

# Manslaughter Guideline Consultation



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The consultation will end on 10 October 2017

A consultation produced by the Sentencing Council.

This information is also available on the Sentencing Council's website:

**[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)**

# About this consultation

## To:

This consultation is open to everyone including members of the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.

## Duration:

From 4 July 2017 to 10 October 2017

## Enquiries (including requests for the paper in an alternative format) to:

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## Additional ways to feed in your views:

This consultation exercise is accompanied by a resource assessment, and an online questionnaire, all of which can be found at:

[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

A series of consultation meetings is also taking place. For further information please use the “Enquiries” contact details above.

## Response paper:

Following the conclusion of this consultation exercise, a response will be published at:

[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

## Freedom of Information:

We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents’ names in any final report we publish.

If you wish to submit a confidential response, you should contact us before sending the response.

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In addition, responses may be shared with the Justice Committee of the House of Commons.

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# Introduction

## What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines for the courts to use when passing a sentence. The Council's remit<sup>1</sup> extends to allow consultation on the sentencing of offenders following conviction.

## Why manslaughter?

In May 2014 the Sentencing Council was asked by the then Lord Chancellor to develop a guideline for so called 'one punch' manslaughter following public concern about the sentences in some high profile cases. The Council considered that it should look at manslaughter offences in the round and undertook to do so when time and resources allowed. There is an existing guideline for manslaughter by reason of provocation issued by the Council's predecessor body the Sentencing Guidelines Council (SGC) which is now out of date following legislative changes to the partial defences to murder<sup>2</sup> but there are no existing guidelines for any other forms of manslaughter.

A fuller explanation of the scope of the guideline and the elements of the offences is given at section one below.

## Which offences are covered by the guideline?

There are four draft guidelines as follows:

- Unlawful act manslaughter
- Gross negligence manslaughter
- Manslaughter by reason of loss of control
- Manslaughter by reason of diminished responsibility

## What is the Council consulting about?

The Council has produced this consultation paper in order to seek the views of as many people as possible interested in the sentencing of manslaughter.

However, it is important to clarify that the Council is consulting on sentencing these offences and not the legislation and case law upon which such offences are based. The relevant legislation is a matter for Parliament and is, therefore, outside the scope of this exercise.

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1 ss.118-136 Coroners and Justice Act 2009

2 ss. 54 and 55 Coroners and Justice Act 2009 introduced the partial defence to murder of loss of control applicable to offences committed on or after 4 October 2010 which replaces provocation.

Through this consultation process, the Council is seeking views on:

- the principal factors that make any of the offences included within the draft guideline more or less serious;
- the additional factors that should influence the sentence;
- the approach taken to structuring the draft guidelines;
- the sentences that should be passed for manslaughter offences; and
- anything else that you think should be considered.

A summary of the consultation questions can be found at Annex A.

### **What else is happening as part of the consultation process?**

This is a 14 week public consultation. During the consultation period, the Council will host a number of consultation meetings to seek views from criminal justice organisations and other groups with an interest in this area as well as sentencers. We will also be conducting interviews with a sample of High Court and Crown Court judges who sentence manslaughter cases to ascertain how they would apply the guideline and to identify whether the guideline presents any practical difficulties for sentencers. Once the consultation exercise is over and the results considered, a final guideline will be published and used by the Crown Court.

Alongside this consultation paper, the Council has produced an online questionnaire which allows people to respond to the consultation questions through the Sentencing Council website. The Council has also produced a resource assessment. These can be found on the Sentencing Council's website: [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)



# Section one: Overarching issues and the context of the guidelines

## Manslaughter

Manslaughter falls into two broad categories: involuntary and voluntary.

**Involuntary manslaughter** is unlawful killing without the intent to kill or cause really serious harm and is a common law offence. There are two classes of involuntary manslaughter: unlawful act manslaughter and manslaughter by gross negligence.

**Unlawful act manslaughter** is charged when death occurs as the result of a criminal act (but not an omission) which a reasonable person would realise must subject some other person to at least the risk of some physical harm (not necessarily serious harm) whether or not the offender knew that the act was unlawful and dangerous and whether or not harm was intended.

According to an analysis of sentencing transcripts<sup>3</sup> 107 offenders were sentenced for unlawful act manslaughter in 2014. Two of these were sentenced to life imprisonment (with minimum terms of seven and a half and 13 years), one was made subject to a hospital order and the remainder were sentenced to determinate custodial terms ranging from two to 24 years. The median custodial sentence length was eight years and six months.<sup>4</sup>

**Manslaughter by gross negligence** occurs when the offender is in breach of a duty of care towards the victim, the breach causes the death of the victim and, having regard to the risk involved, the offender's conduct was so bad as to amount to a criminal act or omission.

According to an analysis of sentencing transcripts 16 offenders were sentenced for manslaughter by gross negligence in 2014. All were sentenced to determinate custodial terms ranging from nine months to 12 years, four of which were suspended. The median sentence length was four years.

**Voluntary manslaughter** occurs when all the elements for murder are present, including an intention to kill or cause really serious harm, but the crime is reduced to manslaughter by reason of loss of control or diminished responsibility. In such cases the offence will be charged as murder (which is a common law offence) and the offender will have pleaded or been found guilty of manslaughter by reason of a special defence which is set out in statute.

<sup>3</sup> The Ministry of Justice Court Proceedings database only distinguishes between manslaughter and manslaughter by diminished responsibility, and therefore an analysis of all of the sentencing remarks for manslaughter cases in 2014 was carried out to ascertain the breakdown by type of manslaughter.

<sup>4</sup> All sentence lengths quoted are before any reduction for a guilty plea (where the pre-guilty plea sentence has not been stated by the court assumptions have been made).

Murder will be reduced to **manslaughter by reason of loss of control** if the defence set out in sections 54 and 55 of the Coroners and Justice Act 2009<sup>5</sup> applies. In summary: if the actions of an offender who would otherwise be guilty of murder resulted from a loss of self control arising from a fear of serious violence and/or arising from a thing said or done that constituted circumstances of an extremely grave character and caused the offender to have a justifiable sense of being wronged, and a person of the offender's age and sex with a normal degree of tolerance and self-restraint might have reacted in the same way, the offender will be guilty of manslaughter.

According to an analysis of sentencing transcripts nine offenders were sentenced for manslaughter by reason of loss of control in 2014. All received determinate custodial sentences in the range of four years and six months to 18 years with a median sentence length of 10 years.

Murder will be reduced to **manslaughter by reason of diminished responsibility** if the defence set out in section 2 of the Homicide Act 1957<sup>6</sup> (as amended by the Coroners and Justice Act 2009) is proved. In summary: if an offender who would otherwise be guilty of murder was suffering from an abnormality of mental functioning which arose from a recognised mental condition and this substantially impaired his ability to understand the nature of his conduct, to form a rational judgement or to exercise self control he will be guilty of manslaughter.

According to an analysis of sentencing transcripts 23 offenders were sentenced for manslaughter by reason of diminished responsibility in 2014. Of these 14 were made subject to hospital orders (under section 37 of the Mental Health Act 1983), three were sentenced to life imprisonment (with minimum terms ranging from 16 to 22 years) and the remaining six were sentenced to determinate sentences (one of which was suspended) ranging from 18 months to 25 years.

There is a further special defence to murder: killing in pursuance of a suicide pact. The Council has not developed a guideline for this offence as it is prosecuted and sentenced very rarely.

### Applicability of guidelines

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this draft guideline. Following consultation, when a definitive guideline is produced it will apply to all offenders aged 18 and older, who are sentenced on or after [date to be confirmed], regardless of the date of the offence.

Section 125(1) Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court -

- (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so.”

<sup>5</sup> <http://www.legislation.gov.uk/ukpga/2009/25/part/2/chapter/1/crossheading/partial-defence-to-murder-loss-of-control>

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

When issued as a definitive guideline this guideline will apply only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Council's definitive guideline, *Overarching Principles – Sentencing Children and Young People*.<sup>7</sup>

### **The guideline in relation to current practice and existing guidelines**

In preparing this draft guideline, the Council has had regard to the purposes of sentencing and to its statutory duties. The Council's aim throughout has been to ensure that all sentences are proportionate to the offence committed and in relation to other offences.

The Council considered statistical data from the Court Proceedings database for the offences covered in the guideline. These data give a reasonably accurate picture of current sentencing levels but there are limitations with the level of detail that can be obtained. To break down the sentences by type of manslaughter and to assist the Council to understand which are the most significant factors taken into account when sentencing manslaughter and the effect these have on the final sentence a qualitative analysis exercise of 129 first instance transcripts of manslaughter sentencing remarks for 2014 covering 157 offenders was undertaken (this is the source of the information on sentence volumes and levels for each type of manslaughter on pages 7 and 8 above). In addition to these sources of data regard was had to relevant case law.

A statistical bulletin setting out information about sentencing levels and trends for manslaughter is published on the Council's website.<sup>8</sup>

Early drafts of an involuntary manslaughter guideline were tested with judges and significant changes were made to improve the clarity of the guidelines as a result.

The Council took note of the fact that sentences for manslaughter have increased since the Court of Appeal decision in *Appleby*.<sup>9</sup> In relation to so-called 'one punch' manslaughter the Council has adopted a nuanced approach rather than one size fits all. For these offences as with all types of manslaughter, a careful assessment of different levels of culpability will drive the sentencing outcome. The approach that has been taken in developing the draft guidelines aims to regularise practice rather than substantially to alter it other than in the case of the more culpable offences arising from breaches of health and safety where it is anticipated that sentences will rise (see further page 22 below).

7 <http://www.sentencingcouncil.org.uk/publications/item/sentencing-children-and-young-people-definitive-guideline/>

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

9 [2009] EWCA Crim 2693 <http://www.bailii.org/ew/cases/EWCA/Crim/2009/2693.html>

## Section two: Developing the guideline

### Identifying the correct guideline

The front page of each guideline contains the following text:

**The type of manslaughter (and thereby the appropriate guideline) should have been identified prior to sentence. If there is any dispute or uncertainty about the type of manslaughter that applies the judge should give clear reasons for the basis of sentence.**

Guidelines for each type of manslaughter may result in different outcomes. It is essential that the type of manslaughter is identified correctly to ensure that the appropriate sentence is passed.

### Assessing seriousness

The guideline sets out a step-by-step decision making process for the court to use when sentencing each type of manslaughter. This means that all courts are following a consistent approach to sentencing across England and Wales.

The particular circumstances of each offence covered by the draft guideline will be different. The draft guideline aims to help the court to decide how serious an offence is and what the sentence should be.

#### **STEP ONE**

##### **Determining the offence category**

The first step that the court will take is to consider the principal factors of the offence. These are the factors that the Council considers are the most important in deciding the seriousness of the offence. The offence category reflects the severity of the offence and indicates the starting point and range of sentences within which the offender is sentenced. The list of factors at step one is exhaustive.

