

**Strangulation and
suffocation offences
guideline**
Consultation response

December 2024

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Foreword



On behalf of the Sentencing Council I would like to thank all those who responded to the consultation on this guideline, and who engaged with us during the consultation process. I also extend my thanks to the members of the judiciary who gave their time to participate in the research exercise undertaken to test and inform the development of the guideline.

Evidence is clear that acts of strangulation and suffocation are highly dangerous, even if carried out for a brief period. Strangulation and suffocation are often uniquely terrifying for victims who as a result may suffer significant trauma. Many victims are vulnerable, and unfortunately these offences are all too often committed in domestic environments where people should feel safe. This guideline will ensure that those who may seek to harm others in this way receive sentences which reflect the seriousness of these offences.

As with all Sentencing Council consultations, the views put forward by all respondents were carefully considered, and the range of views and expertise were of great value in informing the definitive guideline. Because of those views, some changes have been made to the wording of a number of factors within the guidelines. The detail of those changes is set out within this document.

This guideline will provide valuable assistance to courts dealing with these offences and ensure sentences which reflect their seriousness.

Lord Justice William Davis
Chairman, Sentencing Council

Introduction

In revising its assault offences guidelines which were published in 2021 the Sentencing Council had considered research highlighting the seriousness of strangulation as a form of assault. As a result, the revised guidelines provided for the culpability of the perpetrator of any assault involving strangulation, suffocation or asphyxiation to be assessed at the highest level of seriousness.

Subsequently, the Government decided that specific offences of strangulation and suffocation were necessary to ensure perpetrators could be charged and prosecuted with a sufficiently serious offence even in the absence of physical injuries.

Section 70(1) of the Domestic Abuse Act 2021 inserted section 75A in the Serious Crime Act 2015 which created an offence of strangulation and suffocation. The offence was introduced as part of the Government's Violence Against Women and Girls Strategy and came into force on 7 June 2022.

Given that strangulation and suffocation are both forms of assault which are provided for in the assault guidelines as high culpability offences, many sentencers referred to these guidelines when sentencing the new offences after their introduction. In particular the [ABH guideline](#) was referred to, as ABH shares the same statutory maximum sentence as the new offence. However, the ABH guideline assesses actual harm caused, and in the absence of visible physical injuries sentences were not always reflective of the seriousness of the harm caused or risked by an offence. This was noted by the Court of Appeal in [R v Cook \[2023\] EWCA Crim 452](#), which set out the approach to sentencing these offences until such time a sentencing guideline was available.

In May 2024 the Council consulted on a guideline which consolidated aspects of that judgment into a guideline format, using the Council's stepped approach to sentencing. The Council was able to consider the application of principles within the judgment when considering transcripts of subsequent cases sentenced. This provided valuable insight and confidence into how some of these factors may be interpreted and applied in sentencing using the guideline.

The consultation closed in August 2024 and the Council has carefully considered responses in finalising the guideline. The rationale for the factors included in the definitive guideline is explained in this consultation response document and anticipated impacts are highlighted in the accompanying resource assessment.

The guideline seeks to ensure appropriate sentences for these offences, as well as proportionality and relativity with sentences for related offences and other sentencing guidelines.

Applicability of guidelines

The guideline will be in force from 1 January 2025 and will apply only to offenders aged 18 and older sentenced on or after that date. General principles to be considered in the

sentencing of children and young people are set out in the Sentencing Council's definitive guideline, Sentencing children and young people.

Summary of analysis and research

Several research exercises were carried out to support the Council in developing the guidelines. Content analysis was conducted of judges' sentencing remarks for offenders sentenced for strangulation and suffocation. This provided valuable information on some of the key factors influencing sentencing decisions for these cases.

During the consultation stage of guideline development, small-scale qualitative research interviews were carried out with ten Crown Court judges to help gauge how the guideline might work in practice. The results of the research, in combination with consultation responses, led to changes to the wording of factors within the guideline, such as changing the culpability C factor of 'very brief and voluntary desistance' to 'fleeting incident from which offender almost immediately voluntarily desisted'. In this way, analysis and research played an important part in the development of the guideline.

A statistical summary and draft resource assessment were published alongside the consultation, and updated data tables and a final resource assessment have been published alongside the definitive guideline and this consultation response document.

Summary of responses

There were 69 responses to the consultation. Some of the responses were from groups or organisations, and some from individuals.

Breakdown of respondents

Type of respondent	Number of responses
Academic	1
Charity or non-governmental organisation	5
Government	1
Judges	7
Legal professional	3
Medical professional	3*
Magistrates	27
Member of the public/ unknown	21
Prosecutor or police	1

*A meeting was held with medical experts Professor Cath White and Dr Helen Bichard to discuss their written consultation response in more detail.

Equality and diversity

The Sentencing Council considers matters relating to equality and diversity to be important in its work. The Council is always concerned if it appears that the guidelines have different outcomes for different groups. The Council published the report '[Equality and diversity in the work of the Sentencing Council](#)' in January 2023, designed to identify and analyse any potential for the Council's work to cause disparity in sentencing outcomes across demographic groups.

In addition, the available demographic data, (sex, age group and ethnicity of offenders) is examined as part of the work on each guideline, to see if there are any concerns around potential disparities within sentencing. For some offences it may not be possible to draw any conclusions on whether there are any issues of disparity of sentence outcomes between different groups caused by the guidelines, for example because of a lack of available data or because volumes of data are too low. However, the Council takes care to ensure that the guidelines operate fairly and includes reference to the Equal Treatment Bench Book in all guidelines:

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

The demographic data on sex, age and ethnicity have been presented for the year 2023. The statistics discussed below can be found within the data tables published on the Council's website.

