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CCRC - Murder Conviction of Wang Yam Referred to Appeal Court

The murder conviction of a leading Chinese dissident and MI6 informant has been referred to the court of appeal after the Guardian uncovered evidence that was withheld by the police. Wang Yam was convicted at the Old Bailey in 2009 of killing the reclusive author Allan Chappelow, 86, in his home in Hampstead, north London, after a trial during which his entire defence was heard in secret on the grounds of national security. The Criminal Cases Review Commission (CCRC) announced on Thursday 27th April 2016, that the murder conviction was being referred back to the courts because of new evidence "relating to the failure by police to reveal material which might have assisted the defence and undermined the prosecution case". The material relates to an incident which "first came to light as a result of an article that appeared in the Guardian newspaper in January 2014", said the CCRC's statement. "The incident arguably could have formed the basis for the defence to propose the existence of an alternative suspect."

The case against Yam was that he had gained access to Chappelow's letterbox from the street and had been defrauding him by stealing his bank details. The prosecution suggested Yam was confronted by Chappelow and had then killed him. He was jailed for life with a recommendation that he serve a minimum of 20 years. Yam, who is in Whitemoor prison, Cambridgeshire, contacted the Guardian in 2013 with a letter that stated: "I believe the only way to my freedom is [to] let public … know what is my defence and what I had done in full picture. No cover-up … I was convicted for murder without even police have evidence that I know the deceased or ever met each other. There is no evidence to link me with the deceased ... and there are unknown DNA fingerprint footprint, all not belong to me." Part of Yam's legal argument was that because his trial had not been reported fully, potential witnesses had not come forward. After the Guardian report on the case in January 2014, two witnesses did come forward.

One, a former close neighbour of Chappelow, told the Guardian that in 2007, when Yam was in custody, he was in his house when he heard a rustling on the porch. "I opened the door to find a man with a knife going through our post. He pointed the knife at me and I shut the door. He then shouted through the door that he had been watching our house and knew that I had a wife and baby. "He said if I called the police he would kill them. He waited in the porch for half an hour. I hid in the house but did not call the police until he had left. The police showed a strange lack of interest and just told me to change all my bank accounts … It is clear to me that there was a violent person or gang operating in the street and the lack of police interest was very bizarre." The neighbour's statement was passed to Yam's legal team and formed part of their application to the CCRC.

"This case remains the only murder trial in the UK where the defence and other evidence was heard in secret – away from the scrutiny of the public and the press," Yam's solicitor, James Mullion, said. "For the past nine years Mr Yam has been fighting to show his innocence, but has been restricted by court order to doing so behind locked doors. I and the rest of Wang Yam's legal team are hugely grateful to the Guardian for staying with this case and uncovering the important new evidence." Yam's barrister, Kirsty Brimelow QC, said she was delighted the case would be reconsidered.

The body of Chappelow, who had written two biographies of George Bernard Shaw, was found under a metre-high pile of papers in a room filled with rotting furniture in June 2006. It was unclear exactly when he had been killed. Yam, who also lived in Hampstead, came to the attention of the police investigating the murder because, prior to and just after the death of Chappelow, use of stolen credit cards had been traced to him. Wang had recently left the country for Switzerland, where he was arrested in Zug at the end of 2006. He was charged with murder and other offences. In a first trial, for which the jury all had to receive security clearance, he was convicted of the theft and fraud offences and jailed for four and a half years, but the jury could not agree on the murder charge. At a second trial he was convicted and jailed for life.

Wang had been a research assistant in the Chinese nuclear weapons research institute from 1984-87 and an associate professor at a university in Beijing. His grandfather had been Mao's third in command, and his father was a Red Army general. He said he had been involved in the 1989 demonstrations in Tiananmen Square and, supposedly fearful of reprisals, left the country and travelled via Hong Kong to London, where he was swiftly granted refugee status in 1992. He worked initially as a researcher at Imperial College London, and ran his own computer company, Quantum Electronics Corporation, from 1997 until it folded in 1999. At the time of the murder, he was deeply in debt and being evicted from his flat because of rent arrears.

The trial was remarkable in that the media were not allowed to hear the defence case. Jacqui Smith, the then Labour home secretary, and subsequently William Hague, then foreign secretary, signed "public interest immunity (PII) certificates" – demands for court gagging orders. Hague claimed there would be "a real risk of serious harm to an important public interest" if Yam was allowed to disclose evidence heard in secret. Before the PIIs were granted it was reported that MI6 had requested secrecy, that Yam was a "low-level informant" for the intelligence services and that "part of his defence rested on his activities in that role". In 2014, one of Britain's most senior legal figures entered the debate in an unconventional way. In an article for the London Review of Books, Lord Phillips, the first president of the supreme court, wrote that his daily cycle ride took him past Chappelow's house. He recalled the murder and trial, adding: "Very unusually, a large part of his trial was held in camera, because apparently Wang Yam had some link with the security services, which he wished to rely on by way of defence." Phillips noted that Yam had applied to the European court of human rights, claiming that holding part of his trial in secret had infringed his right to a fair trial.

Yam's lawyers tried to have the ban lifted by the ECHR. However, the original trial judge, Mr Justice Ouseley, ruled last year: "[The ECHR's] judges and staff owe no allegiance to the crown. They do not apply UK domestic law. The various protected interests cannot be explained without risk of harm to those interests." In December, the supreme court dismissed Yam's appeal against this decision. It also emerged last year that the prison service banned communications between Yam and Guardian reporters. Yam was told by Whitemoor prison authorities last year that a letter he wrote to the Guardian would not be sent. He was given a "correspondence memo", stating: "Dear Mr Yam, unfortunately this correspondence cannot be sent as you are not permitted to correspond with

journalists." The Ministry of Justice said later that such a ban no longer exists.

Duncan Campbell and Richard Norton-Taylor, Guardian

Clearing the Books?

There are many criminal cases where police forces have covered themselves with shame in efforts to 'solve' or clear their books of crimes. Cases like those of the Guildford 4, Barry George, or the M50 Marie Wilkes murder which implicated Eddie Browning, there are hundreds of other examples. However, there are few that fill me with more disgust and contempt than the brazen attempt by *Devon & Cornwall police to 'Solve the Genette Tate case as reported in MOJUK issue 578. Just after the death of Robert Black, the principle suspect and likely murderer, this deceitful and corrupt police force announces they were just about to charge Robert Black. Just pipped at the post after 38 years? I don't think so, more like a shameless attempt to 'Clear the books' of the crime, a tactic they have used in the past all too often. The sheer nerve of this police force to claim to be providing Genette Tate's family with closure by claiming to be about to charge Black is almost beyond belief. But to then blame the Crown Prosecution Service for 'introducing a new policy' of not charging or trying the dead, unbelievable?

I'm sure we all remember the many previous trials of the dead. The trial of Adolf Hitler for genocide, or the trial of Attila the Hun with the attendant difficulty of digging up witnesses for a similar event. The collapse of the trial of Genghis Khan due lo the failure to find his tomb in order to dig up his body, I'm sure we all remember them well, except they never happened. The only trial I am aware of where a dead body was put on trial was around 1660, after the Restoration. Oliver Cromwell's corpse was disinterred, put on trial, then beheaded after being found guilty. I've not heard of a similar trial since, perhaps this shameless police force could acquaint me with other examples of the Crown Prosecution Service enacting similar trials, and the date on which they abandoned the practice?

