

Consultation Stage Resource Assessment: Manslaughter

1 INTRODUCTION

1.1 This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.¹

2 RATIONALE AND OBJECTIVES FOR NEW GUIDELINE

2.1 In 2005, the Sentencing Guidelines Council (SGC), the predecessor body to the Sentencing Council, published the definitive guideline *Manslaughter by Reason of Provocation*². The guideline was for use where a conviction for manslaughter was clearly founded on provocation alone.

2.2 The Coroners and Justice Act 2009³ abolished the common law defence of provocation and replaced it with provisions related to "loss of control". The Council has decided to produce a new guideline covering the offence of manslaughter by reason of loss of control, to replace the now out-of-date provocation guideline.

2.3 The Council is also proposing guidelines for other types of manslaughter where no guidelines currently exist: unlawful act manslaughter⁴, gross negligence manslaughter⁵ and manslaughter by reason of diminished responsibility⁶. Manslaughter is a very serious offence, and to ensure consistency of approach to sentencing, it is important that judges have relevant and up-to-date guidance. It is equally important that the process which is followed in arriving at sentences is transparent to the public.

2.4 The Council decided not to develop a guideline for the special defence to murder of killing in pursuance of a suicide pact, as it is prosecuted and sentenced very rarely.

¹ Coroners and Justice Act 2009 section 127.

² [https://www.sentencingcouncil.org.uk/wp-content/uploads/Manslaughter by Reason of Provocation.pdf](https://www.sentencingcouncil.org.uk/wp-content/uploads/Manslaughter_by_Reason_of_Provocation.pdf)

³ <http://www.legislation.gov.uk/ukpga/2009/25/section/54>

⁴ http://www.cps.gov.uk/legal/h_to_k/homicide_murder_and_manslaughter/#unlawful

⁵ http://www.cps.gov.uk/legal/h_to_k/homicide_murder_and_manslaughter/#gross

⁶ <http://www.legislation.gov.uk/ukpga/Eliz2/5-6/11/section/2>

3 SCOPE

3.1 As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guidelines on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

3.2 This resource assessment covers the following offences:

- Unlawful act manslaughter;
- Gross negligence manslaughter;
- Manslaughter by reason of loss of control; and,
- Manslaughter by reason of diminished responsibility.

4 CURRENT SENTENCING PRACTICE

4.1 To ensure that the objectives of the guidelines are realised, and to understand better the potential resource impacts of the guidelines, the Council has carried out analytical and research work in support of the guidelines.

4.2 The intention is that the new guidelines will encourage consistency of sentencing and in the vast majority of cases will not change sentencing practice overall. In order to develop guidelines that maintain current practice, knowledge of recent sentencing was required.

4.3 One source of evidence has been the analysis of sentencing transcripts of recent manslaughter cases⁷. Knowledge of the sentencing starting points, ranges and factors used in recent cases has helped the Council to create guidelines that should maintain current sentencing practice.

4.4 Another source has been research conducted with 71 judges. This work explored judges' views on an early draft guideline, and its implications in terms of sentencing behaviour.

4.5 Data from the Crown Court Sentencing Survey⁸ has been used, where possible, to check the assumptions made following the other research, and make sure that the

⁷ In total, the transcript analysis covered 156 cases of manslaughter, including all offenders sentenced in 2014 and a small number from 2013 and 2015.

⁸ From 1st October 2010 to 31st March 2015 the Council conducted the Crown Court Sentencing Survey (CCSS) which collected data on sentencing practice in the Crown Court.

sample of cases used to develop the guideline is representative of sentencing in other recent years.

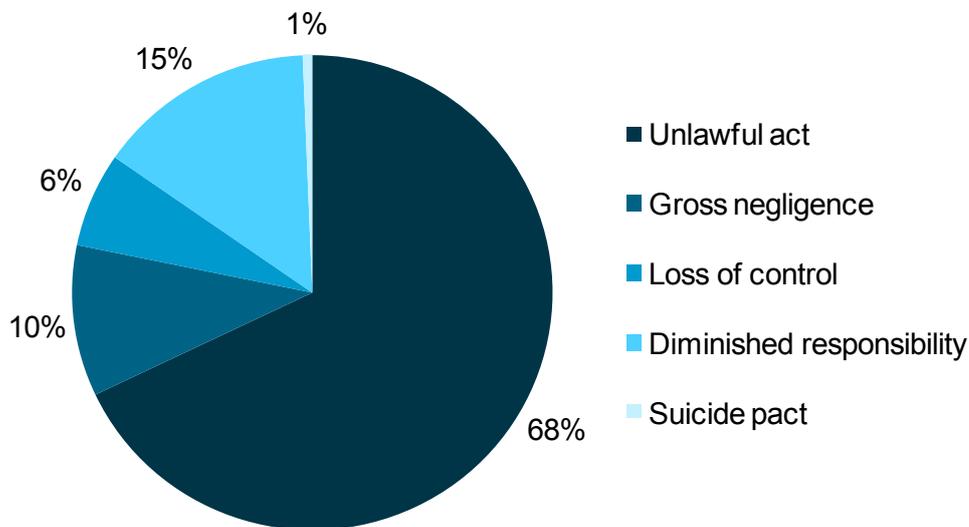
4.6 Detailed sentencing statistics for manslaughter offences have been published on the Sentencing Council website at the following link:

<http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year.>

4.7 The published statistics⁹ are based on data from the Court Proceedings Database and cover manslaughter as a whole, as it is not possible to provide a breakdown by the four different types.

4.8 Since 2006 the number of offenders sentenced for manslaughter offences has gradually declined, from 210 in 2006 to 160 in 2016 (see Figure 1). The vast majority (88 per cent in 2016) are sentenced to immediate custody, with an average custodial sentence length of 10 years in 2016. The maximum sentence a judge can impose for manslaughter is imprisonment for life.¹⁰

Chart 1 – Proportions of offenders sentenced for each type of manslaughter^{11,12}



⁹ The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. Further information about this data can be found in the accompanying statistical bulletin published here:

<http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

¹⁰ Judges can also impose orders under the Mental Health Act (such as hospital orders), which may lead to the offender spending the rest of their life in hospital in some circumstances..

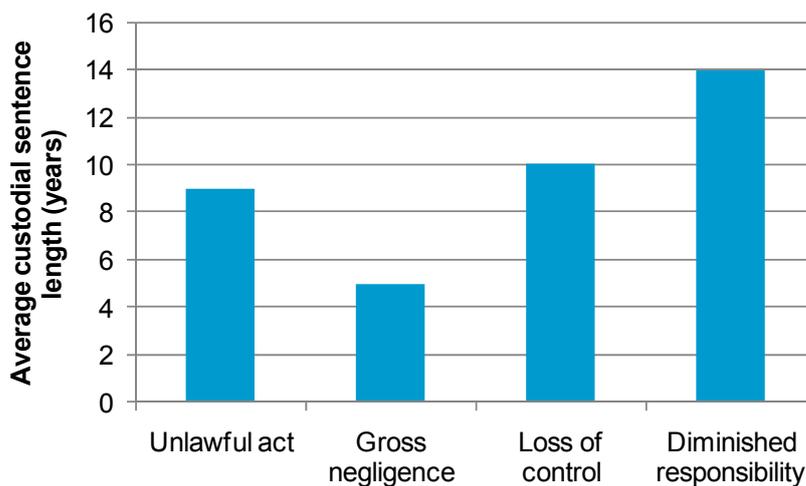
¹¹ The Council decided not to develop a guideline for the special defence to murder of killing in pursuance of a suicide pact, as it is prosecuted and sentenced very rarely.

¹² These figures are taken from the sample of transcripts covering all offenders sentenced in 2014, and a small number from 2013 and 2015.

4.9 Analysis of sentencing transcripts covering all offenders sentenced for manslaughter in 2014, and a small number from 2013 and 2015, showed that unlawful act manslaughter was the most common type to come before the courts, with loss of control the least common.

4.10 Average custodial sentence lengths (ACSLs) varied depending on the type of manslaughter that offenders were sentenced for. The ACSL was highest for offenders sentenced for manslaughter by reason of diminished responsibility, although it should be noted that most offenders sentenced for this were given an order under the Mental Health Act 1983, and only a small proportion were given a determinate custodial sentence.

Chart 2 – Average¹³ custodial sentence lengths¹⁴ (in years) of offenders sentenced to a determinate immediate custodial sentence, prior to any guilty plea reduction¹⁵, for each type of manslaughter covered by the draft guideline¹⁶



5 KEY ASSUMPTIONS

5.1 To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guideline, and draws upon analytical and research work undertaken during guideline development. However, some large assumptions must be

¹³ The average is calculated as the mean custodial sentence length.

¹⁴ These figures are for immediate custodial sentences of determinate length only, and do not include life sentences or lengths of orders under the Mental Health Act.

