

Prison Reform Trust response to Sentencing Council draft guideline on manslaughter – October 2017

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families.

www.prisonreformtrust.org.uk

Introduction

We welcome the opportunity to submit our views regarding the sentencing guidelines for Manslaughter. Rather than dealing with each category of manslaughter separately, we have chosen to make some broad comments about the general approach of the guidelines.

Lengthening sentences

Our key concern is about lengthening sentences. The number of people convicted of manslaughter has been falling steadily since 2008, with 153 people convicted in 2016, down from 248¹. The proportion of people sentenced by the court to custody has remained broadly stable over the last 10 years, ranging between 88% and 96%, and averaging at 91%.

However, since 2007 the average custodial sentence has nearly doubled, rising from 61.6 months to 113.6 months in 2016. Last year also saw the highest number of life sentences imposed in the last decade, with 11 people given a life sentence.

¹ Ministry of Justice (2017) Criminal justice statistics outcomes by offence tool, Criminal Justice System statistics quarterly: December 2016, London: Ministry of Justice

There has also been strong growth in the use of sentences of 'more than 10 years and less than life', with 44 sentences imposed in 2016 compared with 12 a decade ago.

Basic analysis of the proposed starting points and the approximated distribution of offences within them suggest that these guidelines are following the trend of increasing sentence length, rather than challenging it. We strongly recommend comparisons are made to sentence lengths prior to 2014 and that starting points and ranges in the guideline do not set in concrete a dramatic rise for which there is no obvious justification or policy requirement.

The associated resource assessment for this consultation anticipates no or minimal impact on correctional resources. But by cementing an inflation in sentence length from recent history rather than taking the longer view, the proposed guideline in fact confirms a significant additional resource requirement which no government has been prepared to meet, and which has resulted directly in a dramatic decline in prison conditions. The decline in those conditions, quite apart from putting the government in breach of basic human rights norms, also prevents prisons from meeting one of the core purposes of sentencing, to rehabilitate.

Omission of controlling and coercive behaviour

Within the culpability characteristics of the guidelines, there is no direct reference to control or coercion from another person to commit the offence. The introduction of the offence of coercive and controlling behaviour by section 76 of the Serious Crime Act 2015 distinguishes domestic abuse-related crimes from other offences. The government's guidance on the offence recognises that forcing someone to commit a crime could be part of a pattern of abuse.²

Coercive behaviour from another person could influence the role played by the offender and their circumstances in relation to the offence, and therefore their culpability. The nearest description included in the guidelines is 'in defence of self or others' which appears under lower culpability factors for unlawful act manslaughter. However, this clearly does not fully cover the influence and circumstances of this on a person's culpability. We recommend that controlling and coercive behaviour is taken into consideration in relation to the offender's culpability for the offence.

Individuals with intellectual disabilities can be especially prone to suggestibility and acquiescence in their daily lives. This can increase the risk of a person with intellectual disability being coerced into playing a particular role in relation to the offence, and therefore their culpability. The presence of intellectual disability should be considered a mitigating factor, especially if coercion or controlling behaviours feature in the case against the person.

² Home Office (2015) Controlling or Coercive Behaviour in an Intimate or Family Relationship. Statutory Guidance Framework, London: Home Office

We are encouraged to find that being a 'sole or primary carer for dependent relatives' is included in factors reflecting personal mitigation for all types of manslaughter covered, and 'history of significant violence or abuse towards the offender by the victim' is included in factors reducing seriousness for all expect manslaughter by gross negligence.

However, the guidelines are again lacking any clear and direct reference to controlling or coercive behaviour from another person as a potential mitigating factor when considering sentencing. 'A history of violence or abuse towards the offender by the victim' does not cover circumstances in which a person is coerced to commit an offence which results in harm to a person who is not the perpetrator of the abuse. This is plausible in a number of circumstances – for example if a person is coerced into violent behaviour to a third party which results in unintended death. In relation to manslaughter by gross negligence, a person could be subject to controlling behaviour which prevented them from acting to prevent someone from harm, such as calling an ambulance for someone who had been harmed in a violent or drug related incident.

Sentencing guidance now recognises coercion as a mitigating factor in theft, fraud and drugs offences, but it still needs to be taken into account in wider offences. More detail and recommendations will be available in Prison Reform Trust's forthcoming briefing about domestic abuse as a driver to women's offending in England and Wales. We recommend that these guidelines be extended to include consideration if the offence was the result of controlling or coercive behaviour towards the offender by a third party.

Dual Diagnosis

We have concern about the caveat in the guidance relating to mental disorder as a mitigating factor, which advises 'little, if any, weight should be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice'. This guidance could be reductive and unhelpful when applied to people with dual diagnosis for whom the relationship between their substance misuse and mental health issues is more complex than this suggests. In particular, the use of the word 'voluntary' fails to take into account that many individuals with mental health problems find it hard to access medical advice and maintain contact with mental health services, and may self-medicate by using drugs and alcohol. Mental health conditions may be such that the person is unaware they have such a 'problem'. This should be amended so that it is less dismissive and more considerate of the variety of circumstances this could reflect.

Learning disability and mental disorder

We are pleased to find that learning disability has been explicitly included alongside mental disorder as a factor indicative of lower culpability for unlawful act manslaughter, gross negligence manslaughter and manslaughter by reason of loss of control. We would expect liaison and diversion reports to

have informed pre-sentence reports and for this information to be carefully considered in relation to sentencing.

It would be worthwhile being clear about what is included by the term 'mental disorder', particularly in relation to manslaughter by reason of diminished responsibility under which this guidance does not make specific reference to learning disability.

It should be clear that other conditions such as autism are taken into consideration. Due to the nature of the condition autism, including so-called high functioning autism (Asperger Syndrome), specific guidance on factors that should be taken into account in the assessment of the level of responsibility should be considered, alongside further mitigating or aggravating factors.