

August 2023

Non-Fatal Strangulation: Harm, Impact & Sentencing

Introduction

In July 2021 the Government published a new strategy to tackle violence against women and girls. Part of that strategy was the introduction of the Domestic Abuse Act 2021. Section 70 of that Act inserted s.75A into the Serious Crime Act 2015, introducing two new offences of non-fatal strangulation and non-fatal suffocation, both coming into force on the 7th July 2022.

The Offence

The legislation provides that a person is guilty of the offence if they:

- (a) Intentionally strangle another person; or
- (b) Do any other act to another person that –
 - i. Affects the other person's ability to breathe, and
 - ii. Constitutes battery of the other person.

The offence is triable either way. On summary conviction, the maximum sentence is 6 months' custody. On indictment, the maximum sentence is 5 years' custody.

At present, there are no specific sentencing guidelines in place. However, there are two sources of information that can inform us on sentence length and factors to consider: academic study and case law. This article will consider each in turn.

Non-Fatal Strangulation: A Study

For indication as to the harm caused by non-fatal strangulation and factors to consider when making decisions on bail, sentence, prosecution or other, we can turn to a

research paper published by Dr Catherine White OBE, Glen Martin, Alice Martha Schofield and Rabiya Majeed-Ariss in the Journal of Forensic and Legal Medicine.¹

The paper focuses upon the Saint Mary's Centre, a Sexual Assault Referral Clinic ("SARC") in Manchester which offers a range of services for those reporting rape or sexual assault. In June 2016, they introduced a SARC specific non-fatal strangulation proforma, allowing the physician to gather information. The data received from this was used for the study. The information gathered spanned a three-year period between 1st January 2017 and 31st December 2019.

The data covered 2,206 patients. Of these, 204 reported non-fatal strangulation. Therefore, for those visiting the Saint Mary's Centre following an allegation of rape or sexual assault, 1 in 11 reported non-fatal strangulation. This increased to 1 in 5 where the alleged perpetrator was the partner or ex-partner².

Force

A misconception is that non-fatal strangulation must involve a restriction in the airway and thus breathing. The neck contains the trachea, carotid artery and jugular vein. The brain receives oxygen through blood flow; therefore it is the restriction of the veins and arteries which cause rapid loss of consciousness.

A controlled experiment in the 1940's of 126 young males and 11 people with schizophrenia showed that when a cuff on the neck was rapidly inflated to reduce blood flow to the brain, the average time until loss of consciousness was 6.8 seconds³. It takes 4psi to occlude the jugular vein, 11psi the carotid artery and 34psi the trachea. For reference, the average male handshake is 80 – 100psi, and the force required to open a can of fizzy drink is 20psi.⁴

¹ White C, Martin G, Schofield AM, Majeed-Ariss R. *'I thought he was going to kill me': Analysis of 204 case files of adults reporting non-fatal strangulation as part of a sexual assault over a 3 year period.* J Forensic Leg Med. 2021 Apr;79:102128. doi: 10.1016/j.jflm.2021.102128. Epub 2021 Feb 16. PMID: 33618205.

² *Ibid.*

³ Rossen R, Kabat H, Anderson JP. Acute arrest of cerebral circulation in man. *Arch Neurol Psychiatr.* 1943;50:510–528

⁴ Investigation and Prosecution of Strangulation Cases. *The California District Attorneys Association (CDAA) and the Training Institute on Strangulation Prevention;* 2020. Page 124

This demonstrates that non-fatal strangulation can rapidly cause a complainant to suffer loss of consciousness. As this is dictated by loss of oxygen in blood flow, matters of non-fatal strangulation in which the complainant reports their breathing was restricted are of no less seriousness.

Harm

Many would expect marks on the neck to be prevalent after an incident of non-fatal strangulation. However, in the study, less than half (46.6%) of those reporting non-fatal strangulation had an attributable injury⁵. The necessity of presence of injury demonstrating that an incident of non-fatal strangulation took place is therefore a misconception.

