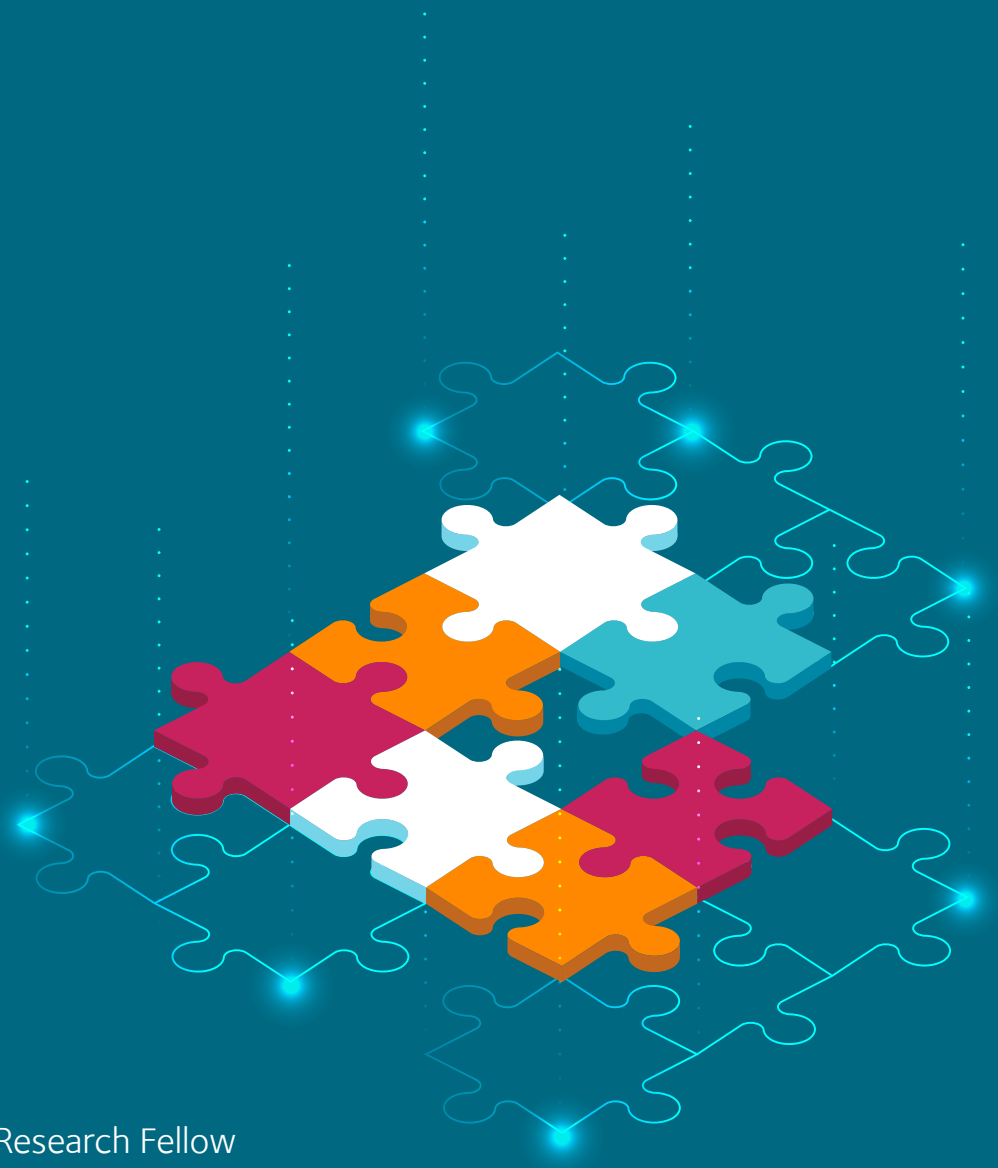
Public Law Project

Missing Pieces:

Transparency and Accountability in Public Body Automated (and Automated Assisted) Decision-making



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A. Executive summary

The nature of public body decision-making is changing. Public bodies are increasingly using automated technologies, including Artificial Intelligence (AI), to make or support consequential decisions about people's lives and rights.

Government has set out in policy that its use and adoption of AI should be subject to the principles of:

1. Safety, security and robustness
2. Transparency and explainability
3. Fairness, bias and discrimination
4. Accountability and responsibility
5. Contestability and redress[1]

Where AI or other forms of automated technology are used in public body decision-making one of the routes for accountability, contestability and redress is through public law remedies, including judicial review.

However, it has been suggested that effective accountability through this route is being held back by challenges in gathering and assessing relevant information about those tools and the decisions made using them.[2]

This report looks in greater detail at those challenges in practice to:

1. Develop an account of what information is needed about these decision-making systems, at what stage, to bring effective public law litigation
2. Analyse whether current transparency mechanisms meet those needs
3. Understand the considerations, challenges and opportunities from a public body perspective in facilitating that transparency
4. Make informed recommendations about how mechanisms could be improved or supplemented

Key findings are as follows:

1. There is currently a patchwork of transparency mechanisms which individually and collectively fail to provide the information in the detail, form and time required to effectively challenge systems of concern. Such limitations in transparency exacerbate existing barriers to justice in judicial review, weakening accountability and preventing early resolution of issues.

2. Public body participants, without exception, were supportive of transparency but also identified substantive and practical challenges to meeting requirements in practice.

1. Government Digital Service, Artificial Intelligence Playbook for the UK Government (10 February 2025) pp. 46-47.
2. Brendan McGurk KC and Joe Tomlinson, *Artificial Intelligence and Public Law* (1st edn, Hart Publishing, 2025), p.143; Lord Sales, 'Algorithms, Artificial Intelligence and the Law' (2020) 25(1) Judicial review 46; Lord Sales, 'AI and Public Law: Automated Decision-Making in Government' (5 November 2025) Keynote Lecture for the Government Legal Department's Annual Conference; Alexandra Sinclair, 'Automated Decision-Making And Government Opacity' (August 15, 2024) Public Law, 2025, January pp. 8-15.

3. Transparency and accountability could be strengthened by:

    a. **Improved upstream governance, engagement and design processes:** in particular, by ensuring that these are informed by public law considerations, shaping the questions asked and therefore information captured, understood and monitored by public bodies.
    b. **Improved compliance with, and enforcement of, existing transparency requirements.**
    c. **Enhancing and supplementing existing transparency mechanisms** by requiring individual notification of when and how automated systems have been used to support individual decisions accompanied by enforceable individual rights to information about those systems.

4. Ensuring we have a legal and regulatory framework that is fit for purpose for the emerging automated state cannot be left to evolution via the common law alone – it requires urgent action to provide certainty and confidence in what is required to ensure that decision-making systems, and the decisions made using them, are fair, lawful and non-discriminatory.

B. Scope and methodology

This section sets out the project scope and the methodology applied.

1. Automated decision-making systems

This report applies the following intentionally broad definition of **automated decision-making (ADM) systems:**

> *A system that uses one or more algorithms, as part of computer software, to produce outputs that can be used in relation to decision-making*[3]

This is broader than the definition of 'solely' automated decision-making applied under UK data protection law.[4] The latter refers to decisions that are taken entirely by an automated system, without 'meaningful' human involvement.

The definition applied in this report also captures what are sometimes described as automated 'assisted' decision-making systems, where a human may be involved at some stage of the decision-making process. This includes automated systems that are used to:

1. **Frame, triage or stream decision-making**: for example, by determining the type or quality of human judgment involved
2. **Inform decision-making**: by providing information to a decision-maker to consider when reaching a decision

It also captures a wide range of technologies including, but not limited to, those sometimes described as 'Artificial Intelligence'.[5] This includes both pre-determined systems which apply set rules or formulas defined by a human and self-learning systems.[6]

3. This reflects the definition applied by the Open Government Partnership in its joint paper with the Ada Lovelace Institute and the AI Now Institute, Algorithmic Accountability for the Public Sector: Learning from the first wave of policy implementation (2021); it differs from, but is similar in breadth to, the definition applied by the Government's Algorithmic Transparency Recording Standard.
4. Art 22A-D UKGDPR, see further Annex 2.
5. The Information Commissioner's Office (ICO) defines AI as "an umbrella term for a range of technologies and approaches that often attempt to mimic human thought to solve complex tasks", ICO, Artificial Intelligence: Definitions, available here: https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/artificial-intelligence/explaining-decisions-made-with-artificial-intelligence/part-1-the-basics-of-explaining-ai/definitions/
6. See further McGurk and Tomlinson (2025), p. 3, n2; Rebecca Williams, 'Rethinking Administrative Law for Algorithmic Decision-making', Oxford Journal of Legal Studies, Volume 42, Issue 2, Summer 2022, pp.s 468–494

The rationale for applying a broad definition is that:

1. Automated decision-making systems that have raised concerns to date have included systems that a) use automated algorithms which do not constitute "AI"[7], and b) assist rather than determine decisions[8]

2. The distinction between what constitutes solely and non-solely ADM can be blurred, and may be contested, in practice[9]

A similarly broad definition has been applied by the Government's Algorithmic Transparency Recording Standard (ATRS).[10]

2. Public law litigation

The type of law governing the conduct of public bodies is known as public law. Public law should ensure that public bodies act lawfully, fairly, rationally and compatibly with the human rights of those affected by their actions.

Where a public body acts unlawfully, there are a number of ways that those affected can formally challenge that behaviour or decision. These include:

1. Complaining using public bodies' complaints procedures or ombudsmen
2. Exercising rights of appeal to a tribunal (if such a right exists in relation to the particular decision being challenged)
3. Asking a public body to review its decision
4. Through judicial review

Where the law provides that there is a right to appeal a decision of a public body to a tribunal, the tribunal will usually look again at the decision made and make its own determination on whether the decision was correct, based on the evidence that is presented at the hearing. If there is no right to appeal – or if an appeal won't properly address the problem – it may be possible to challenge a public body's decision by judicial review.

Unlike statutory appeals, judicial reviews do not consider whether a decision was correct or not. It instead looks at whether the public body has reached its decisions in accordance with the law. Potential grounds of challenge in judicial review stem from the specific relevant statutory scheme, general statutory frameworks regulating government decision-making and common law principles developed by the courts.[11] It can include grounds of challenge under equality, human rights and data protection law.

7. For example, the 2020 A-levels exam results algorithm (see further rows 17 and 18 of the Litigation Mapping Exercise set out at Annex 3).
8. For example, the Live Facial Recognition technology that was the subject of a successful challenge in R (Bridges) v CCSWP [2020] EWCA Civ 1058 (see rows 1 and 2 of Annex 3).
9. See for example, in relation to the equivalent definition under the EU GDPR, Case C-634/21, *SCHUFA Holding (Scoring)* (December 2023); see also Reuben Binns and Michael Veale, 'Is that your final decision? Multi-stage profiling, selective effects and Article 22 of the GDPR', International Data Privacy Law, 2021, Vol. 11, No. 4.
10. Government Digital Service, Algorithmic Transparency Recording Standard (ATRS) Mandatory Scope and Exemptions Policy, 17 December 2024, section 4.
11. Further information on potential grounds of judicial review can be found at Annex 1.

Judicial reviews may challenge both individual decisions produced using ADM systems and the use of the ADM system itself. It has been suggested that in the ADM context, the distinction between individual and systemic challenges is likely to be blurred.[12]

The focus of the current report is on challenges by way of judicial review. However, it has also included within the research sample regulatory complaints to the Information Commissioner's Office (ICO) under the UK General Data Protection Regulation (UKGDPR) where these a) relate to public body use of ADM systems, and b) entail grounds of challenge that could also be raised by way of judicial review.

3. Information rights and requirements relevant to ADM systems

Potential sources of information about ADM systems include the following information rights and requirements:[13]

1. **The ATRS**: a standardised template for public sector organisations to publish information about how and why they are using algorithmic tools. Information about tools that are in scope should be published in a publicly available repository[14]

2. **The Freedom of Information Act 2000 (FOIA)**: which gives people the right to request and receive information held by public bodies[15]

3. **Data protection ADM safeguards (Art 22C UKGDPR)**: the safeguards that must be in place to lawfully undertake 'solely' ADM. This includes requirements regarding the provision of information about those decisions

4. **Data protection information rights (Arts 13 – 15 UKGDPR)**: under data protection law data subjects have the right to be informed about and to access information about how their personal data is processed. This includes additional information in relation to 'solely' ADM[16]

5. **Duty of candour**: the primary procedural duty governing the evidence base in judicial reviews. The duty of candour requires parties to assist the court by providing a full and accurate explanation of all the of the facts relevant to the issue in dispute.

In January 2026, the Home Office published its Policing White Paper. This included an intention to develop, publish and maintain 'a registry of the AI tools the police are using and the steps they've taken to test and evaluate them before deployment'.[17] As this has not yet been developed, it has not been reviewed as part of this research. However, many of the recommendations regarding the ATRS will also be of relevance to this new repository.

12. Jennifer Cobbe, 'Administrative Law and the Machines of Government: Judicial review of Automated Public Decision-Making', (2019) 39(4) Legal Studies 641; Lord Sales 'Information Law and Automated Governance', (Institute of Directors, 24 April 2023).
13. See further Annex 2
14. Government Digital Service, Algorithmic Transparency Recording Standard Hub
15. s. 1 FOIA
16. in the case of solely automated decision-making within the definition of Art 22A-B UKGDPR, this includes information about the existence of ADM, including profiling, meaningful information about the logic involved and the significance and envisaged consequences of that processing.
17. Home Office, From Local to National: A New Model for Policing, (January 2026)

4. Method

The project sought to answer four research questions:

1. What information is required about automated public decision-making systems and automated assisted decision-making systems, and at what stage to bring effective public law litigation?
2. To what extent do existing transparency mechanisms meet the requirements identified in answer to question 1?
3. How can current mechanisms be reformed to meet the requirements identified in answer to question 1?
4. What are the considerations, challenges and opportunities from a public body perspective in meeting the transparency requirements identified in answer to question 1?

