

**Response to the  
recommendations relating to  
sentencing guidelines in the  
Domestic Homicide  
Sentencing Review**

September 2023

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# **Response to the recommendations relating to sentencing guidelines in the Domestic Homicide Sentencing Review**

7 September 2023



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# Introduction

## The Review

The government commissioned Clare Wade KC to review sentencing in domestic homicide cases to establish whether current law and sentencing guidelines are fit for purpose and to identify options for reform.

The [Domestic Homicide Sentencing Review](#) (the Review) was published in March 2023.

The Review makes six recommendations relating to the work of the Sentencing Council:

**Recommendation 11**  
Paragraph 8.1.23

We recommend that in cases of **manslaughter by way of diminished responsibility** consideration should be given to sentencing guidelines being amended to make strangulation an aggravating factor.

**Recommendation 12**  
Paragraph 8.1.24

We recommend that in **manslaughter by way of loss of control**, consideration should be given to sentencing guidelines being amended to make strangulation an aggravating factor.

**Recommendation 13**  
Paragraph 8.1.25

We recommend that in cases of manslaughter, consideration should be given to sentencing guidelines being amended to make coercive control on the part of the perpetrator of the killing towards the victim a factor which indicates higher culpability. Further, that consideration should be given to making coercive control towards the perpetrator of the killing by the victim of the killing a factor denoting lower culpability.

**Recommendation 14**  
Paragraph 8.1.26

We recommend that consideration be given to whether the **Overarching Principles on Domestic Abuse** should be amended to contain explicit reference to assaults consisting of non-fatal strangulation being an aggravating factor.

**Recommendation 15**  
Paragraph 8.2.10

We recommend that in cases of domestic manslaughter, consideration should be given to sentencing guidelines being amended to indicate that use of a weapon is not necessarily an aggravating factor.

**Recommendation 16**  
Paragraph 8.3.29

We recommend that that where death occurs in the course of violence which is alleged to be consensual during a sexual encounter between the perpetrator and the victim then whether the offender is charged with **unlawful act manslaughter or gross negligence manslaughter**, the killing should be categorised as category B high culpability.

## The Government response

The Government published its own full response to the Review in July 2023. With regard to the above recommendations the [Government response](#) said:

These recommendations fall under the remit of the independent Sentencing Council for England and Wales, rather than the Government.

The Sentencing Council for England and Wales was set up in April 2010 to promote greater transparency and consistency in sentencing, while maintaining the independence of the judiciary. The Sentencing Council is an independent, non-departmental public body.

The Council has responsibility for developing sentencing guidelines, monitoring the use of these guidelines, and assessing the impact of guidelines on sentencing practice. The Council may also be required to consider the impact of policy and legislative proposals relating to sentencing, when requested to do so by the Government.

Under section 124 of the Coroners and Justice Act 2009, the Council has a statutory duty to consider a proposal by the Lord Chancellor for sentencing guidelines to be prepared or revised. This can be in relation to a particular offence, particular category of offence, particular category of offenders, or a particular matter affecting sentencing.

Alongside publication of the Review in March 2023, the Lord Chancellor wrote to the Council to propose that the sentencing guidelines be revised in light of Recommendation 16 in the Review.

The Council has considered this proposal and the Chairman of the Council has responded to the Lord Chancellor, stating that it would not be appropriate to consider Recommendation 16 in isolation, and that the Council will await the Government's full response to the Review, to understand any implications which arise from that. The Council has also resolved to set up a working group to consider the Review in the round.

Further to the action taken alongside publication of the Review in March 2023, the Lord Chancellor has written to the Council to propose that they revise the sentencing guidelines in light of both the Review and the Government's response to the Review. The Government commits to working collaboratively with the Council regarding the Review, its recommendations and the Government's response to the Review.

## Manslaughter sentencing guidelines

The manslaughter guidelines came into force on 1 November 2018. There are four guidelines:

- [Manslaughter by reason of diminished responsibility](#)
- [Manslaughter by reason of loss of control](#)
- [Gross negligence manslaughter](#)
- [Unlawful act manslaughter](#)

The Council has recently begun work on an evaluation of the manslaughter guidelines and aims to publish the findings from that evaluation in 2024.

# Our response to the recommendations

## Recommendations 11 and 12

Recommendation 11: “We recommend that in cases of **manslaughter by way of diminished responsibility** consideration should be given to sentencing guidelines being amended to make strangulation an aggravating factor.”