Sex

For strangulation and suffocation offences, substantially more males were sentenced compared to females. Of the around 1,100 offenders sentenced in 2023, the majority were male (98% per cent), with only around 25 female offenders sentenced in total. For male offenders, immediate custody was the most common sentence, comprising 64 per cent of sentences imposed in 2023, followed by 28 per cent receiving a suspended sentence order and 7 per cent a community order, a further 1 per cent received a sentence of 'other or unknown'. The remaining offenders received a fine (less than 1 per cent) or a discharge (less than 1 per cent). For female offenders, the majority received a suspended sentence outcome (70 per cent), 22 per cent received an immediate custodial sentence and a further 4 per cent received a community sentence and 4 per cent received a discharge.

Age

The majority of offenders sentenced for strangulation and suffocation offences in 2023 were under the age of 50 (87 per cent), for these age groups, immediate custody was the most common sentence outcome. Between the ages of 25 and 49, the mean average

custodial sentence length (ACSL) after any reduction for a guilty plea was fairly consistent at around 19 to 20 months' custody. There were some variations in ACSL for the younger and older age groups. However, these groups included lower numbers of offenders sentenced and therefore the ACSLs derived are more sensitive to small shifts in volume.

Ethnicity

In general, most offenders sentenced in 2023 for strangulation and suffocation offences were white (88 per cent, where ethnicity was known). Across all ethnicities, immediate custody was the most frequent outcome. There was some variation in the ACSL across ethnicity groups, although caution should be taken comparing between groups as some ethnicities contained much smaller volumes of offenders sentenced.

The Council has had regard to its duty under the Equality Act 2010 in developing the guideline, specifically with respect to any potential effect of the proposals on victims and offenders with protected characteristics. The consultation sought views from respondents as to whether any factors within the guideline would disproportionately impact any offenders based on sex, age or ethnicity. No respondents identified any issues specific to the guideline. The guideline and its factors are intended to apply equally to all offenders aged 18 or over.

Strangulation and suffocation

Culpability factors

Culpability factors provide for assessment of an offender's intention or blameworthiness in committing the offence. As stated in the consultation document the Council considers that all offences of strangulation and suffocation are very serious. However, even with this as the starting position, it is necessary for the guideline to provide for the full spectrum of culpability of an offender. Views were sought on three levels of culpability, with factors as follows:

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

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
-

Temporal related factors

The higher culpability factor 'sustained or repeated strangulation or suffocation' and the lesser culpability factor 'very brief and voluntary desistance' were considered highly relevant to assessing an offender's intention to cause harm, as duration of an offence is for other forms of assault. Analysis of sentencing transcripts for strangulation and suffocation confirmed this, highlighting a spectrum of offences which ranged from prolonged and repeated acts of strangulation or suffocation and offences of a very short duration committed in 'a moment of madness'.

Many respondents approved of the sustained and repeated factor and the rationale for departing from the wording 'prolonged and persistent' used in the assault guidelines:

We note that the Council have opted to use the wording in the guideline judgment of R v Cook [2023] EWCA Crim 452 'sustained or repeated strangulation' as opposed to the term 'prolonged and persistent' found in the guidelines for other offences of non-fatal violence. We share the Council's view that 'sustained or repeated' is preferable in the context of non-fatal strangulation and non-fatal suffocation. - Sentencing Academy

However, there were a number of respondents who raised concerns at the application of the factor in practice, and the potential for inconsistent interpretations of what constitutes a sustained offence:

Another practical problem in assessing how long the strangulation lasted, is that often a victim does not know or is unable to form a reliable assessment of how long it lasted because of their terror or because they lose consciousness while still being strangled. – Crown Court Judge

The same concerns were raised in relation to the factor very brief and voluntary desistance, with some judges in road testing and a number of respondents questioning how the duration of a brief incident would be assessed:

We do not take issue with factors mentioned in Culpability A or B, they are aligned with the approach in R v Cook [2023] EWCA Crim 452. In relation to Culpability C, a description of an incident as 'brief' (and by extension "very brief") is open to interpretation (R v Cook referred to a 'short-lived' incident). Anything from three seconds to thirty seconds (the latter was the subject of discussion in R v Borsodi [2023] EWCA Crim 899) may potentially be described as a 'brief' or 'short lived' incident. We believe Category C seeks to describe a potentially fleeting or momentary incident of strangulation in light of the guidance given in Cook about any incident carrying an inherent risk / impact, necessitating the 18-month starting point for sentence. We wonder whether for example "very brief, fleeting or momentary" would make clearer what is intended? - HM Council of District Judges

Professor Cath White and Dr Helen Bichard also raised concerns regarding seriousness being assessed with reference to duration of an offence. This was due to their concern that 'even brief offences are very serious as consciousness can be lost, indicating possible brain injury, in a matter of seconds'. IFAS, an organisation focused on increasing awareness of the dangers of strangulation within the medical profession, stated the following:

Caution over temporal references. Correct interpretation of terms such as “sustained” in the context of anatomical / physiological consequences of strangulation are essential. Requires judges to be well versed in the medical evidence base. Who will determine the duration? It is likely that due to increased oxygen deprivation, the worse the strangulation is, the less reliable the victim’s estimation of duration. - IFAS

Other respondents also noted that a victim’s assessment of duration may be unreliable:

This is problematic as a survivor may experience alterations in consciousness, and memory deficits as a result of brain injury, or from the psychological trauma. This makes it unsafe to rely upon the survivor’s recollection to estimate the duration of the offence. Research conducted in a sexual assault referral centre found that when patients were asked to estimate how long non-fatal strangulation had lasted, a third did not know. – British Psychological Society (BPS)

Some respondents also questioned what would constitute voluntary desistance. The Justices' Legal Advisers' and Court Officers' Service, formerly the Justices' Clerks' Society (JCS) response suggested how this factor may be improved:

The lesser culpability factor “Very brief incident and voluntary desistance” may be more clearly defined as “Voluntary desistance from strangulation or suffocation following a very brief incident”, to highlight that it is in respect of this aspect that desistance must be timely and voluntary, rather than allowing for the importation of desistance with respect to any wider interpretation of what constitutes the incident.- JCS

A number of responses approved of the factor and recognised such a factor is required to provide for the full spectrum of offences being charged:

I agree with the factors contributing to Lesser Culpability, particularly “a very brief incident and voluntary desistance”. I dealt with a case which involved very brief strangulation and voluntary release by a female on a female in a public space. Despite this case being very different to the case law around the charge of strangulation, significant mitigation presented and reducing the custodial term markedly, the Bench could not agree to impose a Community Order sentence. Recognition of “very brief incident and voluntary desistance” will hopefully point sentences to more appropriate outcome such as CO rather than remaining with a custodial sentence.- Magistrate

The Council carefully considered all of the responses and research findings highlighting concerns regarding how assessment of duration would be undertaken. In the definitive guideline the lesser culpability factor ‘very brief and voluntary desistance’ has been revised to ‘Fleeting incident from which offender almost immediately voluntarily desisted’. The

Council considers that this wording provides greater clarity of an incident which would involve lesser culpability and reduces the risk of inconsistent interpretations of the factor.

Careful consideration was also given to alternative phrasing of the high culpability factor 'sustained or repeated strangulation or suffocation'. The Council considered a factor which assessed an offender's deliberate intention to cause harm, but believed such a factor would be difficult to evidence and could involve a greater degree of subjectivity. The Council recognises concerns regarding the reliability of a victim's estimate of duration. However, the factor was included in the R v Cook judgment as an aggravating factor and the Council were reassured on examination of sentencing transcripts following that case that application of the factor was appropriate. It was also noted that other evidence is often available to support the assessment. The factor has therefore been retained in the definitive guideline.

Use of a ligature

Some respondents, including IFAS, noted that while a ligature could be seen as indicative of planning of an offence, other methods of committing the offence were not necessarily less serious:

I understand the ligature criteria as it goes to a more pre-meditated action rather than a brief instinctive action and I feel that some words to reflect this should be provided for sentencers. Surely applying your foot to someone's throat while they are prone on the floor, even fleetingly, carries higher culpability than fleetingly placing your hands around the throat while standing. - Magistrate

Whilst the use of a ligature may indicate a degree of planning the converse is not true. Absence of a ligature use may also be planned, can be just as dangerous and, as the hands are always present, so too is the threat from the perspective of the victim. - IFAS

This view was also expressed by Professor Cath White, who suggested use of a ligature should be treated as an aggravating factor rather than being distinguished from manual strangulation which may be equally as serious.

A number of other respondents suggested the use of a ligature factor should be expanded to include other items:

We would invite the Sentencing Council to consider the inclusion of the term 'ligature or other instrument.' We agree that use of a ligature would be a high culpability feature, but other instruments may be used to similar effect. Examples of such instruments could include a pillow or a plastic bag being placed over the head. An additional consideration may be if a knee or shod foot was used to restrict breathing of a victim. - Criminal Bar Association

You may wish to consider as regards suffocation, 'use of a plastic bag (or equivalent) over the head or face' as a Culpability A factor, to distinguish, for example, from a suffocation effected in which D manually holds V's nose and mouth closed. I don't suppose there's much difference in the terror that the V would experience, but the use of a plastic bag might be analogous in this offence as the use of a weapon is in the traditional assault offence guidelines? - Damian Warburton (Barrister)

It is correct that the use of a ligature denotes high culpability, but we suggest adopting the Court of Appeal's terminology in Cook: 'use of ligature or equivalent'. Widening this ground is particularly relevant in cases involving non-fatal suffocation. - Sentencing Academy

Has the council considered the use of items other than ligature? For instance in my professional NHS role, before joining the bench, I experienced victims who had been suffocated with the use of a plastic bag over the face or head as a means of inducing fear in the victim or following a threat to kill. This method would be a high culpability factor I feel. - Magistrate

The use of a ligature in the higher culpability category is appropriate. However, we wonder if consideration was given to other mechanisms, such as a headlock, or knee across the neck, where the pressure exerted would be greater? Perhaps they should be specifically noted in the guidance? - Faculty of Forensic & Legal Medicine

The Council noted concerns that manual strangulation could still indicate high culpability but considers that this would be captured by a manual strangulation which is sustained or repeated. Consideration was given to whether the factor should be assessed as an aggravating factor at step two. However, the Council agreed with respondents who thought

that use of a ligature or other item does increase the culpability of an offender, particularly with reference to some of the examples cited. The factor has been expanded to include other items in the definitive guideline.

Medium culpability

Offences falling within this category do not fall squarely within a higher or lesser culpability category, as either have both a higher and lesser culpability factor present, or the culpability falls between the factors specified in higher and lesser culpability.

The majority of responses agreed with the approach in the guideline to providing for medium culpability offences, recognising the approach is used in other guidelines and provides for a more precise assessment of culpability.

I was initially unsure about the medium culpability category - my instinct was to suggest that a sentencer should place greater weight on the factors listed under higher culpability than the mitigation that might bring something into lower culpability, and thus that the presence of greater and lesser factors would ultimately lead to high culpability. However, this instinct is not consistent with the way the guidelines in general work. Therefore, I'm very much in favour of the proposed culpability factors and wanted to explain my rationale to show why I am in favour.- Magistrate

No changes have been made to medium culpability factors in the definitive guideline.

Lesser culpability factors

The lesser culpability factor relating to duration of an offence has already been discussed. Other proposed lesser culpability factors were excessive self-defence and mental disorder or learning disability, where this is linked to the commission of the offence.

