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The Post Office Scandal

As noted in the first chapter, interest in lawyers' ethics has climbed in recent years. The #MeToo movement highlighted how lawyers had helped silence victims of sexual misconduct. There is a continuing and vigorous debate about SLAPPs:[1] the use of legal threats to silence, slow, or neuter journalists, NGOs, and academics investigating wrongdoing. Parliament's Intelligence and Security Committee warned that professional enabling by lawyers (and others) posed a national security threat.[2] Russia's invasion of Ukraine prompted soul-searching by UK firms with offices in Russia.[3] Parliament has become increasingly interested in these areas, seeing a sometimes fundamental tension between 'professional enablers', 'lawfare', and democratic institutions.[4]

[1] Strategic Litigation against Public Participation. See Susan Coughtrie, '"London Calling": The Issue of Legal Intimidation and SLAPPs against Media Emanating from the United Kingdom' (London: Foreign Policy Centre, 2022), https://bit.ly/4s2sjiI.

[2] Intelligence and Security Committee, 'HC 632 – Intelligence and Security Committee of Parliament – Russia', 21 July 2020, https://bit.ly/44v4aHk.

[3] 'Taskforce on Business Ethics and the Legal Profession', www.ibe.org.uk/legal-profession-taskforce.html.

[4] 'Lawfare and UK Court System – Hansard – UK Parliament', 20 January 2025, https://bit.ly/48SLgeR; 'Lawfare: "An Industry That Hides Evil in Plain Sight"? – Lawyer Watch', https://bit.ly/3MGZXdp.

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Such concerns are not new, but they are gaining more political traction. Independent regulation has also increased the focus on lawyer misconduct. The Solicitors Regulation Authority (SRA) has issued guidance and warning notices on SLAPPs and NDAs, for example.[5] The Legal Services Board, which oversees all legal services regulators, has decided to make professional ethics a strategic priority:[6]

> Behaviours which have the potential to undermine professional ethics and the rule of law have been brought into sharp focus in recent years through several high-profile examples, including the misuse of non-disclosure agreements (NDAs), and Strategic Lawsuits against Public Participation (SLAPPs). The conduct of solicitors and barristers related to the Post Office Horizon IT scandal has also been heavily scrutinised during a lengthy and ongoing Public Inquiry.

It is the PO scandal that produces the central examples used in this book. It does so for many reasons. One is that the scandal has had an enormous impact on public consciousness, as well as on the lives of those involved. That has partly been the function of a television drama: *Mr Bates vs the Post Office*. This four-part TV series, cannily timed to run on New

[5] 'Warning Notice: Strategic Lawsuits against Public Participation (SLAPPs)', 28 November 2022, www.sra.org.uk/solicitors/guidance/slapps-warning-notice/; 'Warning Notice: Use of Non-Disclosure Agreements (NDAs). Updated 12 November 2020' (Birmingham: SRA, 12 November 2020), www.sra.org.uk/solicitors/guidance/non-disclosure-agreements-ndas/.

[6] LSB, 'Professional Ethics and Rule of Law – Draft Policy Statement', 21 January 2025, https://bit.ly/4aQhx8S.

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Year's day, catapulted extraordinary subpostmaster stories into the nation's living rooms. A deluge of media and political activity ensued. Interest spread to other parts of the globe. A statutory public inquiry – the Post Office Horizon IT Inquiry, chaired by a retired and senior judge, Sir Wyn Williams – was already underway. The inquiry fed the political and news narratives as a succession of lawyers and former and current PO executives were forced to discuss a host of unedifying events. Some (including lawyers) were given incrimination warnings because they now risk prosecution.

Through these means, the understanding that the PO ruined thousands of lives is now widespread. Subpostmasters and postmistresses (SPMs[7]) who ran post offices as franchises were thrown out of their businesses and homes, sued, and bankrupted; they (or sometimes their employees) were prosecuted and imprisoned. The cost has been extraordinary in scale and scope.[8] Minds and bodies are scarred.[9] People have

[7] I use SPMs to refer to subpostmasters/mistresses, who run PO branches as owners of a franchised business, but also for employees working in Post Office branches.

[8] For data on compensation claims, see 'Post Office Horizon Financial Redress Data' on the GOV.UK website: at the time of writing the numbers were continuing to increase, https://bit.ly/44NDAcH; evidence to the inquiry on impact is found at 'Post Office Inquiry | Human Impact Hearings', Post Office Horizon IT Inquiry, 19 May 2022, www.postofficehorizoninquiry.org.uk/hearings/listing.

