



House of Commons  
Justice Committee

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# Draft Sentencing Council guidelines on manslaughter

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**Fourth Report of Session 2017–19**

*Report, together with formal minutes  
relating to the report*

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## Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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# Report

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## The Sentencing Council

1. The Sentencing Council for England and Wales is an independent non-departmental body of the Ministry of Justice, set up to promote greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary. Its primary role is to issue guidelines on sentencing, which the courts must follow unless it is in the interests of justice not to do so. The Council also assesses the impact of guidelines on sentencing practice and promotes public awareness of sentencing practice in the magistrates' courts and the Crown Court.
2. Under section 120 of the Coroners and Justice Act 2009, the Council is required to publish sentencing guidelines in draft before they are finalised. Section 120(6) of the 2009 Act lists the Justice Committee as a statutory consultee on draft guidelines. The Council must also consult the Lord Chancellor and any person that the Lord Chancellor directs should be consulted, together with such other persons as the Council considers appropriate. In setting guidelines, the Council is required to have regard to a number of factors, including the sentences imposed by courts in England and Wales for particular offences and the need to promote consistency in sentencing.<sup>1</sup>

## Our response to the current consultation

3. In this Report we comment on a set of four draft guidelines on manslaughter offences published for public consultation by the Sentencing Council on 4 July 2017. These are the guidelines on:
  - Unlawful act manslaughter
  - Gross negligence manslaughter
  - Manslaughter by reason of loss of control
  - Manslaughter by reason of diminished responsibility

There is an existing guideline for manslaughter by reason of provocation that was issued by the Sentencing Guidelines Council, the Sentencing Council's predecessor body;<sup>2</sup> however, this is now out of date as a result of legislative changes to partial defences to murder.<sup>3</sup>

4. The Council's decision to produce these draft guidelines<sup>4</sup> was prompted by a request from the then Lord Chancellor to develop a guideline for so-called "one punch" manslaughter cases,<sup>5</sup> in response to public concern about the sentencing in some cases of this type. In response, the Council decided to produce guidelines for all types of manslaughter cases. Its aim throughout this process has been to ensure that sentences are

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1 [Section 120 \(11\) \(a\) and \(b\) of the Coroners and Justice Act 2009](#)

2 [Manslaughter by reason of provocation - definitive guideline. Sentencing Guidelines Council, 2005](#)

3 [Section 54 and 55 Coroners and Justice Act 2009](#)

4 [Sentencing of manslaughter: consultation](#). The Sentencing Council, July 2017.

5 "One punch" manslaughter is exemplified by [the 2016 case of Richard Eveleigh](#) (unreported), who fell out with his best friend after a football match; Mr Eveleigh's single punch to his friend's face caused him to fall backwards, striking his head on the ground. The friend later died of his injury.

proportionate to the offence committed and in relation to other offences.<sup>6</sup> The Council has also intended to encourage consistency of sentencing and notes that “in the vast majority of cases [the new guidelines] will not change sentencing practice overall.”<sup>7</sup>

5. We welcome the clarity with which the Sentencing Council has explained the structure of these guidelines and its rationale for the approach taken. We are pleased to have an opportunity of commenting on the guidelines and are grateful to the Council for the efforts it has made to liaise with us and for agreeing to consider our report, although it is published after the consultation deadline (10 October 2017). As it has done on previous occasions, the Council has shared its consultation responses with us; accordingly, we decided that it was not necessary for us to seek separate evidence, either formally or informally. Drawing on responses already submitted to the Council also means that we avoid imposing duplication of effort on the part of consultees. The Appendix to our Report has been produced for us by the Council to summarise its proposals and the consultation responses received; once again, we are grateful for this assistance.

6. In the light of the resources available to us and the Council’s own timetable for finalising the guidelines, our Report does not aim to provide a comprehensive response to each of the consultation questions. We have instead focused on particular themes where we felt that our observations could contribute most usefully to the discussion.