To answer these questions, we undertook the following phases of work:

Phase 1: (a) mapping the judicial review litigation landscape relevant to public body ADM

An exercise was undertaken to identify instances of a) judicial review, and b) regulatory complaints to the ICO under data protection law, that related to ADM systems falling within the definition set out at B.1 above.

This included cases where a judicial review challenge or a data protection regulatory complaint had been:

1. Considered but not initiated (for example, no pre-action correspondence had been sent),
2. Initiated (for example, through the sending of initial pre-action correspondence) but dropped or settled without progressing to judgment or a final decision,
3. Was still under consideration or otherwise in progress,
4. Initiated and progressed to judgment or final decision.

Cases were identified by undertaking a search of legal research platforms and the ICO's database of enforcement action.[18] Searches used a combination of:

1. Keyword searches (for example, "automation", "decision tool", "machine learning"), and
2. Legislation searches (for example, "Article 22 UKGDPR")

Identified cases were then reviewed by the research team to determine whether they fell within the project scope.

18. ICO, 'Enforcement Action' https://ico.org.uk/action-weve-taken/enforcement/

A key limitation of this approach was its relative ineffectiveness at identifying cases falling within categories 1 – 3 above (cases that had not proceeded to judgment or final decision). To identify cases falling within these categories, PLP publicised a call for participants and applied a "snowballing" approach to identify further cases not otherwise publicised.

The results of the litigation mapping exercise can be found at Annex 3. This includes publicly available information only and excludes references to cases not currently in the public domain.

(b) semi-structured interviews with legal practitioners, individuals and organisations involved in litigation regarding public body ADM

Semi-structured interviews were undertaken with legal practitioners, individuals and organisations involved in litigating (or considering litigating) cases falling within the above scope. We applied a purposive approach to sampling, identifying participants that fall within the project scope identified through the litigation mapping exercise at phase 1(a). This was supplemented by a call for participants and applying a "snowballing" approach to identify further participants not otherwise publicised.

Interviews were conducted with 24 participants:

Research Participant Category	Number
Barrister[19]	7
Solicitor[20]	2
Solicitor (NGO)[21]	7
Claimant (NGO)[22]	5
Claimant (individual)	3
TOTAL	24

Interviews related to 18 specific ADM systems. Some participants had been involved with more than one challenge. In addition, some participants shared experiences and perspectives relating to ADM systems or challenges that were not specifically identified or further analysed in the research.

(c) Case analysis of ADM challenges

In relation to 5 identified ADM systems, a more detailed case analysis approach was applied to material identified through semi-structured individuals supplemented, where available, by publicly available documents. This did not include access to case files or restricted information to avoid falling foul of restrictions related to client confidentiality, privilege or collateral use of documents disclosed for the purposes of litigation.

19. This includes barristers with experience representing both claimants and public body defendants. However, their inclusion within the current sample was in relation to their experience representing claimants.
20. Solicitor refers to solicitors working in private practice rather than in-house at a non-governmental organisation (NGO)
21. Solicitor (NGO) refers to solicitors working in-house within a non-governmental organisation
22. Claimant (NGO) refers to participants working in non-legal roles within non-governmental organisations who would consider bringing or had brought litigation in their own name.

(d) Dyadic and semi-structured interviews with public body officials

The initial intention has been to convene a focus group with public body officials.[23] However, in response to challenges with participant recruitment we instead held a series of dyadic and individual semi-structured interviews. This addressed practical challenges around scheduling and also facilitated a more tailored set of discussions.

Interviews were held with 11 public body officials from 7 different public bodies . Participants were selected on the basis of their experience regarding the development and / or internal governance processes around the development of public body ADM systems.

Phase 2: analysing existing transparency mechanisms against the information requirements identified in Phase 1

The scope and operation of existing transparency mechanisms set out in section B.3 above were analysed as against the requirements identified in phase 1. This included:

1. A review of 23 freedom of information requests identified through the litigation mapping and case analysis exercise and relating to:
    a. 17 ADM systems,
    b. 12 public bodies (4 central government departments; 4 police forces; 1 regulator and 3 local authorities)
2. A high-level review of 125 entries on the ATRS[24]
3. A review of the ATRS required information fields and guidance
4. A more detailed, qualitative review of 10 ATRS entries

Phase 3: recommendation forming workshops

Workshops were held with 32 participants across five separate sessions to test the draft findings and inform the project recommendations. This included one public body focused workshop comprising 7 participants.

Advisory Group

The research was assisted by an advisory group comprising litigators, academics, experts in AI development and representatives of the Equality and Human Rights Commission, Law Commission and Government Legal Profession. The Advisory Group oversaw the design and development of the research project and provided valuable advice, input and discussions.

23. 5 participants were from central government departments, 3 worked in a policing context, 3 in a local authority context.
24. This represented the total number of entries at the time of the review (February 2026), at the time of publication a further 27 entries have been added to the ATRS since the review was undertaken.

Conflicts

In addition to undertaking research, PLP has a casework team of lawyers who represent clients affected by unlawful policies and decisions. This can and does include representing individuals in relation to challenges of ADM systems that fall within the scope of this research.

The ADM systems in scope of the research include systems that Public Law Project has engaged with from a case work perspective. However, the research team did not have access to case files for the purpose of this research to avoid falling foul of restrictions related to client confidentiality, privilege or collateral use of documents disclosed for the purpose of litigation. All research materials are saved to a restricted section of PLP's online filing system with permissions limited to core members of the research team. PLP's casework team does not have access to these files.

C. What do you need to know?

This section looks at the key themes identified in phase 1 regarding the information required about ADM systems to bring effective public law litigation. It is also framed with reference to whether this information was available in practice.

1. Whether an ADM system is in use

Participants noted that the key starting point was knowing whether an ADM system was being used by public bodies to make decisions:

> P17 (Barrister) 'Most fundamentally, you want to understand whether AI was deployed at all'

> P23 (Claimant – NGO) 'You need to know if it's been used...that's the most crucial question, isn't it really?'

Participants explained how this was of priority importance, as while it was not sufficient on its own to understand if there were concerns about that system, it at least facilitated the ability to ask relevant questions.

> P16 (Solicitor - NGO) 'if you get the first piece of the thread, then you can start discovering the rest – so acquiring the first piece seems very important'

In relation to the specific ADM system challenges considered, the trigger for asking questions was sometimes a brief reference to an ADM system in a public document. These references were described as not always obvious, and it was felt that they required a degree of 'tech literacy' to recognise the potential significance of the information.

> P11 (Barrister) 'I do a lot of this work these days increasingly about AI, and it's always just because people like myself and solicitors I work with know that this is what things to look out for, but it is really hard to do because you're taking steps in the dark.'

Other ADM systems were identified through speculative FOIA requests. In other instances, participants referred to picking up on something feeling 'a bit off', for example, in how a document was drafted or due to a decision looking obviously wrong. A barrister who had spent time researching and advising on cases involving the use of generative AI explained:

> P19 (Barrister) 'for someone like me, it's quite obvious when I'm reading a document that there are certain hallmarks of a ChatGPT decision.'

However, concerns were expressed that this would not be clear to their colleagues. Some participants noted that they continued to be unclear as to whether there was an ADM system in operation at all, even after enquiries:

> P23 (Claimant - NGO) 'We don't know for sure that there is a technical component...that it's an algorithm.'

2. Whether it was used in a specific decision about a decision subject

Participants explained it was not enough to know that an automated system was in general use by a public body.[25] For a decision subject to be able to effectively bring a challenge, they needed to know whether it had been used as part of the decision concerning them.

> P11 (Barrister) 'That's the main thing I think, what has been used in this individual person's case?'

Only one participant referred to an incident where the use of an ADM system was proactively referred to by a public body in correspondence sent to the decision subject. The participant expressed doubt as to whether that reference had been intentional. Other participants described how, even where there was an awareness that a tool was in use, it often remained unclear whether it had been used in a particular individual decision.

> P13 (Solicitor - NGO) 'I've had clients where [the public body] even said yes we do use the tool, but we can't confirm whether it's been used on your client or not; you just think how are you supposed to advise your clients whether they could issue [a claim] on that?'

The concern was that without obvious 'tells', and in the absence of proactive notification, claimants would have no way of knowing if technology had been used.

> P5 (Solicitor - NGO) 'The problem with some of the more sophisticated algorithms is that people don't even know they're affected by it.'

3. Information needed to identify grounds of challenge and assess their prospects of success

In the cases considered, information about the existence of a system was not accompanied by sufficient information needed to identify relevant grounds of challenge. Instead, participants used a combination of the transparency mechanisms (including those described in Section B.3 above[26]) to identify relevant grounds of challenge.

25. Although knowing about the existence of the system in general at least supported being able to then ask whether an ADM system had been used in a particular decision
26. Other sources of information included parliamentary scrutiny measures such as parliamentary questions tabled by Members of Parliament and information published as part of procurement processes.

3.1 Detail and specificity

Often participants reported receiving some information which broadly aligned to some of the key categories of information they were seeking. The key issue was often that it didn't provide the level of detail or specificity needed.

> P13 (Solicitor - NGO) 'You'd want more specifics, whereas what we generally have is this quite unspecific information.'

For example, participants referred to the inadequacy of information asserting that there was a 'human-in-the-loop' without providing the further detail necessary to assess the adequacy of that role to either provide 'meaningful' human involvement or perform the safeguarding function it was intended to provide. This was also raised in recommendation forming workshops.

> RW1-RP3 'I find people are very hand-wavy about Human-in-the-Loop. It's like, 'No, don't worry, we've got Human-in-the-Loop,' but it's like, okay for how long? Who's reviewing? What expertise are you seeking on to make these questions? Obviously, there's a risk of automation bias and cognitive offloading that means that this, as a defence or as a piece of assurance, doesn't really hold up to scrutiny.'

3.2 Assertions are insufficient

Participants referred to the need for assertions, for example about why legal requirements or concerns didn't apply, to be supported and backed up by the accompanying rationale and additional information to support the conclusion reached. For example, one participant contrasted the comparative usefulness of an initial disclosure by a public body asserting that the equality analysis of the relevant system did 'not present any immediate concerns of discrimination, unfair treatment or detrimental impact on customers' with the subsequent publication of a (redacted) version of the assessment itself:

> P13 (Solicitor - NGO) 'the latest [Equality Impact Assessment (EIA)[27]] set out their justification for why [difference between outcomes for different protected groups] might exist but you at least knew what their analysis was, I think it was really helpful to see that.'

They explained how having that additional information left them better placed to assess whether the initial assertion was credible or not.

This was particularly important in an area where the applicability of legal requirements is context specific or where the scope has not been tested extensively in the courts. For example, as noted in section B above, whether a decision constitutes a 'solely' automated decision for the purposes of UKGDPR can be contentious in practice.[28] As one participant explained, simply stating that a system is outside of this definition, without explaining how and why that conclusion was reached, was not sufficient:

27. Equality Impact Assessments (EIAs) refer to the documents public bodies commonly use to evidence compliance with their Public Sector Equality Duty, see further Annex 1.
28. See for example n.9

> P10 (Solicitor) 'It's not really for them to say we've not been using automated decision-making, full stop. I think one would expect that the response would be the technology is not automated decision-making for Y reason and that you can kind of go against and push back and say actually this is what you've missed about in your analysis.'

3.3 Underlying documents

Participants were often seeking documents themselves, for example the policies, guidance or training documents used in practice by decision makers – not just summaries or "gists". As one participant explained:

> P14 (Solicitor) 'just understanding [the public body's] own policies, just understanding the exact wording of them all, it's probably best to see them.'

Other participants referred to situations where disclosure of the documents themselves had undermined, or provided a different slant to, the conclusions that could be drawn from the summary explanation that had been provided by the public body.

3.4 Wider context

However, while detail was considered important, participants also emphasised the need for accompanying accessible explanations, putting the detail into context. This was contrasted with experiences in practice. For example, one participant referred to the experience of receiving responses to subject access requests which:

> P13 (Solicitor – NGO) 'can't really be properly understood by the data subject. So they might send a bunch of spreadsheets, but the meaning of those spreadsheets is not clear for the data subject.'

D. When do you need to know it?

This section looks at the key points in time identified in phase 1 where information about ADM systems was required. Section D.2 looks at the key stages once judicial review was being considered. However, research findings also identified the following key points where transparency was important for avoiding the need for litigation in the first place. These are set out below in section D.1.

1. Pre-decision information requirements

1.1 Before an ADM system is adopted

A key theme from participants was a desire for early, proactive transparency about potential ADM systems before they were in use. This was with the aim of facilitating pre-adoption scrutiny and input into whether systems should be used at all, and if so, how they should be designed.

This included emphasising the importance of early engagement with those likely to be impacted by ADM systems in order be able to properly understand how it might function in a discriminatory way or impact people in practice. For example, one participant noted that this kind of perspective could not be captured from statistics alone:

> P12 (Claimant - individual): '[AI ethics committees] probably look at stuff statistically and everything, but I don't really think they get the harm that an AI system can have; the real-world impacts.'

They noted that this went beyond transparency and included the need for meaningful engagement with the individuals and communities impacted:

> P12 (Claimant - individual): 'They would need to have more transparency, not just have a committee full of professional people, but maybe have a community discussion, an open community forum.'

The same perspective was also shared by another individual claimant in relation to a different ADM system:

> P18 (Claimant - individual): 'They don't know what questions to ask [when designing the system] because they've not actually done any research. None of us [service users] have been consulted, that's why it's not working.'

