

IN THE SUPREME COURT

ON APPEAL FROM THE COURT OF APPEAL (CRIMINAL DIVISION)

B E T W E E N : -

THE KING

Appellant

- and -

BENJAMIN LUKE FIELD

Respondent

- and -

ADVOCACY AFTER FATAL DOMESTIC ABUSE

THE CENTRE FOR WOMEN'S JUSTICE

PROJECT RESIST

Interveners

WRITTEN SUBMISSIONS ON BEHALF OF THE INTERVENERS

INTRODUCTION

1. The Interveners are non-governmental organisations whose work is concerned with domestic abuse: Advocacy After Fatal Domestic Abuse (“AAFDA”), the Centre for Women’s Justice (“CWJ”), and Project Resist (“PR”).¹ Their interest in the present appeal lies in Edis LJ’s observation in *R v Field* [2026] EWCA Crim 413; [2026] 2 Cr App R 2 (“**Field 3**”) that *R v Kennedy* (No 2) [2007] UKHL 38; [2008] 1 AC 269; [2007] 3 WLR 612 (“**Kennedy**”) might require reconsideration in light of a number of decisions of the Court of Appeal, including *R v Wallace* [2018] EWCA Crim 690; [2018] 2 Cr App R 22, with implications for cases “*in which allegations are made of homicide by causing death where the death was the result of suicide following a lengthy*

Tab 6
(p96)

Tab A15
(p1666)

Tab A18
(p1730)

¹ AAFDA is a charity which supports families after fatal domestic abuse including suicide. CWJ is a charity which aims to advance the human rights of women and girls in England and Wales, particularly within the criminal justice system. PR is an independent strategic advocacy and policy organisation for minoritised women.

period of domestic abuse” [61-63]. These cases are referred to below as “**DA suicide/homicide**” cases.

Submissions in Overview

2. For the purposes of murder or manslaughter, legal causation requires that the conduct of a defendant made a significant and operating contribution to the death. That conduct need not be the only cause of death, nor does it need to be the ‘last act’ in the chain of events: *R v Hughes* [2013] UKSC 56; [2013] 1 WLR 2461 at [22]; *R v Blaue* [1975] 1 WLR 1411; *R v Smith* [1959] 2 QB 35 (C-MAC).

**Tab A17
(p1714)**

Tab A5 (p1568)

3. Where there is an intervening action of a responsible adult (other than the defendant), which is the immediate cause of the death, the defendant may be relieved of legal causation: *Kennedy*. A victim’s decision to end their own life is capable of being such an action, though it is not necessarily so, for example, if the defendant’s action remains a concurrent cause: *R v Dear* [1996] Crim LR 595, or where a victim’s decision to end their own life is a direct response to circumstances for which the defendant is responsible: *Wallace*.

**Tab A11
(p1623)**

4. The Interveners respectfully agree with Edis LJ’s observation in *Field 3* that the circumstances in which a victim taking their own life relieves another of responsibility for their death is an important matter for DA suicide/homicide cases, however they make two submissions:
 - a. It is unnecessary for the determination of the issues arising in this appeal to disturb the principles articulated in *Wallace*.
 - b. If that is wrong, *Wallace* is correctly decided and consistent with the principles articulated in *Kennedy*. Scholarly criticism of *Wallace* is misplaced.

UNNECESSARY TO DISTURB *WALLACE*

5. The Interveners' starting point is that consideration of the correctness of *Wallace* is unnecessary to determine the second certified question in this appeal:²
- Tab 9 (p152)
- a. The Court of Appeal's consideration of the Appellant's case in its first decision ("*Field 1*")³ and in *Field 3* did not turn on any analysis of *Wallace*.
 - b. The Appellant's case is that *Wallace* is correctly decided: §51.
 - c. The Respondent makes no submission that *Wallace* is wrongly decided and distinguishes Mr Field's position on the facts: §§23-24.
6. The issue arising between the parties is whether the act of Peter Farquhar that led to his death (the drinking of whisky supplied by the Respondent), was a "*free, deliberate and informed*" act (as in *Kennedy*), such that there is no relationship of legal causation between the Respondent's actions and Mr Farquhar's death. No suggestion is made that Mr Farquhar did not intend to do the act which was the immediate cause of his death (drink the whisky). Nor is it suggested that he intended, by drinking the whisky, to bring about his own death. The issue is whether Mr Farquhar's act of drinking the whisky was "*informed*".⁴ That does not require consideration of the separate and different principle articulated in *Wallace* concerning whether, where a victim takes their own life as a direct response to circumstances created by the defendant's unlawful acts, it can properly be considered that the victim's intervening acts are "*free*".
7. There is powerful authority for the proposition that legal causation is context specific. In *Kennedy* Lord Bingham emphasised it was not "*a single unvarying concept to be mechanically applied without regard to the context in which the question arises*" [15]. This context-based approach is necessary for the compelling reason that the rules of causation under which responsibility is to be attributed must address the purpose for which the underlying legal rule exists [15]: "*one cannot give a common sense answer to a question of causation for the purpose of attributing*

