

Sentencing Council meeting:
Paper number:
Lead Council member:
Lead official:

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SC(18)MAY08 - Manslaughter
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1 ISSUE

1.1 This is the final consideration of the manslaughter guidelines prior to publication of the definitive guideline. The Council will be asked to review all of the changes made post consultation and to consider sentence levels.

1.2 The plan had been to publish in early September, but to enable effective training on the guideline at the Serious Crime seminar on 6 September it will be necessary to publish in early August.

2 RECOMMENDATION

2.1 The Council is asked to consider and agree the amendments to each of the guidelines:

- **Annex A** Unlawful act
- **Annex B** Gross Negligence
- **Annex C** Loss of Control
- **Annex D** Diminished Responsibility

2.2 The Council is asked to specify the intended effect of each guideline on sentence levels and to agree in broad outline the content of the resource assessment.

3 CONSIDERATION

Unlawful Act - factors

3.1 The guideline at Annex A includes amendments agreed at the December 2017 Council meeting. Additions are shown in red and underlined. Deletions have been omitted for the sake of clarity. For ease of reference aggravating and mitigating factors are numbered; the numbering will **not** be included in the definitive guideline.

3.2 An analysis of 2016 cases suggests that few (if any) cases are likely to be assessed as culpability D, although culpability D factors were important in balancing culpability B factors.

Question 1: Is the Council content with the factors in Annex A?

Gross Negligence - factors

3.3 The guideline at Annex B includes amendments agreed at the January 2018 Council meeting which were 'road tested' with 11 judges. Additional proposed changes resulting from that research and from further representations on behalf of medical professionals are shown underlined in red or struck through.

3.4 The version of the guideline agreed at the January meeting (and in subsequent email exchanges) was generally well received by the judges who tested it for us. The five judges who resentenced their own cases using the guideline were happy with the sentence they arrived at. Two of the cases were work based deaths and, as expected, the guideline produced higher sentences than those passed originally. In one case the actual sentence of 4 years would have been increased to 8 years. The judge concerned confirmed that he felt the higher sentence was appropriate.

3.5 The culpability B factor which was the subject of most discussion by the Council was:

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

3.6 This factor was designed to capture cases such as motor manslaughter or cases involving firearms which are not covered by other high culpability factors. One judge who resentenced a case involving a shotgun raised a point that Council members had anticipated: when does 'blatant' become 'extreme' thus elevating it to culpability A? The judge felt that he had to stretch a point to get the case into culpability A which is where he felt it belonged.

3.7 Judges who applied the guideline to a case of extremely dangerous driving, almost all arrived at sentences lower than the 12 years passed in the case that the scenario was based on. Sentences ranged from 5 years to 12 years and averaged 8.5 years. Most judges categorised it as culpability B (using the above factor), but one placed it in C and one (somewhat reluctantly) in A.

3.8 The culpability D factor 'The negligent conduct was a lapse in the offender's otherwise satisfactory standard of care' was applied as expected in a medical case (although the judge did suggest clarifying whether it meant towards the victim or more generally) but unexpectedly by one judge to the driving scenario (hence the categorisation of culpability C).

3.9 One judge commented:

My problem with the guidelines is that this offence can arise in a multiplicity of different circumstances. If those are not listed specifically under culpability the sentence could be too low. Hence here, D drove dangerously for a period, he was "after" the V, neither factor can be seen in the sections of culpability.

3.10 The Council has been aware of this difficulty throughout the development of this guideline and has left considerable discretion to judges, a fact that many judges have

recognised and welcomed. It is submitted that the guideline as currently drafted strikes the right balance between providing guidance and affording discretion for this very diverse offence. A judge commented:

I have to say I liked it – principally because it forced me to exercise judgment (within a framework) and was not overly prescriptive. That approach is crucial in manslaughter cases whereby the categorisation of the manslaughter is relatively easy, but the factual matrices are wide and diverse.

