UK common law position is found in the Clause 17 of the Draft Criminal Code Bill 1989, whereby (1) a person causes a result where they had done an act that is more than a negligible contribution to the occurrence or omits to do the act which would have prevented the occurrence, and (2) a person does not cause a result if, after a person’s act or omission, an act or event occurs (2.1) which is the immediate and sufficient cause of the result; (2.2) which the person did not foresee; (2.3) or could not have reasonably foreseen.

Step 1: Factual causation
To determine the factual causation, one applies the ‘but-for’ test established in R v White [1910] 2 KB 124. If the consequence would have occurred anyway, that is if the defendant’s act or omission did not make a difference, then there is not sufficient causation.

Step 2: Legal causation
Legal causation is understood as an operative and substantial cause (R v Dear (1996) CLR 595). If the factual causation is proved, then the legal causation will also be established provided that:
1. The act is wrongful (R v Dalloway (1847) 2 Cox 273).
2. The defendant’s contribution is substantial (R v Adams [1957] Crim LR 365).
3. Subsequently to the defendant’s act or omission, no abnormal event, sufficient in itself to cause the harm, occurred. Such event is also known as novus actus interveniens and can fall into the following categories:
   a) The act of a third party, e.g. R v Pagett (1983) 76 Cr App R 279.
   c) Medical interventions, e.g. R v Jordan (1956) 40 Cr App E 152.

An argument for critique
Causation in law is intertwined with the notion of causation in the moral, as well as in the common-sense human perception (Lagnado, Gerstenberg, 2016, p. 595). Yet, it is often argued that causation in the legal system does not account for the plurality of individual agency which is rooted in social and political structures (Norrie, 1991, p. 692). The lack of such consideration is particularly evident when accessing the complex and broad concepts of ‘voluntariness’, ‘normal’ and ‘abnormal’ events (Hart, Honore, 1985 p. 131). The focus on the individual and the abstraction from social fabric leads the decisions on causation rely on ‘policy’, yet, that ‘policy’ becomes reductionist and, therefore flawed (Norrie, p. 692). As an example, one is to consider R v Dhaliwal [2006] EWCA Crim 1139, where despite the solid evidence of physical and mental abuse, the prosecution was unable to establish a clear causal link between the victim’s suicide and the defendant’s abuse (Orr, 2016, p. 6).

Reference list