

284.3 *Judicial guidance*

R v Thompson 2014 EWCA Crim 2892 D pleaded to manslaughter on the basis of diminished responsibility. This court in *R v Wood* 2009 EWCA Crim 651, 2010 1 Cr App R (S) 2 (p 6) and the subsequent authorities has made it plain that a large disproportion between sentences for murder and sentences for manslaughter, which came close to murder would be inimical to the administration of justice.

Att-Gen's Ref Nos 107-108 of 2014 2015 EWCA Crim 405 Since *Att-Gen's Ref Nos 160, 62-3 of 2009* (see above), particular regard must be had to the dreadful consequences of manslaughter and as a result sentences have increased in recent years.

Att-Gen's Ref No 36 of 2015 2015 EWCA Crim 1174 D was convicted of manslaughter. Held. para 16 *Att-Gen's Ref Nos 60, 62 and 63 of 2009* (see above) signals a clear change to the approach to sentence in unlawful act manslaughter cases. There is to be an upward movement in sentences to reflect the new focus on harm under [Criminal Justice Act 2003 s 143](#), the sentencing regime for offences of murder contained in Schedule 21, and the sterner approach in cases involving the carrying of knives and other weapons, see *R v Povey* 2008 EWCA Crim 1261, 2009] 1 Cr App R (S) 42 (p 228). para 25 There is now a much greater focus on the fact a death has been caused. For more details see [284.41](#).

284.21 *Child victims With violence*

R v Thompson 2014 EWCA Crim 2892 D pleaded (full credit) to manslaughter on the basis of diminished responsibility. His marriage broke down but he continued to live with W, his wife. She bought out his share in the home and D paid W rent. V, their 11-year-old daughter, and D shared the same bedroom and he was exceptionally close to her. W started a new relationship with B and demanded D leave by 1 June 2013. He didn't and a new deadline of 1 July 2013 was given. In early June, W and B went on holiday together with V. On their return, tension in the house increased and D became distraught at the prospect of separation from V. On 21 June 2013, D told V's school she was ill. It was a lie and he took her to London Zoo for the day. They returned at 6pm. Later that evening, he took a cord from her dressing gown and strangled her while she was asleep. He turned off the lights, secured the house and at 11.30 pm drove off in his car. About half an hour later, he drove his car into a tree at a speed of over 90 mph. He was badly injured and was taken to hospital. W phoned the hospital and D lied about the whereabouts of his daughter. When W visited D in hospital, he said V was at home. W, without warning, discovered V's body later. The three psychiatrists did not agree. One considered D suffered from Asperger's Syndrome and was clinically depressed. Further he thought killing V was the only option to save her. Another said D had an abnormal personality with schizoid, avoidant and obsessive compulsive features. As a result, the applicant's emotional development was stunted and he had rigid, obsessional and inflexible thought. The third said D was in an extreme state of distress. Held. We start at 25 years, so with plea **17 years** not 20.

284.26 *Diminished responsibility Judicial guidance etc.*

R v Thompson 2014 EWCA Crim 2892 D pleaded to manslaughter on the basis of diminished responsibility. Held. In cases of diminished responsibility, a defendant's impairment may be so gross that his responsibility may be minimal; conversely, his impairment may be such that a substantial amount of mental responsibility remained. For details, see [284.21](#).

284.32 *Fall Death caused by the fall and not any blow*

R v Smylie 2015 EWCA 133 LCJ D pleaded to manslaughter and theft on the day of his trial. V, aged 45, was a single man with a private drink problem. He met D to try to buy some cannabis. There was a disagreement between the two and D took out his wallet. D then pushed V and his forehead struck the ground causing an internal head injury. Whilst V was on the ground, D took £80 from V's wallet. V was next seen on some nearby stairs with D. D pushed V aggressively causing V to fall backwards but not onto the ground. V was then able to visit a local housing office and to go to the police station to report the events but V was not prepared to wait to be seen. Over the next few days V told others he was not well and three days after the incident his forehead looked swollen and haemorrhaged. Two further days later he died. The cause of death was subdural haemorrhage. D was aged 26 with 37 court appearances for 79 offences. He was assigned to a Prolific Priority police office which had little effect. In February 2012, D was given 6 weeks for theft. In April 2012, he was sent back to prison for 14 weeks for another theft. Very soon after his release, he committed this offence. The Judge identified two mitigating factors, a) no previous convictions for violence and a lifetime post-traumatic stress disorder. Held. It was a hard push, but it was only a push. V's heavy drinking may have made him more vulnerable. We start at 4 ½ years not 6. With plea, 4 years. We make the theft sentence of three months concurrent not consecutive, making 4 years not 5 years 3 months.

