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# Wrongful Conviction in England and Wales: An Assessment of Successful Appeals and Key Contributors

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Article abstract

This paper presents an analysis of 88 criminal convictions that have since been quashed on the basis of error of fact (wrongful convictions) that have occurred in England and Wales since 2007, in the context of wider set of 389 wrongful convictions that have occurred in England and Wales since 1970. Based on this analysis, three key contributors of concern are identified as having been influential in leading to wrongful convictions recently - digital evidence, guilty pleas, and misleading testimony. Cases involving each of these factors are discussed, including cases from the Post Office Scandal, which make up many of the identified wrongful convictions during this period. In considering each factor, failings in the criminal justice system that leave defendants vulnerable to wrongful conviction are discussed. The paper concludes with brief initial suggestions for reform to provide greater protection against highlighted vulnerabilities.

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**Wrongful Conviction in England and Wales:  
An Assessment of Successful Appeals and Key Contributors**

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*This paper presents an analysis of 88 criminal convictions that have since been quashed on the basis of error of fact (wrongful convictions) that have occurred in England and Wales since 2007, in the context of a wider set of 389 wrongful convictions that have occurred in England and Wales since 1970. Based on this analysis, three key contributors of concern are identified as having been influential in leading to wrongful convictions recently - digital evidence, guilty pleas, and misleading testimony. Cases involving each of these factors are discussed, including cases from the Post Office Scandal, which make up many of the identified wrongful convictions during this period. In considering each factor, failings in the criminal justice system that leave defendants vulnerable to wrongful conviction are discussed. The paper concludes with brief initial suggestions for reform to provide greater protection against highlighted vulnerabilities.*

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## I Introduction

### A. Setting the Scene: Criminal Appeals in England and Wales

In England and Wales, a significant number of recognised wrongful convictions demonstrate the potential for factually innocent people to be convicted of crimes.<sup>1</sup> Some existing work has analysed potential causes of these wrongful convictions, in order to provide

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<sup>1</sup> Sam Jones, "Long-standing miscarriages of justice in the UK" (18 Mar 2019), online: *The Guardian* <<https://www.theguardian.com/uk/2009/mar/18/miscarriages-justice-history>>.

recommendations as to how reform might stop such convictions occurring in the future.<sup>2</sup> Importantly, lessons learned from wrongful convictions have led to important reform in the criminal justice system, including the *Police and Criminal Evidence Act 1984*, which contains (among other things) procedural and evidential requirements seeking to reduce the risks of wrongful conviction caused by unreliable confession evidence, and the introduction of the Criminal Cases Review Commission (CCRC), an independent statutory body tasked with reviewing alleged wrongful convictions.<sup>3</sup> However, regulations have not addressed all causes of wrongful conviction, and developments in evidence and in the criminal justice system more broadly mean that new problems may be increasingly significant in leading to wrongful convictions. Examining factors associated with wrongful convictions today is important. This task is especially important because funding shortages in the criminal justice system have led to particularly difficult conditions in which the risk of wrongful conviction might be heightened.<sup>4</sup> In this context, several factors relating to the state of the criminal law profession and criminal justice investigations generally have been linked to reduced protections from a wrongful conviction for defendants. These include, but are not limited to, poor legal representation and lawyer-client relationships,<sup>5</sup> reductions in the rights of suspects,<sup>6</sup> and the outsourcing of forensic science work to private bodies following the closure of the government-owned forensic science service in 2012.<sup>7</sup>

In order to understand wrongful convictions in England and Wales, it is first necessary to understand the current processes by which wrongful convictions are recognised. Convictions can occur either in the magistrates' court or the Crown Court. The magistrate's court handles less serious cases, which are heard by either two or three magistrates (lay judges) or a district judge.<sup>8</sup> The Crown Court handles more serious cases, which are normally heard by a jury (who

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<sup>2</sup> See, for example, Tom Bingham, "Justice and injustice" in *The Business of Judging: Selected Essays and Speeches* (Oxford: Oxford University Press, 2000); 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 & David A Lagnado, "A systematic analysis of misleading evidence in unsafe rulings in England and Wales" (2018) 58:2 Science and Justice 128.

<sup>3</sup> *Criminal Appeals Act 1995* (UK), s 8.

<sup>4</sup> For more information, see Law Society, *Crisis in the Criminal Justice System* (2021), online: <https://www.lawsociety.org.uk/campaigns/criminal-justice/>. Rosa Ellis, "Behind the numbers: The demise of legal aid" (3 Feb 2020), online: *The Times* <<https://www.thetimes.co.uk/article/crisis-in-the-courts-behind-the-numbers-the-demise-of-legal-aid-r5zcm6dwm>>; Holly Greenwood, "Rethinking innocence projects in England and Wales: Lessons for the future" (2021) 60:4 *The Howard J of Crime & Justice* 459; Dan Newman & Jon Robins, "The demise of legal aid? Access to justice and social welfare law after austerity" (2022) 3:3 *Amicus Curiae* (2nd) 448.

<sup>5</sup> Daniel Newman, *Legal Aid Lawyers and the Quest for Justice* (Oxford: Hart Publishing, 2013).

<sup>6</sup> Rachel Gimson, "The mutable defendant: From penitent to rights-bearing and beyond" (2019) 40:1 LS 113; Mark George QC, "Everyone knows the criminal justice system is in a state of crisis" (9 Mar 2018), online: *The Justice Gap* <<https://www.thejusticegap.com/everyone-knows-criminal-justice-system-state-crisis/>>.

<sup>7</sup> Carole McCartney & Stephanie Roberts "Building institutions to address miscarriages of justice in England and Wales: mission accomplished?" (2013) 80:4 *U Cin L Rev* 1333; Tim J Wilson & Angela M C Gallop, "Criminal justice, science and the marketplace: The closure of the forensic science service in perspective" (2013) 77:1 *JCL* 56.

<sup>8</sup> See Ed Johnston & Tom Smith, *Criminal Procedure and Punishment*, 2<sup>nd</sup> ed (Hall & Stott Publishing, 2020), ch 9.

make the ultimate determination of guilt) and a judge (who makes determinations of law, and issues a sentence).<sup>9</sup> People convicted in the magistrate's court have an automatic right of appeal to the Crown Court, where the case is fully reheard by a Crown Court judge, usually sitting with two magistrates (although note that this right is restricted where the person pleaded guilty).<sup>10</sup> People convicted in the Crown Court must make an application for leave to appeal, and leave to appeal can be granted by the Court of Appeal or the original trial judge.<sup>11</sup> Permission to appeal will only be given where it is determined that the case is "reasonably arguable."<sup>12</sup> Where leave to appeal is given, the appeal is heard by the Court of Appeal. There are restrictions on the evidence that can be considered by the Court of Appeal. For example, the court will generally only consider fresh evidence where it was not or could not have been made available at the time of trial.<sup>13</sup> The appeal will be allowed where it is deemed that the conviction is "unsafe."<sup>14</sup> In cases involving new evidence, this now typically involves a determination that the new evidence would have impacted the decision of the jury.<sup>15</sup> In convictions from both the magistrates' court and the Crown Court, defendants may also apply to the CCRC where they allege they have been wrongfully convicted. The CCRC can refer cases to the Court of Appeal where it believes that there is a "real possibility" that the relevant conviction will be overturned by the Court of Appeal,<sup>16</sup> primarily where other avenues of review have been exhausted.

