

Sentencing Council meeting:
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Lead Council member:
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SC(23)NOV04 – Non Fatal Strangulation
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1 ISSUE

1.1 This is the second meeting to consider a guideline for non-fatal strangulation and suffocation.

2 RECOMMENDATION

2.1 That the Council considers and agrees the draft guideline at **Annex A**.

3 CONSIDERATION

3.1 At the October meeting the Council considered factors which should be included in the seriousness assessment for non-fatal strangulation offences and agreed that sentences should have parity with GBH s20 offences. It was agreed that the draft guideline should include two culpability and two harm categories. A draft guideline informed by the decisions at the meeting is at **Annex A**.

Culpability factors

3.2 The Council considered culpability factors at the last meeting and agreed that only lesser culpability factors should be defined, and that high culpability should capture all other cases. It was highlighted that this would likely mean a high proportion of offences would be captured at high culpability, and the Council agreed this was appropriate.

Question 1: Does the Council agree with the culpability factors at Annex A?

Harm factors

3.3 For the harm assessment it was also agreed that the guideline should include two categories, with the highest level of harm defined and the lower harm category capturing all other cases. It was agreed that explanatory text should be included to recognise that all cases will involve a high degree of harm.

3.4 Given that harm will always be of a very high level due to the terror victims are likely to experience, it was agreed that the highest category should be reserved for cases where there is a severe and ongoing impact. This would align with the approach to assessing harm in GBH offences, where the highest category is reserved for almost fatal injuries and life changing injuries or conditions. For reference, GBH harm factors are as follows:

Harm
All cases will involve 'really serious harm', which can be physical or psychological, or wounding. The court should assess the level of harm caused with reference to the impact on the victim

Category 1

- Particularly grave or life-threatening injury caused
- Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment
- Offence results in a permanent, irreversible 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 on their ability to work

Category 2

- Grave injury
- Offence results in a permanent, irreversible injury or condition not falling within category 1

Category 3

- All other cases of really serious harm
- All other cases of wounding

3.5 At the last meeting the following harm factors were proposed:

Harm
Category 1 – Severe, ongoing psychological and/or physical impacts
Category 2 – All other cases

The factors were agreed in principle subject to minor amendments to separate the factors out, as follows:

Harm

All cases of strangulation involve a very high degree of inherent harm. The court should assess the level of harm caused with reference to the impact on the victim.

Category 1

- Severe, ongoing psychological harm
- Physical injuries resulting in severe long-term impact

Category 2

- All other cases

3.6 Further consideration has been given to these factors in light of proposed sentences. It is thought that it would be appropriate to align the wording of the factor with the relevant GBH harm factor to define the level of harm attracting the highest assessment more clearly. Given that many offences will involve psychological harm, the severity of this may be difficult to assess without some objective measure, risking inconsistent harm assessments. There is also a risk that sentences would be disproportionate in comparison to GBH s20 offences where the impacts of those offences are permanent and life changing.

3.7 To mitigate these risks it is proposed the relevant high GBH harm factor (slightly modified to remove the requirement for permanent, irreversible injuries) be included as Category 1 harm.

Harm

All cases of strangulation involve a very high degree of inherent harm. The court should assess the level of harm caused with reference to the impact on the victim.

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 on their ability to work.

Category 2

- All other cases

3.8 It is thought that aligning the harm assessment in the highest category with GBH s20 offences which cause a victim to be permanently affected by a disability or injury would be appropriate and provide for proportionate sentences.

Question 2: Does the Council agree with the proposed high harm factor?

Aggravating and mitigating factors

3.9 Proposed aggravating and mitigating factors are included at Annex A and are based on the discussion at the last meeting. There are significantly more aggravating than mitigating factors as there is little appropriate mitigation for this offence.

Question 3: Does the Council agree with the proposed aggravating and mitigating factors?

Sentences

3.10 It was agreed at the last meeting that sentence ranges should be broad and starting points should ensure appropriate uplifts can be applied for aggravating factors. It is important to note that as the lesser culpability factors are likely to capture a low proportion of offences, the majority will fall within high culpability and aggravating factors will apply. Based on a review of transcripts and the known prevalence of strangulation within domestic abuse contexts, it is highly likely that several factors are likely to apply in many cases requiring increases to sentence starting points. The Council is asked to bear this mind in considering sentences.

