

Working Paper 11

Accessing Injustice?

Experiences of representation and the criminal justice system during the Post Office Scandal

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THE POST OFFICE PROJECT

Ethics and justice lessons from the Horizon Scandal

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Any errors are our own.

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Executive Summary

This is our second working paper based on in-depth interviews with those affected by the Post Office (PO) Scandal. It explores a subject which so far has not been considered in-depth in the context of the scandal.

Whilst there has been extensive consideration of the conduct of Post Office Limited (POL),¹ Fujitsu, government and other associates of those three (most notably lawyers for POL), there has been very little, if anything, written about experiences of the criminal justice system more generally and about defence representation in particular.²

This report considers legal representation of subpostmasters and mistresses (SPMs),³ particularly in the context of experiences of POL investigations through audit and interviews. It then looks at when and how lawyers were instructed. It provides rare insight into how SPM's understanding of their innocence and expectations of fair treatment inhibited a belief that representation was needed and explores the implications of this.

The report discusses how choice of representation was constrained and haphazard. Funding (be it private or legal aid funding) complicated an already difficult process.

SPM's perceptions of criminal defence lawyers and the work that they did for them were underpinned by a sense that the egregious conduct of POL, and the operation of the criminal justice system and of legal aid, meant they were at a significant disadvantage.

A range of views on criminal defence lawyers were expressed. Although respondents almost uniformly ended up with adverse outcomes, views ranged from the positive to the negative. Overall, concerns about poor communication and a lack of proactive defence predominated. SPMs came to see that the legal system's norms undermined protections, and there was a common sense of futility given POL's position, power, and conduct.

¹ Throughout this report 'POL' refers to 'Post Office Limited' as a collective for the organisation and its members, management team, in-house lawyers, and other employees.

² The report focuses on experiences of subpostmasters and mistresses residing in England and Wales as these made up the majority of our respondents, however, we do also include data referring to the situation in Northern Ireland and Scotland.

³ Throughout this report, 'SPM' is used to refer to 'subpostmasters' and 'subpostmistresses' but also as a shorthand to include any other post office worker accused and/or investigated by POL, such as counter clerks and managers.

Experiences of Defence Representation

Accounts of advice on guilty pleas suggested there was inadequate counselling on the impact and meaning of such pleas, and advice treated guilty pleas as, or close to, inevitable, regardless of protestations of innocence.

Whilst concerns about their lawyers were common, they were often seen as outgunned, out of their depth, and/or giving the ‘best’ advice they could in the circumstances. Often, the risk of imprisonment and its ramifications was enough to persuade the innocent that a plea was in their interests. On the other hand, some SPMs questioned that advice, and others were dismayed that their claims of innocence were not investigated or taken seriously. The general approach of defence lawyers towards eliciting a plea as described by SPMs here is inconsistent with the professional view on how plea decisions ought to be taken.

Introduction

Academic research exploring criminal defence, tends, as Blake and Ashworth note, to emphasise “ethical decision-making cannot be divorced from the socio-legal context in which lawyers operate.”⁴ Such work suggests structural and cultural factors, in the management of courts, law firms, and legal aid schemes, all influence behaviour.

The existing literature suggests a number of factors affect defence lawyers’ practices:

- Structural issues, namely inadequate funding: Low legal aid rates and fixed tariffs, with austerity measures across the criminal justice system more generally.
- A range of related systemic issues: severe case backlogs; shortages of defence lawyers (and an aging workforce), and high workloads; and,
- A system, and often even defence practices and cultures, that assume defendant client guilt and prioritises guilty pleas, even when it should not, and where efficiency takes precedence over quality and client care.

For a more detailed discussion of that research see Appendix A at the end of this report. In summary, the research suggests practices that can lead people who are factually innocent to plead guilty to charges against them, and who do so without the benefits of full advice and a proper defence.

What light can the experiences of SPMs shed on these concerns?

Relevance to the Post Office Scandal

To date, research in relation to professional representation has tended to be based on observation of defence practice and courts, with relatively modest attention paid to the perspectives of defendants themselves.⁵ There are several reasons for this. One perspective is sceptical of whether client views can tell us anything meaningful about professional competence.

⁴ Meridith Blake and Andrew Ashworth, ‘Ethics and the Criminal Defence Lawyer’ (2004) 7(2) Legal Ethics, 169, 167–189. Doi: 10.1080/1460728X.11424209.

⁵ Although see, Tamara Goriely, ‘Evaluating the Scottish Public Defence Solicitors’ Office’ (2003) 30, 84 Journal of Law and Society; Lee Bridges and others, ‘Evaluation of the Public Defender’ (Legal Services Commission).

Whilst this view can be overstated,⁶ clients are not necessarily well placed to understand whether in legal terms the lawyer advised them correctly on plea, for instance. However, they may be better placed to evaluate commitment and whether their lawyer appeared to understand their account. Moreover, they can provide valuable insight into how defendants *experience* the criminal justice system, and how systems appear to function on the ground.

A second reason for scepticism is clients, and defence clients in particular, may have their own reasons for wanting to blame their lawyer, rather than their own actions, for their legal misfortune. This argument does not apply in the same way to SPMs. For one thing, there is already an emerging picture as to what drove their legal misfortune: the Post Office and its lawyers.⁷ We also know a great deal, in general terms, about their cases, which can be used to complement their perspectives and provide additional legal knowledge – the majority of SPMs pleaded guilty and at least some plea bargains have already been deemed inappropriate;⁸ prosecution expert evidence was not produced in its proper form (a fact that should have been evident on the face of POL's evidence); key elements of the offences did not appear to be made out on the evidence in several (arguably many) cases; and so on.⁹ Disclosure was, of course, regularly refused sometimes for patently inappropriate reasons.¹⁰

These concerns set up a suggestion that, as well as prosecution malpractice by POL, there were issues a committed defence lawyer might have got their teeth into potentially with some success. We can see too that even where this did happen POL lawyers had a tendency to stonewall proper defence,

⁶ Tamara Goriely, 'Debating the Quality of Legal Services: Differing Models of the Good Lawyer' (1994) 1, 159 *International Journal of the Legal Profession*; Richard Moorhead, Avrom Sherr and Alan Paterson, 'What Clients Know: Client Perspectives and Legal Competence' (2003) 10, 5 *International Journal of the Legal Profession*.

⁷ See Post Office Project publications <https://postofficeproject.net/our-outputs/our-key-publications/>; Paul Marshall, 'Scandal at the Post Office: The Intersection of Law, Ethics and Politics' (2022) 19, 12 *Digital Evidence & Elec Signature L Rev*; Nick Wallis, 'The Great Post Office Scandal' (2021).

⁸ For example, see discussion in Duncan Atkinson KC 'Report to The Post Office Horizon IT Inquiry Phase 4 Investigation, Disclosure and Criminal Prosecution in England and Wales and Investigations and Prosecutions by The Post Office 2000-2013,' Volume 2 (Revised).

⁹ See for example: Rebecca Helm, Sally Day, Richard Moorhead and Karen Nokes, 'Working Paper Appeals following a Guilty Plea' (2024) https://postofficeproject.net/wp-content/uploads/EBJL_AppealsFollowingGuiltyPlea.pdf; Evidence submitted to the Horizon IT Inquiry <https://www.postofficehorizoninquiry.org.uk/evidence>.

¹⁰ See for example: Richard Moorhead, Sally Day and Karen Nokes, 'Working Paper 7 The First Flat Earther: How 'clever' strategy might drive professional error' (2024) <https://postofficeproject.net/wp-content/uploads/WP7-The-First-Flat-Earther-1.2v2.pdf>; Evidence submitted to the Horizon IT Inquiry <https://www.postofficehorizoninquiry.org.uk/evidence>.

as when turning down disclosure requests improperly.¹¹ In any event, we know in fact that some cases were successfully defended. The Inquiry has stated, “Most of the persons prosecuted were convicted of offences of dishonesty. An unknown percentage of those prosecuted were acquitted (probably somewhere in the region of 7.5%).”¹²

Another possibility is that the way the courts did, or were expected to respond, to defence challenges, was such as to make more active defence unlikely to succeed. To give one example, former SPM Seema Misra’s lawyers sought a stay of her final trial in the face of a lack of disclosure but were unsuccessful.¹³ Although the Lady Chief Justice has said there is no evidence of poor practice by the judiciary,¹⁴ some evidence has emerged. A former DPP, who reviewed cases for the Post Office as part of its appeal preparation has said he thinks judges may have failed in some cases.¹⁵

One should be wary of drawing adverse inferences too firmly in relation to defence or court standards from these positions, but evidence does suggest the need for some investigation of defence practices. The Inquiry has not engaged in such investigation, nor, as far as we were aware, has anyone else.

Both systemic issues and defence practices *may* be important influences on the scandal.

Our contribution to redressing the absence of evidence on these points is to map SPMs’ journeys into the justice system from their perspectives. Specifically, we examine their experiences of legal representation in legal

¹¹ Ibid. See also: *Hamilton and Others vs Post Office Limited* [2021] EWCA Crim 577.

¹² ‘Post Office Horizon IT Inquiry Report Volume 1’ (2025) footnote 9; see also: para 3.25 and footnote 22.

¹³ Richard Moorhead, Karen Nokes and Rebecca Helm ‘Working Paper 6 Brian Altman’s General Review’ (2023) <https://postofficeproject.net/wp-content/uploads/WP6-Brian-Altman's-General-Review-Final-updated-logo.pdf>; Karl Flinders, ‘Police told in 2016 that Post Office prosecutor withheld evidence of Horizon errors from court’ *Computer Weekly* (07 May 2024) <https://www.computerweekly.com/news/366583303/Police-told-in-2016-that-Post-Office-prosecutor-withheld-evidence-of-Horizon-errors-from-court>; Nick Wallis, ‘Keeping their knees on Seema’s neck’ (02 May 2024) <https://www.postofficescandal.uk/post/keeping-their-knees-on-seemas-neck/>.

¹⁴ Jess Glass, ‘Judiciary not responsible for Horizon scandal convictions, top judge says’ *The Independent* (06 February 2024) <https://www.independent.co.uk/news/uk/judiciary-post-office-wales-england-justice-b2491432.html>; Richard Moorhead, ‘Postmasters punished by an adversarial legal culture’ *Substack* (27 March 2024) https://richardmoorhead.substack.com/p/postmasters-punished-by-an-adversarial?utm_source=publication-search.

¹⁵ Catherine Baksi, ‘Judges failed postmasters, says former DPP’ *LawGazette* (10 June 2024) <https://www.lawgazette.co.uk/news/judges-failed-postmasters-says-former-dpp/5119952.article>.

proceedings and/or action taken against them by POL. Whilst our data covers some experiences with lawyers on civil matters, the dominant focus is on criminal cases and that is what we concentrate on in this report. Though we interviewed people across the UK, our analysis is primarily focused on the legal jurisdiction of England and Wales as the location of the majority of cases that were shared with us.

This report covers our respondents' experiences of:

- Accessing and funding of legal advice and representation
- Legal advice and representation, including the perceived quality of lawyers and lawyering
- Plea bargaining and pressures to plead guilty
- Client understandings of legal processes and the implications of plea
- Preparation for court appearances and appeals

Particularly in respect of criminal proceedings, given the consequences for SPMs, the perceived nature and quality of defence lawyering is important, as is a birds-eye view of the criminal justice system as it was experienced by SPMs subject to it.

Methods

This report is based on data gained from 28 in-depth, semi-structured interviews with 35 participants, including 26 former SPMs, six partners, two adult children, and one sibling. It builds on our survey-work on mental harm to primary and secondary victims,¹⁶ with careful foregrounding of participant welfare governing our handling and analysis of the interviews.¹⁷ Transcripts were reviewed and approved by participants, before thematic analysis applying Braun & Clarke's six-step guide was conducted,¹⁸ and all

¹⁶ See: Beth Gowns, Jeff Kukucka, Richard Moorhead and Rebecca Helm, 'The Post Office Scandal in the United Kingdom: Mental health and social experiences of wrongly convicted and wrongly accused individuals' (2023) 29, 17 Legal and Criminological Psychology; Sally Day, Emily Spearing, Rebecca Helm, Karen Nokes and Richard Moorhead, 'Exploring the Mental Health and Wellbeing of the Families of those Wrongly Accused in the Post Office Scandal' (2024) <https://postofficeproject.net/our-outputs/our-key-publications/>.

¹⁷ Ethics approval was granted from Exeter University. For a fuller discussion of our methodology see: Sally Day, Karen Nokes, Richard Moorhead and Rebecca Helm 'Understanding the Impacts of the Post Office Scandal' (2025) <https://postofficeproject.net/wp-content/uploads/WP10-Injustice-Impacts-final-newlogo.pdf>.

¹⁸ Virginia Braun and Victoria Clarke, 'Using thematic analysis in psychology' (2006) 2, 77 Qualitative Research in Psychology.

data anonymised. We report interviewee's words in direct, unattributed quotes throughout this report. Here we concentrate on the questions focused primarily on experiences and understandings of legal and formal processes, lawyering, and the impacts of the scandal.

Vulnerability: How Understandings and Expectations Shaped Initial Experiences

Wintersteiger has observed that, "A lack of basic awareness and knowledge of laws and legal processes results in the denial of the most fundamental protections promised by the rule of law, and entrenches existing social and economic disadvantage."¹⁹ Work on legal literacy (individual's knowledge and capability in the face of legal problems) suggests people can struggle to understand their rights, how the law applies to the problems they face, or what to do about those problems.²⁰ Adequate legal knowledge can arm people with the information needed to identify and push back against unfairness, mistreatment, coercion, and abuse. It can enable people to make informed decisions about their situation, better equip people to advocate for themselves, and ultimately, can increase access to justice.

In what follows, we examine how SPMs responded initially to suspicion and investigation. As we will see, understanding their responses is an important part of understanding their vulnerability and the unfairness and mistreatment they experienced. As we know, SPMs faced many moments of legally-underpinned crises, such as: wrongful and unsubstantiated allegations of debt; the termination of their contracts; and 'investigation' and prosecution. Unsurprisingly, most SPMs had little more than instinct to guide them, with prior experience of law typically confined to matters such as conveyancing, and with no previous interactions as suspects in *criminal* proceedings.

Many echoed the SPM who said to us, "I've never been in trouble in my life." Most felt "completely naïve and ignorant to anything to do with law." Another explained, "I really didn't get what law is about. Well, you know what's right and wrong, but actually, court is about law and nothing else, which I didn't realise." Even participants who felt they did have sufficient

¹⁹ Lisa Wintersteiger, 'Legal Needs, Legal Capability and the Role of Public Legal Education' (2015) 13 Law for Life: The Foundation for Public Legal Education <https://asauk.org.uk/wp-content/uploads/2018/02/Legal-needs-Legal-capability-and-the-role-of-Public-Legal-Education.pdf>.

²⁰ Pascoe Pleasence, Dr. Nigel J. Balmer and Dr. Catrina Denvir, 'How People Understand and Interact with the Law' (2015) 26 PPSR https://www.thelegaleducationfoundation.org/wp-content/uploads/2015/12/HPUIL_report.pdf.

legal knowledge had difficulty, as one SPM told us, “they’d [POL] dress things up and make it so complicated.”

Most SPMs had an instinctive expectation of decency: they did not necessarily know the intricate workings of the law, but they knew it was supposed to be fair and just. This made SPMs vulnerable to being managed and manoeuvred by POL through the investigation process. It meant many did not exercise their legal rights or protections (or did so very late in the process). Most participants believed everything would work out okay because they knew they were innocent. Several told us, “there was no evidence to say where the money had gone. I was hoping it would come back, but it didn’t.” All said they could never have imagined how bad their situations would get. Knowing they were blameless, influenced SPMs decision-making and shaped how most responded to POL throughout their ‘investigation.’

