

<b>Neutral Citation No:</b> [2026] NICA 12	<b>Ref:</b> KEE13010
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	<b>ICOS No:</b> 24/53344/A01
	<b>Delivered:</b> 24/03/2026

**IN HIS MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND**

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**THE KING**

v

**BARRY MAGUIRE**

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**Mr Ian Turkington KC with Mr Damien Halleron (instructed by Roche & McBride Solicitors) for the Appellant**  
**Ms Rosemary Walsh KC with Mr Michael McAleer (instructed by the Public Prosecution Service) for the Crown**

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**Before: Keegan LCJ, McCloskey LJ and McBride J**

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**KEEGAN LCJ** (*with whom McBride J agrees*)

***Introduction***

[1] The appellant appeals with leave of the single judge, O’Hara J, against the sentence imposed upon him by His Honour Judge Sherrard (“the judge”) on 23 October 2025 for a range of offences which arise in a domestic abuse context. The appellant pleaded not guilty at arraignment on 18 September 2024. He was due to be tried on 12 May 2025, but he was re-arraigned 8 May 2025 and pleaded guilty to six counts. The total determinate custodial sentence imposed on the six counts was one of five years split equally between custody and licence.

[2] This sentence was made up as follows:

Count 1: A domestic abuse offence, contrary to section 1 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (“the 2021 Act”). For this offence the appellant was sentenced to five years’ imprisonment.

Counts 2, 3, 5, 11 & 12: These were all counts of non-fatal strangulation or asphyxiation, contrary to section 28 of the Justice (Sexual

Offences and Trafficking Victims) Act (Northern Ireland) 2022. The appellant was sentenced to four years' imprisonment for the substantive offences to run concurrently to each other and the sentence on count 1. These offences had the statutory domestic abuse aggravator under section 15 of the 2021 Act attached and the court imposed a composite additional 12 months for each offence which was also to run concurrently with count 1.

[3] The grounds of appeal maintain that the sentence was manifestly excessive and wrong in principle because of the following propositions: all of which concern the application of a previous decision of this court in the judgment in *R v Haughey* [2025] NICA 10:

- (i) The court was wrong not to make a reduction to the domestic abuse aggravator uplift under section 15 of the 2021 Act.
- (ii) It is ill-conceived that an offender who pleads guilty at a very early stage will receive the same section 15 domestic aggravator uplift as an identical offender who is convicted after trial.
- (iii) Article 33 of the Criminal Justice (Northern Ireland) Order 1996 must apply to section 15 of the 2021 Act Parliament would have expressly said so otherwise.

[4] At the conclusion of the hearing before us we announced our decision that the appeal would be dismissed and the sentence upheld. However, we indicated that we reached this conclusion by applying a different methodology in sentence to that applied by the sentencing judge and that we would provide written reasons dealing with how to apply the statutory aggravator and the ongoing application of *R v Haughey*. These are the reasons which follow.

### ***Factual background***

[5] The facts are as set out by the prosecution in their submissions for the court. We summarise these as follows. The complainant and the appellant were in a relationship which commenced shortly after they met in or about July 2023 and ended on 30 November 2023. The relationship began in a facility for those dealing with alcohol problems. The relationship began to deteriorate when the appellant relapsed from sobriety approximately nine weeks after the couple met.

[6] On Thursday 30 November 2023, police received a report of an ongoing disturbance at a property in Omagh. The report was received from a neighbour who heard an altercation from an adjoining property. The reporting person initially rang a friend, who also lived close by, and they both made their way to the scene of the disturbance and observed the complainant exit the property in a dishevelled and

emotional state. She stated that her partner, the appellant had assaulted her. On police attending the scene, the complainant stated that the appellant had assaulted her both by beating and choking her. It was noted that she had visible marks to her throat. She also stated that the appellant had threatened to kill her.

[7] On examination, the complainant had bruises on almost every part of her body; the bruises were at various stages of healing and were captured by photographs taken by the police. The complainant also showed the police photographs she had taken of herself on 15 November 2023, approximately two weeks earlier. On this previous occasion the complainant said that the appellant had pushed her to ground for arguing back, before holding his hand over her mouth and nose. The complainant told police that the appellant would not let her eat which had resulted in her having to eat from the floor. The complainant reported that the appellant had recorded her eating off the floor on his mobile phone. She also told police that the appellant had control of her money in her bank account. The complainant was conveyed to hospital where she was admitted for treatment.

