CBA response to the Law Commission’s homicide consultation

Law Commission Consultation Paper No 277 (17th June 2026): Strand one, homicide offences

October 2026

The Criminal Bar Association

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.

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.

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These written submissions are provided on behalf of the Criminal Bar Association.

Overview

1. This is the Criminal Bar Association's ("CBA") response to the Law Commission's ("the Commission") Consultation Paper ("the Consultation") upon strand one of its project reviewing the law relating to homicide.

2. Strand one focuses on homicide offences.

3. The CBA exists to represent the views and interests of specialist criminal barristers in England and Wales. Given its remit this response avoids, whenever reasonably possible, straying into areas of public policy where opinions may be sharply divided.

4. The Commission's guiding steer has been to ensure that homicide offences accurately reflect a defendant's culpability and, if convicted, deliver a proportionate sentence. We agree this is a sensible starting point. In addition, and rightly in our view, it has adopted a series of principles to guide its provisional proposals; namely, (a) coherence, (b) clarity, (c) fairness and proportionality and (d) practicality.

5. The key provisional proposals it has made regarding general homicide offences are:

   - There should be a three-tier structure for the general homicide offences replacing the current two-tier structure.
   - Within that three-tier structure, a division of murder into 2 degrees: first degree (intention to kill) would sit in tier 1 and second degree (intention to cause serious injury) within tier 2.
   - First degree murder would attract the mandatory life sentence.
   - However, second degree murder would attract a maximum discretionary sentence of life imprisonment.
   - A new verdict of "murder with a partial defence" to replace the current verdict of manslaughter when the defendant killed with the intention to kill but a partial defence applies. This would sit within tier 2.
   - Such a new verdict would attract a maximum discretionary sentence of life imprisonment.
   - No partial defences for second degree murder because it attracts a maximum discretionary sentence of life imprisonment. The presence or absence of these factors would be assessed by the judge in the sentencing process.
   - A more coherent and principled reform of manslaughter offences – breaking them down into (a) reckless manslaughter, (b) unlawful dangerous act manslaughter (UDAM) and (c) gross negligence manslaughter (GNM). They would sit within tier 3 with a discretionary life sentence.
   - A structure with more than 3 tiers would be unjustifiably complicated.

6. In our response to the Commission's Call for evidence we made submissions proposing various reforms to the general homicide offences. The Commission's provisional proposals are aligned with the general approach we set out (a rejection of the current binary structure), if not some of the detail we proposed. Accordingly, save where stated below, we adopt and do not repeat those submissions.

7. That said there are issues of important detail upon which we believe many of our members may take a different view to that of the Commission. We flag them for review, but do not adopt a definitive position on them.

8. The Commission has also made interesting and carefully thought through provisional proposals on a number of other offences including (a) infanticide (suggesting it and the defence should be retained), (b) mercy or consensual

killings (suggesting that a bespoke offence is not justified), (c) the need for a bespoke offence to criminalise the supply of unlawful drugs resulting in the victim's death, (d) the need for a bespoke offence to criminalise a culpable failure to seek medical assistance or intervention and death results and (e) the need for a bespoke offence to criminalise controlling or coercive behaviour in an intimate or family relationship where the abusive behaviour contributes to the victim's suicide.

9. Whilst we agree that there is no need to dispense with the offence of infanticide and the defence, we recognise there might be cogent arguments as to why there are gaps in the criminal law which the proposed new offences might be required to address. However, due to the limits of the CBA's remit it does not have sufficient expertise or data to say there is an evidenced based need for some of the newly proposed offences.

10. That said we accept that there are strong arguments to justify the notion that the supply of drugs resulting in a victim's death requires criminalisation.

11. What we are less comfortable doing, however, is saying that the CBA has a stance on the requirement to criminalise omissions. That engages very difficult issues of public policy upon which we as an organisation do not believe it is our place to express a definitive view one way or the other.

12. Finally, we note the Commission's decision not to make proposals to reform the law of complicity because it cuts across the whole of the criminal law, not just homicide offences. However, there is merit in the Commission's reasoning that if its three-tier structure (or more) were adopted that in of itself would introduce in some cases a more accurate differentiation between the culpability of a principal offender and an accessory.