284.37 Gross negligence Cases

R v Bowler 2015 EWCA Crim 849 D was convicted of manslaughter by gross negligence. D suffered from cerebral palsy and lived with his carer, C (who was acquitted). D had a history of physical and sexual abuse. He needed crutches and had a sexual dysfunction which meant he had difficulties in staying in a relationship. V was interested in extreme masochistic experiences and put his interest on a gay web site. He enjoyed submission and being wrapped in cellophane or PVC or both. V liked to be left after sex in a mummified state. In 2009, there was contact between D and V. V introduced D to his sexual practices and asked D to be his master. V said he had done it many times with other men. D agreed and he had sex with D using cellophane about 10-15 times. Holes were made in the cellophane to allow V to breathe. D said V asked to be additionally wrapped in PVC. In 2013, V e-mailed D late asking if he could come round. V arrived at 11.30 pm and D wrapped him in cellophane and taped it. There were holes around his nose and mouth and over his anus. At V's request, V was also wrapped in PVC. There were no air holes but it was wrapped loosely to allow the air in. C then spanked V and D had anal sex with V using a strapped-on penis. The sex tired D and he told V he was going downstairs to rest. V agreed to this. D went upstairs half an hour later and V was moving. Next time he came up V was lifeless. Both D and C panicked. Eventually, at 5.50 am, C went to a taxi office and told his mother he had killed someone. About three hours after, D contacted his brother and the emergency services were called. D accepted the advice from the ambulance service on the phone on how to revive V. The police arrived and V had been dead for some time. Test showed V had taken ketamine, norketamine and methamphetamine in normal recreational amounts. Death was caused not by suffocation but by a heart attack caused by overheating while under the influence of drugs. D was aged 35 with no convictions. The Judge assessed the period of time V was left wrapped up [after the sex] at between half an hour and three hours. On appeal the defence said, V positively encouraged the bondage, death was caused in a large measure by the victim's misjudgment and D was unaware of the dangers of over-heating. The prosecution relied on the time V was left when he could not look after himself. Held. Unusual sexual practices are a matter for the individuals themselves. Here the practice of wrapping up was not an aggravating factor. The relevance of that was the creation of danger to V. The aggravating factor was the time V was left helpless and in

¹ The Court said the starting point would have been 6 years before plea and the plea credit was about 10% which made 5 years. This is in fact a 17% reduction so it may be the Judge started at 5 ½ years with a 10% discount.

danger. The culpability here was different to other cases because V [asked] for the actions to take place. **3 years** not 5.

284.41 Knife, With Cases

Att-Gen's Ref No 36 of 2015 2015 EWCA Crim 1174 D was convicted of manslaughter as an alternative to murder (based on lack of intent). D and V had known each other for some time and there was no animosity. They both went to a funeral and after the service they encountered each other. A fight broke out and D called V a grass which was denied. There was evidence D used this term for people he did not like. D punched V to the head and both men fell to the ground. D then kicked V and a knife with a 6" blade fell out of D's pocket. Both men reached for the knife but D picked it up and stabbed V in the neck. D drove off. D later called 999 but the information given was too little for the service to act on it. When found, V was taken to hospital but he was dead on arrival. V had a 4" deep stab wound to the neck, which severed his jugular vein causing severe haemorrhaging. There were further knife injuries to V's chin and upper chest. D disposed of his blood soaked clothing and tried to clean the blood from his shoes. D was aged 53. He had many previous convictions over a significant period. There was a section 18 in 1982 and possession of an offensive weapon in 1982, 1989, 1990 and 2013, just a year before this offence. In 1997 he received 9 years for conspiracy to rob, possession of a firearm with intent and two possessions of prohibited weapons. There was no remorse. Held. Sentences have moved upwards (see **284.3**). The principle aggravating feature was that D took a knife to the scene. D did not expect a confrontation but he chose to pick the knife up and he knew V was unarmed. The case was of high culpability. The offence was aggravated by D being the aggressor in the initial confrontation, the offence was witnessed in a public place, D made off and D disposed of the evidence. The least sentence is **14 years** not 9.