Once Horizon showed monies were missing, at some stage an audit would be conducted by POL. There appeared to be no consistent or streamlined process for this; some SPMs rarely had audits while others had them frequently. Some audits were a surprise, but many SPMs had begged for auditors, the National Federation of Subpostmasters (NFSP),²¹ and area and line managers, to come out to their post office to try and help them locate ‘missing’ monies.

Many thought at this stage that POL “were going to help.” One SPM told us, “the relief I felt at the actual time, when the auditor was going through it, I thought, ‘they’re going to find it’ [the problem].” Another said, “to me, the auditors coming were a good thing because I thought, ‘right we’ll get it all sorted once and for all.’” Many explained they “didn’t realise the consequence of what was going to happen.”

They shared business and personal information willingly. SPMs agreed to and sometimes invited searches of their homes. They often “gave them [POL investigators] all my bank details” and “bank statements, all my mortgage statements, everything I could think they would need.” They answered any questions they could, to show POL that they had nothing to hide and in the hope it would assist investigations to locate and resolve what the problem was.

²¹ The NFSP is a membership organisation who held themselves out as representing SPMs but also receive substantial funding from POL.

Audits, exposed by the Inquiry as more of a glorified stock-take,²² were typically incredibly traumatic experiences in themselves. SPMs expecting an impartial and even-handed investigation of alleged shortfalls, frequently experienced a harrowing process of suspicion, bullying, inaccurate reporting, and accusation.²³

Types of Interviews

Interviews about shortfalls were of two kinds: one was a supposedly investigatory one (that could lead to termination of the contract) and the second was more specifically geared towards criminal prosecution.

Typically, the interviews for ‘investigation’ and ‘discipline’ were held immediately or shortly after audits. SPMs reported not being informed of the seriousness of investigations and interviews and often having these downplayed by auditors and investigators as “it was just going to be a chat.” Although permitted to bring a friend or fellow post office person under their contracts, our respondents usually reported POL not offering or suggesting they could have a support person present. POL generally sought to prohibit legal representation at these interviews (their contract with the SPMs had been drafted as justification for this). In some cases, POL misinformed SPMs that they were not allowed to have anyone at all to accompany them, sometimes pressuring them against bringing anyone. Investigators told one participant, “the only reason you’d need somebody with you is if you’ve got something to hide.” Another was told, “Oh well, if you’re guilty we could get you a lawyer.” One SPM described a particularly traumatic incident where their family tried to intervene and were threatened with legal action by POL.

For most SPMs, POL’s downplaying the nature and seriousness of interviews gave SPMs a false sense of security. One said, “I thought I was dealing with people who are genuine and I thought, ‘I don’t need anyone at this point in time.’” Indeed, many told us, “I didn’t take legal representation with me because I didn’t think I needed to.”

²² ‘POL00120561 - Email from Mike Granville to Paula Vennells, Mike Moores, Mike Young and Others Re: Update on JFSA and Horizon Issues and Urgent Response Needed for BIS and Report on JFSA Response to Issues for BIS’ (*Post Office Horizon IT Inquiry*, 26 November 2010) <https://www.postofficehorizoninquiry.org.uk/evidence/pol00120561-email-mike-granville-paula-vennells-mike-moores-mike-young-and-others-re> accessed 1 September 2025.

²³ The experiences of audit and interview were discussed at great lengths with us by SPMs, many of whom to this day still feel traumatised and harmed from these. With great regret, as the focus of this report is on legal representation specifically, we cannot relay here in great detail SPMs experiences of POL’s conduct during these situations.

Even when some SPMs received a purported caution,²⁴ this still did not always raise the alarm:

“I was cautioned. But, at the time, I didn’t really take that in because, obviously, I’d never been in a position where I was cautioned for anything before. And they said all of this, and I thought, ‘well, I’m only going to tell you the truth anyway.’ So, I didn’t really absorb it.”

Aside from any investigation, participants felt under immense anxiety and pressure, not understanding why money was showing as missing with losses continuing to grow and desperately trying to find ways to repay these. Yet they also believed the ‘truth would out’ and they would be vindicated. As one told us:

“...it sounds bizarre, I was absolutely convinced that they would find the money and work it out, and I wouldn’t be charged anyway, and that, sort of, made me manage, cope with it, in a way, because although it’s absolutely hideous and I felt awful, I thought, ‘No, this will go away, because they’re bound to see what the problem is.’ ... every time the post came, I was convinced I’d get a letter to say, ‘Yes, everything’s fine, they’ve sorted it out,’ but obviously, that letter never came.”

For these SPMs, misplaced optimism and faith in the decency of POL meant they generally had their guard down. Others, as we will see, expected less of POL – having seen or heard about bad behaviour. Some SPMs referred to being socialised to believe in the legitimacy of authorities and public institutions, “I expected them [POL] to listen to me and listen to what I said and believe me because I was telling the truth.” Another said, “I believed that the justice system would go, ‘they aren’t guilty.’ I was very naïve.” One SPM, interviewed multiple times by POL, explained:

“I always, sort of, thought, ‘this is the day they’re going to tell me that they’ve sorted it out and everything’s fine’, and then I’d get there, and my heart would sink when they said, ‘right, we need to ask you what you’ve done with the money’. I thought, ‘oh, my God. It’s just going on and on.’”

Looking back, SPMs ranged between saying, “I should have taken legal advice straight away, that was the first thing.” Whilst others doubted whether, if they had “kicked more of a fuss up, [but] it wouldn’t have got us anywhere. They [POL] were determined, weren’t they, to finish us all off.” One participant described the general approach from POL towards SPMs:

“The presumption of guilt was there. The auditors on the day presumed I’d misappropriated it. The contract manager, when I

²⁴ It is not clear to us that the Post Office had the power to issue a caution.

was terminated, said the same thing. And the investigators continued in that light. I mean, from day one, I was guilty.”

The manner in which interviews were conducted were overwhelmingly reported as being brutal and distressing. POL investigators conducted themselves with an air of “supremacy.” Many SPMs found their interviewers were, “never friendly, never pleasant, always rude, always arrogant, always in control, everything on their terms.” Countless stories were told of POL investigators treating SPMs in ways that felt “humiliating and really upsetting.” One SPM said their interviewer, “escorted me to the toilets and even stood outside the cubicle.” Participants spoke of experiencing intimidation, harassment, bullying, even being threatened. The investigators’ conduct was considered so nefarious by one participant they said, “who knows what goes on between the devil and the POID? [Post Office Investigation Department]” SPMs felt they were “automatically blamed as guilty.” Most SPMs echoed this participant:

“They [POL investigators] don’t care what you say, that when they come to question you, they’re not hearing you. Unless you’re going to say, ‘The money is here and I have stolen it,’ anything else is completely irrelevant, that the investigators do not want to know what you think, what you say, what you believe. They’re not interested, and they remain in that stance from day one.”

Due to how these interviews were conducted, some participants described confessing to something they had not done. There appeared to be one main underlying reason for these confessions, made in a heightened state of fear and exhaustion: the mistaken belief that this would conclude the matter quickly and would end the stressful and gruelling process of audit and investigation. One participant explained, “I just wanted the whole thing over” (a common cause of what are known as compliant false confessions).²⁵ Another felt they could avoid further adverse treatment, “So, they’re not going to be nasty to me....” And, as they had no access to Horizon data, they added, “There was no point going on a lifelong battle to prove something I can’t.”

SPMs were vulnerable to pressure and persuasion, they did not have the energy, resources, or positive evidence to help them prove their innocence. Respondents told us investigators often led and directed SPMs on how they could construct a story that would appeal to POL. Frequently, immense pressure was put on SPMs to ‘just admit’ guilt. Participants spoke of investigators who had “written me a confession,” and being presented with

²⁵ See Gisli H. Gudjonsson ‘The Psychology of Interrogations and Confessions: A Handbook’ (2003) Chichester, England: Wiley.

a statement and told “you need to sign it.” Some said POL investigators told SPMs, “If you plead guilty, we’ll make it easy for you.” As we know from the Inquiry, the process POL used was often not a fact-finding one, but rather a means of securing admissions.²⁶

What was overwhelmingly communicated to us was that for SPMs the audit and ‘investigation’ stages of the scandal were incredibly traumatic and harmful. The ramifications are still being intensely felt to this day. SPMs felt violated by the abuse of the ostensible legitimacy of legal process to hold SPMs responsible for alleged ‘shortfalls’ that they were not responsible for.

Seeking Legal Advice

Before we look more closely at experiences of representation we should consider when and from whom participants sought legal advice.

The point at which participants sought legal advice varied.

Only two participants sought legal advice “from the very beginning.” They were already suspicious of POL’s intentions given their prior negative experiences with them. Others were prompted by escalations of crisis: the contract termination (removing them from the post office), the discipline or criminal investigation interviews, or when they received a summons.

For many SPMs, it was not until they experienced the mistreatment during interviews that they realised POL was not benevolently or genuinely investigating ‘shortfalls’:

“I just had a bad feeling. ...They were very bullish and in my face and I got the feeling from there [the interview] that it wasn’t going to be the end of it....”

“They didn’t say like it was going to a criminal matter But then they interviewed me under caution, then I realised then...I had a feeling it might not be what they were saying...and that’s why my spouse got a solicitor involved, because normally they [POL] say you can’t have a solicitor.”

²⁶ See for example: Horizon Compensation Advisory Board, ‘Implications of the Psychological Effects on Sub-postmasters and Mistresses of The Behaviour of Authorities’ (2024)

<https://assets.publishing.service.gov.uk/media/65f04912981227001af612ea/horizon-compensation-advisory-board-paper-on-behaviour-and-psychology.pdf>;

Horizon IT Inquiry: Human Impact Hearings and Transcripts
https://www.postofficehorizoninquiry.org.uk/hearings/listing?hearing_type=81&witness=All.

Despite experiencing a gruelling, aggressive, and over six-hour interview, one SPM did not seek legal advice until after their first appearance in court. Still holding faith in POL until then, they realised they could not trust them and were in need of help:

“I went and got to court, and I read through what they were going to charge me with...and it was awful, when you read it, it was just dreadful. So, on Monday morning, I thought, ‘I’ve got to find a solicitor now.’ Went and found a solicitor.”

Some did not seek help until after conviction: when a letter informing them that POL was taking action against them under the Proceeds of Crime Act 2002. And several SPMs never sought legal advice, fearing retribution from POL, worrying about the cost, or seeking assistance elsewhere such as from the NFSP or Communication Workers Union (CWU).

A sense of futility or defeat can be an important inhibitor of advice seeking.²⁷ The perceived power of POL added to some SPMs feeling overwhelmed, as did the POL propagated myth that they were ‘the only ones’ experiencing Horizon problems. Two participants explained:

“We didn’t have much left. Why would we risk this house, a roof over our head, to fight this body that had loads and loads of money behind it and we were just two little people? We didn’t know there was anybody else, as the Post Office kept telling us, we thought we were the only ones. So, we didn’t think that we could possibly do it, until we saw JFSA.”

“To be honest, I never even thought about getting a solicitor, seriously. I mean, [the CWU] said, ‘Get a solicitor.’ But you’re going to fight the Post Office, which you just thought, ‘It’s impossible.’”

One SPM released post-arrest did not seek any further legal advice aside from the duty solicitor who was assigned to visit them in cells: “I was so sickened and so worn down, I just felt I couldn’t fight it anymore. I really had had enough.” Another, who said they “had friends advising me,” pleaded guilty and met their solicitor just before going into court: “I didn’t tell them anything about Horizon” because the SPM “didn’t want this to go on to a big circus, I just wanted to get out of the Post Office.”

²⁷ See, for example: Pascoe Pleasence and Nigel J. Balmer ‘How people resolve ‘legal’ problems’ (2014) London: Legal Services Board; The 2023 Legal Needs Survey <https://www.lawsociety.org.uk/topics/research/find-out-what-your-clients-need-with-the-results-of-our-legal-needs-survey>.

Several people echoed this: they did not share their suspicions of Horizon or their many and varied experiences of ill-treatment from POL, due to feeling isolated and afraid of backlash from POL or fears of not being believed.

Choosing Legal Representation

Typically, legal representation was ‘chosen’ under great time-pressure when SPMs felt desperate. They generally had not considered trying to find ‘quality’ representation as they were anxious to find anyone who would take their case:

“Your head is going 100 miles per hour, and you don’t know which way to get out. So, probably, questions that I should have asked [my lawyer], I didn’t. Probably, I should have investigated the solicitors a bit more, but I didn’t. Anyone that said they were willing to help me, I grabbed onto that like a lifeline because I was drowning. I didn’t know what to do. I’d lost everything.”

For some the task felt overwhelming. As one spouse said, “we don’t know solicitors.” Another SPM said, “I don’t know anything about anything to do with solicitors, law, or anything else.” Even those with prior connections to lawyers, often felt they did not know how to go about finding representation in this kind of context.

Aside from those assigned a duty solicitor post-arrest, two main avenues were adopted: 1) contacting a solicitor already known to the SPM, 2) searching locally (or for the closest available solicitor), often via recommendation.

For those who contacted a lawyer they already knew, the majority were not criminal lawyers or even litigators. Often, they worked in conveyancing, as one SPM said, “I’d had no other contact with any solicitors other than the conveyancing.” Several contacted the solicitor who had assisted them when “buying the lease for the shop and the post office” or from other business or personal affairs like wills. For these SPMs, using lawyers already known to them brought a level of comfort and trust. Most had not considered or did not realise the advantages of getting a criminal law specialist. As one SPM said, “The solicitor that I used... I trusted them. They’d always done a good job. They’d never overcharged me.”

The second most common avenue was through word of mouth or searching locally via “good old Google” or “the Yellow Pages” or recommendations from friends or family members, including neighbours or people they knew locally who worked in the legal profession. One person found their lawyer via the Citizens Advice Bureau. Another’s spouse told us they, “Just went in town, there’s a big office in town, so we just went there and said we needed a solicitor.” Another went with the “one famous solicitor...always in the

[newspaper]” in their local town. Another SPM told us, “it was just because that was the only legal team that I’ve heard of.”

Funding for Legal Advice and Impacts on Representation

The process of finding legal representation was further complicated by funding issues. At the time of most of our SPM’s cases, legal aid would have been available for advice and assistance for criminal cases for the criminal investigatory interviews (as police station work) and for representation once charged in the Magistrates Court and the Crown Court, albeit sometimes subject to the payment of a financial contribution by the defendant.²⁸ Requests for financial contributions (and means tests) put pressure on SPMs at a time of financial precarity.²⁹

Other legal issues civil in nature (such as disputing shortfall debts or contesting a contract termination) would almost certainly not have qualified for legal aid. There are a variety of reasons for this but, in particular, ‘business disputes,’ as they would have likely been characterised, have long been excluded from the legal aid scheme.³⁰ Many SPMs went without, or found the funds for lawyers themselves, or were forced to rely on friends and family to assist.

It is interesting to note that several of our respondents chose to pay privately even for their criminal defence (or elements of it). While some people never sought legal advice because they could not afford it. One participant said, “We didn’t have any money because the Post Office had taken all.” Instead, these individuals took advice from friends, family, the NFSP, the CWU, especially Mark Baker,³¹ or other SPMs, noting, “I couldn’t afford anything.” Some SPMs found once they had a duty advocate appointed, this did lead to them getting legal aid.