Keith Rose A7780AG, HMP Whitemoor, Longhill Road, March, PE15 0PR

*Whilst on the subject of Devon & Cornwall police it is worth pointing out their all too routine bungling which necessitates their inventive fables. Retired Professor of English Medieval Culture at Exeter University, Avril Henry, suffered from a multitude of ailments. They included cardiac and renal problems, tinnitus and ear infections, Professor Henry, 82 years o1d, was a member of EXIT the pro-euthanasia charity and ordered for herself a suicide kit from Mexico. Devon & Cornwall police were tipped off about the purchase by Interpol so acting in their normal kind and considerate manner for dealing with the elderly and frai1, they smashed down her front door in the middle of the night. They even Look a psychiatrist with them to determine her state of mind. Shock at having her door smashed in during the early hours? Having confiscated all the available drug's, they could find the deficient and cack-handed officers left, doubtless satisfied with their early hour's raid. A couple of days later Professor Avril Henry committed suicide with drugs from the Mexican kit.

Hillsborough Inquests: Why Saying 'Sorry' Isn't Enough Mark George QC

In the aftermath of publication of the report of the Hillsborough Independent Panel in 2012, David Crompton, the Chief Constable of the South Yorkshire Police issued a fulsome apology. He said: "On that day South Yorkshire Police failed the victims and families. The police lost control. In the immediate aftermath senior officers sought to change the record of events. Disgraceful lies were told which blamed the Liverpool fans for the disaster. Statements were altered which sought to minimise police blame. These actions have caused untold pain and distress for over 23 years. I am profoundly sorry for the way the force failed on 15th April 1989 and I am doubly sorry for the injustice that followed and I apologise to the families of the

96 and Liverpool fans." Now, in my experience police officers don't much like having to say 'sorry' once, much less twice. But David Crompton was at it again on Tuesday 26/04/2016as soon as the jury in a new Hillsborough Inquests had finished delivering its devastating verdicts. This is what he said in Tuesday: "On 15th April 1989 the South Yorkshire Police got the policing of the FA Cup semi-final at Hillsborough catastrophically wrong. The force failed the victims and failed their families… . Today, as I have said before, I want to apologise unreservedly to the families and all those affected." You would be forgiven for thinking that Mr Crompton who had nothing at all to do with Hillsborough disaster, must be a thoroughly decent man making sincere and heartfelt apologies, not just once but twice, that no one could misinterpret. Admitting your force, even when not under your command had got things 'catastrophically wrong' is not something you will hear a senior police officer say very often.

It might interest you to know that when Mr Crompton was represented by a legal team of solicitors and barristers at the recent Inquests, it seemed he must have forgotten what he had said back in 2012. You would imagine that he would have instructed his counsel to inform the court that he stood by his statement from 2012 and would not be saying anything in the Inquests that would be in any way inconsistent with that apology. So you may wonder why his counsel, no doubt on the instructions of their client Mr Crompton, sought to piggyback on the loathsome and repellent assertions repeatedly made by counsel for the match commanders, Mr Duckenfield and his sidekicks Marshall and Greenwood that the disaster was all the fault of drunken, hostile, ticketless fans most of whom turned up late expecting to gain entry to the stadium.

Why otherwise were witnesses questioned to elicit that fans were spitting on police officers outside the perimeter gates of the stadium, or that they had 'forced their way' through those gates that the police were trying to close to ease the pressure on the fans near the turnstiles, or that fans could simply have withdrawn themselves from the crush outside the ground? Why was a witness questioned to elicit that fans outside the ground became unresponsive to police instructions to stop pushing? Why was a witness asked to confirm that he had previously said in a written statement in 1989 that during the rescue effort 'three or four fans' had assaulted a press photographer? Why was Mr Marshall the match commander responsible for the outside of the Leppings Lane entrance asked to confirm further examples of alleged bad behaviour by Liverpool fans?

What did any of this have to do with the current Chief Constable? How could he instruct his legal team to ask such questions and adopt such a line if he meant a single word of the apology issued in 2012? The purpose of the questioning is obvious. The same Chief Constable who had admitted that his force had caused the disaster and then tried to cover it up was trying to persuade the jury that it was after all, all the fault of the fans.

You will no doubt remember that as early as the evening of the disaster the then Chief Constable Peter Wright had confirmed that the exit gate C, through which some two thousand supporters entered in just five minutes after 14.52, had been opened on police instructions. That is on orders from the match commander David Duckenfield. During the Inquests it became apparent to us that the police investing the disaster afresh, known as Operation Resolve, were seriously contending that the gate was not in fact opened in response to Mr Duckenfield's order but instead, at the behest of a junior police officer or a gateman acting on their own initiative.

This was such a ridiculous idea that even the team of lawyers representing Mr Duckenfield rejected this nonsense. This theory finally bit the dust after our audio-visual team had done a brilliant bit of detective work in which they had been able to identify the order to open the gate being given in the background on tapes recording traffic between the emergency services.

But not before Mr Crompton's lawyers had tried valiantly to prove that this crackpot theory had legs and that in fact gate C was not opened in response to Mr Duckenfield's order at all.

How you may ask did those instructions to his counsel square with the apology he had given in 2012? And if you still think Mr Crompton is a decent man you have to consider how some-one who conducted themselves in the way demonstrated above during the Inquests then had the bare-faced cheek to issue another abject apology as soon as the game was up and the jury had confirmed that the disaster was indeed the fault of the police and not the fans. No wonder there was a seriously adverse reaction to Mr Crompton's latest apology. No wonder the Home Secretary was not happy with it. Nor were many others including I suspect every single family of the 96 and the many others affected by the disaster.

So no surprise that Mr Crompton is now toast and that the Police and Crime Commissioner for South Yorkshire has indicated that he will not be resuming his post before his resignation apparently scheduled for later this year takes effect. But that is not enough in this case. Mr Crompton should not be allowed to resign. For what he has done he deserves to be sacked right now. And in the confident expectation that some excuse will be found not to sack him, I hope that before Mr Crompton finally swans off to his Mediterranean retirement home on a fat publicly funded pension he will at least be good enough to answer these questions, because frankly I haven't got a clue. And in the absence of any answer its hard to avoid the conclusion that Mr Crompton issues apologies not because he means a single word of what he says but because he thinks it is politic to do so. And people like that deserve the contempt of us all.

UK Has 'Most Punitive' Criminal Records Regime For Young Offenders

Anushka Kangesu, Justice Gap: England and Wales have topped a new international ranking of the most punitive childhood criminal records system. The Standing Committee for Youth Justice (SCYJ) last week published a report on the international treatment of criminal records for youths comparing regimes in 16 jurisdictions including Australia, Canada, France, Germany, Italy, and in the US, Ohio and Texas. The study looked at serious crimes such as murder or rape and found that, in England and Wales, criminal records for children were treated in the same manner as adults regardless of offence category. However minor a childhood crime, in England and Wales that crime can never be deleted and is kept by the state for life. The report found that a child who offends in England and Wales is not only more likely to acquire a criminal record, but that this record will have a longer-lasting and more profound impact on them as they go on to adulthood. If a child in Germany or New Zealand is arrested by the police and released with no further action taken, that information is never disclosed on criminal records checks.

However, in England and Wales, that information is held locally by the police and may at their discretion, be disclosed on enhanced criminal records. Last year 60,000 cautions and convictions were given to youths in the UK, all of which are attached to criminal records, some of which will need to be disclosed for many years, some of them forever. This is a stark contrast to the statistics in New Zealand where only 48 children under the age of 17 were given a criminal record. Penelope Gibbs, Chair of the SCYJ, said: 'A child who has shoplifted a couple of times will suffer the disproportionate penalty of not only having the offences recorded for life, but also having to disclose it at key points- such as entering university or applying for certain jobs, such as a teacher, or a police officer. No other country reviewed inflicts such tough penalties on a child who offends.'

