

Working Paper

Appeals following a Guilty Plea

The Evidence Based Justice Lab
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EVIDENCE-BASED
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THE POST OFFICE PROJECT

Ethics and justice lessons from the Horizon Scandal

Appeals Following a Guilty Plea

Author Background

[Professor Rebecca K Helm](#) is Professor of Law and Empirical Legal Studies and Director of the Evidence-Based Justice Lab at the University of Exeter, and also a current UK Research and Innovation Future Leaders Fellow. Her work combines rigorous empirical research grounded in behavioral science with more traditional legal research in order to promote the effective translation of scientific work into legal policy and practice. She has been researching guilty pleas and the cognitive mechanisms underlying guilty plea decision-making for the last ten years and in that time has uncovered significant amounts of evidence about how guilty plea systems function in practice. She is currently the academic co-chair of the Plea-Bargaining Institute, and also an author on an upcoming Scientific Review Paper of the American Psychology and Law Society relating to guilty pleas.

[Dr Sally Day](#) is a Research Fellow at the University of Exeter and a criminologist, with a profile centered on the critical examination of state-corporate and safety crimes. She uses in-depth qualitative methods to explore experiences of state corporate victimization, and is currently working on a large study examining the experience of victims of the Post Office Scandal.

[Professor Richard Moorhead](#) is a Professor of Law and Professional ethics at the University of Exeter, and an Honorary Professor of Law at UCL. He has spent his career researching lawyers and legal services, and has conducted research for the Legal Services Board, Solicitors Regulation Authority, Law Society, Civil Justice Council, Ministry of Justice and others. He is the Principal Investigator on the Post Office Project (a project seeking to draw on evidence relating to the Post Office Scandal to better understand that scandal, to change lawyers' ethics for the better, and to contribute to an improved criminal justice system) and a member of the Department of Business and Trade's Advisory Board on Horizon Compensation Schemes.

[Dr Karen Nokes](#) is a lecturer at UCL faculty of Laws. Karen harnesses insights from psychology, alongside business and management to explore the psychological processes of judgment and decision-making within organizations and institutions, with a particular interest in the professions and professional ethics.

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Executive Summary

When a defendant is convicted following a guilty plea, as opposed to a determination of guilt at a full trial, the conviction is particularly difficult to appeal. Since these convictions are based on a decision made by the defendant rather than the evidence heard at trial, provisions relating to appeal focus primarily on the quality of that decision (e.g., whether it was “voluntary”) rather than evidence. In this context, the Court of Appeal have determined that fresh evidence should only provide the basis for an appeal following a guilty plea where it is established that the appellant did not commit the offence (not just that they may not have done so).¹ This broad restrictive approach to appeal of convictions following a guilty plea is problematic in light of robust evidence suggesting that convictions via guilty plea are highly unreliable determinations of guilt, can exploit inequalities (including along lines protected under the Equalities Act, 2010) and vulnerabilities, and can be particularly unreliable in certain groups, including children.

In this paper, we examine these limitations of convictions via guilty plea, emphasize the importance of providing appropriate avenues of appeal for defendants who have pleaded guilty, and discuss how legal standards might provide these appropriate avenues (recognizing that evidence has not been tested at trial and the benefits of finality). In this analysis we draw on a significant amount of empirical work examining guilty plea decision-making including two recent projects, one involving interviews with children who have pleaded guilty and lawyers who have represented them,² and another involving interviews with victims of the Post Office Scandal.³ Using this, and other, evidence we demonstrate how important it is for the legal system to adopt a more nuanced and permissive approach to appeals following a guilty plea.

We suggest that the appeals process must account for the circumstances underlying an initial plea decision as well as the strength of evidence indicating an appellant is innocent, even where those circumstances do not undermine the legal validity of the original plea. If the circumstances in which a defendant pleaded guilty were conducive to constrained decision-making and wrongful conviction, the plea should be considered less reliable, and thus the level of evidence needed to overturn it should be lower. In cases in which a defendant did not face such

¹ See R v Tredget, [2022] EWCA Crim 108.