² "Did either the first or third Court of Appeal err in their understanding and application of *R v Kennedy (No 2)* ... and is any reconsideration of that decision required?"

³ [2021] EWCA Crim 380; [2021] 1 WLR 3543.

⁴ In *Field 3* Edis LJ explained the point at [29]: "*FDI [free deliberate and informed] is the test for establishing whether the act was 'voluntary' in law so that it alone is treated as the cause of the prohibited outcome. In this case it is the last of those words which is engaged. Was Mr Farquhar's decision to drink the whisky informed?*"

responsibility under some rule without knowing the purpose and scope of the rule". Lord Hoffmann explained the same point in his 2005 Blackstone lecture:⁵

Tab A29 (p1980)

"... the law not only defines the conduct giving rise to liability but must also inevitably define the occurrences for which one will be treated as responsible. The law never says simply that one is liable. One is always liable for something. If liability is based on fault, as in negligence, the law will usually apply the standard criteria. If liability is based on something else, as in the river pollution case, the criteria may be different. But in both cases, these criteria are creatures of the law, fashioned so as best to suit the purpose of the rules which impose liability."

8. The Interveners submit that causation in DA suicide/homicide cases arises in its specific context. Particular issues are raised as to the voluntary quality of a victim's acts given the distinctive nature of the harm caused by the offending. As Dr. Lodge has written (citing Victor Tadros)⁶ (at 275):

Tab A31 (p1997)

"... domestic abuse is distinctive in its harmful effects because it involves the erosion of the victim's freedom from non-domination, through the violation of an expectation of trust. The relationship between the abuse and the abused provides the setting for an abusive course of conduct during which the sufferer's options are dictated, or arbitrarily controlled, by the abuser. The consequence is that the abuse has 'the kind of power over the victim's options that he ought not to have and deprives the victim of the kind of perceptual and evaluative control over her options that is required for true freedom. Such is the magnitude of the abuse, the frequently self-blaming victim either lacks the capacity to recognise and act on her liberty to make autonomous choices or at least drastically underestimates the choices available to her, including having the freedom to leave the relationship.'"

She concludes:

"...the characteristic moral wrong of domestic abuse is predicated on the idea that domestic abuse victims not only suffer a diminution of liberty and choice but also that there is an attenuation of the psychological state required to make, and indeed perceive, choices; these are the features of domestically abusive relationships that render the abusive conduct particularly injurious to the victim."

9. The consequence of that distinctive harm has specific implications in considering the "free" or voluntary choices of a victim in the application of causation principles (at 292):

Tab A31 (p2007)

"Ending one's life after enduring a period of significant psychological abuse is a "choice" dictated by the circumstances, which are, in turn, created by the defendant. The suicidal response will often be one of a range of reasonable responses from a victim displaying typical vulnerabilities."

⁵ 'Causation', Leonard Hoffmann, (2005) LQR 121 (Oct) 592-603. The same principle was acknowledged in *R v Hughes* [2013] UKSC 56; [2013] 1 WLR 2461 at [20]: "it is trite law ... that the meaning of causation is heavily context-specific".

⁶ A Lodge, 'Domestic abuse, suicide and liability for manslaughter: in pursuit of justice for victims' (2020) J Crim L 84(4) citing V Tadros, 'The Distinctiveness of Domestic Abuse: A Freedom Based Account', (2005) 65(3) *Louisiana Law Review*.

The voluntariness of the victim’s suicidal reaction and the reasonableness of her response therefore need to be given legal effect through liberal interpretation of causation principles.”

10. Although not in the context of a criminal case, a similar point was recognised in *Corr v IBC Vehicles Ltd* [2008] UKHL 13; [2008] 1 AC 884 (a suicide following injuries sustained in a workplace accident). Lord Bingham found that the victim’s decision to end his life “*was not a voluntary, informed decision taken by him as an adult of sound mind making and giving effect to a personal decision*”, but “*the response of a man suffering from a severely depressive illness which impaired his capacity to make reasoned and informed judgment, such illness being ... a consequence of the employer’s tort*”. The suicide caused no break in the chain of causation, indeed: “*the more unsound the mind of the victim the less likely it is that his suicide will be seen as a novus actus*” (at [16]).