According to the SCYJ, a criminal record acquired by a child in England and Wales could affect that person 'for longer, and more profoundly, than in any other jurisdiction under consideration'. The group argued that that was the result of a number of factors: England and Wales was 'relatively rare in making no distinction between records acquired as a child, and those acquired as an adult'; many other countries had entirely separate systems for children and adults for most offences; unlike many jurisdictions, there was 'no means to "wipe" or expunge a criminal record acquired in childhood in England and Wales'; and our rules on disclosure were 'relatively unrestricted' meaning there were 'few ways to prevent the disclosure of comparatively minor convictions and cautions' and all convictions could be disclosed for lengthy periods, in comparison to many other jurisdictions.

In Germany, Ohio, Texas and Spain childhood criminal records were held on separate databases to those of adults and such databases had more restricted access. 'In Canada, Ohio, and Poland, all but the most serious offences committed by children do not attract a criminal record, and in New South Wales, New Mexico and New Zealand, in the main, only the most serious offences committed by children are classed as 'convictions' at all – as a result, in New Zealand in 2014, only 48 children under the age of 17 were given a criminal record, and only one child in New Mexico was given an adult sentence and thus a criminal record in 2013/14,' the report said. By contrast, as set out above, almost 60,000 criminal records were imposed on children in England and Wales in 2013/14.'

32% Increase In Children In Custody Requiring Hospital Treatment

Ministry of Justice statistics for 2014-2015, released recently, show that there has been a 32% increase in children in custody needing hospital treatment, following assault, self- harm or restraint incidents, which Article 39 reports HERE. Meanwhile, the Youth Justice Board's statement following the release of these statistics focussed on the fact that 9% fewer children were entering the youth justice system than a year ago. The release of these figures follows the Panorama documentary on the physical abuse of children by staff at Medway Secure Training Centre in Kent on 11 January 2016, of which Frances Crook of the Howard League for Penal Reform said: "Watching this programme made me cry. The deliberate cruelty against children was one of the most upsetting things I have seen in this country. Shocking also was the institutionalised fraud being perpetrated to cover up that abuse."

For the first time, the statistics released include uses of force as a result of using the "Minimising and Managing Physical Restraint System" (MMPR) on children in England and Wales, which has been introduced in five secure establishments, including Medway. This is described by the government, as being a technique of using non-physical, de-escalation techniques, before resorting to force to restrain a child. Despite the introduction of the MMPR system, it was only used in 58% of "use of force" incidents in the past year. In 36 incidents where MMPR was used, pain inducing techniques were used on children, which are described as being utilised where necessary to protect a child or others from an immediate risk of serious physical harm. Children's "passive non-compliance" was a reason given by staff for using force in 423 cases.

There has been a substantial increase of the use of restraint on children, up 60% from the year ending March 2010 to end of 2015. 95% of injuries resulting from restraint are described as "minor", whilst five children required hospital treatment after being restrained in that year. The statistics also show that physical restraint has been disproportionately used on the younger age group (10-14 years of age), females and young people who were of black, Asian or ethnic minorities. The number of self-harm incidents has increased by 46% compared with the year ending March 2010. It is unclear whether the increase in self- harm incidents is

related to the increase in restraint incidents. Finally, there were 1,790 incidents of assaults where the victim was a child, and 31 children required hospital treatment following the assault.

Fears Over Credit For Guilty Plea *Law Society Gazette*

Criminal defence solicitors are expected to oppose proposed replacement guidelines on sentence reductions for early guilty pleas. The Sentencing Council says it wants to ensure that reductions for guilty pleas 'should be applied fairly and consistently and that the guideline should encourage defendants who are guilty to plead guilty as early in the court process as possible'. Benefits include: being able to inform victims and witnesses that their testimony is not required; resource savings for the police, Crown Prosecution Service, Legal Aid Agency and HM Courts and Tribunals Service.

The council's consultation closes on 5 May. The Criminal Law Solicitors' Association told the Gazette it had 'grave reservations' about the replacement guidelines, 'particularly in the current climate where the CPS is serving less and less detail about a case (especially relevant when complex) and often not serving it on time'. The association's consultation response states that in many proceedings at the initial stage, 'it is impossible to advise defendants properly until full files of evidence have been provided by the CPS, and the mantra that "the defendant must know whether he has done it" is inappropriate. 'Lay clients are not lawyers, they rarely know the intricacies of law and possible defences, and no one should be expected to plead without knowledge of the full case against them'.

Current guidelines recommend a one-third reduction where the plea is entered 'at the first reasonable opportunity'. Under the revised guideline, a maximum one-third reduction would be applied where the plea is entered 'at the first stage of proceedings'. The first stage would be the first point at which the charge is put to the offender in court and a plea, or indication of plea, is sought. After the first stage of proceedings, the maximum reduction level would be one-fifth. A sliding scale would follow. The association said the draft guideline eroded the principle 'that it is for the prosecution to prove their case'. No admissions made in the pre-court process should be taken into account as mitigating factors, it added. Jonathan Black (pictured), former president of the London Criminal Courts Solicitors' Association, said it was 'simply the wrong time' to 'entertain such a proposal'. Black said the profession was 'in the midst' of a struggle to balance its professional duty to provide advice on the evidence 'against the combined forces of poor disclosure at the first hearing and the failings of the Better Case Management project [and] Digital Case System'. The LCCSA told members this week that it will submit a 'strongly worded' response.

Deaths/Assaults/Suicide in Prison Custody Year Ending March 2016

In the 12 months to March 2016 there were 290 deaths in prison custody (a rate of 3.4 per 1,000 prisoners), an increase of 51 compared to the 12 months ending March 2015. These deaths comprise of: 100 apparent self-inflicted deaths (a rate of 1.2 per 1,000 prisoners), up from 79 in the previous 12 month period (a 27% increase); 167 deaths due to natural causes (a rate of 1.9 per 1,000 prisoners), up from 149 on the same period in 2015; * 6 apparent homicides, up from 4 on the same period in 2015; 17 other deaths, 9 of which are 'awaiting further information' prior to being classified.

Self-harm: In the 12 months to December 2015 there were: 32,313 reported incidents of self-harm, up by 6,470 incidents (25%) on the same period in 2014; 377 self-harm incidents per 1,000 prisoners, compared with 303 incidents per 1,000 prisoners in the same period of 2014 (up 24%); 9,458 prisoners reported to have self-harmed, up 1,665 (21%) on the same period in 2014; * 2,261 hospital attendances, up 504 (29%) on the previous year; 110 prisoners per 1,000 self-harmed, up by 19 per 1,000 prisoners (21%) on the same period in 2014. Of those that self-harmed in the 12 months to December 2015, they self-harmed, on average, 3.4 times.

Assaults: In the 12 months to December 2015 there were: 20,518 assault incidents, up 27% from 16,219 incidents in the same period of 2014; 240 assault incidents per 1,000 prisoners, up from 190 on the same period in 2014; 2,813 serious assaults, up 31% from 2,150 in the previous year; 15,511 prisoner on prisoner assaults, up 24% from 12,552 incidents in the previous 12 months 181 prisoner on prisoner assault incidents per 1,000 prisoners, up from 147 in the same period of the previous year 2,197 serious prisoner on prisoner assaults up 31% from 1,682 in the same period of 2014, 4,963 assaults on staff, up 36% from 3,640 incidents in the same period of 2014. 58 assault on staff incidents per 1,000 prisoners, up from 43 on the same period in 2014; 625 serious assaults on staff up 31% from 477 in the same period of 2014

Early Day Motion 1423: Mohamedou Ould Slahi

That this House notes that Mohamedou Ould Slahi has been detained in Guantanamo Bay since 2002 without being charged; condemns the torture he has received through Slahi's designation as one of two Special Projects personally approved by then Defence Secretary Donald Rumsfeld, which included beatings, extreme isolation, sleep deprivation; sexual molestation, frigid rooms, shackling in stress positions, and death threats; further notes that the former Chief Prosecutor in Guantanamo has stated that the US Government has no evidence that Mohamedou engaged in acts of hostility towards the United States; applauds Mohamedou for writing an award-winning 466-page handwritten manuscript about his time in Guantanamo Bay; highlights that Mohamedou has been granted a Periodic Review Board hearing in June which may clear him for release; and calls on the Government to make representations to the US government and US Defence Secretary Ash Carter calling for Mohamedou's release.

