



# Domestic Abuse Bill – the need for an offence of non-fatal strangulation

## About Centre for Women's Justice

Centre for Women's Justice (CWJ) is a legal charity working to hold the state to account on the response to violence against women and girls. We are a lawyer-led organisation whose work focuses on challenging failings and discrimination against women in the criminal justice system.

## Summary

CWJ is calling for a free-standing offence of non-fatal strangulation or asphyxiation. We believe that this form of offending is currently significantly under-charged across the UK. Our view is strongly supported by the Domestic Abuse Commissioner, the Victim's Commissioner and numerous domestic abuse charities.

## What is non-fatal strangulation?

It is widely recognised that non-fatal strangulation and asphyxiation (eg. suffocation with a pillow) are a common feature of domestic abuse and a well known risk indicator.<sup>1</sup> Strangulation and asphyxiation are the second most common method of killing in female homicides - 29% or 17%<sup>2</sup> - as compared to only 3% of male homicides.<sup>3</sup> In addition, research highlights how non-fatal strangulation is frequently used as a tool to exert power and control, and to instil fear, rather than being a failed homicide attempt.<sup>4</sup> It sends the message that 'if you do not comply this is how easily I can kill you'. Non-fatal strangulation is a gendered crime.

Reports describe strangulation as extremely painful and the inability to breathe as very frightening. Loss of consciousness can occur in 10 to 15 seconds and lack of oxygen to the brain can result in mild brain damage. Although there is little or no visible injury, numerous longer-term effects are reported, including fractured trachea/larynx, internal bleeding, dizziness, nausea, tinnitus, ear bleeding, sore throat, a raspy voice, neurological injuries such as facial and eyelid droop, loss of memory and even stroke several months later as a result of blood clots.<sup>5</sup>

## Why is a new offence needed?

Under-charging demonstrates a failure by both police and prosecutors to appreciate the severity of non-fatal strangulation. A separate offence would also emphasise the importance of non-fatal strangulation when risk assessments are carried out.

## The current legal position

There is currently no distinct offence of non-fatal strangulation or asphyxiation<sup>6</sup> and it can be difficult to prove intent for an offence of attempted murder. In the majority of cases prosecutions can only be brought for an assault offence. The lack of observable injuries means that offenders' conduct is often minimised, and they are charged with common assault rather than with actual bodily harm (ABH).

CPS guidance for prosecutors on offences against the person<sup>7</sup> states that when deciding whether to charge with common assault or ABH:

*Whilst the level of charge will usually be indicated by the injuries sustained, ABH may be appropriate.....[where] the circumstances in which the assault took place are more serious e.g. repeated threats or assaults on the same complainant or significant violence (e.g. by **strangulation or repeated or prolonged ducking in a bath**, particularly where it results in momentary unconsciousness.) (emphasis added)*

The guidance indicates that non-fatal strangulation and suffocation offences should result in a charge of ABH rather than common assault. However, in our experience this does not take place in a great many cases.

### **Realities on the ground**

CWJ carries out training for local domestic abuse services around England and Wales. Over the past two years we have trained over 32 organisations at 24 training days in London, the Midlands, North East and North West of England, North and South Wales and the South East. Our experience is based on reports by frontline domestic abuse support workers who take part in our training.

CWJ's training includes the CPS guidance quoted above. In most, if not all, training sessions domestic abuse support workers report that cases they deal with involving strangulation are generally charged as common assault. We hear this consistently and from support workers across the country. We therefore believe this to be a systemic issue rather than local isolated failings.

### **Charging decisions**

Common assault is a summary offence which can only go to the Magistrates Court, whereas ABH is more serious 'either way' offence which can go to the Magistrates or the Crown Court. Police have the power to charge summary offences without a charging decision from the CPS.<sup>8</sup> We do not know whether in practice officers obtain input from CPS in such cases. Frontline support workers report that police officers tend to focus primarily on physical injuries when assessing domestic abuse situations. Strangulation and asphyxiation leave minimal injury and are therefore easily dismissed as relatively minor. However, prosecutors are also responsible for under-charging and for under-charged cases proceeding to trial.

