**‘Vulnerable’ adults in the Domestic Violence, Crimes and Victims Act 2004**

***R v Uddin* [2017] EWCA Crim 1072, Court of Appeal**

Suhail Uddin (U) and his wife, Salma Begum (B), had been awarded custody of U’s younger sister, Shahena Uddin (S), and her two sisters, Rehena Uddin (R) and Sabina Uddin. They all lived at the same house in Watford. Also living at the property were S and U’s brother, Jewel Uddin (J). Living nearby were two more brothers, Jhuhal Uddin (K) and Tohel Uddin (T). The family situation was ‘complex and dysfunctional’, with B operating a ‘strict regime’ in the house (at [14]). One night in October 2014, S was beaten to death, aged 19. The cause of death was choking on inhaled vomit whilst unconscious, having been repeatedly hit on the head. This was the culmination of a ‘lengthy history of isolation and sustained physical and emotional abuse’ (at [10]), apparently triggered by her refusal to comply with B’s authoritarian regime (at [14]).

The regime ‘included physical beatings with objects; being made to eat paper, her own faeces and vomit; force feeding; deprivation of sleep and water; being made to stand for hours staring into a lavatory bowl; not being allowed to use the lavatory or shower when she needed to; having to use the lavatory or shower under surveillance; being forced to sleep on the floor when she wet the bed and being made to lick the lavatory bowl or seat’ (at [11]). The various objects allegedly used to hit S included a plastic baseball bat, a Wii bat, a mop handle, a spirit level and glow sticks. In addition to the physical abuse, S was socially isolated. Although she had attended school, she was not allowed a mobile telephone and had no access to social media. She could not socialise with anyone outside the home nor speak to anyone about her family in a way that might reveal what was happening to her (at [12]). B and U were the ‘main perpetrators’ of the physical violence and emotional abuse meted out to S (at [13]), but the other members of the house were ‘either active or complicit in the beatings and punishments’ (at [10]).

At the time of her death, S ‘had fifty-five separate areas of injury, including two black eyes, bruising to her head, face and both ears, a cut to the head and her lip, with bruising inside her mouth, and injuries to the back of her head, right shoulder, legs and back. She had specific targeted injuries to both breasts, hip, stomach, arms and hands, including defensive injuries’ (at [7]).

Seven members of the Uddin family were charged with various offences: two counts of murder and seven counts of causing or allowing the death of a vulnerable adult, contrary to s 5 of the Domestic Violence, Crimes and Victims Act 2004 (the 2004 Act). They appeared before HHJ Spencer and a jury at St Albans Crown Court in December 2015.

During the trial, the defence made a submission of no case to answer on the s 5 counts on the basis that S was not a ‘vulnerable’ adult. At the time of her death, it was contended, S was aged 19 and had not been suffering from any physical or mental disability or illness.  She was not ‘feeble-minded’; rather, she was ‘feisty and argumentative’, ‘controlling’ and ‘prepared to stand up for herself at school’ (at [14]). This submission was rejected by the trial judge. Instead, HHJ Spencer directed the jury on the meaning of ‘vulnerable’ adult that ‘you must be sure that Shahena was reduced to that state of vulnerability as a result of emotional and/or psychological damage she had suffered through the way she was treated in the household’. At the end of the trial, B was convicted of murdering her sister-in-law; J, K, R, T and U were all convicted of causing or allowing their sister’s death under s 5 of the 2004 Act.

U appealed against his conviction, contending that HHJ Spencer’s direction on the meaning of ‘vulnerable’ was wrong, and that something more than a state of vulnerability caused by ‘emotional and/or psychological damage’ was required. It was contended that, in the absence of evidence that a person was vulnerable because of illness, disability or old age, that a state of ‘utter dependency’ was required, following Khan *& Others* [2009] EWCA Crim 2; [2009] 1 Cr. App. R. 28.

**HELD, dismissing the appeal,** that S was a ‘vulnerable adult’. Although s 5(6) of the 2004 Act expressly identified only two categories of ‘vulnerable’ adult, namely disability or illness (category one) and old age (category two), the words ‘or otherwise’ in the section provided for an additional third category of potentially vulnerable adults who were not suffering from an illness, disability or old age (at [34]). This third category could be defined as constituting cases in which there was a ‘cause (other than physical or mental disability or illness or old age) which has the effect on the victim of significantly impairing his ability to protect himself from violence, abuse or neglect’ (at [37]).