² See Evidence-Based Justice Lab, ‘Incentivized Legal Admissions in Children Part 2: Guilty Pleas’ (2021), available at https://evidencebasedjustice.exeter.ac.uk/wp-content/uploads/2021/09/ChildGuiltyPleas_FullReport.pdf.

³ We are in the process of final analysis of interview data with Post Office defendants. That analysis will consider issues about the difficulties people face when dealing with the legal system, and powerful opponents, when they have low or misguided assumptions about how the criminal justice process works and what the implications of pleas are for their immediate and long-term future. Victims of the scandal had life changing decisions to take from positions of sometimes extreme vulnerability socially and mentally, and were provided with varied levels of support and guidance from their own lawyers. The fragility and contingency of such decisions will be a focus; Moorhead et al., ‘Experiences of Plea and Criminal Defence’ *forthcoming*.

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constraint in their initial decision-making, maintaining a high bar for appeal following conviction is more appropriate. Such an approach has the advantage of protecting the finality of guilty pleas while also recognizing the important, and predictable, categories of case in which significant injustice can arise through the guilty plea process.

Limitations of Convictions Via Guilty Plea

Convictions via guilty plea are sometimes conceptualized as voluntary admissions by guilty defendants against their own self-interests, and worthy of reward through a sentence discount.⁴ However, in reality guilty pleas are not admissions, they are tactical decisions based on a range of considerations, which can include perceived probability of conviction (and relatedly perceived evidence strength), charge and sentence discounts, the time and cost involved in trial, and personal circumstances.⁵ When defendants are convicted via guilty plea they are convicted on the basis of the decision of one person, who is in a vulnerable position, who is facing significant incentives to convict, and who often knows relatively little about the evidence against them (in spite of legal advice). As a result, guilty pleas are likely to be a leading cause of wrongful conviction, and also to exacerbate inequality and vulnerability in the justice system, with a particularly negative impact on child defendants. Broad resistance to appeal following a guilty plea means that these extremely important undesirable outcomes are very rarely addressed.

A. Wrongful Conviction

Pressures to plead guilty have the potential to create a disconnect between factual guilt (and, relatedly, evidence strength) and convictions. In some cases, incentives to plead guilty leave innocent defendants feeling that they have no choice but to plead guilty. This is perhaps most obviously the case when, as a result of sentencing discounts (under the Definitive Guideline on Reduction in Sentence for a Guilty Plea)⁶ or charge reductions⁷ a defendant who faces a custodial sentence at trial is

⁴ E.g., Julian Roberts and Netanel Dagan, 'Rewarding Virtue: An Ethical Defence of Plea-Based Sentence Reductions' in Roberts and Ryberg (ed), *Sentencing the Self Convicted* (Hart, 2023).

⁵ See, for example, Rebecca K. Helm, Roxanna Dehaghani, and Daniel Newman, 'Guilty Plea Decisions: Moving Beyond the Autonomy Myth' (2022) 85(1) *Modern Law Review* 133; Rebecca K. Helm, 'The Psychology of Plea Decisions' (2024) *Annual Review of Law and Social Science* 20; Allison Redlich, Miko Wilford, and Shawn Bushway, 'Understanding Guilty Pleas Through the Lens of Social Science' (2017) 23(4) *Psychology, Public Policy, and Law* 458.

⁶ Sentencing Council, 'Reduction in Sentence for a Guilty Plea' <https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/reduction-in-sentence-for-a-guilty-plea-first-hearing-on-or-after-1-june-2017/>, and <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/reduction-in-sentence-for-a-guilty-plea-first-hearing-on-or-after-1-june-2017/>.

⁷ Regulated (in the case of public prosecutions) by the Code for Crown Prosecutors, see Crown Prosecution Service, 'Code for Crown Prosecutors' (2018), at <https://www.cps.gov.uk/publication/code-crown-prosecutors>.