Participants linked the desire for early, pre-adoption transparency and engagement with concerns about the limitations of judicial review as a mechanism for securing genuinely better, fairer, trusted systems (see further section F.7 below). This was also a strong theme from recommendation testing workshops. However, participants also emphasised the need for consultation and engagement to be meaningful and influential – and for it to include the option not to progress with an ADM system at all.

> P22 (Claimant - NGO): 'There have been a lot of consultation meetings, which are not really consultations. They are, 'This is what we're thinking of doing, you can protest if you like and we'll pretend to take it into consideration.'

This was also a sentiment reflected in recommendation forming workshops:

> RW4-RP2: 'there's never been acceptance from public authorities that maybe they shouldn't do the digital transformation project that they're trying to do – and if there's going to be a collaborative approach, I think that has to be an option on the table.'

1.2 As part of the individual decision-making process

In many public body decision-making contexts, decision subjects should be given the opportunity to make representations before a decision is made. This could be due to requirements in statute, policy or implied under the common law principles of procedural fairness.

Participants referred to examples where individuals' ability to provide such representations had been limited due to a lack of information about how the ADM system had been applied in their case. For example, one participant explained how a lack of information about the input data, its source and how it had been applied within a calculation meant it was very difficult for decision subjects to identify and correct material inaccuracies. They explained that in the absence of this information, they instead had to try to reverse engineer how the decision was reached to then inform their response.

> P23 (Claimant - NGO): 'I took [the figures I had] and put it into a spreadsheet and started trying to work out exactly what formula they're using to come up with the [final figure].'

Similar concerns were also raised in contexts where individuals were subject to further investigation on the basis of machine learning risk predictions systems. Participants explained how a lack of information about how that risk had been identified, and on the basis of what information, made it very difficult for individuals to know what information they needed to provide to address concerns.

> P13 (Solicitor - NGO) 'there's no transparency as to why these people are being investigated, which is making it really hard for them to defend themselves.'

Similar concerns were raised where public bodies had used generative AI to transcribe or summarise client case notes for use in a decision. These participants noted the importance of being provided with both the AI generated text and also any manually written notes in order to identify any discrepancies or other limitations in the information.

2. Judicial review

Three key points in the judicial review process were identified in interviews and case analysis as being particularly important for having sufficient, relevant information in order to be able to formulate and assess the merits of potential grounds of challenge.

2.1 Applying for Legal Aid

As set out in section F below, judicial review can be prohibitively expensive. Some individuals may however be able to claim legal aid from the Legal Aid Agency (LAA) to fund their claim.

Legal aid is ordinarily only awarded if a case is assessed by the LAA as having a 50% or greater chance of success.[29] This is a higher threshold than the one applied at the judicial review permission stage (see further in section D.2.2 below). As discussed further at section D.2.3 below, a key challenge presented by insufficient information about an ADM system, is the ability to identify, formulate and assess the relative merits of grounds of challenge.

A participant working at an organisation with a judicial review legal aid contract explained how insufficient information about an ADM system or decision could therefore negatively impact on the ability to demonstrate to the LAA that the merits test was met:

> P13 (Solicitor - NGO) 'I have had negative advice from Counsel who have said 'yes, there might be something going on here, but we don't have enough information about it to meet the legal aid test, so we can't proceed.'

2.2 Issuing a claim and applying for permission

Before lodging an application for judicial review, claimants must usually follow the Pre-Action Protocol for Judicial Review (PAP). The aim of the PAP is to enable parties to understand and properly identify the issues in dispute so that they can make informed decisions about whether to proceed.[30]

If a claim is not resolved at the pre-action stage, and the claimant wishes to proceed with judicial review, they must lodge a claim with the court seeking permission to do so.[31] The judge will refuse permission if they are not satisfied that there is an arguable ground for judicial review which has a realistic prospect of success.[32]

As discussed further at section D.2.3 below, a key challenge presented by a lack of access information, is the ability to identify and formulate grounds. This can already be a challenge for drafting the initial PAP letter before claim but becomes a more significant challenge when considering whether to issue a claim due to the cost consequences that follow should a claimant be unsuccessful at that stage.

29. Legal aid can sometimes also be awarded if the prospects of success are borderline (50/50) or marginal (uncertain) provided the case is of 'significant wider public interest'; is of 'overwhelming importance to the individual'; or relates to a breach of rights under the European Convention on Human Rights.
30. Pre-Action Protocol for Judicial Review, para 3
31. s. 31 Senior Courts Act
32. Administrative Court Judicial review Guide, 9.1.3

If a claimant is refused permission, they are liable for the costs of any defendants and interested parties[33] who intervened in the claim. The decision whether to issue a claim is therefore a key strategic point for claimants, where they are required to weigh up the relative likelihood of being granted permission against the cost risks if permission is refused.

> P13 (Solicitor - NGO) 'issuing a claim is a massive risk for people due to the costs that are involved.'

Participants explained that in this context especially, it was often considered too great a risk to proceed to issue if they hadn't been provided with enough information to assess the merits of a claim. They noted the interaction between this and arguments relied on by defendants that the duty of candour applies less extensively at the pre-permission stage (see further section E.1 and Annex 2).

Participants noted that this created a 'vicious circle' whereby the purported operation of a less extensive duty of candour at the pre-permission stage meant they weren't able to obtain the information needed to progress to the permission stage, at which point the more extensive duty would have otherwise been triggered to give them the information they needed to understand their concerns.

> P1 (Barrister) '[the] claimant is reluctant to pull the trigger, which then engages the duty of candour more seriously.'

2.3 Post-permission evidence

If permission is granted by the court, the court may also give case management directions.[34] Typically, this will include directing:

- The defendant to file with the court and serve on the claimant detailed grounds for contesting the application and any written evidence within 35 days,
- That any reply and application by the claimant to adduce further evidence must be filed within 14 days of service of the detailed grounds contesting the application,
- The claimant must file with the court and serve on the defendant a skeleton argument and trial bundle no later than 21 days before the hearing of the judicial review,
- The defendant must file with the court and serve on the claimant a skeleton argument not later than 14 days before the hearing of the judicial review.

There is usually no oral or expert evidence in judicial review, unless the court requires it to understand the relevant technical context.[35] However, it has been suggested in extra-judicial writing that the Administrative Court will need to show a greater willingness to admit expert evidence, and to allow oral evidence and cross-examination, in the context of disputes about ADM systems.[36] Similar views were expressed by research participants:

> P13 (Solicitor - NGO) 'The court isn't going to be really that well-placed at least at the beginning unless they have really good expert evidence before them.'

33. Interested parties are parties other than the claimant and defendant directly affected by the claim, including other public bodies.
34. Civil Procedure Rules (CPR) 54.10(1)
35. *R (Lynch) v General Dental Council* [2003] EWHC 2987 (Admin), [2004] 1 All ER 159 [22] - [25]
36. n2 Sales (2025), para 25

> P2 (Solicitor - NGO) 'these cases are complex and you need experts to assist you.'

Participants also expressed concerns that the Administrative Court's unfamiliarity with this approach to evidence would represent a challenge.

> P19 (Barrister) 'It is an ongoing difficulty with judicial review that you do not ordinarily have the same evidential process as in civil litigation. You would not normally have witnesses giving oral evidence and being cross-examined. Sometimes, where there is a proper basis for doing so, it may be advantageous to bring an associated private law or statutory claim, for example under the UK GDPR or discrimination law, because that may proceed to trial with disclosure and oral evidence.'

> P17 (Barrister) 'We're not used to expert evidence in the Admin[istrative] Court, we're not really used to dealing with contested evidence.'

Three of the cases identified as part of the litigation mapping exercise involved expert evidence relating to the systems at issue:

- In *Eisai* (2008) where both parties submitted expert evidence related to whether it was necessary to publish executable versions of an economic model to properly test its reliability (and therefore ensure that a consultation process was procedurally fair).[37]
- In *Bridges* (2020) expert evidence was relied upon by the claimant to explain to the court how the relevant technology worked and what information the police would need to determine whether the technology was discriminatory as part of their Public Sector Equality Duty. Further expert evidence was also submitted to explain why the defendant's analysis of discrimination was not sufficient.[38]
- In *Thompson and Carlo* (2026) the claimants sought to rely on expert evidence from two witnesses, one of whom was a claimant in the case. The court excluded or gave no weight to much of this evidence on the basis that it amounted to opinion rather than admissible fact and did not assist in resolving the legal issues before the court.[39]

Aside from the concerns about the need for expert evidence identified above, participants also noted that the complexity and technical nature of systems could prove difficult to explain to a judge. This could lead to deciding not to run certain grounds due to concerns they wouldn't be easily understood:

> P6 (Barrister) 'When your object as the lawyer is to win the case, trying to engage in a torturous exploration of the IT underpinnings of the system that you want to attack decisions from can be risky. It may be simpler to just cram your arguments into a more familiar mould.'

37. *R (Eisai Ltd) v National Institute for Health & Clinical Excellence* [2008] EQCA Civ 438 (row 25 Annex 3)
38. *R (Bridges) v CCSWP* [2020] EWCA Civ 1058 (rows 1 and 2 Annex 3)
39. *R (Shaun Thompson and Silkie Carlo) v The Commissioner of Police of the Metropolis and The Equality and Human Rights Commission (Intervener)* [2026] EWHC 915 (Admin) (row 20 Annex 3)

This participant also referred to the challenges of presenting evidence about digital, automated systems, via the more traditional format used when producing court bundles:

> P6 (Barrister) "we're all used to policy documents that you can look through, and they have numbered pages and paragraphs and useful diagrams and things, but often the things that have been programmed into a computer system, when they're printed out, it's quite hard to digest because they imagine the reader reading them through the system. So when you put it into a courtroom,...you can't get the judge, or at least you don't get the judge to go and sit on the system that the decision-makers use. So just from a purely visual perspective even, it can be quite hard to reconstruct the experience of using the policy document in a way that a traditional policy document that just looks like the other publications of government isn't.'

E. To what extent do existing information sources meet those needs?

The following section sets out core themes from litigant and litigator interviews regarding limitations in practice of the following transparency mechanisms:

- ATRS
- FOIA regime,
- Data protection ADM safeguards
- Data protection information rights
- Duty of candour

It also sets out findings from the phase 2 reviews of the ATRS and a sample of FOIA requests.

Further information about these measures, inclusive of an analysis as against the needs identified in phase 1, can be found in Annex 2

1.Limitations in scope

Participants identified limitations in the scope of each of the above measures as creating a barrier to accessing the information required.

Table 1: Limitations in scope of current transparency mechanisms - phase 1 interviews and recommendation forming workshops

Limitation	Description	Example quote(s)
ATRS		
Breadth of tools in scope	Under government guidance, central government bodies are required to comply with the ATRS. The mandatory requirement to publish ATRS records applies to algorithmic tools that either: • Have a significant influence on a decision-making process with public effect, or • Directly interact with the general public. Algorithmic tools that fall outside of the above scope, can still be published on the register on a voluntary basis.[40] Some participants referred to the number of ATRS entries that appeared to relate to ADM systems that were of limited concern. There was a concern that this could potentially obscure systems that presented a greater risk. This was raised in conjunction with concerns that high risk ADM systems appeared to be missing from the register (see further section E.4 below). This reflected similar comments made by public body participants (see section G1.1.3 below) and in the recommendation forming workshops.	P15 (Claimant - NGO) 'how many algorithmic systems are there across government? There must be thousands. How do you define it?...you could cut out a lot of the dross or maybe you could have different tiers.' RWP5-7 'I think the scope [of the ATRS] has gone too far...where I increasingly land is I think that there are a few things people really care about [which should be prioritised].'

40. n10, para 4.2

Limitation	Description	Example quote(s)
Level of detail required	The ATRS specifies a standardised set of information categories (fields) that should be provided about ADM systems.[41] Guidance sets out further detail on how these fields should be completed.[42] Some participants felt that the level of detail required by the ATRS wasn't sufficient to provide the full range of information needed to assess whether a system was of concern from a public law perspective.	P17 (Barrister) 'I would require far more detailed information. In a sense, the test is almost, if you would otherwise be left in a situation where you'd have to scrabble around using FOIA to understand how some of this stuff worked, or the outcomes that it's expected to deliver, or is delivering, a lot of that stuff should probably be addressed pre-emptively in the ATRS.'
Subject Access Requests (Art 15 Right of Access)		
Limited to personal data	Article 15 UKGDPR provides data subjects with the right to access copies of any personal data concerning them that is being processed by a data controller. Personal data is limited to data concerning the data subject. Participants identified circumstances where information required about ADM systems would fall outside of this definition (or a public body's interpretation of it). This included general information about how the ADM system works, training data where it had been "pre-processed" to no longer constitute personal data; information on trends indicative of indirect discrimination and information that was no longer being processed by the data controller.	P19 (Barrister) 'it's individualised so it doesn't give you a full picture of what's happening.' P15 (Claimant - NGO) 'it was just a printout of all of the messages back and forth...the client already knew the messages they were getting...it certainly didn't give us any insight into the automated processes or the reasons for [the decision].' P1 (Barrister) 'anything that is unrelated to processing, like what happens once the output of the system is given to a human? How does the human then think about instigating a further investigation? I think probably the [information rights under UK] GDPR wouldn't have given us the tools to get that kind of information.'