Hackney Police Officer Shooting: Not Guilty Verdicts

A man charged with attempted murder and possession of a firearm with intent to endanger life, after the shooting of a Police officer, has been acquitted by an Old Bailey jury. Tyrone Henry was alleged to have shot the officer at the culmination of a police chase through the streets of Hackney. He fled an armed police raid on his home address pursued by both Trident and armed SCO19 officers. The Crown initially alleged that Henry had attempted to kill the officer, deliberately shooting him with the 9mm pistol that he was carrying. The Defendant maintained that he had taken possession of the pistol, which had been used in a shooting the previous evening, in order to prevent the escalation of a feud between associates of his. When tackled by the officers he dropped the firearm, which then inadvertently discharged having either come into contact with the ground or been kicked by an officer. The Prosecution offered no evidence in respect of the Attempted Murder on the first day of trial. The jury acquitted the Defendant of intent to endanger life after six hours of deliberations.

An Opening for Justice for CIA Torture *Human Rights Watch*

The United States government just opened the door a crack to justice for the torture of scores of men in CIA custody under its infamous detention and interrogation program. For the first time, the Justice Department didn't effectively block a lawsuit by detainees held and tortured by the CIA by invoking, as it had done in previous similar lawsuits, the "state secrets privilege." The privilege requires a court to give great deference to a government claim that litigating a case would risk revealing state secrets that would jeopardize national security. That claim put an end to previous cases related to the torture program,

hindering victims' efforts to secure redress, and keeping a tight lid on details about the program. For years, Human Rights Watch has urged the administration to stop invoking the privilege unless it was truly necessary to protect genuine national security interests. In this case, Salim v. Mitchell, a federal judge allowed the lawsuit to move to the next phase. It was brought by Suleiman Abdullah Salim and Mohamed Ahmed Ben Soud (formerly Mohammed Shoroeiya), two now-free, former detainees of the CIA who were never charged with crimes by the US, and the family of Gul Rahman, who died in CIA custody after being tortured in Afghanistan. (Human Rights Watch first published Shoroeiya's account in a 2012 report.)

The plaintiffs, represented by the American Civil Liberties Union, are suing Bruce Jessen and James Mitchell, psychologists whose company was paid $81 million under CIA contract to develop and implement the CIA's interrogation program. The Justice Department's decision not to invoke the privilege probably resulted, in part, from the release of the summary of the Senate Intelligence Committee study on the CIA's program in December 2014. With so much information now in the public domain, it is harder to claim that litigating the case would reveal harmful state secrets. Still, the administration deserves credit for not attempting to make that argument. The plaintiffs will face many further obstacles. The defendants may claim they can't defend themselves without bringing in still classified evidence, so the government could invoke the privilege at a future stage. And civil redress is no substitute for thorough and credible criminal prosecutions that the US government is required to bring in accordance with its international treaty obligations. But for the time being, the administration's position provides hope that at least three of the scores of CIA torture victims might one day actually get their day in court.

Odd Items Pinched From Police Station

Handcuffs, an office phone, a truncheon and washing powder were among the strangely varied items nicked from just one police station, local newspaper the Wigan Evening Post has reported. Information covering recorded thefts of pieces of equipment from Wigan Police Station in Greater Manchester over a four year period, obtained via a Freedom of Information request, showed crooks helped themselves to over a dozen bits of police kit. Items pinched also included a wheel, a video camera and gloves. Four of the stolen items were subsequently recovered, the newspaper added, and in some cases suspects were identified and prosecuted. In the case of the office phone, one adult was cautioned for theft, while for the theft of the stolen video camera a defendant was charged, though the outcome of the case is unknown. Greater Manchester Police said it takes all reports of theft seriously and that thieves would be prosecuted where possible.

National Crime Agency V Respondents Shane Davies, Sheila Davies, Rhianna Davies

The three named Applicants seek to set aside the orders of Supperstone J of January 16th 2015 which granted the National Crime Agency, ("NCA") a Property Freezing Order, ("PFO"), and a Disclosure Order, ("DO"), against each of them and six other Respondents. The orders were granted pursuant to sections 245A and 357 of the Proceeds of Crime Act 2002, ("POCA") following an ex parte hearing. The NCA is a designated "Enforcement Authority" under section 316(1) of POCA which has the statutory duty of tracing and recovering the proceeds of unlawful conduct (s304(1) of POCA). That duty is not predicated upon a criminal conviction, nor is the grant of the orders that were sought in these proceedings. In determining whether property acquired has been "obtained through unlawful conduct" it is not necessary to show that the conduct was of a particular kind if it can be shown that it was obtained through conduct of one of a number of kinds, each of which would have been unlawful, section 242(2)(b) POCA.

The first applicant, Shane Davies, ("SD"), is the main protagonist in these applications.

He is joined in his application by Rhianna Davies, his wife. He is the son of the second applicant, Sheila Davies. The other defendants in the criminal proceedings were members of his extended family or his friends. Lengthy skeleton arguments have been produced in this application and two lever arched files of authorities have been relied upon, in addition to many transcripts of the Crown Court proceedings which took place in Bristol in 2013. In reality what falls to be determined is what happened at the ex parte hearing on 16th January 2015; whether the NCA complied with its statutory and common law duties of disclosure and whether the court hearing the application was misled, deliberately as is alleged, or at all. If such failings or deliberate action is proved against the NCA then the court would have to go on to consider whether the public interest nonetheless demanded the grant of the PFO and DO. Denial of orders which operate in the public interest is not the appropriate means of marking such failings or misconduct. All submissions, written or oral, have been considered but it is only necessary to decide those matters which determine the outcome of the applications.

The Background: The NCA has been interested in the activities of the first applicant, SD, for a number of years. It is believed that he has been involved in, at least to the extent of benefitting from, unlawful conduct by the supply of controlled drugs. It is believed that his friends and family, including the other applicants, have assisted him in the accumulation or consolidation of funds from this unlawful conduct. He has amassed a property portfolio, said to be worth in excess of £8m. Much of that group of properties is held in the names of his family and friends. In an investigation launched by the police, the Crown Prosecution Service ("CPS"), alleged that a substantial part of that portfolio was acquired by the benefit of mortgages obtained by frauds on the lending institutions. The frauds were said to be the provision of false representations as to the income and financial status of the individual applying for a particular mortgage. Simply put the applicants for mortgages were falsely claiming to have incomes or financial status which was untrue. There was evidence, capable of belief as admissions against interest, that SD had instigated the use of fraudulent information by co-accused on mortgage applications for properties which were in reality to be treated as his, irrespective of the name of any putative purchaser.

These three applicants, with others, stood trial at the Crown Court sitting in Bristol in 2013. In simple terms they faced allegations that they had conspired to defraud mortgage lenders by providing false details as to income. Some connected defendants had earlier pleaded guilty to similar related charges. In the course of the trial evidence emerged which showed that the provision of false details had not operated as an effective deception on the staff employed by those lending institutions and that some of those details had not actually been provided by the applicants themselves. A financial advisor to SD, Mr Giblin, gave evidence that he completed the application forms on occasion and "embellished" the details.