¹⁵ The average custodial sentence lengths illustrated in the chart are those before any guilty plea reduction has been applied. The average custodial sentence lengths for the final sentences passed (to the nearest year) are as follows: unlawful act – 8 years, gross negligence – 4 years, loss of control – 8 years, diminished responsibility – 10 years.

¹⁶ These figures are taken from the sample of transcripts covering all offenders sentenced in 2014, and a small number from 2013 and 2015.

made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the new guideline are therefore subject to a large degree of uncertainty.

5.2 Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed new guidelines.

5.3 The resource impact of the new guidelines is measured in terms of the change in sentencing practice that is expected to occur as a result of them. Any future changes in sentencing practice which are unrelated to the publication of the new guidelines are therefore not included in the estimates.

5.4 In developing sentence levels for the different guidelines, existing guidance and data on current sentence levels has been considered. Transcripts of cases and news articles have also been reviewed.

5.5 In addition, while data exists on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the new guidelines, due to a lack of data available regarding the seriousness of current cases, and the low numbers of cases (particularly for some of the lowest volume types of manslaughter). As a consequence it is difficult to ascertain how sentence levels may change under the new guideline.

5.6 It therefore remains difficult to estimate with any precision the impact the guideline may have on prison and probation resources. To support the development of the guideline and mitigate the risk of the guideline having an unintended impact, further interviews will be undertaken with sentencers as part of the consultation, which will provide more information on which to base the final resource assessment accompanying the definitive guideline.

6 RESOURCE IMPACTS

6.1 This section should be read in conjunction with the draft guidelines available at: <http://www.sentencingcouncil.org.uk/consultations/>.

Summary

6.2 The expected impact of each guideline is provided in detail below. Overall, the draft manslaughter guideline is anticipated to change sentencing practice only for cases which appear very infrequently, and therefore it is expected to have a minimal impact on correctional resources.

6.3 Further research will be conducted during the consultation stage, and this should help to provide a clearer estimate of the impact for the final resource assessment, to accompany the definitive guideline.

Unlawful act manslaughter

6.4 There is no existing guideline for this offence. The proposed new guideline has four levels of culpability (very high, high, medium and low) but only one level of harm, as all cases of manslaughter will inevitably be of the utmost seriousness.

6.5 Unlawful act manslaughter is the most common type of manslaughter, making up around 68 per cent of offenders sentenced for manslaughter each year.¹⁷

6.6 In general, the proposed sentencing ranges have been set with current sentencing practice in mind and therefore it is not anticipated that there will be any impact on prison and probation resources.

Gross negligence manslaughter

6.7 There is no existing guideline for this offence. The proposed new guideline has four levels of culpability (very high, high, medium and low) and one level of harm.

6.8 The Council's aim is to increase consistency in sentencing practice and not to change sentencing severity in the majority of cases.

6.9 The exception to this is for some cases of gross negligence manslaughter typically in the workplace, where an employer has had a long-standing disregard for the safety of employees and is motivated by cost cutting. In such cases, the Council came to the conclusion that it would be appropriate for sentences to increase. It is therefore expected that where an offender has been convicted for manslaughter due to failings in respect of their health and safety responsibilities, an increase may be seen in

¹⁷ These figures are taken from the sample of transcripts covering all offenders sentenced in 2014, and a small number from 2013 and 2015.

immediate custodial sentence lengths. However, these cases appear very infrequently, with transcript analysis showing that only three offenders were sentenced for these types of offences in 2014. Therefore the increase in sentence lengths for these specific types of cases is anticipated to have a minimal impact on correctional resources.

Manslaughter by reason of loss of control

6.10 The proposed new guideline for manslaughter by reason of loss of control adopts the Sentencing Council's standard approach by having three levels of culpability, but like the other guidelines included here, just one level of harm.

6.11 In general, the proposed sentencing ranges have been set with current sentencing practice in mind, although only a very small number of offenders are sentenced for this offence each year (eight in 2014¹⁸). Some of the starting points and ranges are different to those included in the existing SGC guideline for the offence of manslaughter by reason of provocation. The SGC guideline is now out of date but continues to be referred to in sentencing for cases of manslaughter by reason of loss of control taking account of legislative changes made since then.¹⁹ Analysis of more recent transcripts and CCSS data suggests that the sentencing levels in the draft guideline are more reflective of current sentencing practice and so are not expected to cause a change in average sentencing severity.