This appeals system has been described as successful in correcting wrongful convictions, since appeals can be allowed in relatively broad circumstances (specifically when compared with the United States).<sup>17</sup> However, it should be noted that the system also has important potential weaknesses. For example, the reluctance of the Court of Appeal to consider fresh evidence makes it hard to appeal for those who may have had evidence of innocence at the time of trial but not presented it (e.g., due to lawyer error), and the fact that the CCRC can only refer where there is a "real possibility" the Court of Appeal would overturn a conviction "handcuffs" the CCRC to rules and procedures of appeals courts.<sup>18</sup> Relatedly, it is important to recognise that an analysis of recognised wrongful convictions is "handcuffed" to current appeals procedures. Recognised cases likely represent the tip of the iceberg in terms of wrongful convictions, that tell us only the wrongful convictions that the courts are picking up on, given current procedures.

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<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*, ch 11.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> For example, *R v A (D)*, (14 Mar 2000), [unreported] CA, "the Court is in no position to declare that the appellant is innocent ... Our function is to consider whether in the light of all the material before us this conviction is unsafe" (Lord Bingham).

<sup>15</sup> *R v Pendleton*, [2001] UKHL 66.

<sup>16</sup> *Criminal Appeals Act 1995* (UK), s 13(1)(a).

<sup>17</sup> Lissa Griffin, "Correcting injustice: Studying how the United Kingdom and the United States review claims of innocence" (2009) 41 *U Toledo L Rev* 107.

<sup>18</sup> Michael Naughton, "Appeals against wrongful conviction" in Karen Corteen et al, eds, *A Companion to Crime, Harm, and Victimisation* (Bristol: Bristol University Press, 2016) 10.

## B. The Miscarriages of Justice Registry

This paper presents an analysis of data contained in a new Miscarriages of Justice Registry (the registry), documenting and categorising convictions since 1970 that have been overturned by appeals courts in England and Wales on the basis of factual error, meaning errors as to facts or their interpretation (as opposed to errors relating to law or procedure).<sup>19</sup> In this paper these cases will be referred to as wrongful convictions. Although courts in England and Wales do not make judgments about whether defendants are factually innocent (only of whether a conviction is “unsafe,” as discussed above), the hesitancy of courts to overturn convictions in the absence of compelling evidence means that the overturning of a conviction is a strong (although not conclusive) indication of factual innocence.<sup>20</sup> Cases for inclusion in the registry were identified using media searches, communications with organisations involved in work relating to wrongful conviction, searches of legal databases, and searches of the CCRC website. Cases were selected for inclusion where (i) a defendant was convicted of a criminal offence which was subsequently overturned as a result of factual error at the original trial, (ii) the conviction was not substituted for another conviction (either for a different offence or as the result of a retrial), (iii) there was at least one year between the initial conviction and the successful appeal, and (iv) sufficient information was available about the case for it to be included. All cases in the registry are categorised by cause(s) and a range of other factors, including whether the defendant initially pleaded guilty.<sup>21</sup> Note that the inclusion criteria used mean that not all convictions of innocent people will be picked up. Importantly, wrongful convictions will be missed in a number of circumstances, including where they have not been overturned by appeals courts and where there was insufficient coverage for them to be picked up by searches. It is also possible that the search picked up cases in which factually guilty defendants had their convictions overturned, although in many cases there was strong evidence of innocence. Thus, the registry should best be viewed as a set of cases involving convictions that were likely wrongful convictions, and that can provide insight into evidential factors that are likely to be associated with wrongful convictions.

This paper analyses cases in the registry as of November 11, 2022.<sup>22</sup> At that time the registry included 389 cases in England and Wales dating from convictions in 1970 to convictions in 2018 (a 48-year period). Of those 389 cases, 166 occurred between the beginning of 1970 and the end of 1994 (the first half of the period) and 223 occurred between the beginning of 1995 and the end of 2018 (the second half of the period). An existing analysis of data in the registry has highlighted the persistence of wrongful convictions despite changes in legislation, but also the changing nature of wrongful convictions over time.<sup>23</sup> For example, recognised wrongful convictions resulting from false or unreliable confessions are less common and different in nature now than they were in the 1980s, perhaps as a result of successful implementation of provisions contained in the *Police and Criminal Evidence Act* 1984.

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<sup>19</sup> “Miscarriages of Justice Registry” (nd), online: *Evidence-Based Justice Lab* <<https://evidencebasedjustice.exeter.ac.uk/miscarriages-of-justice-registry/>>.

<sup>20</sup> See Kate Malleison, “Appeals against conviction and the principle of finality” (1994) 21 *J L & Soc’y* 151.

<sup>21</sup> For more information on categorisation, see Helm, *supra* note 2.

<sup>22</sup> Note that a previous analysis of cases in the registry, with a different focus, was conducted in 2021. See Helm, *supra* note 2.

<sup>23</sup> *Ibid.*

Given the potential for the landscape of wrongful convictions to change, it is important to consider closely the factors that have been associated with wrongful convictions in the recent past that can provide insight into where interventions designed to target wrongful convictions might be targeted today. This paper focuses on wrongful convictions from the registry that have occurred over the last 15 years (since 2007) to provide insight into important factors associated with wrongful convictions in England and Wales today, particularly when compared to older cases in the registry (convictions occurring prior to 2007).

## II Current Causes and the Post Office Scandal

As noted above, the registry contains 389 wrongful convictions that have occurred in England and Wales since 1970. Eighty-eight of these convictions have occurred in the last 15 years. Note that although many of these cases ( $n=59$ ) were related to the “Post Office Scandal” (which will be discussed below), themes from the Post Office Scandal can also be seen in the broader set of registry cases. An initial examination of the 88 cases revealed four key factors associated (between them) with wrongful convictions in all but five of the cases: misleading digital evidence, false guilty pleas, inadequate disclosure, and discredited witness testimony. The prevalence of the first three of these factors was heavily influenced by Post Office Scandal cases, however each cause could also be seen in the data more broadly. A full list of cases coded by contributing factor present and with case citations, where available, is contained in Appendix 1. The remainder of this article will focus on discussing three of these factors: misleading digital forensic evidence, false guilty pleas, and discredited witness testimony.<sup>24</sup> As the Post Office Scandal contributes so significantly to the wrongful convictions during this period, it will be briefly introduced before turning to consider the factors themselves. It is important to note that appellants appealing convictions relating to the Post Office Scandal were part of a large group, and were well-mobilised (e.g., through the Justice for Sub-Postmasters Association). As a result, they were able to successfully appeal convictions in a way that individual defendants are unlikely to be able to. The cases can therefore provide insight not only into the scandal itself, but also factors that are likely present in other wrongful convictions, including those that have yet to be recognised.

### A. The Post Office Scandal

The Post Office Scandal primarily refers to action taken by the Post Office in relation to shortfalls that were flagged in the accounts of sub-postmasters and sub-postmistresses (SPMs) from around 2000 up until 2021. These shortfalls were flagged by an accounting system known as Horizon, which had been introduced by the Post Office in 1999, and which was managed by a sub-contractor, Fujitsu.<sup>25</sup> Between 2000 and 2014, more than 700 SPMs and other Post Office employees were prosecuted for offences including theft, fraud, and false accounting, on the basis of the Horizon-flagged shortfalls (an important note is that the majority

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<sup>24</sup> For discussion of issues surrounding disclosure, see Ed Johnston & Tom Smith, eds, *The Law of Disclosure: A Perennial Problem in Criminal Justice* (London: Routledge, 2022); Hannah Quirk, “The significance of culture in criminal procedure report: Why the revised disclosure scheme cannot work” (2006) 10:1 E&P 42.

