

Section one: Overarching issues and the context of the guidelines

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.

According to an analysis of sentencing transcripts³ 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.⁴

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.

³ 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.

⁴ 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).

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 2009⁵ 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 1957⁶ (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.

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.

Applicability of guidelines

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this draft guideline. Following consultation, when a definitive guideline is produced it will apply to all offenders aged 18 and older, who are sentenced on or after [date to be confirmed], regardless of the date of the offence.

Section 125(1) Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court -

- (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so.”

⁵ <http://www.legislation.gov.uk/ukpga/2009/25/part/2/chapter/1/crossheading/partial-defence-to-murder-loss-of-control>

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

When issued as a definitive guideline this guideline will apply only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Council's definitive guideline, *Overarching Principles – Sentencing Children and Young People*.⁷

The guideline in relation to current practice and existing guidelines

In preparing this draft guideline, the Council has had regard to the purposes of sentencing and to its statutory duties. The Council's aim throughout has been to ensure that all sentences are proportionate to the offence committed and in relation to other offences.

The Council considered statistical data from the Court Proceedings database for the offences covered in the guideline. These data give a reasonably accurate picture of current sentencing levels but there are limitations with the level of detail that can be obtained. To break down the sentences by type of manslaughter and to assist the Council to understand which are the most significant factors taken into account when sentencing manslaughter and the effect these have on the final sentence a qualitative analysis exercise of 129 first instance transcripts of manslaughter sentencing remarks for 2014 covering 157 offenders was undertaken (this is the source of the information on sentence volumes and levels for each type of manslaughter on pages 7 and 8 above). In addition to these sources of data regard was had to relevant case law.

A statistical bulletin setting out information about sentencing levels and trends for manslaughter is published on the Council's website.⁸

Early drafts of an involuntary manslaughter guideline were tested with judges and significant changes were made to improve the clarity of the guidelines as a result.

The Council took note of the fact that sentences for manslaughter have increased since the Court of Appeal decision in *Appleby*.⁹ In relation to so-called 'one punch' manslaughter the Council has adopted a nuanced approach rather than one size fits all. For these offences as with all types of manslaughter, a careful assessment of different levels of culpability will drive the sentencing outcome. The approach that has been taken in developing the draft guidelines aims to regularise practice rather than substantially to alter it other than in the case of the more culpable offences arising from breaches of health and safety where it is anticipated that sentences will rise (see further page 22 below).

7 <http://www.sentencingcouncil.org.uk/publications/item/sentencing-children-and-young-people-definitive-guideline/>

8 <https://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

9 [2009] EWCA Crim 2693 <http://www.bailii.org/ew/cases/EWCA/Crim/2009/2693.html>