

Case Law update

Court of Appeal hands down guidance for sentencing strangulation offences

by Emma Clarke



On 4th April 2023, the Court of Appeal (Criminal Division) laid down guidance for dealing with sentences for offences intentional strangulation, in the matter of [R v Cook \[2023\] EWCA Crim 452](#), following up with [R v Butler \[2023\] EWCA Crim 800](#) dealing with cases where a strangulation is combined with a s47 assault occasioning actual bodily harm (ABH) charge.

The Offence

Following the insertion of s75A into the Serious Crime Act 2015 by the Domestic Abuse Act 2021, the offence of non-fatal strangulation applies to behaviour committed on or after 7th June 2022. The offence is committed when a person intentionally strangles another person, or does any other act to that person that affects the ability of the person to breathe and constitutes a battery of that person. There is deliberately no requirement for any injury to prove any injury or harm for the offence; it is satisfied so long as there is strangulation and it is intentional.

The Appeal

In the absence of Sentencing Council Guidelines, Mr Cook appealed his sentence of 15 months' imprisonment. The trial judge had referred to the guidelines on ABH. The appellant submitted that

harm fell into Category 3. The sentencing judge disagreed with that.

The Court of Appeal held that the sentencing judge was entitled to have some regard to the s47 guideline but was not required to nor entitled to do more than that. To seek to set the starting point for the offence by reference to actual harm is wrong in principle.

The Court set out that, save in exceptional circumstances, the sentence will start at 18 months immediate custody.

Application

Following [Cook](#), a court should not do anything more than have 'some regard' to alternative guidelines when considering sentences for offences where there are none. Instead, the court should take a starting point of 18 months' custody and apply the specific factual circumstances to the aggravating factors set out at paragraph 16. These are:

- i) History of previous violence.
- 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.

Now in force

From 1/7/23 SGs on

[Animal cruelty](#)

[Motoring offences](#)

From 1/10/23 SGs on [Perverting the course of justice](#) but remember [s59 Sentencing Act 2020](#)

9SJS in the news

Vanessa Thomson and Emma Clarke prosecuted [this rape of a child case](#).

David Bruce defended [this murder of a baby case](#) and in this [grooming case](#) for Michael Salts.

Isabelle Haddad defended [this drugs case](#) for Walsh Solicitors.

- 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.

The usual statutory aggravating factors, Domestic Abuse Guideline and Overarching Principles' Guideline also apply.

Strangulation with s 47

After Cook, R v Butler [2023] EWCA Crim 800, dealt with how to approach cases of strangulation with ABH. A sentencing judge needs to identify the lead offence, which, depending on the facts, would normally be strangulation, and set a starting point before moving on to consider increasing the sentence to reflect the ABH, guarding against double counting.

For the full article go to [our website](#).

Team News

Katie Walden joins our team



■ We are delighted that Katie Walden has completed her pupillage supervised by Simon Blakebrough and accepted tenancy with us. At the time of writing, she has had acquittals in all her Crown Court defence trials. Katie is available to take instructions.

Legal 500 rankings

■ Our team has been **ranked in the Legal 500** with Jaime Hamilton KC, Vanessa Thomson and Geoff Whelan ranked as individuals and Helen Longworth again identified as a rising star in our field.

CBA podcast Life at the Criminal Bar

■ Have a listen to Jaime Hamilton KC in this [CBA podcast](#) on life at the Bar

Advocacy tip:

"A plea in mitigation should never be an "all you can eat buffet". Don't tell the court every biographical detail about your client. Focus on the things that will persuade the court to the sentence you are aiming for"—Jaime Hamilton KC

Contact the Team

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Bulletin edited by Helen Longworth and Emma Clarke