A few people who started paying for their own legal advice, on criminal and civil cases, spoke of borrowing “from everybody to pay” their solicitors, until

²⁸ The position regarding the availability of legal aid for advice and representation in the Magistrates Court and Crown Court, and for civil matters, changed following the Legal Aid, Sentencing, and Punishment of Offenders Act 2012. The financial assessment for legal aid determines whether an applicant may have to pay all, some or none of their defence costs, depending on what the means test decides they can afford from their income and capital assets.

²⁹ For more on means tests in relation to legal aid and the impact of such tests on defendants, see Roxanna Dehaghani, Rebecca Helm and Dan Newman ‘The vulnerable accused and the limits of Legal Aid’ (2023) 192-205 In *Vulnerability, the Accused, and the Criminal Justice System*, Routledge.

³⁰ See Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO”) <https://www.legislation.gov.uk/ukpga/2012/10/contents>.

³¹ Mark Baker was an SPM and also a rep for the NFSP, until he left to join the CWU.

eventually they “just couldn’t afford to pay anybody anymore.” Another who, “didn’t have the money to foot the legal bill anymore ... didn’t have a solicitor when it went to court.” This person was informed they did not qualify for legal aid because they lived with their partner whose wage was taken into consideration. This SPM explained they felt the income threshold to qualify for legal aid was too high, and the outcome was alarming, “So, I just didn’t go to court in the end, and because I didn’t go to court they found me guilty of...I don’t know what they found me guilty of now....”

Perceptions of Legal Aid Experiences

Legal aid funding and management has been controversial for many years, with low fee rates in particular, and the number of law firms and lawyers taking on publicly funded criminal work reducing over time.³²

Our interview responses suggested SPMs had experienced limited availability of legal aid lawyers, which affected who they instructed. One said, even though they lived in a sizeable town with “half a dozen law firms ...there were only two that took Legal Aid cases.” Having had a previous negative experience with one of those, they felt they had no choice but to go with the other available firm (and were not “enamoured” with the lawyer who ended up representing them).

This was further exacerbated for those living rurally, who had particular struggles that one characterised as, “Hobson’s choice.” Another told us, “My nearest town...none of them were criminal solicitors, none of them.” A third said, “I literally just phoned around until I found a criminal lawyer...and there was one in [small town].” A fourth, who was encouraged to pay privately initially, perceived an absence of necessary criminal experience in local lawyers more generally:

“...the problem, especially for us in [rural town]...we didn’t have a specific solicitor that was a court solicitor or somebody that went to court all the time. When I had to get somebody, [lawyer], their fee was £500 per meeting basically. The costs were absolutely astronomical. And your kind of everyday solicitor just didn’t have the experience to...they can buy and sell a house, they can help you with small disputes, but they don’t have the experience to go in against the court system...”

³² Bellamy, Sir Christopher, ‘Independent Review of Criminal Legal Aid’ (2021) Ministry of Justice 2021 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041117/clar-independent-review-report-2021.pdf; For some historical perspective, see Richard Moorhead, ‘Legal Aid and the Decline of Private Practice: Blue Murder or Toxic Job?’ (2004) 11,159 International Journal of the Legal Profession.

Interestingly, some participants mentioned the volume of work that their legal aid lawyers handled as affecting their experience.³³ For example, talking of being met at court by a lawyer with upwards of 20 case files they were managing on them. Participants often felt a high case load impacted on their lawyer's ability to listen to them and provide tailored advice. One said of legal aid, "the only way you make a living out of it is do lots and lots of it. It's just high volume of cases, eventually you generate enough fees." Financial pressures on defence advocates left clients feeling pushed through the system in high volumes. Limits on public funding, including the use of fixed fees, constrained the time lawyers were able to spend on cases. As this SPM reflected:

"We had two half-hour meetings. But they [the lawyer] were not interested in finding the truth...I don't know what rates they were getting. The 500 quid or whatever they were paid to represent me, they just wanted to do the least amount of work as possible, because they probably had another 10 people to see that day. And provided they did 10, they would make a decent living. That's how I felt I was dealt with by them."

Another SPM explained, "it should be representation, not basically just looking for an easy way to get a case closed and move on. I think the legal system let me down massively." Vulnerable and at the mercy of the criminal justice system, SPMs often felt like they were being processed along a 'conveyor belt' due to these systemic legal aid issues.

For some, there was a feeling that how legal aid functioned on the ground created a two-tier system of legal representation, and that those who could afford to pay for lawyers privately received a higher standard of service. Although one such also noted, even so, "I don't think it would have changed the outcome, because those people... ..who threw money at it just got ruined further [by POL]."

Perceptions of Lawyers and Lawyering

This section discusses participant views on the quality of legal advice and representation. Mostly, this related to experience during criminal proceedings, and we concentrate on that.

³³ As discussed in Appendix A, this chimes with empirical studies which have found that legal aid practice is characterised by the need for lawyers to undertake a volume of cases to make such work financially sustainable.

Overall Opinions on Quality

Satisfaction with representation varied significantly but what clearly came across in interviews was that many SPMs: felt completely dependent on their lawyers; did not know what to expect or how to judge the quality of their representation; and, found it difficult to evaluate and/or question decisions taken by their lawyers and the ‘normal’ routines of legal practice, especially when unexplained.

They reported frequent misunderstandings where they and their lawyers were speaking past each other, and many SPMs felt vital information was not always effectively communicated to them, to the extent that many felt peripheral to the process and without a handle on what was going on around them.

Participants began their engagement with lawyers in situations of high stress and with little knowledge of what to expect from their lawyers or the legal processes they were subjected to. They reported not knowing their legal rights or the possible outcomes of the cases against them; particularly relevant for decisions on pleas, explored later. As one said, “not knowing, really, anything about the law system... I just expected what I got, basically.”

Relatedly, they spoke of being treated in a “bog standard almost routine” way. Their representation typically wasn’t, “caring or anything, I didn’t really expect them to be either...I don’t know if you’re supposed to or not.” Another SPM who had, “never dealt with a criminal solicitor, I didn’t know any better,” felt their lawyer had not listened and, “had no clue what had happened” to them.

Some now assessed their lawyers against the (much better) levels of service and support they have had from their lawyers at the Inquiry and in their applications for compensation. As two SPMs explained:

“Looking back now, I definitely picked the wrong criminal solicitor [when first investigated by POL]...I didn’t know how to judge what a good criminal solicitor is...Because I didn’t know then what they should be doing in preparation, so I didn’t pick up on the fact that they were doing nothing.”

“I sat back and reflected and think how bad I got treated [by lawyer when POL first investigated], to be truthful, you know? I hardly seen my solicitor...now I’ve got this solicitor that I’ve got now, you know, I’m getting emails every week. I’m getting Zoom calls...much better now.”

Understanding Processes

Participants' understanding of the legal processes they had experienced was very mixed and appeared to be linked to the relationship they had with their legal representation.

A few SPMs said they were guided and felt well-informed: "they literally walked me through the whole process, and literally held my hand." Another was appreciative that their lawyer had "explained things, good or bad." A third had, "been really lucky... I've encountered brilliant lawyers," who were seen as a "credit to their profession."

Typically, these more positive interactions were with lawyers SPMs knew prior to their Horizon problems. But a few that had not known their lawyers beforehand and who felt they had spent time with them, talked them through their case, and fought for them, had lawyers early in their career. For example, one SPM said their lawyer was: "very, very aggressive in their stance... they were young, vibrant, ambitious, cared, and wanted to win – perhaps different to other lawyers who might perhaps be more jaded."

SPMs who felt their representation was 'on their side' also reported feeling they had a better understanding of their case and the legal process, and of having a more positive overall experience.

In general, however, most SPMs reported dissatisfaction. They thought they had not been properly walked through the legal processes when "I had no idea what the procedure was or what was the preparation I needed to do or anything like that". Most echoed the view that their lawyer "never contacted" them; they had to chase them, and their communication "was pretty poor." Often, SPMs felt they were not fully informed or kept up to date with how their case was progressing or what to expect. Many said legal jargon and processes were not explained to them. Most felt unprepared at each stage of their legal journey.

Speaking of their legal representation, several felt "completely in their hands" as they went through the motions being funnelled through the "conveyor belt" of the legal machine. One SPM told us: "I didn't understand the legal process.... I just went along with what my legal team recommended...." Another said they were not "aware of actually what was going on" just had to put "faith and trust in your legal representation" and hope for the best. Another told us they "believed every word" their lawyer said and found them "a little bit scary."

Inexperience and dependence left them wondering about what else could have been done. Several didn't enquire about getting expert evidence because they didn't know they could: "I didn't know what a forensic accountant was. I didn't know anything." They were not advised to keep and

store paperwork, accounts and so on, and – often desiring to move on – “threw everything away.” As these two explained:

“The unfortunate thing was, after I was convicted, they gave me all my evidence and paperwork back, and I had a very cathartic bonfire (laughs), which was the wrong thing to do...it was bloody brilliant at the time. It was wonderful seeing all that go up in smoke...I thought, ‘Right. This has gone out of my life now,’ because I was told by [my solicitor] after the court case, ‘Whatever you do, do not appeal...because you will end up in a worse place than you are now’... never, ever thought that we’d get to the position where we could fight back.”

“A couple of days, which would’ve been my cut-off day for knowing whether I’d be going to court or not, I thought, ‘Well, it’s not happening.’ So, I burnt a lot of stuff. You know, the children didn’t need to know. They knew as much as they needed to know, and that was on the Friday. Saturday morning, Special Delivery, got a summons to court.”

Limited Time, Understanding, and Belief

Having sufficient contact and being listened to are essential elements in building the lawyer-client relationship. Most of our participants said they only met their solicitor a handful of times across the course of their case and usually met their barrister for the first time on the day of their court hearing. We get a sense of their experiences from these quotes:

“[O]nce I’d been handed over to the barrister, I never really saw the solicitor again.”

“I think it was only twice I met them. The first one to explain the case and the second time for them to explain to me what they think is going to happen.”

“I had that one meeting with them while they were eating their lunch and I was being interrogated [by POL]. That’s it. That is the only communication I’ve had with the...I went to the loo, and when I came down, they were gone.”

“I didn’t speak to them before I went to Magistrates Court [they met walking into the hearing]...there was no contact with my solicitor after.”

To advise properly lawyers need to understand the facts of the situation before them but it was not uncommon for participants to feel their lawyers were uninterested in their story or seemed not to believe their account. This participant emphasised how the perceived stigma of accusation infiltrated their interactions with their lawyer:

“[I]t’s awful because you’ve got somebody looking at you and they don’t know you from Adam and ... [they’re] trying to work out whether I am actually a thief or not... They never said that, but.... they’re asking me lots of questions and I’m saying, “I don’t know....No, it’s definitely not happened to anybody else, because I’ve asked them [POL] that and they’ve told me it’s only me, but I don’t understand what’s going on.”

As well as disbelief, disinterest was seen as a problem, “it wasn’t that they didn’t believe me.... They didn’t understand it, and they were not very willing to do the homework to find out.” SPMs thought a lack of belief was seen in the way lawyers often appeared to be influenced by POL being the prosecutor. One described their lawyer saying, “No twelve people on a jury would believe that a prestigious government organisation would have a dodgy computer system.” The lawyer, they were sure, “believed the same thing.” Another participant said “[the lawyer] thought I was guilty because this is The Post Office.” They noted the particular vulnerability of “having to put faith in somebody who actually didn’t believe you anyway. And the belief was because The Post Office was this big, trusted brand, and who would believe you?”

For these SPMs, the presumption of guilt that lay at the heart of the mistreatment by POL was being reinforced by their own legal representatives.³⁴ The frustration was overwhelming: “nobody believed us.”

SPMs sometimes persisted and succeeded in getting their story across:

“I had to go two or three times to see my lawyer and try and prove how it worked. But, once they kind of got their head round how the systems worked... and I think, at that point in time, there were one or two articles turning up about The Post Office... they then grasped what was going on or at least accepted what I was saying. And my argument always was, ‘Well, I’m your client. You should accept what I’m talking about.’”

³⁴ Considering all SPMs went through what they described as the “rigmarole” of being vetted by POL before they were appointed – some even being sought out personally, held previous community and public-facing roles such as Magistrates and district councillors, had won entrepreneurial business awards, or were otherwise seen as “the pillar of community,” many SPMs felt let down that their legal representatives did not recognise this and investigate further the allegations against them.

SPMs having to fight against the scepticism of their own lawyers stands in marked contrast to the evidence of POL lawyers before the Inquiry who accepted POL's assurances that Horizon worked on trust, and accepted they could ignore or minimise problems in POL's position.

As one SPM explained:

"I mean, if you were my lawyer, and I came to you and said, 'Yeah, I did steal that money,' then your duty is to tell me to plead guilty. But, if I came to you and say, 'No, I didn't steal that money,' then it's your duty to represent me in such a way where I've got a fighting chance of winning my case."

Most SPMs did not feel they had that fundamental commitment from their lawyers and this was an important ingredient in their pleading guilty.

Futility

Alongside disbelief and disinterest was a third perception: the futility of mounting a defence.

Several defence lawyers emphasised how they were up against "a powerful," well-resourced institution, and often explicitly said that fighting the case against POL was pointless. Lawyer-conveyed futility echoed across many interviews in criminal (and civil) cases. For example, one participant recalled their lawyer saying, "God, this is the Post Office.' ... they were terrified You could tell, they were like, 'This is big stuff. ...this isn't the norm.'" Another SPM was told, "'You're wasting money. There's nothing... you cannot take them on.'"

Lawyers expressed concern over the status and "reputation at that time of the Post Office," one explained to their SPM client:

"You can't fight it because they're The Post Office, they're God. There's nothing you can do. They'll turn up armed up to their hilt, with the best of the best, and that's what we're up against."

Another was told:

"You're never going to beat them. So, you might as well give up now because you're never going to beat them."

"If you go into court, and maintain your innocence, and claim that it's a computer system that's to blame, those twelve people in the jury box are never in a month of Sundays going to believe an institution of the government, which is how the public see the Post Office, could have a dodgy computer system. There's no way they would believe that the Post Office could possibly have a computer system that wasn't reliable."

In describing POL as an unbeatable institutional force, with an unimpeachable computer system, reputation and resources mattered. Conversely, we now know the cases were typically very badly prepared,³⁵ and some of that poor preparation should have been apparent to a skilled defence lawyer. The golden thread of British justice: innocent until proven guilty was defeated, in part – and without in any way minimising the role of POL’s belligerence and impropriety – by a culture of defeat.

Preparing Cases: Seeking Additional Evidence and Dealing with Disclosure

Participants were asked about the preparation of their legal cases, in particular, whether their lawyer requested information from POL about their cases and whether their lawyers sought any expert evidence. In the main, SPMs reported their lawyers did not discuss this with them and did not make any enquiries on their behalf (that they knew of). As one said, “I don’t think they made any enquiries at all. I think they just received the documentation from The Post Office legal representation, and I think they just went with that.” Some pointed out they did not suspect that Horizon could be the issue and so did not mention it to their lawyers. Others said they were constrained by funding; they had no money to pay for expert evidence or anything additional, so it was not an option.

When SPMs’ lawyers had requested information, these were generally refused by POL. One SPM recounted their lawyer saying, “They’re not giving me any disclosure and I can’t defend you without the stuff.” Another was denied requests on costs grounds – a position that was strongly criticised in the Inquiry evidence and in the Hamilton case.³⁶ In one case, disclosure was said to have been turned down even though the SPM/their lawyer had “offered to pay for everything.” Another participant explained their lawyer’s request was successful, but the information they were provided with was practically useless:

“...what they did supply, which was very minimal, made no sense whatsoever. It was just computer printouts on their own that said absolutely nothing, and my solicitor didn’t have a clue what they read, anyway.”

Another SPM said their lawyer tried to find other SPMs in the same situation, but they were unsuccessful. SPM’s lack of information about Horizon also

³⁵ See Duncan Atkinson KC’s reports to the Inquiry, in particular, ‘Report to the Post Office Horizon IT Inquiry Phase 4 Investigation, Disclosure and Criminal Prosecution in England and Wales and Investigations and Prosecutions by the Post Office 2000-2013 Volume 2 (revised)’ (EXPG000004R) <https://www.postofficehorizoninquiry.org.uk/evidence/expg000004r-duncan-atkinson-kc-expert-report-volume-2>.

³⁶ *Hamilton and Others v Post Office Limited* [2021] EWCA Crim 577.

hampered their ability to answer the questions that their own lawyers had about their cases. One participant explained how they could not tell their lawyer what happened, “they’re asking me lots of questions and I’m saying, ‘I don’t know... I don’t know how that’s happened; I don’t know how that could happen.’”

A recurring issue raised in our interviews was POL denying access to the tapes and transcripts of the SPMs recorded interviews with POL’s investigators. Provision of such material is routine in criminal defence cases. The three common responses from POL were outright rejections, or stating they would send them but never doing so, or claiming they were lost or destroyed. The few who were given transcripts, commented on their suspicions that these had been altered or were dubious summaries.³⁷ One SPM said, “it’s not a full transcript. ... you can see it’s like a paraphrase. It has been changed, I know it has been changed.” Another SPM said:

“It [interview transcript] bore no resemblance... you know, it was three and a half pages, I went through two and a half tapes, and they’d obviously picked out what they wanted to put in there... and even when I requested the tape and everything, I never got it, never got it.”

A lack of disclosure and the way SPMs were usually denied access to any of their own information and records from branches they had been suspended and removed from was described as being “like you’re in treacle because you’ve got no evidence.” Another participant described investigation staff taking documents away from their PO branch in “black dustbin bags,” claiming they would be kept safe, only to later find out that these documents were destroyed. Across our interviews, SPMs spoke about the frustration of POL ‘holding all the cards’ and being the gatekeeper of information and evidence that SPMs needed.

³⁷ It would appear Police and Criminal Evidence Act 1984 (PACE), specifically code E 3.21, was not adhered to.

Legal Advice on Plea

Though there is no formal plea bargaining in the UK, various forms of plea bargaining are a routine and embedded practice.³⁸ Horne argues that in England and Wales, “the courts’ increasing reliance on guilty pleas procured through the deliberate infliction of pressures on defendants has been ignored or sanitised.”³⁹ While the system in the UK is not comparable to that of the US context,⁴⁰ there are bargaining and negotiating practices and pre-trial incentives to plead guilty, including as a result of charge bargaining (through which defendants can plead guilty to lesser or fewer charges in exchange for having charges against them reduced or dropped), fact bargaining (where prosecution and defence negotiate on what version of events should be presented to the court as what happened in exchange for concessions in sentencing or charges),⁴¹ and in a less direct way the promise of sentence discounts.⁴²

It is important to emphasise that what good defence lawyering means depends very much on the case in question. The profession tends to formally emphasise the idea of zealous defence for clients protesting their innocence

³⁸ For detailed discussion see: John Baldwin and Michael McConville, ‘Plea Bargaining and Plea Negotiation in England’ (1978) 13, 287 *Law & Soc’y Rev*; Luke Marsh, ‘A portrait of guilt from England and Wales: defending against state-induced pleas’ (2024) 60, in ‘Research Handbook on Plea Bargaining and Criminal Justice’, eds. Máximo Langer and others; Mike McConville and Luke Marsh, ‘State-induced guilty pleas and legitimacy in Criminal Judges: Legitimacy, Courts and State-Induced Guilty Pleas in Britain’ (2014); Aogán Mulcahy, ‘The Justifications of “Justice”: Legal Practitioners’ Accounts of Negotiated Case Settlements in Magistrates’ Courts’ (1994) 34(4) 411 *British Journal of Criminology*; For the Scottish context see: Jay Gormley, ‘The inefficiency of plea bargaining’ (2022) 49(2) *Journal of Law and Society*; Jay Gormley, ‘The gravest inefficiency of plea bargaining and the consequences for rehabilitation and reintegration’ (2025) 52, 2 *Journal of Law and Society*.

³⁹ Juliet Horne, ‘A Plea of Convenience: An examination of the guilty plea in England and Wales’ (2016) 19.

⁴⁰ See N Vámos, ‘Please Don’t Call it “Plea Bargaining”’ (2009) 9, 617 *Criminal Law Review*; Julian V Roberts and Ben Bradford, ‘Sentence Reductions for a Guilty Plea in England and Wales: Exploring New Empirical Trends’ (2015) 12(2) *Journal of Empirical Legal Studies*.

⁴¹ “While often conceptualised as the exception, plea bargaining of various kinds accompanies most convictions. Sentence discounts are especially systemic mechanisms for plea bargaining and one in which sentencers (and indeed the law) are most prominently involved in facilitating and approving” – for more detailed discussion see Jay Gormley and Cyrus Tata, ‘Guilty pleas, sentencing and sentence ‘discounting’: who is ‘sentence discounting’ really for?’ (2024) 264, in Máximo Langer, Mike McConville, and Luke Marsh, ‘Research Handbook on Plea Bargaining and Criminal Justice’.

⁴² “Such a guilty plea [sentence discounts] is still, in effect, a ‘plea bargain’ because the criminal justice system has set up a standing offer of a discount for guilty plea, which then engages all defendants in an implied negotiation over plea. Thus, the sentencing discount amounts to a third form of plea bargaining” – Juliet Horne, ‘Plea Bargains, Guilty Pleas and the Consequences for Appeal in England and Wales’ (2013) 2, *Warwick School of Law Research Paper No. 2013/10* <http://dx.doi.org/10.2139/ssrn.2286681>.

(where the evidence is not overwhelming) and/or where the prosecution cannot prove its case. Pragmatism comes to the fore, properly, where the evidence is strong and the client is willing to plead guilty. As alluded to above, there can be significant benefits for defendants who plead guilty. Sentencing guidelines provide for relatively considerable sentence discounts for those willing to plead guilty, and especially those who plead early in their case.⁴³ Importantly, these discounts can change the outcome from a custodial to a community sentence.⁴⁴ Charge reductions can also be significant, and can change the type and length of sentence that a defendant is exposed to.⁴⁵ Defendants can also obtain informal benefits from pleading guilty, including (occasionally) release from remand institutions.⁴⁶ The client's best interests usually demand that attention is paid to these benefits.

To simplify somewhat, the official logic of proper defence practice is that those who the evidence suggests are not guilty, or the prosecution cannot prove as guilty, and those wishing to protest their innocence even in the face of adverse evidence, *will be* vigorously defended.⁴⁷ This vigorous defence will occur, with some reluctance and after potentially forceful advice, even where the evidence against the client is overwhelming.

The rest, *if they agree*, will have the 'benefit' of a guilty plea which may – and arguably should – lead to a lighter sentence.⁴⁸ Some clients may also seek to plead guilty even where the evidence is equivocal, perhaps even where they do not accept, fully or at all, that they are guilty. Here,

⁴³ Sentencing Council's 2017 definitive guideline 'Reduction in Sentence for a Guilty Plea' provide for a discount of up to 1/3 of sentence for defendants who plead guilty at the earliest opportunity, with this reduction decreasing to a maximum of 1/10 of sentence for defendants who plead guilty on the first day of trial: https://sentencingcouncil.org.uk/media/uqggmkhlh/reduction-in-sentence-for-guilty-plea-definitive-guide_final_web.pdf.

⁴⁴ Rebecca K. Helm, Roxanna Dehaghani and Daniel Newman, 'Guilty Plea Decisions: Moving Beyond the Autonomy Myth' (2022) 85(1) *The Modern Law Review*; Gormley (2022).

⁴⁵ For evidence relating to the type of charge reductions typically offered in England and Wales, see: Rebecca Helm, 'Constrained Waiver of Trial Rights? Incentives to Plead Guilty and the Right to a Fair Trial' (2019) 46(3) 423 *Journal of Law and Society*.

⁴⁶ Rebecca Helm (2019), (2022).

⁴⁷ For discussion see: Blake and Ashworth (2004); David Nicolson and Julian Webb, 'Professional Legal Ethics' (1999) (Oxford University Press); David Pannick, 'Advocates' (1992) (Oxford University Press); Richard O'Dair, 'Legal Ethics: Text and Materials' (2001) (Butterworths); Tom Smith, 'Zealous Advocates: The Historical Foundations of the Adversarial Criminal Defence Lawyer' (2012) 2, 1-20 *Law, Crime and History*.

⁴⁸ Jay Gormley, Julian V. Roberts, Jonathan Bild and Lyndon Harris, 'Sentence reductions for guilty pleas: A review of policy, practice and research' (2020) <https://www.sentencingacademy.org.uk/wp-content/uploads/2023/08/Sentence-Reductions-for-Guilty-Pleas.pdf>.

professional guidance suggests the lawyer will advise against such a course but reluctantly acquiesce and do what the client wants.⁴⁹

Guidance on the role of defence counsel in relation to the plea decision has been given by the Court of Appeal in *R v Turner*.⁵⁰ In that case Lord Parker CJ noted that:

“Counsel must be completely free to do what is his duty, namely to give the accused the best advice he can and if need be advice in strong terms. This will often include advice that a plea of guilty, showing an element of remorse, is a mitigating factor which may well enable the court to give a lesser sentence than would otherwise be the case. Counsel of course will emphasise that the accused must not plead guilty unless he has committed the acts constituting the offence charged. The accused, having considered counsel's advice, must have a complete freedom of choice whether to plead guilty or not guilty.”

As a practical matter, defence lawyers can advise on what is in their client's best interests, which may sometimes be pleading guilty despite protested innocence and simultaneously maintaining that the accused must not plead guilty unless they have committed the offence they are charged with. There is a great deal of potential pain and difficulty in Lord Parker's idea that “of course Counsel will emphasise.” In addition, the line between “advice in strong terms” and pressure with the potential to undermine “complete freedom of choice” is problematic, since in reality lawyers, as experts relied on by their clients, may leave clients feeling they have no choice but to plead guilty should they advise them to do so in strong terms.

As we will see, defence lawyers in Post Office cases often encouraged their clients to plead guilty in order to get the lightest sentence possible and the best outcome. Duncan Atkinson KC captures why this happened and the difficulty from a lawyer's perspective in his expert evidence to the Inquiry:

“Duncan Atkinson: ...I think from the position of those acting for a defendant, where they were – their instructions were, if they were in accordance with the interview, ‘I don't know why this happened but it must be the system because I can't explain it otherwise,’ that they would be up against, particularly once generic statements started floating about, a positive assertion that there isn't something wrong with the system.

⁴⁹ The Right to Effective Counsel and Guilty Pleas in Criminal Courts: A Comparative Report Prepared for Reprive November 2017 Oxford.

⁵⁰ *R v Turner* [2022] EWCA Crim 617.

So you have, on the one hand, a defendant saying ‘It must be the system,’ you have the prosecution’s evidence saying ‘It is not the system,’ and you then have to decide whether you allow your client to proceed to trial against that wall or whether you discuss with your client the possibility that a plea to something less than theft will keep them out of prison.

And that’s a decision I wouldn’t – or a conversation I wouldn’t envy anybody.”⁵¹

The dilemma is indeed an awful one, as we now know. The language is also interesting: it suggests, not allowing the client to proceed to trial alongside the possibility of canvassing a plea deal.

SPMs knew they were not guilty of theft; they knew they had not taken any money. However, many were less certain about the false accounting charges. In response to Horizon showing ‘shortfalls,’ SPMs sometimes delayed action by claiming the cash (and sometimes stock) they held was higher than it actually was to match the figures shown by the Horizon system and cover the loss (and frequently reported helpline staff telling them to do it). This was so they had more time to try and work out what was going on, how the ‘shortfalls’ occurred, and find the money to add to the system to cover the apparent ‘shortfall.’ Indeed, they had to balance their accounts each week contractually to keep trading.

The legal issue here is whether such conduct amounts to dishonesty. False accounting requires dishonesty is proved. SPMs were frequently told by their lawyers that they were “technically” guilty or that misstating the cash position was a lie and so dishonest in and of itself.

Equally, and oppositely, it could have been argued before a jury that misstating the cash in the circumstances the SPMs found themselves was not dishonest. For example, there was a variety of pressures placed on SPMs regarding balancing and the consequences of shortfalls which might have persuaded juries that their reaction was not dishonest. As many SPMs told us, the weekly pressure to balance to be able to open the next day: “you couldn’t run an office if you’ve got negative figures.” And so, in terms of ‘altering’ numbers, one SPM explained:

“If you don’t accept the loss, right, you can’t open the following day. You have to accept the loss, you have to ... so that’s how it’s been designed. So, all these subpostmasters who have accepted

⁵¹ See oral evidence and/or transcript for Duncan Atkinson KC (criminal prosecutions expert witness) Phase 4 - 19 December 2023, page 180 of transcript, <https://www.postofficehorizoninquiry.org.uk/hearings/phase-4-19-december-2023>.

it, right, were then done for false accounting. Whereas that's what the Post Office asked us to do!"

SPMs were frequently instructed by Helpline staff to take actions which potentially amounted to false accounting. As one SPM said, "the helpline told me to false account. They instructed me to rollover, knowing that the balance was wrong." Given all we know now about Horizon and how POL managed balancing problems, it might be fairly suggested that defences to false accounting charges were capable of being run.

It is fair to emphasise, lest any potential criticism of defence lawyers be hasty or simplistic, that running such a defence would not be easy. One can easily imagine how a prosecution cross-examination on false figures given by SPMs during balancing exercises would be used against them. And, any defence in this regard would require defence lawyers to understand the operation of Horizon and the management of balancing more than SPMs told us they appeared to.

Theft charges were even more vulnerable to attack: POL was routinely unable, for instance, to show defendants had received large sums of cash or had otherwise been enriched by their allegedly substantial thefts from the business. Yet, we have very little sense from the evidence before the Inquiry or in our interviews that lawyers typically picked up the poor evidence base for theft charges.

There are three possible explanations for this worth mentioning: one is that defence lawyers were not good at or motivated to analyse and understand the basis of the charges their clients faced. The second is that they were accustomed to prosecutions proceeding and courts convicting on the basis of evidentially flawed cases. The third is that they understood the situation well, knew that a defence could be run, but that the risks of prison were very high should that fail. The similarly high likelihood of a non-custodial sentence should they plead guilty meant pleading was easier and less uncertain than running any of these defences. It also involved less work or risk of failure to the practitioner.

Whatever the reasons for it, many SPMs pled guilty to theft (sometimes) and false accounting (more often) in situations where they regarded themselves as innocent or were unsure or equivocal about their own guilt i.e. in false accounting cases. As one explained:

"The [lawyer] that represented me basically said, '...because we've got no way of interrogating the problems of the system, technically you've done false accounting in law. I can't see how you're going to be able to plead not guilty'...I want to plead not guilty, because I hadn't gained any money from this, I hadn't had any money from false accounting or anything like that...they

said, ‘The judge will consider it to be false accounting and you’ll have to plead guilty.’ This was their advice.”

We start to get a sense here that pleading guilty was more dictated than advised on.

There are some common understandings amongst criminal defence lawyers as to some of the basic requirements in situations where the client protests innocence or is equivocal about guilt, but where pleading guilty may bring advantages to the client, such as avoiding a prison sentence:

- Plea advice should be based on instructions and, when it becomes available, a careful review of the prosecution evidence and capacity to mount a defence.
- A client who maintains their innocence should not plead guilty.
- A client who maintains their innocence can plead guilty if properly advised on the basis of the evidence against them.

In broad terms, this approach suggests lawyers should advise on plea based on well-understood instructions and a proper review of evidence (although very early pleas may be based on the client’s instructions alone – on the flawed assumption the client can know whether they are guilty or not).⁵² In other words, guilty pleas should be based on informed consent.

The defendant should ordinarily be advised on whether the prosecution are likely to prove the case against them based on the evidence available (whether there was evidence sufficient to prove theft, for instance). The defendant needs to fully understand whether they are guilty on the facts as they know them, so a good lawyer would need to understand and counsel the client on the dishonesty question in relation to false accounting. And they should be counselled on the implications of pleading guilty to a criminal offence. This latter point is important generally but is particularly important for first time offenders convicted of an offence of dishonesty. Any conviction, and particularly a conviction for dishonesty, can – and in the case of the SPMs did – have a devastating impact on their lives, in terms of stigma and employability in particular.

They should also, importantly, caution against those saying they are innocent from pleading guilty even where the risk of conviction is high. And, in particular, where a client maintains their innocence they are supposed to advise against a guilty plea.

⁵² For a broader critique of this assumption, see Rebecca K Helm, ‘The Challenge of Factual Hard Cases for Guilty Plea Regimes’ (2024) 87(5) 1182 *Modern Law Review*.

From our interviews with SPMs, the general picture was that lawyers provided strong advice to SPMs to plead guilty to offences for strategic reasons, sidestepping the client's instructions and views on their own guilt. A plea was seen as the way to get the best outcome for their clients, hoping they would be spared from a custodial sentence.

The question of whether this advice was appropriate is likely to be a nuanced one. We know, but with some hindsight, that cases could have been contested, but doing that might have been difficult and may have brought further retribution from POL towards SPMs – as one SPM told us:

“if I pled not guilty, the Post Office were going to add or invent a theft charge... A lot of other people had the charges levelled at the beginning, then taken off, they did it the other way around with me and threatened me with the theft charge if I didn't plead guilty.”

Faced with these kinds of situations, many SPMs took the advice of their lawyers to plead guilty unquestioningly. Participants rarely recalled any specific advice from their lawyers about the nature of the charges they pleaded guilty to. Where advice on false accounting was provided, it was framed as needing to enter a guilty plea as a *technicality*, regardless of protestations of innocence:

“They [lawyer] said, ‘Technically, you're guilty of false accounting, and if you plead guilty, you're less likely to go to prison for it, because they knock time off for an early plea or a guilty plea before court.’”

This downplaying of dishonesty as a technicality helped persuade reluctant clients to plead. Some participants described how, although innocent, they were thankful for any tactical advantage their lawyer had managed to secure through a plea agreement. Both the thanks and the irony of it was not lost on them, reflected in this recollection: “What they did was they spared me from prison, and I got off as lightly as I could, for something I didn't do.”

Where our interviewees indicated a desire to plead not guilty their lawyers, mostly strongly, cautioned their clients against this. There was a heavy emphasis on sentence discounting for a guilty plea and, in particular, a guilty plea being entered to avoid a custodial sentence. One participant told their lawyer they wanted to plead not guilty but their lawyer said, “Don't do that because they will come down on you like very hard.” Another told us their lawyer said, “if you say you haven't done it, you're going to get a proper sentence, a harsher sentence. The best thing for you is to plead guilty.” Maintaining innocence was portrayed as likely (“a good chance”) or almost a certainty of being incarcerated:

“If you go in there and plead ‘not guilty’, I can pretty much guarantee you will get a custodial sentence...However, if you plead guilty, go and find yourself a couple of decent references, and I’ll say some nice things in court, in mitigation, I’ll give you a 95% chance that you’ll get a non-custodial sentence. You’ll get a suspended sentence.”

Another participant’s lawyer said:

“You do realise you’re not going to win against the Post Office?... If you plead guilty before we go into court, I can probably get you off without going to jail...If you plead not guilty, you will definitely go into jail, and you’ll do between three and five years.”

Faced with advice of this kind most SPMs felt they had no alternative but to change their plea to guilty. One SPM was advised by their lawyer, their barrister, and another independent barrister, “All the opinions said the same thing, plead guilty, so that’s what we did, follow the advice.” With next to no understanding of the legal processes being used against them, they were solely reliant on their lawyers and overwhelmed by the threat of prison. This sense of having no choice in terms of a plea and being directed by legal representation is captured by these three participants:

“[Lawyer] ‘But the only option you’ve got really is to plead guilty.’ I said, ‘I don’t want to plead guilty to the theft.’ And my lawyer said, ‘Well, there’s not much option in it really,’ and I had to.”

“The barrister said, ‘You’d better just go with the narrative because you might be able to stop the prison but if you start fighting, I’ll not be able to help you. The Post Office will definitely put you in prison. You understand?’ So, I had to swallow that again and say ‘okay.’ The barrister said, ‘Don’t appeal afterwards, don’t do anything, just pay them their money and that’s it.’”

“The barrister said, ‘Look, if you go through it, the Post Office will turn around and say, ‘Look, this money was missing,’ and it will all come out. And then because you are fighting it, you’ll still be found guilty because the money is missing. They’ll still find you guilty and because you’ve put them through the hassle of having a trial and, obviously, the cost, you will be put into jail.’”

The situation appears to have been closer to not allowing their clients to plead not guilty rather than full advice and freedom of choice. It was not that the SPMs did not agree to plead guilty, but that they did so on a basis that was not fully informed. It is understandable that the central risk, imprisonment, was a dominant concern but this – on the accounts we have – was almost the only concern alongside the supposed hopelessness of trying the case.

The golden thread of British justice, the presumption towards and protection of innocence was lost. The notion that the innocent should not plead guilty and that lawyers should caution against the innocent pleading guilty is undermined by a process which constrains their choices and side-steps claims of innocence. As one participant put it, “I had to plead guilty to avoid going to prison, even though I wasn’t guilty.”

It might be argued by some that SPMs are misremembering their encounters with the defence lawyers to alleviate responsibility for their own decision to plead. We do not think that consistent with the interviews we conducted. Indeed, our participants fully accepted they had agreed to the pleas and recognised how incredible entering a guilty plea when you were not guilty might seem to ordinary people. One SPM explained:

“That was the thing, just to get out of prison you have to plead guilty. I mean, later down the years when all of this came out and stuff, I mean a family member said to me, ‘When you haven’t done something wrong, why would anyone, a lawyer, tell you to plead guilty. Because that’s not right, you never plead guilty’... I said, ‘But that’s what the solicitor said to me.’ But if someone is saying to you, ‘You’re going to go to prison if you don’t plead guilty. They’re going to look at you and make you an example.’ Then what do you do, you listen to what your solicitor is telling you or your barrister is telling you.”

Whilst there may be a presumption that legal representation provides a safeguard from defendants making non-consensual decisions in the justice system, our data makes clear that this was not the case for the SPMs. Nor were the SPMs looking to blame their own lawyers. SPMs often felt their lawyers could not have done anything that would have made any difference to their case and that their lawyers did their best in the circumstances, given the behaviour of POL and the confines of the legal system (such as issues with legal aid and sentence discounts). As these quotes suggest:

“I think the solicitors have done their best....it feels like they’re continually jumping through hoops and over barriers.”

“[I] believe, with what the Post Office had given them [the lawyer] as evidence, they did what they thought was right for me.”

“There’s no explanation to the missing money. It was so difficult... they [lawyers] did the best that they could.”

In addition to advice from legal representation, it is important that any consideration of the reasons as to why people plead guilty to offences they have not committed takes account of the context in which they do so. As has been discussed throughout, there was an assumption of guilt and reverse burden of proof placed on SPMs by POL. There was bullying, threatening,

and aggressive treatment by auditors, and more often ‘investigators,’ to extract confessions and admissions of guilt from SPMs. And there was, in the main, strong advice from legal representation pushing SPMs to plead guilty. In this context, there were also two other factors that were raised during our interviews that played a role in pressuring SPMs to plead guilty: 1. the timing of the offer of plea deals (the conditions that were attached to such a deal were also often discussed) and 2. The fear of incarceration.

Timing of Plea Deal Offers

Many participants were offered a deal on the day of their court hearing or very close to it. As one participant said, “they dropped the theft charge on the day of the court case and reduced it to false accounting.” Such timing increased the pressure and stress caused by its proximity to the trial and the lack of time to discuss with their lawyers and to think things through properly. Some of our participants saw it as akin to an ambush. One SPM said:

“[it was] before the pre-sentence report where [the POL lawyer] said, ‘If you don’t plead guilty, we’re going to escalate to the Crown Court, and we’ll be pushing for a seven-year jail term.’ Which when I’ve looked now, I think seven year jail is one of the higher, it wouldn’t have been that, but that’s what they threatened me with.”

Plea deals also frequently came with conditions. SPMs were told if they paid the monies that POL insisted were due to them, they would not be pursued further, although there were often occasions when payments were made, but SPMs were still pursued. Others saw a theft charge dropped for false accounting but were pursued, aggressively as they saw it, through a proceeds of crime application, “even though there had been no theft.”

It was not uncommon for SPMs to be told they were not allowed to blame the Horizon system in any mitigation in court (improperly limiting their rights and risking a more serious sentence).⁵³ One participant recounted the conversation they had with their barrister on the morning of the Crown Court hearing:

“...they’d agreed to drop the theft charge and only take me through on false accounting as long as I just said I didn’t know what had happened to it [the money]...And that was part of the

⁵³ See for example: ‘Report to the Post Office Horizon IT Inquiry Phase 4 Investigation, Disclosure and Criminal Prosecution in England and Wales and Investigations and Prosecutions by the Post Office 2000-2013 Volume 2 (revised),’ (EXPG000004R) <https://www.postofficehorizoninquiry.org.uk/evidence/expg000004r-duncan-atkinson-kc-expert-report-volume-2>.

deal, that I didn't mention the computer system was in error in any way... the barrister just said, 'Don't mention anything about the computer system, just say you don't know what's happened to this money.'"

The Court of Appeal referred to this kind of plea deal as being entirely improper in *Hamilton*.⁵⁴ Participants spoke to us about a range of pressures that they felt influenced the decision to change their plea. Fear of going to prison was expressed as the most significant.

Fear of Incarceration Influencing Plea

The fear of receiving a custodial sentence was itself multi-layered. Some participants expressed a deep-seated fear of the prospect of being in prison:

"The thought of going to prison, if I'm honest. That's the only thing I was concerned about was going to prison...the fear factor of me pleading guilty is literally because I didn't want to go to prison."

"I'm an outdoor person. I'm outdoors all the time. And I couldn't have coped with being in a small room, sharing with somebody else. I couldn't have done that. I know I couldn't have done that. And I was at the stage where I think my mental health wouldn't have allowed me to cope with that, and I think I probably would have done something to myself."

Some participants felt that if they were sent to prison, their relationships would break down, "Well, if I go to jail for five years, they [partner] might not be here when I get out." Some SPMs carried the responsibility of knowing their family members would not survive the SPM's jail term. Others feared health conditions (physical and mental) would mean they themselves would not survive prison, "I mean, I was petrified just to go, but also, that unknown, whether it would actually kill me." One SPM said, "A lot of people regret pleading guilty. Yeah, no, I don't think I do regret it because I don't think I'd be here now, if I did, if I had pleaded not guilty."

For some SPMs, protecting their family was paramount. One SPM told us, "I was terrified of going to prison. I had kids at the time." Another explained

⁵⁴ *Hamilton and Others vs Post Office Limited* [2021] EWCA Crim 577.

the pressure they felt to plead guilty to protect their children.⁵⁵ Those who were mothers felt a particular vulnerability:

“I think they [the lawyer] was trying to avoid me going to jail because I had children. And they already knew what would have happened [receiving a custodial sentence] because this had happened prior to that to some other people.”

Concerns also included the protection of their business that they were trying to keep going to support their family despite the loss of the post office branch counter,⁵⁶ “I didn’t want to go to prison. If I did go to prison, the shop would’ve folded.”

Pleas were also influenced by gaslighting by POL which created self-doubt and weakened resolve, even though SPMs knew they were innocent. Many explained they felt they were losing their sanity due to constantly checking and re-checking their accounts and transactions for hours and hours and not being able to figure out what had gone wrong. As these examples show:

“Because you actually get to a stage where you actually doubt yourself. You really doubt, and you needed people around you to believe in you. Yeah, the doubts in your head are unbelievable.”

“I mean, I really did think it was... I knew I hadn’t stolen anything, but I couldn’t explain this money, because I was so naïve, and I actually believed the number that was on the screen, and I couldn’t explain it.”

“By the time all the emotion and everything comes, you actually get to the stage where you think, ‘Did I do it and I can’t remember?’”

There were also situations raised where advice on plea differed between the solicitor and barrister. One such example saw a solicitor, who had a good relationship with their SPM client, advise the SPM to consider pleading guilty, but explained they would not have to enter a plea at the forthcoming hearing so they had time to continue to discuss and consider this. The solicitor could not attend this hearing and the barrister who represented the SPM that day strongly encouraged them to plead guilty to false accounting. The SPM explained:

⁵⁵ In a similar vein, not having children played a role in this SPM’s decision to maintain a not guilty plea, they explained: “because I didn’t have any children or anything prison wasn’t such a, I mean, it was horrific, I had no idea how I was going to deal with it, but, by then, I was, sort of, on autopilot.”

⁵⁶ In some cases, SPMs were able to keep a general business running (often a local convenience shop) whilst the Post Office element of the business was closed, due to their suspension. Though often, due to the reduced foot traffic and stigma SPMs suffered, these also eventually had to be closed.

“I said, ‘But, I’m told I don’t have to plead,’ and all this time, I’ve gone along with everything that they’ve done. I’ve done as I’m told and I’ve done everything, but...I was told I didn’t have to plead anything that day...And they were pushing for me to plead guilty... they said, ‘When we go back in the courtroom so what are you going to plead?’ I said, ‘I’m not.’ I said, ‘I want to speak to my solicitor’... They said, ‘If you’re not going to go in there now and plead, you’ll be pissing off the judge, pissing off the Post Office, and me as well’...normally, your barrister and that walks into the courtroom with me, but they didn’t. They just stormed in ahead of me, and that is significant to me, because I hadn’t a clue...I felt so alone. I thought, ‘This person’s supposed to be supporting me.’

The SPM recalled the judge saying, “I can see that you are being harassed, and you’re upset,” and told the SPM they would not be asked to plead that day. After this, the barrister offered the SPM an apology for swearing at them. It is the most overt example of pressure on clients to plead in our interviews.

Understanding the Implications of a Guilty Plea

We also asked our participants about whether and how their lawyers explained to them the impact and implications of their guilty plea and of having a criminal record. It appears that often, other than reference to entering a guilty plea to avoid receiving a custodial sentence, very little else was communicated to our participants by their lawyers. This was a frustration frequently raised by SPMs and is still raw to this day.

Many felt they were not made aware of *how* legal outcomes would affect and place limits on their lives for years into the future (securing future employment, being able to take out loans/mortgages, or the cost of insurance were all mentioned). As one SPM asked if they understood the possible consequences that might follow their plea, said, “No. I didn’t really understand anything that was happening, at all.” The practical and social impact of having a criminal record was not made clear to them. For some, the possibility of still receiving a custodial sentence even after pleading guilty was not effectively explained before they had decided to plead. For example:

“It didn’t cross my mind that I might be going to prison, you know what I mean? Yeah, and they [lawyer] didn’t make me aware of that until on the day, when they said, ‘I can’t guarantee you won’t go to prison, but I don’t think you will.’ I thought, ‘God.’ That was a bit scary...Maybe they presumed that I already knew that, but I didn’t actually.”

SPMs were often unaware of what a plea meant post-sentence. One SPM said, “lo and behold, I could never work because I didn’t know what criminal record means”. Another explained:

“Never had this experience in life, so I didn’t know. So, criminal conviction, basically, you don’t get money, banks don’t lend you, you’re seen as a criminal, you don’t get good jobs. And those things hadn’t crossed my mind. The idea was to walk away as safely as I can, away from this. And I wasn’t looking at those scenarios, you know?”

Similarly, those who were found guilty of false accounting often, “didn’t really understand the gravity of false accounting.... I didn’t realise it was as serious as it is.” Participants spoke of long-term impacts:

“I didn’t know what false accounting entailed. ...when you going to try and get a job, fraud is the worst thing on Earth...Honestly, I didn’t realise. I knew I’d get a conviction, but I didn’t realise that that’s what it would turn out to be...”

“...I didn’t realise how devastating having a fraud conviction would be. You know, I didn’t realise what the connotations of that would be, even down to your insurance for your car and everything going up by a ridiculous amount...I mean, we had to do everything in my partner’s name because I couldn’t do anything in my name because it was just horrendous.”

Our interviews did not suggest that plea decisions involved the exercise of meaningful, well-informed choice, supported by their legal advisers. As we have seen it was not uncommon to feel the adviser did not believe them and, the SPMs sometimes felt, had not fully understood the case. Counselling on dishonesty in false accounting cases, for instance, was cursory or non-existent. Guilt was assumed as proven even where there were, as we now know, significant weaknesses in prosecution preparation. Whether advice to plead guilty was the right advice, and there are reasons for understanding why such advice was given which remain readily accepted by many SPMs to this day, the experience was not always, indeed not often, one of full and forensic advice. Protestations of innocence were side-stepped or SPMs were persuaded out of them to avoid the threat of prison. As one participant aptly captured the overall tenor of interviews, guilty pleas entered “wasn’t by choice, it was by pressure, and fear.” Another described it as attempting “damage limitation,” and said of the thought of entering a not guilty plea, “No sane person would’ve done it.” There was no indication that SPMs had been told, as they should have been, that they should not plead guilty if innocent.

Preparation for Court and Beyond

How did participants describe the experience of having to go to court? Many, unsurprisingly, saw it as frightening but also felt unprepared for the legal process taken against them. They often felt their lawyers did not prepare them adequately, failing to explain in any detail how their case would proceed in court.

Asked what their lawyer had done to prepare them to attend the Crown Court, one said, “Nothing. Nothing. I spoke to my solicitor once in their office and that was it, I never spoke to them before... after.” Another said of the lack of preparation for the court process from their lawyer, their case was simply treated as a matter of ‘routine’, “I don’t want to sound disrespectful, but it was, sort of, a matter of course.”

The purpose of each court hearing was not always explained by their lawyers. Having multiple court appearances to navigate, without a full explanation as to why such appearances were necessary, heightened anxiety.

Changes in the location of hearings sometimes took respondents by surprise, with the reasons for that not being understood. The stress of this was often deepened by changes in the barristers dealing with their case, sometimes just before the hearing at the Crown Court. Lawyers would understand this as a normal unpredictability in the system (e.g. other cases barristers are engaged in can overrun) but the reasons for the change were not, it seems, typically communicated to clients. And a last-minute change of barrister would impact upon the SPMs confidence that the new barrister understood their case and was well placed to represent them.

The shift from solicitor to barrister representation was experienced by some as a further weakness in the process. One described the conference they had with the barrister before the hearing, felt more like the barrister “reading about the case, with me present, than conversing with me, if that makes any sense.” Another participant said they did not know what was supposed to happen and what the barrister would do, describing the process as “it all seemed pretty mechanical.” Another explained “I spoke to [the barrister] once before the trial started, and that was the only time I spoke to them until the end. So, did I know what was happening? Probably not. Would it have helped if I did? Probably not.”

Participants were also taken by surprise when cases transferred from the Magistrates Court and the Crown Court. Some, having pled guilty in the Magistrates Court, were unaware that the Magistrates could remit their case to the Crown Court for sentence that could then be harsher. One SPM recounted leaving the Magistrates Court after pleading guilty, when their

lawyer simply explained: ““Oh, they’re going to sentence you...You should prepare for this because Crown Court might send you to prison.””

Only a few participants described lawyers who explained exactly what would happen in the court process to ensure that they were fully informed. One participant said their lawyer “explained everything to me” including who the barrister would be, what they would be asked to say when they first stood up in court, and whether they would be asked to indicate their plea. These would of course be very routine steps to lawyers dealing with this day in and out but totally alien to most people.

Being adequately informed about the legal process that would be followed is important for all defendants in legal proceedings. A general theme from our interviews was that only rarely did lawyers explain to their clients in sufficient detail for them to understand what would happen in the process of their case and why.

Heading into court, many SPMs felt they, “hadn’t got a clue what was going on” as for most it was the “first time I’d ever been in a court.” One person said, “I didn’t understand the charges.” Participants generally felt incredibly under-prepared for any trial. Many felt like they didn’t understand what was happening, some were physically and mentally in severe poor health due to the trauma of the situation and were unable to manage aspects of the court appearance. This included several being unable to stand in the dock due to poor physical health, as well as not being able to comprehend what was going on in the case whilst any trial took place. At one court appearance, an SPM, who was experiencing a serious mental health crisis at the time, said, “I was dribbling, not talking. Sometimes I couldn’t stand up by myself. I can’t remember if I put my plea in by myself or not.” SPMs spoke of feeling intimidated by POL investigators who, they thought, “just turned up at court to intimidate me.” Others spoke of the aggression of POL’s legal representation, one explained during cross-examination, “the barrister on the Post Office side was absolutely horrible...the judge had to stop the questioning... they wasn’t pleasant and they were just shouting, and shouting, and shouting” at the SPM in court.

A lack of advice also impacted on SPMs’ experience of pre-sentence reporting. The pre-sentence report writer asked one SPM, ““What have you done?” I said, ‘Do you know what, I have no idea. I have no idea what’s happened or what’s going on.’” The ‘sufficiency’ of the guilty plea also arose with the Probation Service, who prepared pre-sentencing reports, expecting that SPMs display acceptance of their guilt:

“I had to go for a pre-sentence report with the Probation Service. I’d just pled guilty and then I had to go and do this report. I didn’t realise what the report was for, and this lady is there asking me these questions and of course I then told her that this

system had lost this money, not me and of course, I made things worse for myself because she said, 'I'm not showing any contrition or remorse.' I'd actually told her the truth about what had happened in the background and then that report was then used in court, and she stood up and the report was, 'They are saying it's The Post Office, it's not them, they have been stitched up.'

Others spoke about not initially understanding their sentence. One, "didn't even realise what a custodial sentence meant," a second, "didn't understand what a supervision order was," and a third "didn't know what a Confiscation Order was." Important matters such as how to comply with orders to repay money to the Post Office were not clear. One SPM explained they were almost recalled to prison because no-one communicated to them the process of paying monies directed by the court to POL.

Several SPMs raised concerns over the role of judges and the courts, and why cases were "allowed to be heard in court time and time again." A few SPMs explained how judges nearly stopped their cases, concerned there was no evidence of theft or missing monies. One SPM said of their Magistrate, "talking to the solicitors, 'Should we be in this court, this looks like a breach of contract matter to me?'" But, "the Post Office barrister or solicitor or whoever he was, stood up and said, 'No sir, I can assure you that this is the correct course of action.' The clerk of the court did some shuffling about and whatever else and then it continued." Another SPM explained their frustrations:

"Why weren't these patterns picked up by the courts? The Post Office didn't want to pick it up, they didn't want to change it. We know that, so that's that. But, all the judges and the courts of this land, there are thousands. Why didn't any of them say, 'God, there's a lot of crime within the Post Office, isn't there? Wonder what is going on there?' ... And I think some of it is because it's government owned, Post Office, so people in authority have thought, 'Oh, let's leave it alone. We haven't got the money or the power to question, to ask those questions. Are we going to get sued if we dare go against these people? And if we do, we stand no chance of representing ourselves, funds wise.' So, you know, they're badly governed. They're not overseen, they're not scrutinised properly."

It appeared, as with defence lawyers, judges may have been constrained, to a degree, by the system itself. Some SPMs spoke of their judges openly saying they were trying to give them "the minimum [sentence] they could do at the time." One judge is said to have remarked, "I'm not sure if a crime's actually been committed here" and so "I'll have to find in the most favourable way possible for this defendant." Another explained, "I

genuinely believe the judge believed me” and stressed to the jury to “make sure you can actually see that a crime has been committed.” One judge told another SPM in court, “I don’t think you’ve taken the money.”

Appeals and the Criminal Cases Review Commission (CCRC)

Appeals and the CCRC were discussed in interviews. As previously noted, some SPMs were directly told by their legal representation not to try to appeal or that they would have no hope of a successful appeal against POL. Some said they were never advised there was even an option for appeal: “It’s amazing, I’ve missed it out...missed out all these years and didn’t think I could appeal, I really didn’t.” For those who had been in contact with the CCRC, there were stories about not being informed of the process and requirements and not being provided with meaningful updates or the need for representation:

“I didn’t think they [CCRC] give you enough information because I didn’t know that once it had been referred from the CCRC, you still had to fight your own case. So, we still had to then find legal representation to fight my case in the Court of Appeal, but that’s not made clear. So, you think, ‘CCRC have made this decision. They’re going to overturn your conviction. That is it.’ That’s not the case.”

There were also issues raised concerning lack of guidance for completing and submitting applications, which were then rejected for incorrect completion, “they send us them back saying they were ineffective, so obviously I didn’t know what to write...And they gave us the names of some solicitors on the back.” Similarly, another SPM was not informed of the documentation they would need for their application, which they had kept but just didn’t know it was needed, and so “CCRC initially refused the case.” Eventually, after much toing-and-froing, the CCRC explained to the SPM, “this is what we are looking at. Can you give us more information?” The SPM then sent through the required paperwork, as they said, “I’d got the documents [years before]...I didn’t know they needed it.” Issues with lack of clear communication and transparency regarding CCRC processes and requirements caused immense frustration and further stress for SPMs, who felt time, energy, and money was wasted in situations that could easily have been avoided.

Conclusions

We would not say that these interviews suggest that criminal defence is the primary cause of the PO Scandal. Nothing should detract from the centrality of POL's conduct to the miscarriages of justice SPMs experience. Nor, though, should that prevent reflection on weaknesses in criminal defence and in the criminal justice system more generally. As one of our respondents put it:

“There's no safety net, it doesn't seem like there's a proper safety net to stop cases like mine going through and just waving them through with a conviction.”

The road to representation was also far from smooth. POL worked to exclude or discourage representation in the early stages of ‘investigation,’ minimising the seriousness of the situation whilst they sought to collate evidence against the SPMs. SPMs assumed good faith and, believing in their own innocence, cooperated. Even when POL turned more openly towards criminal allegations, SPMs often did not get representation thinking the system would protect them.

When representation was sought, it could be done haphazardly. SPMs sometimes sought representation from solicitors without experience of criminal defence, with many SPMs not realising the need for specialist help. They proceeded sometimes to pay privately or fell into legal aid representation at the last minute (e.g. through duty representation at court). They felt their choices of solicitor were constrained by a lack of choice in the local market which they partly attributed to the state of legal aid. Similarly, many SPMs felt legal aid was sometimes difficult to deal with (when contributions were required at a time of significant stress generally and financially). Moreover, they were conscious that legal aid rates and underfunding likely limited the service their lawyers provided to them.

In this way, problems of accessibility, funding, and availability acted as impediments for many to obtain legal advice and/or representation, preventing some from receiving any legal advice at all.

Regardless of the varying experiences of their lawyers, many SPMs recognised that due to the norms and the inequality of arms baked into the legal system that they were at a structural disadvantage. It could be argued that within this broader context, even the most accomplished, competent, and caring lawyer would struggle to secure a just outcome for their client. As some said to us, “I got off as lightly as I could, for something I didn't do.” With several SPMs echoing this view:

“I don't hold anything against [lawyer] at all because I believe, with what the Post Office had given them as evidence, they did

what they thought was right for me. And, you know, I can't knock them for that."

Others strongly opposed this sentiment and felt their legal representation should have supported their not guilty plea and given them "a fighting chance of winning" their case. The positive experience of current representation in the Horizon IT Inquiry and SPM's representation during compensation claims, has led many SPMs to feel their original lawyers provided (sometimes seriously) substandard representation.

Our interviews suggest that the conduct of the defence for SPMs varied. Some SPMs had positive interactions with supportive lawyers, who they felt believed them and mounted a zealous defence when representing them. Typically, these were lawyers who were already known to SPMs and who had a prior good relationship or were more junior lawyers, perhaps less jaded by the system.⁵⁷

Many SPMs though talked about negative experiences. They felt disbelieved, not listened to, passively processed, pressured, even bullied by the inevitability of pleading guilty as their lawyers advised. Some felt their lawyers were out of their depth coming up against such a powerful organisation as POL, and that this influenced the advice they gave and how they managed SPM cases.

The golden thread of British justice: innocent until proven guilty was defeated, in part, and without in any way minimising the role of POL's belligerence and impropriety, by a culture of defeat.

Our interviews did not suggest that plea decisions generally involved the exercise of meaningful choice in which SPMs were supported by their legal advisers. They often experienced the opposite of meaningful support, and were encouraged to plead guilty (rather than cautioned against pleading guilty) when they maintained innocence. It was not uncommon to feel the adviser did not believe them and, SPMs sometimes felt, had not fully understood the case. Counselling on dishonesty in false accounting cases, for instance, was cursory or non-existent. Guilt was assumed as proven even where there were, we now know, significant weaknesses in prosecution preparation and the client's instructions were that they were innocent.

⁵⁷ Regarding concerns over an aging criminal defence profession see for example: Sir Bill Jeffrey, 'Independent Review of Criminal Advocacy in England and Wales' (May 2014) <https://assets.publishing.service.gov.uk/media/5a7ec09b40f0b62305b82f55/jeffrey-review-criminal-advocacy.pdf>; Sir Christopher Bellamy (2021).

Overall, advice on plea seemed to be influenced and shaped by four main factors:

- Lawyers seemed to assume guilt and suggested to clients that they had been dishonest (and therefore were 'technically' guilty), when a thorough legal analysis would have or may have shown they were not. Whilst running such defenses may have been difficult, and the lawyer may have felt they were risky, that they were not even considered with the client suggests inadequate advice was given to some SPMs.
- Lawyers often pressed clients to plead guilty partly because they hoped they could avoid custody by doing so.
- Lawyers did not fully advise their clients on their options, i.e. they did not tell SPMs they should not plead guilty if they felt they were innocent, a point related to the concern about dishonesty being assumed, and they did not effectively advise people of the consequences or implications of their plea so that they fully appreciated what they were giving up by pleading guilty.
- Improper incentives to plead were offered by POL, and improper conditions imposed, the defence did not appear to flag these conditions as being problematic and things the client should not have to agree to.