[8] Police were required to force entry to arrest the appellant. He was then arrested for various offences to include common assault, domestic abuse, non-fatal strangulation and threats to kill. The complainant's bank card was subsequently found on the appellant's person and returned to her. During interview the appellant stated that himself and the complainant both had drinking problems and arguments started when they were both drunk. As to the allegation that he made her eat off the floor, he said that she suffered from bulimia and he tried to encourage her to eat. He denied that he had ever control of her money and that he would only have her bank card if she had asked him to go to the shop for her. He denied ever having assaulted the complainant and stated that the only time that he put his hands on her throat was during consensual sex. He denied having ever forced the complainant to eat food from the floor. He admitted that he had thrown food over the floor during a particular incident on 30 November 2023 during a verbal only argument. When police advised the appellant that they would be examining his phone for evidence of the offence, he then said he may have taken a photo or recording of the complainant eating from the floor. Footage was later discovered of this incident on the appellant's phone.

### *The prosecution case*

[9] There were various elements of criminal behaviour comprised in count 1, the domestic abuse offence. In summary, this included verbal abuse which was manifested by the appellant shouting and screaming at the complainant. There was also verbal abuse to degrade and upset the complainant based on previous personal and private disclosures made by her to the appellant in the earlier part of their relationship, for example, "nobody wants you, I am all you have." There was an incident during which the appellant punched the wall beside the complainant's face on up to 10 occasions. There were occasions when the appellant would wake the complainant out of her sleep to insult her. There was sending of aggressive voice

and text messages to insult, degrade and upset the complainant. Specifically, the prosecution maintained:

- (i) The voice messages dated 4 November 2023 from the appellant to the complainant are vicious and insulting.
- (ii) The voice messages dated 29 November 2023 from the complainant to the appellant are referenced; the complainant can be heard crying and sobbing whilst apologising for not answering the appellant's phone calls. The prosecution assert that these messages are compelling.
- (iii) Telephoning the complainant up to 30 times per day.
- (iv) Breaking into the complainant's home without permission at the end of October 2023.
- (v) On 30 November 2023, throwing a takeaway meal onto the kitchen floor and making the complainant eat same while he videoed her whilst she was under the fear that if she did not eat the food off the floor voluntarily, then she would be forced to.
- (vi) Accessing the complainant's bank account from her phone without permission and removing sums of money without permission.

[10] In addition, counts 2, 3, 5, 11 and 12 were all offences of non-fatal strangulation. The particulars of count 2 were that on 12 November 2023, the appellant intentionally covered the mouth and nose of the complainant and that he intended to affect her ability to breathe or the flow of blood to her brain or that he was reckless as to whether this act would affect her ability to breathe or the flow of blood to her brain. On count 3, the facts relate to the same day 12 November 2023 but, in addition, relate to the appellant intentionally applying pressure to the throat or neck of the complainant. On count 5, the particulars were that on numerous dates unknown between 12 November 2023 and 30 November 2023, other than the behaviour complained of at counts 2 and 3, the appellant intentionally covered the mouth and nose of the complainant and applied pressures to her throat or neck and intended to affect her ability to breathe or the flow of blood to her brain or that he was reckless as to whether this act would affect her ability to breathe or the flow of blood to her brain. On count 11, the particulars were that on 30 November 2023, the appellant intentionally applied pressure to the throat or neck of the complainant and that he intended to affect her ability to breathe or the flow of blood to her brain or that he was reckless as to whether this would affect her ability to breathe or the flow of blood to her brain. On count 12, the particulars were that on 30 November 2023, the appellant intentionally covered the mouth and nose of the complainant and that he intended to affect her ability to breathe or the flow of blood to her brain or that he was reckless as to whether this act would affect her ability to breathe or the flow of blood to her brain.

[11] All of the foregoing offences were said to be aggravated by reason of involving domestic abuse, contrary to section 15 of the 2021 Act.

*The judge's sentencing remarks*

[12] The judge sets out the history of this case and recounts the various facts governing the offences from the first episode of asphyxiation on 12 November 2023. The judge's overall assessment of this offending was as follows:

"Looking at these offences, it is apparent that you were using strangulation and asphyxiation as a method of exerting control and dominance over the injured woman. At various times you told her that you were going to "train her", you were going to "show her your power", and that you were going to "take control."

[13] The judge also referenced the victim statement and recorded the fact that the complainant was a vulnerable woman and a professional woman who clearly suffered significant sequelae which she described in her own words as follows:

"The physical abuse I experienced was very psychologically damaging and long lasting. To this day, when I feel anxious, I can feel that breathlessness, like every time he choked me, and I was unable to breathe. Remembering that feeling of not being able to breathe again is very traumatising. I still feel unsafe if I'm by myself with a man. His degrading actions caused me to lose confidence in myself, and it has taken me considerable time to get control over my life again. I realise he took advantage of my vulnerabilities and his treatment towards me has caused trauma that will last a lifetime. This was my first proper relationship, and it has been so damaging and destructive. These experiences have changed me as a person."