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likely to receive a community sentence if they plead guilty.⁸ In this context going to trial involves risking custody, a risk that many do not feel able to take. As a result, defendants are left feeling that they have no choice but to plead guilty.

This reality was clearly demonstrated in the recent Post Office Scandal cases (which will be examined here for illustrative purposes), in which many of the sub-postmasters and mistresses who have now been recognized as innocent initially pleaded guilty. Most frequently in those cases, charges of theft or fraud were dropped or “left to lie on the file” where defendants pleaded guilty to false accounting. These reductions meant that defendants would often have to risk a custodial sentence by going to trial, which they could avoid by pleading guilty. This reality left many sub-postmasters and mistresses feeling that they had no choice but to plead guilty. The following are illustrative quotes taken from the Human Impact Hearings of the current Post Office Inquiry:

- *“I pleaded guilty as I felt I had no option ... I was terrified that I would end up in prison. It was a feeling of sheer terror⁹.”*
- *“I was petrified, I didn’t want to do anything that might cause me to go to prison.¹⁰”*
- *“I felt extremely pressurized and like I had no choice but to plead guilty.¹¹”*

In these circumstances not only did defendants plead guilty despite being innocent, they were consistently advised by their lawyers to do so. Many victims of the scandal were initially adamant that they would not plead guilty but were convinced by lawyers that they should do so (regardless of factual guilt). The following are illustrative accounts given by sub-postmasters.

- *“The Post Office barrister said that they would drop the Theft charge if I accepted the lesser charge of False Accounting. I had no choice but to go with this...I was told by the Barrister that it couldn’t go to a full trial under*

⁸ 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. Relatedly, similar pressures may be felt where the discount creates a situation in which a custodial sentence that would not otherwise be suspendable will become suspendable.

⁹ David Thomas Hedges, ‘Post Office Horizon Inquiry Written Statement’ available at <https://www.postofficehorizoninquiry.org.uk/evidence/witn01300100-david-thomas-hedges-witness-statement>.

¹⁰ Sami Sabet, ‘Post Office Horizon Inquiry Written Statement’ available at <https://www.postofficehorizoninquiry.org.uk/evidence/witn01820100-sami-sabet-witness-statement>.

¹¹ Vipinchandra Patel, ‘Post Office Horizon Inquiry Written Statement’ available at <https://www.postofficehorizoninquiry.org.uk/evidence/witn01880100-vipinchandra-patel-witness-statement>.

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legal aid with me having the legal representation that I required to fight the case...the barrister simply said that there was little alternative.¹²

- *“They then dropped the theft charge but said he would go to prison unless he pleaded guilty to False Accounting. The Barrister said “you cannot fight them” and recommended pleading guilty.*¹³”
- *“My solicitor and barrister provided me with legal advice and advised me to take a plea bargain of false accounting with the Post Office dropping the theft charge. I felt pressurised into accepting this. I could not face going to prison for something that I had not done...With the prospect of a custodial sentence hanging over me I felt I had no choice.*¹⁴”

In some cases, sub-postmasters felt they had no choice but to follow the professional advice they were being given (and sometimes did not really understand the implications of pleading guilty). However, more broadly these cases underscore the point that pleading guilty can be the only realistic (or the only seemingly realistic) option even for innocent people. This advice from lawyers reflects the fact that, given incentives to plead guilty and weaknesses in the criminal defence system, pleading guilty can be only real option for a defendant, regardless of factual guilt. An important note in this regard is that the cases against the sub-postmasters and mistresses in respect of charges of theft were weak. In fact, some evidence suggests that the prosecution knew that there was insufficient evidence to support a charge of theft.¹⁵ These examples cannot be explained away as relatively isolated examples of overwhelmingly strong cases against innocent people.

