

Sentencing guidelines for manslaughter

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CRIME LINE



Sentencing guidelines for manslaughter offences come into force on 1 November 2018. These will apply to all offenders over the age of 18 who stand to be sentenced on or after this date.

The guidelines cover both *voluntary* and *involuntary* manslaughter offences and apply to *individual offenders* only. Corporate Manslaughter is exempt and will continue to be dealt with by reference to the guidelines for health and safety offences^[1].

This publication represents the first comprehensive guidance for sentencing in manslaughter cases.

Previous guidance was limited to the guideline for Manslaughter by Reason of Provocation which is now out of date (due to legislative changes to partial defences to murder)^[2].

Sentence Length

It remains to be seen whether sentences under the new guidelines remain in line with current sentencing practice.

One area in which the Council does foresee a sentence increase is in cases of gross negligence cases involving employers with a long history of disregard for the safety of employees. This shift in tone is no doubt influenced in part by public ventilation of issues arising from tragedies such as *Grenfell* and *Hillsborough*.

These guidelines could also see longer sentences in cases of so called “one punch manslaughter”. A number of high-profile cases of this nature have attracted criticism in the past for seeming leniency. The Lord Chancellors’ request in May 2014 for guidance in sentencing such cases is what saw the Sentencing Council first embark on this work, before deciding to draft guidance for manslaughter cases in the round.

Structure

The Sentencing Council has produced guidelines for the following **four** types of manslaughter:

- Unlawful Act Manslaughter
- Gross Negligence Manslaughter
- Manslaughter by Reason of Diminished Responsibility
- Manslaughter by Reason of Loss of Control

The structure of the guidelines follows the by now familiar format of categorising cases initially by assessment of *culpability*. Once the notional sentence is reached, further adjustments will be made to allow for the presence of aggravating and mitigating features and/or credit for a guilty plea.

A key difference to other guidelines is the decision to apply **four** levels of culpability to manslaughter by way of unlawful acts and gross negligence (“*very high*”, “*high*”, “*medium*” and “*lesser*”).

Cases of “very high culpability” may be indicated by the extreme character of one or more of the high culpability factors and/or a combination of these factors. For obvious reasons, possible findings of *very high culpability* will not apply to cases of diminished responsibility or loss of control.

During the consultation period, the Criminal Bar Association (CBA) queried the need to depart from the standard 3-level scale of culpability. The Sentencing Council decided however to stick with this format stating that its research suggests it will “provide the appropriate range of sentence levels”.

General Principles

Some of the general text of the guidelines contains helpful points which may be summarised as follows:

- The type of manslaughter should have been identified prior to sentence. If there is any dispute or uncertainty about the type of manslaughter which applies, the sentencing judge should give clear reasons for the basis of sentence.
- The court should balance the characteristics to reach a fair assessment of overall culpability in the context of the circumstances of the offence.
- The court should avoid an overly mechanistic application of culpability factors.
- The guideline tables are for a *single offence* of manslaughter resulting in a *single fatality*. If there are further offences arising out of the same incident or facts, concurrent sentences reflecting the *overall criminality* of offending will ordinarily be appropriate.
- Care should be taken to avoid the risk of double-counting factors which have been considered when assessing the level of culpability.
- In appropriate cases, the court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, *the notional determinate sentence should be used as the basis for the setting of a minimum term*.

Unlawful Act Manslaughter

In cases where death was caused in the course of an unlawful act which involved an intention by the offender to cause harm falling just short of GBH **or** which carried a high risk of death or GBH (which was or ought to have been obvious to the offender) the initial categorisation will be one of high culpability. This carries a starting point of 12 years and a sentence range of 8 to 16 years.

Mitigation in such cases can include steps taken to assist the victim and a history of “significant” abuse or violence towards the offender by the victim. The reverse of this would be an aggravating feature (that is, the offender having a history of violence towards the victim) but interestingly there would not appear to be a requirement for such violence to qualify as significant.

Cases of unlawful act manslaughter involving very limited culpability allow for the possibility of a suspended sentence given the range of 1-4 years with a starting point of 2 years.

Gross Negligence Manslaughter

During the consultation process the Council received input from several organisations representing the medical profession. Some expressed concern that the guidelines would be difficult to apply given the range of circumstances in which acts of gross negligence can occur. This disquiet explains in part the stated warning to judges to avoid an “overly mechanistic approach” when determining culpability.

Suggestions were also made by the medical community for mitigation relevant to those working in high stress environments. The guidelines therefore include factors to reflect any external pressures on an offender which have contributed to the breach of a duty of care. These include the offender lacking the necessary expertise, equipment, support or training and the offender having been subject to stress or pressure (including from competing or complex demands) which related to and contributed to the negligent conduct.

As stated above, it is expected that these particular guidelines will see heavier sentences handed out to offenders than was previously the case.

Loss of Control Manslaughter

The Justice Select Committee noted that the starting point for high culpability for this offence was 14 years, as compared with 12 years in the Sentencing Guideline for Manslaughter by Reason of Provocation. Concern was expressed that the new guidelines may lead to higher sentences in some loss of control cases. The Council considered but rejected this concern taking the view that 14 years was proportionate to the seriousness of the offending and did not deviate from current sentencing practice.

Diminished Responsibility Manslaughter

The Diminished Responsibility guidelines are detailed and differ from the others in that they set out additional steps for the court to consider relating to dangerousness, mental health disposals and the requirement to review the sentence as a whole to ensure that it is fair and proportionate.

One issue raised during the consultation was an initial decision to state that the mitigation of an offender having a mental disorder would have limited weight where s/he had exacerbated the condition through drink/drug abuse or failing to take their medication. The Council accepted arguments made to the effect that this could lead

to injustice given the complex interplay between mental health and drug or alcohol misuse. It remains however an issue for offences of diminished responsibility when the court is deciding the extent to which an offender's actions or omissions contributed to the seriousness of the disorder at the time of the offence [3].

Conclusion

As part of its preparatory work the Sentencing Council conducted a review of *all* sentences handed out for manslaughter cases in 2014 and 2016. The definitive version incorporates a number of changes suggested during the consultation process. One concern expressed by the CBA that the guidelines will be difficult to apply to cases of secondary liability was not however accepted.

The unique challenge of sentencing manslaughter cases is that they cover a wide radius of circumstance and culpability. This is perhaps best illustrated by the fact that these guidelines cater for a sentence of anywhere from 1 to 40 years. As noted by one of the members of the Sentencing Council, Lord Justice Holroyde:

“Manslaughter offences vary hugely – some cases are not far from being an accident, while others may be just short of murder. While no sentence can make up for the loss of life, this guideline will help ensure sentencing that properly reflects the culpability of the offender and the unique facts of each case”.

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