[14] The judge goes on to record the appellant's circumstances as follows. He came before the court aged 41. Prior to entering custody, he lived in Bangor and worked in hospitality and had the prospect of work on release. The appellant, the judge records, was exposed to domestic violence in his family home and described his early life as turbulent and chaotic. His parents separated and he remained with his mother who passed away, sadly, when he was in custody for these offences. She suffered her own difficulties with alcohol. However, alcohol clearly was a difficulty for the appellant over the last 20 years. The judge had the benefit of a report from a clinical psychologist, Dr Weir, who described the appellant as having grown up in a family where alcohol was ever present and both his parents were dependent. The judge does record that the appellant tried to rehabilitate on a number of occasions

and that he was presently managing sobriety attending a programme at Newtownards Hospital. The judge records that the appellant was first referred to alcohol treatment in 2011 and the pattern has emerged of detoxification and relapse, the longest period of stability being six months. The judge opines that his alcohol consumption has clearly had an impact on the appellant's mental health and he was drinking at the time of the offending. The longevity of the alcohol addiction and the failure to address it, thus opening the appellant up to offending, the judge considers is a relevant consideration to be applied in the sentencing options.

[15] The judge deals with the *Haughey* decision and states:

"This is a case of high culpability and the repetition of the behaviour, time after time after time, serves to significantly elevate your culpability and to distinguish this matter entirely from *Haughey*. In the absence of a report and relying on the victim impact statement, subject to the provisos that I've already made, the harm, it seems to me, is at the higher end of moderate as discussed in *Haughey*.

Your previous conviction for domestic violence offending aggravates your offending, as does the fact that you committed the offences while in drink; the injured woman's vulnerability as someone struggling with alcohol dependence; and your degrading treatment of this woman, both during the section 28 assaults and otherwise."

[16] The judge considers the value of the guilty plea and the application of *R v Haughey*. He also considers dangerousness and decides that he does not have sufficient evidence to find dangerousness in this case. The judge acknowledges some remorse on the part of the appellant and that the offences were caused during a particularly stressful period when the appellant's mother was terminally ill.

[17] Drawing all of the above together, the judge settled upon a starting point after trial of five and half years' imprisonment taking account of totality. The core of the sentence is found in the following section of the sentencing remarks:

"You pleaded late in the day, but in advance of a trial that would have been challenging. I note whenever the plea was offered, it was accepted to be welcome. Against that background, the correct sentence to take account of your plea, on the strangulation and asphyxiation counts, is one of four years' imprisonment, and on the abuse count is one of five years' imprisonment. The offences other than at count 1 - so in other words, the asphyxiation and

strangulation offences - were aggravated by reason of domestic abuse and so on counts 2, 3, 5, 11 and 12, I will add a period of 12 months' imprisonment to reflect that serious domestic violence aggravation.

Accordingly, the sentence on count 1 is five years' imprisonment; the sentences on each of the other counts is four years' imprisonment plus 12 months to reflect the domestic violence aggravator. All sentences to run concurrently with each other."

### ***Consideration***

[18] *Haughey* was a case concerning four charges including one count of non-fatal strangulation. At the time it was considered by the Court of Appeal non-fatal strangulation was a relatively new offence in Northern Ireland for which no sentencing guidelines existed. The Court of Appeal therefore provided some helpful guidance. Much of what was said in *Haughey* applies without any issue and we affirm what the court said as follows.

[19] The policy background to the 2021 Act set out at para [31] is clear in that whenever this new law was introduced the maximum penalty for non-fatal strangulation of 14 years applied, as the Justice Minister said, "together, these offer greater protections across our society to those that are subject to both violent and non-physical abusive behaviours."

[20] Paras [33] and [34] also reflect the decisions of this court in *R v Hutchison* [2022] NICA 55 and *R v Hughes* [2022] NICA 12 wherein this court indicated:

"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."

[21] We wholeheartedly endorse what the Court of Appeal said at para [35]:

"[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.”

[22] The court also went on to examine in impressive detail, the issue of loss of consciousness and how non-fatal and repeated strangulation should be dealt with in our jurisdiction. The court rightly referred to previous offending as an aggravating factor and gave a warning against double counting. The court also dealt with mitigation and remorse, in detail applying a methodology which we adopt.

[23] The only issue which has been the focus in this appeal is how the domestic aggravator is applied in cases of this nature. The relevant discussion in *Haughey* is at paras [68]-[78] of the judgment. This relates to section 15 of the 2021 Act which provides as follows:

“15. – (1) It may be specified as an allegation alongside a charge of an offence against a person (“A”) that the offence is aggravated by reason of involving domestic abuse.”

