

GROSS NEGLIGENCE MANSLAUGHTER

Common law

**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.

STEP ONE
Determining the offence category

CULPABILITY	
<ul style="list-style-type: none"> 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 <u>particularly in factual situations to which the factors do not readily apply.</u> 	
A- Very High Culpability	<p>Very high culpability may be indicated by:</p> <ul style="list-style-type: none"> the extreme character of one or more culpability B factors and /or a combination of culpability B factors
B- Factors indicating high culpability	<p>The offender persisted in <u>continued or repeated</u> the negligent conduct in the face of the obvious suffering <u>caused to</u> of the deceased <u>by that conduct</u></p> <hr/> <p>The negligent conduct was in the context of other serious criminality</p> <hr/> <p>The negligent conduct displayed a <u>reckless disregard for the safety of other(s)</u></p> <hr/> <p>The negligent conduct gave rise to a <u>glaringly obvious and very high risk of death</u></p> <hr/> <p>The negligent conduct was <u>particularly serious in all the circumstances of the case</u></p> <hr/> <p>The negligent conduct was motivated by financial gain (or avoidance of cost)</p> <hr/> <p>The negligent conduct persisted over a long period of time (weeks or months)</p> <hr/> <p>The offender was in a dominant <u>leading</u> role if acting with others</p> <hr/> <p>The offender was clearly aware of the risk of death arising from the offender’s negligent conduct</p> <hr/> <p>Concealment, destruction, defilement or dismemberment of the body (where not separately charged)</p>
C- Factors indicating medium culpability	<p>Cases falling between high and lower because</p> <ul style="list-style-type: none"> factors are present in high and lower which balance each other out and/or the offender’s culpability falls between the factors as described in high and lower
D- Factors indicating lower culpability	<p>The offender did not appreciate the risk of death arising from the negligent conduct</p> <hr/> <p>The negligent conduct was a lapse in the offender’s otherwise satisfactory standard of care</p> <hr/> <p>The offender was in a lesser or subordinate role if acting with others</p> <hr/> <p>The offender’s responsibility was substantially reduced by mental disorder*, learning disability or lack of maturity</p>

~~*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 taken into account in the sentencing levels at step two

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
Starting Point 12 years' custody Category Range 10 - 18 years' custody	Starting Point 8 years' custody Category Range 6 - 12 years' custody	Starting Point 4 years' custody Category Range 3 - 7 years' custody	Starting Point 2 years' custody Category Range 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.

Below 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.

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
- Offender ignored previous warnings
- 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 cover up/ conceal evidence)
- Blame wrongly placed on other(s) [additional information will clarify this point]
- The duty of care arose from a close personal 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
- Attempts to assist the victim
- The duty of care was a temporary one created by the particular circumstances
- The offender lacked the necessary expertise, equipment or training (for reasons outside the offender's control) which contributed to the negligent conduct
- The offender was subject to stress or pressure outside the offender's control which contributed to the negligent conduct
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder, learning disability
- Age and/or lack of maturity
- Sole or primary carer for dependent relatives

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.

Blank page