41. Government Digital Service, Algorithmic Transparency Recording Standard Template
42. Government Digital Service, Guidance for organisations using the algorithmic transparency recording standard

Limitation	Description	Example quote(s)
FOIA		
Limited to information held	The right to information under FOIA only applies to information held in recorded form by the public body at the time of the request.[43] If the public body doesn't hold a particular piece of information, they aren't required to create it.[44] Participants explained that this meant this route (or public bodies interpretation of it) was not well suited for seeking information about systems that might not be held in this way, in particular wider explanations and context about how a system was operating. As discussed at E.2.1 below, there were also concerns that if public bodies were not collecting the information needed about systems for their own internal governance and monitoring purposes, it would not then be "held" and accessible through this route.	P2 (Solicitor - NGO) 'They were also saying that you're asking for opinion rather than evidence that already exists, because it was questions. It was quite hard to formulate questions about what might happen to someone if they are scored with a high-risk score and they would say, 'This is opinion, this isn't recorded.' Then we would try and narrow it to like, 'Well, tell us what has happened to people who have been -' and again they would just say, 'Not recorded.' So that was quite frustrating.'
Art 22C Safeguards and Art 13-14 information rights		
Limited to 'solely' automated decision-making	The safeguards in Article 22C, and the additional requirements under Art 13 and 14 information rights, only apply where a decision falls within the definition of solely automated decision-making in Arts 22A-B UKGDPR. Most of the ADM systems considered as part of this project were viewed by the relevant public body as falling outside of this definition. Participants reported that this led to public bodies taking the view that they were therefore not required to comply with these provisions.	P13 (Solicitor - NGO) 'the most typical response is let's not engage because actually the process that you're trying to challenge is not one that is applied to because it's not a fully automated decision...it's their word against yours at that stage really.'
Duty of Candour		
Application of a weaker, or less certain pre-permission duty	There is some uncertainty in case law and in practice on when the duty of candour begins, how it applies in the pre-action stages and the extent to which it requires the disclosure of documents. However, there is recent case law that supports the position that the duty is less extensive before permission is granted.[45] Participants reported public bodies relying on this interpretation as justification for not providing requested information at the pre permission stages.	P21 (Solicitor) 'there's still that perennial dispute as to when it's triggered... how early pre-issue? ...the perennial issue as to what is required.' P4 (Barrister) 'there's been a recent case [Police Superintendents' Association[46]] that says it isn't as onerous at the pre-action stage, and so that does put you in a really difficult position where you're fighting blind.'

43. s. 1 FOIA
44. ICO, Determining whether we hold information
45. *R (Police Superintendents' Association) v The Police Remuneration Review Body* [2023] EWHC 1838 (Admin)
46. n45

Some participants were of the view that it was probably right that there was an escalating approach to duty of candour. They suggested that the solution instead should be to prioritise standardised, proactive reporting about ADM systems (for example, through the ATRS) alongside specific additional information rights or carve-outs focused on the specific ADM context. Suggestions included extending the information rights and safeguards that apply to 'solely' ADM under the UKGDPR to automated assisted decision-making systems and producing bespoke guidance in relation to the application of the duty of candour in the ADM context.

Participants generally spoke positively about the ATRS subject to caveats about its limitations as set out in the sections above and below.

> P14 (Solicitor) '[the ATRS] is good, and the fact that it's growing is positive.'

As noted in the table above, some participants raised concerns about whether the range of algorithmic tools in scope of the ATRS was too broad. However, where suggestions were made for narrowing the scope, these largely aligned with the existing definition that relates to mandatory publication.[47] This suggested that the entries participants had in mind as examples of low priority systems were reflective of voluntary compliance by public authorities. The more significant concern was the absence of ADM systems that were of priority concern (see further section E.4 below).

In relation to the level of detail required by the ATRS, the review of the ATRS template and guidance note carried out for this project found that the categories (tiers) of information required by the ATRS largely aligned with the information needs identified. Limitations in detail instead appeared to flow from variations in how it was complied with in practice (discussed further at E.4 below).

2. Exemptions

Related to scope is the application of exemptions to justify withholding the provision of information.

The review of 23 FOIA requests (relating to 17 ADM systems and 12 different public bodies) found reliance on the following FOIA exemptions:

Table 2: FOIA exemptions; sample of 23 FOIA requests

Exemption	No. FOIA requests applied[48]	No. ADM systems[49]	No. public bodies
S. 12 (cost threshold)	6	5	4
S. 22 (intended for future publication)	1	2	1
S. 24 (national security)	1	1	1
S. 31 (law enforcement)	15	9	6
S. 35 (government policy); s. 36 (conduct of public affairs)[50]	3	4	3
S. 40 (personal data)	2	2	2
S. 43 (trade secrets and commercial interests)	2	2	2
Not held	3	3	3

47. n10, section 4.2
48. some responses to FOIA requests applied more than one exemption
49. some FOIA requests related to more than one ADM system
50. These exemptions have been grouped together as they relate to similar considerations. S. 35 applies to information held by Central Government departments or the Welsh Government only; S. 36 may apply to other public bodies.

In relation to six of the FOIA requests, the relevant public body changed their reliance from one exemption to another exemption following a complaint being made to the ICO.[51]

A similar picture was reflected in interviews where participants cited information being withheld (in its entirety or partially through redactions) due to the application of exemptions. The most common exemption cited was s. 31 (prejudice to law enforcement). Participants also referred to public bodies citing the costs exemption, national security and commercial confidentiality.

> P16 (Solicitor - NGO) 'The responses were either too redacted, for example, the training materials, the policy documents requested in relation to these tools...they came in a super redacted way that didn't make any meaningful sense.'

Participants also referred to public bodies applying equivalent exemptions in relation to Subject Access Requests.

The ATRS does not require the publication of information that would be subject to exemptions under the FOIA, Environmental Information Regulations or data protection legislation.[52] There was only one instance of an ATRS entry explicitly citing a FOIA exemption (s. 31) as the basis for withholding categories of information.[53] However, this may be reflective of the guidance which provides that in most cases where exemptions apply, the approach should be to reduce the level of information supplied rather than withholding it in its entirety.[54]

2.1 Information not held / exceeding the cost threshold

As noted in the table above, three of the FOIA requests reviewed included responses that information was not held.[55] Four of the FOIA requests refused on s. 12 (costs ground) responded that the information was held but in an unstructured and not easily accessible way (which would therefore exceed the cost threshold to collate).

Participants noted concerns where these responses were provided in relation to information that, in their view, the public body should have held and have had easily accessible for their own monitoring purposes. This relates to the concerns set out at section F below relating to the need for transparency to be accompanied by governance and monitoring requirements that ensure the right questions are being asked and answered when designing and determining whether to adopt ADM systems.

51. One involved a change from s.40 (personal information) to s. 36 (government policy); one from s.12 (costs threshold) to s. 31(1)(a)(prevention and detection of crime); and two from s. 31(1)(a) to s. 12 (costs threshold)
52. n10, Section 5.1
53. DWP: Universal Credit Advances Model, available here: https://www.gov.uk/algorithmic-transparency-records/dwp-universal-credit-advances-model
54. n10
55. these all related to requests for EIAs and DPIAs

2.2 Commercial confidentiality

In addition to references to direct experience of commercial confidentiality being cited as a reason to withhold information, participants noted that this was potentially a risk that would be an increasing issue going forward.

> P17 (Barrister) 'the tension comes in where the extent of the scrutiny might impinge on the commercial interests of the tech providers...if you are a tech provider you will write in these sorts of protections for your company...and that protection will in turn limit the extent to which public servants using this stuff, who are on the end of the challenge, can openly and frankly discuss this.'

The above participant was of the view that it was likely the courts in practice would be supportive of disclosure. This was also reflected in the litigation mapping exercise which included two cases where the public body cited concerns about commercial confidentiality as a reason not to disclose the models involved.[56] In both of those cases, the court demonstrated a presumption in favour of disclosing the models concerned.[57]

The participant's concern however was that in the meantime it would create practical challenges in terms of accessing the information needed. Participants, including in the public body focus groups (see section F2.1) and in the recommendation forming workshops, noted the importance of ensuring there were commensurate obligations on third party developers to ensure that public bodies had access to the information needed to provide assurance about ADM systems used.

The ATRS scoping document advises caution about an overly broad approach to exempting information on the basis of commercial confidentiality.[58] However, the ATRS guidance also provides that the level of detail provided 'should not infringe on a supplier's intellectual property'. It also provides, that where an ADM tool involves an 'off the shelf' model, the template sections regarding training data should be left blank.

As part of the detailed review of 10 ATRS entries, one of them explicitly noted limitations in the information provided (specifically in relation to the details of how the algorithm worked, the specific features considered, the weighting of those features and the details of how input data was processed) due to it being considered the intellectual property of the relevant supplier.

2.3 Fraud, gaming, law enforcement, national security and immigration control

The FOIA requests citing s. 31 exemptions related to tools used variously in relation to fraud detection, immigration enforcement, tax compliance and law enforcement. Information provided by public authorities in justification of their reliance on this included concerns that providing insight into decision-making processes would allow people to evade controls or to 'submit spurious claims to meet criteria'.

56. Eisai n37; R (Servier Laboratories Ltd v National Institute for Health & Clinical Excellence) [2009] EWHC 281 (Admin) [Annex 3 rows 25 and 26]
57. see further McGurk and Tomlinson (2025), p. 149, n2
58. n10, section 5.3

In relation to two of the requests, the public body cited its right to neither 'confirm or deny' the existence of an ADM system, on the basis that revealing this information could allow individuals to identify relative weak spots in their processes. Responses included references to both individual 'gaming' and serious organised crime. This is consistent with some of the concerns raised in public body focus groups (see F.2.3).

Participants were sceptical about how credible these concerns were and were concerned the exemption was being applied in a blanket or overly expansive way:

> P13 (Solicitor - NGO) 'I still can't see any reason why more details, statistical information on [the number of people impacted by the ADM system]...I can't see how any of the fraud-prevention arguments can be relevant to that.'

Further, in relation to some of the ADM systems identified in phase 1 and FOIAs considered in phase 2, there were examples in which information initially withheld was subsequently released either following further consideration by the public authority or following reviews by the ICO as part of the complaints process.

Participants referred to the need for improved understandings and scrutiny of the credibility of concerns, and the circumstances in which disclosure truly presents a risk. This was also reflected in public body focus groups (section G.2.3 below) and recommendation forming workshops.

In any event, even where public body concerns were legitimate, there was still a need to ensure sufficient independent scrutiny, accountability and redress in relation to systems that could have a significant impact on individuals.

2.4 Work arounds

2.4.1 Trusted, independent testing

Participants in the recommendation forming workshops raised the potential for public bodies to work with independent researchers to evaluate and test systems. Participants provided examples of where this had been used in other jurisdictions, including in relation to the Allegheny Family Screening Tool (AFST) in Pennsylvania where anonymised data was shared with researchers to test the tool's potential to discriminate.[59]

It was noted that this kind of independent evaluation was important not just as a work around to disclosure concerns, but as an important quality assurance tool both pre and post adoption of an ADM system. Participants also emphasised the importance of such evaluation being independent, trusted, expert and multi-disciplinary, reflecting some of the challenges discussed at F.4 and F.8 below.

2.4.2. Confidentiality rings

In the context of judicial review, there is the potential for the court to order the disclosure of confidential information to a restricted number of participants through confidentiality rings.[60]

59. see further Allegheny County, *Allegheny Family Screening Tool*, available here: Allegheny Family Screening Tool - Allegheny County, PA
60. CPR 31.19; Section 19.2 Judicial Review Guide 2025

Participants referred to the potential for greater use of confidentiality rings, including at the pre-action stages, as a work around to genuine concerns about confidentiality. However, there was also caution about endorsing this as an approach in a public decision-making context given the importance of open justice.

> P17 (Barrister)'It's a particular concern in the admin court precisely because you're not just scrutinising what another individual has done, you're scrutinising what the government has done, and there will be an impulse to keep the doors open to the greatest extent possible.'

> P13 (Solicitor - NGO) 'I would be hesitant to want to fully endorse that as an approach because I think transparency is really important and judicial review is about lawful decision-making...but that would be better than not having anything at all.'

3. Compliance

Participants also described ways in which information provision was limited due to how transparency requirements were complied with in practice.

ATRS		
Missing entries	Publication on the ATRS Is mandatory for central government departments. Despite this, participants referred to tools they were concerned about, which fell within the mandatory scope of the ATRS, but which did not appear on the register. They noted that often the tools that were missing were those that raised significant concerns. Of the 15 specific ADM systems raised in interviews and still in force (as far as is known) only 4 are published on the ATRS. Of the 11 that are not published, 7 are within the scope of mandatory publication.	P20 (Barrister) 'I've certainly had cases where people have come to me...and I've noticed there's no ATRS to see.' P14 (Solicitor) 'you might get someone who comes along and has an issue and the relevant algorithmic system happens to have been reported on the [ATRS], but usually it won't have because the public bodies that are doing things that don't give rise to the issues are also the public bodies that don't want to report on their algorithmic systems.' P8 (Claimant - NGO) 'the ones that have joined up on the ATRS are ones that algorithmic systems that aren't necessarily, what's the way to say it, that aren't necessarily impacting the most vulnerable.'
Delayed entries	The mandatory requirement to publish an ATRS record applies to tools that are in Beta/Pilot or Production phase. However, participants reported that in practice, tools were often published on the ATRS after they had been in operation for some time.	P21 (Solicitor) 'usually before something gets on there, we know that it exists anyway, or at least so far, because reporting has been quite often delayed.'