Excessive self defence

As stated in the consultation document, this factor was intended to provide for the breadth of offending identified in transcripts, which included fights and brawls. A small number of respondents misunderstood the intended application of the factor, believing this would be available in a domestic context where a perpetrator of an offence suggests they act in response to an attack by the victim:

Most, if not all, of the acts constituting non-fatal strangulation and suffocation in a domestic context, occur behind closed doors. As such, retaining the excessive self-defence factor as a contributor to lesser culpability may be misplaced, given that it is an argument the defence could raise with no proof or evidence of what actually happened behind those closed doors. In the context of a domestic relationship, especially a longstanding one, alleging that the victim was actually attacking the perpetrator and the perpetrator acted in self-defence is not difficult, and the defence may well adduce evidence from the history of the relationship to attempt to prove the victim's general bad character and/or propensity toward violence, evidence that is irrelevant to the act of strangulation or suffocation. As such, this factor should be removed. – Individual respondent

While excessive self-defence may be present, it needs to be determined, for example, whether this was used by the primary perpetrator against a victim-survivor using violent resistance; in which case, it would not indicate reduced culpability and would instead evidence a pattern of abusive behaviour with high culpability/intent to cause harm. Conversely, if 'excessive self-defence' was used by a domestic abuse victim-survivor it must be considered in the wider context of the abuse; victim-survivors of abusive behaviour have a right to resistance, and the use of self-defence should be examined as a mitigating factor (currently listed as: history of significant violence or abuse towards the offender by the victim-survivor) when established that they are not the primary perpetrator. There should be measures in place at this stage to ensure the victim-survivor is not unfairly criminalised for resisting abuse. - Safe Lives

Remove excessive self-defence - this puts blame and action back on the victim. - Individual respondent

The Council were satisfied in including the factor that the Domestic abuse: overarching principles guideline would guard against this as it confirms: 'Provocation is no mitigation to an offence within a domestic context, except in rare circumstances.'

A response by a judicial body noted the same point, although in relation to a mitigating factor:

The DA guideline refers to provocation 'not amounting to mitigation to an offence within a domestic context, except in rare circumstances.' The mitigating factor in this guideline 'history of significant violence by the victim towards the offender' might benefit from a particular reference to the DA guideline here, so that it is not misconstrued.- HM Council of District Judges

In its guidelines, which are accessed digitally by sentencers, the Council links relevant points in the guideline to overarching guidelines to provide further guidance on how to assess specific issues if required and would do so for this factor. However, for the avoidance of doubt, the Council has decided to qualify the excessive self defence factor to confirm that this will rarely apply in a domestic context.

Mental disorder or learning disability

The consultation document explained that where present this factor may reduce the responsibility of an offender, such as where they are suffering from paranoia and believe they are subject to an imminent threat. It was noted that this factor would usually require supportive medical or other professional evidence and is not easily relied upon, so would be unlikely to capture a high proportion of offences.

The British Psychological Society (BPS) asked that the guideline provide more clarification on specific issues relating to mental disorders and learning disabilities, and to be mindful of the high prevalence of mental disorders in the criminal justice system. Their response included the following points:

We are unclear why the consultation document states that only a small proportion of offences will fall into the lesser culpability category, given the high rate of mental health problems amongst those in contact with the criminal justice system. We therefore urge the Sentencing Council to provide further clarity on the 'lesser culpability' level (i.e.: does this include all mental disorders and learning disabilities, or only certain mental disorders and learning disabilities).

Furthermore, we urge the Sentencing Council to specifically mention neurodiversity alongside mental disorders and learning disabilities, where the guidance states that 'if an offender has a mental disorder or learning disability, this could reduce their level of responsibility'. Neurodiversity refers to the different ways a person's brain processes information including the world around them.³ Differences in executive functioning apparent in a range of neurodevelopmental disorders can influence antisocial behaviour by reducing inhibition, preventing the self-regulation of contextually appropriate behaviour, or impairing the ability to anticipate consequences. - BPS

The Sentencing Council's overarching guideline [Sentencing offenders with mental disorders, developmental disorders, or neurological impairments](#) provides comprehensive guidance on issues relating to sentencing offenders with specific mental health conditions.

The Council is also confident that courts are experienced in assessing whether a disorder is related to the commission of the offence, or if it should be taken into account in mitigation.

The definitive guideline culpability assessment is as follows:

Culpability

A – High culpability

- Sustained or repeated strangulation or suffocation
- Use of ligature or other item

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

C – Lesser culpability

- Fleeting incident from which offender almost immediately voluntarily desisted
- Excessive self defence (this would rarely apply in a domestic abuse context)
- Mental disorder or learning disability, where linked to the commission of the offence

Harm factors

The harm assessment which was subject to consultation was 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

- 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

The consultation explained that two categories of harm were included as it was not thought possible to define three categories of harm. This is because evidence is clear that high harm will often result even in the absence of physical injuries and that equally serious impacts may manifest in different ways for victims. In addition, physical injuries may not be equally visible on differing skin tones. This presented difficulties in defining and gradating

harm levels for which evidence would be available to sentencers to enable consistent assessments of harm.

Some respondents, including the medical experts Professor White and Dr Bichard, approved of the proposed approach to assessing harm and that particular features should not be defined or gradated, believing that three categories with prescriptive factors could result in underassessment of harm in some cases. The lack of physical injury in a high proportion of cases was highlighted in the IFAS response:

We agree that all cases of strangulation involve a very high degree of inherent harm. We would want this to be a very clear message. A complainant does NOT have to demonstrate injury in order for the case to proceed through the CJS.

Psychological harm should not depend on a formal diagnosis.

“Physical injury” should be specific with regard to internal or external injury. External, visible physical injury is not present in around half of strangulation cases (see e.g. Strack et al., 2001; White et al., 2019), but that is not to say that there aren’t internal injuries that would require medical imaging to be confirmed. – IFAS

Other respondents also approved of the proposed approach:

We strongly agree that the inherent harm in all such offences means that only 2 categories are required in the Guideline. – Criminal Bar Association

However a high proportion of respondents, as well as some of the judges who tested the guideline, disagreed with the inclusion of only two harm categories, and believed there should be three:

There surely ought to be a third Harm factor. You have put severe consequences to result in Harm 1, yet do not distinguish at all in Harm 2 between cases that result in some physical or psychological consequence for the V, and those in which there is no physical or psychological consequence. Although the clear intent of Parliament was that the s.75A(1) offence* was to recognise the terror of a strangulation or suffocation rather than any lasting injury caused by it (and this is already inherent in the significantly enhanced sentencing power provided by the statute over and above a common law battery for example), it must nevertheless remain that a strangulation/suffocation that does causes some lasting effect must merit a sentencing result that is a step up from one in which no lasting effect has been caused?– Damian Warburton (Barrister)