Often overlooked are the psychological injuries caused by non-fatal strangulation. The study found that over 40% of complainants were strangled in their own homes, and in 33.3% of cases it was noted that the complainants had children⁶. Therefore, the impact is both on the complainants who are targeted in a place of supposed safety, and on children who may witness the act or be aware of it.

Indicator of future conduct

A 2008 US study⁷ focusing on over 900 women concluded that a prior history of non-fatal strangulation by an intimate partner increased the chances of that woman becoming a victim of attempted murder sixfold and completed murder sevenfold.

In the Saint Mary's Centre study, 27% of those who reported non-fatal strangulation stated it was not the first time that the alleged perpetrator had strangled them. Where the alleged perpetrator was a partner or ex-partner, this gave a median DASH RIC score of 15, with any score over 14 considered high risk.⁸

Over one third of those who suffered non-fatal strangulation believed that they were going to die. Non-fatal strangulation must be looked at both in terms of the seriousness of the assault, but also as an indicator of future risk.

⁵ *White C and others* (n 1)

⁶ *Ibid*

⁷ Glass N, Laughon K, Campbell J, et al. Non-fatal strangulation is an important risk factor for homicide of women. *J Emerg Med*. 2008;35:329–335.

⁸ *White C and others* (n 1).

Non-Fatal Strangulation: Sentencing

Introduction

Having reviewed the study and having considered the factors involved in incidents of non-fatal strangulation, we can turn to how the sentencing exercise is carried out.

***R v Cook* [2023] EWCA Crim 452**

The brief facts are as follows: shortly before the offence of strangulation came into force, Alfie Cook, aged 18 at the time, assaulted his partner by strangling and spitting at her. For this, he was charged with common assault, and released on conditional bail.

4 months later, Cook attended the address of the complainant and assaulted her by squeezing her neck and pushing her down into the sofa, before getting on top of her and strangling her with both hands, leaving red marks on her neck.

Cook pleaded guilty to intentional strangulation at the PTPH and was sentenced to 15 months' custody. With the lack of guidelines, in sentencing, the Judge was referred to the guidelines for ABH to help her come to a conclusion.

Cook appealed on the grounds that his sentence was manifestly excessive, with the Court of Appeal publishing its judgment on the 4th April 2023.

Court of Appeal

At [14], the Court of Appeal found that the Judge at first instance was entitled to have some regard to the ABH guidelines, however, the Judge was not required, nor entitled to do anything more than merely have some regard. The Court noted that the offence of intentional strangulation does not, as part of the offence, include any elements of physical or psychological harm. Therefore, *'to seek to set the starting point for the offence by reference to actual harm is wrong in principle'*.

The Court went on to consider what they believed the proper approach to sentencing intentional strangulation should be.

At [16], the Court stated that the conduct required to establish the offence meant a custodial sentence is appropriate, save in exceptional circumstances. The starting point will be 18 months' custody, irrespective of the gender of the perpetrator.

Aggravating Factors

The Court went on to outline a non-exhaustive list of aggravating factors:

- (i) History of previous violence. The significance of the history will be greater when the previous violence has involved strangulation.
- (ii) Presence of a child or children.
- (iii) Attack carried out in the victim's home.
- (iv) Sustained or repeated strangulation.
- (v) Use of a ligature or equivalent.
- (vi) Abuse of power.
- (vii) Offender under influence of drink or drugs.
- (viii) Offence on licence.
- (ix) Vulnerable victim.
- (x) Steps taken to prevent the victim reporting an incident.
- (xi) Steps taken to prevent the victim obtaining assistance.

In addition to these, the statutory aggravating factors also apply. The Court noted at [18] that due to the lack of a specific sentencing guideline, the Sentencing Council Overarching Principles' Guideline will apply. The aggravating factors that the Court identified were drawn substantially from the overarching guideline.

Mitigating Factors

The Court also addressed mitigating factors. The Court made clear at [17] that '*provocation is no mitigation to an offence within a domestic context, except in rare circumstances*'. The Court set out a non-exhaustive list of mitigating factors:

- (i) Good character.
- (ii) Age and immaturity.
- (iii) Remorse.
- (iv) Mental disorder.
- (v) Genuine recognition of the need for change and evidence of the offender having sought appropriate help and assistance.
- (vi) Very short-lived strangulation from which the offender voluntarily desisted.