The Post Office cases also demonstrate other pressures that can lead innocent people to plead guilty (that are far less clearly regulated) and, importantly, can leave them feeling that they have no realistic choice but to do so. Below are two examples:

- *“I was told by the Post Office that if I pleaded guilty to*

¹² Hughie Noel Thomas, ‘Post Office Horizon Inquiry Written Statement’ available at <https://www.postofficehorizoninquiry.org.uk/evidence/witn01620100-hughie-noel-thomas-witness-statement>.

¹³ Karen Wilson, on behalf of the late Julian Wilson, ‘Post Office Horizon Inquiry Written Statement’ available at <https://www.postofficehorizoninquiry.org.uk/evidence/witn01680100-karen-wilson-first-witness-statement>.

¹⁴ Allison Henderson, ‘Post Office Horizon Inquiry Written Statement’ available at <https://www.postofficehorizoninquiry.org.uk/evidence/witn01460100-allison-henderson-witness-statement>.

¹⁵ Evidence Based Justice Lab, ‘Working Paper 3: Post Office Prosecution and Appeals,’ available at <https://evidencebasedjustice.exeter.ac.uk/wp-content/uploads/2022/10/WP3-Prosecutions-and-Appeals-Oct-2021-2.pdf>, 13-14.

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*false accounting, they would not pursue me for the money.*¹⁶

- *“I was told if I pleaded guilty, they would drop the charge against my wife.”*¹⁷

It is crucial to note that these pressures are not confined to the Post Office Scandal cases. To give another example, Thomas Smart described feeling “forced” to plead guilty after a novelty bullet keyring was found at his house and incorrectly classified as a live round by the government’s forensic science service (his conviction was later quashed after the service admitted that the wrong exhibit had been tested).¹⁸ More broadly, charge discounts (even those that appear modest such as a reduction from a section 18 charge under the Offences Against the Person Act 1861 to a section 20 charge under the same act) can create significant sentence differentials (in the Offences Against the Person Act example, this discount can change the maximum sentence a defendant can receive from life in prison to five years in prison), including changing the type of sentence that is imposed on a defendant.¹⁹

Another important note in this regard is that these plea offers are, at least sometimes, made on the morning of a criminal trial to defendants who are terrified, frightened, and desperate. These conditions are not conducive to the exercise of defendant autonomy, which requires not only the ability to make a choice but also conditions that promote empowerment and safety to make that choice in an appropriate way.²⁰ However, in situations involving compelling sentence differentials (particularly those involving changes in sentence type), even members of the general public in the UK (protected from the psychological impacts of a real trial) acknowledge they would plead guilty when innocent and would no longer be driven in their decision-making by factual guilt or innocence.²¹

The Post Office cases are exceptional not because innocent people pleaded guilty (although they clearly did), but because the significant number of appellants

¹⁶ Della Robinson, ‘Post Office Horizon Inquiry Written Statement’ available at <https://www.postofficehorizoninquiry.org.uk/evidence/witn01550100-della-robinson-witness-statement>.

¹⁷ John Dickson, ‘Post Office Horizon Inquiry Written Statement’ available at <https://www.postofficehorizoninquiry.org.uk/evidence/witn01660100-john-dickson-first-witness-statement>.

¹⁸ Evidence Based Justice Lab, ‘Thomas Smart’ available at <https://evidencebasedjustice.exeter.ac.uk/case/thomas-smart/>.

¹⁹ For further discussion of charge discounts, 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.

²⁰ For further discussion, see Rebecca K. Helm, Roxanna Dehaghani, and Daniel Newman, ‘Guilty Plea Decisions: Moving Beyond the Autonomy Myth’ (2022) 85(1) *Modern Law Review* 133.

²¹ Rebecca K. Helm, ‘Cognition and Incentives in Plea Decisions’ (2022) 28(3) *Psychology, Public Policy, and Law* 344.

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involved meant that wrongful convictions were recognized (either on appeal or through the Post Office Offences Act 2024) when they likely would not have been otherwise. We know from our work that innocent people are pleading guilty all the time, in circumstances that lead them to feel that they have little to no choice but to do so.

