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## HM Convicted of Historical Rape Wins Appeal Against 'Excessive' Nine-Year Sentence

A man who was sentenced to nine years' imprisonment after being found guilty of historical sex offences which included the rape of his younger sister and a cousin when he was a teenager has had his custodial term reduced following an appeal. The High Court of Justiciary Appeal Court quashed the original sentence and imposed one of six years after ruling that the trial judge's disposal was "excessive", having regard to the appellant's age at the time of the offences, the 40-year period since without re-offending and the "low risk" to the public.

Cumulo sentence - Lord Menzies and Lord Turnbull heard that the appellant "HM" was convicted after trial at Glasgow High Court of three serious charges, which were committed when he was aged between 13 and 17. The first was of lewd, indecent and libidinous practices and behaviour towards his younger sister between May 1971 and May 1975 at a time when she was aged between four and about seven or almost eight; second, of rape of the same younger sister on one occasion between the same dates; and third, rape of a younger cousin of his on various occasions between November 1973 and November 1976 when she was aged between three and six. The trial judge, having obtained a criminal justice social work report and having heard mitigation on behalf of the 59-year-old, stated that if the charges had been sentenced individually the sentences would have been four years for the first charge and six years imprisonment for each of the second and third charges but that taken together this would have resulted in a total sentence of 16 years which he considered would be an "excessive penalty". He therefore imposed a cumulo sentence of nine years' imprisonment in respect of the three charges.

'Excessive penalty' - But the appellant challenged the total sentence imposed, arguing that it was "excessive". In his sentencing statement the trial judge observed that the sexual abuse of children was "abhorrent" and that rape was at the most serious end of the scale of sexual offences. He went on to say that anyone who committed such an offence had to expect to receive a "significant custodial penalty" whenever they were brought to justice. The appeal judges agreed with those views, and also agreed that a cumulative total of 16 years would have been an "excessive penalty" and that he was correct to impose a lower cumulo sentence.

However, what the trial judge did not do in the course of his sentencing statement, nor in his report to the appeal court, was to make any reference to the case of Paul Greig v HM Advocate 2013 JC 115, in which the court gave authoritative guidance as to how a judge should approach sentencing an adult for an offence committed whilst a child, what weight should be given to the appellant's age at the time of the offence, the appellant's behaviour in the intervening period and also what weight should be given to the need for future protection of the public - matters that had already been covered by the court in the case of L v HM Advocate 2003 SCCR 120.

'Low risk' of re-offending - The appeal judges reiterated that the offences of which the appellant was convicted were "abhorrent and serious crimes", but held that the cumulo sentence imposed was "excessive". Delivering the opinion of the court, Lord Menzies said: "In the present case, the criminal justice social work report adopted three methods of risk assessment to assess the risk presented by the appellant. These resulted in an assessment of a minimum risk in one of them and of low risk in each of the other two methods of assessment.

"It does not appear that the trial judge in reaching the cumulo sentence of nine years imprisonment has had sufficient regard to the period of over 40 years during which the appellant has not re-offended or come to the attention of the authorities and in which he appears to have led a pro-social life, being fully employed and forming part of the community in which he lived. The cases of Greig and L in which the original sentence in each case was reduced from eight years imprisonment to five years imprisonment can be distinguished from the appellant's circumstances in the present case because it does appear that the appellant continued to offend in relation to his young cousin in relation to the third of these offences when he was a rather older teenager until the age of 16 or 17 whereas for example in Greig the offences were committed when the appellant was aged 14 and 15. Having regard to all of the circumstances in this case, including the guidance given in Greig, the fact of the long intervening period of responsible adulthood and the assessment that there is a low need for the public protection, we consider that the cumulo sentence imposed by the trial judge was indeed excessive. We shall accordingly quash that sentence." However," he added, "we reiterate that these were abhorrent and serious crimes and that has to be reflected in the sentence of this court. We shall accordingly impose a cumulo sentence in respect of all three charges of six years imprisonment to date from the same date as the sentence imposed by the trial judge."

## The Illusion of Open Justice

'The Justice Gap': The judiciary seem exercised by the future of open justice. They are consulting judges and magistrates on the digital court reform programme and assert that 'the public should be able to see and hear that which they can currently see and hear in court'. The problem is that open justice is not a reality now. The public has access to most criminal courts, and many civil courts, but cannot observe most family courts, and many civil cases too. Even if you do want to observe a court, public interest is not exactly welcomed. It is very difficult to work out what is going on, or actually to hear what is happening in many court rooms. Those who try to take notes are sometimes (wrongly) told they are not allowed, and there is often nowhere to even buy a cup of tea. When I observe magistrates' courts, there are seldom any other curious members of the public, either in that court-room or in the whole building. There are witnesses and the friends and family of defendants, the occasional student, but seldom ordinary citizens.

Pamela Attfield is a citizen keen to learn more about the system. But her experience makes one wonder if judges really do support open justice. This non-practising solicitor wanted to watch small claims cases in Watford County Court. She failed to get through on the phone to find out what day small claims were heard (no surprise to lawyers here), so had to drop in to the court just to get the information. She returned to the court on 23rd March 2017 and was told, via the legal advisor, that the Judge presiding over small claims said she was not allowed in the court room on spec. The Judge said Pamela should notify the court in advance, and request permission to attend, which could be refused at the Judge's discretion.

The indomitable Pamela went home, found a copy of the Civil Justice Council 'A guide to bringing and defending a small claim' 2013. This says that 'members of the public are free to sit in the room and listen' and that the Judge can order that the hearing be in private only if it is believed that it would be in the interests of justice to do so. Pamela returned to court that day, but was still banned by the Judge from her court room.

Pamela returned the following week and tried again, quoting the guide. This time the legal advisor said the Judge would only let her into the court if she gave her full name and

address, and if the litigants agreed to her observing. When she was allowed in, the case turned out to be about parking. At the end of the next case the Judge informed Pamela that such cases were not suitable for being observed because the room was small and 'because few of the applicants and defendants were represented, the presence of a member of the public made them feel uncomfortable and she would therefore prefer me to attend a different court'. When Pamela returned to the court that afternoon she was banned from observing this Judge's small claims cases. 'I was told that they were sensitive matters and that, in any event, it was entirely at the Judge's discretion and she did not want me in her room,' she said.

Pamela, having assumed courts were open, was shocked by the whole episode and tried to complain directly to the court. The court suggested she should complain to the Judicial Complaints Investigations Office (JCIO), but they, in turn, said that it was not a matter of judicial conduct 'The JCIO explained that the judge was entitled to conduct the hearing as she thought was in the best interests of the parties involved. The JCIO stated that judges were entitled to make decisions and manage hearings free from outside interference by officials (including the JCIO), government ministers or other judges, and the judicial disciplinary process could not be used to challenge a judge's decision. The only way to do so was through the Courts.'

Yes, read that again. The only way for an ordinary person to challenge the seemingly arbitrary decision of a judge to ban them from watching a supposedly open court hearing is to judicially review the decision. It's incidents like this that fuel the tabloids' antipathy to the judiciary. In too many areas, judges are, in practice, unaccountable. The senior judiciary espouse the principles of open justice but they are supporting a court reform programme which will see thousands more criminal cases dealt with through the (totally closed) single justice procedure, and others go on video or online. It is pie in the sky to think that a criminal case dealt with online can ever be as open as one dealt with in court – apart from anything you cannot see the process of decision-making online, just the outcome. Open justice is indeed in jeopardy, both from unaccountable judges and from the new digital system. But who is fighting for justice to be 'seen to be done' as well as done?

### Jury Finds Nicola Jayne Lawrence's Life Could Have Been Saved at HMP New Hall

Nicola Jayne Lawrence, from Creswell in Derbyshire, was 38 when she died from a combination of methadone toxicity and multi drug administration at HMP New Hall. The narrative conclusion returned by the jury at the inquest identified various missed opportunities that may have resulted in Nicola's life being saved. She was one of 22 women to die in women's prisons in 2016, the highest annual number of deaths on record. Nicola, one of three siblings, was described by her mother as a very loving and caring daughter. Nicola was diagnosed with Multiple Sclerosis (MS) in her early twenties. She developed PTSD after the death of her partner. She suffered from anxiety and struggled with mental ill health. She also struggled with addiction to drugs. Despite her family desperately trying to access therapeutic support and help with drug rehabilitation, the right kind of support was never available to her. In September 2016, Nicola was recalled to prison to serve a 28-day sentence. During an initial health screening on 9 September 2016, Nicola told the staff about her MS, an injury to wrist and dependence on drugs. The prison doctor prescribed medications to manage her various health needs. In addition to her usual medications, Nicola was prescribed methadone. This was the first time Nicola had received a prescription for methadone.

The inquest heard how there was no consideration given to the impact of methadone on the medication she was already prescribed for her MS. There was also a failure of communication with her MS specialist. At 21.30 on the 23 September 2016, officers saw Nicola lying face



down on the floor of her cell and snoring loudly. They say she raised her arm in response to requests for her to get on to her bed but otherwise remained on the floor. The staff decided to check on her at regular intervals, noting each time that she remained on the floor snoring. At 23.30, they noticed that Nicola was no longer snoring and was unresponsive. They entered her cell and called for emergency assistance.

In their conclusion, the jury found: The level of communication between health professionals and prison staff was lacking. Prison officers lacked the training and information to recognise and deal appropriately with a prisoner on a Methadone programme exhibiting signs and symptoms of drug toxicity. Had the prison staff acted on their concerns and contacted the health team between 9.30pm and 11.00pm, it is likely that Naloxone would have been administered - a drug which could have reversed the effect of methadone toxicity which could have saved Nicola's life.

Christine Lawrence, Mother of Nicola said: "The fact that the jury have confirmed she might still be with us if the level and nature of observations had been different is painful to hear. I am still worried for other vulnerable prisoners, who like Nicola, might not be getting the correct treatment or support. I hope that lessons have been learnt and the prison and healthcare providers put changes in place which mean that Nicola's life has not been lost in vain. I do not want another family to have to go through what we have been through. I would like to take this opportunity to thank the jury members that sat patiently for nearly three weeks listening to the evidence and for their full and thought out conclusion."

Deborah Coles, Executive Director of INQUEST said: "Nicola's death could have and should have been prevented by those who owed her a duty of care. The prison service must address the serious failings in this case as a matter of urgency. Nicola should not have been sent to prison in the first place, but once she was there it is unforgivable that she had to lose her life in this way."

### Right to See Parole Board Decisions Comes Into Force

Jamie Grierson, Guardian: Members of the public will be able to request summaries of Parole Board decisions on whether prisoners are safe to release under a law change prompted by the handling of the case of serial sex attacker John Worboys. The Parole Board was previously unable to tell victims or the public the reasons why it had decided whether or not to release a prisoner. Under the new rule that came into effect on Tuesday 22nd June 2018, victims, members of the public and the media in England and Wales will be able to request a summary for cases that are considered by the board. However, decisions made before Tuesday will not be eligible. The change comes after uproar over the now-overturned decision to release Worboys, a former black-cab driver who was jailed indefinitely in 2009 with a minimum term of eight years after being found guilty of 19 offences, including rape, sexual assault and drugging late-night passengers, committed against 12 victims.

The Parole Board chief executive, Martin Jones, said: "The Parole Board has been pushing for more transparency and I am pleased that this change to the rules will allow for better understanding of the parole process. Protection of the public is our primary concern and I hope these summaries will provide reassurance, particularly to victims, that these difficult decisions are made with a great deal of care." Requests will have to be submitted via an online form on the Parole Board website and summaries will be subject to data protection regulations. In March, three high court judges quashed a decision to release Worboys, after a legal challenge brought by two of his victims. The judgment also concluded that rule 25 of the Parole Board rules, which prevented publication of any of the reasoning behind decision-making, was illegal. The board makes 25,000 decisions on whether or not to release inmates every year.

### Jail Compensation For Killers Could Cost Taxpayers £43 Million

Prisoners claiming compensation from inside jail cost the taxpayer almost £43million over the last five years. Inmates including killers Levi Bellfield and Kevan Thakrar received 28,150 separate payouts from the Ministry of Justice (MoJ). It means that 100 payments were made to inmates each week, with each costing around £1,500 to settle. Lags claimed for accidents including slips and trips, as well as injury compensation when they were attacked by other inmates or guards. There were hundreds of claims where prisoners' belongings had gone missing, or when they had been freed from jail a few days late. Some even claimed for food poisoning, falling out of their bunk beds and being made to go "cold turkey" in a bid to beat drug addictions.

David Spencer, the research director at the Centre for Crime Prevention, said: "It is frankly absurd that prison inmates are able to make personal injury claims from behind bars. "When you are sent to prison you are quite rightly stripped of some of the rights enjoyed by law-abiding citizens. If they are drug addicts then they are made to go clean. Most people would have assumed they were not entitled to tap into the overblown personal injury industry either and be shocked to discover that £43million of their money has been given to criminals for such trifling matters. Once Britain has left the European Union, it is to be hoped that this matter can be addressed and that prisoners will only be allowed to claim compensation if they have been subjected to obvious criminal offences."

A MoJ spokesman said: "We robustly defend all claims and are successful in two thirds of cases brought against us by prisoners. Both the number and value of special payments to prisoners has fallen since last year. We always seek to ensure these payment are offset against outstanding debts owed to courts and/or victims."

### How a Champion Boxer Got Caught in Britain's Immigration Dragnet

Daniel Trilling, The Guardian: A little-known Home Office scheme designed to deport more 'foreign criminals' has left Kelvin Bilal Fawaz – and many others like him – living in an endless limbo. The opening ceremony of the London Olympics, on 27 July 2012, should have been a moment of triumph for Kelvin Bilal Fawaz. The talented young boxer had recently been crowned the amateur light middleweight champion of England, and he was meant to be marching with the athletes of Team GB as they paraded into the Olympic Stadium. Fawaz was born in Nigeria, and trafficked to Britain as a child – where he was rescued by the state and raised in care. Now he was a champion, ready to represent his country, with a lucrative professional career ahead of him. But there was one problem: he wasn't a British citizen. In fact, it wasn't clear if he had permission to stay in the UK at all. As a child, he had been given temporary leave to remain until just before he turned 18 – but he had to apply to extend this as an adult, and by 2012, at the age of 24, he was still waiting for a response. Like the rest of us, he watched the Games on television.

Since then, Fawaz has lost almost everything: his nascent career, his marriage, and ultimately, his liberty. Now 29, he has lived his entire adult life in the UK without valid immigration status, which means he has no right to work and is liable to be detained and deported at a moment's notice. During the past decade, he has applied and appealed for extended leave to remain; he has applied for a spousal visa; he has even asked to be registered as stateless person. All these requests have been turned down by the Home Office, which considers his presence in the UK undesirable. The Windrush scandal has brought attention to the "hostile environment" policy introduced by Theresa May in 2012 to drive unwanted immigrants from the UK. But Fawaz has become ensnared in a lesser-known policy – another Home Office scheme designed to remove immigrants, purportedly by targeting the most dangerous foreign criminals.



This is called Operation Nexus, a joint initiative between police forces and immigration enforcement. Launched in 2012, it has received little public scrutiny – official guidance notes describing it were only published last year. But it goes even further than previous schemes to deport "foreign criminals", because it also targets people, such as Fawaz, who have never been to prison. In his late teens and early 20s, Fawaz received convictions for minor offences such as cannabis possession, driving without insurance and spraying graffiti; he points out that he has never received a harsher sentence than community service, and argues that he is a reformed character. For the Home Office, none of this matters.

In fact, the state has been trying to force Fawaz from the UK for several years – but he has nowhere to go. Although he was born in Nigeria, his mother came from Benin and his father from Lebanon. Nigeria won't accept Fawaz as a citizen, and according to Fawaz, neither will his parents' countries of birth. The Home Office doesn't believe him, so it keeps trying. In the meantime, he survives on donations and trains at his local boxing gym. The gym is his life: he hoovers it, he cleans the toilets, he has even slept there when he's had nowhere else to stay. Legally speaking, he has all but reached the end of the road. His best chance may well be to throw himself once more on the mercy of the Home Office and ask for the state to be sympathetic and make an exception.

In this regard, Fawaz has more in his favour than others who find themselves in similar situations. His talent is undeniable, and making a contribution through sport is a well-worn path to acceptance for immigrants. Fawaz has represented England in international competition six times, including against Nigeria: as he puts it, he has literally bled for his adoptive country, in the ring. He has made something of his turbulent life, and passes his knowledge on to young people and children at the gym, so that they might avoid the mistakes he once made. But the Home Office disagrees: its press officers point out that Fawaz has 15 criminal convictions in total. "When someone has no leave to remain in the UK, we expect them to leave the country voluntarily," is their rote reply to journalists. "Where they do not, we will seek to enforce their departure."

After years of living in uncertainty, Fawaz was suddenly arrested in November last year, placed in detention and told he would be imminently deported to Nigeria. His story became national news. A petition started by a member of the public demanding that the Home Office grant Fawaz British citizenship received more than 100,000 signatures. After several weeks in a detention centre, he was released on bail. Our reactions to these stories follow a familiar pattern. Attention focuses on the merits of the individual: has this person worked hard, have they contributed, have they played by the rules? If they don't deserve to be treated like this, then the implication is that other people do deserve it: "If only we could create an immigration system that caught the bad foreigners – the illegals and the criminals – and left the innocent alone."

As more details come to light about the damage caused by the government's "hostile environment" for unwanted immigrants, this question is at the forefront of political debate. But Fawaz's story shows how, in trying to make an increasingly severe distinction between the deserving and the undeserving, the UK casts many people into a bureaucratic limbo that effectively criminalises their existence in this country. What if, instead of finding "illegal immigrants", our policies are creating them?

In early February this year, I met Fawaz as he joined a group of campaigners from 38 Degrees to hand in his petition at the Home Office's headquarters in Westminster. He arrived late, greeting each of us as if we were old friends. When he asked me to take a photo of him for his Instagram feed outside the Home Office entrance, he turned on the charm. "This is so good," he exclaimed in a soft, London-inflected voice. He gave polite but firm instructions to

the camera crew who were filming an interview with him: “Don’t just ask me how people can help. Ask me human questions.”

For several years now, there has been a trickle of stories about bizarre or apparently cruel decisions in immigration cases, in which people who have spent many years – or even their whole lives – in the UK are ordered to leave the country. In recent months, thanks to dogged reporting on the subject, the fate of the Windrush generation has become a national scandal. Now, the focus is widening to other people caught up in the “hostile environment”, the harsh system of internal border controls that the prime minister made her flagship policy when she was home secretary.

But our fractious national debate about immigration is based on three categories whose definitions are not fixed: “illegal”, “criminal” and “foreign”. In fact, it is easy to see how their meanings have shifted under the pressure of media outrage and government policy. During the last two decades, the shift has been in one direction: to broaden our idea of who is a foreign criminal and who is an illegal immigrant, which in turn justifies harsh new policies, and authoritarian structures.

At the centre of this is the Home Office, the government department with perhaps the most direct impact on our daily lives. It is responsible for the police, fire services, MI5, immigration and border control – in short, many of the ways in which a state is supposed to keep its citizens safe. But because of this role, it often finds itself under pressure from within government and without. On the one hand, it is frequently attacked by rightwing media for perceived failures to prevent crime or control immigration, and by liberal critics for apparent heavy-handedness. On the other, it sometimes sees itself at odds with fellow government departments, looking out for the ordinary British citizen while officials elsewhere make decisions based solely on what’s best for economic growth and competitiveness. The result, as a group of academic researchers concluded in their recent book Go Home? The Politics of Immigration Controversies, is “an organisation that feels embattled and misunderstood”, which develops new policy “at an unusually high speed”, often in response to pressure from the media and with one eye on the news cycle.

Although the policies introduced by May were some of the most hardline yet, they are part of a longer-term pattern of anti-immigrant rhetoric. One of the flashpoints in this process is how the state deals with foreign-national offenders: people who aren’t British citizens who commit crimes in the UK. This is one of the most sensitive parts of the immigration system: serious crimes committed by people with limited or no right to be in the country often generate furious press coverage, as do bureaucratic obstacles to their removal, such as human rights laws.

It is often hard to tell what is the greater cause for outrage: the crime itself, or the foreignness of the offender. In this atmosphere, for more than a decade, successive governments have promised to deport ever-larger numbers of these people, but in doing so, they have followed a dangerous logic, whereby the nature of the threat we are supposed to be protected from has shifted – from particular crimes to a vague, expanding category of the “foreign criminal”.

The first big media storm about foreign criminals erupted in the summer of 2006, after it emerged that 1,000 foreign prisoners had been released at the end of their sentences without being considered for deportation, as the rules required. Labour’s home secretary, Charles Clarke, was forced to resign; his replacement, John Reid, declared the immigration directorate “not fit for purpose” and launched a series of reforms to restore public confidence in the system. UK borders were rebranded, with flags, insignia and uniformed staff, while a communications strategy focused on getting more immigration raids into the media. And in 2007, the UK Borders Act introduced the automatic deportation of “foreign criminals” convicted of serious crimes and imprisoned for more than 12 months. Since its landslide victory in 1997,



the New Labour government had tried to outflank its critics on the right by taking a tough line on crime and immigration. Rather than challenging the claim that these two phenomena were inextricably linked, it reinforced the idea: as late as 2010, Labour’s election manifesto contained a section entitled Crime and Immigration. In the early days of New Labour, the focus was on asylum seekers, who were the target of exaggerated press claims about people trying to exploit Britain’s system of refugee protection. In the early 2000s, Labour dramatically expanded Britain’s network of immigration detention centres in order to lock up asylum-seekers while their claims were processed. After 2007, the government found a new use for the additional facilities: to detain the increased number of foreigners who were being scheduled for deportation after their prison sentences had ended.

At a stroke, Labour had drastically expanded the definition of a dangerous foreign criminal. The policy had an immediate effect, raising the number of offenders removed from the UK from under 3,000 in 2007 to nearly 4,500 in 2008. But they did little to reduce the salience of immigration as an issue in the minds of voters or newspaper editors. When the Conservatives came to power, having pledged to reduce immigration to the “tens of thousands”, the incoming home secretary Theresa May focused much of her energy on removing unwanted people from the UK. In 2012, she gave an interview to the Daily Telegraph in which she declared her intention to create “a really hostile environment” for illegal immigrants: initiatives to identify and deport people, or to make everyday life so difficult for them that they would leave of their own accord. A host of new laws followed in the 2014 and 2016 Immigration Acts, which extended border control into everyday life by criminalising bureaucratic irregularities and forcing public servants and private companies to check the immigration status of prospective clients. These were accompanied by measures to encourage government agencies to collect and share immigration data more effectively.

At the same time, Operation Nexus was rolled out to a series of police forces in England. Its definition of “foreign criminal” is far broader than the policy that existed before 2007; broader, too, than how New Labour redefined it. Serious offenders fall under its remit, but so do people convicted of minor offences. Yet if you look at the deportation figures, a strange picture emerges. The number of people deported from within the country (as opposed to those turned away at ports and airports) has stayed roughly steady at between 10,000 and 12,000 a year. That’s because deporting someone – an “enforced removal” in official euphemism – is a complicated process. A Home Office document entitled Country Returns Guide gives us some insight: this spreadsheet, a resource for civil servants, lists more than 200 countries and comments on how co-operative they are at taking their citizens back from the UK. Alongside each entry, wherever possible, are comments noting roughly how long it will take to issue a travel document (anywhere from a few days to six months, depending on the country), what kind of supporting evidence is required to prove a person’s nationality, and remarks on the country itself. In many cases the information is unclear or incomplete.

It is for this reason that many of May’s policies are aimed at convincing people to leave of their own accord. But while you might expect the number of so-called “voluntary returns” to have increased since 2012, there has been no significant growth here, either. Indeed, the total number of returns, voluntary or enforced, has actually fallen since 2014. So as new policies seek to bring more and more people into the state’s immigration dragnet, fewer people are being made to leave. Instead, they are thrown into a state of uncertainty that can last many years. This is what happened to Fawaz.

On Wednesday evenings, Stonebridge Boxing Club in north-west London is in full flow. When I visited, in mid-February, around 50 people were there for a training session, shouted at by a handful of coaches. The gym, on the second floor of a half-built office block, was hot with overworked bodies, and every 30 seconds or so there was a thud and a rattle as dozens of people, men and a few women, hit punchbags in unison. Most of the people there were black, Asian or eastern European. Stonebridge is in Brent, one of the most ethnically diverse parts of London; it is also one of the boroughs where, in 2013, the Home Office trialled a scheme to drive around advertising vans bearing the slogan: "In the UK illegally? Go home or face arrest."

As I watched, Aamir Ali, the club's owner, pointed people out to me: two of the coaches had boxed for Nigeria and Lebanon, respectively, at the 1992 Olympics. Mikael Lawal, a young Londoner of Nigerian heritage, is the first from the gym to turn professional. In the main ring, a boxer who had recently arrived from Kazakhstan was dispatching one challenger after another with rapid blows, not seeming to tire. He had come to the UK to try his luck at a professional career, Ali explained; a friend from his home village has lived in London for years and is a regular. "United Nations, is all I'm saying," he joked. Although immigration is nothing new to Britain, its nature and shape has changed in recent decades. Between 1993 and 2014, the number of foreign citizens living in the UK rose from nearly 2 million to more than 5 million. At the same time, a series of changes to the law have made it much harder for these residents to secure UK citizenship. Instead, Britain's multiethnic communities live with a plethora of temporary and precarious forms of leave to remain. Academics call this "multi-status Britain" – people have jobs, lives and families here, but on paper they are foreign.

Fawaz arrived midway through the session, wearing an immaculate white T-shirt, fedora and ripped jeans that contrasted with everyone else's sweaty gym gear. He walked around greeting people as a visiting celebrity might, then stood by a corner of the ring and watched the fight with the Kazakh boxer. His expression turned serious, and his head nodded in the rhythm of the two men. Ali is Fawaz's manager, and has been his benefactor since he spotted the boxer in 2012 – impressed not just by his skill, but the level of preparation he put into the fight. He remembers seeing Fawaz sitting by the ring, watching intently as his rival fought another man: "[It's] his focus. His head was in there, he was feeling it."

When Fawaz tells his story, he does it in soundbites and neat, well-worn anecdotes – the behaviour of a sportsman with one eye on fame, perhaps, but it is also what immigration control demands of its subjects. Testimony becomes everything, and the complex details of a life are turned into claims and counter-claims. By his account, this is roughly how it goes: he was born in northern Nigeria to a Lebanese father and a mother from Benin. His mother abused him ("You know when someone has a life that is not good for them and they take their anger out") and his father left him with an "uncle" – either a relative or a family friend, Fawaz isn't sure – in Lagos. During this time his mother was murdered in religious riots, and in 2004, when Fawaz was 14, his uncle announced that he was taking him to London to reunite him with his father. He was flown to the UK – on what documents, Fawaz doesn't know – but instead of meeting his father, he was given to a family who held him captive and made him work as a domestic servant. After a few months, he escaped, and was taken into the care of social services in a west London borough.

In the back office of the gym, overlooked by wallpaper bearing the famous 1930s photo of New York workmen eating their lunch on the girder of a half-built skyscraper, Fawaz told me what happened to him after he escaped his captors. To use the language of child protection workers, he had been trafficked into domestic servitude. The government offers protection to trafficked



children, but it has strict limits, to avoid opening up a kind of back door to permanent citizenship. In most cases, they are refused asylum and granted a type of temporary leave to remain that expires before they turn 18. This is usually on the basis that there are no safe reception facilities for children in their home countries, but it means that they spend the formative years of their lives not knowing if they will be expelled from the UK when they become adults. Frequent delays in processing applications, which can take several years, increase the uncertainty further – making it even more difficult for children raised in care to build stable adult lives.

Given temporary leave to remain, "while they worked out what to do with me", Fawaz was placed in a group foster home in west London until he turned 16, then moved to a halfway house for older teenagers. There, he joined some of his new neighbours in what he described as "bad stuff. Weed, graffiti, sex with different girls, alcohol, smoking. It was only when I left that era that I looked back and I was like: 'Oh my god, you really, really was going down.'" In early adulthood, as he waited to find out if he would be allowed to stay in the UK, Fawaz received a string of minor criminal convictions. But this was also a period, he told me, in which his life began to change for the better.

First, he got involved in boxing, via a sports day at Brunel University in west London. Fawaz had always boxed by himself – he told me he made his own punchbag as a child in Nigeria – but this was his first proper introduction to the sport, and he discovered he had talent. After a few months, he had beaten everyone at Brunel, and moved on to All Stars, a long-running local club with a reputation for working with troubled young men. "My whole concept [of life] changed," Fawaz said. "I had seen the rebellious side of London, the naughty side, the less ambitious side."

Second, he met and fell in love with a young woman, who he married. "She retuned me, she made me see things differently," he told me. Fawaz received a national diploma in sports science and was offered a place at university, although he couldn't take it up because of his uncertain immigration status: without leave to remain, he was not eligible for a student loan. Gradually, his success in amateur boxing competitions – and the demands of training – led Fawaz further and further away from his old friends. In early 2012, he won the Amateur Boxing Association (ABA)'s national competition, becoming light middleweight champion of England. This convinced him to focus on his career, although he had not entirely put his old life behind him: his last criminal conviction was in 2014. Fawaz said a series of violent incidents, in which he was attacked or threatened, convinced him to completely break off contact with his former friends.

I asked Fawaz to imagine his life since arriving in the UK – his life in care, his shift from delinquency to boxing – as a line on a graph. He moved his hand upwards in a steep slope, representing his progress all the way until that championship victory in 2012. And then he dropped his hand, sharply. It was in that year that his request to stay in the UK – made years earlier, when he was still a teenager – was rejected. With his status unresolved, Fawaz had no right to work and could not turn professional: he says he had to turn down a contract from a top boxing promoter worth more than £200,000.

Next, Fawaz made a series of appeals that were turned down. The ABA wrote to the Home Office five times to ask that Fawaz be given travel documents and a work visa. Another attempt, to gain naturalisation via marriage, was rejected because Fawaz did not have the right to be in the UK at the time of his wedding. After several more years, having exhausted all legal avenues, he was issued with a document ordering him to leave the country, and told to sign in at an immigration reporting centre every week or face being detained.

And yet, he said, he still couldn't obtain a passport from any other country. The stress of this period, Fawaz said, led to the breakup of his relationship in 2015. At that point, he told me,

he stopped boxing: “I gave up. I lost everything, I lost my motivation, I started drinking.” He suffered depression, and during a period in between houses, would sometimes sleep on public transport. “I got into trouble,” Fawaz said about his earlier years. “But it was just a kid who had no parental guidance. I never raped anyone, I never robbed a bank, I never beat anyone – ” he paused in frustration. “I’m a boxer. I had so much anger in me, and yet I never fought on the street. When people [were] fighting I [would] tell them there’s no point.” Later, Fawaz pulled up his sweatshirt to show me a tattoo of birds’ wings that ran along the length of his back. Underneath the feathers on the right-hand side, I could see a raised patch of skin – where, Fawaz said, a knife had punctured his lung.

Operation Nexus was Theresa May’s attempt to solve a problem that had bedevilled home secretaries since John Reid. Although the number of foreign-national offenders removed from the UK initially rose sharply, it has been stuck at roughly the same level ever since. Piloted in London, and since extended to other parts of England, Nexus is a way for police and immigration officials to identify “high harm” foreign national offenders and remove them.

Some police forces now station immigration officers in custody suites, and others make immigration checks on everyone they arrest. When a person applies for citizenship, or to extend their leave to remain, their details are cross-checked with police records and, if necessary, passed on to specialist Nexus casework teams employed by the Home Office. As with other immigration cases, people can appeal against the decision to remove them, and evidence will be heard at a tribunal.

But our notions of who counts as “illegal”, “criminal” and “foreign” depend on who defines them. And Nexus is playing a key role in broadening the terms of reference, so much so, in fact, that people with minor convictions – or even none at all – can find themselves labelled foreign criminals. On its own terms, the policy has been partly successful: between 2012 and 2015, for example, around 3,000 foreign-national offenders were removed.

Some of these people committed serious crimes, but not all of them: Nexus also considers cases based on ancient, spent and petty convictions, and carries out “intelligence-led” deportation. Immigration tribunals have less strict rules of evidence than criminal courts, and a person can be more easily referred to Nexus the less secure their immigration status is. If you have valid immigration leave, according to the official Nexus guidance notes published by the Home Office, the police have to believe you pose a “current and ongoing threat to the public” to be referred. If you have no valid immigration leave – if, say, you are waiting for a decision on your application – you merely need to be “subject to active police interest” in order to be sucked into Operation Nexus and put before a tribunal.

Melanie Griffiths, a social scientist at Birmingham University who has observed a number of Nexus-related appeals, has described how intelligence-led deportation leads to cases that “rest upon a medley of allegations, unproved assertions, hearsay, anonymous evidence, the behaviour of the appellant’s friends and circumstantial evidence”. Police often submit large bundles of evidence that include “non-convictions”: stop-and-searches where nothing is found, withdrawn charges, acquittals at trial and arrests that led to cautions or no charges. Officials are, in effect, able to paint a picture of serious criminality without having to definitively prove it.

Fawaz told me that at one of his appeal hearings, “they brought police officers to testify against me”, who claimed he was a gang member. When I spoke to him, he was indignant at the suggestion that his minor convictions – “just naughty child stuff” – suggested something more serious. Other Nexus cases appear to work in such a grey area too: among the examples Griffiths collected was a teenager of Caribbean descent deemed “at risk” of joining a gang, an



Eritrean refugee convicted of “illegal working” and a homeless, alcoholic Bangladeshi man who stole a steak. A standard defence of Operation Nexus would be that visitors to the UK have to abide by its laws, and that people should not commit crimes. Yet it exists in a context where the fact of living in the UK without secure immigration status is being treated increasingly like a crime itself. This is happening in two ways. First, specific new crimes are being created: among their provisions, the 2014 and 2016 Immigration Acts introduced the offences of “illegal working” and “driving when unlawfully in the UK”. Behaviour that would previously have been treated as a bureaucratic irregularity is now the behaviour of a “foreign criminal”.

Second, enforcing the hostile environment involves treating immigrants – and people who look or sound like they might be immigrants – as potential criminals. Immigration enforcement officers have been granted greater powers to stop and detain people on the street. The laws compelling landlords, bank clerks, NHS staff and university administrators to check prospective clients’ immigration status turn ordinary citizens into border guards, while data-sharing initiatives on schoolchildren (cancelled by the Department of Education in April after a public campaign) or NHS patients (partially suspended earlier this month) increase the state’s powers of surveillance.

At the same time, it has become much harder to fight for the right to remain. Since 2012, people in the UK without status must live here for 20 years before they can apply for temporary leave to remain on the basis of “long residence”; it would take around 30 years in total to receive indefinite leave. Fawaz, who arrived in the UK aged 14, would be in his mid-40s if he took this uncertain route. It has become much harder to win an immigration appeal on human-rights grounds after new guidelines were introduced. Fees for citizenship applications have soared (from £200 in 2002 for indefinite leave to remain, to £2,389 in 2018), while cuts to legal aid as part of the coalition government’s austerity measures forced the collapse of the two main providers of free immigration advice.

But for all this effort, the removal figures for foreign-national offenders have not grown – they vary between around 5,000 and 6,000 a year. In 2014, the National Audit Office found that removing offenders cost £850m annually – and was hindered by poor administration and other countries not co-operating. Much like the other policies intended to make life difficult for unwanted immigrants, Operation Nexus aims to remove people, but ends up leaving many in a precarious and ultimately untenable position, as it has done to Fawaz: still in the country, but with their rights and ability to move freely severely limited.

I visited Fawaz again at the gym on a weekday afternoon when it was almost empty. Fawaz and a friend were in the ring together. Every now and then Fawaz would shout out advice to his less-skilled partner: to keep his feet moving, to think about his centre of gravity, to anticipate his opponent’s next move so he could dodge it. “I’ll just take the punch,” said the friend through his mouthguard, in a moment of bravado. “Why?” asked Fawaz. “Don’t take a punch unless you’re prepared to sacrifice something for it.” Aware that I was watching, Fawaz began to expound his theory of boxing. “Power isn’t everything I don’t waste all my energy, I play I do salsa dancing – who said men can’t do feminine things?” Stonebridge Boxing Club, Fawaz told me, is what rescued him after his marriage broke down. He began training there properly three years ago, occasionally competing for amateur titles: he won the ABA London middleweight championship in 2017. “I don’t want to waste the essence I have in me,” he said, explaining how he was trying to conserve his energy until his citizenship status was resolved. “So I made a conscious choice to only fight once a year.” His latest interest outside boxing is making afrobeats music: Fawaz sings, while a friend produces. He posts Instagram stories of himself dancing and singing in the studio. “I’m not a lazy person, you know,” he cautioned.

Towards the end of last year, a few months after an application to be considered stateless was rejected – again, the Home Office did not believe Fawaz when he said he wasn't eligible for citizenship elsewhere – his resolve faltered. His depression came back, and he missed several of his weekly sign-in appointments at his local Home Office reporting centre. On 29 November, as Fawaz was on his way into the gym, the building was surrounded by police and he was arrested by immigration enforcement officers. He was kept overnight in Wembley police station, and then driven to a detention centre near Gatwick airport – where officials told Fawaz that they were preparing to deport him to Nigeria.

The UK places nearly 30,000 people in immigration detention each year, of whom half are foreign-national offenders. Detaining immigrants is officially supposed to be used as a last resort – and only when there is a reasonable prospect of imminently removing someone from the country. A recent Amnesty International report found that immigration detention has now become a "routine" procedure, in which administrative mistakes were common but difficult to put right. Once someone has entered detention, the report found, they are often kept there "as a matter of convenience". Around half are released back into the community, which suggests that many should not have been in there in the first place. But the number of people released on bail from detention – living in limbo, as Fawaz now does – has more than doubled since 2010, to nearly 4,000 last year.

Fawaz was initially bullish when he described his time in detention, calling it a "clarification of the mind". He said he had spent most of his time in the centre's gym, or teaching himself how to play the piano. But it was obvious the experience had disturbed him. He said he had self-harmed several times while he was there – "not because I wanted to die but because it's a relief for me" – and showed me marks on his wrists and forearms. "For the first week, I felt like my life was finished," he said. "Like an abandoned kid again." His spirits were lifted when his case made national news. "Even the security in there came up to me and said: 'You're famous, man, everyone's talking about you.'" Some weeks later, a representative of the Nigerian high commission told officials working on Fawaz's case that he was not their citizen. On 2 January, an immigration tribunal appeals judge released Fawaz on bail, back to his old life of weekly sign-ins.

One evening at the end of January, Fawaz stepped on stage at Amnesty International's events hall in east London. The audience had just watched Leon Gast's documentary When We Were Kings, which tells the story of Muhammad Ali and George Foreman's 1974 world heavyweight championship match in Zaire. The film still has a political charge: Ali and Foreman's views on history, racism and the role that boxing plays in reclaiming black power sit uncomfortably next to contributions from Norman Mailer and George Plimpton, white American writers praising the physique of their black compatriots and shouting with glee as they fight in the rThe politics of the film were especially resonant at this event: a monthly club hosted by Welcome Cinema and Kitchen, an organisation that brings refugees, asylum seekers and the public together for social events. Many of the attendees were living with precarious legal status, and had come to hear Fawaz talk about his own situation.

Before the event, he had been entertaining children in the creche downstairs, showing off his title belts and cracking jokes as he posed for photos. But when he entered the hall and saw his picture projected on to a large screen, he gasped in surprise. Fawaz's self-confidence is evident, but there is also a certain naivety that came from his upbringing: he told me that he had barely left the west London suburbs until his early 20s.



Since being released from detention, with the prospect of being recalled at any moment, Fawaz now has three possible routes. The first is to make another application to the Home Office: his lawyers are considering options for an appeal, supported by the 100,000 signatories of the 38 Degrees petition. If that fails, he could still be deported, but this is unlikely, since Nigeria, which usually co-operates with the UK in deportations, has been firm in insisting he is not theirs. This leaves a third route: an endless limbo as the UK tries unsuccessfully to remove him, and facing destitution if the donations he gets from friends dry up. Many of the people in the Welcome Cinema audience risked finding themselves in similar situations; some, perhaps, already were. This complex system for removing immigrants affects thousands of men, women and children in Britain today, yet as Melanie Griffiths points out in her research, it's striking how recent a phenomenon it is.

Although states practised banishment or transportation throughout much of history, this largely stopped in the 19th century with the rise of the nation state. In the UK, deportation was reintroduced by our first modern immigration restrictions, the 1905 Aliens Act. But it was only during the 1990s that it began to be used on a large scale – at first to remove failed asylum seekers, and now as a more general tool for immigration control.

Operation Nexus is one of the most sensitive parts of this system; most politicians would shrink from giving it proper scrutiny. Yet as Fawaz's story suggests, it seems to offer little room for redemption, which is usually regarded as an important part of the criminal justice system. There is also a wider question about equality before the law: do certain people deserve to be punished twice for a crime, on the basis of their immigration status?

Because of existing bias in sentencing, ethnic-minority communities are the most affected by efforts to deport foreign-national offenders: black and Asian men are over-represented in the prison population, while around 75% of immigration detainees are of Afro-Caribbean or Asian origin; Griffiths's research found that barely any north Americans or Australians end up in detention. And the broader effort to force unwanted immigrants from Britain falls mainly on black, Asian and eastern European shoulders. Even some EU citizens have been caught up in the hostile environment: a policy to deport EU rough sleepers was ruled unlawful by the high court in December, after a case brought on behalf of two Polish men and a Latvian. These are the people whose work Britain demands when the economy requires it, and whom it rejects when they are surplus to requirements. The drive to make expulsions easier is also adding a chapter to Britain's relationship with its former colonies: the UK is spending £700,000 to build a prison wing in Nigeria for deportees, and has offered to fund a maximum-security prison in Jamaica. Deportation charter flights, in which immigration detainees are removed en masse, now operate several times a year to West Africa and South Asia.