## Resource impact

7. The Sentencing Council has a statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for prison places, probation services and youth justice services. A consultation stage resource assessment was published alongside the draft manslaughter guidelines. Drawing on the Court Proceedings Database, the assessment identifies a decline in number of offenders sentenced for manslaughter over the past decade from 210 (in 2006) to 160 (in 2016). Although this database does not provide a breakdown of the different types of manslaughter, the Council’s own analysis of sentencing transcripts from 2014, together with a sample of transcripts from 2013 and 2015, indicates that unlawful act manslaughter was the most common type (68% of offenders), followed by diminished responsibility (15%), gross negligence (10%) and loss of control (1%).

8. As noted above, the aim of the new guidelines is to encourage consistency of sentencing, while maintaining current sentencing practice for the majority of cases. The Council’s analysis of sentencing transcripts suggests that average determinate custodial sentences, prior to guilty plea reductions, were as follows:

- Unlawful act manslaughter–9 years
- Gross negligence manslaughter–5 years
- Manslaughter by reason of loss of control–10 years
- Manslaughter by reason of diminished responsibility–14 years

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6 Consultation paper, page 9

7 [Consultation Stage Resource Assessment](#), paragraph 4.2

9. In its resource assessment, the Council explains that there is a lack of data on the seriousness of current cases.<sup>8</sup> This, together with the low numbers of convictions for certain types of manslaughter, has made it difficult for the Council to provide accurate estimates of the guidelines' potential impact on prison and probation resources. The resource assessment has therefore made assumptions about how current cases would be categorised under the new guidelines, explaining that these assumptions are "subject to a large degree of uncertainty".<sup>9</sup> Based on these assumptions, the impact of each of the new guidelines is expected to be as follows:

- **Unlawful act manslaughter:** the proposed sentencing ranges for unlawful act manslaughter—the most common of the manslaughter offences—have been set with current practice in mind, so the new guideline is not expected to have any impact on resources.
- **Gross negligence manslaughter:** while the broad aim is to maintain current sentencing practice, the Council has concluded that it would be appropriate to increase sentences for the (infrequent) cases where an employer has had a "long-standing disregard" for employees' health and safety, motivated by cost-cutting. This is anticipated to lead to longer immediate custodial sentences in such cases.
- **Manslaughter by reason of loss of control:** the general aim is to maintain current sentencing practice. However, the Council proposes to increase the starting point for sentencing cases in the highest level of culpability to 14 years, from 12 years under the current guideline. The reasons for doing this have not been expressly stated, although we note that 14 years is closer to the middle of the category range (10 to 20 years' custody).
- **Manslaughter by reason of diminished responsibility:** while the overall aim is to maintain current sentencing practice, the draft guideline is designed to encourage greater use of so-called 'hybrid' orders, whereby an offender is moved to prison once treatment in a mental hospital is no longer needed. The Council explains in its consultation stage resource assessment that it has not been possible to identify with any certainty the proportion of offenders currently given hybrid orders, nor to calculate the impact on prison resources of more offenders spending part of their sentence in prison.<sup>10</sup>

The resource assessment also explains that the Council intends to conduct further research during the consultation stage, with the aim of then providing a clearer estimate of impact for the final resource assessment that will accompany the definitive guidelines. This will include further interviews with sentencers as part of the consultation process, in addition to the interviews already conducted with 71 judges during the development of the draft guidelines.

**10. We are concerned about the impact of potentially higher sentences for gross negligence manslaughter and manslaughter by reason of loss of control. While we appreciate that the Council faces significant challenges in estimating the impact of these guidelines on sentencing practice, we consider it important to understand and**

8 Paragraph 5.5, Consultation stage resource assessment

9 Paragraph 5.1, Consultation stage resource assessment

10 Paragraph 6.16, Consultation stage resource assessment

**quantify any consequential increase in correctional resources as early and as accurately as possible, to allow the Ministry of Justice to factor this into planning the custodial estate. We welcome the Council's intention to carry out further work to determine the likely impact of the new guidelines, including through further interviews with sentencers. *However, we recommend that the Council go further by quantifying the impact on correctional resources and that this estimate be published as part of the final resource assessment.***

## **Offenders with mental health problems and learning disabilities**

11. The draft guidelines for unlawful act manslaughter and gross negligence manslaughter include as a low culpability factor: “the offender’s responsibility was substantially reduced by mental disorder, learning disability or lack of maturity”. However, this is qualified by a statement that: “[l]ittle, 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.” Similarly, the draft guideline for manslaughter by reason of diminished responsibility requires sentencers to consider whether an offender has exacerbated their mental disorder by voluntarily abusing drugs or alcohol or voluntarily failing to follow medical advice. The consultation stage documents do not give the rationale for including this qualification; it does not appear to be a feature of other sentencing guidelines.