B. Exacerbation of Inequality and Vulnerability

Importantly, pressures to plead guilty do not apply to all defendants equally. One of the key problems with convictions being determined by an individual decision-maker is that individual decision-makers vary in their susceptibility or resilience to pressure. Particular individuals are susceptible to pressures to plead guilty, and are likely to be convicted disproportionately (including when innocent) as a result. Below are some non-comprehensive examples.

First, and as discussed above, defendants will commonly face a risk of custody at trial that they can avoid by pleading guilty. Some defendants may feel unable to take this risk even if they are innocent, and even if the evidence against them is likely to be weak and thus the probability of conviction low. Such defendants may include, for example, single parents who simply cannot risk custody however low that risk is, those with precarious employment who will lose their livelihood if they receive a custodial sentence, and those with health conditions that mean they would be unlikely to cope in custody. Contrastingly, those without family commitments or relevant health conditions and those with secure financial situations may be able to risk custody, particularly where that risk is low.

Second, particular types of defendants are susceptible to finding themselves remanded in custody pending trial and able to secure release from custody (and a sentence of time served) if they plead guilty. The defendants in this situation are typically people who are refused bail as a result of their personal circumstances, including those without a fixed address or foreign nationals. These defendants can face a particularly compelling pressure to plead guilty where remand conditions are poor, and they can be left feeling willing to do almost anything to secure release.²²

Third, incentives to plead guilty can exploit vulnerabilities in certain groups of defendants. For some defendants, significant difficulties that might be faced at trial make actually having a full trial seem inaccessible to them. They simply can't envision being able to cope with the costs or pressures involved in a full trial. In our own work, we have heard first-hand reports of defendants pleading guilty because they do not perceive that they can cope with a trial and / or they feel desperate to get the legal process over with.²³ Defendants sometimes speak of a state of shock, sometimes suffering mental breakdowns, and just wanting it all to be over. In

²² For further discussion of these cases see Rebecca K. Helm, 'Cognition and Incentives in Plea Decisions' (2022) 28(3) *Psychology, Public Policy, and Law* 344.

²³ Rebecca K. Helm, Roxanna Dehaghani, and Daniel Newman, 'Guilty Plea Decisions: Moving Beyond the Autonomy Myth' (2022) 85(1) *Modern Law Review* 133.

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addition, vulnerabilities specific to a defendant can make them less able to exercise meaningful autonomy, and more likely to comply with suggestions that they are guilty. For example, research has shown that women are particularly susceptible to falsely confess because they are vulnerable to public shaming inherent in criminal prosecution which encourages an “acceptance of guilt that is built upon a generalized acknowledgment of wrongdoing.”²⁴ In our own work, female defendants have told us about presuming they must have done something wrong and about feeling guilty as a result, even after being recognized as innocent. Similar feelings are likely to be particularly acute in both male and female victims of domestic violence, who are particularly likely to internalize blame.

As a result of this differential susceptibility to pressure, particular individuals are more likely to plead guilty due to pressure rather than as a result of autonomous decision-making and factual guilt. Those individuals are therefore convicted, and wrongly convicted, disproportionately.

C. Children

One particularly important class of defendant to consider when examining the limitations of convictions via guilty plea is children. Children face a number of developmental limitations which mean they are particularly susceptible to pressures to plead guilty and to pleading guilty when innocent.

First, a range of research suggests that psychologically children are less able to translate their underlying values into concrete decisions, being more driven by superficial weighting of risk and reward. As a result, children are likely to struggle to appropriately translate values such as not wanting to admit to something that they’re not responsible for, into decisions.²⁵ Second, children are susceptible to being driven by short term rewards rather than consideration of more meaningfully important considerations such as long-term consequences.²⁶ Third, children often struggle with legal literacy and with appreciating the consequences of pleading guilty.²⁷ Finally, children can find the prospect of facing trial particularly difficult. This difficulty is further exacerbated in neurodivergent children. In our work interviewing lawyers about their experiences representing children who have

²⁴ Jill Peay and Elaine Player, ‘Pleading Guilty: Why Vulnerability Matters’ (2018) 81(6) *Modern Law Review* 929: 947. See also Rebecca K Helm, ‘The Challenge of Factual Hard Cases for Guilty Plea Regimes’ (2024) 87(5) *Modern Law Review* 1182 for an examination of this phenomena in the legal context.