A new homicide structure

Murder: tier 1 and tier 2 (§§ 4.6–4.12)

13. In our response to the Call for evidence we submitted that the Commission should explore a new tiered structure (or ladder) because, amongst other things, it would strike a workable balance between pragmatic considerations and the principle that offenders should be categorised relative to their degree of wrongdoing.

14. Having considered the Commission's proposals we have reflected on our position in the reply to the Call for evidence and suggest that there might be a case not just for a three-tier structure but one with more – say four or five tiers. This would not suffer from undue complication.

15. First, the proposal to categorise killings where there is an intent to kill on the one hand into tier 1 and an intent to do serious harm on the other into tier 2 as first degree and second degree murder respectively is a sensible one. The precise terms that are used (ie. different degrees) is for others to decide.

16. Second, as to the proposal at (**§§6.33-6.37**) that the fault element for second-degree murder should be an intention to cause *serious injury*, this mirrors our response to the Call for evidence and therefore we say nothing more about it.

17. Third, there is good sense in terms of fair labelling to categorise as murder those killings where a partial defence succeeds. Arguably, and for all the reasons the Commission cites, manslaughter (voluntary) is not an appropriate term.

18. However, and fourthly, where there may be significant debate, is the proposal at (**§§5.41 to 5.46**) that there should not be a mandatory life sentence for murder where there is an intent to cause serious harm. Some may say, for example, that a knife point murder with intent to cause serious harm should attract a mandatory life sentence. We flag this accepting it is ultimately likely a public policy debate into which the CBA does not propose to tread.

19. If the mandatory life sentence were retained for killing with intent to cause serious harm, then the argument at **(§7.37** and following) that partial defences should apply only to first degree murder falls away (*see* also **§7.53**). This might have the added advantage that such a verdict would be returned by a jury and not determined by a judge during a sentencing process as the Commission currently proposes. This would also provide procedural coherence for a jury considering partial defences in a single trial where both first- and second-degree murder is in play.

20. Fifth, as to the precise form of such a verdict, discussed by the Commission at (**§7.50**), we have no specific proposals to make. But it is a verdict, not a separate, chargeable, homicide offence.

21. Sixth, such a scheme could retain the three-tier structure. It would, however, create three categories within the second tier. One of second degree murder based on an intent to cause serious harm, another on the basis of a verdict based on the partial defence to first degree murder and a third on the basis of a partial defence to second degree murder. Of course, this would require a verdict stipulating culpability on the basis of a partial defence to either first or second degree murder. Thus framed it might survive criticism at (**§7.44**) that the tier of second degree murder would become overinclusive.

22. Finally, in the alternative, and contrary to creation of a three-tier structure, we recognise a more tiered structure might be justified because there is, for example, a legitimate argument to say that a murder without an intent to kill should not be placed into the same category as a murder based on the partial defence to first degree murder. To do otherwise risks freighting both, at least in terms of basic labelling, with the same level of culpability. This might result in some controversy. For example, a victim of domestic abuse who kills with a partial defence will have the same label as a murderer who deliberately stabs with a knife they have brought to the scene for that purpose.

23. To address this, there may be scope for a 5-tier structure as follows:

    - Tier 1 – murder (intent to kill)

- Tier 2 – murder (intent to do serious harm)
- Tier 3 – first degree murder with a partial defence
- Tier 4 – second degree murder with a partial defence
- Tier 5 – manslaughter

24. We don't believe this would be unduly complicated and it does have the attraction of balancing the need for fairness and proportionality, clarity and consistency with practicality.

Procedural issues (§§ 5.47–5.53)

25. The Commission has given careful thought to the potential practical and procedural ramifications that may flow from its proposal for a three-tiered structure.

26. We broadly agree with its conclusions and do so whether there is a 3, 4 or 5 tiers.

27. As to the issue of jury verdicts, if it was thought necessary to retain the partial defences to second degree murder (ie. killing with intent to cause serious harm) then such a verdict should plainly be delivered by a jury (see above at §19) and not determined by a judge in a sentencing process.

