

A Sentencing Guideline for Manslaughter (by reason of an Unlawful Act) within the ECSC

Within the ECSC, in the nine member states and territories, the offence of manslaughter (by reason of an unlawful act) is found in both common law and statute.

Applicability of Guideline

In sentencing for this offence, the Chief Justice has issued guidelines¹ and the court must apply the relevant guidelines and sentence accordingly unless to do so would not be in the interests of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guideline must be given when passing sentence.

It is expected that every court will follow the steps below, with each relevant step being identified to the offender in public before the sentence is passed. Starting points and ranges apply to all adult offenders² whether they have pleaded guilty or been convicted after a trial. Credit for a guilty plea is taken into consideration only at Step 3.

Step 1

Consider the level of culpability by finding the starting point by consulting the guideline and the grid below. Then adjust the figure within the range for the aggravating and mitigating factors of the offence.

¹ As at [date of publication]

² For persons below the age of 18, see the **Practice Direction 8D on Sentencing Guidelines no. 4 of 2019**.

Step 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

Step 3

Adjust the figure on assessing discount for any plea of guilty, if applicable.

Step 4

Adjust the figure on assessing totality if sentencing for more than one offence.

Step 5

Give credit for time served on remand.

Step 6

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

CONSTRUCTING THE SENTENCE

STEP 1

Consider the level of culpability by finding the starting point by consulting the guideline and the grid below. Then adjust the figure within the range for the aggravating and mitigating factors of the offence

A case of manslaughter by reason of an unlawful act requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to determine the offence category based on consequence.

The consequence of manslaughter is always the death of the victim.

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

SERIOUSNESS - Level A – Very High

- The extreme character of one or more Level B factors, and /or
- A combination of Level B factors.

SERIOUSNESS - Level B – High

- Death was caused in the course of an unlawful act which involved an intention by the offender to cause harm falling just short of really serious bodily harm.
- Death was caused in the course of an unlawful act which carried a high risk of death or really serious harm which was or ought to have been obvious to the offender.
- Death was caused in the course of committing or escaping from a serious offence in which the offender played more than a minor role.
- Concealment, destruction, defilement or dismemberment of the body (where not separately charged).

SERIOUSNESS - Level C – Medium

- Death was caused in the course of an unlawful act which involved an intention by the offender to cause harm (or recklessness as to whether harm would be caused) that falls between high and lower seriousness at level B and D.
- 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.
- Death was caused in the course of an unlawful act which was in defence of self or others (where not amounting to a defence)

SERIOUSNESS - Level D – Lower

- Death was caused in the course of an unlawful act
 - where there was no intention by the offender to cause any harm and no obvious risk of anything more than minor harm, or
 - in which the offender played a minor role

THIRD STAGE

Having determined the level of responsibility, find the starting point by consulting the grid below, where the sentences are expressed in years, not as percentages of a maximum³.

Consequence	Seriousness - Level A – Very High	Seriousness - Level B - High	Seriousness - Level C - Medium	Seriousness – Level D - Lower
Death of the victim	Starting point 24 years Range 14-30 years	Starting point 18 years Range 10-24 years	Starting point 12 years Range 6-16 years	Starting point 6 years Range non-custodial-9 years

³ In the nine island nations of the ECSC, the maximum sentence for manslaughter by reason an unlawful act is life imprisonment, except on Antigua & Barbuda, where it is 35 years, though this figure still allows for the figures expressed in the grid. Notwithstanding the starting points expressed in years, in appropriate though rare cases the maxima may apply.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- More than one person killed as a result of the offence
- 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
- Involvement of others through coercion, intimidation or exploitation
- Significant mental or physical suffering caused to the deceased
- Victim particularly vulnerable due to age or disability
- History of violence or abuse towards the victim by the offender
- Persistence of violence
- Leading role in group
- Blame wrongly placed on other(s)
- Abuse of a position of trust
- Victim was providing a public service or performing a public duty at the time of the offence
- Offence involved use of a weapon
- Other(s) put at risk of harm by the offending
- Death occurred in the context of an offence which was planned or premeditated
- Offence committed in the presence of children
- Actions after the event (including but not limited to attempts to cover up/conceal evidence)

MITIGATING FACTORS of the offence

- History of significant violence or abuse towards the offender by the victim
- Lack of premeditation as to committing the unlawful act

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for violence offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Physical or mental disability or ill-health
- Steps taken to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁴.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

⁴ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal no.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6.