Appeal Outcome

Cook's appeal was dismissed. On having established the correct approach, the Court applied it to the case, considering the proper sentence would have been 18 months'

custody. Therefore, rather than being manifestly excessive, the Court found that, if anything, the sentence was lenient. The appeal was rejected.

The most important guidance of the Court of Appeal to note is that unless there are exceptional circumstances, the starting point shall be a sentence of 18 months' immediate custody.

Whilst the Court of Appeal sought guidance from the Sentencing Council Overarching Principles Guideline, they have introduced unique factors, such as use of a ligature or equivalent, history of strangulation and very short-lived strangulation from which the offender voluntarily desisted.

It must be noted as to why the Judge at first instance erred in their sentencing, and as to what makes sentencing intentional strangulation unique as compared to sentencing an assault. This is, as laid out in *Cook*, the fact that the offence does not require any element of physical or psychological harm. This approach is confirmed in the aforementioned study. Thus, if there is any such harm, this will inevitably be an aggravating feature.

Conclusions

The Saint Mary's Centre study demonstrates that non-fatal strangulation can cause serious harm, even without the presence of injury and a restriction in the ability of the complainant to breathe. Defendants should not be able to rely on the absence of these as a mitigating feature. The study outlined even without their presence, severe harm and psychological injury can be caused.

The decision in *Cook* reaffirms this position, and sets out the unique position that in a matter of non-fatal strangulation, unlike other assault offences, there does not need to be physical harm. This demonstrates the Court's understanding of the seriousness of the offence.

However, the case of *Cook* has not created a guideline that is set in stone, thus approaches to matters of sentencing still vary. Sentencing guidelines will be required to ensure consistency across sentencing courts, and Dr Catherine White OBE has

recently confirmed that she is in consultation with a view to publishing sentencing guidelines for the offences.

Matthew Mortimer
Pupil Barrister

My thanks to Dr Catherine White OBE for providing me with a copy of her study to enable the writing of this article.

REFERENCES

Glass N, Laughon K, Campbell J, et al. Non-fatal strangulation is an important risk factor for homicide of women. *J Emerg Med.* 2008;35:329–335.

Investigation and Prosecution of Strangulation Cases. *The California District Attorneys Association (CDAA) and the Training Institute on Strangulation Prevention;* 2020. Page 124

Rossen R, Kabat H, Anderson JP. Acute arrest of cerebral circulation in man. *Arch Neurol Psychiatr.* 1943;50:510–528

White C, Martin G, Schofield AM, Majeed-Ariss R. 'I thought he was going to kill me': Analysis of 204 case files of adults reporting non-fatal strangulation as part of a sexual assault over a 3 year period. *J Forensic Leg Med.* 2021 Apr;79:102128. doi: 10.1016/j.jflm.2021.102128. Epub 2021 Feb 16. PMID: 33618205.

RESOURCES

Institute For Addressing Strangulation

<https://ifas.org.uk/>

Safe Lives DASH

<https://safelives.org.uk/sites/default/files/resources/Dash%20risk%20checklist%20quick%20start%20guidance%20FINAL.pdf>

Saint Mary's Centre

<https://www.stmaryscentre.org/>

Training Institute on Strangulation Prevention

<https://www.strangulationtraininginstitute.com/>

THE CRIMINAL TEAM:

Jason Beal (Head of Chambers)
Piers Norsworthy (Head of Crime)
Joanna Martin KC
Rupert Taylor
Edward Bailey
Judith Constable
Emily Cook
Sally Daulton
Victoria Bastock
Althea Brooks
Holly Rust
Ryan Murray
Sophie Johns
Philippa Harper
Naila Hadid (pupil)
Matthew Mortimer (pupil)

Door Tenants

Paul Williams
Julia Cox



Devon Chambers
8 The Crescent
Plymouth
PL1 3AB
01752 661659

www.devonchambers.co.uk
clerks@devonchambers.co.uk