²⁵ Rebecca K Helm, Valerie F. Reyna, Allison A. Franz, and Rachel Z. Novick, ‘Too Young to Plead? Risk, Rationality, and Plea Bargaining’s Innocence Problem in Adolescents’ (2018) 24(2) *Psychology, Public Policy, and Law*, 180.

²⁶ See, for example, Jari-Erik Nurmi, ‘How Do Adolescents See Their Future? A Review of the Development of Future Orientation and Planning’ (1991) 11(1) *Developmental Review* 28.

²⁷ See, for example, T. Grisso et al., ‘Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants’ (2003) 27 *Law and Human Behavior* 333.

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pleaded guilty one lawyer described asking a child client who maintained they were innocent why they wanted to plead guilty and the child replying: “Cause I don’t want to come back here. This is very stressful. This is very long.”²⁸ These realities make children particularly susceptible to pleading guilty when innocent.²⁹

In addition, current procedure creates a situation in which many children face particularly compelling incentives to plead guilty. Many children who face a custodial sentence at trial, can avoid custody if they plead guilty, and receive a lenient community sentence known as a referral order. In this context, we have found evidence that children who do not opt to plead guilty (e.g., because they say they are innocent) can actually be prompted to reconsider their decision by judges.³⁰

In a recent report on guilty pleas in children, we found compelling evidence that many innocent children are pleading guilty.³¹ When we asked 27 legal professionals “Roughly what proportion of under 18s who plead guilty do you think are actually innocent?,” the average (mean) response was 15%. We also heard from 19 children who had pleaded guilty themselves, one of whom stated: “*I still believe I did not do the crime.*”³² In these circumstances there is a clear risk of severe injustice influencing some of the most vulnerable members of our society. A robust appeals procedure is needed to protect children in this context and to facilitate the recognition and correction of injustice where possible.

Avenues for Appeal

A. The Importance of Realistic Avenues for Appeal

The realities of convictions via guilty plea, discussed above, make convictions obtained in this way particularly unreliable. However, they are also very difficult to appeal. As a result, in the current system, convictions via guilty plea are both less reliable than convictions at full trial and treated as if they are more reliable than

²⁸ Evidence-Based Justice Lab, ‘Incentivized Legal Admissions in Children Part 2: Guilty Pleas’ (2021), available at https://evidencebasedjustice.exeter.ac.uk/wp-content/uploads/2021/09/ChildGuiltyPleas_FullReport.pdf

²⁹ For a more detailed discussion of these factors and how they cause innocent children to plead guilty, see Rebecca K Helm, ‘Guilty Pleas in Children: Legitimacy, Vulnerability, and the Need for Increased Protection’ (2021) 48(2) *Journal of Law and Society* 179.

³⁰ Evidence-Based Justice Lab, ‘Incentivized Legal Admissions in Children Part 2: Guilty Pleas’ (2021), available at https://evidencebasedjustice.exeter.ac.uk/wp-content/uploads/2021/09/ChildGuiltyPleas_FullReport.pdf

³¹ *Ibid.*

³² *Ibid.*

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convictions at full trial.³³ Ultimately, the current approach to appeals does not line up with realities in practice, and significant injustices are being overlooked.³⁴

