



Criminal Law Solicitors' Association

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CLSA Response to the SCG consultation on Manslaughter Offences

The Criminal Law Solicitors' Association is the only national association entirely committed to professionals working in the field of criminal law. The CLSA represents criminal practitioners throughout England and Wales and membership of the Association is open to any solicitor - prosecution or defence - and to legal advisers, qualified or trainee - involved with, or interested in, the practice of criminal law.

Overview

The Criminal Law Solicitors' Association has prepared this response to the above consultation on behalf of its members. The views contained are those of a representative body of criminal practitioners.

Unlawful Act Manslaughter

Question 1 – Do you agree with the proposed approach to the assessment of culpability?

In general terms we agree with the proposed approach.

We submit that the qualification to the culpability factor in relation to mental disorder is unhelpful. In our experience a very high proportion of mental disorders are linked to alcohol or drug misuse. They are also liable to lead chaotic lifestyles which may mean they miss appointments and do not follow medical advice. The way in which the guideline is drafted is such that the factor of mental disorders will so rarely apply that it may as well be deleted altogether.

The focus of this factor should be whether or not the mental disorder is linked to the commission of the offence. The proposed guideline detracts from this central issue by requiring the sentencing judge to consider the satellite issue as to whether the offender also drinks or takes drugs or follows medical advice. An example is case study 4. Did the offender also drink? Even if she regularly drank but not to the point of alcohol abuse, this could exacerbate her depression. Under the proposed guideline a sentencing judge could be distracted into a debate as to whether the offender's depression was exacerbated by her drinking. We submit that the more relevant issue is the extent to which her actions in pushing her mother were linked to her depression.

We submit that the better formulation of this factor is that which is found in other guidelines of "mental disorder where linked to the commission of the offence".

Question 2 – Do you agree with the proposed approach to the assessment of harm?

We agree with the proposed approach to the assessment of harm as all offences of manslaughter will involve a loss of life and it is therefore wrong in principle to distinguish cases on the basis of the level of harm caused. We agree that factors such

as the vulnerability of the victim or the level of suffering caused before death can be factors that increase seriousness within the offence category.

Question 3 – Are there any aggravating or mitigating factors that should be removed or added

We suggest that if the defendant acted with others in group attack, this should be an aggravating feature. As would the fact that death resulted from an incident in a public place and with members of the public present. We suggest “group attack” and “timing and location of offence” be considered as aggravating features.

We question the value of the aggravating feature relating to dishonesty and pursuit of financial gain. In homicide offences it is the level of violence that is most relevant. An underlying intent to dishonesty is less relevant. It is an aggravating feature that a homicide is committed in the course of a robbery but it is the use or threat of violence that is the relevant factor not the dishonesty. In the case of a burglary it is the invasion into the victim’s home. To use the example of case study 3 it is the use of violence in the victim’s home that is the aggravating feature of the burglary not the underlying intent to financial gain. If this offence had been committed for honour based reasons not financial reasons would the offence be less serious?

As regards mitigating features if a defendant has played a subordinate role in a group then this would be a mitigating feature (where not taken into account in setting the category). As with other guidelines whether a defendant has a mental disorder that is not linked to the commission of the offence is a potential mitigating feature at this stage.

Question 4 – Do you have any comments on the sentencing ranges and starting points?

No – we agree with the proposed sentencing ranges and starting points

Question 5 – Do you have any views on the application of the guideline to case 1?

No- this is broadly the sentence we would expect for an offence of this nature at present.

Question 6 – Do you have any views on the application of the guideline to case 2?

No.

Question 7 – Do you have any views on the application of the guideline to case 3?

Please see our comments in answer to question 3 for our views of the relevance of dishonesty and the intention to obtain financial gain. In any event in this case study this factor has been taken into account at step 1 and should not be double counted in step 2.

Question 8 – Do you have any views on the application of the guideline to case 4?

Please see our comments in relation to question 1 in relation to the mental disorder element that is raised by this case study.

Gross Negligence Manslaughter

Question 9 – Do you agree with the proposed approach to the assessment of culpability?

Please see our answer to question 1.

Question 10 – Are there any aggravating or mitigating factors that should be removed or added?

No.

Question 11 – Do you have any comments on the sentencing ranges and starting points?

We note that it is acknowledged in the consultation document that the proposed starting points and ranges could lead to some increase in sentences. We agree as it seems to us that there is a likelihood of a significant proportion of cases falling into category B with a starting point of 8 years which is a substantial increase from the 2014 median average sentence of 4 years. However, we do not disagree in principle with such an increase and we agree with the resource assessment that the number of such cases will be low and so the impact on prison and probation resources will be minimal.

Question 12 – Do you have any views on the application of the guideline to case 5?

As the consultation paper acknowledges, the proposed sentences are likely to reflect an increase on current sentencing practice. Our views in relation to this are stated above in answer to question 11.

Question 13 – Do you have any views on the application of the guideline to case 6?

Please see our comments in relation to question 1 in relation to the mental disorder element that is raised by this case study.

Manslaughter by reason of loss of control

Question 14 – Do you agree with the proposed approach to the assessment of culpability?

We agree.

Question 15 – Are there any aggravating or mitigating factors that should be removed or added?

We repeat our suggestions in answer to question 3 that "group attack" and "timing and location of offence" should be aggravating features.

We also repeat our views as to the merits of dishonesty and the pursuit of financial gain as an aggravating feature.

We also repeat our comments in answer to question 1 regarding the mitigating factor of mental disorder. We suggest that it should be phrased "mental disorder where linked to the commission of the offence".

Question 16 – Do you have any comments on the sentencing ranges and starting points?

No – we agree with the proposed sentencing ranges and starting points

Question 17 – Do you have any views on the application of the guideline to case 7?

No.

Question 18 – Do you have any views on the application of the guideline to case 8?

No.

Manslaughter by reason of diminished responsibility

Question 19 – Do you agree with the proposed approach to the assessment of responsibility?

In general terms we take the view that given a) offences of this nature are so fact sensitive and b) the use of hospital orders are for obvious reasons so prevalent; a guideline for this offence is of little practical use. This is evidenced by the 2014 evidence base. The majority of sentences were hospital orders, and of the 9 that were not those that were not ranged in sentence from 18 months to a life sentence with minimum tariff of 22 years.

The draft guideline gives no guidance as to when or in what general circumstances the level of responsibility retained his high medium or low. This is understandable given the fact sensitive nature of these sentencing exercises but the lack of guidance (and in addition the inclusion of step 5) renders the guideline of limited assistance either to sentencing judges or to those advising an offender as to what to expect in sentence. It is difficult to see how the guideline will achieve any consistency in sentencing.

We take the view that there should be no guideline for this offence

Question 20 – Are there any aggravating or mitigating factors that should be removed or added?

Many of the factors stated are likely to be overtaken by psychiatric assessments of the offender's mental disorder in fixing the correct sentence. As stated above the fact

sensitive nature of these offences considerably reduce the assistance that can be derived from a guideline.

Question 21 – Do you have any comments on the sentencing ranges and starting points?

Please see our answers to questions 19 and 20.

Question 22 – Do you have any comments on steps three, four and five?

Please see our answers to questions 19 and 20. Sentencing judges in these cases will apply these steps already without any prompt to do so from a sentencing guideline.

Question 23 – Do you have any views on the application of the guideline to case 9?

Please see our answers to

Question 24 – Do you have any views on the application of the guideline to case 10?

Please see our answers to questions 19 and 20.

Question 25 – Do you have any other general comments that you wish to make about the draft guidelines?

No