<sup>25</sup> Richard Moorhead, Karen Nokes & Rebecca K Helm, “The Conduct of Horizon Prosecutions and Appeals” (2021) Post Office Project Working Paper 3 online: *Evidence-Based Justice Lab* <<https://evidencebasedjustice.exeter.ac.uk/wp-content/uploads/2022/10/WP3-Prosecutions-and-Appeals-Oct-2021-2.pdf>>.

of these prosecutions were brought by the Post Office themselves, as a private prosecutor). It is now acknowledged that the Horizon system was not reliable, meaning there was no basis for the prosecutions (at least in many cases).<sup>26</sup> In 2021, following referrals by the CCRC, the convictions of SPMs on the basis of Horizon evidence began to be overturned, and to date 81 defendants who had been convicted on the basis of Horizon evidence have been acquitted.<sup>27</sup>

Importantly, evidence suggests that there were difficulties with the Horizon system from its introduction.<sup>28</sup> SPMs raised questions about shortfalls that they did not understand but queries were not investigated or not well investigated. Even when the Post Office were clearly aware of problems with the Horizon system (e.g., a Receipts and Payments mismatch bug was explicitly discussed between the Post Office and Fujitsu) they continued to blame SPMs for these shortfalls, and to prosecute them for related offences. Concerns relating to the Horizon system were not disclosed to SPMs or their legal teams. As was stated in the first Court of Appeal judgment overturning convictions that had been based on Horizon data: “Defendants were prosecuted, convicted, and sentenced on the basis that the Horizon data must be correct, and cash must therefore be missing, when in fact there could be no confidence as to that foundation.”<sup>29</sup> In fact, failures in investigation and disclosure in the cases lead the Court of Appeal to describe prosecutions based on Horizon data as an “affront to the public conscience.”<sup>30</sup> These prosecutions are now recognised as part of the most widespread miscarriage of justice in recent history, and a compensation scheme has been put in place to support victims of these miscarriages of justice as well as those who suffered harms from investigations that did not end in criminal conviction.

Two of the key factors that allowed the wrongful convictions in the Post Office Scandal to occur were vulnerabilities created by the use of digital evidence, and defendants pleading guilty. Those factors, alongside a third, lay witness testimony, and their role in leading to wrongful convictions (including in the Post Office Scandal cases) are discussed below.

## B. Digital Evidence

Digital evidence refers to any evidence that comes from an electronic source, including evidence from mobile phones, evidence from computers (and computer systems), evidence from online platforms, cell site evidence, and evidence from closed-circuit television (CCTV). Advances in technology and the use of technology in recent years has led to increasing use of digital sources of evidence in the criminal justice system, and increasing complexity of digital evidence.<sup>31</sup> In fact, a recent empirical study suggested that digital forensic evidence is now

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<sup>26</sup> *Hamilton & Ors v Post Office Ltd*, [2021] EWCA Crim 577 [*Hamilton*].

<sup>27</sup> See, for example, *Hamilton, ibid*; *Allen & Ors v Post Office Ltd*, [2021] EWCA Crim 1874; *Hawkes & Ors v Post Office Ltd*, [2022] EWCA Crim 1197; *White & Ors v Post Office Ltd*, [2022] EWCA Crim 435; *Ambrose & Ors v Post Office Ltd*, [2021] EWCA Crim 1443.

<sup>28</sup> *Bates and Others v Post Office No. 6* [2019] EWHC 3408 (QB) at para 455; *Hamilton, supra* note 26 at para 96.

<sup>29</sup> *Hamilton, supra* note 26 at para 136.

<sup>30</sup> *Ibid* at para 137.

<sup>31</sup> See, for example, Rick Muir and Stephen Walcott, 2021. *Unleashing the value of digital forensics* (London: The Police Foundation, 2021), online:

<https://www.police-foundation.org.uk/publication/unleashing-the-value-of-digital-forensics/>;

Eoghan Casey, “The chequered past and risky future of digital forensics” (2019) 51:6 AJFS 649; Jan

used more often than non-digital forensic evidence, and that mobile phone evidence is now the most commonly used forensic evidence (with defence practitioner participants reporting its use by the prosecution in over 50% of their caseload).<sup>32</sup> As existing work has noted, increasingly the legal community must be “prepared to deal with an increase of digital evidence in both volume and complexity.”<sup>33</sup> However, case data from the registry suggests that the legal community is not prepared to deal effectively with digital evidence, and highlights ways in which the use of digital evidence make defendants vulnerable to wrongful conviction. Registry cases suggest a shift from more traditional forensic evidence (including medical, biological, chemical, and feature comparison) driving the majority of identified wrongful convictions in this area pre-2007, to digital evidence driving the majority of identified wrongful convictions in this area post-2007.

In terms of convictions occurring prior to 2007, the registry contains 79 cases classed as involving false or misleading forensic evidence. The majority of these cases involved medical, chemical, or biological evidence. Four cases (the cases of Mark Dallagher, Joseph Ottoo, Sirfraz Ahmed, and Mark Kempster) involved feature comparison evidence. Only one non Post Office case, the case of Aaron Bacchus, involved digital evidence.<sup>34</sup> In that case, Mr Bacchus was convicted of robbery after a group of men entered a woman’s flat through a window and stole property from her. There was CCTV evidence showing the arrival of five men at the property, and the Crown Prosecution Service relied on expert evidence comparing this CCTV with footage of other robberies at which Mr Bacchus was present. On appeal, the prosecution conceded that this comparison was unreliable, and the conviction was overturned.

In terms of convictions occurring post 2007, the registry contains 65 cases classed as involving false or misleading forensic evidence. Excluding the Post Office Scandal cases (which represent 59 of the cases in this area, all of which involved digital evidence) the registry contains 6 cases classed as involving false or misleading forensic evidence, three (50%) of which involved digital evidence (two of the other cases involved medical evidence and the final case involved ballistics evidence). Examining the Post Office Scandal cases, and these three additional cases involving digital evidence, alongside relevant commentary, can provide insight into ways in which the utilisation of digital evidence may create vulnerabilities to wrongful conviction.

Digital evidence is often seen as objective and trustworthy evidence, and thus might be seen as sufficient to substantiate a conviction without significant amounts of other evidence, potentially due to beliefs that technology is more reliable and objective than it actually is in practice. This trust in digital evidence can be seen relating to computer evidence in the Law Commission recommendation that computers should be presumed to have operated correctly unless there is explicit evidence to the contrary (which commentary suggests is important in current legal proceedings).<sup>35</sup> In the Post Office cases, data from the Horizon computer system

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Collie, “Digital forensic evidence—Flaws in the criminal justice system” (2018) 289 *Forensic Science International* 154.

<sup>32</sup> Dana Wilson-Kovaks, and Rebecca K Helm, “Digital evidence in defence practice: Prevalence, challenges, and expertise” (in preparation).

<sup>33</sup> Hans Henseler and Sophie van Loenhout, “Educating judges, prosecutors and lawyers in the use of digital forensic experts” (2018) 24 *Digital Investigation*, March Supplement S76.