Staff of the lending institutions explained that they were not, at that time, necessarily concerned with the actual income declared by borrowers. The market in property was such that the likely increase in the value of a house and/or its potential rental income were so great that an ability to meet mortgage repayments was immaterial. Those two pieces of evidence, either alone or in combination, which had not been anticipated by the CPS, meant that the prosecution did not continue. Counsel prosecuting took the view that in the light of that evidence a properly directed jury would be unlikely to convict.

In due course those who had pleaded guilty were to be allowed to withdraw their pleas and no evidence was offered against them. After the "collapse" of the prosecution case against these applicants, counsel drafted a document for the court explaining their position and seeking to

resist the application by the other defendants who had pleaded guilty to other charges to re-vi) In any event the acquittal of these applicants does not disprove the arguable case, on the balance of probabilities, that funds concerned were the proceeds of unlawful conduct. vii) It is not possible to isolate a single cause for the failure of the prosecution. The consequence of the acquittals means that these applicants and their co-accused are not guilty of the mortgage frauds alleged against them. It does not mean, without more, that the funds involved are not arguably the proceeds of unlawful conduct. Nor does it preclude, on the test of the balance of probabilities, that the funds could not be recovered under POCA. viii) Further the application for the PFO was based on the NCA's submission that they had a good arguable case that the property concerned is recoverable or associated property under POCA. ix) Irrespective of any evidential burden no material has been adduced to demonstrate, by way of contradiction of the NCA's position, any legitimate source of the disputed funds. There is no support for the legitimate source of any funds in records held by HMRC. x)

The NCA merely has to establish good arguable grounds for the grant of a PFO and reasonable grounds to suspect that property is recoverable or associated before the grant of a DO. There is nothing advanced in these submissions which unsettles the judge's conclusions that such relatively low thresholds have been crossed on the material in the case. xi) The PFO is an interim measure pending final determination of the issue. The DO facilitates the gathering of material to inform those proceedings. xii) In the absence of a finding of deliberate or inadvertent non-disclosure or any bad faith, it is not necessary to go on to consider the public interest in not setting aside the orders. On all the material in the case it is difficult to see how the public interest test would not have been satisfied, irrespective of bad faith. Accordingly the applications to discharge the orders granted ex parte by Supperstone J on 16th January 2015 are dismissed. An order will be granted in the terms of the draft submitted, extending the PFO for six months from the date of handing down of this judgment and joining another respondent.

Jordan Cunliffe Sentence Reduction Bid Rejected Despite Procedural Error

"Whilst there was procedural error, there was thus no material unfairness such as to justify quashing of the Secretary of State's decision to refuse to reduce the Claimant's minimum term". Justice Carr

Jordan Cunliffe was 16 when he was jailed for a minimum of 12 years in 2008 after Garry Newlove, 47, was kicked to death in Warrington in 2007. Mr Newlove died in hospital two days after being attacked by three people. Dismissing the case, High Court judges said the decision was based on his progress in jail not on a statement by Mr Newlove's widow at his 2015 appeal. Cunliffe, 24, initially appealed against his sentence last May but his application was refused after Mr Justice Mitting considered the victim personal statement made by Victims' Commissioner Baroness Helen Newlove. The court heard Baroness Newlove's statement was withheld from Cunliffe and his lawyers, at her own request. His legal team claimed that was "unlawful". Giving judgement , Lord Justice Bean and Mrs Justice Carr ruled the statement was "irrelevant to the decision". Lord Justice Bean said: "I consider that the victim personal statement in this case should not have been considered by [Mr Justice Mitting] if Baroness Newlove was unwilling to have it disclosed. "The procedure adopted was, to this extent, unfair. It would have been unfair even if the murder victim's widow was not a member of the House of Lords and did not hold the post of Victims' Commissioner." In the case heard last year, Mr Justice Mitting found Cunliffe's progress in prison had been "good, it had not been exceptional". For this reason, Lord Justice Bean said the original finding to reject the bid was "not only correct, but inevitable". Cunliffe can apply for parole at the end of his 12-year term in 2019. *BBC News*

Leaving Mentally-Ill Prisoner Without Treatment Deprived Him Of Realistic Prospect Of Release

In Grand Chamber judgment in the case of Murray v. the Netherlands (application no. 10511/10) the European Court of Human Rights held, unanimously, that there had been: a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights. The case concerned the complaint by a man convicted of murder in 1980, who consecutively served his life sentence on the islands of Curaçao and Aruba (part of the Kingdom of the Netherlands) – until being granted a pardon in 2014 due to his deteriorating health –, about his life sentence without any realistic prospect of release. The applicant, Mr Murray, notably maintained that he was not provided with a special detention regime for prisoners with psychiatric problems. Although a legal mechanism for reviewing life sentences had been introduced shortly after he lodged his application with the Court, he argued that, de facto, he had no perspective of being released since he had never been provided with any psychiatric treatment and therefore the risk of his reoffending would continue to be considered too high to be eligible for release. Mr Murray passed away while the case was pending before the Grand Chamber. Two of his relatives subsequently pursued his case before the Court. The Court came to the conclusion that Mr Murray's life sentence had not de facto been reducible. It observed that although he had been assessed, prior to being sentenced to life imprisonment, as requiring treatment, he had never been provided with any treatment for his mental condition during the time he was imprisoned. The opinions of the domestic court advising against his release showed that there was a close link between the persistence of the risk of his reoffending on the one hand and the lack of treatment on the other. Consequently, at the time he lodged his application with the Court, any request by him for a pardon was in practice incapable of leading to his release.

Crown Loses Appeal Against Disclosure Order Source: Scottish Legal Briefing

Prosecutors have failed in an appeal against a judge's decision to order the disclosure of recordings of interviews of two complainers in a sex abuse case after appeal judges ruled that such label productions are subject to the control of the court, not the Crown. The Criminal Appeal Court held it is for the trial court as "master of its procedure" to determine whether to grant an application by the defence to remove them for the purposes of copying or inspection by an expert. Lord Justice Clerk, Lord Carloway, Lady Smith and Lady Clark of Calton, heard the Crown appeal against a judge's decision ordering disclosure to the defence agents by delivering copies of disc recordings of police and social work joint investigative interviews of two young boys.

The respondents "AM" and "JM", aged 16 and 15, faced two charges of sexual abuse involving the two younger boys, contrary to sections 18, 20 and 21 of the Sexual Offences (Scotland) Act 2009. Special measures had been granted in relation to both complainers, including the taking of their evidence on commission and the giving of evidence in chief in the form of prior statements. The discs and the transcriptions, which were in the custody of the Crown, were listed as productions in the lists attached to the indictment.The respondents wished to have the discs' content viewed by a forensic psychologist, but the Crown refused to provide copies of the discs to the defence, electing instead to allow "disclosure by access" by enabling the accused to inspect the discs "at a reasonable time and in a reasonable place" However, both respondents lodged preliminary and compatibility issue minutes relating to the discs and the PH judge ordered the Crown to provide copies of the discs to the respon-

dents' agents, subject to certain conditions, after ruling that the Crown had adopted an "illegitimate blanket policy", whereby discs containing visual recordings of JIIs of children being interviewed would never be given to the defence. In the circumstances the judge concluded that the Crown's policy, which left "no element of discretion", offended the respondent's right to a fair trial under Article 6 of the European Convention on Human Rights.

On appeal, the principal contention for the Crown was that the judge had erred in holding that the respondents' article 6 rights were breached by the decision to disclose the content of the JIIs by access, rather than providing copies. In terms of section 164 of the Criminal Justice and Licensing (Scotland) Act 2010, the Lord Advocate had laid before the Scottish Parliament a Code of Practice, which established "a clear, consistent and readily understood means" which enabled parties to apply a practice meeting the "legitimate and proportionate aims of balancing the rights of an accused person and those of the witnesses". It was argued that disclosure by access was a "justified and proportionate response" to the obligations placed upon the appellant and "did not unnecessarily impede preparation of the defence".