Tab A16
(p1678)

11. Speaking extra-judicially, Whipple LJ has acknowledged the policy considerations involved in determining the boundaries of legal causation in suicide cases in the civil and criminal law:

“In the end, the balance in cases involving suicide has to be drawn between, on the one hand respect for individual autonomy which includes a person’s right to end their own life at a time of their own choosing and, on the other hand, societal concern to protect the vulnerable from being pressured into taking their own lives.”

12. Equivalent issues are not raised in the present appeal. Moreover, any disturbance to the principles articulated in *Wallace* would risk significant and (in the Interveners’ submission) unhelpful, implications for the investigation and prosecution of DA suicide/homicide cases.

DA Suicide/Homicide Cases

13. Policing and government data indicates that over the last three years suicides following domestic abuse have consistently and materially exceeded the number of intimate partner homicides.⁷ The same data indicates that in 2024/2025, victims of domestic abuse were nearly twice as likely to die by suicide than by acts of violence by an intimate partner. Whilst awareness of the possibility of suicide following domestic abuse is increasing, current methodologies for data monitoring mean that significant underreporting of DA suicide/homicide cases is likely.⁸ Notwithstanding these limitations, it is plain that the victims of such offences are predominantly women. Evidence

Tab 51
(p1452)

⁷ National Police Chiefs Council, Domestic Homicide Project, ‘*Domestic Homicides and Suspected Victim Suicides 2020-2025 Year 5 Report*’ (April 2026): Finding 1, p. 5.

⁸ The NPCC’s *Domestic Homicides* report (*ibid*) uses the typology of ‘suspected victim suicides following domestic abuse’ (SVSDA), which is limited to victims who have died by suspected suicide following known domestic abuse.

suggests that black and minoritised women are at particular risk and at (severe) disadvantage in relation to the identification and investigation of these issues by law enforcement⁹ (notwithstanding recognition for over thirty years that South Asian women face starkly increased risks of suicide in response to domestic abuse).¹⁰

**Tab 51
(p1454)**

Tab 49 (p1345)

14. In 2006 the first DA suicide/homicide prosecution was brought to trial in England and Wales: *R v Dhaliwal* [2006] EWCA Crim 1139; [2006] 2 Cr App R 24.¹¹ That prosecution failed.¹² Notably, however the Court of Appeal observed *per curiam* that the conduct could fall within the ambit of homicide ([8]):

**Tab A14
(p1655)**

“... subject to evidence and argument on the critical issue of causation, unlawful violence on an individual with a fragile and vulnerable personality which is proved to be a material cause of death, even if it is the result of suicide, is arguably capable of amounting to manslaughter”¹³

In 2017 the first conviction in a DA suicide/homicide case resulted in England and Wales.¹⁴

15. Increased levels of public concern and political action have led to improved investigative practices and increased possibilities of positive charging decisions in DA suicide/homicide

**Tab 49
(p1274)**

⁹ NPCC report, ‘Domestic Homicides’, finding 6 at p. 7 (women); and finding 8 (minoritised ethnic groups). See also ch. 1A, ‘Life or Death? Preventing Domestic Homicides and Suicides of Black and Minoritised Women’, November 2023, CWJ and Imkaan joint report and at pp. 78-85, p. 103.

¹⁰ ‘Life or Death?’ (*ibid.*), pp. 80.

¹¹ Prior to that was *R v Cenci* (1989) 11 Cr App R (S) 199, in which a plea of involuntary manslaughter was accepted where the victim of domestic abuse, in escaping violence, smashed a window and fell to her death. In her previous role as director of Southall Black Sisters, Pragna Patel (director of PR) advocated for and supported the Dhaliwal family.

¹² It was found that there was insufficient evidence to leave to the jury to establish that the defendant had inflicted psychiatric harm so as to commit an unlawful act within the meaning of ss. 18, 20 or 47 Offences Against the Person Act 1861.

¹³ See also at [32]: “... as a matter of law, the prosecution of a spouse, or partner ... whose unlawful conduct causes recognisable psychiatric illness, such as, ..., post-traumatic stress disorder; or battered wife syndrome, or reactive depression, with resulting suicide, subject always to issues of causation, is not excluded from the ambit of this offence.”

