283.43 *Knife, With Post-2018 guideline case*

Att-Gen's Ref 2019 Re Bailey 2019 EWCA Crim 731 D was convicted of manslaughter. The victim, V, attacked D with a wooden ornament. D then stabbed V five times. **8 years** not 6, see **283.62a**.

283.60a *Defendant then aged under 18 Post-2018 Judicial guidance*

(including those who turn 18 before sentence or those over 18 lacking maturity)

R v Hobbs and DM 2018 EWCA Crim 1003, 2 Cr App R (S) 36 (p 312) LCJ H and DM were convicted of manslaughter and theft. para 27 We have considered *R v JF and NE* 2015 EWCA Crim 351 (defendants aged 14½ and 16. 24-month DTO substituted), *R v Hayes* 2015 EWCA Crim 199 (defendant aged 17 years. 3 years 9 months' YOI substituted) and *R v E* 2011 EWCA Crim 2744 (defendant aged 13. 4 years' detention substituted). [For the first two cases, see the 13th edition of this book at **282.59** and for the last case, see the 12th edition at **283.61**.] These authorities are fact-specific but they all demonstrate the modern approach of the courts to sentencing those aged under 18 for manslaughter which is consistent with the Sentencing Council guidelines, namely the need to look carefully at the age, maturity and progress of the young offender in each case. That [approach] is also necessary in cases involving young people who offend before are aged 18, but are sentenced when technically adults, and also young people who offend in early adulthood but are far from the maturity of adults. In *R v Clarke* 2018 EWCA Crim 185 at para 5, I emphasised this point: "Reaching the age of 18 has many legal consequences, but it does not present a cliff edge for the purposes of sentencing. So much has long been clear. The discussion in *R v Peters* 2005 EWCA Crim 605, 2 Cr App R(S) 101 (p 627) is an example of its application, see paras 10-12. Full maturity and all the attributes of adulthood are not magically conferred on young people on their 18th birthdays. Experience of life reflected in scientific research (e.g. 'The Age of Adolescence': thelancet.com/child-adolescent; 17 January 2018) is that young people continue to mature, albeit at different rates, for some time beyond their 18th birthdays. The youth and maturity of an offender will be factors that inform any sentencing decision, even if an offender has passed his or her 18th birthday."

For more detail, see **283.60b**.

Note: This guidance was applied in *R v Geoghegan* 2019 EWCA Crim 787 (a non-manslaughter case) making this post-guideline guidance. In any event this type of guidance would be unaffected by the introduction of the guideline. Ed.

283.60b *Defendant then aged under 18 Pre-2018- guideline case*

R v Hobbs and DM 2018 EWCA Crim 1003, 2 Cr App R (S) 36 (p 312) LCJ H and DM were convicted of manslaughter and theft. V drove from Derbyshire to Basildon to pick up his children. He arrived at some time before midnight and made a makeshift bed in his car so he could sleep before he picked up his children in the morning. H, then aged 17, and DM, then aged 15, stole six marine distress flares. H was eager to lob a flare into a car.[1] She tried to persuade DM and a third person to do it. They refused. H and DM went to where V was sleeping. At about 2 am, DM saw an iPhone and car keys in V's car. One of them opened V's car door and H threw in a flare. The toxic fumes killed V. H and DM sold the iPhone and keys for some cannabis. DM[2] had an IQ assessed at 74 (so in the bottom 4%). He was assessed as a mentally vulnerable young man with deficits in verbal comprehension and reasoning.

1 The facts are not listed in chronological order and the sequence of events and the locations are far from clear.
2 The personal details of H are not given other than she was at a college and 'had limited contact with the authorities'.

There was a very positive report from his secure training centre. H's pre-sentence report said H had no established pattern of violence but there was no evidence of an immediate risk of reoffending on release. The Judge found the action was reckless and the motive was that it was considered fun. Held. The Judge appears to have had little, if any, regard to the fact that H was aged 17 at the time of the offence. There is no 'cliff edge' when sentencing a defendant who becomes 18. It is necessary to look at the harm that the two should be taken to have foreseen. H's sentence of 9 years did not reflect her age, immaturity and resultant culpability at the date of the offence. They saw it as a prank and they would not have known that marine flares burn at a much higher temperature than ordinary fireworks, that they burn with exceptional intensity and that the chemicals [used] are exceptionally toxic. In terms of culpability the circumstances fall at a relatively low level. 9 years would have been too high even for an adult. For H, **5 years** was appropriate. For DM, **3½ years**.

