

Neutral Citation No: [2025] NIMag 1	Ref: [2025]NIMag 1
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 24/053703
	Delivered: 04/05/2025

**IN THE MAGISTRATES' COURT IN NORTHERN IRELAND
NORTH ANTRIM**

BETWEEN:

THE DIRECTOR OF PUBLIC PROSECUTIONS

Complainant

and

JOHN DILLON

Defendant

SENTENCING REMARKS

DISTRICT JUDGE (MC) KING

Background

[1] John Dillon was convicted by this court on 20 February 2025 of the following offences:

- (i) On the 15 June 2024, assaulted Joanne McKenna thereby occasioning her actual bodily harm, contrary to section 47 of the Offences against the Person Act 1861; and
- (ii) On the 15 June 2024, intentionally applied pressure to the throat or neck of another, namely Joanne McKenna and intended to affect her ability to breathe or the flow of blood to her brain, or that you were reckless as to whether this act would affect her ability to breathe or the flow of blood to her brain, contrary to section 28 of the Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022.

[2] Both offences were aggravated by reason of involving domestic abuse, contrary to section 15 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021.

[3] Ms McKenna and the defendant were in a relationship at the time of the assault. Following a trip to Dungannon with a stop in Ardboe to meet a friend and then for lunch the couple returned to his car for the journey home. It is clear that they left the restaurant under a cloud, although evidence was not led as to what happened there, with the defendant described as “angry” and “the whole vibe horrible.” Some alcohol had been consumed by the defendant by the time he left the restaurant.

[4] The defendant was driving and was shouting at Ms McKenna to “get us fucking home” using Google Maps. At this stage he was “shouting and shouting” and that she wanted him to stop driving and in order to stop the car she grabbed the steering wheel. In response, Dillon reached over and grabbed her throat, with Ms McKenna unable to breath or move. Her evidence was that she “couldn’t do anything.” She started to feel dizzy then recalls being punched across the face before “blacking out.” She recalls the dizziness being accompanied by pain to her throat and everything “fading away”, “going black” almost like she “fell asleep.” The punch left her lip “busted”, bleeding from the nose and her left cheek puffed, sore and starting to bruise. The defendant left the car with Ms McKenna making her way home in the car alone.

The pre-sentence report

[5] The defendant is an adult self-employed plumber with work throughout Northern Ireland and the Republic of Ireland. Nothing adverse was noted about his upbringing or mental health status and no relevant previous offending was identified.

[6] He was unable to offer any insight to PBNI in respect of his offending or the impact on his victim. The report states:

“Using the PBNI Ace risk assessment tool Mr Dillon is assessed as being a medium likelihood of reoffending. Factors supporting this assessment include:

Failure to take full responsibility for his actions.

Propensity to minimise his offending behaviour.

Lack of insight into the impact of his actions for the victim.

Concerns regarding the use of alcohol prior to the present offences.

Victim blaming behaviour.

Breach of bail conditions.

The defendant's engagement in full-time employment, positive family support, no previous domestic violence history or similar offending are deemed to be protective factors..."

[7] It continues:

"While the defendant's conviction for offences of Assault Occasioning Actual Bodily Harm and Non-Fatal Strangulation raises concerns regarding his capacity to inflict harm within the context of an intimate partner relationship, there is no previous pattern of past similar offending or current evidence to indicate that he meets the current threshold for significant risk of serious harm..."

The victim impact statement

[8] By way of a synopsis of the victim impact statement dated 28 March 2025, Ms McKenna no longer feels safe in her home nor safe in her home village. As a result of this attack her world has shrunk around her - in her words she has become a "hermit." She has security measures placed at her home, suffers anxiety and has difficulty sleeping. Her professional life has been negatively impacted, and she reports physical issues with swallowing. She also reports suicidal thoughts. All of this is as a result of the defendant's attack on her.