[24] When sentencing for an offence to which the statutory domestic aggravator applies, section 15(4) requires the court to:

- “(a) state on conviction that the offence is aggravated by reason of involving domestic abuse,
- (b) record the conviction in a way that shows that the offence is so aggravated,
- (c) in determining the appropriate sentence, treat the fact that the offence is so aggravated as a factor that increases the seriousness of the offence, and
- (d) in imposing sentence, explain how the fact that the offence is so aggravated affects the sentence imposed.”

[25] The Court of Appeal took a different view from the trial judge in that it indicated that the statutory aggravator should be the last step in the sentencing process, so it did not attract a reduction for the plea. The question which is front and centre in this appeal is whether that approach squares with Article 33 of the Criminal Justice (Northern Ireland) Order 1996 (“the 1996 Order”) which provides that the court shall take into account in terms of a reduction for plea (i) the stage in the proceedings at which the offender indicated his intention to plead guilty and (ii) the circumstances in which the indication was given. Article 33(2) specifically sets out that if, as a result of taking into account any matter referred to in paragraph (1), the

court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, it shall state in open court that it has done so.

[26] This provision was examined by the Supreme Court in *R v Maughan* [2022] UKSC 13, at paras [43] and [44] as follows:

“43. Article 33 of the 1996 Order is neither prescriptive nor exhaustive. It does not expressly require the judge to reduce the sentence because of the plea, nor does it prescribe any rate of discount if he does so although there is a clear steer that a discount should be considered. It does not prescribe how any indication of an intention to plead should be given or indeed to whom it should be given. ... If the judge reduces the sentence for the plea, he must articulate that he has done so and take into account when and in what circumstances an indication of an intention to plead was given.

44. Just as it does not prescribe any rate of discount at any stage of the proceedings neither does it prevent the court from adopting a sentencing policy by way of guidance designed to ensure transparency and consistency. There is no requirement for an extended meaning of “proceedings” to be adopted for that purpose. Article 33 does not prevent the adoption of a sentencing policy which treats as relevant to sentencing discount the failure to admit wrongdoing during interview.”

[27] It is important to stress that the sentencing methodology adopted in *Haughey* was not the subject of any submissions by either party before that appellate court. This is perhaps unsurprising as the law was extremely new and the court was grappling with the first case in which the domestic aggravator was applied. In addition, unlike *Haughey*, the instant case has a mix of offences (one domestic abuse offence which itself is not subject to the statutory aggravator and five non-fatal strangulations which are subject to the statutory aggravator) which has highlighted the issue in stark relief. Matters have moved on in that we have had full argument of the issue. The comments made by the Court of Appeal were also *obiter*, as per *Young and Bristol Aeroplane Company* [1944] KB 718. Thus, a recalibration of *Haughey* is required because we consider the correct method is to leave reduction for a guilty plea to the end of the sentencing exercise after the domestic aggravator has been applied.

[28] We reach this conclusion principally because Article 33 of the 1996 Order has not been expressly or implicitly amended by virtue of the 2021 Act, and it remains the guiding principle in relation to reduction for a guilty plea. The correct

methodology is to choose a headline offence, indicate what the starting point is for that after consideration of aggravating and mitigating factors, indicate what the increase is for domestic aggravator mindful not to double count and then reduce for any guilty plea.

[29] In this case applying a starting point of five and a half years for the entirety of the offending and then adding 12 months for domestic abuse aggravation leads to a final sentence of six and a half years before reduction for the guilty plea. The plea was late and so a reduction of 20-25% was appropriate. Applying a 25% reduction for the plea, the final sentence should have been somewhere in the region of five years. Using a strict mathematical approach the sentence arrived at by our methodology is 78 months with a quarter reduction of 19.5 leading to a final sentence of 58.5 months or four years and 10.5 months. Therefore, the judge's final sentence whilst marginally over that, is not manifestly excessive. In fact, if the judge had been alive to the correct methodology he could justifiably have adjusted his figures slightly to reach five years.

### *Conclusion*

[30] We are entirely satisfied that a total sentence of five years is an appropriate sentence for this type of offending and that is why this appeal is dismissed. In addition, we approve the guidance in *Haughey* in most respects, as regards the need for deterrent and appropriate sentencing in this area of domestic violence and the need to identify the statutory aggravator. The recalibration we make is that the reduction for the plea should come at the end of the sentencing exercise given the provisions of Article 33 of the 1996 Order. This sentencing methodology should now be applied by all sentencing judges.