

# **MANSLAUGHTER BY REASON OF DIMINISHED RESPONSIBILITY**

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

**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.**

## STEP ONE

### 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.
  - In considering the extent to which the offender's actions were voluntary, the extent to which a mental disorder has an impact on the offender's ability to exercise self-control or to engage with medical services will be a relevant consideration.
- The degree to which the mental disorder was undiagnosed and/or untreated will be a relevant consideration. For example:
  - Where an offender has sought help but not received appropriate treatment this could be a factor which would reduce responsibility.

### HARM

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

**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
<p><b>Starting Point</b> 24 years' custody</p> <p><b>Category Range</b> 15 - 40 years' custody</p>	<p><b>Starting Point</b> 15 years' custody</p> <p><b>Category Range</b> 10 - 25 years' custody</p>	<p><b>Starting Point</b> 7 years' custody</p> <p><b>Category Range</b> 3 - 12 years' custody</p>

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 eight of this guideline.

Below 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.

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

**Aggravating factors**

*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 three 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

- History of ~~significant~~ violence or abuse towards victim by offender
- Commission of offence whilst under the influence of alcohol or drugs (the extent to which a mental disorder has an effect on offender's ability to make informed judgments or exercise self-control will be a relevant consideration in deciding how much weight to attach to this factor).
- 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 other(s) through coercion, intimidation or exploitation
- Victim was providing a public service or performing a public duty
- Concealment, destruction or dismemberment of the body.
- 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

### **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 **all sentencing options** including a section 45A direction and consider the importance of a penal element in the sentence taking into account the level of responsibility assessed at step one.

#### 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 a penal element is appropriate and the mental disorder can appropriately be dealt with by a direction under s.45A MHA, 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 s41 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 whether, (assuming the conditions in s.37(2) (a) are satisfied), the matters referred to in s. 37(2)(b) would make a hospital order the most suitable disposal. The court should explain why a penal element is not appropriate.

#### 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 s47 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.

#### **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.