

# **WHEN THE STATE IS ACCUSED:**

## **WHAT COURTS MUST DO AND WHAT THEY CANNOT LAWFULLY AVOID**

**A public paper on judicial duty, statutory obligation and the rule of law across the United Kingdom**

### **1. The central issue**

This paper addresses a single, unavoidable question:

What must courts do when credible evidence suggests that the state or its agents may have acted unlawfully?

Not what courts prefer to do. Not what is convenient, but rather, what the law requires.

The answer is not political - It is constitutional.

## **2. Courts do not exist by custom - they exist by law**

Across the United Kingdom, courts exist and exercise authority only because Parliament has created them and bound them by statute.

This matters because:

A court cannot lawfully ignore the same statutes that give it authority.

Judicial power is not self-authorising.

It is conditional.

## **3. The non-negotiable judicial duties (UK-wide)**

Across England & Wales, Scotland and Northern Ireland, courts are bound by the following duties.

These duties are set in law. They are not optional and are not suspended by context.

## **DUTY 1:**

Courts must declare what the law is

Source (UK-wide):

- Common law constitutional principle
- Senior Courts Act 1981 (England & Wales)
- Court of Session Act 1988 (Scotland)
- Judicature (Northern Ireland) Act 1978

What this means:

When a court is properly asked a legal question, especially one about whether state conduct is lawful, it must say what the law is.

It may:

- limit remedies,
- control procedure,
- stage consideration,

But it cannot refuse to state the law without abandoning its function.

Silence is not neutrality. It is abdication.

## **DUTY 2:**

Courts must apply statute over policy

Source (UK-wide):

- Constitutional Reform Act 2005
- Scotland Act 1998
- Northern Ireland Act 1998
- Fundamental common-law doctrine of parliamentary supremacy

What this means:

No court may lawfully allow:

- policy,
- guidance,
- emergency frameworks,
- operational convenience,

to override statutory requirements.

If a statute imposes a duty (for example, on police, prosecutors, or investigators), courts must enforce that duty, not rationalise its avoidance.

To do otherwise is to replace the rule of law with the rule of discretion.

### **DUTY 3:**

Courts must ensure access to justice

Source (UK-wide):

- Human Rights Act 1998 (Articles 6 and 13 ECHR)
- Common law right of access to the courts

What this means:

Courts must not tolerate administrative or policy mechanisms which prevent allegations from ever reaching judicial scrutiny.

If:

- allegations are filtered out,
- never recorded,
- diverted away from criminal process,

then access to justice is destroyed before the court even opens its doors.

Courts must respond to that reality - not ignore it.

## **DUTY 4:**

Courts must ensure effective investigation where serious harm is alleged

Source (UK-wide):

- Human Rights Act 1998 (Articles 2 and 3 ECHR)

What this means:

Where death, serious harm, or state involvement is credibly alleged, courts must ensure that an effective investigation exists.

If investigative mechanisms have been neutralised by policy or practice, courts cannot:

- defer,
- look away,
- or treat the matter as academic.

Failure to intervene is itself a breach of the Convention obligations Parliament has imposed.

## **DUTY 5:**

Courts must prevent executive self-immunisation

Source (UK-wide):

- Constitutional Reform Act 2005
- Common law separation of powers

What this means:

Courts exist precisely to prevent the executive from deciding:

- when the law applies,
- whether allegations may be examined,
- which complaints are “allowed” to exist.

Any system in which the state filters out allegations about its own conduct before they reach court is constitutionally impermissible.

Courts must dismantle such systems - not accommodate them.

### **DUTY 6:**

Courts must act on a full and honest record

Source (UK-wide):

- Duty of candour (public law)
- Common law procedural fairness
- Human Rights Act 1998

What this means:

Courts must not decide cases where they know, or ought to know, that:

- evidence has been suppressed,
- allegations were never recorded,
- the record has been shaped by policy rather than law.

Justice on a filtered record is not justice - It is administration.

#### **4. Nation-specific statutory anchors**

##### **Scotland**

- Judiciary and Courts (Scotland) Act 2008 - Judges are under a statutory duty to uphold the rule of law.
- Criminal Procedure (Scotland) Act 1995 - Assumes lawful investigation and reporting to the Procurator Fiscal.

##### **England & Wales**

- Senior Courts Act 1981 - Establishes supervisory jurisdiction over public authorities.

- Criminal Procedure and Investigations Act 1996 - Assumes allegations are recorded and evidence preserved.

## **Northern Ireland**

- Northern Ireland Act 1998 - Constitutional statute incorporating the Good Friday Agreement.
- Justice (Northern Ireland) Act 2002 - Embeds human-rights-centred judicial responsibility.

In all three jurisdictions, courts are statutorily required to confront unlawful obstruction of justice - not excuse it.

## **5. What courts cannot lawfully do**

Courts cannot lawfully:

- refuse to say whether the law applies when the state is accused;
- treat statutory duties as optional;

- accept policy-filtered evidence as a complete record;
- defer indefinitely where rights are engaged;
- allow the executive to decide which allegations exist.

These are not matters of style or preference. They are matters of jurisdictional legitimacy.

## **6. The consequence of judicial deviation**

When courts depart from statutory requirements:

- the rule of law collapses into discretion;
- justice becomes conditional on power;
- public confidence in the legal system erodes;
- constitutional authority drains away.

This is not activist language - It is constitutional logic.

## **7. The unavoidable conclusion**

Courts across the United Kingdom are bound by statute and constitutional law to declare what the law is, apply statute over policy, ensure access to justice and prevent the state from shielding itself from scrutiny.

When courts fail to do so, they do not preserve stability - they abandon legality.

## **8. Put Simply**

Courts are created by law and the same law requires them to apply statute, ensure access to justice and hold the state to account, especially when the state is accused.

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