# The Invisible Scales: Structural Bias, Public Trust, and the Case for Democratic Oversight of Sentencing

Why we need to revisit equity at law, and what we could do about it.

2 May 2026 25 min read

## The Structural Flaw

The English and Welsh justice system contains an accountability gap so fundamental that it is almost invisible precisely because it is structural. It is not the result of bad actors, corrupt judges, or a conspiracy. It is the predictable consequence of a system designed to protect judicial independence — a genuine constitutional good — without any corresponding mechanism to detect or correct systematic bias in how that independence is exercised.

The flaw is this: **no body with power to act has visibility of sentencing patterns across the whole system, and no body with visibility of those patterns has power to act.**

The Judicial Conduct Investigations Office (JCIO) investigates individual misconduct. The Court of Appeal (COA) hears individual appeals. The Attorney General (AG) can refer individual unduly lenient sentences. The National Audit Office (NAO) audits government spending. The Sentencing Council monitors guideline compliance. Parliament debates criminal justice policy. Each of these bodies operates in its own lane, looking at its own slice of the picture.

Nobody is looking at the whole picture. Nobody is asking: *across all judges, all courts, all offence categories, are sentences being applied consistently regardless of who the defendant is?*

That question — the most important question a justice system can be asked — is currently nobody's job. So, we, the public, speculate.

# What People Are Feeling and Why They Are Not Wrong

Public confidence in the justice system is in structural decline. Polling consistently shows that significant majorities believe sentences are too lenient, and a growing proportion believe the system applies different standards depending on who is before the court. This perception is often dismissed by the legal establishment as media-driven populism, misunderstanding of how sentencing works, or straightforward prejudice.

That dismissal is itself part of the problem.

Some of what drives public concern is, genuinely, media distortion. Outlets report on outlier cases. Complexity gets stripped away. A sentence that follows the guidelines precisely, accounting for a guilty plea, no prior convictions, and specific mitigating circumstances, looks inexplicable in a two-paragraph news story that omits all of those factors.

But not all of it is distortion. The 2025 controversy over the Sentencing Council's pre-sentence report guidance — which directed courts to weight protected characteristics including ethnicity and immigration status when considering rehabilitation prospects — was not a media fabrication. The Justice Secretary herself publicly criticised it. Government ministers characterised it as creating a two-tier system. The Council's own guidance existed in writing and was not misrepresented.

When the body responsible for sentencing consistency issues guidance that appears to the reasonable observer to create structured differential treatment, and when the mechanism for correcting that is a public standoff between the Lord Chancellor and an unelected body with no clear democratic resolution, the public perception of bias is not irrational. It is a reasonable reading of observable facts.

The feeling is: *the rules are different depending on who you are.* The structural flaw is: *we have no systematic way to determine whether that feeling is correct, and no clean mechanism to correct it if it is.*

Those two things together are corrosive to the legitimacy of the entire system.

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# What the Sentencing Council Is and How It Got Here

The road to the Sentencing Council was paved with genuine good intentions (I write about that at lenght: here ) and a real problem.

**For most of the twentieth century, sentencing in England and Wales was a matter of pure judicial discretion within statutory maximums**. A judge in Birmingham could sentence an identical offence to five years while a judge in Brighton sentenced the same offence to two. Both sentences might be legally correct. The

disparity was real, measurable, and — from the perspective of defendants, victims, and the public alike — difficult to defend as justice.

The appellate courts tried to manage this through guideline judgments: senior court decisions that established starting points and ranges for common offences. But this was slow, piecemeal, and dependent on cases actually reaching the Court of Appeal. Large areas of sentencing practice went un-guided for years.

The Sentencing Advisory Panel, created by the Crime and Disorder Act 1998, was the first attempt at a more systematic approach — drafting guideline proposals and referring them to the Court of Appeal. The Halliday Report in 2001 pushed further, leading to the Sentencing Guidelines Council under the Criminal Justice Act 2003, which took responsibility for guidelines away from the Court of Appeal entirely. The Coroners and Justice Act 2009 replaced this with the current Sentencing Council, established in April 2010, with a broader mandate and a statutory duty on courts to follow its guidelines unless departure is in the interests of justice.

The goals were clear and legitimate: consistency, transparency, public understanding, and a more predictable system for everyone in it. Guidelines would mean that a defendant, their lawyer, a victim, and the public could all understand in advance what sentence range an offence attracted and why a particular sentence fell where it did.