<sup>34</sup> See *R v Aaron Bacchus* [2004] EWCA Crim 1756.

<sup>35</sup> Peter B Ladkin, Bev Littlewood, Harold Thimbleby, and Martyn Thomas CBE, “The law commission presumption concerning the dependability of computer evidence” (2020) 17 *DE & ESLR* 1.

was seen as sufficient for prosecutors to pursue criminal charges against SPMs, despite the fact that, as the Court of Appeal noted in *Hamilton*, "...there was no proof of an actual loss as opposed to a Horizon-generated shortfall."<sup>36</sup> Although many SPMs pleaded guilty, this evidence from Horizon was also seen as sufficient by judges and jurors to convict SPMs in some of the cases that did go to trial despite conflicting with evidence from SPMs. This bias towards believing computer systems even where the evidence they provide contradicts accounts given by humans has been described as *user error bias*, and also as a *dangerous* way to approach investigations.<sup>37</sup> Importantly, the perceived objectivity and trustworthiness of digital evidence stands in contrast to the realities underlying this evidence. One recent study examining expert evaluations of the same 3GB evidence file demonstrated that digital evidence relied on in court can be inherently uncertain and prone to bias and error.<sup>38</sup> In the Post Office cases trust in digital evidence certainly did prove to be dangerous. The Horizon system was faulty, this trust was misplaced, and innocent people were convicted.

The extent to which digital evidence is prone to bias and error is made more problematic where defence teams do not effectively scrutinise digital evidence; including through accepting evidence presented by the prosecution without detecting flaws in that evidence, and not hiring opposing experts. The cases in the registry show that even in cases involving relatively simple digital evidence, defence lawyers may sometimes struggle to critique digital evidence effectively. Consider, for example, the case of Danny Kay.<sup>39</sup> Mr Kay was accused of rape. At his trial, jurors were shown Facebook messages between Mr Kay and the complainant, which were an exhibit at trial. An issue at trial was which messages had been deleted from a message thread by the complainant, and why. This issue was discussed through the examination of the complainant and defendant as witnesses, but not through scrutinising digital sources effectively to identify deleted messages. It was only after Mr Kay had been in prison for a number of years that his sister-in-law discovered that she could access an archive on his Facebook account containing further messages that had been deleted by the complainant and showed that significant and misleading impressions had been given by the complainant at trial. As a result, the conviction was overturned.

Another example of weak scrutiny of digital evidence is the case of Jodie Rana.<sup>40</sup> Ms Rana was accused of arson, and key evidence at her trial was expert evidence in the form of a report written by a cell site expert (who was not called to give evidence at trial), which was interpreted to mean that Ms Rana was within 25 meters of the scene of the crime as a result of having connected to a particular router. This was agreed expert evidence despite the fact that Ms Rana did not accept that she was this close to the scene of the crime, and despite the fact that the report was based on router marketing rather than any testing. It was only on appeal

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<sup>36</sup> *Hamilton*, *supra* note 26 at para 261.

<sup>37</sup> James Christie, "The Post Office Horizon IT scandal and the presumption of the dependability of computer evidence" (2020) 17 DE & ESLR 49.

<sup>38</sup> Nina Sunde and Itiel Dror, "A hierarchy of expert performance applied to digital forensics: Reliability and bias ability in digital forensics decision making" (2021) 37:1 Forensic Science International: Digital Investigation 301175. See also Jon Robins, "Digital forensic evidence relied upon in court is prone to 'bias and error,' says report" *The Justice Gap* (12 Jul 2021), online: <<https://www.thejusticegap.com/digital-forensic-evidence-relied-upon-in-court-is-prone-to-bias-and-error-says-report/>>.

<sup>39</sup> *Kay v Regina* [2017] EWCA Crim 2214. [Kay]

<sup>40</sup> *Rana v Regina* [2018] EWCA Crim 725.

when a report was obtained by a new expert (who had conducted testing) that it became clear that Ms Rana could have been 72-160 meters away and still have had service from the router. The Court of Appeal noted that this new evidence rendered the conviction unsafe, and so quashed the conviction.<sup>41</sup>

The reasons for this lack of effective defence scrutiny may partly relate to difficult conditions in the criminal justice system following funding cuts for criminal defence work.<sup>42</sup> These cuts have put pressure on defence lawyers to process cases more quickly, something which may be particularly problematic in cases involving digital evidence due to the complexity and volume of that evidence.<sup>43</sup> In addition, because of the relatively rapid rise in the use of digital evidence, defence lawyers may not have sufficient training in scrutinising that evidence, leading to weaknesses in evaluating evidence themselves and, relatedly, in knowing when to hire an expert. A recent empirical study found that many defence lawyers did not feel that they had the technical competence to fully understand digital evidence and reported little to no training in digital evidence.<sup>44</sup> Commentators have called for more training to be offered to legal practitioners to address these deficits and improve the ability of defence lawyers to scrutinise and utilise digital evidence.<sup>45</sup>

However, it should be noted that the risks of wrongful conviction resulting from digital evidence do not entirely lie with the defence. As a result of resources and access to original digital sources, the defence can be dependent on thorough police and prosecution investigation of digital sources and on appropriate disclosure from the prosecution. Disclosure guidelines do require the police to pursue all reasonable lines of inquiry pointing towards or away from a suspect, and to disclose relevant evidence to the defence.<sup>46</sup> However, research suggests that in practice, both generally, and in the specific context of digital forensic evidence, current disclosure systems may not be effective.<sup>47</sup>

The Post Office cases demonstrate how failings in investigation and disclosure can hamper the ability of defence teams to defend their clients in cases involving digital evidence (and in cases

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<sup>41</sup> Another case in which misleading prosecution expert evidence led to wrongful conviction based on digital evidence was the case of Amilton-Nicolas Bento. In that case, an expert at trial gave evidence to suggest that CCTV footage indicated the victim was walking with a bag that was discovered in the defendant's apartment. On appeal, evidence from experts suggested this "bag" was actually a shadow on the film.

<sup>42</sup> Jon Ungoed-Thomas, "Barristers to be balloted on possible walkouts in row over legal aid rates" *The Guardian* (11 Jun 2022), online: [The Guardian](https://www.theguardian.com/law/2022/jun/11/barristers-to-be-balloted-on-possible-walk-outs-in-row-over-legal-aid-rates) <<https://www.theguardian.com/law/2022/jun/11/barristers-to-be-balloted-on-possible-walk-outs-in-row-over-legal-aid-rates>>.

<sup>43</sup> Henseler and van Loenhout, *supra* note 33.

<sup>44</sup> Wilson Kovacks et al, *supra* note 32.

<sup>45</sup> See, for example, Aaron Alva and Barbara Endicott-Popovsky, "Digital evidence education in schools of law" (2012) 7:2 *The Journal of Digital Evidence, Security and Law* 75.

<sup>46</sup> *Criminal Procedure and Investigations Act 1996* s 23(1), Code of Practice, online: <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/447967/code-of-practice-approved.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/447967/code-of-practice-approved.pdf)>.