**Tab 50
(p1435)**

¹⁴ Nicholas Allen was convicted of the manslaughter of Justene Reece following a guilty plea. See ch. 5 AAFDA Report. ‘Justice Denied? Accountability after domestic-abuse related suicides and unexplained deaths’, September 2025.

cases.¹⁵ The introduction of a new offence of controlling and coercive behaviour has provided an additional route to prosecution for unlawful and dangerous act manslaughter.¹⁶

16. There remains widespread concern, however, as to the obstacles faced in DA suicide/homicide prosecutions. The Law Commission has highlighted the disparity between the small numbers of prosecutions and convictions for homicide offences when compared to the prevalence of suicides following domestic abuse and issues around causation specifically.¹⁷ It notes (§14.31):

Tab A39
(p2099)

“... the lack of successful prosecutions for manslaughter in this context [domestic abuse] suggests an issue with causation specific to suicide following domestic abuse. Improved understanding of the link between domestic abuse and suicide could assist juries to interpret the evidence relating to causation. However, there is a concern that pre- or co- existing vulnerabilities of the victim are often used to minimise the impact of the abuse as a cause of the suicide, or to argue that factual causation is not established. For example, abuse victims often experience mental health conditions, psychological injury and suicidal ideation. These may have presented before the current relationship. This can then be presented in court by the defence to argue that the suicide was not a result of abuse in the current relationship but linked to the pre-existing vulnerabilities. Where this is in fact the case, it is appropriate that the law operates to prevent defendants being held criminally responsible for the death. However there are concerns that the causation requirement of the general homicide offences, combined with the prevalence of pre- or co- existing vulnerabilities generally inevitable for victims of abuse, means that too few cases of culpable conduct result in an appropriate criminal conviction.”

17. There is a compelling argument for finding criminal liability for murder and manslaughter in DA suicide/homicide cases. Deaths arising from morally wrongful conduct should be accurately and

¹⁵ See for example the Law Commission Consultation Paper, *Homicide Offences*, CP 277 (17 June 2026) at 14.25 – 14.27 and the commentary at 14.41. The current CPS guidance on charging murder or manslaughter in suicide cases relevantly provides:

“Murder or manslaughter may be the appropriate charge where suicide follows an unlawful act or acts by the suspect. This most obviously applies (but is not restricted to) a domestic abuse context; for instance where a suspect has subjected the victim to controlling and coercive behaviour or ongoing violence. Early advice and engagement between police and prosecutor is essential where the police are considering such an investigation. This should cover coordination with the coroner and identifying and obtaining all relevant information to understand the relationship history between suspect and the victim and what led the victim’s state of mind to establish causation. [...]

For cases where the suspect did an act with intent to kill or cause grievous bodily harm, and suicide then followed, murder may be the appropriate charge. Suicide will not necessarily break the chain of causation but the psychiatric injury caused by D’s acts must have been an operating and significant cause of death. See: Dear [1996] 3 WLUK 208 and Wallace [2018] EWCA Crim 690.

For cases where the suspect acted so as to cause a recognisable psychiatric injury resulting in the victim’s suicide, unlawful act manslaughter may be made out. See [Dhaliwal] and R v Chan Fook [1994] 1 WLR 689. Evidence from a Home Office psychiatrist should be obtained to provide the psychiatric injury and prosecutors must carefully consider the extent of any pre-existing mental health conditions.”

¹⁶ Section 76 Serious Crime Act 2015 creates the offence of controlling or coercive behaviour in an intimate or family relationship. See the CPS guidance on charging murder or manslaughter in suicide cases (*ibid*).

¹⁷ At 14.17. See also at 14.19-14.27 and the commentary at 14.41-14.48.

appropriately criminalised. The Law Commission has cited the academic commentary of V Munro and R Aitken:

“The abuser does not pull the trigger or provide the rope. The victim may even see the act of suicide as a form of liberation or a final expression of rebellion or subversion against a partner’s control. But this does not mean that the actions of the abuser are not a significant cause of death, and nor does it mean that the act of taking one’s life is a reflection of voluntary agency.”¹⁸