Whether advice to plead guilty was the right advice, and there are reasons for understanding why such advice was given which remain readily accepted by many SPMs to this day, the experience was not always, indeed not often, one of full and forensic advice. Protestations of innocence were side-stepped, or SPMs were persuaded out of them, to avoid the threat of prison. As we have noted already, one participant aptly captured the overall dynamic when guilty pleas were entered it “wasn’t by choice, it was by pressure, and fear.” It was clear that the ramifications and long-term implications of entering a guilty plea were not communicated to SPMs by their representation. And so, SPMs were not made aware of the legal consequences and thus were not fully informed on how the outcomes of such a plea would affect the trajectory of their lives.

The experience for SPMs was often exacerbated by a lack of timely, effective, consistent, and transparent communication by their legal representation. Often lawyers did not meet their clients ‘where they were at’: did not take the time to explain the processes, the meanings of language, different hearings, sentencing, and so on, and did not walk their SPM clients through the possible outcomes of their plea. This left SPMs further isolated, terrified, and not knowing what was going on in their own case most of the time.

Many SPMs stressed to us, what this person said:

“The justice system is, as far as I’m concerned, it protects the people with money.”

We have sought to convey how many SPMs recognised that through POL’s conduct, the legal system’s normal processes and running of cases, lack of funding for ordinary defendants, and sometimes related deficits in criminal defence, the cards were stacked against them from the start. This raises serious and important questions concerning the broader state of the criminal justice system.

Implications

For understandable reasons, current policy on the criminal justice system concentrates on efficiency concerns and dealing with the backlog, as well as victims’ rights.⁵⁸ Concerns about quality and defendant’s rights tend to be absent in such debates in much the same way as the SPMs protestations of innocence were sidestepped during Horizon prosecutions.

Academic and other research has often pointed to vulnerabilities in relation to quality, and the propensity of the criminal justice system to act with more rhetorical than real regard to the ‘golden thread’ of innocent until proven guilty. What our research does show is how, from the SPMs perspectives, these concerns are real.

We do not think these issues can solely be attributed as experiences driven by the uniquely bad behaviour of POL as private prosecutors. Miscarriages of justice in public prosecutions of SPMs in Scotland for instance,⁵⁹ and the apparently ready adoption of passive criminal defence based on the assumption of guilt in the cases we describe above, suggest a wider problem. We highlight some implications in general terms:

The sustainability and quality of criminal justice and legal aid practice are areas where it is now, more than ever, time for efforts to be redoubled. There are a complex set of issues at work here: economics and funding (for

⁵⁸ See for example: Sir Brian Leveson, ‘Independent Review of the Criminal Courts – Part I’ (09 July 2025) <https://www.gov.uk/government/publications/independent-review-of-the-criminal-courts-part-1>.

⁵⁹ All SPMs in Scotland who were convicted of a relevant offence were automatically exonerated when the Post Office (Horizon System) Offences (Scotland) Act 2024 came into force on 14 June 2024. The Scottish government then also identified 141 cases which may be eligible to have their convictions overturned – as of February 2025, 64 of these cases had their convictions quashed and 11 cases are still under review. Prior to this Scotland legislation, there were court-led exonerations of some Scottish SPMs. For more information see for example: Convictions quashed under the Post Office (Horizon System) Offences (Scotland) Act 2024: FOI release (<https://www.gov.scot/publications/foi-202400431750/>); BBC News September 2024 More than 140 Post Office convictions could be quashed in Scotland (<https://www.bbc.co.uk/news/articles/c5y9g6ekxexo>).

the courts and for legal aid), culture, regulation, and guidance. Our own perspective, with one of us having many years of experience in professional competence and legal aid, is that a focus on quality has abated as more basic concerns about finance and sustainability have taken pole position.

Against such a backdrop, neither the professions nor government nor the courts have much reason to reflect openly and self-critically on the systems fundamentals.⁶⁰ Each blame the other and lack of public support for positive reform. Ultimately, the SPMs' views suggest that publicly funded defence practitioners failed to match the prosecution in 'equality of arms' and, relatedly, were unable to provide robust protections for those accused of criminal offending. The issues must be considered closely alongside debates relating to efficiency, about which cases should have a jury trial, for instance. It is no good facilitating more trials (and, relatedly, guilty pleas) and associated resolution of the case backlog if such efficiencies also increase the systematic conviction of innocent people. Moreover, as our research has made clear, the scarcity of legal aid lawyers, especially outside large urban areas, further complicates and exacerbates these problems.⁶¹

We have concerns that once superficial respect is paid to the ruin suffered by SPMs, the issues will be said to be of historic significance only or particular to the behaviour of the Post Office. Both views are we believe flawed. Although these events occurred more than ten years ago, the pressures and cultures that allowed such injustice to occur are still operating in the criminal justice system today. SPMs and the wider public deserve to know that what was experienced was a system structurally and culturally loaded against them, and to know that their experiences will be afforded sufficient consideration in making improvements.

Those administering the criminal justice system: prosecutors, courts, defence lawyers and the Legal Aid Agency (LAA) need to reflect explicitly on the vulnerabilities of defendants facing plea decisions. The experience of the SPMs shows these as being ignored or minimised, and that the assumption that adequate protections are in place is likely flawed. Prioritised efficiency and assumptions that defendants 'know if they are guilty' (and beliefs that most are likely guilty) can fray the golden thread of 'innocent until proven guilty' badly. This is doubly concerning given the

⁶⁰ Although the Bellamy report (2021) did lay down many markers of concern.

⁶¹ Jessica Sellick notes, "experiences of rural communities are often overlooked within legal scholarship." For rural access to justice issues, see for example: The 2019 survey and 2023 survey conducted by YouGov, LSB, and The Law Society; Daniel Newman and Faith Gordon eds., 'Access to Justice in Rural Communities: Global Perspectives' (2023); for overview see, Jessica Sellick (September 2025) How accessible are justice services in rural areas? <http://ruralwords.co.uk/how-accessible-are-justice-services-in-rural-areas/>.

harms caused by unjust and wrongful accusation and prosecution are enormous and lasting, as we have demonstrated elsewhere.⁶²

There are more prosaic things that could also be done. At the basic level we noted a lack of clear and comprehensive guidance, echoing the work of Horne,⁶³ on how guilty plea decisions should be handled by lawyers. Such guidance should explicitly grapple with the reality that in the current system it may be in the best interests of an innocent person to plead guilty, and acknowledge the conflict between providing the advice that a lawyer perceives is in the best interests of the client (including in strong terms) and cautioning a client that they should not plead guilty when innocent. Given the findings throughout this report, we encourage the Sentencing Council to review its guidance on guilty pleas (see below).

Guidance should also establish a clearer baseline level of investigation that should be done by lawyers into a case (both in terms of facts and relevant law) prior to the plea decision, especially where a client maintains innocence. The Law Society's standards of competence for the Criminal Litigation Accreditation scheme do cover areas of concern, (the need to examine the law; to listen to clients; and communicate with them, especially explaining process and outcomes) however, there is a clear incongruity between theory and practice. It may be fruitful for The Law Society to reconsider its standards of competence in light of our findings, publicise them widely, and put in place more effective oversight to determine compliance. The same should be said of the Bar Council's guidance on advice to plead guilty: the potential for forceful advice to undermine theoretical free choice should, in our view be given proper emphasis.⁶⁴ The legal aid scheme has a peer review scheme, applicable only to legal aid lawyers. We suspect, under financial pressure, this has lost its original purpose of raising standards and become merely an audit tool.

Accessibility of services (particularly away from large urban areas) and raising public awareness of the need for, and availability of, specialist criminal defence lawyers, needs to be prioritised as a policy goal by the Government, professional regulators and professional representative bodies and the professions.

We cannot assume that all clients 'know' whether they are legally guilty or that knowledge relating to guilt will guide the plea decision, especially in the absence of robust support from lawyers.

⁶² Sally Day, Karen Nokes, Richard Moorhead and Rebecca Helm (2025).

⁶³ Horne (2013), (2016).

⁶⁴ Bar Council (2022) Change of Plea, <https://www.barcouncilethics.co.uk/wp-content/uploads/2022/01/Change-of-plea-January-2022.pdf>.

The Sentencing Council should revisit its guidance on credit for guilty pleas,⁶⁵ in particular “E1. Imposing one type of sentence rather than another” and “F1. Further information, assistance or advice necessary before indicating plea.” The Horizon cases illustrate the pernicious impact of a plea that makes the difference between a likely prison sentence and a lesser sentence. These cases also demonstrate that provisions in F1 are inadequate to protect defendants from feeling pressure to plead guilty quickly, even where they face difficult circumstances, including not fully understanding what they have been accused of.

Indeed, there is a case for consideration being given to amending the current disclosure scheme to require more extensive disclosure prior to a guilty plea. Primary disclosure should be required prior to a guilty plea in the Magistrates as well as the Crown Court, and in the Crown Court the defence and prosecution should be working to identify issues that may trigger further disclosure prior to a guilty plea. Courts must also be more determined to enforce disclosure obligations at that stage. More generally, giving the defence time at the start of the process, to consider their options, might ultimately increase quality and efficiency in the criminal justice system. This should be borne in mind when considering the recent independent review of the criminal courts.

And the Code for Crown (and private) Prosecutors (paragraph 9) should be clarified to ensure that plea bargains are not made only at the door of the court.⁶⁶ An obligation on prosecutors to consider early and communicate what is an acceptable plea might be considered.

We recognise that the problems in practice around prosecution and defence approaches to plea are not simply a matter of better guidance. But such guidance helps set standards and oversight of plea decisions.

A most concerning lacuna in the investigation of PO cases so far is the failure to examine vulnerabilities in the broader criminal justice system. SPMs sometimes expressed dismay at the way courts responded to them, or witnessed expressions of concern by judges (e.g. about the case against them being weak) that did not appear to be acted on.

We note the protestation of the Lady Chief justice that there was no basis for saying judges had done anything wrong in Post Office cases and the

⁶⁵ Reduction in sentence for a guilty plea – first hearing on or after 1 June 2017 Effective from 1 June 2017.

<https://sentencingcouncil.org.uk/guidelines/reduction-in-sentence-for-a-guilty-plea-first-hearing-on-or-after-1-june-2017/>.

⁶⁶ The Code for Crown Prosecutors, 26 October 2018, <https://www.cps.gov.uk/publication/code-crown-prosecutors>.

comments of former DPP Sir David Calvert Smith that, in some cases at least, this may not be correct. Whilst we have set out the findings from our investigation, which we hope provide a useful evidenced baseline, a more focused and wider investigation would generate a detailed picture of specific pressure points in the system that require urgent attention.

In a similar vein, the situation in Northern Ireland has been given less attention,⁶⁷ and the situation in Scotland remains under-investigated. A plausible argument can be made the legal situation in Scotland was worse. As we understand it, the onus of proving that Horizon was reliable was on the prosecution (the onus of proof concerning computers was not changed in Scotland, unlike England and Wales), and Scotland had a requirement of corroborative evidence in addition to Horizon that *should have* made conviction harder still. Yet of the 93 convictions in Scotland only one followed a trial. All the rest were guilty pleas, despite Scotland allegedly having a less officially sanctioned system of plea bargaining. We note with emphasis that, as a result, the Crown Office and Procurator Fiscal Service, being ‘public’ and independent, provided no greater protections for SPMs in Scotland.

Overall, what this research suggests is that the supposedly golden thread of innocent until proven guilty was not, as seen in many of the SPM’s cases, a thread often picked up in their cases. We know from the Post Office Inquiry that prosecutors paid scant regard to their obligations as ministers of justice. Their conduct further unlevelled the playing field, and made it hard for any defence lawyer to counter. What is more, though, few tried. The reasons are complicated, but the SPMs’ experiences fit with concerns that defence lawyers are often not inclined, equipped, or funded to defend in a way the system pretends. The criminal justice system’s legitimacy depends on the golden thread being on offer to all defendants, but too often it is not.

But perhaps the most central point that should not be forgotten is the way the system, the Post Office, and even sometimes the defence lawyers, were careless with individual lives, lives they have scarred and continue to do so.

⁶⁷ The situation in Northern Ireland mirrors the rest of the UK – the Post Office (Horizon System) Offences Act 2024 automatically overturned the convictions of SPMs in Northern Ireland who met the criteria, clearing the names of 21 individuals as of April 2025.

Appendix A

Regarding the quality and adequacy of defence lawyering, the academic literature tends to be critical of the system. Two perspectives emerge of particular note.

One is how austerity and efficiency, has damaged defence lawyers' ability to safeguard the accused's rights.⁶⁸ Funding cuts and bureaucratic control of legal aid work, contributed to a system that depends on guilty pleas and 'plea bargaining' to function; under this criticism, due process may be or is sacrificed to ensure the courts can function.⁶⁹ People for whom there is insufficient evidence to convict or who are innocent are often pressured into compromising, sometimes unfairly or improperly.⁷⁰ This tends to be associated with the argument that criminal courts are prosecution friendly and/or defence sceptical.⁷¹

⁶⁸ R. Du Cann, *The Art of the Advocate* (Penguin Publishing, 1964) 46. See also: Richard Moorhead, 'Legal aid and the decline of private practice: blue murder or toxic job?' (2004) 11(3) 159 *International Journal of the Legal Profession*; Catherine Baksi, 'Criminal defence: dead in a decade?' (7 January 2022) *Law Society Gazette*; Daniel Newman and Lucy Welsh, 'The practices of modern criminal defence lawyers: Alienation and its implications for access to justice' (2019) 48 (1-2), 64-89 *Common Law World Review*; Ed Cape, 'The Rise (and Fall?) of a Criminal Defence Profession' (2004) 401 *Criminal Law Review*; Hilary Sommerlad, "'I've Lost the Plot": An Everyday Story of Legal Aid Lawyers' (2001) 28(3) 355 *Journal of Law and Society*; Hilary Sommerlad, 'Reflections on the Reconfiguration of Access to Justice' (2008) 15(3) 178 *International Journal of the Legal Profession*; James Thornton, 'The Way in Which Fee Reductions Influence Legal Aid Criminal Defence Lawyer Work: Insights from a Qualitative Study' (2019) 46(4) 559-585 *Journal of Law and Society* <https://doi.org/10.1111/jols.12179>; James Thornton, 'Is publicly funded criminal defence sustainable? Legal aid cuts, morale, retention and recruitment in the English criminal law professions' (2020) 40, 230-254 *Legal Studies*; Luke Marsh, 'Leveson's narrow pursuit of justice: Efficiency and outcomes in the criminal process' (2016) 45(1) 51-67 *Common Law World Review* <https://doi.org/10.1177/1473779515625386>; Roxanna Dehaghani and Daniel Newman, "'We're vulnerable too": an (alternative) analysis of vulnerability within English criminal legal aid and police custody' (2017) 7(6) *Oñati Socio-Legal Series*; Carolyn Hoyle and Mai Sato, 'Reasons to Doubt: Wrongful Convictions and the Criminal Cases Review Commission' (Oxford University Press 2019).

⁶⁹ For discussion see: Mike McConville and Luke Marsh (2014); Lucy Welsh, 'Access to Justice in Magistrates' Courts: A Study of Defendant Marginalisation' (Bloomsbury Publishing 2022); Gormely (2022); Mulcahy (1994); Jill Peay and Elaine Player, 'Pleading Guilty: Why Vulnerability Matters' (2018) 81(6) *The Modern Law Review*.

