294.3 *Basic principles*

R v Beckford 2014 EWCA Crim 1299, 2 Cr App R (S) 34 (p 285) This Court has said on many occasions the setting of the minimum term is not achieved by slavishly and mechanically following Criminal Justice Act 2003 Sch 21. Courts must achieve a just result.

294.14 *Determining the starting point*

R v Blackman 2014 EWCA Crim 1029, 2 Cr App R 18 (p 244) Court Martial Appeal Court LCJ D was convicted of murder. He was a sergeant in the Royal Marines and calmly shot an unarmed, badly injured, Afghan insurgent. D had spent 15 years in the Royal Marines and character witnesses commented on his exceptional qualities as an outstanding commander. He had completed six tours of duty. A medical report produced two years after the incident noted that D suffered from accumulated frustration and could have suffered from combat stress disorder, though it was not possible to say with any certainty. Held. para 63 The Court Martial was correct to use Criminal Justice Act 2003 Sch 21 as providing [some] guidance for a murder occurring in circumstances which Parliament had not contemplated. It was correct to select the starting point as 15 years. para 73 The Court Martial was correct that a very substantial reduction from the starting point was required. **8 years**, not 10. For more detail see para **294.67** of this update.

Note: This case would fall neatly into Schedule 21 para 5, 'a murder involving the use of a firearm', giving a starting point of 30 years. However, the Schedule says the listed examples which include the firearm entry 'normally fall' within this paragraph. Although the Court did not say so, this appears to be an example of where special and unusual factors determine that a lower starting point should be selected. Ed.

294.28a *Armed forces, Murder by members of*

R v Blackman 2014 EWCA Crim 1029, 2 Cr App R 18 (p 244) Court Martial Appeal Court LCJ D was convicted of murder. He was a Royal Marines sergeant deployed to Afghanistan between March and September 2011. In 2012, a video recording taken from a helmet camera worn by a corporal under his command was discovered during an investigation into an unrelated matter. V, an Afghani insurgent, had been seriously wounded having been lawfully engaged by an Apache helicopter. D found V who was no longer a threat. D caused V to be moved to a place where he would be out of sight of the operational headquarters so that "[Persistent Ground Surveillance Systems] can't see what we're doing to him". V was handled by those under D's command in a rough manner, clearly causing him additional pain and D did nothing to stop them from treating him in that way. D failed to ensure V was given the appropriate medical treatment quickly, and then ordered those giving him some first aid to stop doing so. When D was sure the Apache helicopter was out of sight, he calmly discharged a 9mm round into V's chest, killing him. V may have died of his wounds after the engagement by the Apache helicopter in any event. D then told his patrol that they were not to say anything about what had just happened and he acknowledged that he had broken the Geneva Convention by his actions. D had spent 15 years in the Royal Marines and character witnesses commented on his exceptional qualities as an outstanding commander. He had completed six tours of duty abroad. A medical report produced two years after the incident noted that D suffered from accumulated frustration and could have suffered from combat stress disorder, though it was not possible to say with any certainty. Held. para 63 The Court Martial was correct to use Criminal Justice Act 2003 Sch 21 as providing a degree of guidance on sentencing for a murder occurring in circumstances which Parliament had not contemplated. It was correct to select the starting point as 15 years.

para 64 There were three aggravating factors. First was the circumstances of the shooting: a) the decision to stop first aid, b) the order to move V to a place where they would not be seen, c) the discharge of the weapon into V's chest and d) the instruction to the patrol to say nothing about what happened. V's vulnerability did not add anything material to those acts. There was no threat from V who had been seriously wounded and disarmed. para 66 The second aggravating feature was the deliberate involvement in a dishonest cover-up by soldiers who looked to him for leadership. para 67 Thirdly, D's failure to follow (personally as a soldier and as a person in command of the patrol), the standards of conduct for HM Forces in Afghanistan.

para 68 In mitigation, D had an outstanding service record. para 69 Secondly, the effects on him of the nature of the conflict and the command he exercises. Most serious was the effect of stress. para 70 It is self-evident that forces sent to combat insurgents will be placed under much greater stress than forces sent to fight a regular army. para 72 D was under considerable stress dealing with insurgency and significant further stress because of the remote location of his command post. He had had little face to face contact with those commanding him and they could not assess the effect of the conditions upon him. para 73 The Court Martial was correct that a very substantial reduction from the starting point was required. para 75 D's mental welfare had not been assessed in the ordinary way. The combat stress should have been accorded greater weight.

para 76 The particular circumstances did not require an additional term by the way of deterrence to the sentence as the Court Martial found. The open and very public way in which the proceedings were conducted overall, the worldwide publicity given to D's conviction, the life sentence imposed on him and the significant minimum term he must in any event serve before any consideration of parole will be sufficient deterrence. **8 years**, not 10.