The approach taken at step one to culpability varies across the guidelines and is described in detail in the sections relating to each guideline below.

The assessment of harm is the same in each draft guideline. There is only one level of harm to reflect the fact that cases of manslaughter inevitably involve the loss of a human life and are therefore very serious. The Council has been keenly aware throughout the process of developing these guidelines of the grief and loss resulting from these offences and the difficulty of reflecting in the sentencing process the utmost seriousness of the harm which has been caused.

**STEP TWO****Starting point and category range**

Once the court has determined the offence category the next step is to decide upon a provisional sentence using the relevant starting point and category range. This is discussed in more detail in the sections relating to each guideline below. The court must then consider any relevant aggravating and mitigating factors and the weight that they are to be given. The factors at step two are non-exhaustive.

There are then further steps to follow. The manslaughter by reason of diminished responsibility guideline takes some of the steps in a different order and has two extra steps which are described in section six below. All of the guidelines contain the following steps:

**STEP THREE****Consider any factors which indicate a reduction, for assistance to the prosecution****(Step six in diminished responsibility)**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas****(Step seven in diminished responsibility)**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.<sup>10</sup>

**STEP FIVE****Dangerousness****(Step three in diminished responsibility)**

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 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.

<sup>10</sup> <http://www.sentencingcouncil.org.uk/publications/item/reduction-in-sentence-for-a-guilty-plea-definitive-guideline-2/>

**STEP SIX**  
**Totality principle****(Step eight in diminished responsibility)**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

**STEP SEVEN**  
**Compensation and ancillary orders****(Step nine in diminished responsibility)**

In all cases the court should consider whether to make compensation and/or other ancillary orders. Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

**STEP EIGHT**  
**Reasons****(Step ten in diminished responsibility)**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE**  
**Consideration for time spent on bail****(Step eleven in diminished responsibility)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Section three: Unlawful act manslaughter

(Draft guideline at page 51)

The unlawful act that results in death is typically an assault, but this is by no means always the case; other examples include but are not limited to: arson, robbery, theft, burglary and affray.

## STEP ONE

The first step of the guideline is to consider the culpability of the offender. Four levels of culpability are defined but the guideline recognises that a fair assessment of the offender's overall culpability will require a balancing of the factors. The guideline specifically warns against taking an overly mechanistic approach to applying the factors. The Council recognises that the factual circumstances of individual offences can vary enormously and a degree of flexibility in determining the culpability level is necessary to achieve a fair assessment.

### Culpability factors

The assessment of culpability includes a consideration of the seriousness of the unlawful act that caused the death, the role played by the offender, the intention to cause harm, the obviousness of the risk of serious harm, actions after the event, and the circumstances of the offender.

#### Category A – Very high culpability

Very high culpability is defined with reference to the number or extreme character of the applicable factors in high culpability. An assessment of very high culpability is likely to be confined to those cases where the level of planning was sophisticated and/or the violence was extreme.

#### Category B - High culpability

There are four factors in this category:

- Death was caused in the course of an unlawful act which involved an intention to cause harm falling just short of GBH

This factor will apply when the offender's intention to cause injury (intention may be inferred from the actions of the offender) was only slightly less than that needed for a conviction for murder.

- Death was caused in the course of an unlawful act which carried a high risk of death or GBH which was or ought to have been obvious to the offender

Examples of when this factor may apply include cases where a dangerous weapon was used and/or where the violence used was such that it would be obvious that very serious injury or death was likely.

- Death was caused in the course of committing or escaping from a serious offence in which the offender played more than a minor role

A typical scenario (although not the only scenario) that might be captured by this factor is where the offender is part of an organised burglary, theft or robbery and the victim is killed by a vehicle as the offenders make their escape.

- Concealment, destruction, defilement or dismemberment of the body (where not separately charged)

The final high culpability factor features in all of the guidelines (in step two for diminished responsibility). This occurs in only a small number of cases but is always regarded by the courts as very serious.

### **Category C – Medium culpability**

Medium culpability represents those cases where the culpability of the offender falls between high and lower. This may be because there are factors in both high and lower which balance each other out; or because the level of intention to cause harm falls between that in high and lower; or because death is caused in the course of committing or escaping from a less serious offence in which the offender played more than a minor role.

### **Category D – Lower culpability**

There are four lower culpability factors:

- Death was caused in the course of an unlawful act which was in defence of self or other(s) (where not amounting to a defence)

This factor may apply to cases where the offender acts in excessive self defence.

- Death was caused in the course of an unlawful act where there was no intention to cause any harm **and** no obvious risk of anything more than minor harm

The lowest level of intention is captured by this factor.

- Death was caused in the course of an unlawful act in which the offender played a minor role

This factor will apply to an offender who is acting with others in an unlawful act (of whatever seriousness) which causes a death but who plays a minor role.

- The offender's responsibility was substantially reduced by mental disorder,\* learning disability or lack of maturity

*\*Little, if any, weight should be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice*

This may have a significant bearing on the assessment of the level of culpability but it is important to note that this factor applies only where the offender's responsibility is reduced by the relevant feature, and in the case of a mental disorder which is made worse by the offender's voluntary actions it will carry little weight.



<b>Culpability</b>	
<ul style="list-style-type: none"> <li>The characteristics set out below are indications of the level of culpability that may attach to the offender's conduct; the court should balance these characteristics to reach a fair assessment of the offender's overall culpability in the context of the circumstances of the offence.</li> <li>The court should avoid an overly mechanistic application of these factors.</li> </ul>	
<b>A – Very high culpability</b>	Very high culpability <b>may</b> be indicated by: <ul style="list-style-type: none"> <li>the extreme character of one or more culpability B factors and /or</li> <li>a combination of culpability B factors</li> </ul>
<b>B – Factors indicating high culpability</b>	Death was caused in the course of an unlawful act which involved an intention to cause harm falling just short of GBH
	Death was caused in the course of an unlawful act which carried a high risk of death or GBH which was or ought to have been obvious to the offender
	Death was caused in the course of committing or escaping from a serious offence in which the offender played more than a minor role
	Concealment, destruction, defilement or dismemberment of the body (where not separately charged)
<b>C – Factors indicating medium culpability</b>	Cases falling between high and lower <b>including but not limited to</b> <ul style="list-style-type: none"> <li>where death was caused in the course of an unlawful act which involved an intention to cause harm (or recklessness as to whether harm would be caused) that falls between high and lower culpability</li> <li>where death was caused in the course of committing or escaping from a less serious offence but in which the offender played more than a minor role</li> </ul>
<b>D – Factors indicating lower culpability</b>	Death was caused in the course of an unlawful act <ul style="list-style-type: none"> <li>which was in defence of self or other(s) (where not amounting to a defence) OR</li> <li>where there was no intention to cause any harm <b>and</b> no obvious risk of anything more than minor harm OR</li> <li>in which the offender played a minor role</li> </ul>
	The offender's responsibility was substantially reduced by mental disorder,* learning disability or lack of maturity

*\*Little, if any, weight should be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice*

Q1

**Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.**

### Harm Factors

The Council gave careful consideration to the assessment of harm and whether more than one level of harm could be justified. A careful analysis of cases concluded that while there were factors that might indicate additional harm – such as suffering, or vulnerability of victim - these were not determinative of higher sentences. For example if the victim was a child, that would not necessarily indicate that a substantially higher sentence was passed, the issue that had most influence on the sentence was the culpability of the offender.

The Council therefore concluded that while factors such as suffering or the vulnerability of the victim were relevant to sentencing, they should be considered at step two of the guideline after the starting point has been determined. The following wording is included at step one:

#### Harm

For all cases of manslaughter the harm caused will inevitably be of the utmost seriousness. The loss of life is already taken into account in the sentencing levels at step two.

Q2

**Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.**

### STEP TWO

Once the court has determined the offence category at step one, the next step is to identify the starting point. The sentence ranges cover a very wide range of sentence outcomes (from one year to 24 years' custody) and this range is distributed over only four categories and therefore only four starting points. The Council wanted to make it clear that adjustment from the starting point may be necessary **before** any adjustment for aggravating and mitigating factors where a case does not fit squarely into a category. Additional wording has been included within the sentencing table to this effect.

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

The aggravating and mitigating factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the sentence arrived at so far or to move up or down from it. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which may apply in unlawful act manslaughter cases.

The guideline contains a reminder not to aggravate or mitigate the sentence for factors that have already been taken into account.

**Care should be taken to avoid double counting factors already taken into account in assessing culpability**

**Factors increasing seriousness**

***Statutory aggravating factors:***

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction  
(See step five for a consideration of dangerousness)

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

***Other aggravating factors:***

History of significant violence or abuse towards victim by offender

Involvement of others through coercion, intimidation or exploitation

Victim particularly vulnerable due to age or disability

Significant mental or physical suffering caused to the deceased

Victim was providing a public service or performing a public duty

Commission of offence whilst under the influence of alcohol or drugs

Persistence of violence

Offence involved use of a weapon

Other(s) put at risk of harm by the offending

Death occurred in the context of dishonesty or the pursuit of financial gain

Actions after the event (including but not limited to attempts to cover up/conceal evidence)

Blame wrongly placed on other(s)

Abuse of a position of trust

Offence committed on licence or post sentence supervision or while subject to court order(s)

**Factors reducing seriousness or reflecting personal mitigation**

No previous convictions **or** no relevant/recent convictions

Remorse

History of significant violence or abuse towards the offender by the victim

Lack of premeditation

Good character and/or exemplary conduct

Serious medical conditions requiring urgent, intensive or long-term treatment

Age and/or lack of maturity

Sole or primary carer for dependent relatives

Q3

Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.

### Sentence levels

The starting points and ranges have been broadly based on current sentencing practice as evidenced by the analysis of first instance transcripts and analysis of Court of Appeal judgments. There appears to be some inconsistency in current practice and the aim of the guideline is to improve consistency, but the Council recognises that every manslaughter case will be unique on its facts.

There is wording after the sentencing table to clarify that the sentences apply to a single offence resulting in a single fatality and where more than one offence is being sentenced the sentence may be adjusted to take account of totality. This is repeated across the guidelines.

Based on the sentences passed in 2014, in order to reflect current sentencing practice the approximate distribution of cases across the categories in the draft guideline would be ten per cent in A; forty per cent in each of B and C; and ten per cent in D.

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

- **Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.**

Culpability			
A	B	C	D
<b>Starting point</b> 18 years' custody	<b>Starting point</b> 12 years' custody	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 2 years' custody
<b>Category range</b> 11 – 24 years' custody	<b>Category range</b> 8 – 16 years' custody	<b>Category range</b> 3 – 9 years' custody	<b>Category range</b> 1 – 4 years' custody

Note: The table is for a single offence of manslaughter resulting in a single fatality. Where another offence or offences arise out of the same incident or facts, concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Offences Taken into Consideration and Totality* guideline and step six of this guideline.