3.11 A number of organisations representing doctors and other medical professionals responded to the consultation and suggested factors to take account of the particular mitigating circumstances that might apply in this setting. The Council previously agreed versions of the mitigating factors numbered 5 and 6 in Annex B. Tim and Ruth met with a delegation of doctors and lawyers to discuss the guideline and the extent to which their concerns would be met by the revisions to the guideline. In the light of that meeting additional factors are proposed (numbered 4, 7 and 8). These could apply in some medical cases but also to others (such as other emergency workers) who are operating in particularly complex, stressful or pressurised environments where mistakes are more likely to result in death.

Question 2: Is the Council content with the factors in Annex B?

Loss of control - factors

3.12 No substantive amendments are proposed for the factors in the loss of control guideline at Annex C which was agreed at the March Council meeting.

Question 3: Is the Council content with the factors in Annex C?

Diminished responsibility - factors

3.13 This guideline (at Annex D) was agreed at the April Council meeting. Changes were made to step one and step four. A minor addition is proposed at step four.

Question 4: Is the Council content with the factors in Annex D?

Comparing the step two factors

3.14 Annex E sets out the factors used at step two across all four guidelines. Minor amendments have been proposed to the individual guidelines to ensure consistency.

Question 5: Does the Council wish to make any further changes to the aggravating and mitigating factors?

Sentence levels

3.15 The research with sentencers carried out during the consultation period suggested that the manslaughter guidelines would result in an increase in sentence levels compared with 2014 sentencing practice. Sentence data from MoJ suggested that manslaughter sentences

had increased since 2014. Transcripts of sentencing remarks from 2016 were ordered so that the trends could be analysed across the different manslaughter offences.

3.16 The sentence levels for each of the guidelines are discussed in more detail below; no changes are proposed.

Unlawful act

A	B	C	D
Starting Point 18 years' custody Category Range 11 - 24 years' custody	Starting Point 12 years' custody Category Range 8 - 16 years' custody	Starting Point 6 years' custody Category Range 3 - 9 years' custody	Starting Point 2 years' custody Category Range 1 - 4 years' custody

3.17 The analysis of 2016 cases shows that the average custodial sentence length for unlawful act manslaughter was around two years higher than in 2014. This is in line with the increase in sentences observed in the research.

3.18 Using the latest version of the unlawful act guideline to categorise the 2016 cases suggests that all but a few cases were sentenced within the range of the applicable guideline category.

3.19 Research with judges showed that they were applying the guideline flexibly and took note of the text above the culpability factors and the sentence table. It is therefore likely that judges will exercise discretion in the application of the guideline. While this is in line with the Council's intention, it makes it difficult accurately to predict the effect of the guideline on sentence levels.

Gross negligence

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

3.20 There was no significant difference in sentencing levels for gross negligence manslaughter between 2014 and 2016 with an average sentence of around five years. This is a low volume offence with only 12 cases in the 2016 sample, so trends are more difficult to

detect. The result of research with sentencers clearly shows that health and safety type offences (of which there were six in 2016) would receive significantly higher sentences under the guideline. This was anticipated by the Council and, in general, seems to be welcomed by judges. Sentences for other types of case in the 2016 sample would be likely to be similar using the guideline. As discussed above, recent changes to the guideline should avoid sentence inflation in medical negligence cases.

Loss of Control

A	B	C
Starting Point 14 years' custody	Starting Point 8 years' custody	Starting Point 5 years' custody
Category Range 10 - 20 years' custody	Category Range 5 – 12 years' custody	Category Range 3 - 6 years' custody

3.21 Loss of control cases are also low in volume and from an analysis of the transcripts it seems likely that sentences imposed using the guideline would not be higher on average than those imposed in 2016. However, evidence from research with judges shows that where a case is placed in high culpability, sentences are increased. This echoes the concern from some consultees that the 14 year starting point of culpability A, which compares to 12 years under the old provocation guideline would lead to higher sentences. The Council considered that 14 years was the appropriate starting point for a high culpability case of manslaughter by reason of loss of control. It is submitted that a lower starting point for a case that falls only just short of murder would seem disproportionate when compared with unlawful act or diminished responsibility sentence levels.