I think there should be 3 categories. 1 as stated, Cat 2 should then be "Offence results in moderate physical injury or psychological condition which has some effect on the victim's ability to carry out their normal day to day activities or on their ability to work.", and Cat 3 would cover all other cases. – Magistrate

These two categories are miles apart - Category 2 is far too broad - would be much better split into two where Cat 2 has significant injuries (but not long-term) and Category 3 is minor injuries. The harm categories are unworkable and will result in lesser sentences for those offences which just fail the high bar of Cat 1. – Individual respondent

The draft guideline is unusual in that there are only two categories of harm rather than the three more commonly found in offence-specific guidelines, including those found in guidelines for other offences of non-fatal violence. Even the guideline for causing grievous bodily harm with intent to do grievous bodily harm and wounding with intent to do grievous bodily harm (s.18 Offences against the Person Act 1861) draws a distinction between three categories of harm. This begs the question of what is distinctive about non-fatal strangulation and non-fatal suffocation, and whether degrees of harm cannot be readily distinguished. The accompanying notes detail the evidently severe risks associated with strangulation and suffocation. There is also clearly no reason why all offence-specific guidelines should demarcate three categories of harm. But it would be possible to do so:

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

Offence results in a significant physical or psychological condition which has a significant effect on the victim's ability to carry out their normal day to day activities or on their ability to work.

Category 3

All other cases.

The requirements in the proposed Category 1 (replicated above) are onerous: not only must the offence result in severe physical injury or psychological condition but the resultant injury or condition must have 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. One suspects that many cases will not satisfy all these requirements with the consequence that most cases will be assessed identically as Category 2 offences. This may be appropriate as the offence was enacted to reflect the latent dangers of strangulation and suffocation recognised by the Council in drafting the guideline, but the implications merit consideration. As presently drafted, the threshold for anything other than the lowest category of harm is very high, requiring both a severe and long-term impact on the victim in order for the offence not to be in the lowest harm category. - Sentencing Academy

Some respondents thought that factors such as loss of consciousness or bladder and bowel control should be provided for in the harm assessment, and either result in a category 1 or 2 (out of 3) harm assessment. This question was raised with Professor White and Dr Bichard who disagreed that loss of consciousness or bladder or bowel control were appropriate measures of the severity of harm caused, as offences not involving these features may still involve a high degree of psychological or non-visible physical harm. The experts supported having two categories given the potential for harm to be underassessed and the difficulty with defining clear categories of harm. However, they had strong reservations regarding the threshold required to satisfy category 1 harm.

A number of other respondents also expressed concerns regarding the threshold of the high harm factor, in particular the requirement that harm needs to be long term:

Category 1 should not be limited to long-term effects. Nor, if a victim seemingly is managing to carry on their day to day activities should this necessarily be a lesser offence. You still might be able to feed the children and go to work because you have to, but you are never the same again after having your life threatened in this way so category 1 should not be so limited. This is a really serious offence. Anything other than no or the very briefest psychological condition or quickly passing physical injury should make this a category 1 offence. Psychological harm should not be limited to a person having a specific diagnosed condition. - Individual respondent

It seems in practice most cases will be deemed to be in Category 2 as it is difficult to quantify the direct impact on long-term ability to carry out normal day to day activities by this particular act. PTSD is often undiagnosed or appears in ways that are not easily 'classified' under the Category 1 descriptors. - Individual respondent

I think that Cat 1 harm is too high a bar. Very few, if any cases, will fall into this category. If they did they would more likely be charged as a s.20 or s.18 GBH. This offence is designed to cover cases where there is no visible and/or long lasting harm. The importance of the offence is based on the risk that strangulation creates. That loss of consciousness can occur in a few seconds. Also victims may not realise that they have lost consciousness and not recall that later. Also any loss of consciousness can have an impact on the brain, which may not be detected as few victims will have an MRI. – Crown Court Judge

Should a case be brought to court quickly then there is also a difficulty in assessing as Category 1 given that a long-term effect cannot be properly established. – Crown Court Judge

In testing the guideline with judges some also expressed concerns regarding the high bar to be able to satisfy category 1 harm. Some of these judges also made the point that the long-term requirement would not be possible to assess in the time proceedings may progress to sentence.

The Council considers that it is necessary for the integrity of harm assessments, and to have confidence in consistency of assessments, that there are objective elements to the assessment. Precise definitions for harm categories are not possible given the wide variation in responses by victims who are strangled or suffocated. It is also very unlikely that many offences, particularly domestic offences, would not result in some level of ongoing trauma for a victim so a category for offences with no ongoing, or moderate or low harm would likely be rarely applied, or may lead to underassessment of harm.

However, the Council agreed with the point that long-term impacts in particular will be difficult to evidence, particularly if proceedings are dealt with quickly. In the definitive guideline the Council has removed the requirement for long term harm from the high harm factor, but otherwise retained the factors proposed at consultation.

Explanatory text

The majority of respondents who disagreed with the harm assessment were concerned that the inherent harm in the offence should be reflected, seeming not to note the explanatory wording in the guideline harm assessment referring to inherent harm which was 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.

Suggestions were made to improve this explanatory text, and the Council considered if this could address some of the concerns raised:

The current draft Guideline sets out that all cases of strangulation involve a very high degree of inherent harm and that the Court should assess the level of harm caused with reference to the impact on the victim.

We strongly agree that the inherent harm in all such offences means that only 2 categories are required in the Guideline.

However, we would welcome inclusion of an explanation of the inherent Harm. Such guidance would increase awareness for practitioners and defendants and increase public understanding of the reasons why all cases of strangulation involve a very high degree of inherent harm. The following example of potential wording includes factors referenced within the Consultation paper and in paragraph 4 of R v Alfie Cook [2023] EWCA Crim 452:

Harm

All cases of strangulation involve a very high degree of inherent harm.

