

# [Uk law on voluntary manslaughter](https://assignbuster.com/uk-law-on-voluntary-manslaughter/)

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Jocelyn Ayres \n\n Diminished responsibility. \nThis is one of the three special defences which exist for the defence of murder. It is contained in the Homicide Act of 1957 and is modified by the Coroners and Justice Act 2009. When the defence of diminished responsibility is pleaded successfully it can reduce a murder conviction to manslaughter.\n\nTo use diminished responsibility the defendant must be able to demonstrate one of the following:\n

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1. An abnormality of mental functioning caused by a recognised medical condition. The question of whether the defendant is suffering from the abnormality of a mental functioning is decided by the jury after hearing medial evidence.  The jury don’t have to follow the medical evidence. Some examples of what counts as an abnormality of the mind include Jealousy, Battered woman syndrome, pre-menstrual tension, Epilepsy and chronic depression. An example of this is R v Byrne. The appellant murdered a young girl staying in a hostel, and mutilated the body. He did so as he was suffering from irresistible impulses which he was unable to control. Abnormality of mind was wide enough to cover the minds activities including the ability to exercise will power. He was allowed the defence to reduce the charge to manslaughter. \n \t
2. The abnormality must provide an explanation for defendant’s act or omission in being party to the killings. This follows from the old law which required the abnormality to be caused by an arrested or retarded development of the mind or induced by injury or disease. Alcohol and drugs are not considered unless the abnormality is alcoholism or drug addiction. Something like binge drinking doesn’t allow the defendant to use diminished responsibility. Case law for this could come from R v Wood. The appellant was an alcoholic who had been sleeping rough. He was friends with a group called the breakfast club and had been drinking heavily with them for the past two days before the attack. He was invited to spend the night at the deceased’s house. During the night, he woke up and found the deceased trying to perform oral sex on him, he attacked him with a meat cleaver and hammer killing him. The judge said that a man’s act is involuntary if, and only if, it is it very difficult to do otherwise. The appellant appealed this and the conviction for murder was quashed. \n \t
3. Which substantially impaired his/her mental ability. The defendant must show that the abnormality of the mind must have substantially impaired their mental ability to either understand the nature of their conduct, form a rational judgement or to exercise self-control. This is something for the jury to decide after hearing the medical evidence. A case example for this diminished responsibility is R v Campbell. The appellant killed a female hitch hiker he had picked up when she refused his sexual advances. She wanted to go from Oxford from London. He pulled up at a remote spot and made a pass at her. She hit him in the eye and he punched her in the throat. She began gurgling and blood came from her mouth. Realising the force he must have hit her he panicked and strangled her. He killed her by hitting her with a hockey stick. The appellant had frontal lobe damage and epilepsy. He appealed for diminished responsibility with medical opinion that the effect of his epilepsy and lobe damage affected his judgement, control of emotions and impulses and forward planning. His conviction for murder was ended and he went to retrial. \n

\n Provocation. \nProvocation is part of the special defences for murder, like diminished responsibility. The requirements for the defence of provocation are:\n