Diminished responsibility

High	Medium	Lower
Starting Point 24 years' custody	Starting Point 15 years' custody	Starting Point 7 years' custody
Category Range 15 - 40 years' custody	Category Range 10 - 25 years' custody	Category Range 3 - 12 years' custody

3.22 There were 22 diminished responsibility cases in the 2016 transcripts. Only four received determinate sentences ranging from 7 to 19 years, four received life sentences with notional determinate terms ranging from 30 to 45 years, six were sentenced to life with a s45A order with notional determinate terms ranging from 15 to 30 years and the remaining eight were made subject to s37 hospital orders with a s41 restriction.

3.23 Given the very high level of discretion afforded by the diminished responsibility guideline and the high proportion of these cases that receive mental health disposals it is not possible accurately to estimate the impact of the guideline (if any) on sentence levels.

Question 6: Does the Council agree to retain the sentence levels in the draft guidelines?

4 IMPACT AND RISKS

4.1 As can be seen from the discussion above, with the exception of some gross negligence manslaughter cases and loss of control cases, the guidelines are not expected to cause an increase in sentence lengths. However, because of the discretion and flexibility built into the guidelines, the current upward trend in sentencing for manslaughter cases may continue once the guideline is in force. Some of this may be due to the case mix (for example joint enterprise cases that were previously sentenced as murder now being sentenced as manslaughter or a possible increase in the use of knives), but much of it may be due a more general trend towards more punitive sentencing especially in cases involving death.

4.2 Sentencing data for 2017 will be published on 17 May 2018 and an oral update on the trends in manslaughter sentences will be provided at the Council meeting.

4.3 The resource assessment will reflect the anticipated increases resulting from the guideline and will also make clear that other factors may continue to exert an upward influence on sentence levels after the implementation of the guideline.

4.4 The final resource assessment will be circulated to Council members before publication in August.

Question 7: Does the Council agree that the resource assessment should reflect the fact that sentence levels may continue to increase after the implementation of the guideline?

UNLAWFUL ACT MANSLAUGHTER

Common law

**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.

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.

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

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 18 years' custody	Starting Point 12 years' custody	Starting Point 6 years' custody	Starting Point 2 years' custody
Category Range 11 - 24 years' custody	Category Range 8 - 16 years' custody	Category Range 3 - 9 years' custody	Category Range 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.

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:

1. 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)
2. Offence committed whilst on bail
3. 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:

1. History of violence or abuse towards victim by offender
2. Involvement of others through coercion, intimidation or exploitation
3. Significant mental or physical suffering caused to the deceased
4. Victim particularly vulnerable due to age or disability
5. Victim was providing a public service or performing a public duty at the time of the offence
6. Commission of offence whilst under the influence of alcohol or drugs
7. Persistence of violence
8. Offence involved use of a weapon
9. Other(s) put at risk of harm by the offending
10. Leading role in group or gang
11. Death occurred in the context of an offence which was planned or premeditated.
12. Offence committed in the presence of children
13. Actions after the event (including but not limited to attempts to cover up/ conceal evidence)
14. Blame wrongly placed on other(s)
15. Abuse of a position of trust
16. Offence committed on licence or post sentence supervision or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

1. No previous convictions **or** no relevant/recent convictions
2. Remorse
3. Attempts to assist the victim
4. History of significant violence or abuse towards the offender by the victim
5. Lack of premeditation
6. Good character and/or exemplary conduct
7. Serious medical conditions requiring urgent, intensive or long-term treatment
8. Mental disorder or learning disability
9. Age and/or lack of maturity
10. 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.