That goal has been substantially achieved. Compliance with guidelines in the Crown Court is high. Sentencing is more transparent than it has ever been. The guidelines have reduced — though not eliminated — the most egregious geographic disparities.

So what is the problem?

The problem is that the Sentencing Council, in solving the consistency problem, became something its architects may not have fully intended: **an unelected, largely unaccountable technocratic body with the effective power to make sentencing policy**, operating at a significant remove from democratic oversight, drawing its membership from a professional ecosystem with identifiable institutional leanings, and possessing no external mechanism to detect or correct ideological drift in the guidelines it produces.

To be precise: the Council is not *unaccountable* in the technical sense. The Justice Committee is a statutory consultee on draft guidelines. Ministers can write letters. Parliament can legislate. But these mechanisms are slow, reactive, and politically costly to deploy. In practice, the Council operates with a degree of insulation from democratic pressure that is unusual for a body with this much practical influence over criminal justice outcomes.

This is not a conspiracy. It is institutional capture by default — what happens when any body draws its membership repeatedly from the same professional networks over time. Criminology academia, the probation service, victim advocacy organisations, and criminal law practice share broadly similar frameworks about rehabilitation, custody as a measure of last resort, and the structural causes of offending. These are not fringe views. They are mainstream within those professions. But they are not the only legitimate framework, and they are not one that commands universal assent among the public those professions serve.

When the Council's 2025 guidance on pre-sentence reports **appeared to encode differential treatment by protected characteristics into its framework,** it was not acting maliciously. It was acting consistently with the professional consensus of the world it inhabits. The problem is that the world it inhabits is not the whole of the society whose justice system it is shaping.

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# Why Judicial Decisions Can Be Appealed

The right of appeal is a foundational safeguard, and understanding why it exists illuminates why it cannot, on its own, solve the problem we are describing.

Appeals exist because judges make mistakes. They misapply law. They admit inadmissible evidence. They direct juries incorrectly. They sentence outside permissible ranges. The appellate system corrects these individual errors, develops the law through senior court judgments, and maintains the coherence of the legal system over time.

Critically, appeals address **individual decisions**. A defendant whose sentence is wrong can appeal it. The Attorney General can refer an unduly lenient sentence for increase. The Court of Appeal can and does correct specific errors.

What the appellate system cannot do is identify **patterns**. If fifty judges across England and Wales are each individually within their guidelines but are collectively and consistently departing in the same direction for the same demographic profile of defendant, no individual appeal will surface that pattern. Each case looks fine in isolation. The system of error correction operates on trees; it cannot see the wood.

This is not a failure of the appellate system. It is simply not what the appellate system was designed to do.

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# The Proposal: Parliamentary Committee on Equity at Law

The Courts Accountability and Equity in Sentencing Act, as drafted (very much in draft as an idea), addresses the structural flaw directly by creating the first institution whose specific job is to look at the whole picture.

Its core architecture:

**A Sentencing Data Repository**, maintained by the NAO, into which all Crown Court and magistrates court sentencing decisions are submitted within 14 days in standardised machine-readable format. Each submission

includes the offence, the sentence, the guidelines starting point, any departure and stated reasons, and defendant demographic data. Judge identifiers are included in the classified dataset, not in published materials.

**A Parliamentary Committee on Equity at Law**, a joint committee receiving classified data including judge identifiers, analysing patterns of systemic disparity, and empowered to refer patterns of concern to professional standards bodies. Membership is statutorily diverse, with explicit exclusion of recent Sentencing Council members and mandatory inclusion of lay statistical expertise.

**Mandatory feedback loops**: any body receiving a referral must acknowledge it, report progress at 90 days, and provide a final outcome report within 12 months. Reasons must be given in writing if no action is taken. **This single provision transforms the JCIO from a one-way complaint handler into a two-way accountability mechanism.**

**Quarterly NAO statistical publications** and an annual debatable statement to both Houses. The debate requirement is not cosmetic — it forces Parliamentary engagement with the data annually rather than allowing reports to be filed and forgotten.

**Sentencing Council accountability**: where the Committee identifies systemic disparity and the Council declines to act, the Lord Chancellor may direct guideline amendment subject to affirmative resolution of both Houses. The Council's current effective insulation from democratic override is replaced with a structured, transparent override mechanism that requires Parliamentary endorsement — preserving democratic legitimacy without enabling ministerial caprice.