CWJ frequently hears of cases where prosecutions are not brought because the six month deadline for charging summary offences has passed. Where strangulation is treated as a common assault, rather than ABH, cases are closed by the police due to this deadline, without referral to CPS. Had they been treated as ABH there would be no time limit for charging. A new offence must be an 'either way' offence to reflect the severity of the conduct involved and remove time restrictions.

### **Risk assessment**

A separate offence of non-fatal strangulation will also help the police to identify this critical risk factor in their overall response to domestic abuse. This is illustrated by the Coroner's report in 2019 following the inquest into the death of Anne-Marie Nield.

Anne-Marie Nield died during a sustained assault by her partner, who had previously subjected her to non-fatal strangulation. Officers who dealt with the previous incidents failed to appreciate the significance of strangulation as a risk factor, and graded the risk as standard rather than high. There was no support offered to her and no referral to the multi-agency panel. The Coroner expressed concern that at the time of the inquest two and a half years later there was still no reference to non-fatal strangulation in the police force's domestic abuse policy and a lack of understanding of the issue amongst the officers involved.

### **A freestanding offence**

Strangulation has been identified in other jurisdictions to be a significant factor for risk assessment requiring a freestanding offence.<sup>9</sup> In the US around 30 states have non-fatal strangulation offences and in Australia the state of Queensland introduced the offence in 2016, with other states due to follow.<sup>10</sup>

A freestanding offence of strangulation or asphyxiation which is an either way offence will require police to treat such cases with the gravity they deserve and refer all such cases to the CPS for a charging decision. It will also draw the attention of prosecutors to the seriousness of this form of offending, with training around the particular links between strangulation / asphyxiation, domestic abuse and homicide.

**For more information contact Centre for Women's Justice**  
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<sup>1</sup> The standard risk assessment tool for domestic abuse is the "DASH" checklist which includes a question about attempts to strangle, choke, suffocate, or drown the victim /survivor. The factors within the DASH checklist have been identified through extensive research on factors associated with serious domestic violence and homicide.

[:https://safelives.org.uk/sites/default/files/resources/Dash%20risk%20checklist%20quick%20start%20guidance%20FINAL.pdf](https://safelives.org.uk/sites/default/files/resources/Dash%20risk%20checklist%20quick%20start%20guidance%20FINAL.pdf) See Journal of Emergency Medicine (2007)<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2573025/>

<sup>2</sup> The Femicide Census for 2018 reports 46% of deaths by stabbing and 29% through strangulation or asphyxiation, blunt instrument 16%, kicking/ hitting/ stamping 13% and all other methods below 5%. See page 28 <https://femicidescensus.org/wp-content/uploads/2020/02/Femicide-Census-Report-on-2018-Femicides-.pdf>.

Office for National Statistics Homicides in England and Wales year ending March 2019 reports 17% of women killed by strangulation or asphyxiation, with stabbing the most common method of killing <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/homicideinenglandandwales/yearendingmarch2019>

<sup>3</sup> Office for National Statistics Homicides in England and Wales year ending March 2019, see note 3 above.

<sup>4</sup> Thomas, Joshi and Sorenson (2014)

[https://repository.upenn.edu/cgi/viewcontent.cgi?article=1190&context=spp\\_papers](https://repository.upenn.edu/cgi/viewcontent.cgi?article=1190&context=spp_papers)

<sup>5</sup> Sorensen, Joshi and Sivitz (2014) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4202982/> and Pendleton and Strack (2014) <https://blog.ceb.com/2014/09/19/7-facts-every-judge-and-attorney-should-know-when-domestic-violence-involves-strangulation/>

<sup>6</sup> Section 21 Offences Against the Person Act 1861 sets out an offence of attempting to choke, suffocate or strangle in order to commit an indictable offence, however this only applies when this is done in order to commit some other serious offence

<sup>7</sup> <https://www.cps.gov.uk/legal-guidance/offences-against-person-incorporating-charging-standard>

<sup>8</sup> Director's Guidance on Charging Para 15

<sup>9</sup> Edwards (2015) Criminal Law Review Issue 12 <http://bear.buckingham.ac.uk/108/2/SusanE%20final.pdf>

This article also contains a detailed analysis of relevant English law

<sup>10</sup> <https://www.policyforum.net/red-flag-homicide/>, see also note 4 above.