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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 particularly in cases to which they do not readily apply. 	
A- Very High Culpability	Very high culpability may be indicated by: <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	The offender continued or repeated the negligent conduct in the face of the obvious suffering caused to the deceased by that conduct <hr/> The negligent conduct was in the context of other serious criminality <hr/> The offence was particularly serious because the offender showed a blatant disregard for a very high risk of death resulting from the negligent conduct <hr/> The negligent conduct was motivated by financial gain (or avoidance of cost) <hr/> The offender was in a leading role if acting with others in the offending <hr/> Concealment, destruction, defilement or dismemberment of the body (where not separately charged)
C- Factors indicating medium culpability	Cases falling between high and lower because <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	The negligent conduct was a lapse in the offender’s otherwise satisfactory standard of care <hr/> The offender was in a lesser or subordinate role if acting with others in the offending <hr/> The offender’s responsibility was substantially reduced by mental disorder, learning disability or lack of maturity

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	Starting Point 8 years' custody	Starting Point 4 years' custody	Starting Point 2 years' custody
Category Range 10 - 18 years' custody	Category Range 6 - 12 years' custody	Category Range 3 - 7 years' custody	Category Range 1 - 4 years' custody

Where the offender's acts or omissions would also constitute another offence, the sentencer should have regard to any guideline relevant to the other offence 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*

1. 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)
2. Offence committed whilst on bail
3. 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:

1. History of violence or abuse towards victim by offender
2. Involvement of others through coercion, intimidation or exploitation
3. Significant mental or physical suffering caused to the deceased
4. Offender ignored previous warnings
5. Commission of offence whilst under the influence of alcohol or drugs
6. Offence involved use of a weapon
7. Other(s) put at risk of harm by the offending
- ~~Death occurred in the context of dishonesty or the pursuit of financial gain~~
8. Actions after the event (including but not limited to attempts cover up/ conceal evidence)
9. Investigation has been hindered and/or other(s) have suffered as a result of being falsely blamed by the offender
10. The duty of care arose from a close personal or familial relationship where the deceased was dependent on the offender
11. Offence committed on licence or post sentence supervision or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

1. No previous convictions **or** no relevant/recent convictions
2. Remorse
3. Attempts to assist the victim
4. Self-reporting and/or co-operation with the investigation
- ~~The duty of care was a temporary one created by the particular circumstances~~
5. For reasons outside the offender's control, the offender lacked the necessary expertise, equipment, support or training which contributed to the negligent conduct
6. For reasons outside the offender's control, the offender was subject to stress or pressure (including from competing or complex demands) which related to and contributed to the negligent conduct
7. For reasons outside the offender's control the negligent conduct occurred in circumstances where there was reduced scope for exercising usual care and competence
8. The negligent conduct was compounded by the actions or omissions of others outside of the offender's control.
9. Good character and/or exemplary conduct
10. Serious medical conditions requiring urgent, intensive or long-term treatment
11. Mental disorder or learning disability
12. Age and/or lack of maturity
13. 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.

In appropriate cases an offender may be disqualified from being a director of a company in accordance with section 2 of the Company Directors Disqualification Act 1986. The maximum period of disqualification is 15 years.

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.

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MANSLAUGHTER BY REASON OF LOSS OF CONTROL

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

**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.

STEP ONE - Determining the offence category

CULPABILITY demonstrated by one or more of the following:

- **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.**

A - High Culpability

- Planning of criminal activity (including the carrying of a weapon) **before** 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 - Medium Culpability:

Cases falling between high and lower because:

- 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

C - Lower Culpability

- Qualifying trigger represented a very 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 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
<p>Starting Point 14 years' custody</p> <p>Category Range 10 - 20 years' custody</p>	<p>Starting Point 8 years' custody</p> <p>Category Range 5 – 12 years' custody</p>	<p>Starting Point 5 years' custody</p> <p>Category Range 3 - 6 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 six 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 culpability or in the finding of a qualifying trigger

Aggravating factors

Statutory aggravating factors

1. 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)
2. Offence committed whilst on bail
3. 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:

1. History of violence or abuse towards victim by offender
2. Involvement of other(s) through coercion, intimidation or exploitation
3. Significant mental or physical suffering caused to the deceased