The classification structure is deliberate. Raw case-level data with judge identifiers is restricted to the Committee, preventing trial by media of individual judges on the basis of incomplete data. Aggregate patterns are published, enabling informed public debate. Egregious findings can be declassified by supermajority vote. The system is transparent where transparency serves accountability, and protected where protection serves fairness.

So what would the act look like, roughly;

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**Courts Accountability and Equity in Sentencing Act [20??]**

*Part 1 — Parliamentary Committee on Equity at Law*

1. There shall be established a Parliamentary Committee on Equity at Law (the Committee), a joint committee of both Houses.

2. Membership shall comprise: four MPs and two Lords appointed by their respective Houses; two legally qualified practitioners with no current judicial appointment; two lay members with demonstrable expertise in statistics or data analysis; one representative of victim support services. No member shall have served on the Sentencing Council within the preceding five years.

3. The Committee shall have the following functions:
    - Receive and analyse classified sentencing data provided by the National Audit Office
    - Identify patterns of systemic disparity in sentencing outcomes
    - Refer cases or patterns of concern to appropriate professional standards bodies
    - Receive mandatory outcome reports from those bodies
    - Publish an annual statement to Parliament

*Part 2 — Data Collection and Analysis*

1. The Lord Chancellor shall by order establish a Sentencing Data Repository (the Repository), into which all Crown Court and magistrates court sentencing decisions shall be submitted within 14 days of issue, in a standardised machine-readable format.
2. Each submission shall include: offence category; sentence imposed; guidelines starting point; any departure from guidelines and stated reasons; defendant demographic data held by the court; judge or magistrate identifier.
3. The Repository shall be maintained by the NAO, which shall have sole custody of judge-identifiable data.
4. The NAO shall publish aggregate statistical analyses quarterly, examining sentencing patterns by offence category, departure rates, and demographic correlates, controlling for legally relevant variables as defined in Schedule 1. Individual judge identifiers shall not appear in published materials.
5. The NAO shall provide the Committee with unredacted data including judge identifiers on a classified basis, subject to the Official Secrets Act.

*Part 3 — Referral Powers*

1. Where the Committee, on the basis of data received, identifies a pattern of sentencing decisions that may indicate systemic misconduct or bias, it may refer the matter to:
    - The Judicial Conduct Investigations Office (for circuit judges and above)
    - The relevant Advisory Committee (for magistrates)
    - The relevant professional regulatory body where legal practitioners are implicated
2. Any body receiving a referral under section 9 shall be legally required to:
    - Acknowledge receipt within 14 days
    - Provide a substantive progress report to the Committee within 90 days

- Provide a final outcome report within 12 months, or at conclusion of proceedings if earlier
- State reasons in writing if no action is taken

3. Outcome reports received under section 10 shall be summarised in the Committee's annual statement, with identifying details redacted where ongoing proceedings require it.

*Part 4 — Annual Statement*

1. The Committee shall lay before Parliament an annual statement which shall include:
   - A summary of patterns identified in NAO data during the period
   - The number and nature of referrals made
   - Outcomes received from professional standards bodies
   - Recommendations to the Sentencing Council or Lord Chancellor where systemic issues are identified
2. The annual statement shall be the subject of a debatable motion in both Houses within 60 sitting days of publication.

*Part 5 — Sentencing Council Accountability*

1. Where the Committee makes recommendations to the Sentencing Council, the Council shall be required to respond in writing within 90 days, stating whether it accepts the recommendation and if not, providing detailed reasons.
2. The Lord Chancellor shall have power to direct the Sentencing Council to amend guidelines where the Committee has identified a systemic disparity and the Council has declined to act, subject to affirmative resolution of both Houses.

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# Steelman: The Strongest Objections and Why They Don't Land

## *"This threatens judicial independence."*

It does not threaten judicial independence. It threatens judicial *unaccountability*, which is a different thing. Judicial independence means judges must be free from interference in individual decisions — free from political pressure, financial inducement, or fear of personal consequences for unpopular rulings. Nothing in this

proposal touches individual decisions. No judge is directed how to sentence. No sentence is altered by committee action. The appeal system continues to operate as before.

What the proposal creates is visibility of patterns after the fact, and a referral mechanism to existing professional standards bodies when those patterns suggest systematic misconduct. A judge who is exercising genuine independent judgment consistently and evenhandedly has absolutely nothing to fear from this system. The independence argument only has force as a protection against this proposal if independence is being used as a shield for behaviour that would not withstand scrutiny. That is precisely the condition we are trying to detect.