In a decision dated September 2015 for which written reasons have now been published, Lord Carloway, said it was important to distinguish the disclosure regime, the object of which was "to ensure that the defence have knowledge of what evidence would form the case against the accused and what material there is available to refute it", and the regime covering label productions. Delivering the opinion of the court, the Lord Justice General said: "This case is concerned with recordings of the Joint Investigative Interviews. Whilst they may provide powerful information they are also label productions in the case. "As such a different regime covers their inspection by the defence. No issue of disclosure per se arises in such circumstances. The defence have had formal notice, by way of the lists attached to the indictment, of both the discs and the transcriptions. Intimation of such lists has the effect of bringing the productions specified under the control of the court whether or not they have been lodged and it is for the court to determine, as master of its procedure, what may or may not happen to them. No issue of substantive law arises. At this stage in the case the accused is entitled to see the labels, not as a result of the disclosure regime but in terms of the statute relative to the lists of production. Whilst, in modern practice the Crown may retain them until the diet of trial...it does so subject to any order of the court. If an accused wishes to remove any production from the custody of the court or Crown for the purposes of copying or inspection by an expert, he is entitled to apply to the trial court to do so. There is no need to invoke the disclosure regime, Article 6 of the Convention or European Court jurisprudence. There is no need to lodge a preliminary or compatibility issue minute. All that is required in respect of items referred to in the lists attached to the indictment is a request to the trial court to borrow them for a specified purpose (including copying). The court will thereafter decide, as a matter for its discretion but no doubt having regard to the principles of fairness, including equality of arms, whether it is in the interests of justice to grant the application." He added: "Given that the labels are to be used as evidence in chief, it is difficult to conceive of a situation in which the court would refuse such an application, albeit perhaps subject to conditions. The court has effectively granted that application. The appeals will simply be refused on that basis."

Romanian Sex Workers Challenge UK Immigration Policy *Owen Bowcott, Guardian*

A policy aimed at deporting "high-harm" EU-national criminals and those not entitled to remain in Britain is to be challenged by Romanian sex workers who maintain they are self-employed.

Although freedom of movement is guaranteed within the European Union, the right to stay – after the first three months – is dependent on new arrivals "exercising their treaty rights", for example, by working or studying. Operation Nexus, a combined police and immigration initiative involving sharing intelligence, has been targeting foreign offenders and those suspected of breaking the law since 2012. Among those detained and served with deportation papers are an increasing number of women from eastern Europe who have been working on the streets and in premises across London and Manchester. Many do not have convictions. Sex Work is legal in the UK, although activities associated with it such as kerb-crawling, pimping and owning a brothel are crimes. Some of the women have been arrested by officers during raids intended to break up trafficking rings.

The women, mainly Romanian, have received letters from Operation Nexus officers giving them about a month's notice that they are liable to be detained and put on a flight back to Bucharest. EU nationals' administrative removal on the grounds of not observing their treaty rights can be challenged by arguing that they are studying, working, seeking employment, self-employed or economically self-sufficient in the UK. If removed, EU nationals are banned from re-entering the UK for 12 months. Several women fighting deportation are now being supported by the English Collective of Prostitutes (ECP). "There was a raid which was supposed to be saving victims from trafficking," explained one young woman who wished to remain anonymous. "The police took paperwork and money. I asked for a receipt. They said I was being cheeky. They wanted to know if had been trafficked and asked the client if I was taking drugs. He said no. "They didn't arrest me but said I should be deported and asked me to go to the police station. I went along with a lawyer and showed a letter from a course proving that I was studying English." The threat to remove her was eventually dropped.

Maria, not her real name, was stopped on the street and taken to a police station. "I was held for 24 hours," the 25-year-old said. "A week later I received a letter [saying I would be removed]." Victoria, again a pseudonym, was arrested at her flat and questioned about running a brothel. "I was never charged," the 21-year-old said, "but I was sent a letter. They have taken my passport and said that if my appeal is not successful I will be deported. "Here you can earn money more easily than in Romania; you can have a better future. I can't find a normal job." Some of the women who were sent removal letters are now planning to challenge them on the grounds that they are exercising their treaty rights through being self-employed in the sex industry. Previous EU law cases have established that prostitution constitutes self-employment.

Niki Adams, a spokeswoman for the ECP, said: "This deliberate policy of deportation and destitution targets immigrant women, who because of the criminalisation and stigma associated with sex work, will find it harder to defend themselves. "All the women are mothers who went into sex work because wages in other jobs were too low to feed and clothe their children or because they faced racism from employers." Emma Lough, a solicitor from the London-based Aire Centre, which specialises in European legal rights, said: "Often people receive removal proceedings from the Home Office following information being built up by Operation Nexus police officers, which has been shown to have a disproportionate impact on certain groups and sex workers are one of them. "EU law recognises sex work for the purposes of being a 'worker' but it's hard to provide evidence for it and therefore to show that you have exercisable rights. It's difficult to show employment records.

"The procedure of administrative removal means removing those deemed not to be exercising treaty rights. We see a lot of 19/20-year-old girls who have lived in the UK most of their lives, got caught up in drugs and petty crime and are now facing deportation to a coun-

try where they may not speak the language. "The Home Office have to demonstrate that someone poses some risk to society in order to justify a deportation decision. However, we see deportation decisions based on very low levels of risk without adequate consideration of the likely harm." The Aire Centre is also preparing a separate challenge to the legality of Operation Nexus based on other cases, not related to sex work. Operation Nexus operates through embedding immigration officers in police stations. It targets both foreign offenders and those breaching immigration regulations. Thousands of people – including many with criminal records – have been removed from the UK under Operation Nexus since 2012 although the Home Office declines to confirm precise numbers. The operational and intelligence co-operation between immigration and police has been spread out to forces beyond London.

Oklahoma Court: Oral Sex is Not Rape if Victim is Unconscious From Drinking

Molly Redden, Guardian: An Oklahoma court has stunned local prosecutors with a declaration that state law doesn't criminalize oral sex with a victim who is completely unconscious. The ruling, a unanimous decision by the state's criminal appeals court, is sparking outrage among critics who say the judicial system was engaged in victim-blaming and buying outdated notions about rape. But legal experts and victims' advocates said they viewed the ruling as a sign of something larger: the troubling gaps that still exist between the nation's patchwork of laws and evolving ideas about rape and consent. The ruling sparked outrage among critics who argue the judicial system engaged in victim-blaming and upholding outdated notions about rape and sexual assault

The case involved allegations that a 17-year-old boy assaulted a girl, 16, after volunteering to give her a ride home. The two had been drinking in a Tulsa park with a group of friends when it became clear that the girl was badly intoxicated. Witnesses recalled that she had to be carried into the defendant's car. Another boy, who briefly rode in the car, recalled her coming in and out of consciousness. The boy later brought the girl to her grandmother's house. Still unconscious, the girl was taken to a hospital, where a test put her blood alcohol content above .34. She awoke as staff were conducting a sexual assault examination. Tests would later confirm that the young man's DNA was found on the back of her leg and around her mouth. The boy claimed to investigators that the girl had consented to performing oral sex. The girl said she didn't have any memories after leaving the park. Tulsa County prosecutors charged the young man with forcible oral sodomy.