Note: Other cases can be found in the 12th edition of this book, but they add little. Ed.

283.61 *Mentally disordered defendants* *Post-2018 guideline cases*

R v Fisher 2019 EWCA Crim 681 D pleaded to manslaughter based on diminished responsibility, fraud (using his mother's credit card) and driving whilst disqualified. He stabbed his mother to death. He was assessed as having paranoid delusions probably caused by paranoid schizophrenia. D was in breach of a suspended sentence for an burgling his mother's house. The Judge found D's retained responsibility for the offence fell into the lowest category. The Judge passed a hybrid order with a life sentence (two-year minimum term). The defence submitted that the psychiatrists were agreed that but for his psychotic delusion, the offence would not have occurred and if D had been therapeutically treated at the time, the offence would not have occurred. D has responded well to treatment and he now had personal insight into both his condition and his offending, which was completely absent at the time. The doctor considered it likely that D would remain in a secure hospital for 4-5 years, or longer if there is any recurrence of his psychotic symptoms, drug use or other concerns about the risk he poses. Each of the three psychiatrists recommended a disposal by way of a section 37 hospital order with a section 41 restriction without time limit. The doctor had confirmed that that disposal compared with a life sentence with a section 45A direction added nothing in terms of the safety of the public, and that a Hospital Order was substantially better in terms of the rehabilitation for D.

Held. The Judge followed the steps 1-3 in the guidelines and the principles in *R v Edwards* 2018 EWCA Crim 595, 2 Cr App R (S) 17 (p 120), see **67.9** in Volume 1, properly. [The relevant disposals for these cases were explained in some detail.] There is force in the defence submissions. The two year minimum term was much less than the time D would be treated in a secure hospital. It cannot be said the mental disorder can be appropriately dealt with by a Hybrid Order, because of the advantages of a Hospital Order with a Restrictions Order. The introduction of the Parole Board would not do anything to enhance public safety. The Hospital Order may reduce delays for release and, if necessary, any recall. We substitute a Hospital Order with a Restriction Order.

283.62a *Self-defence, Excessive Post-2018 guideline case*

Att-Gen's Ref 2019 Re Bailey 2019 EWCA Crim 731 D was convicted of manslaughter. D, V and others were taking heroin in D's flat. An argument broke out between D and V. V picked up a substantial hard wooden ornament and D picked up a kitchen knife with a 13 cm blade. A fight started and V pursued D to a balcony and beat D across the back and shoulders with the ornament with such force that he broke it. D was knocked to the floor and fought back with the knife, swinging it five times at V. V received four stab wounds to his legs and one fatal stab wound to his heart. D ran off and threw the knife away in panic. V died at the scene minutes later. D was arrested. D was now aged 28 and had 18 previous convictions. In 2012, he was sentenced for robbery (30 months for kicking a man to the ground and taking his phone). In 2015, D was sentenced for battery (18 weeks for throwing a pint glass at people). In 2017, D was sentenced for wounding (10 months for stabbing a man in the leg with a knife after that man had stabbed D in the back with a needle). D told a health practitioner that he used five

bags of heroin a day, took crack cocaine every few days and drank heavily. The Judge started at 6 years and listed the aggravating features as: a) the use of a knife, b) the fact that D was under the influence of class A drugs, and c) D's previous record. The mitigating features were noted as the fact that the attack was not planned. The Judge also said that the evidence suggested that D began by trying to defend himself, but then went "far beyond what was necessary". The Judge also said that the initial self-defence was significant mitigation but it didn't bring the starting point down to within Category D in the guidelines. Held. The Judge incorrectly approached the categorisation of this case. D went well beyond actions that were necessary for self-defence. It ought to have been obvious to D that there was a high risk he would kill V with his attacks. This made it a Category B case (starting point of 12 years), not C. We consider that the element of self-defence has some real significance in the categorisation of this case. If D had been acting in self-defence (when not amounting to a defence) it would have been a Category D case with a 2-year starting point. By the time the repeated injuries were inflicted, this had ceased to be an incident in which D was defending himself and he had gone on the attack. There needs to be significant downward adjustment to reflect the underlying context of self-defence. We start at 6 years and move upwards to account for the significant aggravating factors. **8 years** not 6.