28. Finally, in our view the modern and established use of routes to verdict and written legal directions can explain the tiered structure (whether 3, 4 or 5) to a jury without causing difficulty.

29. We don't hold with criticism from some quarters that abandoning the current binary structure will result in over complication and confusion for a jury, nor that juries will inevitably reach compromise verdicts. That may happen, but equally it may not. For example, juries have shown themselves perfectly capable of returning guilty verdicts of attempted murder where the evidence justifies it.

Manslaughter: tier 3 (§§ 4.13–4.18)

30. In our response to the Call for evidence we submitted that the offence of manslaughter was in urgent need for reform.

31. The Commission's proposal to re-set the boundaries of manslaughter into three categories of reckless manslaughter, UDAM and GNM is to be welcomed. In our view the categorisation is sensible and coherent.

32. It matters not that there is legitimate debate as to whether the offence of reckless manslaughter currently exists in law. The Commission is perfectly entitled to propose it is newly formulated as part of a single and coherent restatement of the contours of manslaughter.

33. There may be proper debate as to how each form of manslaughter is defined, but for our part we don't dissent from the broad thrust of the Commission's proposals, noting it has not, at this stage, prepared a draft bill. Rather we

adopt and do not repeat the discrete submissions we made on this topic in our response to the Call for evidence. We draw particular attention to our submissions on how GNM should be drawn so that medical professionals are properly protected.

Specific homicide offences (§§ 4.19–4.22)

34. For the reasons outlined by the commission we agree that separate specific homicide offences should not be slotted into a fourth tier. They should sit separately alongside the general homicide offences.

35. As to the offence of infanticide and it acting as a defence to murder and manslaughter we have nothing more to add over and above our submissions in response to the Call for evidence. We don't resist the Commission's conclusion that it should be retained, but sit outside the general homicide structure.

Consultation questions

Consultation Question 1: should there be a structure of general homicide offences with three tiers, to reflect different levels of culpability (§4.25).

36. We answer this question in the affirmative save that we think there are legitimate arguments to justify more tiers (see above).

Consultation Question 2: There should be an offence of first degree murder where the defendant unlawfully killed another person with the intention to kill (§5.62).

37. We agree this works within the proposed three-tier structure. It would also work with more tiers.

Consultation Question 3: There should be an offence of second-degree murder where the defendant unlawfully killed another person with the intention to cause serious injury. This offence would have a maximum sentence of life imprisonment (discretionary life sentence) (§6.50).

38. We answer the first part of this question in the affirmative. However, we think there may be a proper debate to be had about whether the mandatory life sentence should apply.

Consultation Question 4: when a defendant is charged with first-degree murder and a partial defence is successful, the defendant should be convicted of "murder with a partial defence" in the second tier of the homicide structure for which the sentence would be a maximum sentence of life imprisonment (discretionary) (§7.58).

Consultation Question 5: when a defendant is charged with second-degree murder partial defences should not be available – they would be considered at the sentencing stage (§7.59).

39. As to question 4 we don't dissent save that it might be better if it fell within a third tier.

40. As to question 5, if the mandatory life sentence was retained for second degree murder, about which there are likely to be strong views either way, then the partial defences should be retained too. If so, the jury should deliver a verdict of "second degree murder with partial defence". It would attract a maximum sentence of life imprisonment (discretionary). It might be better if it fell within a fourth tier

Consultation Question 6: provisional proposals for the ingredients of UDAM (§8.102).

41. We don't dissent.

Consultation Question 7: provisional proposal that strict liability offences should not be capable of forming the basis for a conviction for UDAM (§8.106).

42. We agree.

Consultation Question 8: provisional proposals for the ingredients of GNM (§8.127).

43. We don't dissent.

Consultation Question 9: do the provisional proposals for reform of GNM have any consequential impact on the statutory offence of corporate manslaughter (§8.142)?