Recommendation 12: “We recommend that in **manslaughter by way of loss of control**, consideration should be given to sentencing guidelines being amended to make strangulation an aggravating factor.”

The Council noted that there was limited evidence to support these recommendations. At 8.1.11 the Review states:

Strangulation played a significant role within the context of manslaughter. Of all 7 strangulation cases which resulted in manslaughter convictions for men, 3 cases were by way of diminished responsibility. It is difficult to conceive of it playing a significant role in loss of control cases given the time it can take to strangle a victim. However, in order to maintain consistency, we have included loss of control cases in our recommendation on strangulation set out below.

The Review cites some diminished responsibility cases where strangulation was a feature. In our own review of transcripts of sentencing remarks of manslaughter cases sentenced in 2019, of 148 offenders sentenced, there were two cases of diminished responsibility that involved strangulation or asphyxiation. In each of these cases the Council was satisfied that the court had taken the relevant factors into account in sentencing.

The Review does not recommend adding a similar factor to the [Unlawful act](#) or [Gross negligence](#) manslaughter guidelines. We identified two cases of unlawful act manslaughter in our 2019 transcripts where death was caused by strangulation. In both cases the use of strangulation was recognised by the sentencing judge as engaging the high culpability factor of ‘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’.

The addition of an aggravating factor may not make any material difference to sentences because if (as in the examples given above) the method of killing has been taken into account at step one, it will not be double counted to aggravate the sentence at step two.

In the analogous situation of the ‘Offence involved use of a weapon’ aggravating factor, it is notable that judges are careful not to double-count when the factor had already been taken into account to assess culpability.

The main argument for adding an aggravating factor relating to strangulation is that it will indicate to lay readers of the guidelines that this is taken seriously, rather than to influence sentence levels, though it would ensure that the seriousness of strangulation was not



overlooked in the sentencing exercise. It would also be consistent with the assault guidelines which have 'Strangulation/suffocation/asphyxiation' as a high culpability factor alongside 'Use of a highly dangerous weapon or weapon equivalent'.

The Council is conscious of the danger of unintended consequences if changes are made to guidelines without a clear need for such changes. However, we acknowledge that as the guidelines all currently have the 'Offence involved use of a weapon' aggravating factor it would be logical and consistent to add a factor relating to strangulation which is an issue of increasing concern.

The Council also recognises that the Government response to the Review does not propose to add strangulation to the statutory aggravating factors relating to murder. The reasoning in that response is that statutory aggravating factors generally relate to the circumstances in which the killing occurred rather than the means by which death was caused. This reasoning does not apply to the offence of manslaughter so there is no inconsistency between our approach and that set out in the Government response.

**The Council is therefore consulting on adding an aggravating factor to all four manslaughter guidelines of:**

- **Use of strangulation, suffocation or asphyxiation**

The consultation is part of the Council's annual miscellaneous amendments. It is open from 7 September to 30 November 2023 and can be found on the [consultations page](#) of the Council's website. Any changes to guidelines resulting from this consultation will come into force on 1 April 2024.

## **Recommendation 13**

Recommendation 13 makes two suggestions which relate to all four manslaughter guidelines:

- coercive control by the offender towards the victim should be a factor which indicates higher culpability
- coercive control by the victim towards the offender should be a factor which indicates lower culpability

It is not clear from the evidence in the Review that there are any examples of where courts have failed to take into account coercive control in relevant cases when using the guidelines.

The guidelines currently have the following factors:

- History of violence or abuse towards victim by offender (aggravating factor in all four guidelines)
- History of significant violence or abuse towards the offender by the victim (mitigating factor in all guidelines except for gross negligence)

Again, the Council is conscious of the danger of making changes to guidelines without good reason. However, the Council felt that the proposed change would reflect up-to-date

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terminology and may have a positive impact on public confidence in the criminal justice system. This view is reflected in the Review which says (at 5.4) “Concerns were expressed in the majority of our focus groups about the fact that coercive control is still poorly understood and that it is often overlooked in the context of intimate partner killing”.

In addition, we note that the Government response to the Review indicates that a similar change will be made to the statutory aggravating and mitigating factors relating to murder. The proposed changes to the manslaughter guidelines will ensure consistency of approach.