Generally, appeals of a conviction following a guilty plea are allowed only in cases where the plea was not entered properly, or was entered as the result of duress or undue pressure. Importantly, the pressures to plead guilty discussed above do not constitute undue pressure for these purposes.³⁵ When defendants have pleaded guilty in the circumstances described above but are, in reality, innocent, they will effectively have to demonstrate that they are innocent in order to successfully appeal their conviction. The Court of Appeal recently held that in the case of a free and informed guilty plea: “it will normally be possible to treat the conviction as unsafe only if it is established that the appellant had not committed the offence, not that he or she may not have committed the offence...it must be demonstrated that the appellant was not culpable.”³⁶

This test is problematic for a number of reasons. First, it should be noted that the criminal appeals system in England and Wales, and associated practice and financial structures in the criminal defence profession, are not geared towards affirmatively proving innocence. Thus, only in very few cases are defendants able to affirmatively prove their innocence. This reality can be seen, for example, when examining the use of DNA evidence in appeals. In a recent analysis of error of fact miscarriages of justice (contained in the UK Miscarriages of Justice Registry)³⁷, we found that in England and Wales, DNA evidence had been used to effectively exclude an appellant as the perpetrator in only nine cases.³⁸ This minimal use of DNA in identifying and remedying miscarriages of justice stands in contrast to the situation in similar cases in the USA where DNA evidence and other tools to affirmatively

³³ See Richard Nobles and David Schiff, ‘The Supervision of Guilty Pleas by the Court of Appeal of England and Wales – Workable Relationships and Tragic Choices’ (2020) 31(4) Criminal Law Forum 513.

³⁴ It should be noted that there are significant problems with the current guilty plea system that cannot be resolved via appeals, however a more permissive approach to appeals that lines up with factual reality does have the potential to address some injustice in this area.

³⁵ See, for example, *McKinnon v. Government of the United States of America* [2008] UKHL 59 at para. 38, “In one sense all discounts for pleas of guilty could be said to subject the defendant to pressure, and the greater the discount the greater the pressure. But the discount would have to be very substantially more generous than anything promised here (as to the way the case would be put and the likely outcome) before it constituted unlawful pressure such as to vitiate the process. So too would the predicted consequences of non-cooperation need to go significantly beyond what could properly be regarded as the defendant’s just desserts on conviction for that to constitute unlawful pressure.”

³⁶ [2022] EWCA Crim 108, [2022] 4 WLR 62 at [171].

³⁷ Evidence Based Justice Lab, ‘Miscarriages of Justice Registry’ available at <https://evidencebasedjustice.exeter.ac.uk/miscarriages-of-justice-registry/the-cases/overview-graph/>.

³⁸ Rebecca K Helm, ‘The Anatomy of Factual Error Miscarriages of Justice in England and Wales: A Fifty Year Review’ (2021) 5 Criminal Law Review 351.

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prove innocence are used far more frequently.³⁹ Second, and relatedly, the test sets an unrealistically high bar for innocent defendants to meet. Defendants who have pleaded guilty, including those who did so as children and under significant pressures, are therefore left with no realistic avenue through which to appeal their conviction. This reality has significant negative consequences for those defendants, but also for the integrity of the wider justice system. When convictions occur via guilty plea, since evidence is not tested at trial and opportunities for appeal are extremely restricted, injustices such as the Post Office Scandal can easily go undetected.

B. Potential Reform of Appeals Following a Guilty Plea

There is a clear rationale for the restrictive approach adopted towards convictions following a guilty plea. First, the benefits to the system when a defendant pleads guilty (including time and cost savings for the criminal justice system and saving complainants from the significant harms that can come from trial) are severely compromised when a defendant pleads guilty but then subsequently seeks to appeal their conviction. Second, when a defendant pleads guilty the evidence against them is not tested in court. Since convictions via guilty plea are not really based on evidence (as noted in *R v Tredget*,⁴⁰ the evidence has not been heard let alone tested) it is difficult (if not impossible) to assess how new evidence impacts the safety of a conviction short of examining whether it proves innocence. The current system addresses this challenge by requiring convicted individuals to prove innocence. However, the challenge could more effectively be addressed by an appeals process that places more emphasis on the nature of the initial guilty plea, and interpreting new evidence in light of that plea (in the same way as appeals of jury decisions take into account the circumstances of the initial decision made by the jury alongside new evidence).