## *“The data will be misused to generate misleading headlines.”*

The classification structure addresses this directly. Judge-identifiable data does not enter the public domain through this mechanism. Aggregate statistics are published by the NAO — an institution with strong norms of statistical rigour — not by political actors with an interest in the results. The methodology for controlling legally relevant variables is set by Parliament in Schedule 1 of the Act, not by the Committee or the NAO, reducing the scope for motivated statistical construction.

Imperfect data analysis is a risk in any accountability system. The question is whether the risk of misleading analysis outweighs the cost of no analysis at all. Currently we have no systematic analysis and demonstrably declining public trust. The status quo is not a neutral baseline.

## *“Sentencing is too complex for automated pattern analysis.”*

This objection proves too much. The Sentencing Council already conducts statistical monitoring of guideline compliance. The Crown Prosecution Service analyses charging patterns. The Home Office publishes criminal justice statistics controlling for multiple variables. The technical capacity to perform rigorous multivariate analysis of sentencing data exists and is already in use. What this proposal adds is the application of that capacity to the question of differential outcomes by defendant characteristics, with democratic oversight of the results.

Complexity is an argument for sophisticated methodology, not for no methodology.

## *“The Committee will become politicised.”*

Any Parliamentary committee can become politicised. The proposal addresses this through the NAO’s custodianship of data and publication function — the NAO is constitutionally independent of government in a way that Parliamentary committees are not, and its statistical publications carry institutional credibility that is not easily captured by political interests. The referral power sits with the Committee, but the analysis sits with the NAO. Separating those two functions reduces the scope for motivated misuse.

The deeper point is that the alternative — leaving the Sentencing Council as the effective policymaker with minimal democratic oversight — does not eliminate politicisation. It merely relocates it to a less visible and less

accountable arena. The 2025 episode demonstrated that the Council is not above making politically charged policy decisions. The question is whether those decisions are made in the open, subject to democratic scrutiny, or behind closed doors, insulated from it.

### *“This will have a chilling effect on judges who sentence minority defendants heavily.”*

If a judge sentences minority defendants more heavily than the guidelines warrant for equivalent offending, a chilling effect on that behaviour is precisely what the system is designed to produce. If a judge sentences consistently with the guidelines regardless of defendant characteristics, the data will show that and no referral will follow. **The chilling effect, if it exists, falls on inequitable sentencing. That is not a flaw in the proposal. It is its purpose.**

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## Conclusion

The structural flaw in the current system is not malice. It is architecture. A system designed to protect judicial independence through institutional separation has, in the absence of any integrating oversight mechanism, created conditions in which systematic inequity can persist indefinitely without detection, and in which public trust erodes steadily without any institutional means of either confirming or refuting the public’s concerns.

The proposal described here does not dismantle judicial independence. It builds around it a democratic accountability structure that has been absent since the courts were established. It asks a question the system currently cannot answer: *are we, as a matter of demonstrable fact, administering justice equally?*

If the answer is yes, the system will demonstrate it and public confidence can be rebuilt on evidence rather than assertion. If the answer is no, we will finally have the means to do something about it.

Either way, we will know. And knowing is the beginning of justice.

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## Appendix A: Extension of the Sentencing Data Repository to Include Pre-Prosecution Decision Data

# A Proposal for Consideration in Committee

## Prefatory Note

This appendix is submitted for consideration during the Committee stage of the Courts Accountability and Equity in Sentencing Act. It proposes a significant extension of the Act's scope: the inclusion of Crown Prosecution Service charging and discontinuation decisions within the Sentencing Data Repository, alongside the existing sentencing outcome data. This extension is not proposed lightly. It carries material risks that are identified and addressed in full below. It is submitted that those risks are manageable through appropriate architectural design, and that the case for inclusion is compelling in light of documented historical failures that an upstream data mechanism might have intercepted earlier.

# Part One: The Gap in the Current Architecture

The Act as drafted addresses the sentencing layer of the criminal justice system. It creates, for the first time, a systematic mechanism for detecting differential outcomes in sentences imposed by courts, and routes that analysis through democratic oversight via the Parliamentary Committee on Equity at Law.

This is a significant advance on the current position. It is not, however, a complete picture.