6.12 The exception to this is for cases falling into the highest level of culpability, where the starting point has increased from 12 years in the provocation guideline to 14 years in the draft loss of control guideline. Sentencing remarks suggest that a starting point of between 10 and 12 years has been used for these types of cases in the past. It is therefore anticipated that increasing the starting point for the highest category could increase average custodial sentence lengths for these types of cases. Out of the nine offenders sentenced for manslaughter by loss of control in the transcript sample (covering all cases in 2014, and a small number from 2013 and 2015), five are estimated to fall into the highest level of culpability. Therefore the increase in sentence lengths for these specific types of cases is anticipated to have a minimal impact on correctional resources.

¹⁸ The transcript sample included all eight cases from 2014, plus one case from 2015.

¹⁹ The partial defence to murder of manslaughter by reason of provocation was replaced by a new partial defence of loss of control as part of the Coroners and Justice Act 2009.

Manslaughter by reason of diminished responsibility

6.13 The proposed new guideline adopts a different structure to the standard approach used in most Sentencing Council guidelines. A conviction for manslaughter by reason of diminished responsibility necessarily means that the offender's ability to understand the nature of the conduct, form a rational judgment and/or exercise self control was substantially impaired. Instead of asking sentencers to consider the levels of culpability and harm, they are instead instructed to assess the degree of responsibility retained by the offender as high, medium or low. A sentencing table for these three levels is then provided.

6.14 There is no existing guideline for this offence. For offenders sentenced to custody, the Council's intention is to maintain current sentencing practice, and sentencing levels have been developed based on current sentencing practice (albeit current sentencing practice for this offence covers a very wide range of sentencing levels, and while all cases from 2014 were analysed, this is still a small number overall).

6.15 A substantial proportion of offenders sentenced for the offence of manslaughter by reason of diminished responsibility are given orders under the Mental Health Act 1983 (including 14 out of the 23 offenders sentenced in 2014 for manslaughter by reason of diminished responsibility). The majority of these were given hospital²⁰ and restriction orders²¹ (under sections 37 and 41 of the Act). However, the Council is aiming for the draft guideline to reflect recent case law in this area, which gives greater consideration to the use of section 45A ('hybrid') orders than has previously been the case²². These orders provide for the offender to be removed to prison for the remainder of their sentence once treatment in a hospital is no longer needed. This is in contrast to section 37 and 41 orders, where offenders are released into the community if it is deemed that they no longer need treatment.

6.16 If the proposed guideline has the intended effect of causing sentencers to move towards imposing more hybrid (section 45A) orders, then there may be an impact on

²⁰ <http://www.legislation.gov.uk/ukpga/1983/20/section/37>

²¹ <http://www.legislation.gov.uk/ukpga/1983/20/section/41>

²² R v Vowles and others [2015] EWCA Crim 45

prison resources as some of those that would have previously received a hospital order alone would now serve some of their sentence in prison²³.

6.17 However, it is not possible at this stage to ascertain with any certainty how many offenders are currently given hybrid orders (it is possible that recent case law has already been reflected in sentencing for these offences²⁴) and therefore the potential increase in these use of these section 45A orders. In addition, for those for whom a hybrid order is imposed, it is not known what portion of their sentence is spent in a hospital and what portion in prison.

6.18 Further research will be conducted during the consultation stage, and this should help to provide a clearer estimate of the impact for the final resource assessment, to accompany the definitive guideline.

7 RISKS

7.1 Two main risks have been identified:

Risk 1: The Council's assessment of current sentencing practice is inaccurate

7.2 An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guideline comes into effect.

7.3 This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes providing case scenarios as part of the consultation exercise which are intended to test whether the guideline has the intended effect and inviting views on the guideline. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated.

Risk 2: Sentencers do not interpret the new guidelines as intended

²³ Only offenders aged 21 or over are eligible to receive a section 45A order, and so it is anticipated that some offenders will continue to be given orders under sections 37 and 41 (one of the cases in the transcript sample related to an offender aged 18).

²⁴ The number of hospital admissions for individuals sentenced to a hospital and limitation direction (for any offence) has increased from 19 in 2014 to 28 in 2016, suggesting this may already be the case. A limitation direction restricts the order in the same way that s41 restricts a hospital order under s37. If the hospital bed is not immediately available on the day of sentence, then the judge may direct that the person be held in "a place of safety" until it is. See Restricted Patients publication, Table 7: <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2016>

7.4 If sentencers do not interpret the guidelines as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

7.5 The Council takes a number of precautions in issuing new guidelines to try to ensure that judges interpret them as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. Transcripts of all sentencing remarks for manslaughter cases in 2014 (and a small number from 2013 and 2015) have also been studied to ensure that the guidelines are developed with current sentencing practice in mind.

7.6 Following the release of the guidelines, explanatory material will be provided to read alongside the guidelines; consultees can also feedback their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.