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Convener of Criminal Justice Committee
Scottish Parliament
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By Email: justicecommittee@parliament.scot

23 June 2025

Dear Convener,

I am grateful for your letter following the evidence session held by the Committee on non-fatal strangulation (NFS), on 21 May 2025, against the background of a petition lodged by Fiona Drouet urging the creation of a stand-alone offence of non-fatal strangulation.

You ask for my views on: (i) non-fatal strangulation (NFS) becoming a stand-alone offence in Scotland; and (ii) the collection of better data on the prevalence of NFS.

I would reply as follows.

(i) NFS becoming a stand-alone offence

I was aware of the evidence session which Dr Emma Forbes attended on behalf of COPFS and provided both oral and written evidence. I considered and approved the written submissions made on behalf of COPFS to the Committee.

I reiterate the view that Dr Forbes expressed that there is no gap in the law in Scotland which would require the create of a new, standalone offence of NFS in Scotland.

I consider that the offences of assault, attempted murder and the Domestic Abuse (Scotland) Act 2018 make a new offence unnecessary.

In contrast to other jurisdictions, Scots law provides for a single offence of assault and the ability of prosecutors to include, within a charge of assault aggravations such as severe injury, danger to life, permanent impairment and permanent disfigurement. This means that, uniquely, the offence of assault can be



prosecuted at all levels in the Scottish courts, up to the High Court. Thus, in any case of NFS, Scottish prosecutors, can decide: (i) whether to charge only assault or to also include aggravations in the charge to reflect the seriousness of the conduct; and (ii) which court to prosecute the offence in, up to and including the High Court.

In addition, the Crown can – and often does – charge NFS as attempted murder where satisfied that the evidence shows the elements of that offence are met.

Finally, NFS cases can be included in charges of abusive behaviour towards a partner or ex-partner, contrary to section 1 of the Domestic Abuse (Scotland) Act 2018.

In short, and for the fuller reasons given by Dr Forbes in her evidence, I do not consider that a new stand-alone offence is necessary. I would take this opportunity to make two further observations.

First, I have recently authorised new instructions to prosecutors on how to assess the seriousness of NFS and thus, for any given case, which offence to charge and which court to prosecute in. These instructions are robust and based, among matters, on up-to-date medical evidence of the dangers of NFS and the medical signs of it. The new guidelines also include a section on assessing whether there has been a danger to life and, if so, including that as an aggravation of the charge.

Second, the Solicitor General and I recognise and share the concerns heard by the Committee about the prevalence of non-fatal strangulation and the mistaken societal acceptance of it, particularly among young people.

Because of these concerns, we are committed to the robust prosecution of NFS. The Solicitor General personally appeared on behalf of the Crown in the *Kirkup v HM Advocate* appeal. She successfully persuaded the Court of Criminal Appeal that there is no defence of consent to NFS in Scots law and thus, when it is carried out in the course of sexual intercourse, the offender has no defence to the crime of assault.

This was a landmark ruling and the fact that the Solicitor General personally conducted this appeal underscores the importance we place on prosecuting NFS.

We are confident we can do so with the offences which already exist in Scots law without the need for a new stand-alone offence.



(ii) The collection of better data on the prevalence of NFS

In respect of how more accurate data can be collected on the prevalence of non-fatal strangulation within cases reported to COPFS, I can advise that COPFS officials are exploring with Police Scotland and SCTS the possibility of a “marker”, that can be added to a charge in which there is non-fatal strangulation. It is anticipated that this “marker” would enable statistical analysis of these cases to be undertaken more easily.

However, as the Committee has heard, the apparent societal acceptance of non-fatal strangulation within relationships means that cases identified by the police and reported to COPFS may not represent the totality of offending. In considering how such non-reported behaviour can be captured I welcome the inclusion of new questions on the topic of non-fatal strangulation during consensual sexual activity in the 2025-26 Scottish Crime and Justice Survey questionnaire.

The Committee may also wish to explore engaging with the Scottish Government’s Equally Safe Joint Strategic Board to consider if the various workstreams involved in the delivery of the Equally Safe Strategy can contribute to the collection of data on non-fatal strangulation.

Finally, I can update the Committee that I have invited Fiona Drouet to discuss with me her petition and the wider issue of non-fatal strangulation, in addition to providing my personal reassurance on how the Crown approaches the prosecution of these offences.

Yours sincerely,

**THE RIGHT HONOURABLE DOROTHY BAIN KC
LORD ADVOCATE**