



Sentencing Guidance for Cases of Intentional Strangulation: R v Butler (Geoffrey) [2023] EWCA Crim 800

Item Type	Article (Accepted Version)
UoW Affiliated Authors	Monaghan, Nicola
Full Citation	Monaghan, Nicola (2024) Sentencing Guidance for Cases of Intentional Strangulation: R v Butler (Geoffrey) [2023] EWCA Crim 800. Journal of Criminal Law. pp. 1-4. ISSN Print: 0022-0183 • Electronic: 1740-5580
DOI/ISBN	<a href="https://doi.org/10.1177/00220183241292469">https://doi.org/10.1177/00220183241292469</a>
Journal/Publisher	Journal of Criminal Law SAGE Publications
Rights/Publisher Set Statement	Under Sage's Green Open Access policy, the Accepted Version of the article may be posted in the author's institutional repository and reuse is restricted to non-commercial and no derivative uses. Users who receive access to an article through a repository are reminded that the article is protected by copyright and reuse is restricted to non-commercial and no derivative uses. Users may also download and save a local copy of an article accessed in an institutional repository for the user's personal reference. For permission to reuse an article, please follow our <a href="https://us.sagepub.com/en-us/nam/process-for-requesting-permission">https://us.sagepub.com/en-us/nam/process-for-requesting-permission</a>
Link to item	<a href="https://journals.sagepub.com/doi/10.1177/00220183241292469">https://journals.sagepub.com/doi/10.1177/00220183241292469</a>

For more information, please contact [wrapteam@worc.ac.uk](mailto:wrapteam@worc.ac.uk)

## Sentencing guidance for cases of intentional strangulation

*R v Butler (Geoffrey) [2023] EWCA Crim 800*

### Keywords

*Intentional strangulation, assault occasioning actual bodily harm, appeal against sentence, sentencing guidelines, aggravating factors, not manifestly excessive, additional criminality*

The appellant was committed to the Crown Court for sentence after pleading guilty to breaching a non-molestation order. He had also been summarily convicted of an offence of intentional strangulation and an offence of assault occasioning actual bodily harm.

These offences all related to incidents involving the appellant's former partner (the victim). The appellant's relationship with the victim ended in May 2022 after the birth of their daughter. The victim applied for a non-molestation order against the appellant which was granted in October 2022. The non-molestation order contained prohibitions, including that the appellant must not use or threaten violence against the victim, that he must not instruct, encourage, or in any way suggest that any other person should do so. The appellant was also prohibited from intimidating, harassing or pestering the victim, and was prohibited from entering the family home or contacting the victim, other than through her solicitors.

In November 2022, the victim drove to a Tesco Express store with a friend. While they were in the victim's car, a Mercedes motor vehicle, in which the appellant was a passenger, pulled up alongside them. According to the victim, the appellant looked angry, got out of the car and approached the victim. She drove off and was chased by the appellant to a junction at which she had to stop. The appellant confronted the victim and she contacted the police. He grabbed the rear door, but the victim drove away. The Mercedes then followed the victim's car for two minutes.

The victim and appellant reconciled in December 2022 and were in the family home when the offence of intentional strangulation occurred. The appellant picked up their daughter and took her upstairs. The victim thought that the appellant had been drinking and asked him to give her the child. He refused to do so, and when the victim reached out to take the child, the appellant placed his left hand on the victim's throat and squeezed it. The victim started coughing and could feel blood rushing to her head. After a struggle, the appellant pushed the victim to the floor and sat on her. He put her in a headlock. The victim managed to get to the landing by the stairs and the appellant then pushed her down the stairs. She struck her head on a wall. The appellant wrapped his legs and arms around the victim and squeezed her. He eventually left the house.

The appellant was convicted of intentional strangulation and assault occasioning actual bodily harm at the magistrates' court. He pleaded guilty to breaching a non-molestation order in relation to the earlier incident. He was then committed to the Crown Court for sentence.