Q4

Do you have any comments on the sentence ranges and starting points?

The following cases studies are provided to illustrate how the guideline would operate in practice.

## Case studies

### Case 1

The offender, aged 35, struck the victim with a single, unprovoked blow to the head. This resulted in the victim falling to the ground and hitting his head on the pavement which caused a fatal injury. The victim was a vulnerable alcoholic. The offender immediately became concerned about the victim and, along with members of the public who had witnessed the incident, tried to assist him.

The offender had previous convictions for minor offences of violence. He pleaded guilty.

Applying the guideline to this offence it would be assessed as medium culpability 'death was caused in the course of an unlawful act which involved an intention to cause harm (or recklessness as to whether harm would be caused) that falls between high and lower culpability'. This leads to a starting point of six years.

The offence is aggravated by the offender's previous convictions for violence and by the obvious vulnerability of the victim. There would be some mitigation for the remorse evidenced by attempts to help the victim.

Q5

**Do you have any views on the application of the guideline to case 1?**

### Case 2

The offender aged 45 and victim were acquaintances and had been drinking for several hours at the home of a mutual friend. There was an altercation between them and both threw punches. There was a knife on the table and the offender picked it up and stabbed the victim once on the arm and once in the neck. The victim collapsed. The offender then left taking the knife with him. Others present called an ambulance but the victim died of a severe haemorrhage caused by the stab wound to the neck.

The offender disposed of his blood-stained clothes and attempted to clean blood from his shoes. The knife was never found. The offender had recent previous convictions for offences of violence and possession of a bladed article.

He was tried for murder and was convicted of manslaughter on the basis of lack of intent to kill or cause serious harm.

Applying the guideline to this offence it would be assessed as high culpability on the basis of one or both of the following factors: 'death was caused in the course of an unlawful act which carried a high risk of death or GBH which was or ought to have been obvious to the offender' and 'death was caused in the course of an unlawful act which involved an intention to cause harm falling just short of GBH'. This leads to a starting point of 12 years.

The offence is aggravated by the offender's previous convictions, being under the influence of alcohol and his actions after the event. A further aggravating factor is the use of a weapon, but this has already been taken into account in assessing culpability. There are no mitigating factors. The court would also consider whether the dangerousness provisions apply.

Q6

**Do you have any views on the application of the guideline to case 2?**

### Case 3

The offender who was a career burglar with multiple previous convictions knew that the elderly victim had some valuable items in a safe at his home. He enlisted the services of an accomplice to carry out the burglary which he directed. The accomplice broke into the victim's home, tied him up and subjected him to sustained violence to get him to reveal the combination of the safe. The victim died as a result of the attack. The accomplice consulted the offender and it was agreed that he would set fire to the house to destroy the evidence. The fire destroyed much of the house before it was brought under control by fire fighters.

The accomplice was convicted of murder; the offender was acquitted of murder but convicted of manslaughter. They had both pleaded guilty to conspiracy to burgle.

Applying the guideline to this offence it would be assessed as very high culpability on the basis that all of the high culpability factors apply. In particular the offender's organising role in the aggravated burglary in which the intention was to inflict violence on the victim would indicate very high culpability.

This leads to a starting point of 18 years.

Aggravating factors include previous convictions, the vulnerability of the victim, the suffering inflicted on the victim, that the death occurred in the context of dishonesty and the risk to others caused by the fire. There are no mitigating factors.

The court would also consider whether the dangerousness provisions apply.

Q7

**Do you have any views on the application of the guideline to case 3?**

**Case 4**

The offender aged 48, lived with her elderly mother and was her carer. The mother suffered from dementia and was prone to outbursts of temper which she directed at the offender. The offender was suffering from depression and was finding it difficult to cope. After a particularly difficult night where neither of them had got much sleep, the mother threw her breakfast across the room and the offender lost her temper and pushed her mother violently off the chair. The mother fell to the floor sustaining injuries from which she later died. The offender was utterly remorseful and grieved for her mother. Her family were supportive stating that she had been a devoted daughter. She pleaded guilty and had no previous convictions.

Applying the guideline to this offence it would be likely to be assessed as medium culpability on the basis of the recklessness as to whether harm was caused (it would have been obvious to the offender that her actions were likely to result in injury) but lower culpability on the basis that her responsibility was substantially reduced by a mental disorder.

This would require a balancing of the factors and could lead to a starting point of three years. The vulnerability of the victim would be an aggravating factor. Mitigating factors would include the lack of previous convictions and positive good character; remorse; the history of significant abuse towards the offender by the victim and lack of premeditation.

Q8

**Do you have any views on the application of the guideline to case 4?**

# Section four: Gross negligence manslaughter

(Draft guideline at page 57)

Developing a sentencing guideline for manslaughter by gross negligence has been particularly challenging because the offence occurs relatively rarely but in a very wide range of circumstances – for example in a domestic setting when parents or carers fail to protect the victim from an obvious danger or fail to call for medical help when it is needed; in a work setting when employers completely disregard the safety of employees; in a medical setting when a practitioner falls far below the required standard in the treatment of a patient – but these are by no means the only examples. In every case in order for the offence to be made out the offender’s conduct will have been so bad as to amount to a criminal act or omission albeit that there was no intention to cause death.

## STEP ONE

As with the unlawful act manslaughter guideline four levels of culpability are defined but the guideline recognises that a fair assessment of the offender’s overall culpability will require a balancing of the factors. The guideline specifically warns against taking an overly mechanistic approach to applying the factors. As set out above, the factual circumstances of individual offences can vary enormously and a degree of flexibility in determining the culpability level is particularly necessary in this guideline to achieve a fair assessment.

### Culpability factors

The assessment of culpability includes a consideration of the context of the act or omission that caused the death, the role played by the offender, the extent to which the offender was aware of the risk of death, the length of time over which the negligent conduct persisted, actions after the event, and the circumstances of the offender.

#### Category A – Very high culpability

Very high culpability is defined with reference to the number or extreme character of the applicable factors in high culpability. An assessment of very high culpability is likely to be rare.

#### Category B - High culpability

There are seven factors in this category:

- The offender persisted in the negligent conduct in the face of the obvious suffering of the deceased

This factor will apply when the offender continued with the negligent act or omission despite the fact that the victim was suffering.

- The negligent conduct was in the context of other serious criminality

Examples of when this factor may apply include cases where an illegally held weapon or illegal drugs were involved.



- The negligent conduct was motivated by financial gain (or avoidance of cost)  
This would apply, for example, where an employer decides not to provide adequate safety equipment to save money.
- The negligent conduct persisted over a long period of time (weeks or months)  
This would apply, for example, where a parent or carer has neglected the victim for many weeks before death or where a dangerous situation had been allowed to exist for a long time before the fatal incident.
- The offender was in a dominant role if acting with others  
This factor may apply, for example, where there are a number of people who have breached their duty of care and one of them was in a position of influence over the others.
- The offender was clearly aware of the risk of death arising from the offender's negligent conduct  
There are some situations where the offender was clearly aware of the risk of death either because it had been pointed out and/or acknowledged by the offender or because it was so obvious that the offender was clearly aware of it (for example playing with a firearm that was known to be loaded).
- Concealment, destruction, defilement or dismemberment of the body (where not separately charged).  
The final high culpability factor features in all of the guidelines (in step two for diminished responsibility). This occurs in only a small number of cases but is always regarded by the courts as very serious.

### Category C – Medium culpability

Medium culpability represents those cases where the culpability of the offender falls between high and lower. This may be because there are factors in both high and lower which balance each other out; or because the level of culpability falls between that described in high and lower.

### Category D – Lower culpability

There are four lower culpability factors:

- The offender did not appreciate the risk of death arising from the negligent conduct.  
For the offence to be made out there must be an obvious risk of death arising from the negligent conduct but it is not necessarily the case that the offender was aware of that risk. This factor will apply to those cases where the offender did not appreciate the risk.
- Death was caused in the course of an unlawful act where there was no intention to cause any harm **and** no obvious risk of anything more than minor harm  
The lowest level of intention is captured by this factor.
- The negligent conduct was a lapse in the offender's otherwise satisfactory standard of care  
This factor applies to an offender (typically but not exclusively a medical professional) who usually discharges his or her duty of care satisfactorily.

- The offender's responsibility was substantially reduced by mental disorder,\* learning disability or lack of maturity

*\*Little, if any, weight should be give to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice*

As with unlawful act this factor may have a significant bearing on the assessment of the level of culpability but it applies only where the offender's responsibility is reduced by the relevant feature, and in the case of a mental disorder which is made worse by the offender's voluntary actions it will carry little weight.

### Culpability

- The characteristics set out below are indications of the level of culpability that may attach to the offender's conduct; the court should balance these characteristics to reach a fair assessment of the offender's overall culpability in the context of the circumstances of the offence.
- The court should avoid an overly mechanistic application of these factors.

<b>A – Very high culpability</b>	Very high culpability <b>may</b> be indicated by: <ul style="list-style-type: none"> <li>• the extreme character of one or more culpability B factors and /or</li> <li>• a combination of culpability B factors</li> </ul>
<b>B – Factors indicating high culpability</b>	The offender persisted in the negligent conduct in the face of the obvious suffering of the deceased
	The negligent conduct was in the context of other serious criminality
	The negligent conduct was motivated by financial gain (or avoidance of cost)
	The negligent conduct persisted over a long period of time (weeks or months)
	The offender was in a dominant role if acting with others
	The offender was clearly aware of the risk of death arising from the offender's negligent conduct
	Concealment, destruction, defilement or dismemberment of the body (where not separately charged)
<b>C – Factors indicating medium culpability</b>	Cases falling between high and lower because: <ul style="list-style-type: none"> <li>• factors are present in high and lower which balance each other out <b>and/or</b></li> <li>• the offender's culpability falls between the factors as described in high and lower</li> </ul>
<b>D – Factors indicating lower culpability</b>	The offender did not appreciate the risk of death arising from the negligent conduct
	The negligent conduct was a lapse in the offender's otherwise satisfactory standard of care
	The offender was in a lesser or subordinate role if acting with others
	The offender's responsibility was substantially reduced by mental disorder,* learning disability or lack of maturity

*\*Little, if any, weight should be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice*

Q9

Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.

### Harm factors

Harm is dealt with in the same way in all four guidelines. Refer to page 16 for a discussion of the treatment of harm.