44. In our response to the Call for evidence we said:

> "*Lastly, the Commission may wish to explore the relationship of gross negligence manslaughter with the free standing homicide offence applicable to corporate defendants in the* ***Corporate Manslaughter and Corporate Homicide Act 2007****. Individuals cannot be prosecuted as accessories to an offence of corporate manslaughter. They are, of course, liable for an offence of gross negligence. This distinction between organisations and individual fault may cause problems if an individual is charged along with a company and the jury is faced with different tests of liability.*"

45. We accept your reformulation of the standard of conduct in GNM as one that falls "far below" what could reasonably be expected goes some way to addressing our point in that it mirrors the test for gross breach of duty in section 1(4(b) of the Corporate Manslaughter and Corporate Homicide Act 2007.

Consultation Question 10: provisional proposal for a separate category of reckless manslaughter (§8.164).

46. We don't have proposals to make on this topic. However, we recognise there is a proper debate to be had about whether the law should criminalise a person who kills by a reckless lawful act (no unlawful act manslaughter). However, it is one of public policy and not for the CBA.

Consultation Question 11: use of the term "manslaughter" to describe this tier of the general homicide offence structure (§8.172).

47. We don't propose to make submissions about this labelling topic.

Consultation Question 12: provisional proposal to retain the offence and defence of infanticide (§9.49).

48. We don't dissent.

Consultation Question 13: invite views on the need and justification for the bespoke offence to criminalise the supply of unlawful drugs resulting in the death of a person (§10.86).

49. Cases like **Broughton [2020] EWCA Crim 1093** are, we accept, troubling and for various reasons. On balance we believe the commentary set out by the Commission in the Consultation concerning causation in these types of cases is persuasive in making the argument that a new offence is worthy of consideration. However, like the Commission, the CBA does not have sufficient evidence or expertise in relation to prevalence or public policy to assess the need for such an offence. Other consultees are likely better placed to make the running on that.

Consultation Question 14: invite views on the need and justification for a bespoke offence in cases in which there has been a culpable failure to seek medical assistance or intervention and death results (§10.91).

50. Issues to do with reform of the long-established principle in the law that there is no duty to rescue those in danger are matters of public policy shot through with polycentric considerations. The CBA is not able to enter that debate.

Consultation Question 15: should specific homicide offences which fall outside the general homicide offences not be incorporated into the three-tier structure (§10.95) ?

51. We agree and it matters not to this conclusion however many tiers are created.

Consultation Question 16: do the substantive elements of the specific offences require reform (§10.96).

52. We don't seek to add to the submissions we made in the response to the Call for evidence.

Consultation Question 17: do you agree with our provisional view that a separate offence for mercy or consensual killings is not justified (§11.26).

53. We repeat what we said in our response to the Call for evidence:

    "*As with infanticide, cases involving mercy or consensual killing are very infrequent. The CBA received no feedback from members on the topic. The issue of whether the compassionate killing should be recognised by the criminal law, and how, is a policy matter on which the CBA does not adopt a position.*"

Consultation Questions 18 and 19: attempt liability under proposed homicide offences should apply to first-degree murder and the current approach to attempts which may result in a conviction of causing grievous bodily harm with intent or attempting to cause grievous bodily harm should be retained, with the consequence that there should not be an offence of attempted second degree murder (§§13.26 and 13.28).

54. We agree.

Consultation Questions 20 and 21: seek views on the need and justifications for (a) a bespoke offence to criminalise controlling or coercive behaviour where that conduct contributes to death by suicide and (b) for an aggravating factor at sentencing for criminal offences commonly charged in domestic abuse cases, where that abuse contributes to the death by suicide of the victim (§§14.67-68)

55. On the first point the CBA does not have sufficient evidence or expertise to make the case for the creation of such an offence. As to the second point, this appears to be a fair and just proposal.

Consultation Question 22: evidence or data on equality impact (§15.6).

56. The CBA does not have such evidence or data.

Consultation Question 23: anything else that you would like to say (15.7).

57. We do not propose to add to the submissions we have made above and in our reply to the Call to evidence.

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