3.11 At the last meeting it was agreed that there should be parity between GBH s20 sentences and non-fatal strangulation sentences. S20 sentences are as follows:

| HARM | CULPABILITY | | |
|--------|---|--|---|
| | A | B | C |
| Harm 1 | <p>Starting point 4 years' custody</p> <p>Category Range 3 years– 4 years 6 months' custody</p> | <p>Starting point 3 years' custody</p> <p>Category Range 2 -4 years' custody</p> | <p>Starting point 2 years' custody</p> <p>Category Range 1-3 years' custody</p> |
| Harm 2 | <p>Starting point 3 years' custody</p> <p>Category Range 2 -4 years' custody</p> | <p>Starting point 2 years' custody</p> <p>Category Range 1-3 years' custody</p> | <p>Starting point 1 years' custody</p> <p>Category Range High Level Community Order - 2 years' custody</p> |
| Harm 3 | <p>Starting point 2 years' custody</p> <p>Category Range 1-3 years' custody</p> | <p>Starting point 1 years' custody</p> <p>Category Range High Level Community Order - 2 years' custody</p> | <p>Starting point 26 weeks' custody</p> <p>Category Range Medium Level Community Order – 1 years' custody</p> |

3.12 At the last meeting the Council discussed whether sentences should reflect the upper left quadrant of the GBH sentence table rather than the bottom left quadrant, and consideration has been given to likely categorisations of offences based on factors. It is proposed that the A1 starting point and range be replicated in the NFS guideline. The proposed A2/B1/B2 sentences are slightly lower than comparable category GBH s20 offences, to reflect that the guideline models differ and the non-fatal strangulation guideline will assess many aspects of seriousness at Step 2 rather than Step 1. As discussed at the last meeting this is due to the very specific nature of strangulation, and that many factors reflecting seriousness are aggravating features rather than increasing culpability.

3.13 A2/B1/B2 categories with only one or two aggravating factors will attract sentences which are capable of being suspended should there be an early guilty plea and the relevant Imposition assessment deem it appropriate. Offences with multiple aggravating factors would be higher and less likely to be capable of being suspended. The proposed sentences are included at **Annex A**.

3.14 The A2/B1 proposed starting point of 2 years 6 months is the same for a Category A1 [controlling or coercive behaviour](#) offence and an A1 [ABH](#) offence.

3.15 It is thought the proposed sentences provide for relativity with offences of comparable seriousness and align with sentences for similar offences. However, it is important that factors be appropriately framed to enable proportionate seriousness categorisations and sentences.

Question 4: Does the Council agree with the proposed sentences at Annex A?

4 EQUALITIES

4.1 As already noted the demographic of offenders is mostly males as the offence is predominantly committed by males against females in a domestic abuse context. The guideline is intended to apply equally to females and proposed factors are equally applicable regardless of the gender of the offender.

5 IMPACT AND RISKS

5.1 While the volume of offenders sentenced on a principal offence basis in 2022 was around 230, as indicated by the DPP at the October meeting, volumes of charges for this offence are steadily increasing and are currently around 400 per month. This reflects a robust Criminal Justice response to these offences in line with the ongoing Government

priority to address Violence Against Women and Girls. However, it is likely the resource impacts of the guideline will be substantial which could exacerbate current issues with the prison population.

5.2 There is likely to be considerable interest in the guideline proposals from academics and experts in the field of the offences of strangulation and suffocation. It is intended that a roundtable be held to seek expert views, either before the draft guideline is finalised or during the consultation period.

Step 1 – Determining the offence category

In order to determine the category the court should assess culpability and harm. The court should determine the offence category with reference only to the factors listed in the table below.

| | |
|--------------------|---|
| Culpability | |
| A | <ul style="list-style-type: none"> All cases not falling within Culpability B |
| B | <ul style="list-style-type: none"> Very brief incident and voluntary desistance Mental disorder or learning disability, where linked to the commission of the offence Excessive self defence |

| | |
|--|--|
| Harm | |
| All cases of strangulation involve a very high degree of inherent harm. The court should assess the level of harm caused with reference to the impact on the victim. | |
| 1 | <ul style="list-style-type: none"> 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 on their ability to work. |
| 2 | <ul style="list-style-type: none"> All other cases |

Step 2 – Starting point and category range

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

| HARM | CULPABILITY | |
|--------|---|---|
| | A | B |
| Harm 1 | <p>Starting point 4 years' custody</p> <p>Category Range 3 – 4 years 6 months' custody</p> | <p>Starting point 2 years 6 months' custody</p> <p>Category Range 1 – 3 years 6 months' custody</p> |
| Harm 2 | <p>Starting point 2 years 6 months' custody</p> <p>Category Range 1 – 3 years 6 months' custody</p> | <p>Starting point 1 year 6 months' custody</p> <p>Category Range High Level Community Order – 2 years 6 months' custody</p> |

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- 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 was committed against person providing a public service, performing a public duty or providing services to the public
- Offence committed in domestic context

- Victim isolated and unable to seek assistance
- History of violence or abuse towards victim by offender
- Presence of children
- Gratuitous degradation of victim
- Abuse of trust or power
- Use of ligature or other item
- 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 licence or post sentence supervision
- Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Age and/or lack of maturity
- Mental disorder or learning disability, where not linked to the commission of the offence
- Sole or primary carer for dependent relative(s)
- Determination and/or demonstration of steps taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment

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