The Recorder sentencing the appellant in the Crown Court did not have a pre-sentence report, but had read two Victim Personal Statements in which the victim described how she felt scared to go out and unsafe in her own home. She expressed her concern that the appellant would take steps to steal her daughter and described feeling physically and emotionally traumatised by the incident. The appellant had 19 convictions for offences including offence against the person, public disorder, and 14 offences for breaching court orders.

The appellant received a total sentence of three years and ten weeks' imprisonment. This term was made up of the following sentences: ten weeks' imprisonment for breach of the non-

molestation order, a consecutive term of three years imprisonment for the assault occasioning actual bodily harm, and a concurrent term of 12 months' imprisonment for the offence of strangulation.

In sentencing the appellant for the breach of the non-molestation order, the Recorder gave the appellant ten percent credit for the guilty plea. Looking at the relevant sentencing guideline, counsel agreed that this was a culpability B, harm 2 case, with a starting point of 12 weeks' imprisonment and a range of up to one year. The Recorder took into account the aggravating features, namely appellant's previous convictions and his significant history of disobeying court orders, the presence of a child, and the fact that the offence took place in a domestic context. The Recorder considered the totality of offending and on that basis started at 12 weeks. He reduced this to 10 weeks' imprisonment due to the guilty plea.

In the absence of a sentencing guideline for intentional strangulation, the Recorder decided to use the sentencing guidelines for assault occasioning actual bodily harm as an indication of an appropriate sentence for the offence of intentional strangulation. Under this guideline, the Recorder stated that the offending behaviour would be categorised as B2, for which a sentence of 12 months' imprisonment would be imposed.

The Recorder held that the assault occasioning actual bodily harm was the most serious offence, and he categorised this as A2 under the guideline. This had been agreed with counsel. The Recorder took into account the offence of strangulation, the vulnerability of the victim, who was in her own home at night with her children, and that the offence took place in a domestic setting. The starting point for category A2 is one year and six months' imprisonment with a range of up to two years and six months. However, the Recorder mistakenly referred to the sentencing range of an A1 offence (which has a starting point of two years and six months' imprisonment with a range of up to four years). He then imposed a sentence of three years' imprisonment to run concurrently with the sentence for strangulation. When questioned by counsel about the category, the Recorder stated that he has meant to say that the offending fell into category A1 because of the serious harm caused to the victim.

The appellant appealed against his sentence on the basis that the overall sentence for the totality of the offending was manifestly excessive. The appellant argued that this was not a category A1 offence and that the starting point was too high. He argued that this was all part of one single incident and that the sentencing guideline for assault occasioning actual bodily harm should be applied. Under this sentencing guideline, strangulation/suffocation/asphyxiation falls within high culpability category A and the attack here was prolonged/persistent. However, the appellant argued that this was a category 2 case as there was no evidence of serious injury. The appellant argued that the presence of aggravating factors in this case did not justify doubling the sentence to three years.

**HELD (DISMISSING THE APPEAL)**, following the decision in *R v Cook* [2023] EWCA Crim 452, the Court held that in sentencing the appellant for these two offences, the approach should be to treat the strangulation as the lead offence and then increase the sentence for that offence to reflect the overall criminality [24]. The Court cautioned against double counting the strangulation.

Following *R v Cook*, the starting point for the intentional strangulation was 18 months' imprisonment [22]. In the present case, there were then numerous aggravating features including the presence of children, the attack taking place in the victim's home, the vulnerability of the victim because she was a woman in her own home caring for a young child and baby, the fact

that the victim was seeking to protect her baby, the appellant being under the influence of alcohol at the time, and the offence being committed while on bail and while subject to a community sentence. These factors, the previous violence towards the victim and the appellant's previous convictions increased the starting point to 30 months' imprisonment [25]. The assault occasioning actual bodily harm was a category A2 offence. It was a persistent attack which went beyond the initial strangulation and involved a headlock (which might also have amounted to strangulation in itself), and the victim was pushed down the stairs and squeezed. The Court held that the additional criminality involved made a sentence of 3 years' imprisonment appropriate and not manifestly excessive [26]. Thus, the overall sentence imposed on the appellant was not manifestly excessive.