Governments often try to make distinctions between good citizens and bad citizens – the welfare scroungers v the hard-working families – but the way Britain has hardened its borders has created a situation that many of us were unaware of until recently, in which people who have lived in this country for many years find their right to stay here permanently under question. Griffiths calls them "almost citizens". I mentioned this to Fawaz: "That's me!" he exclaimed. "You know when you chuck a leaf in a stream of water and you don't know where it's going, you just – I have no control over this now. At this point, it's up to the Home Office to give me a chance. To say: yes you can stay."

Fawaz's first name – Kelvin – is a nickname he acquired as a teenager. At our last meeting, I asked him where he had got it from. "I just made it up when I came here," he told me. "Because I kept on telling people my name is Bilal Fawaz and they couldn't pronounce it, so I said: 'OK, my name is Kelvin.' I wanted to sound more British. I took on the persona."

## Non-Custodial Deaths: Missing, Ignored Or Unimportant?

Whereas deaths in 'secure' or custodial settings have received considerable academic and policy attention, deaths that occur amongst those serving a community sentence are much less well understood. Indeed, it is only very recently that the government has started to publish data on deaths of offenders in the community. Whilst the Prisons and Probation Ombudsman is empowered to investigate such deaths, this has never happened. Yet the mortality rate amongst people who are serving a sentence in the community is consistently higher than in the general population, and perhaps even higher than in custody. In recent years, we have undertaken two studies (on behalf of the Howard League and the Equality and Human Rights Commission) which have sought to investigate this important social issue. In an article published in Criminology and Criminal Justice we have provided an overview of the findings and reflected upon the implications of our work.

Findings: We have found that women are more at risk of dying whilst serving a sentence in the community when compared to the general population, and that drug-related deaths and suicide feature heavily. In the research, for the Equality and Human Rights Commission, we focused on people who died of non-natural causes within 28 days of leaving prison and died by suspected suicide within 48 hours of being released from police custody.

Our analysis of government data found that the first week after leaving prison was the period of highest risk, with drug-related deaths being particularly prevalent. Of those people who died soon after leaving prison, a high number had committed acquisitive crimes. Data on the deaths of people who died by suicide on release from police detention showed that they were most likely to have been arrested for suspected sex offences.

In our research, for the Howard League, we analysed the paperwork that probation providers complete when an offender dies and identified a distinct defensive tone, especially where media interest was anticipated. Across both pieces of research our documentary analysis and interviews with police officers, prison officers and coroners identified aspects of policy and practice which might contribute to this high mortality rate. Issues of communication were considered key and participants referred to cuts to community provision which constrained their ability to make onward referrals where someone was in need of help. The key finding, however, was the difficulty in finding relevant data and then, in turn, the realisation that the data that do exist are far from comprehensive. For example, the data we received about deaths of offenders in the community included many gaps. This raises questions about our understanding of the extent of the problem.

Why the neglect? We have questioned why it is that non-custodial deaths are so neglected. We have narrowed this down to three broad factors: methodological, policy-related and sociological. Identifying causality or a definitive link between a period in police detention or prison custody and a subsequent death is very difficult, especially where one does not have access to coroners' reports or case records. Moreover, probation staff appear not to update central records once a verdict at inquest is reached, which means that the cause of death is listed as 'unknown' in many cases.

In terms of policy, we have identified a lack of duty to investigate such deaths and wonder how far the massive structural changes in probation practice in recent years have compounded the lack of policy on this or contributed to a failure to implement policy. Finally, a sociological view focuses our attention on the ways in which community related issues receive much less attention than custodial ones. This body of work also highlights how institutions are focused on their own problems, leading to what Moore and Hamilton have termed 'myopic exclusivity' which means that the ability to ensure that someone is safe after they have left an institution becomes less important.

Conclusion: Overall, our research has shed light on key issues which underpin the high mortality rate upon release into the community after police detention or prison custody or supervision in the community. But the higher level finding, that such deaths appear to be side-lined when compared to deaths in other criminal justice institutions, is the main barrier that we need to overcome. In order to address the high mortality rate, lack of knowledge, and general neglect, we advocate the creation of an ethic of care which 'revolves around the moral salience of attending to and meeting the needs of others for whom we take responsibility (as individuals and as a state)'. Such an approach would enable us to understand the true extent of non-custodial deaths more fully, as well as encourage policies which might serve to prevent such deaths in the future. [Jake Phillips, Loraine Gelsthorpe and Nicky Padfield]

## Secret Evidence Leads to Downgrade of Convictions Over Stoke Shooting

Secret evidence that was not disclosed at trial has led to the overturning of the convictions of five men for conspiracy to murder following a shooting in Stoke-on-Trent in 2010. Although the court of appeal imposed alternative convictions for the lesser offence of conspiracy to commit grievous bodily harm, the men and their lawyers still do not know what the new material reveals. The five – Wassab Khan, 38, Omran Rashid, 41, Abdul Maroof, 36, Abdul Jabbar, 26, and Fisal Saraj, 27, all from Birmingham – originally received sentences of between 20 and 24 years. They will remain in prison awaiting sentence for the GBH convictions. "In 40 years I have never come across anything vaguely like this before," said Alistair Webster QC, representing the men. "They have no true idea of the material that has brought them back to court." This latest failure to release key evidence comes amid mounting concern over disclosure problems in rape cases, mainly involving large quantities of digital material from phones and computers that have not been handed over to the defence in time.

The secret evidence in this case is understood to have emerged during a separate trial, part of which was heard under a public interest immunity (PII) certificate, which prevents highly sensitive evidence – often related to security matters – from being presented in open court. The five men were convicted over an attack on Mohammed Afsar, a restaurant owner, on 4 June 2010. He had just climbed into his car when a Vauxhall Vectra pulled up alongside. Two men jumped out, one of them carrying a sawn-off shotgun. The gunman ran to where Afsar was sitting and fired into his lower leg and foot. The men escaped in the Vauxhall, which was

Hostages: Sally Challen, 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.