Non-fatal strangulation

[9] There are currently no sentencing guidelines for the section 28 offence when prosecuted in the magistrates' court. However, I have been assisted by *R v BN*¹ and *R v Darryl Haughey*² as well as the Sentencing Council's guidelines in England and Wales for the offences under section 75A of the Serious Crime Act 2015 and existing local Magistrates' Court Guidelines for offences of violence. It should be noted that the section 75A offences carry a significantly lower maximum sentence and I have referenced the relevant guidelines solely in respect of harm and culpability.

[10] In Northern Ireland on summary conviction, a defendant can be sentenced for NFS to imprisonment for a term not exceeding two years whilst on conviction on indictment, to imprisonment for a term not exceeding 14 years.

¹ [2023] NICC 5

² [2025] NICA 10

[11] The rationale for this sentencing framework is neatly summed up in paras [29]–[35] of *Haughey*:

“[29] The appellant asserts that the starting point of 36 months is too high. He seeks to make good on this assertion by referencing caselaw on NFS from other jurisdictions, specifically England & Wales and New Zealand. Different versions of the offence of NFS have been in operation in those jurisdictions for some time. The versions of NFS that exist in these jurisdictions are significantly different from the Northern Ireland version, particularly in regard to the sentencing regime that applies in each case. In England and Wales the maximum sentence for NFS is five years, in NZ the maximum is seven years and in Northern Ireland the maximum is 14 years, so it is clear that the sentencing regimes are not comparable as between these jurisdictions.

[30] During the hearing the judge stated that she did not find the English case she was referred to helpful for sentencing purposes because of the differences in the sentencing regimes. We agree with this distinction and note that it is the duty of sentencing judges in Northern Ireland to give effect to the legislative intent of our own local Assembly which brought in this legislation. It has applied a maximum penalty of 14 years to the offence of NFS in an effort to improve protection for victims of attacks like this. It has done so to reflect public concern that domestic violence has become such a pervasive scourge on society in this jurisdiction.

[31] Speaking about the introduction of a suite of measures designed to tackle this, the Justice Minister Naomi Long said:

‘Public safety and protecting people from violent and abusive behaviours are key priorities for me, I wanted to make a real difference for all of those in our society who are affected by any form of domestic abuse. This now becomes a reality...The introduction of the new domestic abuse offence is one of three pieces of legislation that I will have in place by the end of this mandate. Shortly, we

also have the final stages of the Protection from Stalking Bill and the Justice (Sexual Offences and Trafficking Victims) Bill. Together, these offer greater protections across our society to those that are subject to both violent and non-physical abusive behaviours.’

[32] One way to protect vulnerable people from abusive behaviours is to have available high sentences designed to deter offenders from engaging in abuse. NFS is a particularly risky behaviour where it is just too easy for perpetrators to cause catastrophic damage to victims. We have no doubt that the Assembly intended to deter such behaviour by giving the option of imposing a deterrent sentence on those who engage in it.

[33] The judiciary has already indicated that we understand the problem and will play our part in countering it. For example, in the case of *R v Hutchinson* [2022] NICA 55, the Lady Chief Justice said:

‘In this jurisdiction we are now more alert to the scourge of domestic violence which has become all too prevalent in our society.’

She said the high sentence in *Hutchinson*:

‘Reflects...society’s utter condemnation of such behaviour and should be taken as a signal that offending of this nature will attract commensurate sentences.’

[34] This new approach to sentencing is intended in part to reflect better understanding of the impacts on victims. For example in the case of *Hughes* [2022] NICA 12 the LCJ said:

‘Such sentences are a reflection of the growing appreciation of the seriousness of this type of offending, the frequency of it within our societies and the effects on victims.

Higher sentencing reflects society’s need to deter this type of behaviour and mark an abhorrence of it. This behaviour is not normal,

it should not be tolerated, and if it does occur it will result in a significant sentence.’