12. Some respondents stated that they were broadly content with the culpability factors, although without making specific comment on this qualification.<sup>11</sup> Others questioned its inclusion. The Ministry of Justice had some concerns about how links between mental health and alcohol/drug misuse are referred to in relation to culpability, observing that “[t]he interaction between mental health and substance misuse is often complex and varies considerably depending on individual circumstances, which must be taken into account.” The Prison Reform Trust pointed out that individuals with mental health problems may self-medicate by using drugs and alcohol. Drawing from its own experiences, the Criminal Law Solicitors’ Association suggested that a high proportion of mental disorders are linked to alcohol or drug misuse, often involving chaotic lifestyles that may lead to offenders missing appointments or not following medical advice. London Criminal Courts Solicitors Association thought that it was “difficult to think of many situations where mentally disordered people *genuinely* take drugs voluntarily”. In its Summary (see Appendix), the Council acknowledges these points, stating that careful consideration will be given to them to avoid the guidelines having unintended consequences.

13. **We note that in the draft guidelines there is a qualification to the lower culpability factor normally applying to an offender whose responsibility is reduced by mental disorder, where the offender voluntarily abuses drugs or alcohol or fails to follow medical advice. We acknowledge that the intention may have been to avoid an undue reduction in culpability in cases where an offender may have contributed to their own mental disorder. However, taking into account the interaction between mental health issues and alcohol/drugs abuse, described by the Ministry of Justice as “complex”, we are not convinced of the justification for qualifying the lower culpability of offenders with a mental disorder in such cases. *We recommend that this qualification be deleted from the guidelines.***

## Secondary liability

14. The Criminal Bar Association (CBA) notes that the draft guideline for unlawful act manslaughter appears to apply only to a sole or principal offender, and does not provide express guidance on sentencing a person with secondary liability<sup>12</sup> for the offence; according to the CBA, this could be presumed to be a factor reducing seriousness. As the CBA points out, in the 2016 case of *R v Jogee*<sup>13</sup> the Supreme Court restated the principles relating to secondary liability, ruling that a secondary defendant must *intend* to assist or encourage the principal defendant's crime, rather than having mere foresight that the crime might be committed. However, the Supreme Court accepted that this intention could be 'conditional'—that is, if the crime in question was within the scope of the plan that was agreed between the two defendants, should the occasion arise.<sup>14</sup> The Court also recognised that a secondary defendant would be guilty of manslaughter if they encouraged or assisted in an unlawful act that a reasonable person would realise carried the risk of some harm (not necessarily serious) to another, and death in fact results from the unlawful act.<sup>15</sup> This judgment effectively brought to an end the controversial doctrine of "joint enterprise", a form of secondary liability that had been criticised as unfair and unclear.<sup>16</sup>

15. The operation of the law relating to joint enterprise was the subject of two reports by the previous Justice Committee and secondary liability continues to be a matter of some interest to us.<sup>17</sup> We recently wrote to the Director of Public Prosecutions<sup>18</sup> about her draft guidance for prosecutors in secondary liability cases, raising some concerns about the clarity of the guidance and drawing her attention to the findings of the Lammy Review on the disproportionate impact of "joint enterprise" prosecutions on Black and Minority Ethnic (BAME) communities, particularly on individuals who are associated with gangs. We are also aware that the Lammy Review called for "more subtle scrutiny of sentencing decisions, to ensure that many finely balanced judgements do not add up to disproportionate sentencing of BAME defendants over time."<sup>19</sup>

**16. We consider it important that the manslaughter guidelines, particularly for unlawful act manslaughter, clarify the extent to which secondary liability cases carry a lesser culpability than the primary offence. It may also be helpful for the guidelines to distinguish between conditional and unconditional intent. We recommend that the draft guidelines be expanded to include guidance on sentencing offenders with secondary liability for unlawful act manslaughter.**

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12 A person may have secondary liability for a criminal offence if they provide assistance or encouragement to the principal offender, that is the individual who actually carries out the offence.