The sentencing layer is the end of a pipeline. By the time a case reaches sentencing, a series of prior decisions have already determined which cases are prosecuted, on what charges, and against which defendants. Those prior decisions — made by the Crown Prosecution Service in its charging and discontinuation functions — are currently subject to no equivalent systematic pattern analysis. They are reviewed individually through the CPS complaints mechanism and inspected periodically by His Majesty's Crown Prosecution Service Inspectorate, but no body examines aggregate patterns of charging and discontinuation decisions for evidence of systemic differential treatment by protected characteristics.

This gap matters because systematic bias in a criminal justice system does not necessarily manifest at the sentencing stage. It may manifest — and historically has manifested — much earlier, in decisions about whether to pursue a complaint at all.

# Part Two: The Historical Case — Endemic Abuse and Institutional Suppression

The organised child sexual exploitation cases identified in Rotherham, Rochdale, Oxford, Telford, and elsewhere represent the most significant documented example of systematic institutional failure in the modern history of English criminal justice. The failure was not primarily a sentencing failure. It was a failure of investigation, of charging, and of the institutional willingness to treat the victims as victims.

The timeline is instructive and should be considered carefully by the Committee.

A Home Office-commissioned research report identifying a pattern of organised exploitation in Rotherham was produced in 2002. It was suppressed. The pattern it identified — large numbers of young girls, predominantly white and from economically deprived backgrounds, being exploited by networks of men predominantly of British Pakistani heritage — was known to social services, to police, and in some cases to local politicians, for years before prosecutions began. The first significant prosecutions did not occur until 2010. By the most conservative estimates, over a thousand victims in Rotherham alone were failed during that period. Across all identified locations the figure is considerably higher, and the true number remains unknown.

The Jay Report of 2014 identified the reasons for this failure with uncomfortable clarity: professional reluctance to engage with the racial dimension of the offending pattern for fear of being perceived as racist; institutional cultures that minimised the credibility and agency of the victims; and in some documented cases the active suppression of information by people who understood precisely what surfacing it would mean.

The critical observation for the purposes of this appendix is this: **the information existed**. Police forces held complaint data. Social services held case records. The Home Office held a research report. The failure was not informational. It was institutional — a systematic unwillingness to aggregate, act upon, and escalate information that was already present.

What was absent was any mechanism that would have made that suppression costly, visible, and ultimately unsustainable.

## What Upstream Data Might Have Shown

Had a Repository of the kind proposed in this extension existed and been operational from, say, 1998, the following patterns would have been analytically detectable within a relatively small number of years:

**Complaint discontinuation clustering.** A statistically anomalous rate of discontinuation of complaints involving victims of a particular demographic profile — young females from lower socioeconomic backgrounds — in specific geographic areas, for offences in particular categories, would have appeared in the aggregate data. No individual discontinuation decision need have been wrong on its face. The pattern across thousands of decisions would have been visible.

**Charging rate disparity.** Where complaints were pursued, charging rates for particular offence categories involving identified victim profiles could have been compared against national baselines, controlling for evidential variables. Systematic under-charging would have generated a statistical signal.

**Geographic concentration.** The clustering of anomalous patterns in specific CPS Areas — South Yorkshire, Greater Manchester, Thames Valley — would have flagged those areas for further scrutiny years before the first prosecution.

None of this would have been proof of wrongdoing by any individual prosecutor. It would have been a signal requiring explanation. Under the architecture proposed below, that signal would have gone to the Parliamentary Committee, which would have been required to seek explanation from the CPS, and the CPS would have been required to provide one in writing. Silence — the mechanism by which the 2002 report was effectively buried — would not have been an option.

It cannot be said with certainty that this would have been sufficient to overcome the institutional suppression. The 2002 report was produced for a government department and was still buried. Institutional courage cannot be legislated. But the cost of suppression would have been materially higher, and the paper trail created by mandatory written responses to Committee referrals would have constituted an evidential record that could not subsequently be made to disappear.

The question is not whether this mechanism would have guaranteed a different outcome. It is whether it would have made the right outcome more likely. The answer to that question is yes.

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# Part Three: The Risks of Upstream Extension

The Committee should approach this extension with clear eyes. The risks are real and are set out here in full, alongside the mitigations proposed.