**The Council has agreed to consult on amending these factors to read:**

- **History of violence or abuse (which may include coercive or controlling behaviour) towards the victim by the offender**
- **History of significant violence or abuse (which may include coercive or controlling behaviour) towards the offender by the victim**

This would not place consideration of coercive or controlling behaviour at step one as the Review proposes, but as there is no evidence that courts are failing to take it into account in relevant cases the Council was not in favour of changing the step one factors. An analysis of 2019 manslaughter sentencing transcripts indicates that courts are taking controlling and coercive behaviour into account where there is evidence (in the limited number of cases where it featured).

The consultation is part of the Council's annual miscellaneous amendments. It is open from 7 September to 30 November 2023 and can be found on the [consultations page](#) of the Council's website. Any changes to guidelines resulting from this consultation will come into force on 1 April 2024.

## Recommendation 14

This relates to the [Domestic abuse guideline](#). The Review recommends considering adding an aggravating factor relating to non-fatal strangulation. The current list in that guideline of non-exhaustive aggravating factors of particular relevance to offences committed in a domestic context is:

- Abuse of trust and abuse of power
- Victim is particularly vulnerable (all victims of domestic abuse are potentially vulnerable due to the nature of the abuse, but some victims of domestic abuse may be more vulnerable than others, and not all vulnerabilities are immediately apparent)
- Steps taken to prevent the victim reporting an incident
- Steps taken to prevent the victim obtaining assistance
- Victim forced to leave home, or steps have to be taken to exclude the offender from the home to ensure the victim's safety
- Impact on children (children can be adversely impacted by both direct and indirect exposure to domestic abuse)
- Using contact arrangements with a child to instigate an offence
- A proven history of violence or threats by the offender in a domestic context
- A history of disobedience to court orders (such as, but not limited to, Domestic Violence Protection Orders, non-molestation orders, restraining orders)

The evidence for this recommendation appears to be at 6.6 of the Review. The Review points out that strangulation seems to be a gendered form of killing (in 97 per cent of their sample cases involving strangulation the perpetrator was male). It asserts that incidents of non-fatal strangulation are generally thought to be an accurate predictor of fatal violence and that non-fatal strangulation is prevalent in relationships which feature coercive control.

The Council gave careful consideration to this recommendation but was not persuaded that it would be helpful to add an aggravating factor relating to non-fatal strangulation in the overarching guideline. The reasons include:

- that it could lead to a risk of double counting as "strangulation/suffocation/asphyxiation" is a culpability factor in assault guidelines and is an intrinsic element of the new non-fatal strangulation offence (created by the Domestic Abuse Act 2021, which came in to force on 7 June 2022)
- that the guideline does not currently include factors relating to use of weapon or other means that may be used to inflict violence, and
- strangulation can apply in non-domestic cases so it would be preferable to ensure the factor appears in relevant offence specific guidelines

The Council will be reviewing the Domestic abuse guideline as a whole in 2024 and felt that any further consideration of this recommendation should await the outcome of that review. As noted above, strangulation is already a step one factor in the assault guidelines and work will start in early 2024 on a guideline for the offence of non-fatal strangulation.

## Recommendation 15

This recommendation – that the sentencing guidelines should indicate that the use of a weapon in domestic manslaughter cases should not necessarily aggravate the sentence – reflects the argument put forward in the Review that because of the difference in strength between women and men, women are compelled to use a weapon in order to kill.

The Council noted that even where an applicable Step 2 aggravating factor in a guideline is present, the weight which the court gives to it necessarily varies according to the circumstances of the case. In the sample of cases we have reviewed from 2019 involving female offenders who killed their partners, courts have been careful to avoid double counting with matters taken into account in assessing culpability (for example, the culpability factor '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' is likely to apply where a knife was used). In one case, where the victim had initially thrown the weapon at the offender, that context was considered to be highly relevant in reducing the impact of the use of a weapon on the sentence. In all cases in our sample any context of domestic abuse in the relationship was taken into account.

There is an expanded explanation for the aggravating factor of 'Offence involved use of a weapon' which states:

**Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence**

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- A 'weapon' can take many forms
- The use or production of a weapon has relevance
  - to the **culpability** of the offender where it indicates planning or intention to cause harm; and
  - to the **harm** caused (both physical or psychological) or the potential for harm.
- Relevant considerations will include:
  - the dangerousness of the weapon;
  - whether the offender brought the weapon to the scene, or just used what was available on impulse;
  - whether the offender made or adapted something for use as a weapon;
  - the context in which the weapon was threatened, used or produced.