13 [R v Jogee \[2016\] UKSC 8](#); this case considered the common law principle of joint enterprise, a form of secondary liability (see Footnote 16 below).

14 *Ibid*, paragraph 93

15 *Ibid*, paragraph 96

16 Under the doctrine of joint enterprise, otherwise known as "parasitic accessory liability", a person who agrees to commit a crime with another (the principal offender) becomes liable for all criminal acts committed by the principal offender in the course of their joint criminal venture, even if they had merely foreseen, rather than intended, that the principal would act as they did.

17 House of Commons Justice Committee: [Eleventh Report of Session 2010–12 \(January 2012\)](#), [Fourth report of session 2014 – 2015 \(December 2014\)](#)

18 [Letter from Bob Neill MP, Chair of the Justice Committee, to the Director of Public Prosecutions, 26 October 2019](#)

19 [Chapter 4 of the Final report of the Lammy Review of the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System. September 2017](#)

## Sentence ranges for unlawful act manslaughter

17. Some respondents supported the sentence ranges in the draft guideline for unlawful act manslaughter. For example, the Council of HM Circuit Judges described them as “sensible” and thought that they “broadly reflect sentencing practice.” On the other hand, the Howard League for Penal Reform thought that the starting points were too high and that they could lead to sentence inflation. For offences in the lowest range of culpability—for example, where the unlawful act was in self-defence or the defence of others, or there was no intention to cause any harm and no obvious risk of causing more than minor harm, or where the offender played only a minor role—the Law Society questioned the proposed range of one to four years’ imprisonment, with a starting point of two years. The Society considered it important that “the guideline ... give judges a clear message that, in low culpability cases with powerful mitigation,<sup>20</sup> a non-custodial sentence is not to be regarded as ‘exceptional.’” We note that Suspended Sentence Orders are only possible for custodial sentences of two years or less.

18. **We concur with the view that sentencers should understand that they retain discretion, where there is strong mitigation, to impose non-custodial sentences for unlawful act manslaughter at the lowest level of culpability. We recommend that the guideline state this expressly.**

## Gross negligence manslaughter

19. Some respondents to the Council’s consultation expressed concern about the proposed culpability factors for cases of gross negligence manslaughter. It was suggested<sup>21</sup> that too many workplace cases would be assessed as high culpability, because the factors “negligent conduct persisted over a long period of time” and “offender was clearly aware of the risk of death arising from the offender’s negligent conduct” were likely to apply in most workplace situations. Kennedys Solicitors thought that it “would be wrong in the context of a workplace incident ... that someone who believes that they are acting diligently in their job but who may through omission be grossly negligent should face a starting point of eight years’ custody.” Thompsons Solicitors, who have experience of defending gross negligence manslaughter cases brought against employees, argued that “all too often” it was more junior workers on the front line who are prosecuted for the failings of employers. Some suggestions were made for additional mitigating factors<sup>22</sup> including lack of proper training, following internal guidance, and taking advice from a senior colleague.

20. Those representing the views of medical practitioners expressed fears that the proposed high culpability factors for gross negligence manslaughter could lead to an increase in sentences for doctors. A joint submission from a group of doctors noted that there are circumstances where clinical decisions can be finely balanced, “since both interventions and failure to intervene can result in loss of life.” They pointed out that various factors—including complex and competing tasks, distraction and fatigue—can make “systems

20 Proposed mitigation factors include remorse; history of significant violence or abuse towards the offender by the victim; lack of premeditation; good character and/or exemplary conduct; serious medical conditions requiring urgent, intensive or long-term treatment; age and/or lack of maturity; sole or primary carer for dependant relative.

21 Health and Safety Lawyers Association; Kennedys Solicitors.

22 Including by the Law Society and Unison

prone to error”, and argued that such factors should be taken into consideration. Similar concerns were raised by the British Medical Association, which suggested that “the unique vulnerability of a doctor’s position should be given sufficient weight at sentencing.”