But the trial judge dismissed the case. And the appeals court ruling, on 24 March, affirmed that prosecutors could not apply the law to a victim who was incapacitated by alcohol. "Forcible sodomy cannot occur where a victim is so intoxicated as to be completely unconscious at the time of the sexual act of oral copulation," the decision read. Its reasoning, the court said, was that the statute listed several circumstances that constitute force, and yet was silent on incapacitation due to the victim drinking alcohol. "We will not, in order to justify prosecution of a person for an offense, enlarge a statute beyond the fair meaning of its language." Benjamin Fu, the Tulsa County district attorney leading the case, said the ruling had him "completely gobsmacked". "The plain meaning of forcible oral sodomy, of using force, includes taking advantage of a victim who was too intoxicated to consent," Fu said. "I don't believe that anybody, until that day, believed that the state of the law was that this kind of conduct was ambiguous, much less legal. And I don't think the law was a loophole until the court decided it was." To focus on why the victim was unable to consent, he continued, puts the victim at fault.

But several legal experts declined to fault the appeals court, saying instead that the ruling should

be a wake-up call for legislators to update Oklahoma's laws. Michelle Anderson, the dean of the CUNY School of Law who has written extensively about rape law, called the ruling "appropriate" but the law "archaic". "This is a call for the legislature to change the statute, which is entirely out of step with what other states have done in this area and what Oklahoma should do," she said. "It creates a huge loophole for sexual abuse that makes no sense." Jennifer Gentile Long, who leads a group, AEquitas, that guides prosecutors in sexual and domestic violence cases, agreed. She said the Oklahoma law was an example of a gulf that still exists in some places between the law and evolving notions around consent and sexual agency. Oklahoma has a separate rape statute that protects victims who were too intoxicated to consent to vaginal or anal intercourse, Long noted. But "there are still gaps in the ways laws are written that allow some cases to fall through the cracks," she said. "This case" – because it did not involve vaginal rape but an oral violation – "seems to be one of them".

In the wake of the ruling, Fu has said he will push for lawmakers to change the code. Many states have engaged in a broad overhaul of their rape laws in recent years, Anderson said, part of a movement to fall in line with the modern understanding of rape. "There is a recognition that social mores have changed, that the law should now try to protect sexual autonomy as opposed to sexual morality," she said. Often, the law changes after an outcry over unpopular court rulings. The Oklahoma appeals court declined to make the ruling a precedent. But Fu said he has learned that other defendants are nevertheless making the same argument in other parts of Oklahoma to avoid charges. The defendant's attorney, Shannon McMurray, was not available for comment. She told Oklahoma Watch, which was first to report the ruling, that prosecutors were clearly in the wrong to charge the young man with forcible sodomy, and not a lesser crime of unwanted touching. "There was absolutely no evidence of force or him doing anything to make this girl give him oral sex," McMurray said, "other than she was too intoxicated to consent."

Very, Very Expensive to Fall in Love With a Foreign National

It has never been more expensive to fall in love with a foreign national. Sadly, it looks like it is only going to get more expensive. British citizens with non-European partners face being priced out of the UK with the constant raft of changes to the visa requirements for UK partners. Earlier this month the government announced a consultation paper proposing new fees for proceedings in the First-tier Tribunal (Immigration and Asylum Chamber) and Upper Tribunal (Immigration and Asylum Chamber). If the proposals are brought in, they will result in a fee hike in excess of 500%. Most families will hope never to have to step inside the Tribunal – it is only necessary where an initial visa application is refused. However, with the ever-complex requirements it is real possibility for some. Justice Minister Dominic Raab suggested that the fee hike was justifiable to protect British tax-payers and in so doing deliberately, and inaccurately, inferred that British tax payers are never involved in appeals in the Immigration Tribunal. That is simply not true. Currently, a British citizen will need to demonstrate that they are earning £18,600 per annum before they can sponsor their partner's visa to the UK. This minimum salary threshold applies to all applicants, with no regional variations. It also applies where a couple is returning to the UK after a period of living abroad and doesn't take into account the actual living costs of the couple. The requirement has added complexities, including requiring the British citizen to be earning £18,600 for at least six months at the date of application. This means that families are being forced apart for periods of six months, even longer in some cases.

Extortionate application fees: In addition to meeting the income threshold, British citizens and their families are faced with increasingly high application fees. It has long been UK Visas and Immigration's (UKVI) practice to increase fees in April each year. This year's fee increase however took some

people by surprise as it was introduced on 18 March 2016. It now costs £1,195 for a foreign national to apply for a visa to join their British citizen partner in the UK. This is only the first of three applications that the applicant will need to make before they are able to settle in the UK, securing their family's long term future together. This is because it takes five years of living in the UK before a foreign national partner can apply for indefinite leave to remain. At the current fees, it will cost a family nearly four thousand pounds in application fees alone. In real terms, is it a lot more. Since April 2015, foreign nationals coming to live in the UK for more than six months have been required to pay an immigration health surcharge. The government's position on announcing the levy was that: the surcharge will ensure that those coming to work, study and join family in the UK make an appropriate financial contribution to the cost of the health services they may use whilst in the UK.' It is an attractive soundbite but it ignores the fact that those who enter the UK with the right to work, which includes foreign national spouses, will already contribute through the payment of national insurance contributions and income tax. Furthermore, the surcharge is applied regardless of whether the applicant has private health insurance. The NHS surcharge will add another £1,100 at the current rates to a couple's UKVI fees.

New English language requirements: It doesn't stop there. On 21 January 2016, the Prime Minister announced that non-EEA migrants in the UK as partners or parents will need to attain level A2 of the Common European Framework of Reference for Languages when applying for further leave to remain after an initial grant of leave to remain in the UK. English language testing for partners was initially introduced following an amendment to the Immigration Rules in November 2011, with applicants having to take and pass a Home Office approved English language test at a basic A1 level of English in speaking and listening. The requirement to take and pass an English language test as part of visa applications was the subject of lengthy litigation. In November 2015, the Supreme Court ruled that the requirement was not in itself discriminatory or contrary to article 8 ECHR but that the accompanying Home Office guidance could be incompatible with article 8 where compliance with the requirement to take and pass a test was impracticable.

Since being introduced, the list of approved test providers has undergone various changes. The most recent changes were introduced in April 2014 with the introduction of Secure English Language Testing (SELT). There are now only two recognised SELT test providers: Trinity College and IELTS, with applicants applying for a visa outside the UK being restricted to IELTS tests. The Prime Minister's announcement will see foreign partner's having to take and pass a test at a higher level of A2 which is described as 'waystage or elementary'. Whilst this 'elementary' level English may not, on the face of it, seem an onerous task, figures quoted by the British Council suggest that it will take an applicant between 180-200 guided learning hours to reach level A2. This additional requirement seems excessive, given that foreign spouses need to demonstrate intermediate English at level B1 should they wish to settle in the UK. The changes will put further financial pressure on families who are already required to pay ever increasing Home Office application fees and the newly introduced Immigration Health Surcharge. The truth is these constantly changing requirements put enjoying a family life in their home country out of reach for many British families. Those who don't earn 'enough' face being separated for many months, even years, until their financial circumstances improve.

Asylum Seekers Poorly Served by 'Sausage Factory' Law Firms

Jo Wilding, Justice Gap: People seeking asylum in the UK face a hostile and cynical asylum process. Although legal aid is still available, cuts to publicly funded asylum legal services appear to have had a devastating effect on their availability and quality. Asylum law has some of the most brilliant, most committed lawyers, going far beyond the call of duty, putting in far more hours than they are paid for to provide a thorough service and craft creative and clever legal arguments. They make their services available for most, if not all, of their professional lives at legal aid rates, far below what they could earn from privately paying clients. Yet there are still concerns about the overall quality of publicly funded asylum legal services provided: why? These are complicated issues but this article attempts to give a brief insight, based on completed and continuing research carried out on the quality of asylum services and the situation of unaccompanied children seeking asylum in the UK.