### Harm

For all cases of manslaughter the harm caused will inevitably be of the utmost seriousness. The loss of life is already taken into account in the sentencing levels at step two

### STEP TWO

Once the court has determined the offence category at step one, the next step is to identify the starting point. The sentence ranges cover a very wide range of sentence outcomes (from one year to 18 years' custody) and this range is distributed over only four categories and therefore only four starting points. The Council wanted to make it clear that adjustment from the starting point may be necessary **before** any adjustment for aggravating and mitigating factors where a case does not fit squarely into a category. Additional wording has been included within the sentencing table to this effect.

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which may apply in gross negligence manslaughter cases.

There are a number of aggravating factors that are similar (but not identical) to step one culpability factors. The guideline contains a reminder not to aggravate or mitigate the sentence for factors that have already been taken into account.

**Care should be taken to avoid double counting factors already taken into account in assessing culpability**

**Factors increasing seriousness**

***Statutory aggravating factors:***

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction  
(See step five for a consideration of dangerousness)

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

***Other aggravating factors:***

History of significant violence or abuse towards victim by offender

Involvement of others through coercion, intimidation or exploitation

Significant mental or physical suffering caused to the deceased

Commission of offence whilst under the influence of alcohol or drugs

Offence involved use of a weapon

Other(s) put at risk of harm by the offending

Death occurred in the context of dishonesty or the pursuit of financial gain

Actions after the event (including but not limited to attempts to cover up/conceal evidence)

Blame wrongly placed on other(s)

The duty of care arose from a close or familial relationship where the deceased was dependent on the offender

Offence committed on licence or post sentence supervision or while subject to court order(s)

**Factors reducing seriousness or reflecting personal mitigation:**

No previous convictions **or** no relevant/recent convictions

Remorse

The duty of care was a temporary one created by the particular circumstances

Good character and/or exemplary conduct

Serious medical conditions requiring urgent, intensive or long-term treatment

Age and/or lack of maturity

Sole or primary carer for dependent relatives

Q10

Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.

### Sentence levels

The starting points and ranges have been broadly based on current sentencing practice as evidenced by the analysis of first instance transcripts and Court of Appeal judgments. In considering the factors that make an offence of gross negligence manslaughter more or less serious the Council came to the conclusion that it would be appropriate for sentences to increase in some situations. Typically these are cases where an employer has had a long standing, utter disregard for the safety of employees and is motivated by cost cutting - but there may be other analogous factual scenarios where sentences would also rise under the proposed guideline. Case study 5 on page 28 below illustrates how the guideline might operate in such a case.

The aim of the guideline is to ensure that sentences are consistent, based on a fair assessment of culpability and harm and the circumstances of the offender, regardless of the factual scenario. In cases of gross negligence manslaughter where the negligent conduct is driving, the Council is concerned that sentences should be at least as high as those that would be imposed for causing death by dangerous driving. To ensure this, guidance to that effect has been added immediately below the sentencing table.

Based on the sentences passed in 2014, in order to reflect current sentencing practice the majority of cases would fall into culpability C.

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

- **Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.**

Culpability			
A	B	C	D
<b>Starting point</b> 12 years' custody	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years' custody
<b>Category range</b> 10 – 18 years' custody	<b>Category range</b> 6 – 12 years' custody	<b>Category range</b> 3 – 7 years' custody	<b>Category range</b> 1 – 4 years' custody

In cases of motor manslaughter regard should be had to the *Causing death by dangerous driving* definitive guideline to ensure that the sentence for manslaughter does not fall below what would be imposed under that guideline.

Q11

Do you have any comments on the sentence ranges and starting points?

The following cases studies are provided to illustrate how the guideline would operate in practice.

## Case studies

### Case 5

Offender A, aged 57, was an experienced builder who was sub contracted by a larger company to carry out ground work on the excavation of a basement to a residential property. He employed two young men with no previous building experience to dig out the basement under his direction. He supplied the workers with safety boots and hard hats, but made no other provision for their safety on site. The sides of the hole they were digging should have been shored up but he told them that it was not necessary and would slow the work down, thereby costing money. After three weeks of working on the site, one side of the hole collapsed killing one of the men instantly and narrowly missing the other. He pleaded guilty. He had no previous convictions and was remorseful. He was the main carer for his disabled wife.

Offender B, aged 42, was the site manager for the larger company. He had carried out a risk assessment for the work and drawn up a method statement of the necessary safeguards to be followed. He visited the site on nine occasions in the three weeks before the incident but failed to take any steps to ensure that the method statement was being adhered to. He was convicted after a trial. He had no previous convictions and a good health and safety record over 20 years.

Applying the guideline to offender A, the high culpability factors of 'the negligent conduct was motivated by financial gain (or avoidance of cost)' and 'the negligent conduct persisted over a long period of time (weeks or months)' apply. It might also be felt that because of his experience the factor 'the offender was clearly aware of the risk of death arising from the offender's negligent conduct' would apply.

This would lead to a starting point of eight years.

The aggravating factor 'other(s) put at risk' would apply. Mitigating factors include no previous convictions, remorse and 'sole or primary carer for dependent relatives'

Applying the guideline to offender B, the high culpability factor of 'the negligent conduct persisted over a long period of time (weeks or months)' applies. It might also be felt that because of his experience the factor of 'The offender was clearly aware of the risk of death arising from the offender's negligent conduct' would apply. The low culpability factor of 'the negligent conduct was a lapse in the offender's otherwise satisfactory standard of care' could be relevant in the light of his previous good record. Balancing the factors could lead to a starting point of 5 years. The aggravating factor of 'other(s) put at risk' and the mitigating factor of no previous convictions would apply.

Q12

**Do you have any views on the application of the guideline to case 5?**

**Case 6 (based on similar facts to case 4)**

The offender aged 48, lived with her elderly mother and was her carer. The mother suffered from dementia and was prone to outbursts of temper which she directed at the offender. The offender was suffering from depression and was finding it difficult to cope. After a particularly difficult night where neither of them had got much sleep, the mother slipped and fell in the kitchen banging her head on a cupboard and spilling a bottle of milk in the process. The mother could not get up unaided and the offender put her to bed and cleaned up the mess. Over the next five days the offender brought her mother food and drink, but did not attend to her in any other way and did not summon help. Neighbours reported hearing crying and moaning. The mother was discovered by another family member on the sixth day barely conscious, in soiled clothing and with obvious injuries to her hip and her head. The mother died two days later from complications from a broken pelvis. Had she received prompt medical attention the injury would not have been fatal. The offender was utterly remorseful and grieved for her mother. Her family were supportive stating that she had been a devoted daughter. She had no previous convictions.

Applying the guideline to this offence there are factors in lower culpability that are likely to apply: 'the negligent conduct was a lapse in the offender's otherwise satisfactory standard of care' and 'the offender's responsibility was substantially reduced by mental disorder' but there is also the high culpability factor of 'the offender persisted in the negligent conduct in the face of the obvious suffering of the deceased'. In terms of the offender's appreciation of the risk of death, this would probably fall somewhere between high and lower. This would require a balancing of the factors and could lead to a starting point of four years.

'The duty of care arose from a close or familial relationship where the deceased was dependent on the offender' would be an aggravating factor. Mitigating factors would include the lack of previous convictions, positive good character and remorse.

**Q13****Do you have any views on the application of the guideline to case 6?**

# Section five: Manslaughter by reason of loss of control

(Draft guideline at page 63)

There is an existing SGC guideline for the offence of manslaughter by reason of provocation issued in November 2005. The new partial defence to murder of manslaughter by reason of loss of control applies to offences committed on or after 4 October 2010. The SGC guideline continues to be referred to in sentencing but taking account of the legislative changes that have taken place since then. In developing a sentencing guideline for manslaughter by reason of loss of control the Council has considered the approach taken in the SGC guideline and Court of Appeal judgements on more recent cases.

## STEP ONE

Three levels of culpability are defined. As with the involuntary manslaughter guidelines, the draft guideline recognises that a fair assessment of the offender's overall culpability will require a balancing of the factors and the guideline specifically warns against taking an overly mechanistic approach to applying the factors.

### Culpability factors

The SGC guideline defined culpability by reference to a 'low', 'substantial' or 'high' level of provocation. The legislation<sup>11</sup> requires the loss of control to be caused by a fear of serious violence or by things said or done of an extremely grave character which caused a justifiable sense of being seriously wronged – so in every case for the partial defence of loss of control to be made out, the level of provocation must be high. Nevertheless it is proposed to include culpability factors which attempt to differentiate the degrees of provocation within the high level required by the legislation. The culpability factors also seek to reflect relevant factors that are taken into account in sentencing murder.<sup>12</sup>

### Category A – High culpability

There are five high culpability factors:

- Planning of criminal activity (including the carrying of a weapon) **before** the loss of control  
This factor would typically (but not exclusively) apply where an offender brings a weapon to the scene, and a qualifying trigger subsequently causes him to lose control. This reflects the fact that serious consequences are far more likely to occur when weapons are carried.
- Offence committed in the context of other serious criminal activity  
This factor could apply for example where the loss of control occurred in the context of drug dealing or the commission of a burglary.

11. ss. 54 and 55 Coroners and Justice Act 2009

12. In Schedule 21 to the Criminal Justice Act 2003



- Use of a firearm (whether or not taken to the scene)

The Council considered that where a killing involves the use of a firearm, it would always indicate high culpability.

- Loss of self control in circumstances which only just met the criteria for a qualifying trigger  
This factor represents the lowest level of ‘provocation’ consistent with the offence being made out.

- Concealment, destruction, defilement or dismemberment of the body (where not separately charged)

This factor which appears in the voluntary manslaughter guidelines applies equally to manslaughter by reason of loss of control.

### **Category B - Medium culpability**

Medium culpability represents those cases where the culpability of the offender falls between high and lower. This may be because there are factors in both high and lower which balance each other out; or because the level of culpability falls between that described in high and lower. This will include cases where the level of ‘provocation’ falls between that described in high and lower.

### **Category C – Lower culpability**

There is only one lower culpability factor:

- Qualifying trigger represented an exceptionally high degree of provocation

In the context of the partial defence in which the qualifying trigger must be a fear of serious violence or things said or done of an extremely grave character which caused a justifiable sense of being seriously wronged – this factor represents the highest level of provocation and thereby the lowest level of culpability.

The Council decided **not** to include a reference to culpability being reduced by mental disorder, learning disability or lack of maturity at step one of this guideline because this may already have had a bearing on the finding of loss of control. The factor appears instead at step two.

**Culpability**

- The characteristics set out below are indications of the level of culpability that may attach to the offender's conduct; the court should balance these characteristics to reach a fair assessment of the offender's overall culpability in the context of the circumstances of the offence.
- The court should avoid an overly mechanistic application of these factors.