## Commentary

Section 75A of the Serious Crime Act 2015 (as introduced by s.70 of the Domestic Abuse Act 2021) created offences of non-fatal strangulation and non-fatal suffocation. This provision came into force on 7<sup>th</sup> June 2022 and does not apply retrospectively. Section 75A(1) of the Serious Crime Act 2015 provides that:

- A person ("A") commits an offence if—
- (a) A intentionally strangles another person ("B"), or
  - (b) A does any other act to B that—
    - (i) affects B's ability to breathe, and
    - (ii) constitutes battery of B.

These are either way offences which carry a maximum sentence of five years' imprisonment and/or a fine upon conviction on indictment (s.75A(5)(b)). These are non-fatal offences against the person which can be prosecuted where the strangulation or other act that affected a person's ability to breathe does not result in the death of the victim.

Section 75A requires either that the defendant intentionally strangles the victim or does any other act that affects the victim's ability to breathe and is a battery. There is no definition of the word 'strangulation' in the statute. CPS guidance states that '[t]he word should be given its ordinary meaning which is the obstruction or compression of blood vessels and/or airways by external pressure to the neck impeding normal breathing or circulation of the blood' (see CPS Guidance, available at <https://www.cps.gov.uk/legal-guidance/non-fatal-strangulation-or-non-fatal-suffocation>). Section 75A(1)(b) applies where the defendant does an act which affects the victim's ability to breathe. This may include, but is not limited to, suffocation.

Section 75A(2) provides for a defence to s.75A(1) if A shows that B consented to the strangulation or other act. However, the defence of consent will not apply if B suffers serious harm as a result of the strangulation or other act (s.75A(3)(a)), and A either intended to cause B serious harm, or was reckless as to whether B would suffer serious harm (s.75A(3)(b)).

These offences were introduced as part of the Government's Violence Against Women and Girls Strategy 2021 and were designed to recognise the severity of non-fatal strangulation and suffocation and ensure that the options available to prosecutors were sufficiently serious despite a victim presenting with no obvious, physical injuries.

The issue in the case of *R v Butler* concerned the approach to be taken in sentencing the appellant for intentional strangulation under s.75A(1)(a) alongside another offence (assault occasioning actual bodily harm in this case). There was no sentencing guideline available to the Recorder at

the time of sentencing and the case was decided before the decision in *R v Cook* [2023] EWCA Crim 452 which now provides guidance.

Despite stating that it was not concerned with the route by which the Recorder arrived at the overall sentence, the Court of Appeal called into question that route for two reasons [21]. The first reason was because the guidance now provided in the case of *R v Cook* states that the assault guideline followed by the Recorder in *R v Butler* is not directly applicable to intentional strangulation: there is real harm inherent in the act of intentional strangulation, and as such, the categories of harm set out in the guideline for assault occasioning actual bodily harm cannot be directly applied to such an offence. In *R v Hartland* [2023] EWCA Crim 790 (heard the day before the decision in *R v Butler*), the Court of Appeal stated that in practical terms arguments made with a view to lowering sentence based on the absence of specific harm caused by strangulation will fail in view of the harm inherent in the act.

The second reason was because the assault occasioning actual bodily harm offence was a category A2 offence rather than a category A1 offence [23]. The Victim Personal Statement indicated that there was more than a limited impact on the victim, but the Court of Appeal did not think that reached the level of category 1 harm.

As a result of the decision in *R v Cook*, where a defendant is convicted of both intentional strangulation and assault occasioning actual bodily harm, the appropriate sentencing approach should be to treat the strangulation as the lead offence and then increase the sentence for that offence to reflect the overall criminality [24]. There must be caution against double counting the strangulation because the guideline for assault occasioning actual bodily harm includes strangulation as a factor which categorises the culpability of the assault as category A. The Court acknowledged that there may be cases where it is more appropriate to regard the offence of assault occasioning actual bodily harm as the lead offence [24]. The more serious offence is the lead offence, but for sentencing purposes, it does not matter which offence is the lead offence, so long as there is no double counting.

On 15<sup>th</sup> May 2024, the Sentencing Council published a consultation paper on sentencing the offences of non-fatal strangulation and suffocation. The consultation closes on 14<sup>th</sup> August 2024.

Nicola Monaghan