



**“Vulnerable” -
applying the *Johnson*
test.**
**The 10 key questions
answered**

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**Q1. Why does “vulnerable”
matter?**

- It controls the 9 routes to achieving priority need for a person “vulnerable as a result of”...
 - Old age
 - Mental illness
 - Mental handicap
 - Physical disability
 - Having been in care (and now 21 or over)
 - Having been in the armed forces
 - Having been in custody
 - Having fled actual or threatened violence
 - Other special reason
- **The words “or other special reason” ...show that vulnerability arising from many causes is covered ([51])**






**Q2. What was the issue in
Johnson’s case?**

- “Does the assessment of whether an applicant is vulnerable ...involve an exercise in comparability, and,
- if so,
- by reference to which group of people is vulnerability to be determined?”






**Q3. Does it involve comparison
between the applicant and
others?**

- (A question asked in the absence of a statutory definition of the word.)
- Answer: Yes
- “As Lord Wilson pointed out in argument, “vulnerable”, like virtually all adjectives, carries with it a necessary implication of relativity.” ([51])
- “...a comparison must be implied.” (Lady Hale at [93])






Q4. What was the old test?

- The Court of Appeal decided in 1998 (in *Pereira*) that the authority must ask themselves whether the applicant
 - “when homeless [will be] less able to fend for himself than an ordinary homeless person so that injury or detriment to him will result when a less vulnerable man would be able to cope without harmful effects“
 - [see too **Code of Guidance** para 10.13]






Q5. What was wrong with it?

- Judicial law-making:
 - “less able to fend”
 - “ordinary homeless person”
 - “less vulnerable”
- Consequently, 17 years later:
 - “we had reached the point where decision-makers were saying, of people who clearly had serious mental or physical disabilities, that “you are not vulnerable, because you are no more vulnerable than the usual run of street homeless people in our locality” (Lady Hale at [91])





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Q6. Who is the new *Johnson* comparator

The Supreme Court identify the correct comparator...

- “The comparison is with ordinary people, not ordinary homeless people, still less ordinary street homeless people.” (Lady Hale at [93])
- “an ordinary person if made homeless, not ...an ordinary person actually homeless.” [57], or “an ordinary person, but an ordinary person if made homeless, not an ordinary actual homeless person” [58] or “an ordinary person who is in need of accommodation” [59]
- “And it is ordinary people generally, not ordinary people in this locality.” (Lady Hale at [93])

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Q7. So what does the new *Johnson* test require?

- Virtually everyone who is homeless suffers “harm” [so] “vulnerable” ...connotes “**significantly more vulnerable than ordinarily vulnerable**” as a result of being rendered homeless ([52]-[53])
- “The person who is old ... (etc)... must as a result be **more at risk of harm** from being without accommodation than an ordinary person would be.” (Lady Hale at [93])

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Q8. How do you work out if applicant is at greater risk of harm (when homeless) than an ordinary person?

- Directs an enquiry as to the applicant's vulnerability “if he remains or becomes a person without accommodation” ([37])
- No statistics (“the use of statistics to determine whether someone is vulnerable is a very dangerous exercise” ([43])
- No reference to the demands on the council or its resources ([39])

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contd...

- Is there a significantly greater risk that the applicant will suffer harm if s/he becomes homeless than the ordinary person would suffer if they were to become homeless?
- In this context “significant” must mean “not insignificant”
- Otherwise “there would be a real risk that a sick and vulnerable individual is going to be put out on the streets” (the quote from Sedley at [56])

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Q9. Two steps or one?

- **Do you ask:**
 - (i) whether the applicant is “vulnerable”, and then
 - (ii) whether it is as a result of “old age...etc”
- **or a single, composite question?**
- **No rule but** “I suspect that the one-stage test will probably be more practical in most cases” ([46])

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Q10. Any other questions to be answered?

- Yes
- **Q1:** What if a person has access to help (e.g. can rely on a carer) which can minimise or eliminate the risk of harm s/he would otherwise face?
- **Q2:** If the applicant is disabled (or has another protected characteristic) does that make any difference?
- **PS. Zia Nabi has the answers.**

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