18. The position outlined above in respect of the investigation and prosecution of DA suicide/homicide cases is predicated on *Wallace* being correctly decided. The CPS guidance relies on *Wallace* in charging murder or manslaughter following a suicide. The discussion in the Law Commission Consultation Paper proceeds on the basis that *Wallace* is good law.¹⁹
19. The observation of Edis LJ in *Field 3* on the relationship between *Wallace* and *Kennedy* is capable of being understood as undermining the correctness of *Wallace*. The Interveners are concerned that such misunderstanding may introduce a separate and additional difficulty in respect of legal causation in DA suicide/homicide cases. They are further concerned that it risks undermining current investigations and prosecutions of DA suicide/homicide cases²⁰ and may provide an expanded basis for perpetrators of domestic abuse to avoid criminal liability for homicide, even though their abuse has brought about their victim’s death.
20. Having regard to the above, the Interveners invite this Court to decline to reconsider the correctness of *Wallace* and to clarify that it remains good law. However, to the extent it may be necessary to reconsider the principles articulated in *Kennedy* as applied in *Wallace*, the Interveners submit that *Wallace* is correctly decided.

WALLACE CORRECTLY DECIDED

21. In *Field 3*, the Court of Appeal acknowledged scholarly criticism of its decision in *Field 1* and *Wallace* from Profs. Simester and Sullivan and the editors of *Smith, Hogan & Ormerod’s Criminal*

Tab A30
(p1989)
Causing
Euthanasia

Tab A35
(p2031)
Modern
Criminal Law

Tab A36 (p2053)
Smith and
Hogan

¹⁸ V Munro and R Aitken, ‘Adding insult to injury? The criminal law’s response to domestic abuse-related suicide in England and Wales’ [2018] 9 Criminal Law Review 732, cited by the Law Commission at 14.12.

¹⁹ See the CPS guidance for charging murder or manslaughter in suicide cases (above at fn. 19) and the Law Commission Consultation Paper: 14.45-14.46.

²⁰ The NPCC ‘Domestic Homicides’ report from April 2025 identifies a number of on-going investigations and prosecutions, as well as police initiatives to re-investigate cases and pursue posthumous charges, see for e.g. ch. 7.

Law.²¹ The thrust of this criticism was that *Wallace* and *Field 1* departed from the principles established in *Kennedy*, that an intervening act by someone other than the defendant that is the immediate cause of death, and which is sufficiently autonomous (“*free, deliberate and informed*”), precludes a relationship of legal causation existing between the defendant and that death. For reasons discussed below, the Interveners submit that criticism is misplaced. The necessary starting point for assessing the correctness of *Wallace* is an analysis of what *Kennedy* decided.

Kennedy

22. The appellant prepared a syringe of heroin for the deceased to inject. The deceased injected himself and was later found dead [5]. The appellant was prosecuted for unlawful act manslaughter under s. 23 of the Offences Against the Person Act 1861 [7]. There was “*no doubt*” that the appellant had committed an unlawful and criminal act by supplying the heroin to the deceased, but the act of supplying, without more, could not harm the deceased or cause his death [7]. It was common ground that the charge of unlawful act manslaughter could not be founded on the act of supplying the heroin alone [8].
23. The prosecution case before the Judicial Committee was advanced on the basis that the appellant had committed unlawful act manslaughter in that he had “*administered*” the heroin to the victim within the meaning of s. 23 [8]. Whilst before the Court of Appeal the prosecution had relied on the complicity of the appellant and his victim in pursuing a common unlawful act in “*administering*” the heroin, following *R v Dias* [2002] 2 Cr App R 96 it was properly conceded that the act of injecting oneself with heroin was a distinct act which was not unlawful. The appellant could not be liable as a secondary party with the deceased as principal [18]. As a consequence, the “*sole argument*” left to the prosecution was that the appellant had administered the injection to the deceased within the meaning of s. 23, which (the prosecution contended) should not be narrowly interpreted [19]. Rejecting this submission, it was found that s. 23 drew a clear distinction between a noxious thing administered to another person and a noxious thing taken by another person [19].

²¹ *Field 3* at [35] and at [38]: *Causing Euthanasia* (2019) LQR 135; Prof. Simester, *Modern Criminal Law, Essays in Honour of GR Sullivan*, “Free, Deliberate and Informed?” (2024). David Ormerod and Karl Laird, *Smith, Hogan & Ormerod’s Criminal Law* (17th edition) pp. 85-86.