## Risk 1: Chilling Effect on Prosecution Decisions

**The risk:** If CPS prosecutors know that their charging and discontinuation decisions are being aggregated and analysed for demographic patterns, they may make charging decisions defensively — pursuing weak cases to avoid appearing to under-prosecute a particular defendant demographic, or discontinuing cases involving particular victim profiles to avoid appearing to over-prosecute. Either distortion would be harmful to justice.

**The mitigation:** The analytical framework must control rigorously for evidential strength as a variable. The Code for Crown Prosecutors already requires prosecutors to assess evidential sufficiency as a threshold condition. Decisions that fail the evidential threshold should be coded as such in the Repository submission, and the statistical analysis should examine patterns *within* the evidential threshold category — that is, cases where

evidential sufficiency was assessed as met but charging was nonetheless not pursued, or vice versa. This substantially reduces the scope for defensiveness to distort the data, because the analysis is not asking “why did you discontinue this case” but “why did your discontinuation rate for this category differ from the national baseline after controlling for evidential assessment.”

The methodology for this control must be set in statute, not left to the NAO or Committee to define, for precisely the reason that a methodology not fixed in statute can be gamed or argued about indefinitely.

## Risk 2: The Dataset Becomes a Political Weapon

**The risk:** A dataset containing CPS charging decisions linked to defendant and victim protected characteristics, even in aggregate and even held by the NAO on a classified basis, is extraordinarily sensitive. In the wrong hands, or selectively presented, it could be used to construct inflammatory narratives about prosecution bias in either direction — suggesting that particular communities are over-prosecuted or under-prosecuted — that bear no relationship to properly controlled statistical findings.

**The mitigation:** Three architectural features address this directly.

First, the Committee receives processed analytical outputs from the NAO, not raw records. They see findings, not data from which they can construct their own narratives.

Second, the NAO’s publication of quarterly statistics must be accompanied by full methodological disclosure — the controlling variables, the confidence intervals, the limitations of the analysis. Raw findings without methodological context cannot be published. This creates a standard that makes selective misrepresentation harder to sustain because the full methodology is always in the public record alongside the finding.

Third, the classification structure means that case-level data and prosecutor identifiers never enter the public domain through this mechanism. Aggregate findings at Area level are published. Individual prosecutor performance data is restricted to the Committee. Egregious pattern findings may be declassified by supermajority vote of the Committee, subject to HMCPSI involvement in validating the finding before declassification.

## Risk 3: Prosecutorial Independence Is Compromised

**The risk:** The independence of prosecution decisions from political interference is a constitutional principle as important as judicial independence. A mechanism that creates Parliamentary oversight of charging patterns could — if poorly designed — create pressure on the CPS to make charging decisions that satisfy a committee rather than the Code for Crown Prosecutors.

**The mitigation:** This risk is real and requires the same analytical response as the judicial independence objection to the main Act. The proposal does not give the Committee any power over individual charging decisions. It cannot direct the CPS to charge or discontinue any case. What it creates is visibility of aggregate

patterns and a referral mechanism to HMCPSI — the existing independent inspectorate — when those patterns suggest systemic problems. The CPS's response to any referral must address the pattern, not justify individual decisions. This preserves prosecutorial independence in individual cases while creating accountability for systemic outcomes.

The distinction between interfering with individual decisions and scrutinising systemic patterns is the same distinction that underlies the main Act's treatment of judicial independence. It is constitutionally coherent and operationally clear.

## Risk 4: The Data Creates Perverse Incentives for Victim Reporting

**The risk:** If it becomes publicly known that the Repository tracks victim protected characteristics, some victims may be deterred from reporting offences for fear of their data being held in a government system. This concern applies particularly to victims from communities with low institutional trust.

**The mitigation:** The data held in the Repository is not new data. It is data that already exists within CPS case management systems and is already held by the state. The Repository aggregates existing data; it does not create new data collection from victims. This should be clearly communicated in the public information accompanying the Act. The privacy notice accompanying the Repository must make explicit that no individual victim's data is published or disclosed outside the classified environment of the Committee.

## Risk 5: Scope Creep

**The risk:** A Repository that begins with sentencing outcomes and CPS charging decisions could, over time, be extended to police investigation decisions, bail decisions, parole decisions, and other criminal justice functions. Each extension carries its own risks and each would require fresh democratic authorisation. Without a clear limiting principle, the architecture could expand indefinitely.