Often a very high degree of harm will result although little or no visible injury may occur. A high degree of psychological harm will nearly always be present, particularly in a domestic abuse offence.

A victim subjected to this offence may experience extreme terror, fear for their life and be deeply traumatised. There is a high risk of loss of consciousness or death from even a brief offence, and where physical injuries do occur these can include difficulties in swallowing and breathing, bruising, internal injuries and/or brain injury. Delayed impacts of restricted breathing can include an increased risk of miscarriage and stroke.'

– Criminal Bar Association

The suggestion to strengthen the explanatory text regarding inherent harm was also made by HM Council of District Judges:

Where the guideline refers to any incident 'involving a very high degree of inherent harm' this should be highlighted in a separate box underneath or the sentencer may proceed to consider Harm 1 or 2 without reference to this.

In discussions with Professor White and Dr Bichard they disapproved of the second part of the explanatory text in the draft guideline relating to harm assessments: 'the court should assess the level of harm caused with reference to the impact on the victim.' This was because they believed that the onus should not be on a victim to demonstrate impacts, as harm can be experienced or manifest in different ways and is inherent in the act itself.

Based on these responses, more comprehensive explanatory text is included in the definitive guideline harm assessment, which is as below:

Harm

All cases of strangulation and suffocation involve a very high degree of inherent harm. A victim may experience extreme terror, fear for their life and be deeply traumatised. Harm can include a range of internal and external physical injuries and psychological impacts, immediate and delayed, for which presentation may vary between victims. The harm assessment already provides for the risk of harm inherent in these offences, with the highest category providing for offences where the trauma suffered results in particularly severe impacts.

Category 1

- Offence results in a severe physical injury or psychological condition which has a substantial 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
-

Sentence levels

The sentences consulted on were as below:

Harm	Culpability		
	A	B	C
Category 1	Starting point 3 years 6 months' custody	Starting point 2 years 6 months' custody	Starting point 1 year 6 months' custody
	Category range 2 – 4 years 6 months' custody	Category range 1 year 6 months' custody – 3 years 6 months' custody	Category range 1 year's custody – 3 years' custody
Category 2	Starting point 2 years 6 months' custody	Starting point 1 year 6 months' custody	Starting point 1 year's custody
	Category range 1 year 6 months' custody – 3 years 6 months' custody	Category range 1 year's custody – 3 years' custody	Category range High level community order – 2 years 6 months' custody

The consultation document explained that an important objective of sentencing guidelines is to achieve relativity and proportionality between sentences for related offences. It was explained that the proposed starting point sentence for category A1 offences, which are the most serious, is slightly lower than an equivalent category GBH s20 offence. This is because a category A1 GBH s20 offence requires a “permanent, irreversible injury or 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,” whereas that level of harm would not be present in offences charged as strangulation or suffocation. The starting point is significantly higher than the same category of an ABH offence. A category A2 offence starting point for strangulation or suffocation is aligned with the highest category starting point for an ABH offence.

The Sentencing Academy welcomed the explanation in the consultation document of how the Council has considered the relativity of proposed sentences with other offences with the same statutory maximum, and the intention to achieve parity with sentences for related offences:

We welcome the explanation of how the Council arrived at the sentence levels with reference to the guidelines for assault occasioning actual bodily harm (s.47 Offences against the Person Act 1861) and inflicting grievous harm (s.20 Offences against the Person Act 1861). Both offences have the same maximum as non-fatal strangulation and non-fatal suffocation. One of the reasons for creating distinct offences of non-fatal strangulation and non-fatal suffocation was that the existing hierarchy of non-fatal offences was harm-dependent, and this failed to reflect the broader harm and risk associated with strangulation and suffocation. Nonetheless, it is important to review sentence levels with regard to like offences. – Sentencing Academy

Sir Nic Dakin MP, Minister for Sentencing, also approved of this approach:

I consider that this guideline will assist the courts in imposing appropriate sentences for these offences, as well as proportionality and relativity with sentences for related offences and other sentencing guidelines. This approach aligns with the objectives of the Government's forthcoming review of sentencing, to make sure that our framework is consistent, coherent, and reduces crime.

Some respondents disapproved of proposed sentences believing sentences should be higher, that the full statutory maximum sentence should be available in the highest offence category, and that sentences should all be immediate custody:

I feel all sentences should be more severe by increasing them all by one year more. - Individual respondent

I have already said that I think that all cases charged will fall into Cat 2. I do not think these sentences are high enough. It is the risk not the lasting damage that is the importance in this case. Even if the harm categorisation remains as per the draft, if compared to s.20 GBH, almost the Cat 1 harm strangulation cases would fall in A/1 on the s.20 guideline. However, the Harm 1 strangulation cases [A/1, B/1, C/1] are lower starting points and in some cases lower ranges than for equivalent in the s.20 guideline. I also think given the max is only 5 years, the guideline range should go up to the maximum. – Crown Court Judge

Those levels are wholly unacceptable. They make no impact, especially when suspended. The sentences need to be far harsher across the board with no option to suspend them. A community sentence is an insult and puts other people in immediate danger. – Individual respondent

The consultation document had explained that the Sentencing Council's guideline for the [Imposition of community and custodial sentences](#) is the overarching guideline which sets out the considerations sentencers must undertake in determining whether a custodial sentence is capable of being suspended. Where a sentence is over 2 years it cannot be suspended. For any offence receiving a sentence of 2 years' custody or less, the court must consider if the sentence is capable of being suspended with reference to a weighted assessment which includes a number of factors. The Council considered if it would be appropriate in sentencing these offences to disregard the Imposition guideline and specify that only immediate custody should be imposed but decided that this would be wrong in principle. This is because it would be unjust to distinguish strangulation and suffocation from other offences which are equally serious, as well as undermining broader sentencing principles in the Imposition guideline which courts are required to follow for all other imprisonable offences.

