

The Silent Judiciary

Abdication of Duty in the Face of Constitutional Breakdown

Ethical Approach UK – September 2025

Introduction

A constitution, whether written or unwritten, survives only when its checks and balances are real. The executive must be restrained, the legislature must hold it to account and the judiciary must act as the guardian of the constitutional settlement.

Yet in Britain today, one of these pillars has fallen silent. Judges have chosen procedural retreat over substantive duty, standing by as the executive pursues a dangerous, constitution-destroying frolic of its own.

The Constitutional Problem

- Judicial deference: Courts have accepted executive and policing evasions at face value (e.g., “no investigation”), even when this plainly undermines statutory

obligations.

- Weaponised procedure: Genuine constitutional challenges are dismissed as “Totally Without Merit”, closing the door to oral hearings.
- Silence as complicity: By refusing to act unless pushed by application and then striking down those applications procedurally, the judiciary abdicates its unique constitutional role.

The Judicial Oath and the Constitutional Duty

Every judge swears to

“do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will.”

That oath does not permit silence when the constitution itself is under threat. It requires vigilance and action. Where an executive breaks its bounds, the judiciary must intervene - even suo motu (of its own motion) - to uphold the rule of law.

Why Intervention Without Application Matters

1. Citizens are blocked from access: Costs, procedural hurdles and hostile rulings deter ordinary citizens from

raising constitutional issues.

2. The constitution belongs to all: It cannot be left to individuals alone to enforce. The judiciary itself is a constitutional organ, with inherent responsibility.

3. Silence creates precedent: Every ignored breach of duty normalises constitutional breakdown.

4. Global expectation: In every democracy, courts are recognised as guardians of the constitution, not passive arbiters awaiting instruction.

What Judicial Leadership Should Look Like

- Proactively interpreting statutory duties (e.g. CPIA) in a way that prevents executive evasion.
- Asserting jurisdiction over constitutional violations, even absent a perfect claimant.
- Refusing to rubber-stamp executive narratives where evidence is plainly deficient.
- Issuing constitutional guidance to Parliament and the public where systemic danger is identified.

The Warning

A judiciary that remains silent in the face of executive excess does not remain neutral. It becomes complicit.

Without judicial intervention, the balance of powers

collapses and with it, the very substance of the constitution.

Conclusion

It is surely wrong, indeed dangerous, for the judiciary to abdicate its responsibility to protect the constitution. Britain's constitutional survival requires judges to act not merely when an application is filed, but whenever the rule of law itself is imperilled.

Judicial silence is not impartiality. Judicial silence is the death of constitutional balance.