On the facts, S was ‘subject to long term bullying and beatings’; she was punished in ‘bizarre and degrading’ ways for ‘fabricated and the most innocuous’ of alleged misbehaviour (at [47]). Her liberty had been curtailed and her ability to communicate with others had been restricted. She was subject to ‘powerful cultural and family pressure’ (at [47]). Notes that S had written suggested that the Uddin family’s ‘controlling and cruel’ behaviour left her feeling it was her fault that she was beaten and punished. When S did confide in a friend and that intelligence got back to the family she was punished, thereby deterring her once more from reporting her ordeal to third parties and preventing her from taking steps to protect herself. She was in a ‘very real and tangible way’ vulnerable to the violence inflicted upon her and the control exerted over her by her family (at [47]). Although S’s case may not have been a case of ‘utter dependency’, as described in Khan *& Others*, the effect on S was ‘similar’ (at [48]).

HHJ Spencer was right not to withdraw the case from the jury (at [48]). There was ample evidence for the jury to consider whether S fell into the third category of ‘vulnerable adult’. Indeed, this was ‘exactly the kind of circumstances’ that Parliament intended to cover in creating the offence in s 5 of the 2004 Act (at [49]). There was nothing ‘undesirable as a matter of law or social policy’ in holding to account someone in the position of U (at [49]). He was a member of the same household and had frequent contact with S, his younger sister. He must have known how she was being treated; he knew or ought to have known of the significant risk of serious physical harm to her and she was killed in an unlawful act in circumstances of the kind he foresaw or should have foreseen. Far from taking steps to protect her, ‘at the very least he condoned the treatment of her’ and at the worst he was ‘actively involved in it and or encouraged it’ (at [49]).

**Commentary**

**‘Vulnerable’ adults**

The Court of Appeal was faced with a single issue of statutory interpretation: the meaning of ‘of otherwise’ in s 5(6) of the Domestic Violence, Crimes and Victims Act 2004. The subsection defines ‘vulnerable adult’ as ‘a person aged 16 or over whose ability to protect himself from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age or otherwise’. The Crown’s case was that ‘or otherwise’ should be interpreted widely and not be limited by the preceding words. Counsel for the appellant, however, argued that the words should be interpreted much more narrowly using the *ejusdem generis* principle of statutory interpretation, according to which a generic term at the end of a list of more specific words should be limited to things which are related to those more specific words. At their narrowest, it was contended that ‘vulnerable adult’ should only refer to a person who (i) has a disability or illness and (ii) that disability or illness derived from old age or a condition similar to old age. At the least, the appellant contended that the words ‘or otherwise’ should be interpreted to mean a condition ‘intrinsic’ to the accused and which was similar to illness, disability, or old age. It followed, according to counsel for the appellant, the S – being a physically healthy, 19-year-old woman – was not ‘vulnerable’.

This issue had only been raised once before, in *Khan & Others*, in which Lord Judge LC in the Court of Appeal held that:

We do not rule out the possibility that an adult who is utterly dependent on others, even if physically young and apparently fit, may fall within the protective ambit of the Act… In any event the state of vulnerability envisaged by the Act does not need to be long-standing. It may be short, or temporary. A fit adult may become ‘vulnerable’ as a result of accident, or injury, or illness. The anticipation of a full recovery may not diminish the individual’s temporary vulnerability (at [26]).

Counsel for the appellant suggested that this reading of the statute was ‘too broad’ but contended that, if it did represent the law, then S still did not qualify as a ‘vulnerable’ adult. It was contended that, according to *Khan & Others*, a young and physically fit adult could only qualify as a ‘vulnerable’ adult if she was ‘utterly dependent on others’; applying this to the present case, S fell outside of the protective ambit of the statute. Although it was conceded that S may have had a ‘psychological dependency’ on her family, the defence case remained that she did not fall into the category of ‘utter dependency’.

In the event, the Court adopted the Crown’s interpretation. Hallett LJ, giving the unanimous judgment of the Court, held that the 2004 Act expressly identified only two categories of ‘vulnerable’ adult, namely *disability or illness* (category one) and *old age* (category two). She said that the categories were ‘clearly distinct’ because of the repetition of the word ‘through’ in s 5(6) (at [32]). This excluded the narrowest reading of the statute proposed by counsel for the appellant.