The Sentencing Academy approved of the Council not disregarding the Imposition guideline in sentencing these offences:

The accompanying notes state that the Council considered if it would be appropriate to disregard the imposition guideline and specify that immediate custody should always be imposed, but concluded this would be wrong in principle and that it would be unjust to distinguish non-fatal strangulation and non-fatal suffocation from other equally serious offences. We concur. - Sentencing Academy

Other respondents believed sentences were too severe, or that a middle category of harm should be included to provide for a lower tier of sentences:

The cases that I have seen would not warrant these lengths of sentence. – Magistrate

I am a magistrate currently doing a case now which is a very minor strangulation where the defendant simply put their hands around the throat of the individual for a few seconds. This is an example of a very minor strangulation but the guideline has a starting point of 1 years custody which is way too high for this offence because it's outside the sentencing powers of magistrates. I think the starting point should be something like 12 weeks custody. – Magistrate

I would prefer to see 3 levels of harm, and higher sentencing for category 1 offences, pushing the sentencing downwards to incorporate the new tier. - Magistrate

In your present six bands only two have SPs that can be suspended, and even those have ranges that take them above that level, might be more equitably addressed by my earlier suggestion of a third Harm category, creating nine points in the Guideline. While, for the reasons I have identified that most cases would very likely fall into what I suggested would be Harm 2 of three, if there were a third band then there would be less risk of the judge's hands being tied in the least serious examples as to whether a sentence was capable of suspension. – Damian Warburton (Barrister)

A high proportion of respondents, including IFAS, were satisfied with proposed sentences:

The proposed sentencing levels seem adequate if the culpability and harm are determined correctly. - IFAS

I agree that the sentence levels includes Community Order. My comments in the culpability section explain this. Strangulation is a very serious offence but not every incident sits within a custodial sentence. Including a CO, albeit at the lowest level of sentencing, gives sentencers more tools with which to achieve an appropriate outcome.- Magistrate

The Council noted the range of views expressed but decided that the carefully calibrated sentences levels should remain as consulted on in the definitive guideline.

Aggravating factors

The consultation proposed the following aggravating factors (save for the statutory aggravating factor relating to hostility based on victim characteristics which some respondents noted had been omitted from the list):

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

Factors increasing seriousness

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 licence or post sentence supervision
- Failure to comply with current court orders

An important principle of sentencing is that relevant issues should not be ‘double counted’ in assessing seriousness. This means matters taken into account in assessing seriousness at step one cannot be taken into account again at step two, and that multiple aggravating factors assessing the same issue should not result in multiple increases to the starting point. This is relevant to the Council’s consideration of other aggravating factors or amendments suggested by respondents.

Some suggestions were made that the domestic context should be expanded to include other categories of vulnerable victims:

Aggravating factors to include cases whereby the offence was not in a domestic context but the victim was otherwise vulnerable e.g., a sex worker, learning disability, exploited, homeless etc.- IFAS

We recommend further clarification on the phrase ‘domestic context’, as it is important to distinguish whether this refers to a relationship or a location. The Drive Partnership practitioners have seen instances of perpetrators minimising the ‘domestic context’ factor by claiming they weren’t in a relationship or that the crime happened outside of a home. It should also be clarified that care homes and sheltered accommodation are domestic contexts, and that crimes occurring in these settings qualify as domestic abuse.- Safe Lives

The Council considered that the abuse of trust factor would capture offences where victims are vulnerable for other reasons and in a relationship of trust with an offender. Where this aggravating factor appears in guidelines the additional guidance below is provided as a digital link for sentencers, and it will be in the definitive guideline:

- In order for an abuse of trust to make an offence more serious the relationship between the offender and victim(s) must be one that would give rise to the offender having a significant level of responsibility towards the victim(s) on which the victim(s) would be entitled to rely.
- Abuse of trust may occur in many factual situations. Examples may include relationships such as teacher and pupil, parent and child, employer and employee, professional adviser and client, or carer (whether paid or unpaid) and dependant. It may also include ad hoc situations such as a late-night taxi driver and a lone passenger. These examples are not exhaustive and do not necessarily indicate that abuse of trust is present.

To reduce the risk of double counting of abuse of trust, which is always present in a domestic context, the factor has been qualified with 'where not already taken into account' in the definitive guideline.

The draft guideline provided for a specific vulnerability of 'victim isolated and unable to seek assistance'. A number of consultation respondents suggested this factor should be wider, or assessed as a culpability factor. However, the Council noted that the majority of victims are vulnerable, particularly in offences committed within a domestic context, and this would already provide for the sentence to be increased and cannot be double counted. Aggravating factors are also non-exhaustive and courts may impose an increased sentence where a particular vulnerability is found to be present in an offence.

However, the Council did agree with suggestions that pregnancy of a victim should be a specific aggravating factor. Professor Cath White suggested this factor, along with a number of other respondents, given the increased risk of miscarriage to a pregnant victim. The Council agreed and has included an additional factor of 'victim pregnant at time of offence' in the definitive guideline.

A number of respondents suggested the factor 'history of violence or abuse towards victim by offender' should be broadened to include a history of violence to others:

In terms of 'history of violence or abuse towards victim by offender,' it would be useful to ensure inclusion of 'history of violence or domestic abuse towards victim by offender.' This ensures that all types of abuse, as per the statutory definition within section 1 of the Domestic Abuse Act 2021 are covered, for example economic abuse or coercive and controlling behaviour. – Criminal Bar Association

History of violence or abuse towards victim by offender' should include a history of violence or abuse towards other victim-survivors to ensure an assessment of the bigger picture and the perpetrator's risk level.– Safe Lives

We concur with the Council that 'history of violence or abuse' is preferable to 'history of previous violence'. More difficult is whether the past violence or abuse must have been directed at the victim of the current offence, as specified in the draft guideline. We note that the Overarching Principles: Domestic Abuse guideline, effective from 24 May 2018, also favoured a wider interpretation: 'A proven history of violence or threats by the offender in a domestic setting'. Given that many instances of non-fatal strangulation and non-fatal suffocation arise in a domestic context, courts will read the offence-specific guidance in conjunction with the Overarching Principles: Domestic Abuse guideline. We would favour widening this ground of aggravation to include other victims of prior violence or abuse in a domestic setting. – Sentencing Academy

The Council considered this point carefully, but again noted a risk of double counting where violence to others has been accounted for in any previous convictions the offender may have, which will be taken into account as a statutory aggravating factor. It is correct that the Domestic abuse: overarching principles: guideline includes a wider interpretation, but that guideline is relevant to a wider range of offences. The Council considered that principles of justice require the court take only proven matters into account, and expanding the factor to include previous allegations, rather than convictions, for previous violence would not be appropriate.