Insufficient detail	Some participants felt that ATRS entries didn't include the level of detail required to properly assess concerns about ADM systems. There was also a concern that the information that was provided would require sufficient technical literacy to understand. These concerns were also reflected in the review of 10 ATRS entries (discussed further below).	P16 (Claimant - NGO) 'a failing in the algorithmic transparency recording standard is that you don't always have an express explanation of what the technical nature of the tools are...often you have to infer...I would be requiring a much more granular description of the tool.'
FOIA		
Inconsistent quality of compliance	Participants referred to variations in the quality of responses to FOIA requests.	P15 (Claimant - NGO) 'it did also seem that it really depended on who picked up the query. I think, generally, we've definitely seen a lot of inconsistency.' P14 (Solicitor) 'the response you get is incredibly patchy and varied. Sometimes it might be OK, but often it is very poor.'
Subject Access Rights		
Inconsistent quality of compliance	Similarly, participants referred to variations and limitations in the quality of responses to subject access requests.	P21 (Solicitor) 'any specific questions formulated in subject access requests are usually just refused and ignored. Well, refused or ignored, either with a reference to an exemption or just not addressed.'
Duty of Candour		
Inconsistent quality of compliance	Participants referred to variations and limitations in the quality of compliance with the duty of candour.	P21 (Solicitor) 'it's difficult to know whether there's any weakness in the pre-submission duty of candour that's the problem or it's the approach to it!' P13 (Solicitor - NGO) 'The government tends to be pretty bad at giving disclosure in all areas at pre-action stage.'

Where there were examples of poor compliance with information requirements, participants' perception was that this was due to a combination of both practical challenges and a 'culture of opacity'.

In terms of practical challenges, participants referred to perceptions that public bodies, or at least the individuals responding to information requests, didn't understand the systems or technologies themselves and that this hampered their ability to respond.

> P7 (Claimant – NGO) 'often the decision-makers don't understand how the [ADM] systems work.'

Similar concerns were raised in the public body workshops (see further section G1.1.1 below). This was attributed to both the seniority, expertise and capacity of the individuals responding to requests, but also to the complexity of the systems requests related to.

In terms of culture, some participants expressed a perception that public bodies were "gaming" the exemptions and scope limitations of information regimes to draw out the process as a litigation tactic.

> P1 (Barrister) 'when you're a defendant more generally, it's a tactic.'

Participants noted that fundamental to the duty of candour is that parties are open, candid and acting in good faith. However, participants expressed a perception that this was not always the case:

> P5 (Solicitor - NGO) 'The whole duty of candour is founded on gentleman's understanding that we trust the government will abide. Yes, it might slip up, there might be mistakes, but fundamentally it will abide. Whereas that's long since gone. My experience when I trained in government, it's totally different from the government that I now see, which is just trying to cut corners and get away with things.'

In relation to the concerns about the level of detail provided in ATRS entries, this was also supported by the review of 10 ATRS entries. This found that where information was provided it was often not with the level of detail required and that in other cases important information wasn't provided.

A stark example of this was in relation to information about the risk of discrimination. Of the 125 ATRS entries reviewed only one provided a link to an EIA. A further five included a summary of an EIA. Of the 10 ATRS entries reviewed, five included reference to statistical tests to evaluate the risk of discrimination (see further F.8) – however four of these provided limited detail on the nature of those tests and five either did not provide the results of those tests or didn't disaggregate them by protected characteristic. None of them provided the full set of information that would be required to understand the risk of discrimination in the round.

4. Enforcement

Concerns about poor compliance and culture were viewed as linked to perceived weak enforcement or limited consequences for non-compliance with requirements. In the case of the ATRS, participants emphasised the fact that there was no enforcement mechanism for non-compliance. The need for it to be made mandatory was a frequent recommendation that was made.

In relation to enforcement of information rights under both the FOIA and UKGDPR, participants referred to a perception that enforcement by the ICO was insufficiently robust.

> P1 (Barrister) 'I think there's an issue the [enforcement of compliance with subject access requests] is just toothless and a bit useless.'

> P20 (Barrister) 'I don't have any specific ways in that FOIA laws could be strengthened because the compliance with them is so bad at the moment there's a huge area that could be improved before you even get to gaps on the law.'

Similar concerns were expressed in relation to the duty of candour; a perception that there was insufficient holding to account for failures to comply.

> P6 (Barrister) '[something that would make a difference] would be if government defendants sometimes got in trouble for their failures to comply with the duty of candour.'

In contrast, public body participants generally spoke positively about the importance of transparency but highlighted the need to address some of the practical barriers that prevented this in practice. These participants did also note that internal prioritisation and compliance could be shaped positively by requirements being made enforceable (see further section G below).

5. Length of time

Most participants raised the length of time that it took to obtain information as a key challenge. Participants referred to receipt of information requiring multiple rounds of requests (including FOIA requests, subject access requests and pre-action protocol letters).

> P13 (Solicitor - NGO) 'you eke [information] out over multiple rounds of correspondence.'

The need for multiple rounds was due to a combination of both:

- Responding and contesting an initial failure or refusal to provide information,
- The need for further clarificatory requests.

Participants also noted that even where multiple rounds were not required, the standard response times for a subject access request or FOIA requests often wouldn't provide information in time to be of use to respond to deadlines for pre-decision representations or in advance of issuing a claim within relevant timelines.[61]

> P23 (Claimant - NGO) 'it takes too long to get a Subject Access Request, it's not helpful for people in this situation where you need that timely response.'

61. judicial reviews must be filed promptly and within three months of the date when the claim first arose.

F. Interactions with other barriers

1. Costs

Judicial review is expensive[62] Concerns about the costs were raised across litigant and litigator interviews.

> P14 (Solicitor) 'The issues that people we work with face is just funding really, funding and risk and worrying about cost-capping orders and things like that. That tends to be the big barrier.'

> P4 (Barrister) 'Costs obviously can be quite significant, and you just don't know what the merits of the claim are [due to a lack of transparency], so how do you even formulate grounds? It's all a bit of a nightmare.'

As set out in section D.2.2, the concerns about costs that apply in all judicial reviews was exacerbated in the current context by limitations in the information available in the pre-permission stages and the vicious circle this created in terms of being unable to pass the permission hurdle.

2. Novel, complex cases

While costs are a potential barrier to access to justice generally, there was an anxiety that the novel and potentially complex and technical nature of ADM cases would exacerbate the costs involved due to:

- The time and resource required (on both sides) to understand and articulate the issue
- The novel nature of the cases
  - Requiring specialist and detailed legal advice
  - Leading to public bodies wanting to defend potentially precedent setting cases
- The potential cost of expert evidence

The legal costs of public bodies have increased significantly over the last decade, and many seek to claim commercial rates from claimants.[63] There were concerns that this would be a particular risk in the ADM context.

Participants also repeatedly highlighted their own costs in bringing these cases, which were exacerbated by challenges and delays in seeking the information required.

> P14 (Solicitor) 'doing research, data subject access requests, doing right to object requests and analysing the responses and following up on them; so very expensive and time-consuming just to understand the policy context for [one] potential challenge.'

62. In 2017, Tom Hickman KC estimated that a two-day judicial review trial could produce costs of around £80,000 - £200,00 for a claimant. Research by PLP in 2019 found that the average judicial review claim cost around £30,000. See further L Marsons, Price tag: how costs rules in judicial review undermine the rule of law and access to justice, (Public Law Project) 27 May 2026
63. Government Legal Department, *Hourly rates charged to government departments by GLD lawyers* (April 2024)

Some participants noted that where litigation had been initiated or progressed, this had been by charities which were able to draw on other sources of funding to support exploratory research. Participants working for or instructed by such charities also noted this as being facilitative of being able to identify issues:

> P3 (Solicitor - NGO) 'I think without those kinds of resources, which we are unusual in having, I just don't think all of what we know about [the ADM system] would have ever potentially seen the light of day.'

However, these participants also spoke about the limits on their capacity and resource to undertake lengthy and difficult exploratory research.

Participants also referred to anxieties about the likely need for expert evidence in ADM cases increasing the associated costs. In relation to two of the cases considered, participants noted that access to experts had been very important to their case. However, they noted that this had been contingent on experts volunteering their time for free. They were sceptical as to whether this would be an option in all cases.

One of the barristers highlighted the availability of legal aid as being facilitative of being able to bring relevant challenges in this area.

> P19 (Barrister) 'More importantly, in areas like housing, discrimination and community care, there can be Legal Aid, which means that we can actually have funding to challenge the decision.'

This was supported by a solicitor who noted the distinction between firms with legal aid contracts and those which did not as a reason for why those firms had been able to progress relevant challenges on behalf of clients. Similarly, a solicitor at an organisation which did have a legal aid contract, noted that the inability to secure legal aid due to the relevant criteria not being met as creating a key barrier to progressing a case.

3. Claimant burden

Participants also noted the burden that initiating judicial review litigation could place on individual claimants. It was noted that this was a feature in relation to judicial review generally, but that it was exacerbated by the time consuming and cumbersome nature of cases where there was a need to navigate opacity.

This was a particular concern in contexts where there was also a significant power imbalance between a public body and claimants. For example, one participant referred to their concerns that making enquiries about policing ADM tools would trigger a negative response from the police.

> P12 (Claimant - individual) 'Sometimes you think I'd rather not [raise concerns] because that way you know you're going to get the attention again.'

Similar observations were made in relation to the experience of individuals in a social security and immigration context:

> P15 (Claimant - NGO) '[compiling the evidence base] was quite tricky, because of the general precariousness of the people involved, a lack of English language skills but also concern about, essentially for this to have repercussions on [them] in the future.'

The consequence of the above was that there was a high dropout rate of claimants before cases reached trial. For example, one participant described how they had been supporting 'lots' of people who were being impacted by the suspected issue but that only one referral went ahead as a case.

In other instances, participants reported that issues were resolved on an individual basis for claimants before they progressed to trial. While this was a positive outcome for the individuals involved, a consequence was that systemic issues were left unaddressed.

4. Technical literacy and system complexity

Participants also repeatedly emphasised the challenges of 'technical literacy' and how this inhibited lawyers' ability to identify and then scrutinise issues about ADM systems.

> P4 (Barrister) 'It's all just so alien to all of us, apart from a very small number of high-level IT experts.'

> P5 (Solicitor - NGO) 'as lawyers, we're all in a bit in the dark about this.'

For example, one solicitor spoke about the gaps in their understanding of Large Language Models. They felt this in turn impacted both their ability to identify and formulate the questions they should be asking, to scrutinise the information provided by the public body and the confidence with which to pursue grounds of challenge.

> P24 (Solicitor - NGO) 'I'd be more confident if I were using it in some part of my life where I could have understood how it works, but because I don't, I wouldn't say I was massively confident in knowing... I think the obvious questions are the ones we asked, like there's got to be some kind of human oversight, but there may be other questions that are really important and pertinent to ask as well, which perhaps I don't know. You don't know what you don't know.'

Participants also identified challenges around the complexity of ADM systems and the data sharing arrangements relating to them, as making it difficult to build a clear picture about what was going on. For example, bringing effective Article 8 ECHR privacy challenges and data protection challenges may require an understanding of how numerous data sharing systems and arrangements interact. One participant explained how difficult it was to gain a clear picture of that from outside an organisation.

> P5 (Solicitor - NGO) 'it's difficult having those conversations where you're talking different languages, which obviously, you are. Somebody's coming from an IT programming background. You're coming from a lawyer background and there's bits where you're just not communicating.'

Participants in the recommendation forming workshops highlighted the range and breadth of expertise required to properly test, evaluate and scrutinise ADM systems. This included expertise in:

- The relevant technology, systems and data sharing arrangements involved,
- The relevant sector and use case to which the system was being applied
- Front-line decision-making
- Lived experience as a potential decision subject
- Legal expertise (including, but not limited to, public law expertise)

5. Access to legal advice

Participants also described how the challenges experienced with navigating difficult transparency regimes would be even harder for claimants acting on their own without support from a lawyer. For example, one research participant explained how a client successfully overturned a decision, but noted that:

> P22 (Claimant - NGO) 'this is someone who's very educated, very digitally literate in a comparatively privileged position that if things had gone wrong, she's got lawyers on hand to help her. We're very concerned about how that would impact an ordinary person who can't fight back and who maybe just looks at this huge, long-list [of factors] and doesn't spot there's missing bits.'

One of the individual claimants we spoke to had used a template subject access request provided by an NGO to seek information about whether they had been subject to an ADM system. However, when the request was refused on the basis of exemptions, they then required legal advice and support to challenge the reliance on those exemptions.

Participants noted that this was also an area where there might also be gaps in relevant legal expertise amongst lawyers themselves.

> P20 (Barrister) '[There is] a lack of expertise amongst lawyers... there is a serious rule of law issue, in my view, about that.'

6. Restrictions on information use

One solicitor also cited the restrictions on collateral use of documents as a barrier to being able to use information obtained about one case in relation to another[64].

> P13 (Solicitor - NGO) 'that's a real barrier to moving things along if you can't use information that you've learnt from one client in another client's case...you've gone through seven rounds of pre-action correspondence and all you've got is a bit of information that you can't then use.'

Aside from the restrictions themselves, they viewed this as exacerbated by a lack of clarity and inconsistent approaches on when restrictions applied and a chilling effect on solicitors worried about falling foul of the rules.

64. CPR 31.22

7. Common law limitations

Litigator participants across both research interviews and recommendation forming workshops identified concerns about the inadequacy of the administrative common law to address the fundamental issues associated with ADM. This was attributed to it being:

1. A supervisory, process-focused jurisdiction:

> P13 (Solicitor - NGO) 'The sort of things that a judge will find objectionable might be different to what the average person will because legal stuff like judicial reviews some of them have quite high barriers and what feels intuitively wrong isn't necessarily what's unlawful.'

2. The slow pace of change through the courts being an inadequate match for the speed of technological change in this space.

> P19 (Barrister) 'By the time we get to litigation, we're often dealing with the issue after the event. The technology is moving much faster than cases can work their way through the courts, so we do need to find ways of addressing these issues earlier.'

> P5 (Solicitor - NGO) 'you risk that the horse will have bolted already by the time any clear jurisprudence is established.'

8. Effective governance, monitoring and retention

Participants noted that for transparency to be effective, it also needed to be accompanied by commensurate duties to gather, monitor and retain the relevant information.