[35] Because our local Assembly has deliberately adopted a different path in relation to the treatment of domestic violence, and because the permissible maximum sentence in this jurisdiction is designed to facilitate deterrent sentencing where necessary, we derive little benefit from examining sentencing decisions in other jurisdictions. For this reason, we do not intend to address in detail those arguments of the appellant that are based on comparative case law. Suffice to say that our local Assembly has deliberately adopted a different approach to this issue and the role of judges going forward will be to implement the approach that our local legislature has chosen.”

[12] Whilst paras [22] to [25] of *BN* deal with the serious nature of the offending:

“[22] The gravity of non-fatal strangulation is increasingly becoming identified within the courts and broader society as a significant area of concern. In the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 section 28 creates a free-standing offence of non-fatal strangulation or asphyxiation. Whilst it is yet to be commenced, it is indicative of the broader societal concerns with respect to not only domestic violence but particularly non-fatal strangulation. The research and clinical evidence, of which this court takes judicial notice, is stark. The act of strangulation itself often, as Ms McDermott KC has called in aid, produces very limited direct physical injury. Subconjunctival haemorrhage; petechial haemorrhages; and faint bruising on the neck are often the only observable injuries 5 after what may be a terrifying ordeal. The significance of these injuries should not be underestimated by investigators, prosecutors, or indeed, the courts.

[23] Research has clearly shown that often very modest pressure exerted upon the structures of the neck – the carotid artery; the jugular vein; and the trachea – have a terrifyingly quick action. Indeed, the accepted timeline for strangulation is that at almost seven seconds the victim will lose consciousness. At 15 seconds bladder incontinence may occur. At 30 seconds bowel

incontinence may occur. Cell death occurs between two and three minutes with brain death between four and five minutes. The significance, as occurred here, of bodily incontinence occurring in a case of non-fatal strangulation is that the act of strangulation continued beyond where the victim would have lost consciousness.

[24] The *R v Millberry* approach to sentencing involving an assessment of culpability, harm and future risk is potentially misunderstood in cases of non-fatal strangulation. As has been referenced, a focus merely on physical harm fails to fully reflect the full harm caused to victims. In *R v Campbell Allen* [2020] 25 NICA Stephens LJ stated:

‘[46] The terminology and concepts of “family tiffs or lover’s disputes” relied on by Mr McConkey are simply not appropriate in the context of domestic violence. Those concepts diminish culpability by suggesting that it is “only a domestic incident” or by excusing the offender on the basis that he or she is “not normally violent.” We utterly reject such an approach to culpability. These are serious crimes physically and mentally damaging wives, husbands, partners, and children. We repeat again the consistent approach of this court that the domestic context is a significant aggravating feature. We emphasise that one of the factors that can allow domestic abuse to continue unnoticed for lengthy periods is the ability of the offender to have a public and a private face so that an offender’s good character in relation to conduct outside the offences should generally be of no relevance where there is a proven pattern of behaviour in the domestic context.

[47] Strangulation is a form of asphyxia (lack of oxygen) characterized by closure of the blood vessels and/or air passages of the neck as a result of external pressure on the neck. The neck is an unprotected and vulnerable part of the body. Relatively modest pressure is required over a short period of time to cause

problems which can be fatal or non-fatal. On occasions when fatal the offender may not have had an intention to kill. 6 Strangulation is an effective and cruel way of asserting dominance and control over a person through the terrifying experience of being starved of oxygen and the very close personal contact with the victim who is rendered helpless at the mercy of the offender. The intention of the offender may be to create a shared understanding that death, should the offender so choose, is only seconds away. The act of strangulation symbolizes an abuser's power and control over the victim, most of whom are female.

[48] It is a feature of non-fatal strangulation that it leaves few marks immediately afterwards and this paucity and in some cases lack of observable physical injuries to the victim leads to its seriousness not being correctly assessed. Furthermore, in general there is no inevitable commensurate relationship between signs of injury and the degree of force used.