294.32 ***Child murders*** ***Cases***

Att-Gen's Ref No 11 of 2014 2014 EWCA Crim 843 D was convicted of murder. She fell pregnant and concealed the pregnancy from her family and partner. She gave birth to the child but placed the child with foster parents as she did not wish to keep him. After seven months, she indicated that she wanted the child back and he was returned to her. Just over a year later, D gave birth to V, when she was aged 22. Again, the pregnancy was concealed. D took both children to weekly play group sessions. The staff and other mothers described V as being increasingly withdraw with his general condition being described as blank, emotionless and listless. Witnesses observed a marked contrast between the attention given by D to the older child as compared with the way she treated V. D did not acknowledge that V was her child, instead claiming that he was a child of a cousin whom she was looking after. After V's death, the post mortem showed that he had suffered a number of serious injuries in the fortnight or so prior to his death. There were nine fractures to his ribs (five to the front), a fracture to his right wrist and a fracture of the upper part of his left tibia. Evidence showed that very significant force was required to fracture the front ribs of an 11-month-old child as they at that age, the ribcage is composed of compliant, bendable cartilage. The mechanism for causing the fractures was likely to have been severe gripping and squeezing involving considerable force. The tibial fracture was likely to have been caused by a blow against a hard surface or from a snapping action. In the immediate aftermath of the time during which those injuries were caused, D kept V away from a parenting course and from the play group. The child was seen by a doctor and health worker, neither of which saw anything untoward. One evening, D's downstairs neighbours heard a series of very loud bangs and described the ceiling shaking with the force of the impact. Help was not sought for V until 8am the following morning. Paradmedics arrived and found V to be very pale, his breathing shallow and his pulse was very weak. He had suffered a fatal brain injury and died two days later. Hospital staff observed that D was not in a distressed or concerned condition. V's brain had swollen so that the brain stem was compressed, caused by a direct impact to the head, or by V's head being struck forcibly against a surface. Rib fractures sustained earlier had been refractured and there were severe

retinal haemorrhages and a detached retina. There were 26 areas of bruising. In interview, D claimed she had not inflicted the injuries and suggested that V's older brother must have been responsible. D had no mental illness or personality disorder. D was aged 23 and of previous good character. Held. The aggravating features are that V was particularly vulnerable, had been subjected to an attack or assaults prior to his death of a serious nature which would have caused physical suffering, and abuse of trust. Mitigating features included a lack of intention to kill, a lack of premeditation and D's age. The Judge found that D was a good mother to her older son. This was not a case of an otherwise loving parent who had become angry on an isolated occasion and then fatally assaulted their child, nor was it a case of an offender living in very difficult social circumstances or without the support from a wider family. There was no mental disorder and D had not exhibited deep remorse. The absence of those features does not aggravate the case but they provide nothing to set against the aggravating features. The shortest minimum term that could be imposed was **17 years**, so 17 not 14.

294.33 ***Criminal gangs, Killings by/Drug disputes etc.***

See also: *R v Bidace-Anthony* 2014 EWCA Crim 359 (Convicted of murder, attempted murder and possession of a firearm with intent to endanger life. Murdered V1, a drug dealer, and attempted to murder V2, V1's partner who was disabled. He went to their flat under the guise of buying cocaine. V2 recognised him which is why he tried to kill her. Shot V1 in back of head with handgun brought to the scene. Fired twice at V2, hitting her once. The third shot jammed and D fled. Committed in front of two others and a baby. Starting at 30 years. Life with minimum of **42 years** was very severe but entirely justified.)

See also: *R v Wilkinson and Ward* 2014 EWCA Crim 678 (Plea by D. Conviction for J. Long-standing feud. D chased victim through home and shot him repeatedly. Grenade thrown which caused dreadful injuries. Heavy degree of planning. D on licence for serious armed robbery and drugs offences. Co-defendant given whole life for this and other murders. Notorious and particularly grave offence. Judge fully entitled to increase minimum term due to horrific aggravating features. For D, with limited plea credit and an uplift for possession of another loaded firearm at the time, **35 years**. For J who did not fire the weapon and no relevant previous, **33 years** upheld.