24. The focus of the analysis in *Kennedy* was whether there could be, in effect, a single act of “administration” carried out jointly by the appellant and the deceased within the meaning of s. 23, or whether there were two distinct acts in the form of the appellant supplying the syringe on the one hand, and the carrying out of the injection by the victim, on the other. It was within this context that the principle of autonomy arose for consideration.
25. Given that the law generally assumes the existence of free will, it was held, the proper approach was for the distinct acts of the two men to be disconnected. In doing the act of supplying the syringe the appellant was not to be held responsible for the free and voluntary act of the victim injecting himself. The injection had caused the death, but the appellant had not caused the injection. Accordingly, there was no relationship of legal causation between the supply of the syringe and the death (at [14]):

“The criminal law generally assumes the existence of free will. The law recognises certain exceptions, in the case of the young, those who for any reason are not fully responsible for their actions, and the vulnerable, and it acknowledges situations of duress and necessity, and also of deception and mistake. But, generally speaking, informed adults of sound mind are treated as autonomous beings able to make their own decisions how they will act, and none of the exceptions is relied on as possibly applicable in this case. Thus D is not to be treated as causing V to act in a certain way if V makes a voluntary and informed decision to act in that way rather than another.”

Submissions on Kennedy

26. In the Interveners’ submission, the relevant propositions of principle to be drawn from *Kennedy* for the purposes of *Wallace* are as follows:
- a. The rules of causation are not to be “*mechanically applied*” and must have regard to the context in which they arise; questions of causation will differ according to the purpose and scope of the rule for which the question is asked.
 - b. In a statutory context where the identity of the person whose act caused the harm is decisive (as it was in under s. 23), it is necessary to analyse the acts of those involved by reference to the general principle of free will or autonomy.
 - c. The operation of the principle of autonomy presupposes the exercise of a truly voluntary choice: “*autonomous beings able to make their own decisions how they will act*”. The principle of autonomy will not operate in relation to certain defined categories of person

(children, the vulnerable *etc.*) and in relation to: “*those who for any reason are not fully responsible for their actions*”.

- d. The effect of the autonomy principle is that the free, deliberate and informed acts of a responsible adult are (generally) to be taken as his or her autonomous acts for which he or she alone will be responsible. Truly autonomous acts cannot be taken to have been caused by another person: “*D will not be treated as causing V to act in a certain way if V makes a voluntary and informed decision to act in that way rather than another*”.

- 27. Given the appellant was not the person who had done the decisive act for the purposes of s. 23 (administration of the noxious substance), and as the victim had done the decisive act freely and voluntarily (and was not caused to do so by the appellant), the appellant was not to be held responsible in law for a harm which the victim had freely and voluntarily inflicted on himself.
- 28. It was not suggested in *Kennedy* that there was any unifying or inflexible rule of causation in homicide cases (indeed that was expressly disavowed). Nor was it suggested that the principle of autonomy was determinative of the rules of legal causation. Rather, the autonomy principle was deployed to explain why it was that the act of the victim was not to be attributed to the appellant. Against that background it is relevant to consider *Wallace*.

Wallace

- 29. In *Wallace* the main issue arising was whether the trial judge correctly accepted a submission of no case to answer in respect of a charge of murder [1]. The defendant had thrown sulphuric acid over the victim which had caused severe physical and psychological pain [3, 13]. As a consequence of his injuries, the victim had sought euthanasia in Belgium, which is lawful for adults whose decisions are free, deliberate and informed [3, 16-22, 58]. As a matter of Belgian law, no doctor may be compelled to carry out euthanasia [22].
- 30. The trial judge had ruled the victim’s act in requesting euthanasia, and the doctor’s act in providing it, were independent free and voluntary acts which broke the chain of causation between the defendant’s conduct and the victim’s death [3, 44-45, 50]. The injuries generated the occasion for the death, which was caused by the victim’s choice to die, and the death itself [45]. The prosecution appealed, contending that the question should be left to the jury whether the injuries caused by the defendant were a significant and operating cause of death. The defence

argued euthanasia was the immediate cause of death and the defendant's actions were merely factual context. The victim had made a free choice to end his life [51].

31. Allowing the appeal, the Court of Appeal held the question whether the on-going injuries caused by the defendant made a significant and operating contribution to the death should be left to the jury. It could reasonably be concluded that the victim's euthanasia did not break the chain of causation [59-61]. The acts of the victim and the doctors were not "*unconnected with the fault element of the defendant's conduct*" [60] but "*inextricably, bound up with it*" [61]:

"Looked at in this way, [the victim's] death, his request to the doctors, and the act of euthanasia itself carried out in accordance with his wishes, were not discrete acts or events independent of the defendant's conduct, nor were they voluntary, if by this is meant they were the product of the sort of free and unfettered volition presupposed by the *novus actus* rule. Instead they were a direct response to the inflicted injuries and to the circumstances created by them for which the defendant was responsible. If the question is then asked whether, on a common sense view, the defendant's conduct merely set the stage for [the victim's] death, or was instrumental in bringing it about, we consider the jury could properly answer that question in the prosecution's favour."

