

New Sentencing Guideline for Strangulation and Suffocation



Since its creation in section 70(1) of the Domestic Abuse Act 2021, the offence of strangulation or suffocation has been without specific sentencing guidelines until the 1st of January 2025. During that time, the guidelines for assault occasioning actual bodily harm (ABH) were used, with guidance provided by the Court of Appeal in *R v Cook* [2023] EWCA Crim 452. The principles established by this case concerning sentencing included that a custodial sentence will be appropriate save in exceptional circumstances, and this will ordinarily be a sentence of immediate custody with a starting point of 18 months custody. This approach was reflected in sentencing; the majority of offenders sentenced between April and June 2023 received a custodial sentence, of which 55% received an immediate custodial sentence.¹ Of those sentenced to an immediate custodial sentence in that period, the mean average custodial sentence length was approximately 17 months after any reduction for a guilty plea.²

However, the use of the ABH sentencing guidelines continued to present difficulty when sentencing due to the requirement in the guidelines to assess actual harm caused. The Court of Appeal in *Cook* recognised that there 'is real harm inherent in

¹ Sentencing Council, 'Statistical bulletin: Non-fatal strangulation and suffocation' (14 May 2024) p2, <<https://www.sentencingcouncil.org.uk/wp-content/uploads/Non-fatal-strangulation-statistical-bulletin.pdf>> accessed 21 December 2024

² *Ibid*, p3.

the act of strangulation',³ and the Sentencing Council recognised that using the ABH guidelines meant that sentences did not always reflect the seriousness of the harm caused to the victim.⁴

The Sentencing Council Guidelines

The Sentencing Council guidelines seek to consolidate aspects of the judgment in *Cook* and implement it into the Council's stepped approach to sentencing.⁵ The guidelines also cover the racially aggravated versions of the offences by placing an uplift on sentence at step 3 in the same manner as the ABH guidelines.

Culpability

The guidelines provide for three levels of culpability:

A. High culpability

- Sustained or repeated strangulation or suffocation
- Use of ligature

B. Medium culpability

- Cases falling between category A or C because:
 - Factors in both high and lesser categories are present which balance each other out; and/or
 - The offender's culpability falls between the factors as described in high and lesser culpability

³ [2023] EWCA Crim 452 [4], (CA).

⁴ Sentencing Council, 'Non-fatal strangulation and suffocation offences – Consultation' (15 May 2024) p3, <<https://www.sentencingcouncil.org.uk/wp-content/uploads/Non-fatal-strangulation-consultation.pdf>> accessed 23 December 2024

⁵ Ibid.

C. Lesser culpability

- Very brief incident **and** voluntary desistance
- Excessive self defence
- Mental disorder or learning disability, where linked to the commission of the offence

The reference to 'sustained or repeated' in **high culpability** represents a lower threshold than 'prolonged and persistent' which is used in other assault offence guidelines. The guidelines also do not consider the vulnerability of the victim at the culpability step unlike other assault guidelines. The Sentencing Council instead decided that specific vulnerabilities of a victim will serve as aggravating features, and an offence which occurred in a domestic context would constitute an aggravating feature in any category, which should be reflected in the sentence through an increase in the starting point at step two.⁶

Harm

The guidelines provide for 2 levels of harm:

Category 1

- Offence results in a severe physical injury or psychological condition which has a substantial and long-term effect on the victim's ability to carry out their normal day to day activities or their ability to work.

⁶ Ibid (n 4) p8.

Category 2

- All other cases

As part of the assessment of harm, the Sentencing Council has recognised the harm inherent in strangulation, and taken into account research findings that there is a high risk of harm or death in even a short lived strangulation offence.⁷ Because of this, the guidelines focus on only two harm categories, with **category 1** reserved for severe harm which has a substantial ongoing impact and long term effect on a victim.

Sentence range

The proposed sentencing categories are as follows:

Having determined the category at step one the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.			
Culpability			
Harm	A	B	C
Category 1	<p>Starting point 3 years 6 months' custody</p> <p>Category Range 2 – 4 years 6 months' custody</p>	<p>Starting point 2 years 6 months' custody</p> <p>Category Range 1 year 6 months' custody – 3 years 6 months' custody</p>	<p>Starting point 1 years 6 months' custody</p> <p>Category Range 1 year's custody – 3 years' custody</p>
Category 2	<p>Starting point 2 years 6 months' custody</p> <p>Category Range 1 year 6 months' custody – 3 years 6 months' custody</p>	<p>Starting point 1 years 6 months' custody</p> <p>Category Range 1 year's custody – 3 years' custody</p>	<p>Starting point 1 year's custody</p> <p>Category Range High level community order – 2 years 6 months' custody</p>

⁷ Ibid (n 5) p10.

Once the court has identified the starting point, the process of applying aggravating and mitigating factors is carried out in the usual manner. The guidelines identify the following aggravating and mitigating factors, many of which reflect the domestic context in which this kind of offence is generally committed, and the specific vulnerabilities for victims which flow from that.

Aggravating factors

Statutory aggravating factors

- Previous convictions
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim:
disability, sexual orientation or transgender identity

Other aggravating factors

- Offence committed in domestic context
- Victim isolated and unable to seek assistance
- Offence was committed against person providing a public service, performing a public duty or providing services to the public
- History of violence or abuse towards victim by offender
- Presence of children
- Gratuitous degradation of victim
- Abuse of trust or power
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

- Commission of offence whilst under the influence of alcohol/drugs
- Offence committed whilst on license or post sentence supervision
- Failure to comply with current court orders

Mitigating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Positive character and/or exemplary conduct (regardless of previous convictions)
- History of significant violence or abuse towards the offender by the victim
- Age and/or lack of maturity (which may be applicable to offenders aged 18-25)
- Mental disorder or learning disability, where not linked to the commission of the offence
- Sole or primary carer for dependent relative(s)
- Pregnancy, childbirth and post-natal care
- Determination and/or demonstration of steps taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Difficult and/or deprived background or personal circumstances
- Prospects of or in work, training or education.

Imposition of suspended sentences

The Court of Appeal in *Cook* specified that a custodial sentence for strangulation or suffocation would ordinarily be immediate.⁸ The Sentencing Council considered the addition of an explicit provision to this effect, and concluded that it would be wrong in principle to disregard the guideline for the Imposition of Community and Custodial sentences because it would be 'unjust to distinguish non-fatal strangulation and suffocation from other offences which are equally serious and undermine broader sentencing principle'.⁹ Therefore, no such provision appears in the guidelines and the decision of whether to suspend a custodial sentence is determined in the usual manner.

Conclusion

The imposition of dedicated sentencing guidelines for the offences of strangulation and suffocation has added clarity to the sentencing process. By recognising the harm inherent in strangulation and suffocation offences without the need for reference to actual harm caused, the guidelines will help to ensure these offences are sentenced appropriately and proportionately.

Gemma McKernan

Pupil Barrister

⁸ Ibid (n 3) [16].

⁹ Ibid (n 4) p11.

References

R v Cook [2023] EWCA Crim 452

Sentencing Council, 'Non-fatal strangulation and suffocation offences – Consultation' (15 May 2024)

Sentencing Council, 'Statistical bulletin: Non-fatal strangulation and suffocation' (14 May 2024)