**21. We conclude that there is a risk of the high culpability factors proposed for gross negligence manslaughter leading to inappropriately long custodial sentences, especially in relation to clinical decisions taken by medical practitioners in testing circumstances, and situations where junior employees have little control in their workplace environment. We recommend that the Council reconsider the high culpability factors for gross negligence manslaughter, taking account of these concerns.**

### **“Blame wrongly placed on others”**

22. Several respondents<sup>23</sup> argued against the inclusion of “blame wrongly placed on others” as an aggravating factor in cases of gross negligence manslaughter. It was pointed out that a common defence was that the individual relied on others and that his or her failing did not amount to gross negligence; even if a jury rejects this defence, it would be wrong for the person to be punished more harshly for having sought to rely on it. Pinsent Masons LLP explained:

This is not necessarily an attempt to shift blame to an innocent party but in the context of a workplace fatality simply reflects that such incidents are rarely the consequence of one person’s actions and that there will be a series of complex relationships between individuals and organisations.

**23. We conclude that it would be inappropriate to include “blame wrongly placed on others” as an aggravating factor in gross negligence manslaughter, without further explanation to avoid sentencers penalising offenders who have sought to defend themselves at trial by reasonably highlighting the role played by others. We recommend that the Council revise the guideline accordingly.**

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23 Health and Safety Lawyers Association, Pinsent Masons LLP, Kennedys.

## Conclusions and recommendations

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1. We are concerned about the impact of potentially higher sentences for gross negligence manslaughter and manslaughter by reason of loss of control. While we appreciate that the Council faces significant challenges in estimating the impact of these guidelines on sentencing practice, we consider it important to understand and quantify any consequential increase in correctional resources as early and as accurately as possible, to allow the Ministry of Justice to factor this into planning the custodial estate. We welcome the Council's intention to carry out further work to determine the likely impact of the new guidelines, including through further interviews with sentencers. *However, we recommend that the Council go further by quantifying the impact on correctional resources and that this estimate be published as part of the final resource assessment.* (Paragraph 10)
2. We note that in the draft guidelines there is a qualification to the lower culpability factor normally applying to an offender whose responsibility is reduced by mental disorder, where the offender voluntarily abuses drugs or alcohol or fails to follow medical advice. We acknowledge that the intention may have been to avoid an undue reduction in culpability in cases where an offender may have contributed to their own mental disorder. However, taking into account the interaction between mental health issues and alcohol/drugs abuse, described by the Ministry of Justice as "complex", we are not convinced of the justification for qualifying the lower culpability of offenders with a mental disorder in such cases. *We recommend that this qualification be deleted from the guidelines.* (Paragraph 13)
3. We consider it important that the manslaughter guidelines, particularly for unlawful act manslaughter, clarify the extent to which secondary liability cases carry a lesser culpability than the primary offence. It may also be helpful for the guidelines to distinguish between conditional and unconditional intent. *We recommend that the draft guidelines be expanded to include guidance on sentencing offenders with secondary liability for unlawful act manslaughter.* (Paragraph 16)
4. We concur with the view that sentencers should understand that they retain discretion, where there is strong mitigation, to impose non-custodial sentences for unlawful act manslaughter at the lowest level of culpability. *We recommend that the guideline state this expressly.* (Paragraph 18)
5. We conclude that there is a risk of the high culpability factors proposed for gross negligence manslaughter leading to inappropriately long custodial sentences, especially in relation to clinical decisions taken by medical practitioners in testing circumstances, and situations where junior employees have little control in their workplace environment. *We recommend that the Council reconsider the high culpability factors for gross negligence manslaughter, taking account of these concerns.* (Paragraph 21)
6. We conclude that it would be inappropriate to include "blame wrongly placed on others" as an aggravating factor in gross negligence manslaughter, without further explanation to avoid sentencers penalising offenders who have sought to defend themselves at trial by reasonably highlighting the role played by others. *We recommend that the Council revise the guideline accordingly.* (Paragraph 23)

# Appendix: Manslaughter Guideline: Note by the Sentencing Council

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## Summary of consultation and responses

The consultation ran from 6 July 2017 to 12 October 2017, but several key respondents have been given extensions and so we expect the final responses by 3 November 2017.

In addition to the consultation the Council has carried out research with judges to test the effectiveness of the guidelines and the likely effect on sentence severity. The results of this research are still being analysed.

