

Sentencing Guidelines Update

By [Rebecca McKnight](#)

3PB Barristers

New guidelines for: Strangulation or suffocation/ Racially or religiously aggravated strangulation or suffocation

1. New [sentencing guidelines](#) will come into force **on 1 January 2025** for strangulation or suffocation and racially or religiously aggravated strangulation or suffocation.
2. As practitioners will be aware previous sentencing guidance came from the case of *Rex v Cooke [2023] EWCA Crim 452* and subsequently *Rex v Borsodi [2023] EWCA Crim 899*. Jonathan Underhill wrote a helpful [guide](#) on sentencing in this area.
3. The data in this area is relatively limited given the offences only came into force on 7 June 2022 but practitioners will know that it is becoming increasingly common to see a charge of strangulation or suffocation. There was a clear need for a guideline for these offences.
4. The Sentencing Council have actually published [data](#) on sentences received in this area which is fascinating. There are several tables showing various pieces of data. Table 1.1a shows that almost all cases of this nature are now sentenced in the Crown Court. Table 1.3 shows the mean custodial sentence length starting at 11.7 months in July-Sep 2022 and then going up and up until it hits 19.8 months in Oct-Dec 2023.
5. Turning to the new guideline. The offences of strangulation or suffocation have a maximum sentence of 5 years. The racially or religiously aggravated version a maximum of 7 years.
6. High culpability **A** factors include two features mentioned in *Cooke* – 1) sustained or repeated strangulation or suffocation and 2) use of a ligature or other item. At the opposite end, low culpability, **C**, has two common factors in guidelines for offences against the person listed, 1) excessive self-defence (with the qualification that this rarely applies in a domestic abuse context) and 2) a mental disorder or learning disability, where linked to the commission of the offence. The guideline additionally refers to 3) the

incident being fleeting which the offender almost immediately voluntarily desisted from. Medium culpability, **B**, is for matters that fall between high and low or where there are factors in both high and low culpability which balance each other out.

7. For harm there are two categories, 1 and 2. A top end harm, category 1, case is where the 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. All other cases fall into category 2.
8. The starting point outlined in *Cooke* is 18 months, for **A1** cases the starting point on these guidelines is **3 and a half years** with a **range of 2 to 4 and a half years in custody**. For those cases where there is a psychological or physical injury and either a ligature was used or other item, or perhaps more commonly there is repeated strangulation, defendants will be looking at a substantial prison sentence which will potentially be captured by the dangerousness provisions. It is of note that the starting point at **B1** and **A2** is the same as the starting point at A1 for ABH offences of **2 and half years**, demonstrating the seriousness of strangulation and/or suffocation. There is only one area of the guidelines that appears to potentially fall below the custody threshold and that is **C2** where although the starting point is **a year custody** the **range is a high-level community order to 2 and a half years custody**. Finally, it is of note that a suspended sentence seems a less likely outcome for cases of strangulation or suffocation when looking at this guideline. In comparing this to ABH the only starting point for that guideline above 2 years is at A1 of 2 and a half years, whereas for strangulation or suffocation the starting point is a beyond 2 years at A1, B1 and A2. As per the current case law it seems the trend of defendants being unlikely to receive a suspended sentence for strangulation or suffocation will continue.
9. In terms of the other factors highlighted in the guideline, some of the other *Cooke* factors appear under the other aggravating factors such as presence of children, being intoxicated, and steps taken to stop the victim reporting. The usual uplift will apply where the offence was racially or religiously aggravated.
10. The conclusion from these guidelines is that defendants will continue to be face a significant custodial sentence for strangulation or suffocation which will often not be in the realm of being suspended. If anything, the average custodial sentences provided in the data look as though they will continue going up. For offences that fall into category A1 there is a real possibility of a sentence of 4 years or more and dangerousness will be another factor to consider even where the defendant is of previous good character.

11. The guidelines can be found at this [link](#).
12. There is also further guidance in a short [article](#) from the Sentencing Council
13. and the public consultation that took place in relation to this guideline can be seen [here](#).
14. For more information on these offences generally see my article on [origins, injuries and challenges](#).

This document is not intended to constitute and should not be used as a substitute for legal advice on any specific matter. No liability for the accuracy of the content of this document, or the consequences of relying on it, is assumed by the author. If you seek further information, please contact the 3PB clerking team via email on Stuart.pringle@3pb.co.uk, or telephone 01962 868884).

20 December 2024



Rebecca McKnight

Barrister
3PB Barristers

01962 868 884
Rebecca.mcknight@3pb.co.uk