



Sentencing Council Consultation

Non-fatal strangulation and suffocation offences

RESPONSE OF THE CRIMINAL BAR ASSOCIATION

August 2024

Introduction - Q 1 to Q4

The Criminal Bar Association

1. The Criminal Bar Association (the 'CBA') represents the views and interests of practising members of the criminal Bar in England and Wales. The CBA's role is to promote and maintain the highest professional standards in the practice of law; to provide professional education and training and assist with continuing professional development; to assist with consultation undertaken in connection with the criminal law or the legal profession; and promote and represent the professional interests of its members.
2. The CBA is the largest specialist Bar association and represents all practitioners in the field of criminal law at the Bar. Most practitioners are in self-employed, private practice, working from sets of Chambers based in major towns and cities throughout the country. The international reputation enjoyed by our Criminal Justice System owes a great deal to the professionalism, commitment and ethical standards of our practitioners. The

technical knowledge, skill and quality of advocacy all guarantee the delivery of justice in our courts, ensuring that all persons receive a fair trial and that the adversarial system, which is at the heart of criminal justice in this jurisdiction, is maintained.

3. The email contact details for the CBA are:

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These written submissions are provided on behalf of the Criminal Bar Association and we are happy for the names of the organisation and contributors to be included in any consultation response document.

4. The CBA welcomes the introduction of dedicated sentencing guidelines for Non-fatal strangulation and suffocation offences.

Culpability factors

5. Question 5: Do you have any comments on the proposed culpability factors?

High Culpability

- i. We endorse the recommendation to have 'sustained or repeated strangulation or suffocation' as aspects of High Culpability Bracket A, rather than terminology that replicates the ABH Guideline of 'prolonged and persistent.'

Culpability A: Clarify and expand definition of 'use of ligature'

- ii. We would invite the Sentencing Council to consider the inclusion of the term 'ligature or other instrument.' We agree that use of a ligature would be a high culpability feature, but other instruments may be used to similar effect. Examples of such instruments could include used for purpose of non-fatal strangulation or restriction of breathing such as a pillow or a

plastic bag being placed over the head. An additional consideration may be if a knee or shod foot was used to restrict breathing of a victim.

Lesser Culpability

- iii. Given the specific nature of the offence, it is agreed that both factors of a 'very brief incident' **and** 'voluntary desistance' should be required in order for an offence to fall within Lesser Culpability bracket C.

- 6. Question 6: Are there any factors you consider could unfairly impact certain groups in respect of (for example) sex, age or ethnicity?

None foreseen.

Harm factors

- 7. Question 7: Do you have any comments on the proposed harm factors?

- i. The current draft Guideline sets out that all cases of strangulation involve a very high degree of inherent harm and that the Court should assess the level of harm caused with reference to the impact on the victim.

- ii. We strongly agree that the inherent harm in all such offences means that only 2 categories are required in the Guideline.

- iii. However, we would welcome inclusion of an explanation of the inherent Harm. Such guidance would increase awareness for practitioners and defendants and increase public understanding of the reasons why all cases of strangulation involve a very high degree of inherent harm. The following example of potential wording includes

factors referenced within the Consultation paper and in paragraph 4 of *R v Alfie Cook* [2023] EWCA Crim 452:

Harm

All cases of strangulation involve a very high degree of inherent harm.

Often a very high degree of harm will result although little or no visible injury may occur. A high degree of psychological harm will nearly always be present, particularly in a domestic abuse offence.

A victim subjected to this offence may experience extreme terror, fear for their life and be deeply traumatised. There is a high risk of loss of consciousness or death from even a brief offence, and where physical injuries do occur these can include difficulties in swallowing and breathing, bruising, internal injuries and/or brain injury. Delayed impacts of restricted breathing can include an increased risk of miscarriage and stroke.'

8. Question 8: Are there any factors you consider could unfairly impact certain groups in respect of (for example) sex, age or ethnicity?

None foreseen.

Sentence levels

9. Question 9: Do you have any comments on the proposed sentence levels?

We agree with the proposed sentence levels in the draft Guideline.

Aggravating factors

10. Question 10: Do you have any comments on the proposed aggravating factors?

- i. We would urge inclusion within the Guideline of the additional statutory aggravating factors (as reflected within para 16(c) of *R v Alfie Cook*):

‘offence motivated by or demonstrating hostility based on any of the following characteristics, or presumed characteristics of the victim, disability, sexual orientation or trans-gender identity.’

The aggravated form of the offence involving racial or religious aggravation is dealt with in Annex A of the Draft Guideline. For clarity, it may assist to set out in the Guideline the 3 other statutory aggravating factors in section 66 of the Sentencing Act 2020.

- ii. In terms of ‘history of violence or abuse towards victim by offender,’ it would be useful to ensure inclusion of ‘history of violence or **domestic** abuse towards victim by offender.’ This ensures that all types of abuse, as per the statutory definition within section 1 of the Domestic Abuse Act 2021 are covered, for example economic abuse or coercive and controlling behaviour.
- iii. We would encourage inclusion of the factor set out at paragraph 16(iii) within *R v Alfie Cook* of ‘attack carried out in the victim’s home’ as an additional aggravating factor.
- iv. We would suggest rewording the ‘presence of children’ to read ‘the presence of others (especially children).’ There will be circumstances where an abuser may strangle or suffocate a victim in the presence of another adult for the purpose of terrorising both.

v. An aggravating factor in the current draft guideline is 'gratuitous degradation of victim.' We would suggest adapting this factor to include 'gratuitous and/or sexualised degradation'.

11. Question 11: Are there any factors you consider could unfairly impact certain groups in respect of (for example) sex, age, or ethnicity?

None foreseen.

12. Question 12: Do you have any comments on the proposed mitigating factors?

We agree with the proposals in the draft Guideline.

13. Question 13: Are there any factors you consider could unfairly impact certain groups in respect of (for example) sex, age or ethnicity?

None foreseen.

14. Question 14: Do you have any other comments on the proposed guideline that have not been covered elsewhere?

Nothing additional.

On behalf of The Criminal Bar Association

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August 2024.