They noted the importance of such requirements being reflective of what information was required from a public law perspective. This was not just about supporting effective transparency and accountability but also ensuring that the upstream design and adoption decisions were properly informed by public law considerations.

As set out in section E.2, participants were concerned that in practice public bodies were not gathering or monitoring important information. There were also concerns that the information that was being gathered, and the questions that were being asked, were focusing on blunt statistical tests that didn't reflect the questions that should be being asked from a public law perspective.

For example, of the 10 ATRS entries reviewed in detail 6 cited statistical measures of accuracy as a key measure of performance (for example, stating that "accuracy was X%"). However, in addition to limitations in the level of detail about what exactly these measures captured (for example, detail about what "accuracy" equated to or how it was measured), there were concerns that these could produce an overly blunt measure which didn't reflect public law considerations regarding whether there was a rational and justifiable connection between how decision inputs were converted into outputs.[65]

65. see also, Yeung, Karen and Harkens, Adam, How Do 'Technical' Design-Choices Made When Building Algorithmic Decision-Making Tools for Criminal Justice Authorities Create Constitutional Dangers? (Part II) (December 7, 2022). Public Law, Forthcoming , Available at SSRN: https://ssrn.com/abstract=4319319

> RW3-P5 'Usually what you have is AI companies try to use accuracy as a substitute for sound logic and decision-making. So, they're going to try to argue, well, we ran some tests and we saw that this system was correct in this amount of cases. Therefore, we are assuming that the system works. Which, for a lot of reasons, it's a very questionable thing.'

Similarly, computer scientists have developed various statistical techniques aimed at measuring whether AI models treat individuals from different groups in potentially discriminatory ways (sometimes referred to as Algorithmic Fairness Techniques).[66] However, the appropriateness and suitability of different techniques is contested[67] and are not necessarily compatible with or sufficient for tests under UK equalities law and data protection law.[68] Of the 10 ATRS entries reviewed 5 referred to different algorithmic fairness techniques without further holistic assessment of the risks of discrimination (3 didn't provide detail of evaluating the risk of discrimination at all).

In addition to concerns about the monitoring and gathering of data for evaluation purposes, participants also raised concerns about information necessary for assessing the lawfulness of ADM systems or decisions made using them would not be retained. Participants referred to examples of ADM systems where public body data retention policies required destruction of relevant data before decision subjects would have the opportunity to challenge or seek redress in relation to decisions. These participants referred to the importance of there being clear guidance to public bodies about what data they should retain for how long, including how this interacts with competing considerations around data minimisation.

66. ICO Guidance on AI and Data Protection: What about fairness, bias and discrimination?
67. Simons, J. Algorithms for the People: Democracy in the Age of AI. Princeton University Press, 2023. https://doi.org/10.2307/j.ctv2vjrj0m.
68. Centre for Data Ethics and Innovation, Review into bias in algorithmic decision-making, November 2020, p. 81; n59

G. Public Body Perspectives

The following section sets out the key themes emerging from the public body interviews.

1. Inconsistency in how public bodies approach transparency requirements

All public body participants expressed concern that public bodies do not approach transparency about ADM systems in a consistent way. To some extent, different approaches reflect genuine differences between public bodies (different services, structures, and risks); however, the concern arising from the interviews was that inconsistency is being driven by public bodies' relative ability to comply with transparency requirements, different understandings of legal concepts, level of resourcing and ADM expertise, and their prioritisation of overlapping legal/regulatory remits.

1.1 Complexity of transparency requirements

Participants consistently identified the complexity of transparency requirements as a key reason for inconsistent practices.

> PB5: 'the biggest barrier is essentially the sheer complexity of the system and lack of clarity, which means that when it gets to something like algorithmic transparency, that's obviously a relatively new thing and is sitting in a sea of uncertainty.'

Some participants highlighted that this complexity could cause public bodies to be more risk averse when complying with transparency requirements. This was particularly problematic for public bodies that do not fall within the mandatory scope of the ATRS. Such participants expressed the view that the complexity of the ATRS – and risk of getting it wrong – means that they may avoid entering their own records.

1.1.1 Complexity of ADM systems

Participants attributed some of the burden they face in complying with transparency requirements to the technical complexity of ADM systems. Officials are often constrained in the amount of time they can spend compiling information about a system, so might not be able to go into the technical detail of a system. As a result, information about a system might be published in an inaccurate or incomplete form. This was particularly problematic where non-technical teams have responsibility for publishing information about ADM systems:

> PB2: 'in the translation process from the highly-technical [...] it's not really possible, necessarily, always to translate that precisely and directly into layman's [terms] and [ensure its] transparent for people to understand what's happening to them and their data and the decisions that are being made about their applications and lives...'

1.1.2 Third party involvement

Similarly, participants explained that it can be particularly burdensome to compile information about ADM systems where they have been developed externally.

> PB11: '[there is] a complete power imbalance in many markets between local authorities and big suppliers, and yes, that creates a real big challenge to be able to compel people to do certain things.'

In this context, transparency may depend on information that is not fully within the authority's practical control, or that the authority is not well placed to interrogate.

Participants expressed concern that the effectiveness of transparency mechanisms could be undermined if equivalent obligations didn't apply to systems' developers – particularly if the information required related to a system's technical specification (for example, it's development history or training data).

Some participants felt that unless all the requisite information was obtained when a system is being procured, then it will be difficult to obtain technical information later on. They noted the importance of asking for the right information at the outset when deciding whether to procure an ADM tool. One participant highlighted the challenge that sometimes ADM or AI functionality in a system will be added by the developer without consulting the public body.

> PB11: 'We see a lot of cases of AI just appearing on platforms...and people are like, where on earth has that come from?'

This problem was compounded by low levels of technical literacy within public bodies on AI and ADM (see section above). Public bodies may be ill-equipped to interrogate the information provided to them by third party developer. One participant explained that, in practice, if a supplier refuses to help with a DPIA, their local authority will rarely challenge them; however, the participant felt that public bodies could be more successful in obtaining information from developers if their stance was more robust.

> PB6: 'I think we would have to be robust in terms of saying, well, no, we need to be transparent for these reasons, and we're not asking you to essentially open up your model and your training process. What we're asking for is just the basics on what's the sources of information and what's the accuracy and how are decisions being made.'

1.1.3 Broad scope of transparency requirements

Most participants identified the broad scope of transparency requirements as a key challenge. One issue was their potential to capture tools that might have been in place for a long time before being understood as ADM systems.

> PB1: 'In a big operational department with thousands and thousands of civil servants [there are] lots and lots of tools, including, potentially, legacy tools that might have been in place for a long time, way before the language and awareness of algorithmic tools really evolved to the place that it's in currently.'

The scope of the ATRS was often given as an example of this. Some participants considered that its purpose – informing the public about how government is using ADM – is being obscured by unnecessary detail and low-risk ADM systems.

> PB8: 'I understand why [the ATRS has] gone so broad and why it focuses on such a wide thing, but there does need to be something specific for AI at the moment, because it is the current direction of movement.'

A number of participants felt that transparency requirements should be more intensive for higher-risk tools than for lower-risk ones. However, one participant warned against such an approach because it would require public bodies to correctly judge a system's risk – and thereby increase the risk of inappropriate inconsistency and the need for further subjective analysis of whether a system could be considered sufficiently risky.

Similar concerns were raised about the breadth of the definition of 'solely' automated decision-making tools under Article 22A-D UKGDPR.

> PB2: 'I have issues with the expansive definition because it encompasses so much [...] it's becoming a little scary for us as well because now we are being extra careful with everything, which is also - which also takes up a lot of time and also includes a lot more resources. Now we need to take legal advice for so many other things, which again, time and cost, so everything is in a loop in itself, basically.'

1.1.4 Internal responsibility for ADM transparency

Participants also explained that where it is not clear who within a public body holds the obligation to decide what information about an ADM system should be made public, that there is likely to be variability in whether, and how, it is complied with.

> PB5: 'Software developers can think that they're God's gift to the flow of data. Data managers think that everybody else is just doing what they need them to, and you've got all these different interdisciplinary perspectives, and they don't always join up. I think this is a similar situation with ATRSs, that there's an awful lot of different skillsets and perspective needed to achieve it in reality and at scale.'

The reason for this difficulty is that full information about an ADM system includes both its technical specification and its operational use(s). That information may be held by different teams – and, given the burden of complying with some transparency requirements, public bodies might seek to assign responsibility to one team only. So, the quality of information made available about a system can depend on whether the responsible team has enough proximity to the system to explain it accurately.

> PB11 - local authority: '[ADM systems will sometimes] be procured by individual services [...] that means that there sometimes can be a complete disconnect between the processes and the transparency that might need to be in the ethical processes because it's all quite disconnected, and as quite big organisations that all have their own severe pressures - for example, an adult social care team might be procuring an AI tool, and it might be completely disconnected from the digital team.'

1.2 Uncertainty on key terms

A linked, but separate, source of inconsistency was uncertainty about key terminology. All participants identified disagreement or ambiguity around core legal concepts, such as 'AI', 'automated decision-making', and 'meaningful human involvement', as driving inconsistency.

1.2.1 Transparency

Participants explained that, in practical terms, different public bodies (and teams within them) have different understandings of what 'transparency' means, includes, and requires.

> PB5: 'Well, the first question is, what do you mean by transparency requirements? The reason I ask that is because the word transparency means very different things to very different people, depending on whether or not they're inside of government, outside of government, or in different parts of government.'

> PB10: 'if you would speak to any one of those teams about what transparency meant, they'd just point to the privacy notice, and that's the understanding of privacy notices, even in a fairly digitally mature team with a consciousness of AI ethics.'

This suggests that legislative requirements – and officials' engagement with them – are constitutive of their understanding of transparency. Some teams primarily understand transparency through data protection requirements such as privacy notices[69], while others may understand it through public law, ethics, procurement, or operational accountability. In each situation, the information they publish may be different.

1.2.2 AI and ADM

Participants explained that there was considerable internal uncertainty as to the meaning of the terms 'AI' and 'ADM'.

> PB7: 'I think this is something [I] have struggled with, even in drafting guidance in that, like, we say AI and other algorithmic technologies which will now be referred to as just AI [...] and making sure we've got a standard and objective definition for what AI actually refers to.'

69. Privacy notices refer to the use of notices, often published on websites, as a way of complying with the right to information under data protection law, see for example, ICO, Privacy notice, DWP personal information charter, Home Office, Borders, immigration and citizenship: privacy information notice

Some participants highlighted that this is particularly problematic in relation to the definition of solely automated decision-making in in the data protection context, suggesting that internal understanding of the terms have changed over time:

> PB2: 'there's often legacy systems that have evolved in functionality over the years, and it's when they were built, either the language and legal framework around ADM didn't exist or wasn't as well understood, or the tool didn't have certain functionalities, that were then added. So a system can kind of slide in and out of scope at different points, and there's no actual mechanism to really track that.'

The source of the term's' ambiguity was explained as a result of the blurry separation of a 'decision' and a system's predictions/outputs which were used as inputs in a decision:

> PB2: '[A system] comparing a set of numbers together to come to a result [...] is usually not conceived of in the minds of even policy colleagues, but certainly operational colleagues, as a decision. Then, actually, the lawyers then have to go in and say, 'No, sorry, you were doing decisions there, so that actually does constitute a decision, and therefore it is in scope of Article 22, and therefore it is a case of ADM.'

A public body's understanding of whether a system is solely automated will affect their understanding of whether that system is within scope of the requirements under UKGRPR. Accordingly, one participant described that public bodies might seek to avoid presenting a system as automated decision-making:

> PB2: 'It's mentioned in a negative sense...it's raised as a kind of spectre to be cautious, and it's used as a weapon in the legal arsenal to rein in policy and operational teams.'

1.3 Patchwork governance structure

Participants explained that the overlapping remits of different regulators mean that the allocation of responsibility for complying with transparency requirements can be unclear. Officials practiced in one area of regulation (such as data protection officers) might not consider the overlapping requirements of other areas. This can result in inconsistency where different public bodies assign responsibility for complying with transparency requirements in different ways.

> PB11: 'I think 12-plus regulators touch on this space, and there's a bit of confusion... It's all very interpretable. There are a few things that you have to do, and the rest are optional and down to the individual. So, yes, it's variable again... There are individual regulators for individual service deliveries that then will have their own views on specifically how that should be... Interpretation is then applied differently in all the different service areas.'

Participants agreed that, in practice, data protection considerations tend to dominate both the questions public bodies ask about their ADM systems and (accordingly) the information that they publish about them.

> PB10: 'feeding that into transparency, most people know what GDPR is. They might have a difference of understanding about how to implement it, but most people are quite careful when it comes to GDPR. When it comes to Freedom of Information, or SARs, or environmental regulations, people have absolutely no idea because that is so much a separate function. [...] Many regulatory or statutory transparency functions will be, through lack of time and lack of knowledge, batted away to the information governance professionals.'

The risk here is that other considerations, such as public law principles or the ATRS, are crowded out by an overriding focus on data protection. A number of participants, for example, weren't clear on the distinction between completing an ATRS record and a DPIA.

> PB6: 'as we were doing the ATRS, was this feels like yet another - if it was to become a compulsory thing - it feels like yet another form or template that we've got to complete before we can do something. [...] We already do a DPIA as part of our governance processes. Is there a way, at least, before it becomes we have to do these things of can we incorporate some of these questions into our DPIA.'

Some participants expressed a further concern that combining transparency requirements and impact assessments could undermine the latter's value. It is best practice for impact assessments to be frank assessments of the risks and benefits of a system. Some participants felt that, were they to be routinely published, officials might be more cautious when completing them.

1.4 Lack of training and guidance

Participants also identified gaps in training and guidance as a significant cause of inconsistent practices. Participants felt that, for training and guidance to be useful, it needs to be cross-disciplinary – and engage with legal, technical, policy, procurement, and operational considerations.