**The mitigation:** The Act should contain an explicit provision that any extension of the Repository's scope requires primary legislation — not secondary legislation or ministerial direction. This is the appropriate constitutional mechanism for a decision of this significance and places Parliament as the gatekeeper for any future expansion. It also makes the current proposal's scope clear and bounded: sentencing outcomes and CPS charging and discontinuation decisions, nothing more without further Parliamentary authorisation.

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# Part Four: Proposed Legislative Provisions

The following provisions are proposed for insertion into the Act as a new Part 2A, with consequential amendments to Parts 2 and 3.

**Part 2A — Extension to Crown Prosecution Service Decision Data**

**14A — CPS Decision Submissions**

1. The Director of Public Prosecutions shall ensure that all charging decisions and discontinuation decisions made by the Crown Prosecution Service are submitted to the Repository within 21 days of the decision being made.

2. Each submission shall include:

    - Offence category under consideration
    - Outcome of the charging or evidential threshold assessment
    - Decision made (charge, conditional caution, no further action, discontinuation)
    - Stated reason category for the decision, using a standardised taxonomy established by the Director of Public Prosecutions in consultation with the NAO
    - Protected characteristics of the defendant as held in CPS records
    - Protected characteristics of the victim or victims as held in CPS records
    - CPS Area identifier
    - Individual prosecutor identifier, for the classified dataset only

3. The taxonomy of stated reason categories referred to in subsection (2) shall be established by statutory instrument subject to affirmative resolution of both Houses, and shall not be amended without fresh affirmative resolution.

**14B — Analytical Framework for CPS Data**

1. The NAO shall analyse CPS decision data submitted under section 14A using a methodology established by statutory instrument, which shall include controls for:

    - Evidential sufficiency assessment outcome
    - Offence category and severity
    - Prior offending history where held
    - Geographic baseline rates by CPS Area
    - Temporal factors including case age and complexity

2. The methodology shall be designed to identify statistically significant variations in charging and discontinuation rates that persist after application of the controls in subsection (1).

3. The NAO shall include CPS decision analysis in its quarterly statistical publications under section 7, subject to the same classification and publication rules as apply to sentencing data.

**14C — Referral in Respect of CPS Patterns**

1. Where the Committee identifies a pattern in CPS decision data that may indicate systemic differential treatment, it may refer the matter to His Majesty's Crown Prosecution Service Inspectorate.

2. HMCPSI shall upon receipt of a referral under subsection (1):

    - Acknowledge receipt within 14 days
    - Provide a substantive progress report to the Committee within 90 days
    - Provide a final outcome report within 12 months or at conclusion of any inspection if earlier
    - State reasons in writing if no inspection or action is undertaken

3. Outcome reports received under subsection (2) shall be summarised in the Committee's annual statement under section 12.

**14D — Limitation on Scope**

1. The Repository shall collect data only in respect of the functions specified in sections 4 and 14A of this Act.

2. Any extension of the Repository's scope to include data from other criminal justice functions shall require primary legislation.

3. No Minister of the Crown may by order or direction extend the scope of the Repository beyond that established by this Act.

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# Part Five: Summary Assessment

The extension proposed in this appendix is not without risk. The Committee should weigh those risks seriously.

But the Committee should also weigh the cost of the status quo. The rape gang cases are the most visible and most catastrophic example of what happens when systematic patterns are allowed to persist undetected because no institution has both the visibility to see the pattern and the mandate to act on it. They are not the only example. They are the one that became impossible to ignore.

The argument against extending the Repository upstream is essentially an argument that the risks of oversight outweigh the risks of blindness. The documented history of what blindness costs — measured in the lives of children who were failed by every institution that should have protected them — makes that argument very difficult to sustain.

The architecture proposed here is designed to capture the analytical benefit of upstream visibility while managing the genuine risks through statutory methodology, classification controls, tiered access, and clear limiting principles. It is submitted that this architecture is proportionate, constitutionally coherent, and overdue.

The question the Committee must ultimately answer is the same question that should have been answered in 2002 when a researcher handed a government department a report identifying a pattern of organised child exploitation in Rotherham, and the department buried it.

*If we had known, and had been required to say what we knew, would we have acted?*

This appendix proposes a mechanism that would have made not knowing — and not saying — considerably harder.

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*This appendix is submitted for consideration in Committee and does not form part of the Act as introduced. The provisions proposed herein would require separate impact assessment, consultation with the Director of Public Prosecutions, His Majesty's Crown Prosecution Service Inspectorate, and the Information Commissioner's Office before inclusion in the Bill.*