[49] Non-fatal strangulation can lead to physical and psychological problems...'

[25] There is clear understanding within *R v Allen* and *R v Hutchison* that with regard to "Harm" it requires to be assessed with regard not only to physical harm but also with regard to the "mentally damaging" aspects of domestic violence and non-fatal strangulation."

[13] As for harm:

"All cases of strangulation 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..."³

³ Sentencing Council Guideline for Serious Crime Act 2015 (section 75A(1)(a)) and Serious Crime Act 2015 (section 75A(1)(b))

[14] Given the above I would urge those within the PPS taking decisions about venue for cases of NFS to very carefully consider whether or not summary decisions are appropriate. I suspect as more cases come before the Crown Court and Court of Appeal it will become apparent that even the two years maximum sentence in this court is insufficient to mark the harm caused by the majority of NFS offending. It may very well become the situation that summary decisions become the rare exceptions with trial on indictment becoming the norm. Where summary decisions are taken the PPS can expect to be questioned closely from the bench as to the rationale for that decision.

Sentencing approach

[15] Unusually, I have provided written sentencing remarks, I do so to assist counsel and solicitors when advising the increasing number of defendants charged before me with NFS. Pending sentencing guidelines, I propose to take the following approach to sentencing NFS cases in this court. Having reminded myself of the sentencing guidelines and powers for violent and sexual offences in the magistrates' court I view the appropriate starting points and ranges for NFS to be as follows for a first time offender convicted after contest:

Nature of Offence	Starting Point	Sentencing Range
A brief assault which the offender immediately voluntarily desisted	8 Months Custody & Compensation Order	Community Order to 16 Months Custody & Compensation Order
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	12 months Custody & Compensation Order	6-18 Months Custody & Compensation Order
Premeditated assault or sustained assault or repeated strangulation or use of ligature or other item	16 months Custody & Compensation Order	8-24 Months Custody & Compensation Order

[16] Where the victim was engaging in providing a service to the public a higher starting point will be appropriate and sentences outside the suggested range can be expected.

[17] Examples of possible aggravating factors include:

- A sustained assault involving be that by repeat NFS or other means used to inflict injury.
- Use of weapon.
- Offence motivated by, or demonstrating, hostility to victim on account of his membership of a racial group, religious group, sexual orientation group, disability or presumed disability.
- Abuse of position of trust.
- Offender was member of a group committing the offence.
- Offender has previous relevant convictions and/or has failed to respond to previous sentences.
- Victim is particularly vulnerable.
- Additional degradation of the victim.
- Negative impact on the victim.
- Physical or mental harm caused.
- Offence committed in the presence of a child.
- Offence committed in victim's home or workplace.
- Offender prevented victim from seeking or obtaining help.
- Victim forced to leave home.
- Offence took place in an isolated area.
- Assault committed in the context of 'road rage.'

[18] Examples of possible mitigating factors include:

- The offender has shown genuine remorse in relation to committing the offence.
- Youth or immaturity of the offender.

[19] The sentencing process, in the context of the Magistrates' Court Sentencing Guidelines⁴ and *Haughey*, is as follows:

- I have identified NFS as the lead offence.
- I consider the following as aggravating features: lack of remorse; the follow up punch to the victims face and the impact the offending has had on the victim as particularised in the Victim Impact Statement.
- I consider this case is without mitigating features.
- I have identified the sentencing category as the mid category "B."
- There is no plea reduction applicable in this case.
- Having regard to all the factors, I consider the offence is serious enough to justify the imposition of a custodial sentence.
- That sentence is 12 months.

⁴ See the Magistrates' Court Bench Book

- I apply the section 15 aggravator uplift of four months.
- The total sentence is therefore one year and four months, of which eight months are to be served in custody.

[20] The concurrent sentence for the AOABH is nine months in total to include a section 15 uplift of three months. I impose an offender levy of £25.00.

[21] I will hear any prosecution application for ancillary orders now.