> PB2: '[guidance needs to] provide that layer of translation to different roles, from different roles to other roles and vice-versa and everywhere. Yes, I would agree that that layer of understanding is one of the most important ones. Lots do get - quite a lot of things do get lost in translation and we need to be very aware that it does not.'

A number of participants highlighted the low baseline technical knowhow of some officials responsible for operating ADM systems. Participants felt that public bodies differ in their capacity to understand their ADM systems.

> PB11: '[an example local authority]'s digital team has two people in it, whereas you compare that to [others], the skills, resources and capacities are much more different. So the ability [...] to respond and deliver transparency can be very, very different.'

> PB8: 'Some [public bodies] are having difficulty recruiting people who do understand the data enough to be able to actually fill out the returns to a sufficient level'

1.4.1 Recommendations for good guidance

Participants generally praised the central guidance that does exist. Some participants explained that there was a greater need for simple guidance (such as checklists for local bodies) because local officials are less likely to have the time and experience necessary to sift through complex guidance and/or legislation.

> PB6: 'I wouldn't say there's too much at the moment. I think what [guidance] is coming out is useful'

> PB10: 'It's basic skills. So when templates or forms or expectations are sent to [officials], you will find that the language that's used, people think that it's been dejargonised, and it really hasn't. Even phrases like 'deployment' or 'derived' or 'process' means different things to literally every single different person, so it's those basic concepts. They don't need to know about it. They're too busy procuring and dealing with service users on the ground.'

Although the demand for guidance in central government might be lower, participants still felt that it would be useful for operational officials because, although they can rely on legal officials to comply with transparency requirements, legal officials may lack the operational knowledge to do so effectively. Some participants stressed that transparency requirements are already a burden on public bodies – so were concerned that training and guidance would either over-burden officials, or risk not being used.

> PB5: 'There's only so much you can train people up on. There's only so much bandwidth people in the public sector have to do this kind of work on top of everything else.'

2. Substantive reasons for not publishing information

Participants were generally of the view that there were some circumstances where it was inappropriate to oblige public bodies to publish information about ADM systems. This was for a range of reasons: public bodies' financial interests might be prejudiced by publication; a perception that publication could have adverse effects on public services; and concern that publishing information in the wrong way could damage public trust. Participants also expressed concern that such circumstances can be overstated, applied too broadly, or insufficiently interrogated – which aligns with concerns expressed in litigator interviews.

2.2 Financial prejudice to publishing information

Some participants were wary of suppliers using transparency mechanisms, such as FOIA requests, to identify commercial advantages. One participant explained that such FOIA requests were fairly routine in the context of AI/ADM suppliers.

> PB6: '[We get] quite a few FOIAs around how are you using AI? [...] Some of it feels at times like it's suppliers just trying to find where they could come in and sell us stuff

One participant highlighted that public bodies themselves might consider information about their ADM systems as proprietary. They explained that police forces develop some of their systems in-house and seek to recoup their investment by selling software to other forces.

> PB9: 'So they've developed [an ADM system] and, obviously, didn't want to give too much information as to how they had developed that [...] because they want to sell that to other police forces. Yes, they were quite coy about that, which makes sense.'

Some participants linked public bodies' financial interests to concerns that the public can misinterpret information if it is published in technical language. They expressed concern that if the public lose confidence in a system, then the cost of rectifying a system to assuage the public (even if on the basis of a misinterpretation) could be huge.

> PB11: 'You need your person you're delivering a service to, to be okay with what's happening, otherwise it's just going to cause a disaster in terms of the investment you've made. It's kind of trust between you and your service user, and there is a lot of investment.'

2.3 Adverse effects on public services, including gaming

Participants consistently pointed out that publishing too much information about ADM systems could have adverse effects on public services. They distinguished between 'gaming' (the ability of individuals to exploit rules for their benefit) and systemic risks caused by organised crime.

Participants' gaming concern was that being overly transparent about decision-rules designed to assess someone's need could enable people to manipulate what they tell public bodies in a way that overstates their needs. Participants also often felt that gaming concerns were overstated by risk-averse public bodies. Some participants explained that certain types of information could not be easily gamed, whereas others felt that it was no different from publishing guidance that's offered to human decision-makers.

> PB9: 'That isn't always relevant. I mean, as I say, how you record a crime, there's probably not that much that can be twisted in that way'

> PB5: 'The greatest risk would seem to be that you're doing completely the wrong thing, and if your system is so open to abuse, I don't think it will take the publication of algorithmic transparency records to blow that open. People already play the system.'

Many participants felt that the threat from organised crime was more significant – particularly in the context of fraud, national security and law enforcement.

2.4 Fear of hostile actors having better technical skills

A related but distinct concern was that hostile actors may have stronger technical capability than public bodies. Some participants suggested that organised criminals and fraudsters may adopt AI more quickly than the public sector, may have greater technical knowledge, and may be better placed to identify vulnerabilities in government systems.

> PB9: 'Organised criminality is busy using AI far more than we are, I'm sure. We're confident that's the case. We are relatively slow… there's kind of an arms race to it, to a degree, and we're probably well behind on that arms race because we're a public sector organisation, so we are naturally really slow to these sorts of things.'

This was connected to participants' perception of many officials as having a low level of technical literacy. Some participants felt that, when it came to the technical capabilities of organised crime, the public sector has blind spots it's unaware of which affects their confidence. As a result, some participants felt that it was appropriate to be cautious about what information public bodies publish.

The risk here is that this justification is applied too broadly – and that genuine service users are unable to interrogate how decisions affecting them have been taken.

2.5 Concern that transparency will weaken public trust

Participants were also concerned that publishing too much information about ADM systems might frighten service users. Their concern was that many service users might have a generalised fear of AI and ADM and/or misunderstand how a system works.

> PB2: 'We know from the work that's done and the public attitude survey that trust, certainly in AI, is going down, and even among, as we were talking before, policymakers never mind general public, AI and ADM, everything gets conflated into one big, generalised fear.'

Participants felt that this risk was compounded by the difficulty public bodies experience in clearly communicating complex legal or technical information to the public. They feared that releasing too much information about a system could result in it being misunderstood or misrepresented in the press.

> PB2: If the communication was imperfect […] there's always the possibility of a broad misread. Then you've got - you understand how risk management works in government - you just think what could happen in the papers the next week. So then you've got the front page, 'Government use AI to…' insert incredibly provocative wording here, and it could be something that's very emotionally emotive.'

Participants explained that it can be difficult to strike the right balance between informing the public and scaring them with too much technical information. This was particularly difficult for public bodies where there might be a relationship of low trust with their service users.

> PB2: 'Now from our perspective, from a tech perspective there's a huge question of how much should we be transparent to ensure that we - people feel okay, like they understand what's happening? If we are too transparent, if we give them - give out too much, then there's a big risk of scaring people.'

> PB1: (responding to the above): 'On top of that [...] the relationship... is not one of total trust.'

The perception that providing information about the use of ADM systems would increase anxiety contrasted with the views raised in recommendation forming workshops. Participants in the recommendation forming workshops instead thought that the opposite was true. They emphasised that understanding how and why a decision was taken about you was an important good in its own right, beyond just being able to challenge or appeal the results of a decision.

Some participants also worried that anxiety could increase demand on public services. For example, one participant speculated that individuals who are afraid of AI might use telephone services rather than online ones – which would be more costly for the department.

3. Practical reasons public bodies do not publish information about ADM systems

Even where participants thought that information should be published, they described practical barriers to publishing information about ADM systems. They described transparency as difficult to prioritise, resource and operationalise within public bodies that are already under pressure.

3.1 Competing priorities

Participants recognised that officials responsible for publishing information usually have competing priorities. Generally, participants felt that officials sought to prioritise delivery and statutory functions over proactive publication of information.

> PB5: 'if the toss-up in delivery is between completing an ATRS report and actually doing some software development, there's a good chance that bit of metadata is going to fall by the wayside or be given lesser importance.'

This was connected to participants' perception that public bodies lack resources dedicated to transparency. Two local authority participants explained that, with budgets under pressure, it is difficult to justify spending on perceived non-essentials such as staff time publishing information about ADM systems.

> PB6: 'given the world we're in, the financial constraints we're in, often it's difficult to justify whether we can bring in additional staff to try and help with that, but it's then sometimes it's also difficult to justify whether you can pull staff off of other work to work on these things.'

Discretionary transparency mechanisms such as the ATRS were contrasted with mandatory GDPR requirements. Participants explained that where a function is a statutory requirement, it will have resources assigned to it.

> PB1: 'Unless it's put into legislation, we're not going to have funding for it because it's not going to be a burden that we're going to have to statutorily put money towards, and that's another thing that comes back to the funding and the funding crisis local government is in. Local authorities are mainly looking to fund things that they need to do.'

Similarly, participants highlighted that litigation can act as a trigger for prioritising disclosure. As with mandatory UKGDPR requirements this is a reactive form of transparency.

> PB1: 'Often, you get like a big, long sheet of questions and you try and answer them. [...] Occasionally, we've even been waiting for questions as someone's been in court answering them, but that's usually not the case.'

3.2 Duplicative forms

Participants explained that DPIAs, internal governance documents, procurement documents, EIAs and other compliance forms often ask different people what feel like similar questions. The sense that discretionary transparency forms ask for information that has already been provided elsewhere acts as a disincentive to them being filled in.

> PB6: 'I think some of the feedback from others in the organisation, as we were doing the ATRS, was this feels like yet another - if it was to become a compulsory thing - it feels like yet another form or template that we've got to complete before we can do something.'

> PB7: 'I think it's more just that in multiple avenues of work you see this duplication...I think [teams completing the ATRS] did think that ATRS was fairly burdensome in the demands.'

One participant explained that this was an instance of a wider frustration among officials where different authorities required different but similar forms.

3.3 Low technical literacy

Participants consistently reported that public bodies lack officials who understand both the technology and the decision-making context in which it is deployed, inhibiting transparency.

> PB7: 'You can't just hire any policy officer and ask them to...look at ATRS and see if, like, what the [police] force is publishing is correct. It's quite technical and even from a public law perspective, I think you need somebody who has expertise...I just don't think [police forces] have the resources to be able to do that, specifically around hiring personnel.'

Local authority participants felt that local authorities faced a particularly acute problem with technical literacy.

> PB11: 'I think it's about 48%, or just under now, of the local government workforce doesn't have basic digital skills[70]...that creates another barrier to be able to deploy ethical AI and be transparent and follow the best practice set processes'

3.4 Unfavourable perceptions

Participants also described a cultural barrier. Teams responsible for legal, information governance or transparency processes may be perceived as blocking delivery. This can create incentives to avoid raising concerns, to complete compliance work minimally, or to leave transparency until late in the process. One participant described as an example.

> PB11: 'Those legal processes, the people who are pushing for certain processes and transparency are seen - can often be seen [...] a blocker when actually it's just like, no, we just need to do things in the right way, and we need to slow down, and we need to think about it. [...] That can create a real friction. I've seen information governance teams and digital teams who won't speak to each other, and I've had to be the middle person.'

A related concern among some participants was a perceived risk aversion among government lawyers. They felt that government lawyers could be very restrictive, even for simple ADM use cases.

> PB2: 'It's just that I think there's a general assumption that legal professionals will be just restrictive anyway within departments, so we don't even get to those more extreme use cases that would have more serious consequences for individuals, because again, if we can't even get the first order ADM out the door, why would we start thinking about very, very complicated, very, very expensive, very, very, potentially, contentious use cases?'

3.5 Other practical barriers

One participant also identified officials' unsanctioned use of AI as a barrier to transparency. If public bodies are unaware that officials are using, or how they have used, AI tools.

> PB9: 'You're not allowed to use [AI], but really, [...] across a massive organisation [...] lots of those individuals will take a shortcut to make their life easier'.

70. In the Local Government Workforce Survey 2022, cited in the Local Government Authority's 2025 report The State of Digital Local Government, 48% of local councils reported gaps in the skills of its managers or management teams in relation to supporting digitalisation/use of technology, see LGA, 2022 Local Government Workforce Survey and LGA, State of Digital Local Government

4. Other views on the ATRS

Participants were also asked specifically for their views on the ATRS. Participants expressed some views which were not captured in the themes above.

4.1 The ATRS design

Some participants suggested that the ATRS was designed primarily with central government in mind and is a poor fit for other public bodies.

A police participant explained that ideally the register would give individual police forces a picture of what systems other forces had deployed; however, the participant explained that the ATRS was not delivering that:

> PB7: 'I work in the sector, right, it's still hard for us to even locate it. There's no, even, toggle button to say policing, right. You have to specifically toggle [a specific police force's name]... It's really hard to get a glance of what policing is using.'

Similarly, local authority participants felt the ATRS was a bad fit for them. As well as having concerns (described above) about the technical language used in ATRS guidance, one participant warned that the ATRS could result in a significant duplication of work across local authorities. They suggested that developers supplying multiple local authorities would be better placed to complete the entry.

> PB11: 'For example, if this was made mandatory, we'd be having maybe 50 different ATRSs for 50 different councils using the same tool in the same way and putting in the same information. It's just duplicated effort that's not needed as well, in a way.'

It was also highlighted that some ADM systems may be a poor fit for the standardised ATRS form – and the public may be better served by those responsible for a particular ADM system exercising their own judgement about what transparency is required.

> PB6: 'potentially the phrasing of some of the questions, if you took them at face value, could be a little bit constrictive. So potentially you'd go, well, that's not really how our model or process worked, and then you might start to question the other usefulness of it.'

Linked to this was a concern by some participants that the ATRS is poorly suited to situations where a system's functionality (or a public body's understanding of that functionality) changes over time. The ATRS does not indicate when information was last updated or if it is up to date – so is at risk of giving an inaccurate picture when information becomes outdated. Similar concerns were also raised during the recommendation forming workshops.