Moreover, the words ‘or otherwise’ were not to be construed *eiusdem generis*. Categories one and two were examples of conditions that could be causes of significant impairment but s 5(6) should not be read as limiting the scope of the statute to conditions similar to those categories. Had Parliament wished to link the words ‘or otherwise’ to the preceding categories it could ‘easily’ have done so by using a phrase such as ‘some other similar reason’ or ‘some like reason’ or ‘some equivalent reason’. However, Parliament had not done so (at [35]).

Rather, the words ‘or otherwise’ should be given their natural meaning. In particular, the word*‘*otherwise’ was defined in the Oxford English dictionary as ‘in circumstances different from those present or considered’ (at [34]). Hallett LJ said that the words ‘or otherwise’ were ‘clearly intended to bring within the protection offered by the section causes other than the causes identified but which had the same impact. Consequently, what was envisaged was a third category, *other than* and *different from* the first and second categories’ (at [36]; emphasis added).

Furthermore, whilst category one (disability or illness) could be described as encompassing conditions ‘intrinsic’ to the victim, the cause of such conditions could be either intrinsic or external, for example the ‘mental or physical trauma suffered in an accident’. Likewise, the natural meaning of ‘otherwise’ did not necessitate that the cause be intrinsic. It could be an external cause, through which the victim’s ability to protect themselves was impaired (at [38]).

Hallett LJ said that, in principle, there was ‘no limit’ to the facts and circumstances that might lead to the victim finding him or herself in a state of impaired ability to obtain protection. None of the categories was closely defined (at [39]). In category one, ‘any’ illness or disability would suffice; it not have to be a ‘recognised medical condition’ as in the defence of diminished responsibility. Ultimately, the jury would decide if the victim was suffering from an illness or disability and, if so, its impact on their ability to protect themselves. The concept of ‘old age’ in category two was also not limited. Again, the jury would determine what constituted ‘old age’ and whether that caused a significant impairment.

Similarly, the jury must determine whether a victim fell into the third category. This task would be ‘fact and context sensitive’ (at [40]). The causes of vulnerability could be ‘physical, psychological and/or they may arise from the victim’s circumstances’. Moreover, the third category was not limited to cases of ‘utter dependency’ as postulated in Khan *& Others* (at [40]). Hallett LJ suggested that a ‘victim of sexual or domestic abuse or modern slavery, for instance, might find him or herself in a vulnerable position, having suffered long term physical and mental abuse leaving them scared, cowed and with a significantly impaired ability to protect themselves’ (at [40]).

Finally, Hallett LJ said that the words ‘or otherwise’ were not ambiguous.  It followed that it was not necessary to have recourse to comments made in Parliament during the debate on the Domestic Violence, Crimes and Victims Bill in 2003/2004. However, examination of the Parliamentary discussion of the provision ‘and its underlying policy’ supported *the Crown’s* position that the words ‘or otherwise’ be interpreted widely, and not *the appellant’s* contention that they be interpreted narrowly. During the debate in the House of Lords, the (then) Attorney General, Baroness Scotland QC, had ‘emphasised the broad policy objective behind the section’ (at [43]), namely a desire ‘to protect the most vulnerable in our society’. She had explained that the Government thought that:

[In] terms of our responsibility to protect the most vulnerable in our society we have a strong policy case for extending the provisions to cover vulnerable adults… It would be a step too far to place such a legal duty on all members of the household where the person concerned was healthy and well able to take care of him or herself, or summon the relevant help if necessary. We have not gone down the route therefore of a complex legal definition of a vulnerable adult. We believe that this is a matter of common sense and properly and safely left to the courts (HL, Deb, 21 January 2004, Vol.656, Column GC334).

When Lord Donaldson, the former Master of the Rolls, specifically requested clarification of what he called ’the “or otherwise” problem’, Baroness Scotland responded that:

One of the things of which we are very conscious is, just as with domestic violence, definitions change rapidly. There may be a new species, which could include “or otherwise”, about which we do not know. That is why we have included the measure (HL, Deb, 21 January 2004, Vol.656, Column GC335).