

Loss of Control Manslaughter

A series of 28 phone and face to face semi structured interviews took place with 23 Crown Court judges and five High Court judges. Eleven of those judges re-sentenced their own manslaughter case or sentenced a scenario (which can be found at the bottom of this page) using the Loss of Control guideline. The research will provide valuable information to support development of the manslaughter guideline. However, there are limitations to the work, and as a result the research findings presented below should be regarded as **indicative** only and not conclusive.

Key Findings

- The road testing found that in cases (own and scenario) where the offender was placed in high culpability (A), this tended to lead to an increased sentence from the actual sentence given in the original case, suggesting a potential risk of increased sentences for high culpability cases. This applied in cases which were found to be high culpability originally, indicating that the increase in sentence is due to a higher starting point in the draft guideline as opposed to the draft guideline raising the culpability.
- Most judges were generally able to easily place offenders in a culpability category. However, the scenario identified an issue with consistency when judges were deciding factors based on provocation, judges were more likely to consider the degree of provocation to be at a medium level as opposed to a very low level of provocation which was anticipated by the team. This may lead to a potential deflation of sentences for these types of cases. Some judges also strongly felt that 'use of a weapon' should be considered at an earlier section of the guideline.
- All judges that expressed a view were happy with the one level of harm in the guideline and felt that this was the right approach.
- Generally, judges were content with the starting points and ranges, and in all but one (own case) of the sentencing exercises, judges used the starting points as described in the guideline.
- The road testing found little consistency between judges for the mitigating and aggravating stage of the guideline. Judges were inconsistent in their application of the factors which led to a varied range of final sentences for the scenario. Generally, when sentencing the scenario all judges had (at least) included 'offence involved use of a weapon' as an aggravating factor and all but a couple of judges had included some degree of mitigation. However, this is where the similarities finished. Other aggravating factors considered by the judges were persistence of violence, history of significant violence or abuse towards victim by offender and significant mental or physical suffering caused to the deceased. Consideration of mitigating factors varied even more: no previous convictions, history of significant violence or abuse towards the offender by the victim was included, good character, remorse and sole or primary carer for dependent relatives were considered by judges.

Scenario

B pleaded guilty to the manslaughter of his estranged wife on the basis of lack of intent. He was tried for murder but convicted of manslaughter and sentenced on the basis of loss of control. He killed her with a kitchen knife in her home. The victim had recently moved out of the family home and B was unable to accept that she wished to be without him. He continued to seek her out and to try to think of reasons why he should be with her, sometimes using her relationships with other members of the family to persuade her spend time with him. Over many years the victim had come to despise B who she considered to be a weak father and a drunk, and she said frequently that she deserved better than him. With a degree of cruelty, she frequently said that he was not a good father, especially when dealing with the grave problems created by the behaviour of their son. On three occasions when they still lived together the victim had confronted B with a knife – but she had not actually used violence towards him. It was after the third of these incidents that she had decided to move out.

On the day before her death, there had been a terrible row in the family home between their sons which B could not cope with, and so he rang the victim in the middle of the night. She came to the house in a very angry state and said some terrible things to B and their son. She made it quite clear to everyone that she had gone for good and wanted nothing more to do with B. B arrived unannounced at her flat the next morning. She was angry with him for failing to warn her that he was coming, but she let him in. B lost his control because of a mixture of factors: the strong and contemptuous language which she used, her statement that he would no longer be able to go out with her and their granddaughter in the future, and the fact that she had, on previous occasions, made as if to harm him with a knife. There was a knife at the scene. It is not clear how the knife ended up in B's hand. He used the knife to inflict ten wounds to her head, chest and neck. Five of those wounds showed the clear determination to cut into or towards the throat. He also plunged the knife into her chest, causing a deep wound. This wound travelled upwards and backwards in the body so that the point of the knife emerged through her shoulder. The judge found that there was intent to kill. He pulled out the knife, washed it and left locking the door behind him. When he got home said to their son "I have killed your mother" and told him to call the Police.