⁷⁰ Rebecca Helm, 'Conviction by Consent? Vulnerability, Autonomy and Conviction by Guilty Plea' (2019) 83(2) 161 *Journal of Criminal Law*; Luke Marsh (2016); Peay and Player (2018).

⁷¹ McConville and Marsh (2014); Andrew Ashworth and Lucia Zedner, 'Defending the Criminal Law: Reflections on the Changing Character of Crime, Procedure, and Sanctions' (2007) 2(1) *Criminal Law and Philosophy*.

The second associated view in the literature further queries the system's supposed 'golden thread' of innocent until proven guilty.⁷² Courts, prosecutors, and defence lawyers are expected to internalise this principle in their professional ethics and practice. Defence lawyers, in particular, hold themselves out as having a duty to "promote and protect fearlessly and by all proper and lawful means his[their] lay client's best interest,"⁷³ helping uphold the presumption of innocence and avoid miscarriages of justice.⁷⁴

Critics have suggested, often based on detailed observation, that claims of zealous defence are too often belied by the actual practice of criminal lawyers: practitioner culture,⁷⁵ dynamics in court, and the client-lawyer relationship, they suggest, mean that clients are too often treated with a disdain associated with their assumed guilt, especially when dealing with clients of low socio-economic status and others who are unable to fund defences privately.⁷⁶

Some academic research suggests that lawyers routinely process clients towards a guilty plea, whether or not the evidence and the client's instructions fit with that approach.⁷⁷ The circumstances in which bargaining takes place have been found to be concerning, with process norms and time

⁷² *Woolmington v DPP* [1935] UKHL 1.

⁷³ Blake and Ashworth (2004) 169.

⁷⁴ Tom Smith, 'The "quiet revolution" in criminal defence: how the zealous advocate slipped into the shadow' (2013) 20(1) 111 *International Journal of the Legal Profession*; Cyrus Tata, 'In the interests of clients or commerce? Legal Aid, Supply, Demand and 'ethical indeterminacy' in criminal defence work' (2007) 34, 489-519 *Journal of Law and Society*.

⁷⁵ Within any profession, there is no one homogenous 'culture,' and multiple cultures can exist at any one time, including sub-cultures that can emerge across different areas within the same profession – for discussion see: Elizabeth Chambliss, 'Measuring law firm culture' (2010) 52 *Special Issue Law Firms, Legal Culture, and Legal Practice, Studies in Law, Politics, and Society*, Emerald Group Publishing Limited 1; Emma Cooke, 'The Working Culture of Legal Aid Lawyers: Developing a 'Shared Orientation Model'' (2022) 31(5) *Social & Legal Studies* 704.

⁷⁶ Mike McConville et al., *Standing Accused, The Organisation and Practices of Criminal Defence Lawyers in Britain* (Oxford: Clarendon Press, 1994); Blake and Ashworth (2004); Mulcahy (1994); Daniel Newman, 'Still standing accused: addressing the gap between work and talk in firms of criminal defence lawyers' (2012) 3 *International Journal of the Legal Profession*; Lucy Welsh, 'Informality in magistrates' courts as a barrier to participation' (2023) 74 *International Journal of Law, Crime and Justice*; James Thornton, 'Lessons from poor lawyering in England and Wales: Individual fault and external pressures, in *Poor Defence Lawyering in Criminal Proceedings*' (2025) (eds) Ashlee Beazley, Michele Panzavolta, Andrew Sanders.

⁷⁷ For discussion see: Baldwin and McConville (1979); McConville and Marsh (2014); Luke Marsh, 'A portrait of guilt from England and Wales: defending against state-induced pleas' (2024) in eds. Langer, McConville and Marsh, *Research Handbook on Plea Bargaining and Criminal Justice*; Horne (2016); Gormley (2022).

and financial pressures taking precedent over concerns of justice.⁷⁸ This has been argued to compromise the principle of ‘equality of arms’ and the integrity and legitimacy of the system. Marsh explains:

“decision-making on plea is far from ‘voluntary’, defendants weighing in the balance, a level of trust in their lawyer at a stage when their relationship is at its most undeveloped, with preliminary advice made when disclosure is at its thinnest, as against guilty-plea incentives which are at their highest and periods of detention as untried persons in worsening conditions.”⁷⁹

A variety of reasons are suggested for this. One core theme in the literature suggests it is the strain of ongoing legal aid cuts.⁸⁰ Lawyers are said to have to do the “bare minimum” to survive.⁸¹ “you either do the job properly and lose money or you don’t do the job properly.”⁸² Inadequate for, or inimical to, the provision of zealous defence,⁸³ an ever-increasing workload and low

⁷⁸ See for discussion: Mary E Vogel, ‘Plea bargaining: a misreading of the common law in modernity’ (2024) in Research Handbook on Plea Bargaining and Criminal Justice, eds Langer, McConville and Marsh; Mauricio Duce, ‘Plea bargaining and the risk of wrongful convictions: a comparative overview’ (2025) in eds. Langer and others Research Handbook on Plea Bargaining and Criminal Justice; Ed Johnston, ‘The adversarial defence lawyer: Myths, disclosure and efficiency—A contemporary analysis of the role in the era of the Criminal Procedure Rules’ (2020) 24(1) 35–58 International Journal of Evidence & Proof; Newman (2012); Horne (2016).

⁷⁹ Luke Marsh (2016) 74. See also: The Rt Hon Sir Brian Leveson Review of Efficiency in Criminal Proceedings (2015) <https://www.judiciary.uk/wp-content/uploads/2015/01/review-of-efficiency-in-criminal-proceedings-20151.pdf>; Richard Nobles and David Schiff, ‘Criminal Justice Unhinged: The Challenge of Guilty Pleas’ (2019) 39(1) Oxford Journal of Legal Studies.

⁸⁰ For discussion see: Sir Christopher Bellamy (2021); Paul Willey, ‘Trials in absentia and the cuts to legal aid: a deadly combination?’ (2014) 78(6) 486–510 The Journal of Criminal Law <https://doi.org/10.1177/0022018314557412>; Amy Clarke and Lucy Welsh, “F**k this game ... I’m off”: financial and emotional factors in declining legal representation in miscarriage of justice cases’ (2022) 49(3) Journal of Law and Society; Tom Smith, ‘Trust, choice and money: why the legal aid reform “u-turn” is essential for effective criminal defence’ (2013) 11 Criminal Law Review; Tom Smith, “Justice For Sale’: An Empirical Examination of the Attitudes of Criminal Defence Lawyers Towards Legal Aid Reform’ (2014) 6, 14–40 Plymouth Law and Criminal Justice Review.

By 2019/20 there was “a decline [in the budget] in real terms of around 43% since 2004/5” (Bellamy, 2021, 5).

⁸¹ James Thornton (2019) 580.

⁸² Thornton (2020) 235; see also: Lucy Welsh, ‘The Effects of Changes to Legal Aid on Lawyers’ Professional Identity and Behaviour in Summary Criminal Cases: A Case Study’ (2017) 44(4) 559 Journal of Law and Society.

⁸³ See: Bellamy Review (2021, 58–59): “A consistent theme of the evidence from those working in solicitors’ firms was that they often felt under pressure to do the bare minimum, when it would have been in the client’s best interests to spend more time on the case... The evidence to the Review is that working long hours and and/or through the weekends is a principal route to survival in a criminal legal aid firm.”

remuneration, has generated protest campaigns and walk-outs,⁸⁴ alongside predictions that “the criminal bar will die out within 10 years if the present rate of attrition continues.”⁸⁵

Low rates, and fixed fee controls,⁸⁶ have been found to incentivise “corner-cutting.”⁸⁷ The Bellamy report into the future of criminal legal aid stressed concerns about the standard and quality of lawyering, the client-lawyer relationship, and morale within the profession.⁸⁸ Others have suggested burn-out, dehumanisation, and alienation among defence lawyers, which can “lead to base standards of justice.”⁸⁹ Thornton explains, “the problem is both that the field does not accommodate (let alone encourage) lawyers who put their concerns about quality above concerns about finance.”⁹⁰ And that, in many instances, this environment actually “rewards” what can be described as “poor practice.”⁹¹

Another stream in the research suggests lawyers are generally socialised into the view that almost all clients are guilty and so do not merit a robust defence.⁹² Though now dated, McConville et al.’s work found that some lawyers were not committed to their clients or their interests, held clients in a low regard, and felt they were undeserving of their service.⁹³ This contributed to significant failures on the part of defence lawyers. More

⁸⁴ See: Bellamy (2021); Marsh (2024); Owen Bowcott, ‘Barristers vote to join solicitors’ legal aid protest’ (15 July 2015) *The Guardian*

<https://www.theguardian.com/law/2015/jul/15/barristers-vote-to-join-solicitors-legal-aid-protest>.

⁸⁵ Baksi (2022).

⁸⁶ Cyrus Tata and Frank Stephen, “‘Swings and roundabouts’: Do changes to the structure of legal aid remuneration make a real difference to criminal case management and case outcomes?” (2006) 722 *Criminal Law Review*; Laura C.H. Hoyano, ‘What is Balanced on the Scales of Justice? In Search of the Essence of the Right to a Fair Trial’ (2014) 1(4) *Criminal Law Review*; Sommerlad (2001).

⁸⁷ Blake and Ashworth (2004) 187.

⁸⁸ Sir Christopher Bellamy (2021).

⁸⁹ Newman and Welsh (2019) 66.

⁹⁰ Thornton (2019).

⁹¹ Thornton (2019) 575.

⁹² For discussion see: Mike McConville et al. (1994); Johnston (2020); Newman (2012); Blake and Ashworth (2004) 169; Mulcahy (1994).

⁹³ McConville et al. (1994).

recent work supports these findings.⁹⁴ This is not to say that all defence lawyers hold these views,⁹⁵ but evidence of a problem persists. This plus the justice system's powerful preference for guilty pleas leads or contributes to defences that tend towards the routine processing of defendants on the assumption that they are guilty. The censure and punishment that criminal justice threatens, and the power imbalances between defendants and prosecutors, make the apparent barriers to and claimed abdication of zealous defence particularly concerning.⁹⁶

Put another way, defendants "whole life chances may depend on the quality of the advice and representation they receive from their lawyer."⁹⁷ The Criminal court statistics quarterly April to June 2025, show "the guilty plea rate was 61%, broadly in line with levels seen since the start of 2023 but slightly below the rate seen in earlier periods" in England and Wales.⁹⁸ Risks of wrongful conviction via guilty plea are less well studied in the UK than the US,⁹⁹ in spite of relatively substantial evidence since the 1970's demonstrating false guilty pleas from factually *innocent* defendants have

⁹⁴ See for example: Mulcahy (1994); Report of the Royal Commission on Criminal Justice (1993); Newman (2012). See also: Mike McConville and Luke Marsh, 'Lowering the Bar' (2014) 87-126 in 'Criminal Judges' for discussion on structural and policy changes argued to have an influence on how the legal profession view defendants (e.g. the guilty/innocent matrix set up by Auld, *Turner*, *Goodyear*, *Crown Court Study* findings). For broader discussion with defence lawyers see: Ashlee Beazley, 'Take (what they say) with a pinch of salt: Engaging in Empirical Research to Understand the Parameters of the 'Quality' in 'Poor-Quality Defence Lawyering' (2022) *Journal of Legal Research Methodology* <https://doi.org/10.19164/jlrm.v2i1.1289>. For some views expressed regarding assumptions of clients who are "probably guilty," see: Thornton (2019) 576.

⁹⁵ Cf. Max Travers, 'The Reality of Law: Work and Talk in a Firm of Criminal Lawyers' (Dartmouth Publishing Co Ltd 1997).

⁹⁶ Smith (2013); Blake and Ashworth (2004); Horne (2013); Ed Johnston and Marianne Lochs, 'Shifting Systems: A Comparison of the Role of the Defence Lawyer in England and Wales and the Netherlands' (2025) 84(4) *The Journal of Criminal Law*; for discussion in the US context see: Rachel E Barkow, 'Separation of Powers and the Criminal Law' (2006) 58(4) 989, 992 *Stanford Law Review*.

⁹⁷ Bellamy (2021, 45); Cf. Ashlee Beazley, Michele Panzavolta and Andrew Sanders eds., 'Poor Defence Lawyering in Criminal Proceedings: A Comparative View' (2025).

⁹⁸ Ministry of Justice Court Statistics 2025 (<https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-april-to-june-2025/criminal-court-statistics-quarterly-april-to-june-2025>). The 2023/2024 Report recorded that the Crown Prosecution Service (CPS) brought just under 420,000 prosecutions, with four in every five cases leading to a guilty plea or verdict (p.6). The CPS also stated in this report: "This year we welcomed the reintroduction of the Criminal Justice Board (CJB). We have fully engaged in its work to tackle outstanding court caseloads, including the exploration of levers to encourage early guilty pleas" (p.26) – see: <https://www.cps.gov.uk/sites/default/files/documents/publications/CPS-Annual-Report-2023-2024.pdf>.

⁹⁹ Helm (2019).

been occurring.¹⁰⁰ Whilst defence lawyers pivotal influence on plea is recognised in guidelines and statutes,¹⁰¹ Horne has suggested formal standards are inadequate.¹⁰² As Blake and Ashworth explain:

“...even an innocent defendant might change plea if told by an ‘expert’ that conviction on a not guilty plea is probable, and if informed of the possibility of a charge-reduction and the substantial discount for pleading guilty.”¹⁰³

The criminal justice system tends to assume that defence representation protects defendants against “feeling coerced into making non-consensual decisions and ensure access to justice,” yet, it may be difficult for lawyers to perform this role given the compelling incentives to plead guilty that can be present in many cases.¹⁰⁴ If the critics are right, inadequate defence representation and routine encouragement of pleas may exacerbate this problem.

¹⁰⁰ Rebecca Helm, ‘Wrongful Conviction in England and Wales: An Assessment of Successful Appeals and Key Contributors’ (2022) 3(3) *The Wrongful Conviction Law Review*; Rebecca K Helm, ‘The anatomy of factual error miscarriages of justice in England and Wales: A fifty year review’ (2021) 5 *Crim LR* 351; Nadine M Smit, Ruth M Morgan and David A Lagnado, ‘A systematic analysis of misleading evidence in unsafe rulings in England and Wales’ (2018) 58(2) 128 *Science and Justice*; Dianne L. Martin, ‘Lessons about Justice from the Laboratory of Wrongful Convictions: Tunnel Vision, the Construction of Guilt and Informer Evidence’ (2002) 70, 847 *UMKC L Rev*; Hoyle and Sato (2019).

¹⁰¹ McConville and others (1994) 9; Section 144 of Criminal Justice Act 2003; Sentencing Guidelines Council (2007).

¹⁰² Horne (2013).

¹⁰³ Blake and Ashworth (2004) 179–180.

¹⁰⁴ Helm (2019) 164 – for discussion see: Marsh (2024); Benjamin Newman, ‘Plea Bargaining with Wrong Reasons: Coercive Plea-Offers and Responding to the Wrong Kind of Reason’ (2024) 18, 369–393 *Criminal Law, Philosophy* <https://doi.org/10.1007/s11572-023-09680-w>; Horne (2013); Lucy Welsh and Matt Howard, ‘Standardization and the Production of Justice in Summary Criminal Courts: A Post-Human Analysis’ (2018) 28(6) 774–793 *Social & Legal Studies* <https://doi.org/10.1177/0964663918792725>.