[9] Beth Growns, Jeff Kukucka, Richard Moorhead, and Rebecca K. Helm, 'The Post Office Scandal in the United Kingdom: Mental Health and Social Experiences of Wrongly Convicted and Wrongly Accused Individuals', *Legal and Criminological Psychology* 29, no. 1 (28 August 2024): 17–31; Beth Growns, Jeff Kukucka, Richard Moorhead, and Rebecca K. Helm, 'Brief Report: Mental Health Outcomes and Social Experiences

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ended their lives; many victims live on, but with their lives in pieces and their families brutally impacted.[10]

There is a public outcry at the PO's conduct, but also at the inadequacy of legal responses to it. Many SPMs cases passed through the courts (civil and, particularly, criminal), over a long period of time, and many (though not all) of those SPMs had legal representation, yet glaring problems in the PO's cases were not addressed. The pivotal *Bates* litigation was settled on terms that left SPMs undercompensated because funding ran out. The compensation mechanisms set up, eventually, to correct that problem have been mired in complaints about delay and excessive adversarialism. Concerns about the capacity of the Court of Appeal to deal fairly and expeditiously with hundreds of cases led to a wholly exceptional statutory scheme for quashing of criminal convictions en masse without involvement of the courts. More appeals wait in the wings for cases not dealt with by the statutory scheme. The compensation bill is expected to reach £1.5 billion.

The public inquiry has shown how the normal mechanisms of law, the court cases and the appeals, failed to expose the full truth of the scandal. That failure is epitomised by the Court of Appeal excoriating the PO for past wrongs in the *Hamilton* judgment, whilst praising its handling of disclosure

of Subpostmasters and Subpostmistresses in the British Post Office Scandal', 2023, https://bit.ly/457u04g.

[10] Sally Day, Emily Spearing, Rebecca Helm, Karen Nokes, and Richard Moorhead, 'WP8, Exploring the Mental Health and Wellbeing of the Families of Those Wrongly Accused in the Post Office Scandal', 6 December 2024, https://bit.ly/3N6rUeS.

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in 2020/1.[11] That position looked suspect then. It looks ludicrous now. Late disclosure has dogged the inquiry.

The levels of harm and causes of such widespread and repeated failure in the legal system's handling of these cases is reason enough to focus on it. It has multiple causes.

The second reason to focus on the PO scandal is that whilst these causes include faulty accounting software, inept or dishonest managers, and failures of corporate governance more broadly, work done by lawyers has been central: unfair contracts, questionable civil litigation, dubious prosecutions brought 'privately' and by public prosecutors (especially, but not solely, in Scotland and Northern Ireland); and the covering up of problems in heavily lawyer-dependent ways.

It is important to note that, whilst the extent and nature of the harms visited on SPMs is extraordinary, and the use of private prosecutions at scale for commercial ends highly unusual, the underlying legal work and the problems associated with it are not. What is more, problems occur and reoccur on separate cases, across many years, involving in-house lawyers, private practice lawyers, and several Kings Counsel and General Counsel.

That problems occurred so often, across time, and across different lawyers suggests a broader and deeper problem for law and the legal profession than a 'Post Office problem'. One reason for including case studies beyond the PO story in later chapters is to underline that those problems are far from confined to this one organisation.

[11] *Hamilton & Others* v *Post Office Ltd* [2021] EWCA Crim 21 (hereafter *Hamilton*).

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The third reason for focusing on the PO is a 'small p' one. Not political exactly – it is about persuasion. Recognising that lawyers – sometimes rather well-known lawyers – are involved in the story, some (perhaps many) practitioners have taken a particular interest in the scandal. The PO story and the harms we all know about mean that lawyers are more interested than usual in this story, and perhaps more willing to listen to what the stories might tell us about lawyers' ethics. Getting past an understandable reluctance to listen to bad news about one's own kind is not easy, and the PO is one of those rare stories that breaks the carapace for some.

That said, it is not uncommon for self-protective denial to manifest in other ways. I have been told many times that the PO is all about 'in-house lawyers' or 'private prosecution', by those who do not work in-house or do not prosecute. Both views are seriously flawed as explanations. One further self-denial merits emphasis. A typical response to concerns about the abuse of law is that it is almost always the client's fault, not the lawyers. There is a very respectable case to be made that here it was the opposite: lawyers, not their clients, were the architects of the problems that both are responsible for. And sometimes, there is a case for saying it was private practitioners, as much if not more than in-house lawyers, that led the PO astray.