When sentencing young adult offenders (typically aged 18-25), consideration should also be given to the guidance on the mitigating factor relating to age and/or lack of maturity when assessing the relevance of this factor to culpability.

The Council was satisfied that courts do take the context of the use of a weapon into account in deciding the relevance of this factor to sentencing and decided that no action was required. However, the Council is carrying out an evaluation of the manslaughter guidelines and will take this recommendation into account in assessing the evidence from that evaluation.

### Recommendation 16

The Review recommends that “where death occurs in the course of violence which is alleged to be consensual during a sexual encounter between the perpetrator and the victim then whether the offender is charged with unlawful act manslaughter or gross negligence manslaughter, the killing should be categorised as category B high culpability”.

The culpability B factors in the Unlawful act manslaughter guideline include:

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

The culpability B factors in the Gross negligence manslaughter guideline include:

- The negligent conduct was in the context of other serious criminality
- The offence was particularly serious because the offender showed a blatant disregard for a very high risk of death resulting from the negligent conduct

When drafting the guidelines the Council was conscious of the wide variety of circumstances covered by manslaughter convictions and was careful not to restrict the factors to any particular examples. The rubric above the culpability factors in the Unlawful act manslaughter guideline states:

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.

The Gross negligence manslaughter guideline additionally has this wording at the end: "particularly in cases to which they do not readily apply."

Convictions for manslaughter involving violence which is alleged to be consensual during a sexual encounter are currently rare and it is difficult to discern any patterns in offending and sentencing. The Review highlights cases that were dealt with as gross negligence manslaughter and notes that in future such cases are likely to be charged as unlawful act (because of a change in the law which provides that consent to harm for sexual gratification is not a defence to offences under sections 47, 20 and 18 of the Offences Against the Person Act 1861).

The Review features the unlawful act case of Pybus [2021] EWCA Crim 1787 where the Court of Appeal refused leave to refer the sentence as unduly lenient. In this case, where the offender had choked the victim as part of consensual sexual activity, the culpability was assessed as C (medium) by the sentencing judge with a starting point of eight years (i.e. towards the top of culpability C) before mitigation and a reduction for a guilty plea. The Court of Appeal stressed that its decision was limited to the circumstances of this particular case. The Council explored the background to this case and considered that it would not be helpful to base any changes to the guideline on this set of circumstances.

The Review asserts that "where strangulation is practised in this way there must always be a high risk of death and that any attempt to distinguish between obvious and high is a legal nicety. Many experts would argue that an act of strangulation does not just carry with it an obvious risk of death but can equally be said to carry a high risk which ought to be obvious to anybody."

It is the Council's view that in most cases involving violence which is alleged to be consensual during a sexual encounter resulting in death, courts would assess culpability as high, particularly where strangulation or a weapon was involved because of the obvious high risk of death resulting from such conduct. The Council is satisfied that there is insufficient evidence of an issue with the guidelines to justify any changes to the culpability factors.

Adding 'Use of strangulation, suffocation or asphyxiation' as an aggravating factor (see above) could help to ensure that in cases where the court is not satisfied that the high culpability factors are made out, the sentence reflects the seriousness of the conduct.

As noted previously, the Council has recently begun work on an evaluation of the manslaughter guidelines and will keep this issue under review.

# Next steps

## **Recommendations 11, 12 and 13**

The Council is consulting on making amendments to the manslaughter guidelines in response to recommendations 11, 12 and 13.

The consultation is part of the Council's annual miscellaneous amendments. It is open from 7 September to 30 November 2023 and can be found on the [consultations page](#) of the Council's website. Any changes to guidelines resulting from this consultation will come into force on 1 April 2024.

## **Recommendation 14**

In 2024 the Council will be reviewing the Domestic abuse guideline and work will start on a guideline for the offence of non-fatal strangulation. The Council will take this recommendation into account as part of this work.

## **Recommendation 15**

The Council is carrying out an evaluation of the manslaughter guidelines and will take this recommendation into account in assessing the evidence from that evaluation.

## **Recommendation 16**

The Council is carrying out an evaluation of the manslaughter guidelines and will keep this recommendation under review as part of that evaluation.

# Appendix

## Background to the offence of 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.

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.

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.

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 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.

Murder will be reduced to manslaughter by reason of diminished responsibility if the defence set out in section 2 of the Homicide Act 1957 (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 their ability to understand the nature of their conduct, to form a rational judgement or to exercise self-control the offender will be guilty of manslaughter.