> PB1: 'If [new information] is not already published, then, essentially, oh, we're causing another headache because we're now asking you to publish something else, so they will just tend not to.'

4.2 Low public awareness

Participants consistently questioned the value of the ATRS in informing the public. Most thought that public awareness of the ATRS was low.

> PB5: 'Most people in society are not going to sit down and read through algorithmic transparency reporting standards and entries. You know, they're fairly long, technical exercises. Most people, frankly, if they do care, are unlikely to be even aware it exists, let alone spend time doing it.'

Some thought this was particularly problematic if the ATRS aimed to help affected people understand how public bodies are using ADM. Accordingly, they thought the ATRS was best understood as delivering systemic transparency and not individual transparency. Participants discussed the need for it to be supplemented by clear informational requirements when someone is affected by ADM.

> PB8: 'I think the worry is just that that's not really doing much for transparency because it's so hard to access or even understand by the general public [...] you actually need to have an understanding of what the tools being used are to be able to use it to see what tools are being used.'

Some participants did, however, feel that the ATRS is still serving an important function in informing the public including for informing a more limited number of specialists who could in turn communicate it to the public.

> PB1: 'I think probably awareness of the existence of the ATRS and interrogation of individual records is more driven by specialist, civil society, academic, etc., groups at the moment, rather than, with the best will in the world, I don't think thousands of ordinary members of the public are looking through it every day yet.'

4.3 Low awareness within public bodies

Participants also felt that the ATRS suffers because public bodies are not always aware of it. An official explained there was a focus on improving official awareness of the ATRS.

> PB1: 'There's a lot of work, as you can imagine, going on in that vein at the moment, [...] essentially, just trying to ensure that the ATRS is a first-order consideration when pilots are being planned. [...] The ATRS will be used well by being known, and socialised well across government, so anything that we can do to increase awareness of it by [...] people who are actually building and deploying and developing tools.'

Some participants felt that public bodies are unlikely to be aware of the ATRS because they are not resourced to comply with it and complying with it is not a legal requirement. This was an observation particularly prevalent among local authority participants.

Others, in contrast, felt that it was too soon to make compliance with the ATRS a requirement in law. This might be said to reflect some of the other concerns raised in this section – that work is still needed on the ATRS so that it is suitable for all public bodies, people are aware of it, and its entries are not too technical to be accessible.

> PB1: 'Obviously, putting it on a legislative footing would give us more teeth in relation to all the compliance pieces that we set out at the start, but also comes with, obviously, additional burdens and pieces of work and so on. [...] It would be premature to legislate before we've pushed the policy mandate as far as we sensibly can.'

However, some participants felt that the process of complying with the ATRS can serve an important educative function for officials. Doing so informs them of considerations which are relevant to deciding whether a particular system should be used. In this way, ATRS compliance can serve a useful governance function.

> PB6: 'I think on the whole [the ATRS has] got the right questions. I think it's, like I said, it helped us think about what we would want to ask again next time if we were to do something like this.'

4.4 Technicality and accessibility

Many participants felt that the ATRS was too technical to be accessible to the public. Some even felt that it was too technical for most officials. As a result, the ATRS risks obscuring the information in technical details.

> PB11: 'I personally don't see how the ATRS is transparent in terms of it's a very heavy overview of what the thing is, and you have to be quite literate to be able - digitally literate to be able to even understand it. So is that transparent? It's transparent for a few people.'

> PB5: 'I think, because algorithmic transparency is a relatively new concept, my understanding is that simply educating the public sector on what it is, how to fill out a form, how to fill out the standards to report something, you're very much playing catch-up.'

5. Countering prevailing opacity

Participants, without exception, expressed support for greater transparency about public bodies' use of ADM. They expressed a range of reasons why they thought it in public bodies' interests to explain how they are using these technologies.

5.1 Benefits for internal governance

Participants stressed that transparency can improve public bodies' understanding of best practices for using ADM systems. One participant said that engaging with the ATRS helped their authority identify the questions it should be asking about ADM systems. This was a widely held sentiment.

> PB1: 'I think the value of the ATRS is encouraging that awareness and discussion-based processing amongst officials.'

Some participants understood the value of transparency to be in preventing public bodies from being blindsided by processes or impacts they were not aware of. Proper transparency can help mitigate the risks, including legal risks, for public bodies deploying AI.

In a similar vein, participants linked transparency to identifying and safeguarding against risks associated with ADM systems. One warned that government's failure to go further and ensure transparency risked storing up systemic risks.

> PB5: 'The greatest risk would seem to be that you're doing completely the wrong thing, and if your system is so open to abuse, I don't think it will take the publication of algorithmic transparency records to blow that open. [...] In the longer term it's probably preferable to have that transparency to, frankly, help drive the improvements in the system.'

5.2 Benefits for public understanding and trust

Participants also saw transparency as being necessary to assuage public fears about ADM and AI. Some felt that public misunderstandings of ADM systems threatened their effective implementation. Others felt that such misunderstandings were made more likely by the absence of information.

> PB9: 'Clearly we've got a real desire to up that transparency and be very clear when AI is being used so that the public can be assured and confident in our use of it.'

Linked to this was the observation by some participants that proactive transparency can by useful for reducing time-consuming reactive information work. A number of participants highlighted the difficulty in responding to FOIA requests for technical DPIA documents – and suggested that proactive transparency gives them more scope to ensure that information is properly communicated to the public.

> PB6: 'I think that we are thinking around how can we make some of that a little bit more open so that hopefully it cuts down the number of FOIAs people send to us and we have to respond, but it helps us in terms of the best practice of being open.'

H. Conclusion

Government has been clear about the importance of transparency in public body ADM systems, including for the purpose of ensuring accountability and contestability. However, this research has found that while there is a patchwork of existing transparency rights and requirements that apply to these systems, they individually and collectively fail to provide the information in the detail, form and time required to effectively challenge ADM systems (and the decisions made using them) by way of judicial review.

While this includes gaps, which we think should be filled (see further below), significant improvement could be made through improved compliance with and enforcement of the requirements already in place.

The government's ATRS is a positive example of proactive transparency about ADM systems and the increasing compliance with the standard by public bodies is welcome. However, it is not comprehensive – of the 15 specific ADM systems identified in research interviews which are understood to still be in use, 12 are not on the ATRS register. While compliance with the standard is mandatory in guidance for public bodies, there is not a formal mechanism for enforcing non-compliance.

We are therefore recommending that compliance be placed on a statutory footing accompanied by powers for compliance to be monitored and enforced by an independent oversight body.

Further, while provision of information on the ATRS would represent a significant step forward in proactive transparency about ADM systems, what it does not (and cannot) provide is individual notice about whether and how a decision was applied in individual cases – information that is important for individuals to be able to make representations and contest decisions before and after they are made.

There is provision under existing data protection law which requires the provision of some information, and the right to access information, in the case of "solely" automated decision-making (where significant decisions are taken entirely by automated means without meaningful human involvement) which could and should provide useful information in relation to decisions in that scope. This includes information about the existence of ADM, meaningful information about the logic involved and the significance and envisaged consequences for the relevant data subject. There is also provision for safeguards enabling data subjects to make representations about and contest such decisions.

However, this research found that applying a binary distinction between solely and non-solely ADM decision to determine whether these rights are engaged does not reflect the reality of decision-making in practice or the circumstances where risks arise. ADM systems can and have resulted in harm, even where a human is involved.

In addition, the distinction between what constitutes solely and non-solely ADM can be blurred and be contested. This creates a challenge in practice, where research participants found that seeking information about ADM systems under these routes was resisted if a public body asserted that a system did not constitute "solely" ADM – a position which in turn is hard to contest without further information about the system.

We are therefore recommending the need for an extension of information rights to ensure people are notified when automated algorithmic tools are used to meaningfully assist, inform or frame decisions made about them and provided with information about those decisions. This should include information about how the decision was reached in their case. However, as noted in section B, the distinction between individual and systemic challenges of ADM decisions and the systems they were produced by is likely to be blurred. As such, individual notification should be accompanied by rights and mechanisms for being able to access further information about ADM systems. This could include, for example, including links to the relevant ADM tool on the ATRS entry.

A concern that was raised by research participants was the breadth and potential number of tools that are potentially in scope of the ATRS and the existing data protection provisions relating to ADM. We have not recommended a reduction in scope as part of this report. This reflects the fact that where these concerns were raised or discussed, the suggestions for further constraining scope tended to revert to the definitions already in place. We are however recommending that compliance and enforcement activity should prioritise high risk ADM systems, focusing in particular on the risks and consequences associated with the decisions involved.

This would also benefit from clearer, consolidated guidance on what counts as a high-risk system. Current guidance is framed inconsistently across AI (both in a decision-making and non-decision-making context), solely ADM under UKGDPR, and wider algorithmic decision-making inclusive of algorithmic assisted decision-making. As public body interviews reflected, this risks creating confusion about which systems are genuinely of concern and should be prioritised.

This is one of several steps that would be supportive of improved transparency. You cannot disclose and share information about systems if that information is not held in the first place. It is important that upstream governance systems ensure that the right questions are asked at the outset, and the relevant information identified and gathered to answer those question

Asking the "right" questions is made harder where there is uncertainty about how the current legal framework applies in the current ADM context. While, as set out at Annex 1, existing legal frameworks can be interpreted to apply in the ADM context, at the time of this report, contesting ADM systems is one of the most uncertain areas of public law due to an absence of clear jurisprudence in this area. Evolution of these legal principles to the fast-moving context of new technologies cannot be left to the slow-moving process of common law evolution alone. Planned actions such as the Law Commissions' programme of law reform in relation to public body ADM is a key opportunity to seek to urgently address these gaps and uncertainties.This should include coordinating with the Equality and Human Rights Commission to ensure clear guidance and clarification of the interaction between statistical techniques and the relevant legal standards.

Further, any information rights should be accompanied by ongoing monitoring and retention duties to ensure that information is available when it is needed, including to subsequently challenge decisions, and to continue to monitor how ADM systems operate in practice and in real world environments.

A concern across the board was expertise gaps for all relevant actors at different stages of the ADM lifecycle. Recommendation working groups in particular emphasised the complex web of expertise needed to properly design and scrutinise ADM systems – inclusive of expertise and experience of:

- The relevant technology, systems and data sharing arrangements involved
- The relevant decision-making context to which the ADM system is being applied
- Relevant legal frameworks
- The consequences and context in which the decisions will be applied.

This was accompanied by a strong desire for a regulatory oversight mechanism that could both combine that expertise and have the tools necessary to ensure it was applied to ensure the effective oversight of the development and delivery of ADM systems at all stages of the ADM lifecycle. There was not consensus on the form this should take, with divergence in particular in relation to the benefits of a single oversight body or segmentation along sectoral lines. We are therefore not recommending a specific model, but instead have set out the key features we think any such model should include, specifically:

- The ability to co-ordinate and ensure coherence in relation to the existing patchwork of legal and regulatory frameworks,
- Provision for independent, trusted evaluation of ADM tools at all stages of the ADM lifecycle
- The ability to convene cross-disciplinary expertise, inclusive of insight from impacted individuals and communities

I. Recommendations

Improved upstream governance, engagement and design processes

1. **Governance, design and adoption decisions must be consistent with and reflective of public law:** to support this, an exercise should be undertaken, for example as part of the Law Commission's programme of law reform regarding public body ADM, to surface and clarify contested and unsettled areas of law (including, for example, regarding the relationship between statistical techniques and legal tests)

2. **Sector specific scrutiny and oversight:** the Government Digital Service should convene a time critical working group to identify models for sector specific, independent and expert oversight of public body ADM. This should seek to synthesise the existing patchwork of regulation and governance structure rather than creating an additional distinct layer of governance. It should be inclusive of:

   a. Independent, external, trusted evaluation of ADM tools,
   b. Cross disciplinary expertise, including insight from impacted individuals and communities

3. **Monitoring and retention duties:** transparency requirements should be accompanied by commensurate monitoring and retention duties. In the first instance, that should include updated guidance from the Equality and Human Rights Commission and the ICO in relation to existing requirements in the ADM context. In the longer term, this should include consideration, for example via the Law Commission's programme of law reform of whether additional or strengthened duties are required.

Compliance with, and enforcement of existing transparency requirements

4. **Placing compliance with the ATRS on a statutory footing:** this should include provision for regulatory monitoring and enforcement of non-compliance.

5. **Improved, timely, compliance that prioritises high risk ADM systems:** this should include ensuring that information about ADM systems is published promptly and at beta/pilot stage as is required under the ADM guidance.

6. **Updated ATRS guidance and templates:** ATRS guidance should be revised to provide additional clarity and specificity about information required. This should include developing user-friendly guidance explaining the significance and meaning of technical terms.

7. **Inclusion of links to ATRS in places where people access information about decisions:** including within individual decision notices and policy documents.

8. **Improved understanding of credibility and significance of 'gaming' and law enforcement risks:** the ICO should convene a body of experts to inform guidance and improved understanding of gaming and law enforcement risks associated with ADM tools.

9. **Updated guidance on duty of candour, confidentiality rings and expert evidence in the ADM context:** the Civil Justice Council should convene a working group to test and consult on updated guidance regarding the application of the duty of candour and the use of confidentiality rings in the ADM context. This group should also consider potential models for an amicus curiae function to provide independent expert advice to courts regarding ADM systems.

Supplementing existing transparency mechanisms

10. **Extending information rights and safeguards to automated assisted decision-making systems:** the additional safeguards and information rights that apply in relation to 'solely' ADM systems under Article 22C UKGDPR and Arts 13-15 UKGDPR should be extended to automated assisted decision-making systems.

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