The Three Central Issues of the Scandal

Horizon was an electronic point-of-sale and accounting system introduced by the PO from 1999 onwards. It was supposed to help modernise the network and increase financial control,

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including the reduction of fraud. It was built and maintained first by the British computer company ICL, and then by Fujitsu (when ICL was subsumed within the Japanese corporate). The system was designed to produce weekly accounts that SPMs were required to sign off each week and allow the PO to monitor the business and manage its finances. It was a system that had problems from the beginning. Those problems have reappeared, unpredictably, over the course of its life. In particular, it created 'shortfalls'. These were indications that money might be missing in the subpostmaster branch accounts. Rather than investigate all those shortfalls fully, the PO tended to simply require the SPM to repay the money POL thought they were owed as a debt.

I write, throughout the book, about POL: 'Post Office Limited'. This is the appropriately cold acronym most often used for the Post Office as an organisation. The POL was originally part of the Royal Mail Group (RMG) and dependent on its legal team (including for conducting prosecutions) until it formally separated in 2012 prior to RMG being floated in 2013. POL remains a government-owned corporation to this day.

For our purposes, POL's precise legal identity is not that important, save perhaps in one respect. In 2013, POL's CEO, Paula Vennells, sought to remove a reference to Horizon risks from the RMG prospectus as it was about to float.[12] A flotation prospectus is an important, heavily regulated document in which the seller of a business is required to be candid

[12] Paula Vennells, 'Email Thread from Paula Vennells to Alice Perkins CB RE: Fwd: Prospectus®, POL00146462', 22 September 2013, https://bit.ly/3MuYiYB.

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about any risks in the company it is selling. Such risks impact the business's price – and even its ability to be sold at all. At the point of flotation, it has been suggested during the inquiry, both POL management and the government had an incentive to keep Horizon's failings under wraps.[13] If the suggestion proved correct, it would provide a motive for organising what looks, with the benefit of hindsight, like a cover-up of Horizon's problems.

This book is not about proving or disproving a conspiracy of that sort. It is about examining how lawyers may have contributed to the issues arising from the use of the Horizon system in legal proceedings. From that perspective, the underlying story in the cases concentrates on three issues. It will help to have these in mind from the start.

The first is *whether Horizon was a robust system* and whether errors could be said with confidence to be due to careless users or dishonesty rather than bugs, errors, or defects (BEDs) which could create phantom shortfalls. A related question was whether errors were properly investigated to determine whether user error, dishonesty, BEDs, or some combination of these was at fault. It has become clear that POL and Fujitsu sought to assert user error or theft without having sufficient evidence to support this claim. They failed to properly investigate and concealed or failed to disclose evidence of problems with BEDs that suggested that shortfalls were, or could have been, problems with the system and not user fault, let alone dishonesty.

[13] 'Transcript – Paula Vennells 22 May 2024', www.postofficehorizoninquiry.org.uk/hearings/phases-56-22-may-2024.

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The second is whether *Horizon was subject to 'remote access'*: that is, whether it was possible for Fujitsu engineers to access the system remotely, without SPMs knowing, to correct software bugs and change SPM accounts in the process (ostensibly to correct errors). Not only was this possible, but remote access could also make errors worse, and could be done without being controlled or its use traced. As a result, neither Fujitsu nor POL could say the system was secure. An insecure, untraceable, secret backdoor into an accounting system was kryptonite to claims that the system was reliable and any legal action that relied on it. A key issue in the case is how well this was understood by POL, given that remote access was a massive risk to prosecution safety.

This leads us to the third issue: *whether POL's handling of prosecutions was proper*. There are two levels to this: whether POL prosecuted the case properly in the first place, and whether their reviews of these prosecutions were sound once they became aware of evidence suggesting convictions might be unsafe. It transpires that the prosecutions were not safe and their review of the prosecutions was not sound. *Miscarriages of justice were caused and then contained by inadequate or improper legal work*.

At the heart of this tale are stories like Pamela Lock's.

Pamela Lock

January 2000 is the date when it appears that Horizon was installed in the PO run by Pamela Lock and her husband.[14]

[14] Hamilton (see n.11), paras 353–6.

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SPMs were required to conduct a balancing exercise each week with the system to confirm to POL that stock, cash, and reported sales matched. In the summer of 2000, Horizon started to indicate 'shortfalls' in her branch, an indication to POL that money was missing.