Mitigating factors

As noted in the consultation document, the majority of the proposed mitigating factors are standard factors included in sentencing guidelines.

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Remorse
- Positive character and/or exemplary conduct (regardless of previous convictions)

Factors reducing seriousness or reflecting personal mitigation

- 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
-

Some respondents disapproved of mitigating factors, but as explained in the consultation these are included in all guidelines with the factors proposed common to many guidelines, particularly for other assault related offences.

The Sentencing Academy noted that positive character as mitigation may be limited where an offence is committed in a domestic context, in accordance with the Domestic abuse guideline:

The Overarching Principles: Domestic Abuse guideline recognises that, as a general principle, a court will take account of an offender's positive good character but cautions: 'However, it is recognised that one of the factors that can allow domestic abuse to continue unnoticed for lengthy periods is the ability of the perpetrator to have a public and a private face. In respect of offences committed within a domestic context, an offender's good character in relation to conduct outside these offences should generally be of no relevance where there is a proven pattern of behaviour. The offence-specific guideline will frequently be applied along with the Overarching Principles: Domestic Abuse guideline and so the relevance of positive good character in cases of non-fatal strangulation and non-fatal suffocation will be context-specific. The remaining factors listed are generic except for a 'history of significant violence or abuse towards the offender by the victim'. This should be considered as mitigation.' - Sentencing Academy

As for other factors, relevant overarching guidelines will be linked to specific factors to ensure sentencers are provided with relevant and appropriate guidance when considering the relevance and applicability of factors.

Equality and Diversity

As noted earlier in this consultation response document, during the consultation questions relating to potential equality and diversity impacts of proposals were asked in relation to guideline specific questions. Specifically, the consultation asked if any step one or two factors or sentences would directly impact certain groups or demographics.

A number of responses were relevant to charging of the offence or legislation rather than to sentencing or the guideline. Several respondents noted that this offence is more likely to be committed by males against females, and thus apply mostly to male offenders. However, there were no factors identified which mean the guideline would assess offenders with different characteristics inconsistently or unfairly. Others noted the trend for strangulation to be used in sexual activity could mean young males unaware of the risks of this behaviour are disadvantaged. The Council previously decided that sexually related strangulation should not be provided for explicitly in the guideline, given that in consensual activity it is unlikely to be reported and charged.

Some responses highlighted that visible markings may not be as apparent on darker skinned victims as they would on white victims. The guideline harm assessment does not specify visible physical injuries partly for this reason.

Other issues

The consultation was entitled 'Non-fatal strangulation and suffocation offences – consultation'. A small number of respondents disagreed with the reference to 'non-fatal':

Please can the guidelines, when published, avoid the superfluous references to "Non-fatal" strangulation and "Non-fatal" suffocation. No other offences of violence are classified as being "non-fatal" (whether s.18;s.20;s.47; or s39 assaults). S75A of the Serious Crime Act 2015 refers to the offences of "Strangulation or suffocation" – any other wording is otiose; if there were fatal consequences the offences would obviously be different.- Criminal Sub-Committee of HM's Council of Circuit Judges

It seems bizarre that you and the CPS refer to these offences as "non-fatal" strangulation/suffocation. This suggests that there must be an alternative charge of "fatal" strangulation/suffocation, which there is not - that would be 'murder' or 'manslaughter'. The legislation does not refer to these offences as "non-fatal" in the statute, so I don't understand where you get this adjective from and what the point is of you using these otiose words? – Crown Court Judge

The references to 'non-fatal' aligned with wording used by CPS in its charging guidance. The Council agreed that the term 'non-fatal' does not reflect the legislative provisions and the definitive guideline uses the statutory language of 'strangulation and suffocation'.

List of respondents

Abigail Oleck

Adele Clarke

Alan Gibbons

Brian Watt

British Psychological Society

Carly Patrick

Crown Prosecution Service

Damian Warburton

Daniel Stylianou

Daniella Leona

David John Saunders

David Potter

Dr Helen Bichard

Dr Nicola Williams JP

Faculty of Forensic and Legal medicine of the Royal College of Physicians of London

Gary Maskalick

Gloucester magistrates

HHJ Unsworth KC

James Hulse

Jane Cotton

Johan Mahoney-Berg

Josefina Martinez-Perez

Julia Drown

June Dickson

Justice For Women

Kelly Holdaway

Lisa Hall

Magistrates Association

Malcolm Hogarth

Marcus Peters

Mini Saxena

Ministry of Justice

Mr Neil A Shaw

Peter Reed

Professor Cath White

Rachel Williams

Rebecca Crane

Rosemary England

Safe Lives

Sarah Grace

Sarah M

Sentencing Academy

Shahid Islam

Shelley Tyson

South West Magistrates

Stand up to Domestic Abuse C.I.C

Stephen Verdon

The Criminal Bar Association

The Criminal Sub-Committee of HM's Council of Circuit Judges

The Institute for Addressing Strangulation

The Justices' Legal Advisers' and Court Officers' Service, formerly the Justices' Clerks' Society (JCS)HM Council of District Judges (Magistrates' Courts)

Trauma Stop UK C.I.C

William Ashcroft

8 other anonymous individual respondents

9 other anonymous magistrate respondents

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