284.54 One-punch manslaughter Cases

R v Lynch 2015 EWCA Crim 1130 D pleaded to manslaughter. D and V, aged 62, had been close friends for a number of years. They lived in the same block of flats and had a father/son relationship. They socialized and drank together. D and his brother, B, went drinking after work and that led to an impromptu party at D's flat. As the night wore on, D and B began to argue, which became confrontational. D became extremely agitated and told everyone to leave. When they didn't, D lost his temper. He threw a coffee table into the air and put his foot through the TV screen. D, now worse for drink, attacked B. The confrontation spilled out onto the landing at the top of the stairs. V, acting as a peacemaker, tried to separate the two men. D swung a blow at B but hit V by mistake. V fell backwards and banged his head. There was some delay in calling an ambulance and when a call was made, the phone was handed to D who said, "We have all had a fight and I have hit my neighbour too hard. He is paralysed and I didn't mean to do it". V had a severe fracture to his neck. Corrective surgery was carried out and V had a stroke. This caused irreversible brain damage and V died. D was very remorseful. D was aged 41 and only had a conviction for spitting at his girlfriend. The Judge accepted there was no animosity between D and V. Held. The blow was deliberate and aggressive. The culpability was high. The punch was thrown in the context of a fight. Before that there had been criminal damage. The level of sentencing was in the order of **6-8 years**. We agree with a 6 year starting point, the credit for the mitigation and the 20% credit, making **4 years 3 months**.

Note: The fact the death was caused by the fall rather than the severity of the blow was not taken as a factor by the defence or the Court. Ed.

284.56 Relationship killings Men killing wives, partners etc.

See also: *R v Pisano* 2014 EWCA Crim 2519, 2015 1 Cr App R (S) 33 (p 258) (D was convicted based on an unlawful act. Plea to preventing burial (2 ½ years consecutive). Lived with gay victim, who was

vulnerable and aged 62. D, aged 37, was financially dependent on V. As money ran out D became violent to V. After last attack, V left D injured in flat to 'rot' without obtaining any assistance. (How and when D died was not known.) **18 ½ years** in all not excessive.)

284.56a *Relationship killings* *men killing wives, partners or former partners* *Elderly partner having difficulty in coping*

R v Beaver 2015 EWCA 653 D pleaded to manslaughter based on diminished responsibility. D, now aged 81, had been married for over 60 years to V. D had cared for V well for some time. She had dementia, diabetes and had suffered mini strokes. She also had ulcerated legs from prolonged sitting. D did the housework and gave her injections. V called for D so often that he had to sleep on a chair in the downstairs room she lived in. A neighbour described how V would shout at D and noticed D did not complain. He was loving and caring. However he became more forgetful and was not coping well. He suffered severe weight loss. She was also aggressive to her other carers who she hit. One day, D killed V using a large kitchen knife. D told a psychiatrist that he had had an argument about porridge or his lack of sleep and lost his self-control. D was of good character. A psychiatrist said D was in the range for dementia and suffered from depressive symptoms. Further D was normally a person of great commitment and tolerance. After the sentence, a prison supervisor said D's memory was deteriorating and his dementia was getting gradually worse. He was also becoming more and more forgetful and confused. Held. It was a tragic case but it was not a mercy killing. The attack was brutal. D had just snapped which was attributed to his frontal lobe damage, his dementia, depression, urinary tract infection, sleep deprivation and exhaustion. We are wholly unable to say **3 years** was wrong in principle or manifestly excessive. Mercy nonetheless remains. We substitute a **Suspended Sentence Order** of **2 years** [with mental health and other conditions].

284.59 *Sexual cases*

R v Bowler 2015 EWCA Crim 849 (3 years, see **284.37**)

284.61 *Vehicles* *Offence committed by driver of a motor vehicle* *Endorsement* *and disqualification*

R v Petit 2015 EWCA Crim 958 D pleaded to manslaughter and robbery. D drove with F from Bedford to Peterborough to supply V with some cannabis. V handed over the cash and F snatched it. Within seconds, D accelerated hard away. V was unable to disentangle himself from the car. The speed of the car reached up to 30 mph and V was dragged 138 metres and thrown off, falling to the ground. He received massive head injuries and died. D carried on driving, initially the wrong way on a one way street. When seen by police he lied. He received 8 ½ years (no appeal) and 10 years disqualification. The defence said the dangerous driving was over a short distance and relied on the guideline for disqualification where the offence is death by driving (see **236.22**). That says the period of disqualification should equate with length of the custodial term, knowing that the defendant is likely to be released half way through the term. The prosecution said the driving was deliberate and sustained and there was a very high degree of danger to V which was obvious. Held. This is only a rule of thumb. The pre-plea starting point was about 10 years. The actual term (10 years) was only 1 ½ years longer than the custodial term imposed (8 ½ years). Because of the high degree of danger and the nature of the driving **10 years**, was not manifestly excessive.