4. Victim was providing a public service or performing a public duty at the time of the offence
5. Commission of offence whilst under the influence of alcohol or drugs
6. Persistence of violence
7. Offence involved use of a weapon
8. Other(s) put at risk of harm by the offending
9. Actions after the event (including but not limited to attempts to cover up/ conceal evidence)
10. Offence committed on licence or post sentence supervision or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

1. No previous convictions **or** no relevant/recent convictions
2. Remorse
3. Intention to cause serious bodily harm rather than to kill
4. History of significant violence or abuse towards the offender by the victim
5. Violence initiated by the victim
6. Good character and/or exemplary conduct
7. Serious medical conditions requiring urgent, intensive or long-term treatment
8. Mental disorder or learning disability
9. Age and/or lack of maturity
10. 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.

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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 may be a relevant consideration. For example:
 - where an offender exacerbates the mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to seek or follow medical advice this may increase responsibility. In considering the extent to which the offender's behaviour was 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 relevant.
- The degree to which the mental disorder was undiagnosed and/or untreated may be a relevant consideration. For example:
 - where an offender has sought help but not received appropriate treatment this may 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>Starting Point 24 years' custody</p> <p>Category Range 15 - 40 years' custody</p>	<p>Starting Point 15 years' custody</p> <p>Category Range 10 - 25 years' custody</p>	<p>Starting Point 7 years' custody</p> <p>Category Range 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

1. 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)
2. Offence committed whilst on bail
3. 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:

1. History of violence or abuse towards victim by offender
2. Involvement of other(s) through coercion, intimidation or exploitation
3. Significant mental or physical suffering caused to the deceased

4. Victim particularly vulnerable due to age or disability
5. Victim was providing a public service or performing a public duty at the time of the offence
6. 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).
7. A significant degree of planning or premeditation
8. Offence involved use of a weapon
9. Other(s) put at risk of harm by the offending
10. Actions after the event (including but not limited to attempts to cover up/ conceal evidence)
11. Concealment, destruction, defilement or dismemberment of the body.
12. Blame wrongly placed on other(s)
13. Offence committed on licence or post sentence supervision or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

1. No previous convictions **or** no relevant/recent convictions
2. Remorse
3. Intention to cause serious bodily harm rather than to kill
4. History of significant violence or abuse towards the offender by the victim
5. Lack of premeditation
6. The offender acted in self-defence or in fear of violence (where not amounting to a defence)
7. The offender made genuine and sustained attempts to seek help for the mental disorder
8. Belief by the offender that the killing was an act of mercy
9. Good character and/or exemplary conduct
10. Serious medical conditions requiring urgent, intensive or long-term treatment
11. Age and/or lack of maturity
12. 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 limitation 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 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 (with or without a restriction order under s.41) the most suitable disposal. The court should explain why a penal element is not appropriate.

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.

Aggravating factors

UA	GNM	LC	DR
1. History of violence or abuse towards victim by offender	1. History of violence or abuse towards victim by offender	1. History of violence or abuse towards victim by offender	1. History of violence or abuse towards victim by offender
2. Involvement of others through coercion, intimidation or exploitation	2. Involvement of others through coercion, intimidation or exploitation	2. Involvement of others through coercion, intimidation or exploitation	2. Involvement of others through coercion, intimidation or exploitation
3. Significant mental or physical suffering caused to the deceased	3. Significant mental or physical suffering caused to the deceased	3. Significant mental or physical suffering caused to the deceased	3. Significant mental or physical suffering caused to the deceased
4. Victim particularly vulnerable due to age or disability			4. Victim particularly vulnerable due to age or disability
	4. Offender ignored previous warnings		
5. Victim was providing a public service or performing a public duty at the time of the offence		4. Victim was providing a public service or performing a public duty at the time of the offence	5. Victim was providing a public service or performing a public duty at the time of the offence
6. Commission of offence whilst under the influence of alcohol or drugs	5. Commission of offence whilst under the influence of alcohol or drugs	5. Commission of offence whilst under the influence of alcohol or drugs	6. Commission of offence whilst under the influence of alcohol or drugs
7. Persistence of violence		6. Persistence of violence	
			7. A significant degree of planning or premeditation
8. Offence involved use of a weapon	6. Offence involved use of a weapon	7. Offence involved use of a weapon	8. Offence involved use of a weapon