32. Sharp LJ drew the following propositions of principle from the authorities:

- a. Any assessment of legal causation should maintain focus on whether the accused should be held legally responsible for his actions or whether holding the accused responsible for the death would amount to punishing a moral innocent [64]: *R v Maybin* [2012] SCC 24; [2012] 2 SCR 30 at [29].
- b. The key factual question in evaluating legal causation in homicide cases (whether more than one cause is said to operate or not) is whether the accused's acts made a significant contribution to the death [64]: *R v Miller* [1996] 2 Cr App R 245 at 263.
- c. The responsibility of the accused is not to be excluded unless the act of an intervener is so independent of those acts and so potent in causing death that the jury regard the contribution made by the defendant's acts as insignificant [65-70]: *R v Cheshire* [1991] 93 Cr App R 251 at p.258; *Smith* at pp. 42-43; *Dear*.

Tab A7 (p1588)
- d. The chain of causation will not be broken by the intervening act principle²² where the death is caused by the victim's reaction, or direct response, to circumstances created by the defendant's unlawful acts, even where the defendant's acts do not (medically) contribute to

²² In those cases, however the foreseeability of the victim's response might break the chain of causation.

the death [71-74]: *R v Roberts* [1972] 56 Cr App R 95; *R v Corbett* [1996] Crim LR 594; *R v Williams & Davis* [1992] 1 WLR 380; (1992) 95 Cr App R 1.²³

- e. The latter point was the distinguishing feature from *Kennedy* [76]:

“... it could be said that the position of the drug addict [*in Kennedy*] was not truly analogous to that of [*the victim in Wallace*] any more than it would have been to that of the victims in *Dear*, *Roberts* and *Williams* or to that of the third party doctors in *Cheshire* and *Smith*. *Kennedy* was not concerned, as some of those cases were, and the jury could conclude this one is, with a response by a victim to (extreme) circumstances created by the defendant’s unlawful act, which were persisting, and which had put the victim into a position where he made a “choice” that he would never otherwise have had to make or would have made (not therefore, as we have already said, the sort of free and unfettered volition presupposed by the *novus actus* rule). In the circumstances, in our view, the fact that the Belgian doctors considered [the victim’s] decision/request to be “voluntary” for the purposes of the Belgian law on euthanasia does not determine whether his decision was voluntary for the purposes of the different legal issues arising here. To adapt the words used by Sedley LJ to describe the suicide of a worker in *Corr v IBC Transport* [2006] EWCA Civ 331, [2007] QB 46 at para 69 ... the jury may conclude on the very special facts of this case, that there was nothing that could decently be described as voluntary either in the suffering or in the decision by [the victim] to end his life, given the truly terrible situation he was in.”

Criticism of Wallace

33. The substantial criticism of *Wallace* advanced by Profs. Simester and Sullivan is that, in a “morally charged” decision, the Court of Appeal failed correctly to apply the “free, deliberate and informed” rule and introduced a novel qualification that it must involve a defendant’s voluntary and “unfettered” act (p.24).²⁴ Correctly applying *Kennedy*, they argue, the trial judge’s ruling should have been upheld (at pp. 26-27):

“The best way to approach the facts in *Wallace* is by asking, of what did V die? The answer: a lethal injection by [the doctor]. The injuries caused by D were not a concurrent operating cause of that death ... Can we construct a causal bridge from D’s act to [the doctor’s]? [*Kennedy*] confirms that if [the doctor’s] act was free, deliberate and informed, the answer to that question is, no. Only if [the doctor’s act] fell outside the scope of the FDI principle should we proceed to ask whether that intervention was reasonably foreseeable and not extraordinary.”

34. In the Interveners’ submission however, that criticism sets off from the wrong footing. The Court of Appeal in *Wallace* rightly identified that, unlike *Kennedy*, it was concerned with causation in

²³ The line of cases to which the Court could have referred is in fact much older. See e.g. *R v Evans* (1812): “if [the victim] was constrained by her husband’s threats of further violence and from a well-grounded apprehension of his doing such further violence as would endanger her life, he was answerable for the consequences of the fall, as much as if he had thrown her out of the window himself” cited in *Williams & Davis* at 387G.