294.37 ***Fire, By Cases***

See also: *R v Mahmud* 2014 EWCA Crim 1008 (Convicted of two murders and three attempted murders. M bought seven litres of petrol having told work colleagues he thought of harming his wife, V, who was divorcing him. He and D went to V's address and set it alight using the petrol. M's wife, her father and his wife's infant son died. His wife's mother and her brother suffered life threatening injuries. He assisted in M's escape. D had no convictions and did not instigate the plan. M was to pay D £10,000 for his part. Aged 37 at conviction. Starting at 30 years, D's **34 years** minimum term upheld.)

294.43 ***Knife or other weapon Judicial guidance***

R v Beckford 2014 EWCA Crim 1299, 2 Cr App R (S) 34 (p 285) D drove stolen car into V, ramming him off his bicycle with tremendous force. Held. Judge entitled to conclude that D took a weapon to the scene.

294.45 ***Knife 25-year starting point Cases***

Att-Gen's Ref No 43 of 2014 2014 EWCA Crim 1289 D was convicted of murder. D and H, a co-defendant, had a verbal confrontation with V and J. This was initiated by V. After that, D and H walked on, and V and J drove to a gym where V armed himself with a 5-kilo dumbbell. A further confrontation ensued where V was backed by others also wielding dumbbells. At some stage this must have been

dropped. D confronted V and H. V was fatally stabbed and D attempted to leave the country. V was a respected member of the community with no known gang affiliation. D, aged 19, had recently been released from custody and had relocated to the area because of a civil 'gang injunction' imposed in London. He had convictions from 2011 for possession of a bladed article, burglary and violent disorder, all committed whilst on bail. The latter two offences occurred during the London riots. The Judge took as mitigation, D's age, the element of provocation, the intent to kill was not proved and the lack of premeditation. Held. Insufficient weight was given to the antecedent history of D. The background of gang conflict, D's preparedness to use a knife and the fact V was stabbed in the back were all aggravating features. **22 years** not 15.

See also: *Att-Gen's Ref No 19 of 2014* 2014 EWCA Crim 1322 (Convicted. Sharing home pending separation. Tried to falsely blacken V's reputation. Talked about killing V. Killed her with commercial rolling pin (taken to the home as a weapon), causing severe brain injury. Motive to obtain sole custody of child. 25-year starting point as weapon taken to scene so **23 years** not 18.)

R v Beckford 2014 EWCA Crim 1299, 2 Cr App R (S) 34 (p 285) (D convicted. V, aged 19, was a member of a rival gang. D drove stolen car into V, ramming him off his bicycle with tremendous force. D aged 22 but no licence and poor record with three violent offences, including two robberies in 2009. Held. Judge entitled to conclude that D took a weapon to the scene. In setting minimum terms courts should achieve just results, not slavishly follow Criminal Justice Act 2003 Sch 21. **24-year** term upheld.)

294.52 ***Multiple murders*** ***Cases***

See also: *R v Mahmud* 2014 EWCA Crim 1008 (Convicted of two murders and three attempted murders. M bought seven litres of petrol having told work colleagues he thought of harming his wife, V, who was divorcing him. He and D went to V's address and set it alight using the petrol. M's wife, her father and his wife's infant son died. His wife's mother and her brother suffered life threatening injuries. He assisted in M's escape. D had no convictions and did not instigate the plan. M was to pay D £10,000 for his part. Aged 37 at conviction. Starting at 30 years, D's **34-year** minimum term upheld.)

294.60 ***Relationship killings*** ***Men killing wives etc.*** ***20+ years***

See also: *Att-Gen's Ref No 19 of 2014* 2014 EWCA Crim 1322 (Convicted. Sharing home pending separation. Tried to falsely blacken V's reputation. Talked about killing V. Killed her with commercial rolling pin (taken to the home as a weapon), causing severe brain injury. Motive to obtain sole custody of child. 25-year starting point as weapon taken to scene so **23 years** not 18.)

294.69 ***Sexual murders*** ***Cases***

See also: *R v Minto* 2014 Crim 297, 2 Cr App R (S) 36 (p 301) (Convicted. Contacted V, aged 16, on Facebook, offered her work at hotel. V's body found nearby with 58 stab wounds. V had been sexually assaulted at point of death, and set on fire. Statutory aggravating factors non-exhaustive. Premeditation of the sexual assault, V's suffering, the abuse of trust and the destruction of the body means aggravating factors listed in Sch 21 para 10 not exhaustive. **35-year** minimum term was not a day too long.)