9. Other(s) put at risk of harm by the offending	7. Other(s) put at risk of harm by the offending	8. Other(s) put at risk of harm by the offending	9. Other(s) put at risk of harm by the offending
10. Leading role in group or gang			
11. Death occurred in the context of an offence which was planned or premeditated			
12. Offence committed in the presence of children			
13. Actions after the event (including but not limited to attempts to cover up/ conceal evidence)	8. Actions after the event (including but not limited to attempts to cover up/ conceal evidence)	9. Actions after the event (including but not limited to attempts to cover up/ conceal evidence)	10. Actions after the event (including but not limited to attempts to cover up/ conceal evidence)
			11. Concealment, destruction, defilement or dismemberment of the body.
14. Blame wrongly placed on other(s)	9. Investigation has been hindered and/or other(s) have suffered as a result of being falsely blamed by the offender		12. Blame wrongly placed on other(s)
15. Abuse of a position of trust	10. The duty of care arose from a close personal or familial relationship where the deceased was dependent on the offender		

16. Offence committed on licence or post sentence supervision or while subject to court order(s)	11. Offence committed on licence or post sentence supervision or while subject to court order(s)	10. Offence committed on licence or post sentence supervision or while subject to court order(s)	13. Offence committed on licence or post sentence supervision or while subject to court order(s)
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Mitigating factors

UA	GNM	LC	DR
1. No previous convictions or no relevant/recent convictions	1. No previous convictions or no relevant/recent convictions	1. No previous convictions or no relevant/recent convictions	1. No previous convictions or no relevant/recent convictions
2. Remorse	2. Remorse	2. Remorse	2. Remorse
3. Attempts to assist the victim	3. Attempts to assist the victim	3. Intention to cause serious bodily harm rather than to kill	3. Intention to cause serious bodily harm rather than to kill
4. History of significant violence or abuse towards the offender by the victim		4. History of significant violence or abuse towards the offender by the victim	4. History of significant violence or abuse towards the offender by the victim
5. Lack of premeditation			5. Lack of premeditation
		5. Violence initiated by the victim	6. The offender acted in self-defence or in fear of violence (where not amounting to a defence)
			7. The offender made genuine and sustained attempts to seek help for the mental disorder

			8. Belief by the offender that the killing was an act of mercy
	4. Self-reporting and/or co-operation with the investigation		
	5. For reasons outside the offender's control, the offender lacked the necessary expertise, equipment, support or training which contributed to the negligent conduct		
	6. For reasons outside the offender's control, the offender was subject to stress or pressure (including from competing or complex demands) which related to and contributed to the negligent conduct		
	7. For reasons outside the offender's control the negligent conduct occurred in circumstances where there was reduced scope for exercising usual care and competence		
	8. The negligent conduct was compounded by the actions or omissions of others		

	outside of the offender's control		
6. Good character and/or exemplary conduct	9. Good character and/or exemplary conduct	6. Good character and/or exemplary conduct	9. Good character and/or exemplary conduct
7. Serious medical conditions requiring urgent, intensive or long-term treatment	10. Serious medical conditions requiring urgent, intensive or long-term treatment	7. Serious medical conditions requiring urgent, intensive or long-term treatment	10. Serious medical conditions requiring urgent, intensive or long-term treatment
8. Mental disorder, learning disability	11. Mental disorder, learning disability	8. Mental disorder, learning disability	
9. Age and/or lack of maturity	12. Age and/or lack of maturity	9. Age and/or lack of maturity	11. Age and/or lack of maturity
10. Sole or primary carer for dependent relatives	13. Sole or primary carer for dependent relatives	10. Sole or primary carer for dependent relatives	12. Sole or primary carer for dependent relatives

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