<b>A – High culpability</b>	Planning of criminal activity (including the carrying of a weapon) <b>before</b> the loss of control
	Offence committed in the context of other serious criminal activity
	Use of a firearm (whether or not taken to the scene)
	Loss of self control in circumstances which only just met the criteria for a qualifying trigger
	Concealment, destruction, defilement or dismemberment of the body (where not separately charged)
<b>B – Medium culpability</b>	Cases falling between high and lower because:
	<ul style="list-style-type: none"> <li>• factors are present in high and lower which balance each other out <b>and/or</b></li> <li>• the offender's culpability falls between the factors as described in high and lower</li> </ul>
<b>C – Lower culpability</b>	Qualifying trigger represented an exceptionally high degree of provocation

Q14

**Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.**

**Harm factors**

Harm is dealt with in the same way in all four guidelines. Refer to page 16 for a discussion of the treatment of harm.

**Harm**

For all cases of manslaughter the harm caused will inevitably be of the utmost seriousness. The loss of life is already taken into account in the sentencing levels at step two.

**STEP TWO**

Once the court has determined the offence category at step one, the next step is to identify the starting point. The sentence ranges cover a very wide range of sentence outcomes (from three years to 20 years' custody) and this range is distributed over only three categories and therefore only three starting points. The Council wanted to make it clear that adjustment from the starting point may be necessary **before** any adjustment for aggravating and mitigating factors where a case does not fit squarely into a category. Wording has been included within the sentencing table to this effect.

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which may apply in manslaughter by reason of loss of control cases.

There are a number of aggravating factors that are similar (but not identical) to step one culpability factors or that may have been relevant to the finding of loss of control. The guideline contains a reminder not to aggravate or mitigate the sentence for factors that have already been taken into account.

**Care should be taken to avoid double counting factors already taken into account in assessing culpability or in the finding of a qualifying trigger**

**Factors increasing seriousness**

***Statutory aggravating factors:***

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction  
(See step five for a consideration of dangerousness)

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

***Other aggravating factors:***

History of significant violence **or** abuse towards victim by offender

Significant mental or physical suffering caused to the deceased

Commission of offence whilst under the influence of alcohol or drugs

Offence involved use of a weapon

Persistence of violence

Other(s) put at risk of harm by the offending

Death occurred in the context of dishonesty or the pursuit of financial gain

Actions after the event (including but not limited to attempts cover up/conceal evidence)

Blame wrongly placed on other(s)

Involvement of others through coercion, intimidation or exploitation

Victim was providing a public service or performing a public duty

Offence committed on licence or post sentence supervision or while subject to court order(s)

**Factors reducing seriousness or reflecting personal mitigation**No previous convictions **or** no relevant/recent convictions

Remorse

Intention to cause serious bodily harm rather than to kill

History of significant violence or abuse towards the offender by the victim

Violence initiated by the victim

Good character and/or exemplary conduct

Serious medical conditions requiring urgent, intensive or long-term treatment

Age and/or lack of maturity

Sole or primary carer for dependent relatives

Mental disorder\* or learning disability

*\*Little, if any, weight should be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice*

Q15

**Are there any aggravating or mitigating factors that should be removed or added?  
Please give reasons.**

**Sentence levels**

The starting points and ranges have been broadly based on current sentencing practice as evidenced by the analysis of first instance transcripts and Court of Appeal judgments.

Based on the nine cases sentenced in 2014, in order to reflect current sentencing practice the majority of cases would fall into culpability A or B (the average sentence in 2014 was 10 years' custody). It will be apparent that with so few cases being sentenced caution should be exercised in drawing conclusions from a single year. A review of Court of Appeal cases since the statutory defence of loss of control came into force confirms that the overall offence range of three to 20 years covers current practice.

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

- **Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.**

Culpability		
A	B	C
<b>Starting point</b> 14 years' custody	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 5 years' custody
<b>Category range</b> 10 – 20 years' custody	<b>Category range</b> 5 – 12 years' custody	<b>Category range</b> 3 – 6 years' custody

Q16

**Do you have any comments on the sentence ranges and starting points?**

The following cases studies are provided to illustrate how the guideline would operate in practice.

### Case studies

#### Case 7 (based on similar facts to case 2)

The offender aged 45 and victim were acquaintances and had been drinking for several hours at the home of a mutual friend. There was an altercation between them and the offender produced a knife from his pocket and approached the victim. The victim also produced a knife and slashed the offender across the face. The offender stabbed the victim once on the arm and once in the neck. The victim collapsed. The offender then left taking the knife with him. Others present called an ambulance but the victim died of a severe haemorrhage caused by the stab wound to the neck. The offender disposed of his blood-stained clothes and attempted to clean blood from his shoes. The knife was never found. The offender had recent previous convictions for offences of violence and possession of a bladed article.

He was tried for murder and was convicted of manslaughter on the basis of loss of control.

Applying the guideline to this offence it would be assessed as high culpability on the basis of 'planning of criminal activity (including the carrying of a weapon) **before** the loss of control' This leads to a starting point of 14 years.

The offence is aggravated by the offender's previous convictions, being under the influence of alcohol and his actions after the event. A further aggravating factor is the use of a weapon, but this has already been taken into account in assessing culpability. A possible mitigating factor would be 'intention to cause serious bodily harm rather than to kill'.

The court would also consider whether the dangerousness provisions apply.

Q17

**Do you have any views on the application of the guideline to case 7?**

**Case 8**

The offender was aged 75 and in deteriorating health. His wife of 30 years had always been domineering and in recent years had constantly nagged and belittled him. After a family party at which relatives had noticed her particularly unpleasant behaviour towards him, they argued and she picked up a knife, taunting him saying that he was a bad father to their son. He grabbed the knife from her and stabbed her multiple times in a frenzied attack. About an hour later he called 999 and admitted responsibility and expressed remorse. The victim had suffered 30 knife wounds including many defensive injuries to her arms.

His plea to manslaughter by reason of loss of control was accepted. He had no previous convictions.

Applying the guideline to this offence it could be assessed as medium culpability on the basis that the culpability falls between that described in high and lower.

This leads to a starting point of 8 years.

The offence would be aggravated by the use of a weapon and by persistence of violence and also potentially by 'significant mental or physical suffering caused to the deceased'. Mitigating factors would include no previous convictions and remorse. The factors of 'history of significant violence or abuse towards the offender by the victim' and 'serious medical conditions requiring urgent, intensive or long-term treatment' could also apply.

Q18

**Do you have any views on the application of the guideline to case 8?**

# Section six: Manslaughter by reason of diminished responsibility

(Draft guideline at page 69)

The Council considered various approaches to this guideline. One option was to use the approach set out in some Court of Appeal judgments of requiring judges to determine the sentence for murder that would have been appropriate if the partial defence of diminished responsibility had not applied, and then adjusting that sentence for the level of responsibility retained. One difficulty with that approach is that murder sentences are expressed as minimum terms of a mandatory life sentence, but sentences for manslaughter by reason of diminished responsibility can be life sentences, determinate sentences or mental health disposals. The Council wanted the guideline to provide guidance on the full range of disposals appropriate to this offence and had regard to the consideration of hybrid sentences in *R v Vowles*.<sup>13</sup>

The Council is consulting on a stepped approach to sentencing this offence which includes additional steps to address the consideration of mental health disposals which are common for this offence. The Council recognises that in some cases where medical reports have indicated that a mental health disposal is appropriate it may seem artificial to follow the steps to determining a custodial sentence, but the stepped approach is designed to lead to a consistent approach to sentencing and to ensure that all appropriate disposals are considered.

## STEP ONE

Manslaughter by reason of diminished responsibility can occur in a very wide range of circumstances and can include any of the features of the offence of murder. In all cases the offender will have had the necessary intent for murder. A careful review of first instance cases and Court of Appeal judgments suggests that the key factor in determining the sentence is the degree of responsibility retained by the offender. Therefore, the consideration of culpability at step one involves an assessment of the degree of responsibility retained.

### Assessing the degree of responsibility retained: high, medium or lower

- 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.
- The court should reach a determination as to the level of responsibility the offender **retained**:
  - High;
  - Medium; or
  - Lower

13. *R v Vowles and others* [2015] EWCA Crim 45

- The court should consider the extent to which the offender’s responsibility was diminished by the mental disorder **at the time of the offence** with reference to the medical evidence and all the relevant information available to the court.
- The degree to which the offender’s actions or omissions contributed to the seriousness of the mental disorder at the time of the offence will be a relevant consideration. For example:
  - where an offender exacerbates the mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice this will increase responsibility.

The draft guideline recognises that the assessment by the court will necessarily involve a consideration of the medical evidence and all the relevant circumstances. The sentencer will be required to form a judgment of the level of responsibility retained based on that assessment. The guideline directs sentencers to consider whether the actions (or omissions) of the offender have contributed to the mental disorder and, if so, to treat this as something which increases the degree of responsibility retained.

Q19

**Do you agree with the proposed approach to the assessment of responsibility? Please give reasons where you do not agree.**

### Harm factors

Harm is dealt with in the same way in all four guidelines. Refer to page 16 for a discussion of the treatment of harm.

#### Harm

For all cases of manslaughter the harm caused will inevitably be of the utmost seriousness. The loss of life is already taken into account in the sentencing levels at step two

### STEP TWO

Once the court has determined the offence category at step one, the next step is to identify the starting point. The sentence ranges cover the widest range of sentence outcomes within these draft guidelines (from three years to 40 years’ custody) and this range is distributed over only three categories and therefore only three starting points. Each category has a wide range of sentences and the consideration of aggravating and mitigating factors will determine the final sentence within the range.

The presence of any of the aggravating or mitigating factors within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which may apply in manslaughter by reason of diminished responsibility cases and include factors that are taken into account in sentencing for murder.



There are a number of factors that may have already been taken into account in the assessment of the level of responsibility retained at step one. The guideline contains a reminder not to aggravate or mitigate the sentence for factors that have already been taken into account.

**Care should be taken to avoid double counting factors already taken into account in assessing the level of responsibility retained**

**Factors increasing seriousness**

***Statutory aggravating factors:***

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction  
(See step five for a consideration of dangerousness)

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

***Other aggravating factors:***

A significant degree of planning or premeditation

Victim particularly vulnerable due to age or disability

Significant mental or physical suffering caused to the deceased

Abuse of a position of trust

History of significant violence or abuse towards victim by offender

Commission of offence whilst under the influence of alcohol or drugs

Other(s) put at risk of harm by the offending

Death occurred in the context of dishonesty or the pursuit of financial gain

Actions after the event (including but not limited to attempts cover up/conceal evidence)

Involvement of others through coercion, intimidation or exploitation

Victim was providing a public service or performing a public duty

Concealment, destruction, defilement or dismemberment of the body (where not separately charged)

Offence involved use of a weapon

Blame wrongly placed on other(s)

Offence committed on licence or post sentence supervision or while subject to court order(s)

**Factors reducing seriousness or reflecting personal mitigation:**No previous convictions **or** no relevant/recent convictions

Remorse

Intention to cause serious bodily harm rather than to kill

Lack of premeditation

History of significant violence or abuse towards the offender by the victim

The offender acted in self-defence or in fear of violence (where not amounting to a defence)

The offender made genuine and sustained attempts to seek help for the mental disorder

Belief by the offender that the killing was an act of mercy

Good character and/or exemplary conduct

Serious medical conditions requiring urgent, intensive or long-term treatment

Age and/or lack of maturity

Sole or primary carer for dependent relatives

Q20

**Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.**

**Sentence levels**

The starting points and ranges have been informed by current sentencing practice as evidenced by the analysis of first instance transcripts and Court of Appeal judgments.