²⁴ *Causing euthanasia*. Substantially the same arguments are made in *Smith, Hogan & Ormerod*. Fn. 21 above.

the context of the actions of a victim in reaction (or direct response) to the defendant's unlawful conduct. It was in reaction to the injuries caused by the defendant that the victim decided to end his life and took steps to do so. *Kennedy* was not such a case: it was not in direct response, or reaction, to the appellant's act of supply, that the victim injected himself with the fatal dose of heroin. The criticism fails to grapple with the substantial body of authority relied on by the Court of Appeal in *Wallace* that where causation is to be considered in the context of a victim's response to circumstances created by a defendant's unlawful conduct, the starting point is not a mechanical or inflexible question ("of what did V die?") but one aligned with "common sense" (what caused V's death). Profs. Simester and Sullivan do not suggest that the well-settled line of 'response' cases is wrongly decided, nor do they acknowledge that it was not raised for consideration in *Kennedy*.

35. The Interveners further submit that there is no inconsistency in the analysis of voluntariness in *Wallace* with the principles articulated in *Kennedy*. *Wallace* did not introduce any qualification of "unfettered" volition. *Kennedy* expressly envisaged that it would only be the truly voluntary decisions of another party that would relieve a defendant of legal liability for an act to which he was factually linked. Lord Bingham spoke of "*autonomous beings able to make their own decisions how they will act*". The autonomy principle was of no application to that open category of persons "*who for any reason are not fully responsible for their actions*". Those who are not "fully responsible" for their actions, it is submitted, must include those who are not responsible for the circumstances in which they have been placed by the defendant's unlawful conduct. The doctor's decision to euthanise the victim and the victim's decision to end his life were not "free" choices as in *Kennedy*, but choices that the defendant's unlawful conduct brought about [61].
36. The criticism of common sense is likewise misplaced. The function of juries is to supply the criminal law with the legitimacy of community standards. It is no more objectionable to ask a jury to consider whether the injuries unlawfully inflicted by the defendant made a significant contribution to the death, than to ask them to determine an issue of dishonesty. As the High Court of Justiciary observed in *Johnson v HM Advocate* [2009] HJAC 38; 2009 JC 227 at [56], the test of causation in Scotland (also a more than *de minimis* contribution) allows the jury to attribute responsibility for a death in alignment with ordinary moral notions:²⁵

²⁵ The jury directions given in Scotland on causation in cases of murder and attempted murder are set out in the Jury Manual (at §10): "In most cases it is unnecessary to give the jury any directions on causation, because how the deceased died is usually not in dispute. But where an issue of causation is raised, such as a *novus actus interveniens*, it is sufficient to say that in law the accused's act need not be the sole cause, or even the main cause, of the death. It is enough if the

“... the law’s requirement – that the wrongful act of the accused should have materially contributed to the death of the deceased – is not in doubt. Whether that causal connection has been established in a particular set of circumstances is a question to be determined by the jury, applying what the judge in the present case described as their common sense. As Lord Hoffmann observed in his 2005 Blackstone lecture (pp 593, 594) in relation to Hart and Honoré, *Causation in the Law*:

‘The great achievement of Hart and Honoré was to unpack the concept of causation when it is used as the law uses it, to attribute responsibility for things that happen. They showed that when judges say that it is a matter of common sense, they usually mean that it accords with ordinary moral notions of when someone should be regarded as responsible for something which has happened ... They demonstrated that when the judges spoke of applying common sense, they were appealing to moral notions of what would fairly delimit the events for which ... a defendant should be responsible.’”

37. To contend that the rules of causation should be dictated by a rigid application of the “*FDI principle*” is to contend for a position that allows the law to move out of alignment with ordinary notions of a defendant’s moral fault. No justification is advanced as to why that should be so; why the autonomy principle should be given such priority (over the protection of the vulnerable) in the context of homicide generally; and no support for that position can be derived from *Kennedy*.

CONCLUSION

38. The propositions of principle articulated in *Wallace* are ones that are important in DA suicide/homicide cases. The actions of a victim of abuse are, frequently as a direct consequence of the abuse, not free or voluntary actions given the distinctive nature of the harm. A victim’s choice to escape domestic abuse by ending their life is no choice at all.
39. In light of the foregoing, the Interveners invite this Court:
- a. To leave the principles articulated *Wallace* undisturbed.
 - b. To clarify that *Wallace* remains good law.

Katherine Hardcastle
Fountain Court Chambers
15 September 2026

accused’s acts contributed significantly or material to it: *Finlayson v HM Advocate* 1979 JC 33; *Malone v HM Advocate* 1988 SCCR 498; *Johnson v HM Advocate* [2009] HCJAC 38; 2009 JC 227 at paragraph [55].”