She was interviewed about these shortfalls and suspended without pay before her contract was terminated.[15] A forensic accountant's report, which showed no evidence that she had taken any money, did not dissuade the PO from prosecuting her for theft and false accounting. Advised to plead guilty to theft, she did not; instead, she pleaded guilty to false accounting. She did so, accepting that she had inflated the figures to make the accounts balance. SPMs were required to balance their accounts weekly to keep trading. Many SPMs did similarly whilst they tried to work out what had gone wrong when Horizon showed a shortfall. Mr Justice Fraser (now Lord Justice Fraser, but he is referred to herein as Mr Justice Fraser, given his role at the time) later decided, in the *Bates* group litigation (discussed later in the chapter), that finding out what had gone wrong was an impossible task, given how the system worked and POL's refusal to provide evidence that would have enabled Horizon to be checked.

SPMs were habitually told (and advised by their own lawyers) that stalling for time in this way (which could involve inflating cash figures, for example) was dishonesty. Such advice was pragmatically understandable, but debatable; it is certainly possible to argue that this was not dishonesty at all. Often, SPMs

[15] This account is taken from 'First Witness Statement of Ms Pamela Lock', 14 January 2022, https://bit.ly/3MXItda.

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thought that they had 'lied', even if for good reason, and so usually accepted such advice. Not uncommonly, the notion that they were dishonest was further undermined by other evidence such as voluminous calls to the helpline and area managers reporting there were inexplicable shortfalls in their accounts, thus undermining any claim to dishonesty against them.

Pamela Lock was given a community service sentence and ordered to repay a shortfall of just over £26,000. She had already cashed in an ISA to pay part of what POL said she owed, and was given time to sell the shop that contained her old branch in order raise further funds. She ended up selling the family home to avoid it being repossessed.

Ms Lock is an early but sadly typical example of those thirty-nine cases quashed in the *Hamilton* case in 2021.[16] The Court of Appeal found her prosecution was unfair and an affront to justice.

Legal affront and unfairness were not confined to Ms Lock's case, or even to criminal cases. As we will see, they likely extended to:

1. The unfairness of the contract that underpinned SPM mistreatment.
2. The handling of civil litigation and enforcement against SPMs. We concentrate on two cases: Julie Wolstenholme's case, which settled in 2004, and Lee Castleton's, in 2005/6.
3. The handling of hundreds of criminal cases.
4. The ways in which Horizon was and was not investigated, and the role of lawyers in that.

[16] Hamilton (see n.11).

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5. The review of prosecution safety that began in 2013.
6. The mediation scheme established in 2013 that aimed to reduce the role of Second Sight and settle complaints for minimal compensation.
7. The *Bates* case, run aggressively under a Group Litigation Order (GLO), that was settled in 2019.
8. A culture in POL and amongst its advisers of accentuating the positive and eliminating the negative in the handling of evidence and arguments on Horizon and the safety of prosecutions that led to politicians, the press, and even the courts being misled.

That the story emerged over several phases is also important. Chapter 3 discusses the revelations from the *Bates* cases. *Bates* led to the *Hamiton* case and the quashing of many cases by the Court of Appeal for the egregious conduct of private prosecutions at first instance. The judgment in *Hamilton* also led to the public inquiry becoming statutory.

That inquiry was persuaded to lift legal professional privilege. I had argued that without lifting privilege, their work would have been like 'Watergate without the tapes'.[17] The inquiry has revealed conduct consistent with a cover-up and chilling details about *Bates* and the subject matter of *Hamilton*, of which the High Court and Court of Appeal were blissfully unaware. In effect, it has revealed a legally

[17] See Moorhead's submissions to 'Public Hearing Session: Preliminary Hearing on List of Issues 8 November 2021 Transcript', 63, https://bit.ly/48V26tx; Richard Moorhead, Karen Nokes, and Rebecca Helm, 'Working Paper 4 Submission on Four Themes', 29 October 2021, https://bit.ly/3XZ1Vs6.

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orchestrated cover-up. Chapter 4 covers what we now know about the problems with first-instance proceedings as a result, and Chapter 5 reflects on the mechanisms that were deployed to conceal the truth. They tell a story of an aggressive legal offence and then an aggressive legal defence conducted to protect a computer system and the reputation of the PO itself. By seeking to exploit the law's power for its clients, their lawyers created the legality illusions that have ruined many, many lives.

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