The circumstances underlying an initial guilty plea are important in determining the 'quality' of that guilty plea, both in terms of defendant autonomy and in terms of factual guilt (two potential normative justifications for convictions via guilty plea).⁴¹ In terms of autonomy, pressures, including those discussed above, can compromise the autonomy of a guilty plea through leading defendants to feel that they have no choice (or little choice) but to plead guilty. Although these restrictions on autonomy are (at least for now) permissible legally,⁴² in reality they severely compromise the ability of defendants to make decisions in accordance with their values relating to the core plea decision (admitting guilt vs. exercising the right to a fair trial),

³⁹ Samuel Gross, Kirsten Jacoby, Daniel Matheson and Nicholas Montgomery, 'Exonerations in the United States 1989 through 2003' (2005) 95(2) *Journal of Criminal Law and Criminology* 523.

⁴⁰ [2022] EWCA Crim 108.

⁴¹ See Richard Nobles and David Schiff, 'Criminal Justice Unhinged: The Challenge of Guilty Pleas' (2019) 39(1) *Oxford Journal of Legal Studies* 100.

⁴² See, for example, *Natsvlshvili and Togonidze v. Georgia*, App. No. 9043/05, 29 April 2014; *McKinnon v Government of the United States of America* [2008] UKHL 59.

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including not wanting to plead guilty when innocent.⁴³ In addition, through constraining choice and providing compelling reasons for the innocent to plead guilty, pressures to plead can fracture the relationship between factual guilt and criminal conviction, resulting in convictions that are inherently unreliable. However, it is important to note that such pressures are not always present. In many cases, the only incentive to plead guilty is a 1/3 reduction in sentence (and no change in sentence type) in accordance with sentencing guidelines.⁴⁴ In such cases, guilty pleas are far more reliable indicators of both true defendant preference (related to the core decision to self-incriminate) and factual guilt.⁴⁵

The circumstances underlying a guilty plea therefore provide important context that should be considered in interpreting new evidence that comes to light (in the same way as the evidence at trial is considered in interpreting new evidence in cases that were heard by a jury). Such circumstances might helpfully be considered as part of a holistic examination relating to the safety of the conviction. If the circumstances in which a defendant pleaded guilty were clearly conducive to constrained decision-making and wrongful conviction (as in the Post Office examples discussed above), that plea should be considered less reliable, and thus the level of evidence needed to overturn it should be lower. For example, a defendant might be required to demonstrate that new evidence raises substantial questions about the safety of a conviction rather than to demonstrate their innocence. In cases in which a defendant did not face such constraint in their initial decision-making, maintaining a high bar for appeal following conviction via guilty plea is appropriate in line with principles of finality and autonomy. In cases involving child defendants, consideration of the circumstances underlying guilty plea decisions must recognize the severe developmental limitations faced by child defendants, which likely necessitate a permissive approach to appeal in all cases.

The approach to appeals following a guilty plea that is suggested here would have the advantage of protecting the finality of guilty pleas while also recognizing the important, and predictable, categories of case in which significant injustice can and do arise through the guilty plea process. This recognition of injustice and opportunity to correct it is necessary in order to protect defendants and to protect the integrity of the criminal justice process in what is now largely a “system of pleas.”

⁴³ For further discussion see Rebecca K. Helm, Roxanna Dehaghani, and Daniel Newman, ‘Guilty Plea Decisions: Moving Beyond the Autonomy Myth’ (2022) 85(1) *Modern Law Review* 133.

⁴⁴ For an empirical examination of discounts following a guilty plea, see Julian 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* 187.

⁴⁵ See Rebecca K. Helm, ‘Cognition and Incentives in Plea Decisions’ (2022) 28(3) *Psychology, Public Policy, and Law* 344.