## Background

In May 2014, the Sentencing Council was asked by the then Lord Chancellor to develop a guideline for so called ‘one punch’ manslaughter following public concern about the sentences in some high profile cases. The Council considered that it should look at manslaughter offences in the round and undertook to do so when time and resources allowed. There is an existing guideline for manslaughter by reason of provocation issued by the Council’s predecessor body the Sentencing Guidelines Council (SGC) which is now out of date following legislative changes to the partial defences to murder<sup>24</sup> but there are no existing guidelines for any other forms of manslaughter.

There are four draft guidelines as follows:

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

## 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.

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<sup>24</sup> ss. 54 and 55 Coroners and Justice Act 2009 introduced the partial defence to murder of loss of control applicable to offences committed on or after 4 October 2010 which replaces provocation.

According to an analysis of sentencing transcripts<sup>25</sup> 107 offenders were sentenced for unlawful act manslaughter in 2014. Two of these were sentenced to life imprisonment (with minimum terms of seven and a half and 13 years), one was made subject to a hospital order and the remainder were sentenced to determinate custodial terms ranging from two to 24 years. The median custodial sentence length was eight years and six months.<sup>26</sup>

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

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

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

Murder will be reduced to **manslaughter by reason of loss of control** if the defence set out in sections 54 and 55 of the Coroners and Justice Act 2009<sup>27</sup> applies. In summary: if the actions of an offender who would otherwise be guilty of murder resulted from a loss of self-control arising from a fear of serious violence and/or arising from a thing said or done that constituted circumstances of an extremely grave character and caused the offender to have a justifiable sense of being wronged, and a person of the offender's age and sex with a normal degree of tolerance and self-restraint might have reacted in the same way, the offender will be guilty of manslaughter.

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

Murder will be reduced to **manslaughter by reason of diminished responsibility** if the defence set out in section 2 of the Homicide Act 1957<sup>28</sup> (as amended by the Coroners and Justice Act 2009) is proved. In summary: if an offender who would otherwise be guilty of murder was suffering from an abnormality of mental functioning which arose from a recognised mental condition and this substantially impaired his ability to understand the nature of his conduct, to form a rational judgement or to exercise self-control he will be guilty of manslaughter.

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

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

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

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

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

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

### **Summary of responses as at 27 October 2017**

The consultation asks specific questions about the approach taken in each of the four guidelines and invites comment on the application of the guideline to case studies. There is a final question which invites general comments on the guidelines.

Responses have been received from:

Category	Total	Organisations	Individuals
Academics	2	0	2
Defence lawyers (practising in H&S)	8	6	2
Government	1		
Judiciary	4	1	3
Legal professional associations (predominately from a defence perspective)	6	6	
Medical unions	4	4	
NGOs	3	3	
Trade unions	4	4	
Victims	3	2	1
Misc / anon	3		3
Totals	37	26	11

### **Unlawful act manslaughter**

Seven respondents answered the questions on this guideline and a further five made general comments relating to unlawful act manslaughter.

The responses were generally supportive of the proposals, although there were criticisms/comments including on:

1) The assessment of culpability for offenders with mental health issues – the guideline seeks to restrict the extent to which a mental disorder can limit an offender’s culpability where it is exacerbated by voluntarily abusing drugs or alcohol. Some respondents have challenged this, expressing concerns as to the difficulty in disentangling the interrelationship between mental health disorders and drug and alcohol abuse for many offenders. This is an issue that the Council will consider carefully post-consultation in relation to all of the guidelines.

- 2) The operation of the guideline for those convicted of manslaughter as secondary parties where the principal is convicted of murder. This is something that the Council had considered in developing the guideline, but at least one key stakeholder (the CBA) has questioned whether the guideline would be straightforward to apply in such situations.
- 3) Sentence inflation – some respondents think that the guideline would lead to higher sentences. This is something that the Council will give careful consideration to in the light of the consultation responses and the findings from its research with judges.
- 4) Whether the assessment of culpability takes into account the extent to which an offender may be coerced into committing the offence.
- 5) Whether the actions of the victim are taken into account sufficiently (to reduce culpability).