<sup>47</sup> Quirk, *supra* note 24; Philip Anderson, Dave Sampson, and Seanpaul Gilroy, "Digital investigations: relevance and confidence in disclosure" (2021) 22 *ERA Forum Journal of the Academy of European Law* 587.

more broadly; although note failings in investigation and disclosure in the Post Office cases do not relate to the police). In those cases, ineffective investigation processes and ineffective disclosure made it extremely difficult for defence teams to identify and understand potential flaws in the Horizon system. Where problems with Horizon were reported by SPMs, through the Horizon helpline, there is evidence to suggest that Fujitsu, who managed the system, mischaracterised them as user-error rather than unexplained errors or Horizon errors. As a result, potential problems with Horizon were not recorded or examined. Where potential problems were uncovered, these were not disclosed to the defence. For example, discussions relating to a “receipts and payments mismatch bug” were not disclosed at the trial of one SPM, which took place only a matter of days after those discussions had happened.<sup>48</sup> This lack of appropriate investigation and disclosure meant that defence teams had little indication of potential problems in the system that it might have been worth pushing to investigate further.

The quality and reliability of digital evidence cannot be reliably improved only by training defence practitioners. Improvements are likely needed in the investigation and disclosure of digital evidence to facilitate effective scrutiny of that evidence, particularly where defence access to an original digital source is limited.

### C. Guilty Pleas

Guilty pleas are often equated with admissions of guilt by guilty people. When a defendant pleads guilty, that plea is effectively accepted as proof beyond a reasonable doubt of the allegations against them.<sup>49</sup> As background, in England and Wales, sentence reductions where a defendant pleads guilty are awarded by judges in line with sentencing guidelines.<sup>50</sup> These guidelines provide for a maximum of a 1/3 sentence reduction where a defendant pleads guilty at the earliest possible opportunity, which can change sentence type, for example resulting in the imposition of a community sentence when a custodial sentence would be faced if convicted at trial.<sup>51</sup> In addition, prosecutors can drop more serious charges against a defendant where the defendant agrees to plead guilty to a lesser charge.<sup>52</sup> These reductions are regulated by the Code for Crown Prosecutors.<sup>53</sup> Although these regulations do not allow for “fictional pleas,” where the plea becomes detached from the alleged behaviour,<sup>54</sup> charge reductions can still be significant in terms of reducing sentence length and type.<sup>55</sup>

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<sup>48</sup> *Hamilton*, *supra* note 26 at para 206.

<sup>49</sup> Jeremy Horder, *Ashworth's Principles of Criminal Law*, 9th ed (Oxford: Oxford University Press) 11.

<sup>50</sup> See Sentencing Council, *Reduction in Sentence for a Guilty Plea: Definitive Guideline* (2017), online: <<https://www.sentencingcouncil.org.uk/wp-content/uploads/Reduction-in-Sentence-for-Guilty-Plea-definitive-guideline-SC-Web.pdf>>.

<sup>51</sup> See *ibid* at part E.

<sup>52</sup> For more information, see Rebecca K Helm, “Constrained waiver of trial rights? Incentives to plead guilty and the right to a fair trial” (2019) 46:3 *Journal of Law and Society* 423.

<sup>53</sup> Crown Prosecution Service, *Code for Crown Prosecutors* (2018), online: <<https://www.cps.gov.uk/publication/code-crown-prosecutors>>.

<sup>54</sup> See, Thea Johnson, “Fictional Pleas” (2019). 96 *Ind LJ* 855.

<sup>55</sup> Helm, *supra* note 52.

In this context, approximately 70% of defendants plead guilty (although rates vary between the magistrate's court and Crown Court).<sup>56</sup> Research in England and Wales has shown that, despite sentence reductions awarded for guilty pleas being more modest than those offered in the USA, incentives to plead guilty are likely to be leading (and creating pressure for) innocent defendants to plead guilty.<sup>57</sup> Examining the data from the registry shows some recognised wrongful convictions in cases in which the defendant pleaded guilty, with recent evidence of significant pressures to plead guilty being provided by the Post Office Scandal cases.

Excluding the Post Office Scandal cases, the registry contains eight cases in which defendants initially pleaded guilty (involving seven convictions occurring prior to 2007, and one conviction occurring since 2007). What these cases have in common is that they involve very strong (even conclusive) evidence of actual innocence, which is seen in relatively few other cases in the registry. For example, consider the case of Michael Holliday who was convicted of robbery in 1996.<sup>58</sup> He pleaded guilty on the advice of his lawyer after having confessed while under the influence of drugs and alcohol, but his conviction was overturned on appeal when clear evidence showed that somebody else had committed the offence. In terms of post-2007 cases, the case of Thomas Smart provides another example of someone who had pleaded guilty being acquitted in the face of overwhelming evidence of innocence. Mr Smart was convicted of possessing live ammunition following a bullet keyring being found at his home.<sup>59</sup> He reported feeling “forced” to plead guilty to the crime. His conviction was quashed when the now-disbanded Government Forensic Science Service (who had conducted initial testing) admitted that their testing had been based on the wrong exhibit.

The Post Office cases, representing 54 of the 55 wrongful convictions via guilty plea in the registry since 2007, are important because the significant number of appellants involved means wrongful convictions were recognised when they may not have been otherwise, and because appellants have spoken about their experiences and reasons for pleading guilty. Of the 59 Post Office Scandal cases in the registry involving convictions since 2007 (representing about 73% of acquittals related to that scandal to date, the others having related to convictions prior to 2007), at least 54 of those convicted had initially pleaded guilty to the charges against them. Interviews with those who pleaded guilty and have now been widely recognised as innocent suggest that they often pleaded guilty because by doing so they could have charges against them (usually for theft) dropped and / or could avoid the risk of a custodial sentence. In the Post Office cases, charges of theft or fraud were frequently dropped or left to “lie on the

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<sup>56</sup> “The Disappearing Trial”, *Fair Trials International*, (2017), online:

<<https://www.fairtrials.org/app/uploads/2022/01/The-Disappearing-Trial-report.pdf>>

<sup>57</sup> See, for example, Rebecca K Helm, Roxanna Dehaghani, & Daniel Newman, “Guilty plea decisions: Moving beyond the autonomy myth”, (2022) 85:1 MLR 133; Helm, *supra* note 52; Rebecca K Helm, “Guilty pleas in children: legitimacy, vulnerability, and the need for increased protection” (2021) 48:2 Brit JL& Soc’y 179; John Baldwin and Michael McConville, *Negotiated Justice: Pressures to Plead Guilty* (London: Martin Robertson, 1977).

<sup>58</sup> *R v Michael Shaun Holliday* [2005] EWCA Crim 2388. [Holliday]

<sup>59</sup> “Forensic staff ‘knew live bullet conviction was wrong,’ court hears”, *BBC News* (2 Jul 2013), online: BBC <<https://www.bbc.co.uk/news/uk-england-merseyside-23150487>>.

file” where defendants agreed to plead guilty to false accounting.<sup>60</sup> These charge reductions as well as reductions outlined in the sentencing guidelines meant that defendants could face a custodial sentence if convicted at trial which they could avoid by pleading guilty, and thus led defendants to plead guilty despite believing they were innocent. This motivation has been described explicitly by some of those whose cases are included in the registry. David Thomas Hedges stated that he pleaded guilty due to being “petrified of the prospect of jail.” Josephine Hamilton stated that she pleaded guilty “to avoid prison.” Wendy Buffrey stated that she was advised to plead guilty “to avoid jail.”<sup>61</sup>

Importantly, the fact that many defendants in Post Office cases pleaded guilty was likely important in allowing the miscarriage of justice to become as widespread as it did. Evidence from Horizon was not fully scrutinised in court as often as it should have been, and guilty pleas enhanced the impression that users, rather than Horizon, were to blame for shortfalls. This was exacerbated by the fact that in some cases the Post Office threatened to pursue charges of theft if defendants did not agree to forego criticism of the Horizon system.<sup>62</sup> Thus, criticism of the system was stifled, further preventing wrongful convictions from coming to light.

The cases discussed here are notable due to the fact that it is difficult to appeal a conviction occurring via guilty plea in England and Wales.<sup>63</sup> The vast majority of defendants who plead guilty because of a fear of time in custody will never be able to successfully appeal their conviction, and the cases discussed are very likely representative of a much wider phenomena, as highlighted in interviews with defendants themselves who have pleaded guilty and the lawyers who have represented them.<sup>64</sup> Psycho-legal experimental work examining the plea system in England and Wales has also provided support to suggest both that innocent defendants will plead guilty and that being able to obtain a non-custodial sentence by pleading guilty when a custodial sentence will be faced at trial is a key cause triggering them to do so.<sup>65</sup>

#### D. Witness Testimony

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<sup>60</sup> Moorhead et al., *supra* note 25, pg. 16-18. For more information on why innocent people pleaded guilty in the Post Office cases see Evidence Based Justice Lab, *Post Office Plea Data* (2023), online: <<https://evidencebasedjustice.exeter.ac.uk/wp-content/uploads/2023/02/PostOfficePleaData.xlsx>>.

<sup>61</sup> Rebecca K Helm, “False Guilty Pleas and the Post Office Scandal” *Evidence Based Justice Lab Blog* (28 Apr 2021), online: <<https://evidencebasedjustice.exeter.ac.uk/false-guilty-pleas-and-the-post-office-scandal/>>

<sup>62</sup> Hamilton, *supra* note 26 at paras 116-117.

<sup>63</sup> Richard Nobles, and David Schiff, “The Supervision of Guilty Pleas by the Court of Appeal of England and Wales—Workable Relationships and Tragic Choices” (2010) 31:4 *Crim LF* 513; See also *R v Jones* [2019] EWCA Crim 1059 (para 25: ‘It is of course very rare to admit an appeal against conviction where an unambiguous guilty plea has been entered’).

<sup>64</sup> See, for example, Helm, *supra* note 52; Fair Trials International, *Young Minds Big Decisions* (2022), online: <<https://www.fairtrials.org/app/uploads/2022/10/Young-minds-big-decisions.pdf>>; “Incentivized Legal Admissions in Children” *Evidence Based Justice Lab*, (2021), online: <[https://evidencebasedjustice.exeter.ac.uk/wp-content/uploads/2021/09/ChildGuiltyPleas\\_FullReport.pdf](https://evidencebasedjustice.exeter.ac.uk/wp-content/uploads/2021/09/ChildGuiltyPleas_FullReport.pdf)>.

<sup>65</sup> Rebecca K Helm “Cognition and incentives in plea decisions: Categorical differences in outcomes as the tipping point for innocent defendants” (2022) 28:3 *Psychology, Public Policy, and Law* 344.

Another class of cases clearly apparent in data on convictions since 2007 in the registry are cases where convictions have been overturned due to the discrediting of witness evidence that was influential at trial. This factor was the most common one identified as being involved in wrongful convictions when not including the Post Office Scandal cases. The majority of these cases (n = 13) involve the discrediting of accounts provided by complainants. The remainder involve discrediting eyewitness accounts (n = 6; 5 of which involved the same crime and witness), or witness evidence that could not be categorised based on information available (n = 2). Notably, all successful appeals seem to have been based on concerns about complainant or eyewitness honesty, rather than memory accuracy.<sup>66</sup> These difficulties are unsurprising due to the significant difficulty involved in the task of determining whether a person's account is truthful and correct in the absence of independent verification (e.g., corroborating evidence). Importantly, it should be noted that the cases in the registry primarily involve relatively fortuitous events for those convicted of criminal offences, such as a complainant telling others that they made up accusations and explaining why. These types of event will not frequently occur and be reported, and as a result many wrongful convictions in this area are likely to go undetected (also note that even these events do not always conclusively indicate innocence, and so in some cases convictions may be overturned where defendants are factually guilty). In cases involving accounts provided by complainants, which will be focused on here as the larger group of cases, many of the identified wrongful convictions (n = 10) were in cases involving sexual offences. It is unsurprising that wrongful convictions turning on inaccurate assessment of complainant testimony are most common in these types of case, since they frequently require legal decision-makers to evaluate the evidence of a defendant and a complainant and to determine who is telling the truth, with little, if any, corroborating evidence (e.g., where it is agreed that sexual activity occurred between the complainant and defendant in private, and the relevant issue is consent). The fact these cases often primarily involve consideration of testimony itself is recognised by current Crown Prosecution Service guidance, which states: "Many RASSO [Rape and Serious Sexual Offences] cases will feature limited or no corroborative evidence."<sup>67</sup> Prior to the enactment of the Criminal Justice and Public Order Act 1994, there was a mandatory requirement to warn juries about the dangers of convicting on the uncorroborated evidence of complainants in sexual assault cases. This requirement was abrogated by that act.<sup>68</sup> Now Crown Prosecution Service Guidance states: "One person's word can be sufficient to provide a realistic prospect of conviction. A jury can and does convict in such cases."<sup>69</sup> It should be noted that despite the dropping of the corroboration requirement, commentary suggests that the Crown Prosecution Service are not pursuing a sufficient number of claims in these cases.<sup>70</sup> There is a significant challenge in these cases in accounting for and

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<sup>66</sup> This is in contrast to data from the US suggesting that there mistaken identity is a more common cause of wrongful conviction in sexual offence cases involving adult complainants than perjury or false allegations. See "Percentage Exoneration by Contributing Factor and Type of Crime", *National Registry of Exonerations*, online:

<<http://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx>>.

<sup>67</sup> "Rape and Sexual Offences: Applying the Code for Crown Prosecutors to Rape and Serious Sexual Offences," Crown Prosecution Service, (2021), online: <<https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-2-applying-code-crown-prosecutors-rape-and-serious>>.

<sup>68</sup> *Criminal Justice and Public Order Act*, 1994, s 32.

<sup>69</sup> Crown Prosecution Service, *supra* note 66.

<sup>70</sup> See, for example, Rajeev Syal & Alexandra Topping, "Rape victims 'systematically failed' in England and Wales, report finds" *The Guardian* (25 Feb 2022), online:

recognising the fact that the vast majority of accusations are true,<sup>71</sup> while trying to identify the minority of accusations that are false.

An important question in this context is how a jury decides whether to convict or not convict in cases where the evidence against a defendant is the account of the complainant, particularly since research suggests there are no reliable cues in testimony itself (i.e., absent corroboration) that can indicate truthfulness or accuracy.<sup>72</sup> Experimental research can provide some insight here. Recent work has found that in the absence of helpful objective cues indicating truthfulness or accuracy, people may be driven more by their perceptions of the prevalence of true and false reports, in addition to instincts and surrounding context.<sup>73</sup> Perhaps most importantly, research suggests that people generally perform very poorly (not much better than chance) in assessing whether a speaker is honest and the statement that they are making is correct.<sup>74</sup>

It is therefore unsurprising that commentary has noted that in the current system accurate complainants are not believed and guilty defendants are not convicted.<sup>75</sup> Relatedly, cases in the registry suggest that the reverse is also true (although likely less common) – deceptive complainants are believed and innocent defendants are convicted. One such case is that of Nadeed Aslam.<sup>76</sup> Mr Aslam was convicted of multiple counts of rape of his wife based on allegations made by her. On appeal, two witnesses gave evidence that the complainant had admitted to them that she had lied at the trial. One said that she had done this because she wanted to stay in the United Kingdom, contrary to Mr Aslam’s wishes. The court concluded that this new evidence suggested the accusation had been false (despite having been believed by the jury), and Mr Aslam’s conviction was overturned. Another example is the case of Omar Bryan. Mr Bryan was convicted of rape based on testimony from the complainant who claimed she had been raped by a stranger. Mr Bryan claimed that himself and the complainant knew each other and had consensual sexual intercourse. On appeal evidence showed that the complainant and Mr Bryan were not strangers (she had his telephone number saved on her

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<<https://www.theguardian.com/society/2022/feb/25/victims-systematically-failed-in-england-and-wales-report-finds>>

<sup>71</sup> Liz Kelly, Jo Lovett, & Linda Regan, *A Gap or Chasm? Attrition in Reported Rape Cases* (Home Office Research, 2005).

<sup>72</sup> See, for example, Maria Hartwig & Charles F Bond, “Why do lie catchers fail? A lens model meta-analysis of human lie judgments” (2011) 137:4 *Psychological Bulletin* 643.

<sup>73</sup> Rebecca K Helm & Bethany Grown, “Prevalence estimates as priors: Juror characteristics, perceived base rates, and verdicts in cases reliant on complainant and defendant testimony” 36:4 *Applied Cognitive Psychology* 891. More generally, see Nadia M. Brashier and Elizabeth J. Marsh, “Judging Truth” (2020) 71 *Annual Review of Psychology* 499.

<sup>74</sup> Charles F Bond Jr & Bella M DePaulo, “Accuracy of Deception Judgments” (2006) 10:3 *Personality and Social Psychology Review* 214; see also Holly K Orcutt, Gail S Goodman, A E Tobey, J M Batterman-Faunce, & S Thomas, “Detecting deception in children’s testimony: Factfinders abilities to reach the truth in open court and closed-circuit trials” (2001) 25 *Law & Hum Behav* 339.

<sup>75</sup> See, for example, Alexandra Topping & Caelainn Barr, “Revealed: Less than a third of young men prosecuted for rape are convicted” *The Guardian* (23 Sep 2018), online:

<<https://www.theguardian.com/society/2018/sep/23/revealed-less-than-a-third-of-young-men-prosecuted-for-are-convicted>>.

<sup>76</sup> *Aslam v Regina* [2014] EWCA Crim 1292. [Aslam]

phone), and that she had lied about where she had been on the day of the incident, and Mr Bryan's conviction was overturned.

Importantly, a broader look at registry cases, examining identified wrongful convictions from 1970 onwards, shows that wrongful convictions based on discredited complainant evidence in cases involving sexual offences have become significantly more common since 1994, when the Criminal Justice and Public Order Act abrogated corroboration requirements. Only eight identified wrongful convictions occurring between 1970 and 1994 were categorised as being of this type (about 5% of the total wrongful convictions during that period; note all occurred after 1980). From 1995 to 2016, 40 wrongful convictions were categorised as being of this type (about 18% of the total wrongful convictions during that period, and about 28% of wrongful convictions during that period that were not related to the Post Office Scandal). This information is not given to suggest that corroboration requirements or warnings should be introduced, but to flag the need for consideration to be given to the vulnerable minority of those accused of sexual offences who are actually innocent. While false allegations represent only a small fraction of allegations, these and other cases suggest that they do happen and that they can result in wrongful conviction. This possibility, and the associated harm that is likely to be suffered by individuals who are wrongly convicted of sexual offences in particular,<sup>77</sup> needs to be considered in debates as policy-makers seek to better handle cases involving sexual offences.<sup>78</sup>

### III Discussion and Conclusion

Examining recognised wrongful convictions can provide insight into underlying causes of convictions of the innocent and also into the types of factors that appeals courts are recognising as undermining the safety of criminal convictions. This work has highlighted three factors which appear important in contributing to wrongful convictions over the last 15 years: digital evidence, guilty pleas, and misleading lay testimony. An important question having identified these factors, is how they might realistically be addressed in the context of a criminal justice system that is in a relatively vulnerable state as the result of funding cuts,<sup>79</sup> and which is dealing with a significant case backlog.<sup>80</sup> Below are some brief suggestions intended to contribute to a discussion about how problems in each of the areas identified might begin to be targeted in relatively easy ways given this context. These suggestions are not intended to be exhaustive, or to solve any problems entirely.

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<sup>77</sup> See, for example, Naomi-Ellen Speechley and Ros Burnett, "The plausibility of being wrongly convicted for a sexual offence: Accounts from former prisoners" (2022) 3:1 WCLR 1.

<sup>78</sup> See "End-to-End Rape Review Report on Findings and Actions", *HM Government*, (2021), online: <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1001417/end-to-end-rape-review-report-with-correction-slip.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001417/end-to-end-rape-review-report-with-correction-slip.pdf)>.

<sup>79</sup> See, for example, George QC, *supra* note 6; Tom Smith & Ed Cape, "The rise and decline of criminal legal aid in England and Wales" in Asher Flynn and Jaqueline Hodgson, *Access to Justice & Legal Aid* (London: Bloomsbury, 2017).

<sup>80</sup> See, for example, Law Society, *Crown Court Backlog Increases* (2021), online: <<https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/crown-court-backlog-increases>>.

First, education has the potential to be important in increasing the ability of all participants in the legal process to effectively handle and scrutinise digital evidence. Although existing regulations require digital forensic experts providing services in the criminal justice system to be accredited,<sup>81</sup> this accreditation is only useful when lawyers are confident about when they need to retain an expert and that they can secure funding for that expert. Increased judicial scrutiny and intervention, accompanied by appropriate education, may also be helpful in identifying cases in which expert advice should have been, but was not, sought, or where possible disclosure failings are raised. The myth that digital evidence can be presumed to be objective and reliable must be dispelled for all participants in the criminal justice process.

In the case of guilty pleas, increased judicial scrutiny has the potential to provide some support to defendants feeling pressure to plead guilty. This scrutiny has the potential to be particularly important when it comes to charge reductions, currently only clearly regulated by Crown Prosecution Service guidance. Careful attention should be given to what initial charges were brought, and whether the presence of those charges undermined the voluntariness of the plea decision (although note the current threshold for a decision to be involuntary is high).<sup>82</sup> Creating easier avenues for appeal in cases where incentives to plead were strong may be one promising intervention in this area. Perhaps even more importantly, serious consideration should be given to removing the provision in the sentencing guidelines allowing a guilty plea to change the type of sentence imposed, which clearly has the potential to create pressure for innocent people to plead guilty.

The difficulties created by lay testimony, particularly in cases involving sexual offences, represent the biggest challenge, one that it is beyond the scope of this paper to meaningfully address. It is important to consider what finders of fact should be doing in such cases, given that their ability to detect lies (in both defendants and complainants) is, in reality, limited. It is also important to question how current attempts to improve investigation and prosecution in these cases can improve outcomes for complainants while also providing appropriate protections against wrongful conviction in this area.

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<sup>81</sup> Forensic Science Regulator, *Codes of Practice and Conduct for Forensic Science Providers and Practitioners in the Criminal Justice System Issue 5* (2020), online: <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/880708/Codes\\_of\\_Practice\\_and\\_Conduct\\_-\\_Issue\\_5.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/880708/Codes_of_Practice_and_Conduct_-_Issue_5.pdf)>.

<sup>82</sup> See *McKinnon v Government of the United States and Another* [2008] UKHL 59. [McKinnon]

## Appendix 1

Name	Most serious offence	Inadequate disclosure	Discredited witness testimony	Misleading digital forensic evidence	Guilty plea	Other	Neutral citation (if available)
Amilton-Nicolas Bento	Murder			X (CCTV)			
Anthony Gant*	False Accounting	X		X (computer)	X		
Bryan Tong	Sexual Assault		X (complainant)				
David Hughes*	Forgery	X		X (computer)	X		
Gail Ward*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 577
Janet Skinner*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 577
Margaret White*	False Accounting	X		X (computer)	X		[2022] EWCA Crim 435
Mohammed Aslam*	False Accounting	X		X (computer)	X		
Mohammed Rasul*	Theft	X		X (computer)	X		[2021] EWCA Crim 577
Omar Bryan	Rape		X (complainant)				[2009] EWCA Crim 2291
Abiodun Omotoso*	Theft	X		X (computer)			[2021] EWCA Crim 1443
Adam Joof	Murder	X	X (eyewitness)				[2012] EWCA Crim 1477
Alexander Peppernell	Indecent Assault		X (complainant)				[2009] EWCA Crim 1327
Antonio Christie	Murder	X	X (eyewitness)				[2012] EWCA Crim 1477
Dawn O'Connel*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 577
Gareth Jones	Sexual Assault					X	[2018] EWCA

							Crim 2816
Harjinder Butoy*	Theft	X		X (computer)			[2021] EWCA Crim 577
Janine Powell*	Theft	X		X (computer)			[2021] EWCA Crim 1874
Jasmin Schmidt	Grievous bodily Harm					X	[2009] EWCA Crim 838
Josephine Hamilton*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 577
Levi Walker	Murder	X	X (eyewitness)				[2012] EWCA Crim 1477
Michael Osborne	Murder	X	X (eyewitness)				[2012] EWCA Crim 1477
Owen Crooks	Murder	X	X (eyewitness)				[2012] EWCA Crim 1477
Pauline Stonehouse *	False Accounting	X		X (computer)	X		[2021] EWCA Crim 1874
Thomas Smart	Possessing Ammunitio n				X	X	
Barry Capon*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 577
Claire Thompson	Grievous Bodily Harm		X (other)			X	
Duranda Clarke*	Fraud	X		X (computer)	X		[2022] EWCA Crim 1197
Ian Warren*	Theft	X		X (computer)	X		[2021] EWCA Crim 577
Julian Wilson*	Fraud	X		X (computer)	X		[2021] EWCA Crim 577
Marissa Finn*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 1874

Peter Holmes*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 577
Sajid Ali	Rape		X (complainant)				
Sami Sabet*	Fraud	X		X (computer)	X		[2021] EWCA Crim 1443
Sanjeev Dhir	False Imprisonment / Kidnap					X	[2010] EWCA Crim 1939
Susan Rudkin*	Theft	X		X (computer)	X		Crown Court (No. A202000 57)
William Graham*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 577
Allison Henderson*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 577
Geoffrey Long	Sexual Assault		X (complainant)				
Greg Harding*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 1874
Jacqueline McDonald*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 577
Jerry Hosi*	Theft	X		X (computer)			[2021] EWCA Crim 1443
Julie Cleife*	Fraud	X		X (computer)	X		Crown Court (No. A202000 57)
Kashmir Gill*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 577
Nadeem Aslam	Rape		X (complainant)				[2014] EWCA Crim 1292
Nicholas Clark*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 577

Pauline Thomson*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 577
Rubina Shaheen*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 577
Scott Darlington*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 577
Seema Misra*	Theft	X		X (computer)	X		[2021] EWCA Crim 577
Siobhan Sayer*	Fraud	X		X (computer)	X		[2021] EWCA Crim 577
Timothy Brentnall*	Fraud	X		X (computer)	X		[2021] EWCA Crim 1443
Vijay Parekh*	Theft	X		X (computer)	X		[2021] EWCA Crim 577
Wendey Buffrey*	Fraud	X		X (computer)	X		[2021] EWCA Crim 577
Alison Hall*	Fraud	X		X (computer)	X		[2021] EWCA Crim 577
Damien Owen*	Theft	X		X (computer)			[2021] EWCA Crim 577
David Hedges*	Theft / Fraud	X		X (computer)	X		[2021] EWCA Crim 577
Gillian Howard*	Fraud	X		X (computer)	X		[2021] EWCA Crim 577
Gurdeep Dhale*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 1443
Hasmukh Shingadia*	Fraud	X		X (computer)	X		[2021] EWCA Crim 1443
Tim Burgess*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 577
Vipinchandra Patel*	Fraud	X		X (computer)	X		Crown Court (No. A20200057)

Amanda Barber*	Fraud	X		X (computer)	X		
Ched Evans	Rape		X (complainant)				[2016] EWCA Crim 452
Della Robinson*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 577
Jasvinder Barang*	Fraud	X		X (computer)	X		Crown Court (No. A20200057)
John Dickson*	Fraud	X		X (computer)	X		[2021] EWCA Crim 1443
Lynette Hutchings*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 577
Margery Williams*	Fraud	X		X (computer)	X		[2021] EWCA Crim 577
Norman Barber*	Fraud	X		X (computer)	X		
Robert Ambrose*	Fraud	X		X (computer)	X		[2021] EWCA Crim 1443
Robert Boyle*	Theft	X		X (computer)	X		[2022] EWCA Crim 1197
Trevor Gray	Rape		X (complainant)				
Angela Sefton*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 1874
Anne Nield*	False Accounting	X		X (computer)	X		[2021] EWCA Crim 1874
Danny Kay	Rape		X (complainant)	X (social media)			[2017] EWCA Crim 2214
Grant Allen*	Fraud	X		X (computer)	X		[2022] EWCA Crim 1197
Jamie Dixon*	False Accounting	X		X (computer)	X		[2021] EWCA

							Crim 1874
Khayyam Ishaq*	Theft	X		X (computer)	X		[2021] EWCA Crim 577
Pervinder Swarnn	Assault		X (eyewitness)				
Jodie Rana	Arson			X (cell site)			[2018] EWCA Crim 725
Frances Avis	Harrasment and Criminal Damage		X (complainant)				
Patryk Pachecka	Murder					X	
AM	Rape		X (complainant)				[2020] EWCA Crim 1202
Rajeshkuma r Mehta	Sexual Assault		X (complainant)				[2019] EWCA Crim 2332
Jonathan Price	Wounding with intent and attempting to cause grievous bodily harm		X (complainant)				[2015] EWCA Crim 2110
John Porch	Blackmail and assault		X (complainant)				[2020] EWCA Crim 1633
Adekunle Akanbi- Akinlade	Importing drugs		X (other)				[2012] EWCA Crim 2574

\*Post Office Scandal case. Note that where a case is not marked as a guilty plea case it means either that the defendant pleaded not guilty or information on plea was not available.