Too small to survive: Firstly, the legal aid contract gives limited 'matter starts' to each firm or organisation, which left many firms – or their asylum departments – too small to survive at all or too small to remain specialist. Previous research has shown that an experienced specialist adviser is likely to provide higher quality representation than a non-specialist, regardless of qualification. The removal of non-asylum immigration from the scope of legal aid meant that departments shrank still further, reducing the availability of specialist practitioners. This practice of giving the same number of matter starts to all firms also has the effect of pushing a percentage of people through the doors of the poorer quality firms, as the better ones run out of capacity.

Second, the incentive in the contract is to do the bare minimum of work, since the fixed fee will be the same whether the representative does one hour of work or 10. Some, of course, do the 10 hours of work, squeezing it out on overtime; others secure charity funding to cover the hours which the Legal Aid Agency will not pay for. Some take on more private work, for which they can be paid significantly more – I call this the Robin Hood business model – but this is rarely asylum work since very few people seeking asylum have the money to pay for truly expert private representation. Others expand by opening more offices to obtain more matter starts which they then fulfil by having low paid and low qualified staff doing most of the work under supervision of fewer experienced specialists – often called the 'sausage factory' model.

Third, the Legal Aid Agency (LAA) monitors quality through a system of audits, which check compliance with targets and key performance indicators. These include sending a client care letter, but give no indication of whether the client care letter was comprehensible to the client. They include maintaining a success rate on appeals which is higher than the average percentage of appeals allowed by the Tribunal. The measures for assessing quality completely miss the point and become mainly micromanagement. All of this in turn discourages representatives from taking on complex cases which either look likely to take more than the allotted time or look more difficult to win, which in turn leaves a proportion of the most needy clients with no representative, having been told their case does not have "merit" – or a good enough chance of success. Government and the LAA have argued that market forces should be applied to the provision of publicly funded advice. But in fact, their policies actively obstruct the operation of market forces: clients cannot vote with their feet because they cannot freely choose representatives or change representatives even when they realise their current firm is poor. Quality is ignored in the contracting process and does not appear to have any impact on the LAA's management of contracts, with the top firms micromanaged, audited and refused extension applications in the same way as the poor ones.

One key question for my future research, therefore, is how some organisations manage to continue providing excellent quality legal services; another is why the Legal Aid Agency persists in contracting with those which do not. An important consequence of poor representation, together with poor quality administration and decision making by the Home Office, is that

a significant proportion of people are wrongly refused asylum, contributing to a view that large numbers of people claim asylum falsely. This in turn is used to justify harsh policies directed against people seeking asylum and migrants more generally, feeding into a vicious cycle of disbelief and acceptance of inadequate quality. As a member of a detention centre monitoring board put it, about a third of their detainees get some sort of permission to stay in the UK: "That's a horrible statistic in the context that the legal process is denied to a lot of them. Many more would have been able to stay if they had their cases heard."

HMP Lewes – Some Strengths, But Safety Needed To Improve

HMP Lewes had a number of strengths, but needed to focus on safety, tackling violence and increasing work, training and education, said Martin Lomas, Deputy Chief Inspector of Prisons. As he published the report of an unannounced inspection of the local prison in East Sussex. HMP Lewes, at the time of the inspection, held just over 640 prisoners, including a substantial number awaiting trial or sentence. A third of the population were convicted of sexual offences, many with long or indeterminate sentences, and about 15% were in the last three months of their sentence and located at Lewes for pre-release resettlement support. The number of older prisoners was rising and there was also a significant population of young adults. This complex mix presented considerable challenges and risks, exemplified by the first night centre. Sex offenders were held there because there was nowhere else to put them, which meant other new arrivals were placed where a space could be found, even in the segregation unit, a particularly inappropriate location for someone new to prison. Most staff on other units were unaware of new arrivals and could not therefore provide first night support and monitoring. Some staff did not carry anti-ligature knives and could not assure inspectors that they would act appropriately in the event of a serious self-harm incident.

Inspectors were concerned to find that: • 30 Recommendations from the last inspection had not been achieved and 7 only partly achieved • a quarter of prisoners reported feeling depressed or suicidal on arrival and a third said they had mental health problems; • levels of violence and use of force were high and oversight of both were poor – at Lewes the number of assaults was even higher than at other prisons recently inspected: • the general picture on violence, however, was complex and needed careful analysis, as prisoners reported feeling relatively safe and self-harm was lower than other similar prisons; • safer custody staff had no time to carry out work to understand and address such findings; • provision for older and disabled prisoners was inadequate and overall arrangements for equality and diversity were also poor; • work, training and education outcomes had dipped since the last inspection, although they were improving; • despite a new regime, people on some units were routinely locked up for 23 hours and inspectors found half of the population in their cells during the course of the working day; • not all staff recognised the importance of offender management; and • some sex offenders stayed at the prison for too long without doing suitable offending behaviour work. • Inspectors made 69 Rcommendations.

Martin Lomas said: "HMP Lewes had a number of strengths, especially its good staff-prisoner relationships which mitigated, to a degree, other weaknesses. The CRC arrangements were encouraging and, despite the prison's considerable age, the environment was generally decent. The prison has four principal challenges going forward: a consistent first night process was needed for all prisoners, wherever they were held, supported by proper training of night staff to assure the safety of all prisoners. The high level of assaults demanded more systematic and focused violence reduction analysis and actions. The needs of minority groups, especially the large number of disabled and older prisoners, needed to be better addressed. Finally, improved access to purposeful activity was necessary with efficient use of the available spaces. Addressing these concerns will help the prison to build on the undoubted good work of many of its staff."

HMP Leeds – Less Safe, More Violent

Safety had deteriorated at HMP Leeds, said Martin Lomas, Deputy Chief Inspector of Prisons. As he published the report of an unannounced inspection of the local prison in West Yorkshire. HMP Leeds is a large Victorian inner city prison. For many years the prison had a poor reputation but at a previous inspection in January 2013, inspectors found a very different picture. While the prison then was hugely overcrowded, outcomes for the men held had improved and inspectors assessed them as reasonably good or better in all four healthy prison tests: safety, respect, purposeful activity and resettlement. This more recent inspection saw that outcomes had deteriorated markedly, particularly in safety. Despite this, inspectors observed good leadership at the prison and an essentially positive staff culture.

Inspectors were concerned to find that: •21 Recommendations from the last report had not been achieved and 7 only a partly achieved • levels of violence had increased significantly and were double what is typically seen in local prisons; • the prevalence of new psychoactive substances was a major factor in increased violence, despite some robust action being taken; • there had been seven self-inflicted deaths since the last inspection in 2013 and although staff were caring, some issues identified following Prison and Probation Ombudsman investigations needed to be fully addressed; • early days processes needed to improve: the reception environment was poor and reception staff sometimes failed to pass on key information about vulnerabilities; • use of force and segregation was high and oversight of special accommodation was poor; • levels of crowding were very high and the majority of cells were poorly equipped; • prisoners were negative about their ability to obtain sufficient bedding, clothing and cleaning materials; • the number of staff in daily contact with prisoners had decreased significantly since 2013, which was having an impact; • the promotion of equality and diversity had dipped in the previous year, but was now returning to its previous good level; and • some aspects of offender management had deteriorated and there were weaknesses in some public protection work. • Inspectors made 54 recommendations.

Martin Lomas said: "This was a disappointing inspection of a prison which we assessed to have deteriorated in three of our four healthy prison tests. Fundamental issues around safety were having a significant destabilising impact across the prison and needed to be addressed urgently. It was also concerning that some aspects of early days support were too frail to provide reassurance that the many vulnerable men received into the prison were provided with an appropriate level of care. The new governor and his team had made a good start in getting to grips with these challenges and it was positive to see that they had a good understanding of the issues faced, as well as plans or ongoing actions to address them."

Hostages: Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, Mark Alexander, Anis Sardar, Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan & Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan.