Figures released earlier this year showed the highest number of police-related deaths in more than a decade. In 2017-18, the Independent Office for Police Conduct recorded 283 deaths in England and Wales following police contact, 23 in or following police custody, four police shootings – three of which were terrorism-related – 29 road traffic incidents, 57 apparent suicides following custody, and 170 "other" deaths following police contact. Lammy said the rapid rise in the use of force was a sign of the police stepping up the ill-advised war on drugs at a time when gang crime was exploding across the country, particularly in London. "The unfortunate truth is that escalating the use of force has proven to be futile," he said. "As the use of force has gone up, so has crime. "The war on drugs has failed and we need to seriously begin considering alternatives. A public health approach to drugs, as used in other advanced economies, must be a starting point." Police forces in Britain have been required to keep a detailed record of each time an officer used force since 1 April 2017 and publish the information quarterly. Before that, data was contained in evidence notes rather as part of a consistent, formal procedure across all forces. There were concerns that the previous system was deficient and did not provide comparable data. "The old recording system was not adequate," said Kempton. Home Office statistics show that black people were more than three times more likely to be arrested than white people in England and Wales in 2016-17 and, in London, 52% of people arrested were from Asian, black, mixed and other minority ethnic groups combined.

UK Dropped Objection to Death Penalty for Isis Suspects 'to Appease US'

The Home Secretary, Sajid Javid, decided to cooperate with US authorities in the prosecution of two alleged Islamic State fighters, without assurances they would not face the death penalty, in order to avoid "political outrage" in the Trump administration, the high court has been told. The allegation came as the lord chief justice, Lord Burnett of Maldon, and Mr Justice Garnham heard an application on behalf of the mother of El Shafee Elsheikh over the legality of the Home Office's agreement to provide evidence to US prosecutors. Elsheikh and Alexanda Kotey, who were raised in Britain, are alleged to have been part of an Isis terrorism cell, some of whom were known as "the Beatles", that is thought to have carried out 27 beheadings of US and UK citizens in Isis-held territory. Those killed included the British aid workers Alan Henning and David Haines and the American journalists James Foley and Steven Sotloff. The pair, who have been stripped of their British citizenship, were captured in February by Syrian Kurdish fighters, prompting behind-the-scenes negotiations between the UK and the US governments over where they should be prosecuted. The decision not to seek assurances from the US that the two men would not face the death penalty was in defiance of advice from the Foreign Office and senior civil servants.

Serving Prisones Supported by MOJUK: 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, Robert Knapp, 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, Jake

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MOJUK: Newsletter 'Inside Out' No 712 (24/10/2018) - Cost £1

Morid Khan Oriakhel - Conviction Quashed - Application by Crown for Retrial Refused

1. On 13th October 2017, following a retrial in the Crown Court at Isleworth before His Honour Judge Ferris and a jury, the appellant was convicted of a single charge of perverting the course of justice. He was sentenced to a term of six months' imprisonment suspended for twelve months.

2. He appeals against that conviction with the leave of the single judge.

3. The background to the offence was a conspiracy to intimidate a witness, Avesta Hashemi. Three men pleaded guilty to that offence: Rafi Majid, Tarek Tufan and Alexander Edusei. Two other men, Zayed Kalantar and Samim Naziri, were tried with the appellant on the conspiracy charge and were acquitted.

4. The origin of the conspiracy was the report by Majid's partner (Avesta Hashemi) that he had assaulted her on 20th March 2016. Following contact from the police, Majid recruited Tufan and Edusei to intimidate her by pouring petrol around her house in Southall, London in the hope that she would withdraw the allegation. The conspirators used the appellant's car to travel from Coventry. The extent of his knowledge and intentions in respect of the use of his BMW was a key part of the case against the appellant.

5. Majid, Tufan and Edusei had travelled in the appellant's BMW from Coventry to Southall, on a reconnaissance trip, on the afternoon of 25th March 2016. They left at about 4.30pm and arrived at about 6pm, before returning to Coventry. Later that day, at about 9pm, Tufan, Edusei and another unknown man left Coventry and returned to London, again in the appellant's BMW. They poured petrol around the front door of the victim's house, outside the house and over the gate into the garden behind the house. The smell of petrol was strong and the inhabitants came out of the house, disturbing the arsonists. The men fled shortly after midnight on 26th March and were seen to get into the appellant's vehicle. No doubt realising that the car had been identified, they abandoned it nearby, called a taxi and made their way to Victoria in Central London. Majid then drove down the M40 to pick up the men who had abandoned the car. His car was intercepted near Beaconsfield and he was arrested. The men who had abandoned the BMW were picked up by others. Police subsequently located the BMW, which had no damage. There was no key in the vehicle. At trial there was no positive evidence that the BMW had not been interfered with by way of hotwiring.

5. In the meantime, at about 56 minutes past midnight on 26th March (about eight hours after Majid had driven to London on the first reconnaissance trip and shortly after the BMW had been abandoned) the appellant, who lived in Coventry, reported to the police that his vehicle had been stolen and that he had the key with him.

6. The appellant was arrested on 27th March. He had in his possession a key to the BMW and a mobile phone. In interview he provided a prepared statement in which he said that he did not know how his car came to be taken and that he did not know either Majid or Tufan. He had gone to work at his fast food franchise outlet at about 11.30 on the morning of 25th March and had parked his car nearby. He had come out of his premises at around midnight to get some fresh air. He went to check on his car and found that it was missing. He then phoned the police to report it missing. That account was set out for the convenience of the jury at paragraph 14 of the Agreed Facts.

7. The prosecution case was that the appellant lent his car to Majid knowing that it would be involved in criminality and had falsely reported the vehicle as stolen, thereby perverting the course of public justice. The prosecution relied on a number of pieces of evidence:

1. A mobile phone taken from Majid had the appellant's telephone number stored in it under the name "Gogo". (The appellant owned a pizza restaurant called Pizza Go-Go.)

2. A call had been made from the appellant's phone to Majid for one and a half minutes at 5.38pm on 25th March. This was at a time when cell-site data established that Majid had been in London. The appellant claimed in interview that he did not know Majid; but his phone number also tried to contact Majid at 10.49am on 26th March, by which time Majid had been arrested.

3. At 51 minutes past midnight (approximately 40 minutes after the BMW had been abandoned) a call was made from the appellant's mobile phone that connected to Tufan's voicemail (the calls were of three and two seconds duration). Although there was no evidence of the appellant receiving the call and the calls were not completed, the inference was that the appellant had become aware of what had happened in London either in person or via another telephone – hence his report to the police at 12.56 am.

4. The appellant also attempted to call Tufan (whom he claimed in interview he did not know) at 11.56am on 26th March and there were calls between their numbers at 1.48pm, 4.35pm and 5.40pm, as well as SMS messages and voicemails.

5. The prosecution also relied on the inferences to be drawn from the appellant's failure to give evidence. The appellant did not give evidence. He did, however, rely on his good character and evidence that supported that.

8. Naziri and Kalantar, who were charged with the conspiracy to intimidate a witness, gave evidence. They said that they had spoken to the appellant on the phone on the evening of 26th March about an employee for the appellant's pizza restaurant. They also said that Majid had stopped in Far Gosford Street and had gone to a shop. The prosecution relied on this evidence as providing an opportunity for Majid to have spoken to the appellant whose pizza shop was in Far Gosford Street.

9. It appears that, before he summed up the case to the jury, the judge did not discuss with counsel the legal and factual issues on which the jury should be directed. In our view he should have done so. It would have enabled him in particular to identify what the defence was and it would have avoided the error into which he later fell.

10. The appellant had served a Defence Statement, as required by section 6A of the Criminal Procedure and Investigations Act 1996 (as amended) on 30th November 2016, in which he said that a set of his car keys had gone missing two weeks before the incident. However, neither the contents of the Defence Statement, nor what was described as the "stolen keys defence" was mentioned during the trial and it formed no part of the defence which was advanced before the jury.

11. At page 22B of the summing-up, the judge summarised the case against the appellant. He described the charge as "an allegation that he falsely reported his white BMW was stolen because he knew that it had been used in some criminal offence". He pointed out that, although it had been used to go from Coventry to London twice, the car was not broken into nor hotwired. He then continued (at 22D): No one explained how you would do that, how you would steal the BMW without breaking in until [the appellant] signed off his defence statement about eight months after the night of the petrol pouring. In his defence statement dated November 2016, [the appellant] said that he had lost one set of keys to the BMW two weeks before he says

Met Police's Use of Force Jumps 79% in One Year

Sarah Marsh and Haroon Siddique, Guardian: Black people most likely to be on receiving end of 41,329 incidents in five months: The Metropolitan police's use of force has risen sharply in the last year, with black people far more likely to be subjected to such tactics than anyone else, the Guardian can reveal. The UK's largest police force deployed methods ranging from handcuffing to use of stun guns, CS spray, batons and guns 41,329 times in April to August of this year – 270 times a day on average – according to Guardian analysis of official figures. That compares with 23,118 in the corresponding period last year – a 79% rise – and 62,153 in the whole of 2017-18. On 39% of occasions in which force was used by Met officers in the first five months of the financial year, it was used on black people, who constitute approximately 13% of London's population.

Charities and MPs have raised alarm about officers increasingly resorting to such tactics and black people so often being on the receiving end. The police officers' union said that cuts to resources, increasing violent crime and a new reporting system were behind the stark figures. But Deborah Coles, executive director of the charity Inquest, said: "Ever increasing use of force carries ever increasing risk of serious injury and death. The use of force should only be a last resort and has to be proportionate. Increasing numbers suggest that routine use of force is becoming the first, rather than the last response, and that raises important questions about training and police culture. "This also provides yet more evidence about the overpolicing and criminalisation of people from black and minority communities. It begs important questions about structural racism and how this is embedded in policing practices."

White people and Asian people were underrepresented in the statistics, making up approximately 59% and 18% of the capital's population but accounting for 42% and 11% of occasions respectively in which officers deployed force. The Labour MP David Lammy said: "Systemic racism still permeates each stage of the criminal justice system. More needs to be done to root out this bias, if we are to build trust between the police and the communities they serve." The Met's deputy assistant commissioner, Matt Twist, said officers only used force when a threat was perceived to public – or their own – safety and said that the figures should not be compared with population demographics. He said: "The collation of these figures is still in its early stages, and as this is new data, there are no previous benchmarks to compare it to. Therefore any conclusions drawn from them must be carefully looked at against this context, and should only be compared with those individuals who have had contact with officers, rather than the entire demographic of London." He said the demographics of boroughs with higher rates of violent crime should be examined and that a large proportion of the uses of force recorded were at the lowest possible end of the scale, such as compliant handcuffing.

The data shows wide variety in the use of force between boroughs, from 2,826 incidents in the City of Westminster, to just 373 in Merton in the first five months of the year. Occasions when force was used more than doubled, compared with April to August last year, in 11 boroughs. In only one, Sutton, was there a reduction in the use of force, while in Tower Hamlets force has already been used on more occasions than in the entirety of 2017-18. Simon Kempton, of the Police Federation, said the new recording system played a large part in the rise, but added: "If we intervene in violent crime, we are more likely to use force, which goes without saying, I guess. "One of the things that concerns officers the most is being single-crewed, so working on their own and not with another officer. When you are single-crewed, you are also more likely to use force … so a lack of police officers could also be a factor, simply because where there are more than one of you, even if you do have to use force, the level of force you use is much lower. "The cuts have forced us to do our jobs slightly differently, and that is one tangible difference."

duct had to be kept secret and could not be aired in open court. He argued that the claim should be restricted to investigating over a “sensible time period”, at most six years. For part of the day, the IPT went into closed session from which the press, public and lawyers for the claimants were excluded. Reprieve’s director, Maya Foa, said: “We want to know if it’s government policy to let MI5 agents get away with serious crimes such as torture and murder. “While our intelligence agencies have an important role in keeping this country safe it does not follow that agents can be permitted to break the law without limits. If this is indeed the government’s position it must inform MPs and the public, and open the policy to legal and parliamentary scrutiny.”

Sajid Javid 'Taking UK Down Dangerous Road' by Expanding Citizenship Stripping

Jamie Grierson, Guardian: The Home s Secretary, Sajid Javid, is taking the UK down a “very dangerous road” with plans to expand powers to strip dual citizens of their British citizenship, a leading human rights group has warned. Suspected terrorists have previously had their UK citizenship taken away – most often while they are abroad – and the move does not require prior approval from a judge or parliament. Javid proposes extending the reach of the power to cover serious criminals, citing child grooming gangmasters as an example.

In his conference speech, Javid said: “The home secretary has the power to strip dual citizens of their British citizenship. It is a power used for extreme and exceptional cases. It should be used with great care and discretion – but also determination. “In recent years we have exercised this power for terrorists who are a threat to the country. Now, for the first time, I will apply this power to some of those who are convicted of the most grave criminal offences. This applies to some of the despicable men involved in gang-based child sexual exploitation.”

Corey Stoughton, acting director of Liberty, the human rights and civil liberties group, said: “The home secretary is taking us down a very dangerous road. Few will sympathise with the people this power has been used against – but making our criminals someone else’s problem is not responsible, effective policymaking. It’s the government washing its hands of its responsibilities. “Accepting citizenship stripping as a legitimate punishment could see us all sleepwalking into a future where the list of ‘serious’ crimes gets ever longer and the government uses this extreme measure more and more frequently. Banishment belongs in the dark ages and has no place in the UK in 2018.” From 2010 to 2015, 33 people were stripped of their British citizenship, all of them dual nationals, on terrorism grounds. Figures for 2015 onward have not been made available.

Javid has made tackling child sexual exploitation a key issue for his department. He recently announced an extra £21.5m to help investigators who say they are facing a “constant uphill struggle” to track down offenders. A Home Office spokesperson said: “Any British citizen may be deprived of his or her citizenship if the secretary of state is satisfied that it would be conducive to the public good. It is a power used for extreme and exceptional cases. “Deprivation on conducive grounds can be used where individuals pose a threat to national security, or have been involved in war crimes, serious and organised crime and unacceptable behaviours such as extremism or glorification of terrorism.”

Diane Abbott, the shadow home secretary, said citizenship stripping was discriminatory against minority communities. “Stripping dual nationals of British citizenship is inherently discriminatory and risks creating yet another ‘hostile environment’ not for illegality but for Britain’s many minority communities,” she said. The Conservatives’ inability to learn from past mistakes beggars belief, even when mealy mouthed apologies are barely dry on the page. Why not punish Britons according to their crimes rather than their origins?”

his car went missing. It is common ground between the prosecution and the defence that the judge was in error in referring to the contents of the Defence Statement. The error should have been immediately apparent and the judge should have been informed of his error.

12. Instead of it being put right promptly, the judge went on to compound the error later in the summing-up. At page 32 he returned to the issue in the context of the appellant's prepared statement. He said: The telephone number attributed to him is the one on which his BMW car was reported stolen and you have a transcript of that call. It is clear that he now admits that that was him making the call. That same number was listed in Mr Majid's contact section under 'Go-go'. There is no evidence that the BMW was broken into or hotwired. (Nor was there any evidence to the contrary.) It was not until his November 2016 defence statement that he said he had a set of keys for the car stolen two weeks before Good Friday. When he was arrested at Pizza Go-Go, he had a BMW with him. This is the stolen keys defence which you know about but which was not confirmed by [the appellant] either to the police at interview or in evidence to you. You may want to ask yourselves some questions about the stolen keys defence. Why would Mr Majid steal the keys of a motor car owned by a man from his community? His telephone number is on the contact list of his mobile phone and why would he do that before he beats up his girlfriend and before she goes to the police, in other words, before there could be any plan to intimidate a witness living in London and why would Mr Majid take the risk of using a stolen car, a new white BMW, and driving it openly around Coventry, picking up friends, driving it to London and then using it again, giving it to the petrol pourers, so how does the stolen keys defence work, exactly?

13. There are a number of problems with this passage. First, it repeats the error of referring to a defence that was never put before the jury. Second, it points out that the stolen key defence was not mentioned when the appellant reported that his car was missing, thereby undermining the defence that the car had been stolen at some time during the afternoon and evening of 25th March, which was his defence before the jury. Third, it contains a direction under section 34 of the Criminal Justice and Public Order Act 1994 that the jury were entitled to take into account the appellant's failure to mention to the police a defence that was never put before the jury.

14. Having asked the questions about the stolen keys defence and having made comments which would have cast doubt on the defence if it had been advanced, the judge concluded: "… so how does the stolen keys defence work, exactly?" A little later (at page 34) he said: [The appellant] has taken his chances in not giving evidence. In our view, that observation undermined any direction that it was, of course, the appellant's right not to give evidence.

15. After the jury retired at about 1.30pm, Ms Collins pointed out that the stolen keys defence had never been advanced before the jury: "the jury have never heard about it and they have never seen it". This was confirmed by Mr Merz on behalf of the prosecution, who pointed out, accurately, that the judge had referred to the defence a number of times. The judge adjourned to consider whether he should give a further direction in the light of what he had heard from counsel and said he would then hear an application to discharge the jury.

16. At 2.22pm (54 minutes after they had retired), the jury returned to court. The judge referred to the stolen keys defence on which he had understood the appellant relied and which had been advanced in the evidence. He said this: That was my error. [The appellant] has not relied on that defence at this trial. This case is not about possible defences that [the appellant] might have argued and I was wrong to suggest weaknesses in a defence that he does not rely on. It is right that you should hear about my mistake and that I should correct it swift-

ly. Remember, the prosecution bring this case and the prosecution must prove it so that you are sure. The [appellant] does not have to prove his own innocence.

17. The jury then retired again and the judge heard the defence application that the jury should be discharged from bringing in a verdict. It is fair to say that the prosecution did not resist that application with great vigour.

18. In any event, the judge rejected the application. He said this (at 53G): The stolen keys defence I referred to is not now and has never been a part of [the appellant's] defence before the jury. If I had not made that mistake, I would have pointed out with much greater emphasis and comment the absence of any explanation for the new BMW having been stolen and driven away immediately, without any evidence of break-in damage or hotwiring. That has not been done now as a consequence of my mistake. An objective bystander could well observe that [the appellant's] case now stands in a rather stronger position as a result of my error than it did before. We note that the judge had in fact already raised with the jury that the car had been taken without evidence of either break-in or hotwiring.

19. On this appeal, Ms Collins submitted that the judge made a number of errors which, either individually or cumulatively, rendered the conviction unsafe. First, he referred to the contents of the Defence Statement (the stolen keys defence), which was not in evidence. Secondly, he made unduly prejudicial comments about the contents of the Defence Statement before unnecessarily and unfairly giving a section 34 direction without any prior warning. Third, the judge's attempt to rectify his error was insufficient and did not cure the prejudice. Fourth, the errors required the judge to discharge the jury. She adds a further point: that the identified errors amounted to an infraction of the appellant's right to a fair trial under Article 6(2) of the European Convention on Human Rights, which includes the presumption of innocence and the right to silence.

20. Mr Merz, for the prosecution, accepted that the judge improperly referred to the Defence Statement and the stolen keys defence, which was not in evidence, and erred in commenting that the appellant had not mentioned the stolen keys defence in this initial report to the police that his car had been stolen, or in police interviews, and had erred in effectively giving a section 34 direction, which was not prefigured in any discussion. However, he submitted that this assisted the defence as there was no explanation before the jury as to how the appellant's car had been taken without his permission, there being no evidence of damage or hotwiring. The jury had been directed that the facts were for them to determine and the judge clearly rectified the error he had made – a misunderstanding that the appellant was relying on the stolen keys defence mentioned in the Defence Statement. The jury were appropriately directed on section 35 and the burden and standard of proof, and any prejudice caused was reduced by the judge's correction and fresh direction.

21. Mr Merz drew the court's attention to R v Tufail [2006] EWCA Crim 2879. In that case the judge had inadvertently disclosed matters in the summing-up which had not been adduced during the trial and an application to discharge the jury was refused. In that case, which is cited in Blackstone's Criminal Practice 2018 at D13.65, the court indicated that the factors to be considered in deciding whether to discharge the jury were: (a) the nature of the judge's actions to cure the error; (b) the strength of the case against the defendant; and (c) the degree to which the jury were or may have been influenced by it. He submitted that the judge acted promptly to correct the error and that the jury would not have been unduly influenced by it. In addition, he submitted that the evidence that the appellant was well aware of who had his car when he reported it stolen was overwhelming. He could have told the police that he knew who had taken the car, but that would have implicated Majid and Tufan. He acknowledged that

MI5 Provides Immunity For Agents' Criminal Acts – Including Murder Torture Sexual Assualts

Owen Bowcott, Guardian: MI5 grants its informants legal cover to participate in crimes that may extend to murder, torture and sexual assaults, a tribunal has heard. The policy, in existence since the early 1990s, is likely to have enabled the Security Service to conceal wide ranging illegal activity, Ben Jaffey QC, representing an alliance of human rights group, told the investigatory powers tribunal (IPT) on Thursday. The policy was so secret that even judicial oversight of the practice, introduced in 2012, was not initially acknowledged. Sir Mark Waller, a retired judge appointed to oversee the policy, was instructed by the prime minister at the time, David Cameron, not to comment on its legality.

Known within the intelligence services as “the third direction”, a letter from Cameron to Waller dated 27 November 2012 said his “oversight would not provide endorsement of the legality of the policy”. Cameron continued: “You would not be asked to provide a view on whether any particular case should be referred to the prosecuting authorities; and your oversight would not relate to any future consideration given by prosecuting authorities to authorisations.” Waller was the intelligence services commissioner at the time, charged with independent judicial oversight of the conduct of MI5, MI6 and GCHQ.

Cameron’s letter explained that in protecting national security, MI5’s agent-handlers permit informants to participate in “crime, in circumstances where it is considered [that] involvement is necessary and proportionate in providing or maintaining access to intelligence” that would disrupt more serious crimes or security threats. He added that he had considered whether his letter should be published for transparency purposes, but “concluded that it should not on the basis that doing so would be detrimental to national security and contrary to the public interest”.

Some details of the policy were also disclosed on Thursday during the hearing. A heavily redacted copy of a three-page MI5 document, entitled Guidelines on the use of agents who participate in criminality (official guidance), was released. The document shows that MI5 sought to give its agents even greater freedom to commit criminal offences than that usually proffered to police informers. “The service has established its own procedure for authorising the use of agents participating in crime,” it states. It says any authorisation to commit crimes “has no legal effect and does not confer on either agent or those involved in the authorisation process any immunity from prosecution. Rather, the authorisation will be the service’s explanation and justification of its decisions” should the police investigate.

The IPT case, which is potentially embarrassing for the government, has been brought by Privacy International, Reprieve, the Committee on the Administration of Justice and the Pat Finucane Centre. MI5’s policy is illegal if it breaches fundamental human rights, such as the ban on the use of torture, Jaffey told the tribunal. The policy appears to be the equivalent of MI6’s powers created under the Intelligence Services Act 1994. Section 7 of the act is sometimes known as the “James Bond clause” because it provides a legal amnesty for spies to commit abroad what would otherwise be crimes. The MI5 guidelines date back to the early 1990s and, it is believed, attempted to formalise the legal gap exposed earlier during the Troubles in Northern Ireland when special branch agent-handlers sought clarity from Downing Street on how far they were permitted to go in allowing informants to participate in crimes without facing prosecution themselves.

At that stage, in the 1980s, the office of the prime minister, Margaret Thatcher, was unwilling to give clear guidance. Those exchanges were carefully documented in the De Silva report into the murder of the Belfast lawyer Pat Finucane. Sir James Eadie QC, representing the intelligence agencies, the Home Office and the Foreign Office, told the the IPT that details of MI5’s con-

information that the suspect has put forward or on which he or she might rely'.

How can the CPS reach that conclusion under 4.5 with integrity and within the spirit of the law and rules if they know the defence have been entirely wrong footed by being denied the evidence they should receive as a matter of law? They will know that the right to remain silence is often in response to this failure. They know therefore that the suspect has in reality been denied the opportunity to answer a case that has never been put to them in adequate detail. How when looking at such poor disclosure can the CPS in all conscience reach such a conclusion as required of them here?

What can the defence do to influence the CPS decision? Precious little due to the barriers, both physical and technological, that prevent communication between defence lawyers at the police station and the CPS. In reality there is no pre-charge communication between the lawyers for the defence and the CPS. The Police will submit their representations and the defence simply have to await the outcome. As I have said in the previous piece one can e mail a written statement complaining about the inadequate disclosure (if you have WIFI reception – which often one doesn't) and ask for this to be attached to the custody record. But often this is not attached and the statement is not forwarded.

This current failure of the police and the CPS to consider representations is completely at odds with the prosecutor's code. See 3.3 which provides that Prosecutors should not only identify and, where possible, seek to rectify evidential weaknesses, but, although prosecutors primarily consider the evidence and information supplied by the police and other investigators, the suspect or those acting on his or her behalf may also submit evidence or information to the prosecutor via the police or other investigators, prior to charge, to help inform the prosecutor's decision.

In reality as I have stated above and as 99% of lawyers will confirm there is no mechanism in place at the police station in the pre-charge phase for the 'suspect or those acting on his or her behalf ' to submit evidence or information to the prosecutor via the police. It doesn't (or rarely) happen. Consequently the defence complaints about inadequate disclosure are unheard or muted with only the police view or representations being conveyed to the CPS. The CPS are in my view failing to look more deeply into the reasons for 'no comment' interviews. Obviously they cannot be aware of confidential legal advice give to the suspect. But they can look for obvious clues in the inadequacy of disclosure by the police. They are also not enquiring into whether defence representations have been made or failing to give adequate weight to these if they are aware.

Where do we go from here? I have in the companion piece given my views about the S34 inference of guilt and also proposed changes to the PACE code that will reform the way that the police deal with pre- interview disclosure. So far as the CPS are concerned I propose an amendment to the prosecutor's code. There should be a presumption against immediate charging where the disclosure does not reflect adequately the evidence. The CPS should insist upon a further interview with proper disclosure to enable suspects and their lawyers to know the case for the Crown in sufficient detail to be able to properly answer the allegations.

Without such adequate disclosure any inference from guilt should be treated in the same way as failure to offer the opportunity for free an independent legal advice. No presumption should apply at all. That would require a change to the PACE code as well as the prosecutor code.I can see no real downside for an honest police and prosecution team because a failure to respond to questioning where disclosure was in adequate detail would trigger the inference of guilt. These proposals taken with the others previously made would remove unnecessary conflict and public expense in forcing not guilty pleas, which early proper engagement and proper evidential disclosure as envisaged by Lord Leveson would remove.

a jury note indicating that they were not sure that the appellant knew everything, but submitted that they were sure he knew enough to make him guilty.

22. It is clear that the judge made a mistake. He then went on to repeat his mistake as to the nature of the defence and to undermine it. His correction was short and acknowledged his mistake, but it did not cure the error that had been made. The appellant was entitled to have his defence placed before the jury. His defence was that the car had been stolen during the afternoon and evening of 25th March. It did not cure the harm done to the defence simply for the judge to admit that he had made a mistake and remind them that it was for the prosecution to prove the case.

23. The judgment in Tufail indicates factors that may be relevant in particular cases where an error is made before the jury. It may often be sufficient to tell the jury to disregard what had been said before them. But the present case was different – at least to this extent. The jury had been told of a defence that had never been advanced and which was subjected to adverse comment by the judge. The jury had been left for the best part of an hour in retirement before a correction was made, which admitted the error and reminded them of the burden and standard of proof but did not remind them of the appellant's defence as advanced in the prepared statement and at trial.

24. In our judgment, the case should have been withdrawn from the jury. We note that when this possibility was raised, it was not opposed by the prosecution, although Mr Merz very properly said that it was a matter for the judge.

25. We turn to the prosecution argument that the case against the appellant was strong and that for that reason the conviction should not be regarded as unsafe. We accept that the circumstantial case against the appellant was strong, although Ms Collins has addressed us effectively on the basis that it was not as strong as the prosecution has asserted. She points out that the prosecution relied on contact with Kalantar and Naziri and that Kalantar and Naziri were acquitted of the conspiracy charge.

26. In the circumstances we have described, we do not consider that the verdict can be regarded as safe. Accordingly, we quash this conviction. (An application by the Crown for a second retrial was refused)

Unexplained Wealth Order (UWO): Banker's Wife to Lose Property Worth Millions

David Pegg, Guardian: The wife of a foreign banker faces losing UK property worth millions of pounds unless she can explain the source of her wealth, following a judgment at the high court. The woman, referred to in the judgment as "Mrs A" and cannot be named for legal reasons, was the subject of the UK's first unexplained wealth order earlier this year following an application by the National Crime Agency. Counsel for the NCA described the luxury lifestyle of Mrs A, who spent £16m at Harrods over 10 years, at a hearing before the high court in July. Her husband's net worth was reported to be $72m. The UWO was issued in respect of a property bought in 2009 for £11.5m via a company in the British Virgin Islands. A £7.5m mortgage was also taken out against the property from Barclays Suisse. In 2015, while applying for indefinite leave to remain in the UK, Mrs A told the Home Office that she was the beneficial owner of the BVI company. However, regulators in the Caribbean tax haven told NCA investigators that the company's true owner was Mrs A's husband, Mr A, who also cannot be named for legal reasons. For 14 years, Mr A was the chairman of a state-owned bank in a non-EEA country. He resigned in 2015 and was later accused of "misappropriation, abuse of office, large-scale fraud and embezzlement", according to the judgment. He denied the charges but was convicted at trial and jailed.

The UWO was issued against Mrs A in February this year, freezing the property and requiring her to explain how she had obtained the funds used to procure it. Failure to explain how the property was acquired could potentially result in civil proceedings being initiated to

seize it. Her appeal against the order was dismissed by Mr Justice Supperstone following Wednesday's judgment. Her legal team has have seven days to appeal against the decision and apply for her anonymity to be extended. UWOs were introduced into British law last year amid escalating concern that the UK housing market was being used for money-laundering.

The NCA has previously estimated that £90bn of criminal funds are laundered through the UK each year, with the London property sector being particularly vulnerable, and campaigners calling London "the money-laundering capital of the world". Donald Toon, the NCA director for economic crime, said: "I am very pleased that the court dismissed the respondent's arguments today. This demonstrates that the NCA is absolutely right to ask probing questions about the funds used to purchase prime property. "We will continue with this case and seek to quickly move others to the high court. We are determined to use the powers available to us to their fullest extent where we have concerns that we cannot determine legitimate sources of wealth."

Duncan Hames, the director of policy at Transparency International UK, welcomed the ruling and applauded the court's decision to hold the hearing in public. "The UK has been long identified as a safe haven for corrupt money and despite successive governments recognising this, money-launderers have continued to hide their ill-gotten gains here," he said. Only firm enforcement action, as initiated with this case, will make a reality of ministers' ambitions to create a hostile environment for dirty money in the UK." Earlier this year, the government passed a law requiring offshore owners of British property to disclose their true identities to a central register or face jail sentences and unlimited fines.

People Suing the Government Denied Legal Aid After Government Briefed on Their Cases

Emily Dugan,Buzz Feed: Exclusive: Internal emails seen by BuzzFeed News show officials in ministers' private offices discussed legal aid applications with supposedly independent decision makers before they were rejected. People bringing legal challenges against the government have been refused public funding for a lawyer after ministers and Whitehall officials were given details of their application, BuzzFeed News can reveal, raising questions over political interference in a supposedly independent process. Legal Aid is intended to ensure that people have access to a lawyer for major court cases even when they cannot afford it — a key component in holding government accountable.

But BuzzFeed News has learned of three high-profile cases challenging the government in which legal aid was turned down once the Ministry of Justice was aware of the application. Decisions about legal aid used to be made by court officials but since reforms in 2012 they are made by the Legal Aid Agency - a theoretically independent arm of the MoJ. The LAA claims to work independently of government but a special protocol for high profile cases opens channels of communication. Internal emails from LAA staff seen by BuzzFeed News show that officials, including in ministers' private offices, had conversations about legal aid applications before decision-makers turned them down.

The emails, marked "Official Sensitive" reveal ministerial staff contacted the LAA to find out if legal aid had been granted in cases where they were the defendant. An internal memo sent among LAA staff on 4 April 2014 while Chris Grayling was justice secretary listed three high profile cases with pending applications for legal aid that needed to be briefed on. One was a legal challenge to a ban on prisoners receiving books and the other two are redacted. In one email, an assistant to the chief executive of the LAA writes: "had a call from SoS [Secretary of State's] office - I'm looking for some urgent advice on whether Barbara Gordon-Jones is receiving any legal aid for a JR she is bringing against the SoS re prison books". The tranche of emails reveal that conversations about cases

poor disclosure. Is the inadequate disclosure so poor as to make it impossible to advise the suspect properly and will that advice withstand scrutiny at the trial? (R. v. Roble [1997] and R v Beckles (Keith Anderson) [2004] EWCA Crim 2766; [2005] 1 W.L.R. 2829.)

But what in realty happens at the police station? A number of things that are the unfortunate consequence of poor disclosure. Three examples: Firstly, a charge, in circumstances where, were it not for the poor disclosure, another course might have been followed. This in turn leads possibly to a not guilty plea until evidence is finally served. Secondly, the awful trap where someone is denied proper disclosure revealing guilt but is unable to recall clearly the events (possible due to intoxication) is denied a non-court based disposal such as a caution. A suspect might have said 'I have difficulty recalling the events but accept this is due to intoxication not innocence and I fully accept the case against me'. Thirdly, an excessive reliance upon the inference from silence where there is inadequate disclosure and a failure to instigate further.

Why do I place the blame upon the CPS for this waste of public money and risk of injustice? Because they are implicitly condoning the inadequate disclosure by the police by breaching on a daily basis the prosecutors' code they are supposed to follow. The prosecutor's code (see here) requires, under Para 2.6, that 'Prosecutors must apply the principles of the European Convention on Human Rights, in accordance with the Human Rights Act 1998, at each stage of a case. Prosecutors must also comply with any guidelines issued by the Attorney General; with the Criminal Procedure Rules currently in force; and have regard to the obligations arising from international conventions.

Failure to disclose evidence is a breach actual or anticipated of: a) All the requirements of the common law; b) article 5 and 6 of the European Convention on Human Rights (as CRimPR 1 (1) overriding objective explicitly recognises); (c) EU Directive 2012/13 of 22nd May, 2012 and (d) The necessity to serve all available statements under CRimPR 8.2.—(2) and CRimPR 8. (3) which anticipates service prior to any hearing of initial details of the prosecution case as under Rule 8.3 'any written witness statement or exhibit that the prosecutor then has available and considers material to plea.

Lord Leveson in his review anticipated such early full disclosure at the police station. This was talked about but has never in practice been implemented. It should happen prior to interview where the evidence is available to reduce unnecessary conflict and expense.

Under the prosecutors code 4.2 'In most cases, prosecutors should only decide whether to prosecute after the investigation has been completed and after all the available evidence has been reviewed'. This should surely include a cold impartial look at the adequacy of the police disclosure? Where it is manifestly poor and incomplete the advice to the police should be to re-inteverview and where available either serve or obtain the crucial evidence that would after all defeat the defence resistance to any S34 inference from silence.

Under prosecutors code 4, 'Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction'. How is this possible when the defence have been deliberately pinned back into a 'no comment' defensive stance due to the hopeless disclosure they have received? The CPS should do their job and throw the case back to the police by saying 'you have not disclosed enough for us to be able to test the defence or hit them with a S34 inference'.

The code is further reinforced by prosecutor's code 4.5 that prior to charging advice the CPS should conclude that 'there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other

is important that for its integrity the LAA must be seen be acting independently in its decision-making processes relating to legal aid." He acknowledged that cost had to be taken into account in legal aid decisions involving complex cases such as the Birmingham pub bombing, bringing an "acutely political dynamic but, he said, that "should not facilitate decision being influenced by political considerations". He added that it was "unusual" that the coroner in this case had been sent emails between a solicitors firm and the LAA without them being requested. The situation is causing concern in legal circles, where there are fears that the transfer of legal aid decisions from court staff to civil servants risks compromising their independence.

Sara Lomri, deputy legal director of the Public Law Project, said: " The LAA provide people with access to the courts and its independence has to be beyond question. Many of the legal cases reported in popular press are claims for judicial review. These cases are newsworthy because they often involve one person taking on the might of the state: They are challenging the state's legal authority to do what it has done. Legal aid is often the only option available to people who are asking the courts to check that the state has acted lawfully. "It would be seriously concerning if individuals bringing the state to account via the courts had their cases hindered because of the amount of media attention on the state. Whilst PLP can't comment on any specific case without knowing the full details, we can say that the LAA's decision making must be adequately insulated."

BuzzFeed News gave the Ministry of Justice press office two days to respond to a series of specific questions about these cases and their handling of legal aid applications where the government was a party. They were given summaries of the correspondence with the secretary of state's office that BuzzFeed News had seen in the prisoners' books case — as well as detailed concerns over how decisions were made in the Saudi prisons and Birmingham bomb inquest cases. They refused to answer anything specific, simply issuing a brief statement.

A government spokesperson said: "We reject entirely the suggestion of political interference in the legal aid process. In fact, this government made changes under LASPO to increase the independence of the agency and enshrine it in law. "It is usual practice for information to be shared between an executive agency and the responsible government department in certain circumstances. This would not extend to confidential details of an application. "As part of their inbuilt assurance processes, the LAA can review all legal aid decisions and change these if the application does not meet the relevant merits criteria."

CPS Service Should Not Charge Where Police Fail to Disclose Prior to Interview

Robin Murray, Legal Voice: The Crown Prosecution Service (CPS) and other prosecutors are also simply failing to do their job and need encouragement to do so. This needs examination of: the working in practice of the present prosecutor's code, how defence lawyers are in effect marginalised in breach of this code, and I shall argue for some practical adjustments to the code to make it consistent with UK and international law.

How are the CPS failing to do their job? Increasingly the police interview is treated as part of the trial process – that is clear as an inference of possible guilt from silence applies which can seriously impact the trial despite the right to remain silent. Leaving aside whether this inference under S34 of the Criminal Justice and Public Order Act 1994, should remain on the statute book, what we can say is that international law and, despite UK courts attempts to water protection down, UK case law suggests that for an inference of guilt to bite there should be proper disclosure. I set out the case law in the companion piece above referred to at the top of this article.

In a nutshell the defence lawyer has to make a desperate judgment call when facing

between the MoJ, the minister's office and the LAA appear commonplace, despite the agency supposedly being an independent body. The government says they "reject entirely the suggestion of political interference" but BuzzFeed News has scrutinised three recent controversial cases against them that were turned down for legal aid and found:-

In a test case against the MoJ brought by a prisoner challenging a ban on prisoners receiving books, official emails seen by BuzzFeed News show legal aid was rejected after a phone call from Chris Grayling's office and a series of messages between government and the LAA. Despite the LAA saying the case was not strong enough to merit legal aid, the prisoner won in the High Court after the lawyer took it on pro bono - and the law was overturned. A challenge to the legality of a proposed government contract with the Saudi prison service was granted legal aid and then annulled retrospectively once a letter before claim was received by government. The lawyer bringing the case told BuzzFeed News the retrospective change of mind was unprecedented, outside the rules and "indicative of political interference behind the scenes". Families whose relatives died in the Birmingham bombing were refused legal aid to challenge a ruling that IRA members suspected to be behind the bombings would not be named at fresh inquests into the deaths. The Home Office, Ministry of Defence, Foreign Office and police were all interested parties. The families were told they could not receive exceptional case funding because the case did not meet the merits test - yet a High Court Judge had ruled it did have merit.

The LAA does not have its own media team and all press enquiries relating to legal aid applications are handled by the MoJ. The situation means that government press officers — and sometimes ministers — are briefed about pending legal aid applications in high profile cases before a decision is made. The department's policy for handling high profile cases was released by the MoJ, following a Freedom of Information request from the Legal Aid Practitioners Group. It says "Where a case is already attracting media attention it should always be referred to the LAA's Communications Team." This is a team of MoJ press officers. The policy makes it clear that a case will be considered as high profile - and therefore shared with MoJ staff when the "decision whether to grant or refuse legal aid to the client could cause serious reputational damage to the LAA… this might include funding high profile persons challenging the state, in circumstances that may attract hostile publicity or controversy or, conversely, refusing funding to an individual in a matter that is likely to attract widespread public sympathy."

An increasing number of lawyers have contacted the Legal Aid Practitioners Group worried that there may have been "political interference or influence" in their legal aid applications. The removal of guaranteed legal aid for judicial review applications when challenging the behaviour of public bodies, including government, has added to concerns about transparency. In a report last year, LAPG said: "The constitutional implications of obstructing the right of challenge to the state by removing payment for cases are serious and contrary to principles of fairness and access to the Courts." Carol Storer, director of the LAPG, told BuzzFeed News: "A number of practitioners have contacted LAPG to express concerns that there is a real risk of political interference in some legal aid decisions where the government has an interest. The cases often raise issues of great importance, legally and constitutionally. The high profile policy creates the risk of political interference with decisions about which legal challenges may or may not be brought, which should be completely independent of government." To qualify for legal aid a person first has to prove they meet a strict means test, but there is also a more subjective merits test, which judges factors such as the likelihood of success and the benefit to the client of the case.

BuzzFeed News revealed in January that the proportion of people being turned down for criminal legal aid because of a subjective 'Interests of Justice' test had increased from 47% to 67% since the LAA took on responsibility. Like the merits test in civil cases, the IOJ test

used to be decided in courts by expert clerks and legal advisers, but since the LAA took on decision-making, lawyers and court staff say that the IOJ test has been interpreted much more harshly. BuzzFeed News applied under FOI for the number of civil cases turned down for legal aid on merits grounds annually where the MoJ was a party in the case. It was refused on the grounds that it would be too expensive to find the information. They did release general figures, showing that in 2017-18, 3,008 civil cases were refused on merits in the whole country. Only a fraction of these would relate to government.

Richard Burgon, shadow justice secretary, said: "This is deeply concerning and the government appears to have serious questions to answer. Any political interference - or even just the perception of political interference - risks undermining public trust in the Legal Aid Agency. This will only add to the pressure for the Legal Aid Agency to be replaced by an independent body that operates fully at arm's length from the government, as recommended by the Labour Party-initiated Bach Review into access to justice."

Barbara Gordon-Jones was a prisoner serving time for arson at HMP Send and a voracious reader. She had studied literature and wanted to bring a test case against a ban on prisoners receiving books introduced by the then Justice Secretary Chris Grayling. Her application for legal aid to challenge the new rules was turned down on merits - but after she won the case with a lawyer acting pro-bono, she applied for all communication about her legal aid in a Subject Access Request. The partially redacted emails, shared with BuzzFeed News, clearly show conversations between the LAA and the secretary of state's staff about legal aid. On 3 April an assistant to the chief executive of the Legal Aid Agency sent an email outlining a call from the justice secretary's office asking about legal aid in the case. The following day, David Keegan the Head of Complex and High Cost Cases at the Legal Aid Agency lists it as one of three cases that the MoJ needs to be briefed on. The other two cases are redacted.

On the 10th of April an email was sent to the minister's private office from a 'communications and information handling manager' in the LAA, saying "Just to update you that the LAA has received an application looking to challenge the policy on not allowing books to be delivered to prisoners. We still need some more information before we can properly assess the application, so in the meantime, it's my view that there will not be any possibility of media coverage this evening." They add: "I will of course provide a briefing for you and Press Office (Who I will verbally brief just now). In any case, I'll draft something tomorrow for you and for Press Office, for weekend cover." A month later the application was rejected on the grounds that it did not meet the "merits test" - yet the case was later won.

Gordon-Jones' solicitor, Sam Genen, said he did not complain at the time due to concern that future legal aid applications would be refused. Earlier this week he began the process of a formal complaint to the Parliamentary and Health Service ombudsman. He told BuzzFeed News: "A request was made on behalf of Ms Gordon-Jones to obtain all correspondence from the MOJ on her file. At first a single email was disclosed at the top of the file which required further investigation. It is clear that after Ms Gordon-Jone's application was made the private office for the Defendant (Secretary of State for Justice) contacted the Legal Aid Agency. The application was delayed in any formal consideration and then refused. Despite being refused the case was won on a pro-bono basis." Genen also believes the solicitor who dealt with the subsequent appeal specialised in criminal not public law and did not have all the paperwork he had provided to the LAA. He said "It is inferred that because of the contact which appears to be consistent and sustained that the private office of the secretary of state for justice

may have had a direct or indirect impact on the refusal of legal aid. I have not complained due to concern that future applications would be refused and my clients would be prejudiced."

A British man known as 'AB' who was tortured and imprisoned in Saudi Arabia challenged the legality of a government contract to provide prison and probation services in Saudi Arabia. Just Solutions International (JSI) was the commercial arm of the MoJ set up by Grayling. It won a contract to provide training to prison staff in the country. Legal aid was granted to the man to bring a case on 25 February 2015 and within a few hours, his lawyer sent the MoJ and Foreign Office a letter before claim. A month later, at a time when both government departments were already working on the case, his lawyer received a letter saying legal aid had been "annulled" with retrospective effect. In a statement written shortly afterwards, AB's solicitor, Adam Hundt of Deighton Pierce Glynn said: "On 25 March 2015, I was notified by the Legal Aid Agency that AB's Legal Aid Certificate had been "annulled" with retrospective effect. This is not a mechanism provided for in the statutory regime or guidance relating to Legal Aid, and not a decision that I or anyone in my firm had previously encountered, so I was somewhat taken aback by it." The LAA argued — in contrast to its initial assessment — that he did not qualify for legal aid because the judicial review would not directly benefit him. AB travelled regularly to Saudi Arabia, risking imprisonment, and argued the government's work with the Saudis might strengthen their prison provision. But the LAA said the concern that he may, in the future, be at risk of detention on arrival was not "significant" enough a benefit to qualify, despite the merits policy only stating that there has to be "potential" to qualify.

In June a High Court bid was launched using a different claimant, after AB became frightened of his family being harmed by his involvement in the case. Hundt believes the sudden change in legal aid made AB more nervous about taking part. The High Court challenge did not progress further because in October the programme — and the organisation which pushed it — was scrapped by Grayling's successor, Michael Gove. The decision to abandon it was announced on the day the MoJ was due to serve its defence. Hundt told BuzzFeed News: "This is indicative of political interference behind the scenes in what should be independent decision-making, interference which is calculated to avoid accountability for the government's unlawful actions. This undermines the rule of law to a worrying degree, something that we have seen this and previous governments have repeatedly attempted to do."

The families affected by one of Britain's deadliest terror attacks were forced to crowdfund for the legal fees they needed to challenge the government position at an inquest into their relatives' deaths. Relatives of those killed in the Birmingham pub bombings in 1974 were given permission for a judicial review of a decision not to identify suspected bombers in the upcoming inquest after a High Court judge ruled the challenge was in the public interest. Despite this, the LAA said they did not meet strict criteria for exceptional case funding, which includes a subjective assessment of how likely someone is to win. The court of appeal has now overturned the High Court decision and agreed with the coroner that the suspected bombers will not be names The families had earlier won legal aid for the inquest itself but even that took time as eight families were initially refused it on the grounds that the firm representing them was based in Northern Ireland. In a sign that the MoJ and LAA were communicating about the legal aid situation, following this earlier dispute, the MoJ briefed the judge in an email when the legal aid status of the families changed, despite the families or their lawyers having not informed them.

In a statement to Buzzfeed News, Christopher Stanley, a solicitor at KRW law, who represents several of the families, said: "The LAA is an independent agency of the Ministry of Justice. It