Of the 23 cases sentenced in 2014 the majority received hospital orders and the sentences imposed on the remainder cover the entire range of the proposed sentence levels. With this offence it is not possible accurately to state what current sentencing practice is other than to say that it is very wide.

Having determined the level of responsibility retained at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Level of responsibility retained		
High	Medium	Lower
<b>Starting point</b> 24 years' custody	<b>Starting point</b> 15 years' custody	<b>Starting point</b> 7 years' custody
<b>Category range</b> 15 – 40 years' custody	<b>Category range</b> 10 – 25 years' custody	<b>Category range</b> 3 – 12 years' custody

Q21

**Do you have any comments on the sentence ranges and starting points?**

### STEP THREE

The Council considered that in following a stepped approach it would assist sentencers to bring the consideration of dangerousness forward to step three for this guideline (it appears at step five in the other guidelines).

#### STEP THREE

##### Consideration of dangerousness

- The court should then go on to 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 to a life sentence the notional determinate term (identified at step two above) should be used as the basis for setting the minimum term.

### STEP FOUR

The guidance at step four reflects the approach outlined by the Court of Appeal in sentencing mentally disordered offenders.<sup>14</sup> The guidance specifies the matters to be considered in order. The available mental health disposals are set out and the Council's intention is that, in line with recent case law, greater consideration will be given to the use of section 45A ('hybrid') orders than has previously been the case.

#### STEP FOUR

##### Consideration of mental health disposals

#### Where:

- (i) the evidence of medical practitioners suggests that the offender is currently suffering from a mental disorder,
  - (ii) treatment is available, and
  - (iii) the court considers that a hospital order (with or without a restriction) may be an appropriate way of dealing with the case,
- the court should consider these matters in the following order:

#### Section 45A hospital and limitation direction

- a. Before a hospital order is made under s.37 MHA (with or without a restriction order under s.41), consider whether the mental disorder can appropriately be dealt with by custody with a hospital and limitation direction under s.45A MHA. In deciding whether s.45A direction is appropriate the court should bear in mind that the direction will cease to have effect at the end of a determinate sentence.

14. R v Vowles and others [2015] EWCA Crim 45

- b. If the mental disorder can appropriately be dealt with by a direction under s.45A(1), then the judge should make such a direction. (Not available for a person under the age of 21 at the time of conviction).

### **Section 37 hospital order and section 41 restriction order**

- c. If a s.45A direction is not appropriate the court must then consider, before going further, whether: (1) the mental disorder is treatable, (2) once treated there is no evidence the offender would be dangerous, and (3) the offending is due to that mental disorder. If these conditions are met a hospital order under s.37/41 is likely to be the correct disposal.

### **Section 47 transfer to hospital**

- d. The court must also have regard to the question of whether other methods of dealing with the offender are available including consideration of whether the powers under s.47 MHA for transfer from custody to hospital for treatment would, taking in to consideration all of the circumstances, be appropriate.
- There must always be sound reasons for departing from the usual course of imposing a custodial sentence and where a custodial sentence is not imposed, the judge must set out these reasons.

## **STEP FIVE**

The Council recognises that sentencing for this offence is particularly fact-sensitive. Having followed the stepped approach the sentencer is required to 'step back' and consider whether there are any factors that require an adjustment to the sentence. This will apply whether the sentence is a determinate or indeterminate custodial sentence, a mental health disposal or a combination of the two. The guidance makes it clear that adjustment of the sentence may involve a departure from the sentence range identified earlier.

### **STEP FIVE**

**IN ALL CASES consider factors that may warrant an adjustment to the sentence**

Cases of manslaughter by reason of diminished responsibility vary considerably on the facts of the offence and on the circumstances of the offender.

- The court should review whether the sentence as a whole meets the objectives of punishment, rehabilitation and protection of the public in a fair and proportionate way.
- Relevant factors will include the psychiatric evidence and the regime on release.
- An adjustment may require a departure from the sentence range identified at step two above.

Q22

**Do you have any comments on steps three, four and five? Please give reasons.**

The following cases studies are provided to illustrate how the guideline would operate in practice.

### Case studies

#### Case 9

The offender, aged 27, suffered from a severe mental disorder for which he was receiving treatment and support in the community. He lived with his parents and younger brother. He was taking medication and his condition had stabilised to the extent that he was able to work. He had been advised that he should refrain from using recreational drugs and alcohol as these would be likely to cause a relapse in his condition. In an appointment with his CPN he stated that he was feeling well and was taking his medication. Four days later he began behaving strangely and his parents urged him to see his doctor.

He went out and returned several hours later, under the influence of alcohol and cocaine. His brother returned home to find an horrific scene and their parents brutally murdered with an axe. When the police arrived they found the offender locked in his room.

Psychiatric reports confirmed that the offender was suffering from a recognised mental disorder at the time of the attacks which had substantially impaired his ability to make a rational judgement. He had believed that the people he killed were imposters and that he needed to kill them to protect himself and his brother. The deterioration in his condition was caused by the fact that he had stopped taking his medication a week before the attack and was made worse by the drugs and alcohol he had taken.

His pleas to two counts of manslaughter by reason of diminished responsibility were accepted. At the time of sentencing the offender's condition was stable, he knew what he had done and was extremely remorseful. He had two previous convictions for assaults on family members.

Applying the guideline, the offender's responsibility would be assessed as high because of the degree to which he contributed to the seriousness of the mental disorder. This would lead to a starting point of 24 years.

The offence would be aggravated by his previous convictions, the significant suffering caused to the deceased, and the use of a weapon. (The factor of 'commission of offence under the influence of alcohol or drugs' has already been taken into account in assessing responsibility so would not be counted again.)

The mitigating factor of remorse would apply.

These factors could lead to an increase from the starting point to 28 years.

The court would then go on to consider whether the dangerousness provisions apply. It is likely that in these circumstances the offender would be found to be dangerous and a life sentence would be applicable.

The court would then go on to consider mental health disposals. In the circumstances of this case (depending on the medical evidence) a section 45A hospital and limitation direction could be appropriate.

This would lead to a life sentence with a minimum term of 14 years with a s.45 hospital and limitation direction before any reduction for a guilty plea. The court would then review the sentence as a whole (at step five) and, as there are two counts of manslaughter, would also consider totality (at step eight) which could increase the minimum term to take into account the two deaths.

Q23

**Do you have any views on the application of the guideline to case 9?**

#### Case 10

The offender and his wife had been married for 60 years. The offender was his wife's carer; she suffered from dementia and was unable to wash, dress or feed herself without help. He had been a very capable and devoted carer but recently was finding it difficult to cope and had asked his doctor for help. The doctor had referred him for a mental health assessment and had contacted social services requesting that they review the couple's care plan. The offender became anxious and told a neighbour that he believed that social services would take his wife away and put her in a home, which he had promised her would never happen. He gave his wife several sleeping tablets and then smothered her with a pillow while she slept. He slept in the bed next to her that night and then called the police in the morning, telling them that he had murdered his wife.

He was assessed as suffering from depression and mild dementia, his condition was made worse by lack of sleep and physical exhaustion from his caring duties.

He pleaded guilty to manslaughter by reason of diminished responsibility. He had no previous convictions and had been active in local charities until his caring duties took over.

At the time of sentence his mental health was such that he had a good understanding of the situation, but his short term memory was poor. He was physically frail and was suffering from a number of age related chronic conditions.

Applying the guideline, his responsibility would be assessed as lower. This would lead to a starting point of 7 years.

Mitigating factors of no previous convictions, good character, remorse and 'belief by the offender that the killing was an act of mercy' would apply. The sentence could also be mitigated by the attempts he made to get help (to the extent that this was not taken into account in assessing responsibility at step one).

These factors could reduce the sentence to four years.

The dangerousness provisions would not apply.

Mental health disposals would not be appropriate because at the time of sentence he was not suffering from a mental disorder for which treatment was available.

At step five the court would want to consider whether a further adjustment to the sentence would be appropriate taking into account the circumstances of the offence and the offender's mental and physical condition at the time of sentence.

**Q24**

**Do you have any views on the application of the guideline to case 10?**

**Q25**

**Do you have any other general comments that you wish to make about the draft guidelines?**

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# Annex A: List of consultation questions

## Section three: Unlawful Act manslaughter

- Q1 Do you agree with the proposed approach to the assessment of culpability?  
Please give reasons where you do not agree.
- Q2 Do you agree with the proposed approach to the assessment of harm?  
Please give reasons where you do not agree.
- Q3 Are there any aggravating or mitigating factors that should be removed or added?  
Please give reasons.
- Q4 Do you have any comments on the sentence ranges and starting points?
- Q5 Do you have any views on the application of the guideline to case 1?
- Q6 Do you have any views on the application of the guideline to case 2?
- Q7 Do you have any views on the application of the guideline to case 3?
- Q8 Do you have any views on the application of the guideline to case 4?

## Section four: Gross negligence manslaughter

- Q9 Do you agree with the proposed approach to the assessment of culpability?  
Please give reasons where you do not agree.
- Q10 Are there any aggravating or mitigating factors that should be removed or added?  
Please give reasons.
- Q11 Do you have any comments on the sentence ranges and starting points?
- Q12 Do you have any views on the application of the guideline to case 5?

Q13 Do you have any views on the application of the guideline to case 6?

### Section five: Manslaughter by reason of loss of control

Q14 Do you agree with the proposed approach to the assessment of culpability?  
Please give reasons where you do not agree.

Q15 Are there any aggravating or mitigating factors that should be removed or added?  
Please give reasons.

Q16 Do you have any comments on the sentence ranges and starting points?

Q17 Do you have any views on the application of the guideline to case 7?

Q18 Do you have any views on the application of the guideline to case 8?

### Section six: Manslaughter by reason of diminished responsibility

Q19 Do you agree with the proposed approach to the assessment of responsibility?  
Please give reasons where you do not agree.

Q20 Are there any aggravating or mitigating factors that should be removed or added?  
Please give reasons.

Q21 Do you have any comments on the sentence ranges and starting points?

Q22 Do you have any comments on steps three, four and five? Please give reasons.

Q23 Do you have any views on the application of the guideline to case 9?

Q24 Do you have any views on the application of the guideline to case 10?