284.62 *Vehicle, Offence committed by driving of a motor vehicle*

Att-Gen's Ref Nos 107-108 of 2014 2015 EWCA Crim 4052 D1 and D2 pleaded (15% credit) to manslaughter and two conspiracies to steal. The two, who were established criminals, over a weekend, carried out a number of thefts from vehicles parked in cash and carry car parks. Cloned vans were used. Four offences or preparation work were committed on the Saturday and three before the relevant one. During that one, a victim, V, jumped into van driven by D1 to prevent their escape. Inside there was a struggle between V and M, another conspirator. It ended with V being forcibly ejected through the sliding door. Through the force of M and D1's 'wiggling' of the van, V lost his grip and fell, with the back of his head hitting the ground with great force. M slid the door shut and shouted to D1, "Move it." D1 drove away dangerously and at speed. D2 was in a second vehicle about 300-400 metres away. V suffered a fractured skull and associated brain damage and died. V was aged 35, married with a child, hardworking and a central figure in his wider family. D2 accepted he foresaw the possibility that unlawful and dangerous violence might be deployed by people [intervening while they were stealing]. D1 was aged 34. In 2006, he drove dangerously whilst escaping from an attempted theft from a vehicle at a cash and carry. In 2011, he attempted to break into unattended vehicles at a cash and carry. In 2012, he was [convicted] of dangerous driving when he tried to escape from police who were interested in him at a shop car park. D1 was disqualified from driving. D2 was aged 46 and had dishonesty and driving convictions. His wife's health was poor. Held. There was a strong likelihood of members of the public seeking to intervene. Had the thefts stood alone 4 years [would have been appropriate]. The thefts were organised crime with a degree of sophistication by experienced criminals. At least 12 years would have been appropriate for D1, so **12 years** not 10 ½ years. We do not alter D2's **7 ½-year** sentence.

284.64 Defendant aged under 18

See also: *R v S 2014 EWCA Crim 558, 2 Cr App (S) 29 (p 290)* (Convicted. Age 15. Shot girlfriend aged 15. Pulled trigger to scare her. Previous for two robbery. Worrying attitude to weapons. Remorseful. **9 years** but not extended.)

284.67 Mentally disordered defendants *Grave cases*

R v Brennan 2015 EWCA Crim 1449 and 2014 EWCA Crim 2387 D pleaded (full credit) to manslaughter based on diminished responsibility. He was tried for murder and his conviction was quashed by the Court of Appeal because it was not open to the jury to reject the unchallenged medical evidence. D was obsessed with videos featuring ritualistic and satanic killings. His sexual experiences had always been with men. He worked as a male escort and one of his clients was V. D said V required him to engage in particularly disgusting sexual acts which he particularly disliked. D was in a relationship with B and when B was away D used a set of keys he had cut to use B's flat. D texted V suggesting they meet at the flat. At that time he typed into his computer, 'Hide in bedroom stab heart cut throat bang head cut solar then groin at mo of death Krishna rhade jaya jaganatha place body in pentagram'. At about 9.15, V went to the flat. Just after midnight V left the flat and rang 999 saying he had murdered someone. D later said to the police, "I have killed someone. I hate men. They just do what they want." Police went to the flat and found V naked in the bedroom and dead. He had been stabbed 22 times, primarily in the back but also in the chest. Three knives were used. Two hammers were also found. D said in an interview that the scratching and scorings on V's back was to release V's spirit. Police discovered that after the killing D had cleaned himself, put on new clothes, taken V's car keys and cash from the flat, thrown some of the cash in the street and left a note on the flat door with a pentagram symbol saying, "Do not enter, call 999 straight away." Forensic examination found no sign of sexual activity. At D's home were found pagan material corresponding with those found at the murder scene. D was aged 22 and had no convictions. He was small in stature. He had personality and mental health problems going back to when he was aged 13.

² The judgment is wrongly entitled *R v O'Driscoll and O'Driscoll 2015 EWCA Crim 405*.

D had suffered repeated abuse from another family member. At school he was bullied. There were incidents of self-inflicted violence including smashing his face with a rock. Around the time of the killing he was increasingly depressed and unwell. D told his appropriate adult that he had been having thoughts of killing people. D's mother said he was obsessed with witchcraft and Hare Krishna. A psychiatrist said D's behaviour was consistent with Schizotypal Disorder and Emotional Unstable Personality Disorder. She believed drink and drugs had inhibited him and made the killing easier. She did not think that sexual activity triggered the killing. Held. This was a shocking and savage murder on a defenceless man. D was a deeply troubled and damaged young man. However, he retains significant responsibility for the killing. On the one hand there was a high level of culpability. On the other, D was in an almost total mental turmoil. Since his remand there had been a profound improvement. Two psychiatrists said because of the treatment his risk to others was low. D was not [now] dangerous whatever the position was in 2013. We start at 23 years, so with plea discount **15 years**.