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1. There must be evidence of provocation. This requires there to be evidence that the person charged was provoked by things done or said. There is no requirement that the provocative act was deliberate or aimed at the victim. Even something like the constant crying of a child can be used as evidence. Without the evidence the judge cannot put the issue of provocation to the jury. The jury can consider actions that happen over a period. The defendant is allowed the defence if they induced the provocation. A case example for this is R v Johnson. The appellant was at a night club. A woman called him a ‘ white nigger’. The appellant was white but had taken to adopting a west Indian accent. He took exception to the comment and made threats to her. A male friend of the woman intervened and poured a drink over the appellant. A fight happened and the appellant stabbed the man and he died. He argued that he was acting in self-defence. The judge directed the jury on self-defence, which they rejected, but did not direct them on provocation. He was convicted for murder which he appealed, and it was swapped for manslaughter because of the provocation. \n \t
2. Loss of control. This requires the accused to be provoked into losing their self-control. The definition of provocation came from R v Duffy, and is some act, or series of acts which would cause in any reasonable person and causes in the accused, and sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not a master of his or her mind. If there is any evidence of planning this will demonstrate no sudden and temporary loss of control. The loss of control need not be complete to negate murderous intent. Case law relevant to this is R v Richens. At the age of 17 the appellant killed a man who had raped his girlfriend. The deceased had taunted him about the rape saying that his girlfriend wanted to have sex and that she had enjoyed it. At which point the appellant stabbed him. The defendant raised the defence of provocation at the trial and the judge directed the jury on loss of control, saying that it doesn’t apply to losing that kind of control, and that it is a complete loss of control, to the extent that you don’t know what you’re doing. He appealed against the jury’s conviction of murder. \n \t
3. The provocation must be such as to make a reasonable man do as the defendant did. This is a question for the jury who must balance the gravity of the provocative act against the actions expected of a reasonable man. This is problematic when courts try to interpret and apply the section and it gets appealed regularly. Originally it was objective and no account could be taken of characteristics of the defendant in assessing this. However, it was accepted that particular characteristics could be taken into account, and this lead to some uncertainty. The characteristics must be sufficiently permanent. Some case law for this part of provocation in R v Ahluwalia. The appellant poured petrol and caustic soda on her sleeping husband and then set him on fire. He died six days later from the injuries. The couple had an arranged marriage and the husband had been violent and abusive throughout the marriage, he was also having an affair. On the night of the killing he had threatened to hit her with an iron and told her he would beat her the next day if she didn’t give him money. At the trial, she admitted to killing him, but used the defence of provocation. She was however, convicted of murder. She appealed this decision and raised diminished responsibility. \n

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| Diminished Responsibility  | Case – Mary and Peter  |
| Abnormality of the mind  | For Mary, the abnormality of the mind would be her post traumatic stress disorder, which is recognised as a medical condition. The jury would decide if he is suffering for this by looking at medical evidence.  |
| Explanation  | Mary’s PTSD would have be part of the explanation of why she acted in the way she did, and killed Peter. PTSD can be triggered by sights, sounds and feelings they experience, for example being shouted at by Peter. This trigger can cause an intense emotion and physical reaction, stabbing Peter with a bayonet.  |
| Impaired mental ability  | Mary would also have to show that her PTSD affected her own mental ability – to form a rational judgement or to exercise her self-control. The Jury would then use medical evidence to decide if this is the case.  |

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| Provocation  | Case – Mary and Peter  |
| Evidence  | She would need to have evidence of Peter insulting her and telling her that he hated her to be able to use it as part of her defence. She would be able to argue that he provoked her into stabbing him.  |
| Loss of Control  | This could also form part of Marys defence. This is because she had been soldier, and was suffering from post-traumatic stress disorder. She could say that it affected her judgement her self-control of her emotions, and that is why she acted in the way that she did.  |
| Reasonable man defence  | The jury would need to decide if a reasonable person would act in the same way as Mary did in that situation. This is difficult to use because it is very objective, and based on the juries’ opinion.  |

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| Provocation  | Case – Sarah and Michael.  |
| Evidence  | Sarah would have been provoked by Michael smirking because about sexually abusing young boys. This could also be affected because she is a mother. She would need to have evidence of him doing this. Michaels actions would still be considered provocation, even though Sarah had initiated it by confronting him about the sexual abuse.  |
| Loss of Control  | Sarah could say that the fact that he smirked at the accusation of sexual abuse provoked her, and this caused her to lose her self-control. That would explain why she acted in the way she did.  |
| Reasonable man defence  | The jury would need to decide if a reasonable person would act in the same way as Sarah. This is difficult to use because it is very objective, and based on the juries’ opinion.  |

\nDiminished Responsibility wouldn’t apply to the case of Sarah and her Neighbour as there is no evidence that she had an abnormality of the mind. The fact that she  was drunk would not be able to be used as evidence, because this defence requires it to be a history of alcoholism.