Q25 Do you have any other general comments that you wish to make about the draft guidelines?

# Annex B: Background to guidelines

## Statutory requirements

In producing these draft guidelines, the Council has had regard to a number of statutory requirements.

The purposes of sentencing are stated in section 142 of the Criminal Justice Act 2003:

- the punishment of offenders;
- the reduction of crime (including its reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and,
- the making of reparation by offenders to persons affected by their offences.

The Sentencing Council has also had regard to the statutory duties in the Coroners and Justice Act 2009 which set out requirements for sentencing guidelines as follows:

- guidelines may be general in nature or limited to a particular offence;
- the Council must publish them as draft guidelines;
- the Council must consult the following persons about draft guidelines: the Lord Chancellor, such persons as the Lord Chancellor may direct, the Justice Select Committee of the House of Commons, such other persons as the Council considers appropriate;
- after making appropriate amendments, the Council must issue definitive guidelines;
- the Council may review the guidelines and may revise them;<sup>15</sup>
- the Council must publish a resource assessment in respect of the guidelines;<sup>16</sup> and
- the Council must monitor the operation and effect of its sentencing guidelines.<sup>17</sup>

Section 125(a) of the Coroners and Justice Act 2009 states that, '*every court must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender's case*'. Therefore, courts are required to impose a sentence consistent with the guidelines, unless contrary to the interests of justice to do so. Therefore, the Sentencing Council is keen to ensure that the guidelines are as accessible as possible for sentencers.

When preparing sentencing guidelines, the Council must have regard to the following matters:

- the sentences imposed by courts in England and Wales for offences;
- the need to promote consistency in sentencing;
- the impact of sentencing decisions on victims of offences;

<sup>15</sup> s.120 Coroners and Justice Act 2009

<sup>16</sup> s.127(2) *ibid*

<sup>17</sup> s.128(1) *ibid*

- the need to promote public confidence in the criminal justice system;
- the cost of different sentences and their relative effectiveness in preventing re-offending; and
- the results of monitoring the operation and effect of its sentencing guidelines.<sup>18</sup>

When publishing any draft guidelines, the Council must publish a resource assessment of the likely effect of the guidelines on:

- the resources required for the provision of prison places;
- the resources required for probation provision; and
- the resources required for the provision of youth justice services.<sup>19</sup>

In order to achieve these requirements, the Council has considered case law on the offences included within the guidelines, where it is available, evidence on current sentencing practice and drawn on members' own experience of sentencing practice. The intention is for the decision making process in the proposed guideline to provide a clear structure, not only for sentencers, but to provide more clarity on sentencing for the victims and the public, so that they too can have a better understanding of how a sentence has been reached.

The Council has had regard to these duties throughout the preparation of this draft guideline. In developing an understanding of the cost and effectiveness of different sentences, the Council has considered the available information and evidence and these are contained in the resource assessment which accompanies this consultation paper.

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<sup>18</sup> s.120(11) Coroners and Justice Act 2009

<sup>19</sup> s.127(3) *ibid*

# Annex C: Draft guidelines

## Unlawful act manslaughter

### Common law

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**Triable only on indictment**  
**Maximum: Life Imprisonment**

**Offence range: 1 – 24 years' custody**

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentences for serious offences) of the Criminal Justice Act 2003.

This is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for a second listed offence) and section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

The type of manslaughter (and thereby the appropriate guideline) should have been identified prior to sentence. If there is any dispute or uncertainty about the type of manslaughter that applies the judge should give clear reasons for the basis of sentence.

Draft guideline - not in force

**STEP ONE****Determining the offence category****CULPABILITY**

- The characteristics set out below are indications of the level of culpability that may attach to the offender's conduct; the court should balance these characteristics to reach a fair assessment of the offender's overall culpability in the context of the circumstances of the offence.
- The court should avoid an overly mechanistic application of these factors.

<b>A – Very high culpability</b>	Very high culpability <b>may</b> be indicated by: <ul style="list-style-type: none"> <li>• the extreme character of one or more culpability B factors and /or</li> <li>• a combination of culpability B factors</li> </ul>
<b>B – Factors indicating high culpability</b>	Death was caused in the course of an unlawful act which involved an intention to cause harm falling just short of GBH
	Death was caused in the course of an unlawful act which carried a high risk of death or GBH which was or ought to have been obvious to the offender
	Death was caused in the course of committing or escaping from a serious offence in which the offender played more than a minor role
	Concealment, destruction, defilement or dismemberment of the body (where not separately charged)
<b>C – Factors indicating medium culpability</b>	Cases falling between high and lower <b>including but not limited to</b> <ul style="list-style-type: none"> <li>• where death was caused in the course of an unlawful act which involved an intention to cause harm (or recklessness as to whether harm would be caused) that falls between high and lower culpability</li> <li>• where death was caused in the course of committing or escaping from a less serious offence but in which the offender played more than a minor role</li> </ul>
<b>D – Factors indicating lower culpability</b>	Death was caused in the course of an unlawful act <ul style="list-style-type: none"> <li>• which was in defence of self or other(s) (where not amounting to a defence) OR</li> <li>• where there was no intention to cause any harm <b>and</b> no obvious risk of anything more than minor harm OR</li> <li>• in which the offender played a minor role</li> </ul>
	The offender's responsibility was substantially reduced by mental disorder,* learning disability or lack of maturity

*\*Little, if any, weight should be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice*

**HARM**

For all cases of manslaughter the harm caused will inevitably be of the utmost seriousness. The loss of life is already taken into account in the sentencing levels at step two.

Draft guideline - not in force

## STEP TWO

### Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

- **Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.**

Culpability			
A	B	C	D
<b>Starting point</b> 18 years' custody	<b>Starting point</b> 12 years' custody	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 2 years' custody
<b>Category range</b> 11 – 24 years' custody	<b>Category range</b> 8 – 16 years' custody	<b>Category range</b> 3 – 9 years' custody	<b>Category range</b> 1 – 4 years' custody

Note: The table is for a single offence of manslaughter resulting in a single fatality. Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Offences Taken into Consideration and Totality* guideline and step six of this guideline.

On the next page is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Draft guideline - not in force

**Care should be taken to avoid double counting factors already taken into account in assessing culpability**

**Factors increasing seriousness**

***Statutory aggravating factors:***

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction  
(See step five for a consideration of dangerousness)

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

***Other aggravating factors:***

History of significant violence or abuse towards victim by offender

Involvement of others through coercion, intimidation or exploitation

Victim particularly vulnerable due to age or disability

Significant mental or physical suffering caused to the deceased

Victim was providing a public service or performing a public duty

Commission of offence whilst under the influence of alcohol or drugs

Persistence of violence

Offence involved use of a weapon

Other(s) put at risk of harm by the offending

Death occurred in the context of dishonesty or the pursuit of financial gain

Actions after the event (including but not limited to attempts to cover up/conceal evidence)

Blame wrongly placed on other(s)

Abuse of a position of trust

Offence committed on licence or post sentence supervision or while subject to court order(s)

**Factors reducing seriousness or reflecting personal mitigation:**

No previous convictions **or** no relevant/recent convictions

Remorse

History of significant violence or abuse towards the offender by the victim

Lack of premeditation

Good character and/or exemplary conduct

Serious medical conditions requiring urgent, intensive or long-term treatment

Age and/or lack of maturity

Sole or primary carer for dependent relatives



Draft guideline - not in force

**STEP THREE****Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

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.

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

**STEP SEVEN****Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm, an imitation firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Draft guideline - not in force

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Draft guideline - not in force

# Gross negligence manslaughter

## Common law

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**Triable only on indictment**  
**Maximum: Life imprisonment**

**Offence range: 1 – 18 years' custody**

**This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentences for serious offences) of the Criminal Justice Act 2003.**

**This is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for a second listed offence) and section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.**

**The type of manslaughter (and thereby the appropriate guideline) should have been identified prior to sentence. If there is any dispute or uncertainty about the type of manslaughter that applies the judge should give clear reasons for the basis of sentence.**

Draft guideline - not in force

**STEP ONE****Determining the offence category****CULPABILITY**

- The characteristics set out below are indications of the level of culpability that may attach to the offender's conduct; the court should balance these characteristics to reach a fair assessment of the offender's overall culpability in the context of the circumstances of the offence.
- The court should avoid an overly mechanistic application of these factors.

<b>A – Very high culpability</b>	Very high culpability <b>may</b> be indicated by: <ul style="list-style-type: none"> <li>• the extreme character of one or more culpability B factors and /or</li> <li>• a combination of culpability B factors</li> </ul>
<b>B – Factors indicating high culpability</b>	The offender persisted in the negligent conduct in the face of the obvious suffering of the deceased
	The negligent conduct was in the context of other serious criminality
	The negligent conduct was motivated by financial gain (or avoidance of cost)
	The negligent conduct persisted over a long period of time (weeks or months)
	The offender was in a dominant role if acting with others
	The offender was clearly aware of the risk of death arising from the offender's negligent conduct
<b>C – Factors indicating medium culpability</b>	Concealment, destruction, defilement or dismemberment of the body (where not separately charged)
	Cases falling between high and lower because: <ul style="list-style-type: none"> <li>• factors are present in high and lower which balance each other out <b>and/or</b></li> <li>• the offender's culpability falls between the factors as described in high and lower</li> </ul>
<b>D – Factors indicating lower culpability</b>	The offender did not appreciate the risk of death arising from the negligent conduct
	The negligent conduct was a lapse in the offender's otherwise satisfactory standard of care
	The offender was in a lesser or subordinate role if acting with others
	The offender's responsibility was substantially reduced by mental disorder,* learning disability or lack of maturity

*\*Little, if any weight should be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice*

**HARM**

For all cases of manslaughter the harm caused will inevitably be of the utmost seriousness. The loss of life is already taken into account in the sentencing levels at step two.

Draft guideline - not in force

## STEP TWO

### Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

- **Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.**

Culpability			
A	B	C	D
<b>Starting point</b> 12 years' custody	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years' custody
<b>Category range</b> 10 – 18 years' custody	<b>Category range</b> 6 – 12 years' custody	<b>Category range</b> 3 – 7 years' custody	<b>Category range</b> 1 – 4 years' custody

**In cases of motor manslaughter regard should be had to the *Causing death by dangerous driving* definitive guideline to ensure that the sentence for manslaughter does not fall below what would be imposed under that guideline.**

Note: The table is for a single offence of manslaughter resulting in a single fatality. Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Offences Taken into Consideration and Totality* guideline and step six of this guideline.

On the next page is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Draft guideline - not in force

**Care should be taken to avoid double counting factors already taken into account in assessing culpability**

**Factors increasing seriousness**

***Statutory aggravating factors:***

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction  
(See step five for a consideration of dangerousness)

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

***Other aggravating factors:***

History of significant violence or abuse towards victim by offender

Involvement of others through coercion, intimidation or exploitation

Significant mental or physical suffering caused to the deceased

Commission of offence whilst under the influence of alcohol or drugs

Offence involved use of a weapon

Other(s) put at risk of harm by the offending

Death occurred in the context of dishonesty or the pursuit of financial gain

Actions after the event (including but not limited to attempts to cover up/conceal evidence)

Blame wrongly placed on other(s)

The duty of care arose from a close or familial relationship where the deceased was dependent on the offender

Offence committed on licence or post sentence supervision or while subject to court order(s)

**Factors reducing seriousness or reflecting personal mitigation:**

No previous convictions **or** no relevant/recent convictions

Remorse

The duty of care was a temporary one created by the particular circumstances

Good character and/or exemplary conduct

Serious medical conditions requiring urgent, intensive or long-term treatment

Age and/or lack of maturity

Sole or primary carer for dependent relatives

Draft guideline - not in force

**STEP THREE****Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

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.

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

**STEP SEVEN****Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm, an imitation firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Draft guideline - not in force

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Draft guideline - not in force

# Manslaughter by reason of loss of control

Common law and Coroners and Justice Act 2009 (sections 54 and 55)

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Triable only on indictment  
Maximum: Life imprisonment

Offence range: 3 – 20 years' custody

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentences for serious offences) of the Criminal Justice Act 2003.

This is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for a second listed offence) and section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

The type of manslaughter (and thereby the appropriate guideline) should have been identified prior to sentence. If there is any dispute or uncertainty about the type of manslaughter that applies the judge should give clear reasons for the basis of sentence.

Draft guideline - not in force

**STEP ONE****Determining the offence category****CULPABILITY**

- The characteristics set out below are indications of the level of culpability that may attach to the offender's conduct; the court should balance these characteristics to reach a fair assessment of the offender's overall culpability in the context of the circumstances of the offence.
- The court should avoid an overly mechanistic application of these factors.

<b>A – High culpability</b>	Planning of criminal activity (including the carrying of a weapon) <b>before</b> the loss of control
	Offence committed in the context of other serious criminal activity
	Use of a firearm (whether or not taken to the scene)
	Loss of self control in circumstances which only just met the criteria for a qualifying trigger
	Concealment, destruction, defilement or dismemberment of the body (where not separately charged)
<b>B – Medium culpability:</b>	Cases falling between high and lower because: <ul style="list-style-type: none"> <li>• factors are present in high and lower which balance each other out <b>and/or</b></li> <li>• the offender's culpability falls between the factors as described in high and lower</li> </ul>
<b>C – Lower culpability</b>	Qualifying trigger represented an exceptionally high degree of provocation

**HARM**

For all cases of manslaughter the harm caused will inevitably be of the utmost seriousness. The loss of life is already taken into account in the sentencing levels at step two.

Draft guideline - not in force

## STEP TWO

### Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

- **Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.**

Culpability		
A	B	C
<b>Starting point</b> 14 years' custody	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 5 years' custody
<b>Category range</b> 10 – 20 years' custody	<b>Category range</b> 5 – 12 years' custody	<b>Category range</b> 3 – 6 years' custody

Note: The table is for a single offence of manslaughter resulting in a single fatality. Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Offences Taken into Consideration and Totality* guideline and step six of this guideline.

On the next page is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Draft guideline - not in force

### Care should be taken to avoid double counting factors already taken into account in assessing culpability or in the finding of a qualifying trigger

#### Factors increasing seriousness

##### **Statutory aggravating factors:**

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction  
(See step five for a consideration of dangerousness)

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

##### **Other aggravating factors:**

History of significant violence **or** abuse towards victim by offender

Significant mental or physical suffering caused to the deceased

Commission of offence whilst under the influence of alcohol or drugs

Offence involved use of a weapon

Persistence of violence

Other(s) put at risk of harm by the offending

Death occurred in the context of dishonesty or the pursuit of financial gain

Actions after the event (including but not limited to attempts to cover up/conceal evidence)

Blame wrongly placed on other(s)

Involvement of others through coercion, intimidation or exploitation

Victim was providing a public service or performing a public duty

Offence committed on licence or post sentence supervision or while subject to court order(s)

#### Factors reducing seriousness or reflecting personal mitigation:

No previous convictions **or** no relevant/recent convictions

Remorse

Intention to cause serious bodily harm rather than to kill

History of significant violence or abuse towards the offender by the victim

Violence initiated by the victim

Good character and/or exemplary conduct

Serious medical conditions requiring urgent, intensive or long-term treatment

Age and/or lack of maturity

Sole or primary carer for dependent relatives

Mental disorder\* or learning disability

\*Little, if any weight should be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice

Draft guideline - not in force

**STEP THREE****Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

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.

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

**STEP SEVEN****Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm, an imitation firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Draft guideline - not in force

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Draft guideline - not in force

# Manslaughter by reason of diminished responsibility

## Common law and Homicide Act 1957 (section 2)

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**Triable only on indictment**

**Maximum: Life imprisonment**

**Offence range: 3 – 40 years' custody**

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentences for serious offences) of the Criminal Justice Act 2003.

This is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for a second listed offence) and section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

The type of manslaughter (and thereby the appropriate guideline) should have been identified prior to sentence. If there is any dispute or uncertainty about the type of manslaughter that applies the judge should give clear reasons for the basis of sentence.

Draft guideline - not in force

**STEP ONE****Determining the offence category****Assessing the degree of responsibility retained: high medium or lower**

- 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.
- The court should reach a determination as to the level of responsibility the offender **retained**:
  - High;
  - Medium; or
  - Lower
- The court should consider the extent to which the offender's responsibility was diminished by the mental disorder **at the time of the offence** with reference to the medical evidence and all the relevant information available to the court.
- The degree to which the offender's actions or omissions contributed to the seriousness of the mental disorder at the time of the offence will be a relevant consideration. For example:
  - where an offender exacerbates the mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice this will increase responsibility.

**HARM**

For all cases of manslaughter the harm caused will inevitably be of the utmost seriousness. The loss of life is already taken into account in the sentencing levels at step two.



Draft guideline - not in force

**STEP TWO****Starting point and category range**

Having determined the level of responsibility retained at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Level of responsibility retained		
High	Medium	Lower
<b>Starting point</b> 24 years' custody	<b>Starting point</b> 15 years' custody	<b>Starting point</b> 7 years' custody
<b>Category range</b> 15 – 40 years' custody	<b>Category range</b> 10 – 25 years' custody	<b>Category range</b> 3 – 12 years' custody

Note: The table is for a single offence of manslaughter resulting in a single fatality. Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Offences Taken into Consideration and Totality* guideline and step six of this guideline.

On the next page is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Draft guideline - not in force

## Care should be taken to avoid double counting factors already taken into account in assessing the level of responsibility retained

### Factors increasing seriousness

#### *Statutory aggravating factors:*

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction  
(See step five for a consideration of dangerousness)

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

#### *Other aggravating factors:*

A significant degree of planning or premeditation

Victim particularly vulnerable due to age or disability

Significant mental or physical suffering caused to the deceased

Abuse of a position of trust

History of significant violence or abuse towards victim by offender

Commission of offence whilst under the influence of alcohol or drugs

Other(s) put at risk of harm by the offending

Death occurred in the context of dishonesty or the pursuit of financial gain

Actions after the event (including but not limited to attempts to cover up/conceal evidence)

Involvement of others through coercion, intimidation or exploitation

Victim was providing a public service or performing a public duty

Concealment, destruction, defilement or dismemberment of the body (where not separately charged)

Offence involved use of a weapon

Blame wrongly placed on other(s)

Offence committed on licence or post sentence supervision or while subject to court order(s)

### Factors reducing seriousness or reflecting personal mitigation:

No previous convictions **or** no relevant/recent convictions

Remorse

Intention to cause serious bodily harm rather than to kill

Lack of premeditation

History of significant violence or abuse towards the offender by the victim

The offender acted in self-defence or in fear of violence (where not amounting to a defence)

The offender made genuine and sustained attempts to seek help for the mental disorder

Belief by the offender that the killing was an act of mercy

Good character and/or exemplary conduct

Draft guideline - not in force

Serious medical conditions requiring urgent, intensive or long-term treatment

Age and/or lack of maturity

Sole or primary carer for dependent relatives

### STEP THREE

#### Consideration of dangerousness

- The court should then go on to 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 to a life sentence the notional determinate term (identified at step two above) should be used as the basis for setting the minimum term.

### STEP FOUR

#### Consideration of mental health disposals

#### Where:

- (i) the evidence of medical practitioners suggests that the offender is currently suffering from a mental disorder,
- (ii) treatment is available, and
- (iii) the court considers that a hospital order (with or without a restriction) may be an appropriate way of dealing with the case,

the court should consider these matters in the following order:

#### Section 45A hospital and limitation direction

- a. Before a hospital order is made under s.37 MHA (with or without a restriction order under s.41), consider whether the mental disorder can appropriately be dealt with by custody with a hospital and limitation direction under s.45A MHA. In deciding whether a s.45A direction is appropriate the court should bear in mind that the direction will cease to have effect at the end of a determinate sentence.
- b. If the mental disorder can appropriately be dealt with by a direction under s.45A(1), then the judge should make such a direction. (Not available for a person under the age of 21 at the time of conviction).

#### Section 37 hospital order and section 41 restriction order

- c. If a s.45A direction is not appropriate the court must then consider, before going further, whether:
  - (1) the mental disorder is treatable, (2) once treated there is no evidence the offender would be dangerous, and (3) the offending is due to that mental disorder. If these conditions are met a hospital order under s.37/41 is likely to be the correct disposal.

Draft guideline - not in force

**Section 47 transfer to hospital**

- d. The court must also have regard to the question of whether other methods of dealing with the offender are available including consideration of whether the powers under s.47 MHA for transfer from custody to hospital for treatment would, taking in to consideration all of the circumstances, be appropriate.
- There must always be sound reasons for departing from the usual course of imposing a custodial sentence and where a custodial sentence is not imposed, the judge must set out these reasons.

**STEP FIVE****IN ALL CASES consider factors that may warrant an adjustment to the sentence**

Cases of manslaughter by reason of diminished responsibility vary considerably on the facts of the offence and on the circumstances of the offender.

- The court should review whether the sentence as a whole meets the objectives of punishment, rehabilitation and protection of the public in a fair and proportionate way.
- Relevant factors will include the psychiatric evidence and the regime on release.
- An adjustment may require a departure from the sentence range identified at step two above.

**STEP SIX****Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP SEVEN****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline. Note: the limitations on reductions for murder do not apply to manslaughter.

**STEP EIGHT****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

**STEP NINE****Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm, an imitation firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

Draft guideline - not in force

**STEP TEN****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP ELEVEN****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.