This is the guideline with the highest volume of offences and the Council will consider all the consultation responses and the research findings to ensure that it works effectively across the range of situations where it applies.

### ***Gross negligence manslaughter***

There were 27 responses which directly addressed this guideline. The issues arising include:

- 1) Lawyers who defend in cases of workplace deaths were concerned that several of the culpability factors as drafted would frequently lead to those convicted of manslaughter in the workplace being placed in high culpability and facing sentences of eight years' custody – which would represent a significant increase on current sentencing practice.
- 2) Those representing medical practitioners also expressed concerns that the guideline would inflate sentences for doctors (and other medical professionals) convicted of manslaughter. They consider that the guideline should take account of the unique risks associated with medical cases.
- 3) Those representing workers generally support the approach taken by the guideline, some suggest the addition of factors to reduce culpability for employees in junior positions who lack control of the situation and are prosecuted for manslaughter in the workplace.
- 4) Some respondents felt that the sentence levels were generally too high, while others could see no reason why there would be a discrepancy between sentence levels for unlawful act and gross negligence manslaughter.
- 5) Some respondents made points that relate more to policies around decisions to prosecute than to sentencing.
- 6) Judicial responses to the guideline were generally supportive.
- 7) The Council will give careful consideration to the points made to ensure that the guideline does not have any unintended consequences.

### ***Loss of control***

There were seven responses which specifically address this guideline, most were generally supportive. The issues raised include:

- 1) One academic response queries whether the guideline would work fairly in the case of a victim of abuse who loses control and kills the abuser. This is an issue that the Council considered in developing the guideline and so will look again post consultation at whether the guideline is operating as intended.
- 2) Some questioned whether the culpability factors would be easy to use in practice.
- 3) Some felt the sentence levels were too high.
- 4) The Council will look at the consultation responses and research findings to determine whether some of the factors can be made clearer and to check that the guideline does not inflate sentences.

### ***Diminished Responsibility***

There were eight responses which address this guideline. Most were generally supportive. The issues raised include:

- 1) The complex relationship between mental health disorders and drug and alcohol use were raised by some respondents (across all guidelines).
- 2) One respondent representing families of victims of manslaughter queried the use of mental health disposals.
- 3) Some noted that the very wide sentence ranges for this offence and the degree of flexibility built into the guideline would militate against consistency and one response queried the usefulness of having a guideline for this offence.
- 4) Some useful technical points were made by some respondents regarding the interaction of psychiatric reports with the sentencing process.

The Council will consider the consultation responses and research findings and work with stakeholders to ensure that the treatment of mental disorders in this guideline (and the other guidelines) gives a fair assessment of culpability and assists courts in arriving at a sentence that achieves the right balance between treatment, punishment and the protection of the public.

# Formal Minutes

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**Tuesday 19 December 2017**

Members present:

Robert Neill, in the Chair

Ruth Cadbury	Gavin Newlands
Alex Chalk	Laura Pidcock
Bambos Charalambous	Victoria Prentis
Mr David Hanson	Ellie Reeves
John Howell	

Draft Sentencing Council guidelines on manslaughter

Draft Report (*Draft Sentencing Council guidelines on manslaughter*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 23 read and agreed to.

A Paper was appended to the Report.

*Resolved*, That the Report be the Fourth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

The draft Report was agreed to; the Formal Minutes relating to the consideration of the Report are published with the First Report of the Committee, HC 658.

[Adjourned till Wednesday 10 January at 9.30am

## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2017–19

First Report	Disclosure of youth criminal records	HC 416
Second Report	Draft Sentencing Council guidelines on intimidatory offences and domestic abuse	HC 417
Third Report	Pre-legislative scrutiny: draft personal injury discount rate legislation	HC 374
First Special Report	The implications of Brexit for the Crown Dependencies: Government Response to the Committee's Tenth Report of Session 2016–17	HC 423
Second Special Report	Government Responses to the Committee's Reports of Session 2016–17 on (a) Prison reform: governor empowerment and prison performance (b) Prison reform: Part 1 of the Prisons and Courts Bill	HC 491
Third Special Report	The implications of Brexit for the justice system: Government Response to the Committee's Ninth Report of Session 2016–17	HC 651