



Ministry
of Justice

The Right Honourable
Shabana Mahmood MP
Lord Chancellor & Secretary
of State for Justice

The Rt Hon Lord Justice William Davis
Chairman of the Sentencing Council
Royal Courts of Justice
Strand
London
WC2A 2LL

20 March 2025

Dear Lord Justice Davis,

THE IMPOSITION OF COMMUNITY AND CUSTODIAL SENTENCES GUIDELINE

I would like to take this opportunity to thank you for taking the time to discuss the new 'Imposition of Community and Custodial Sentences' guideline last week. I found our meeting constructive and look forward to working with the Council to resolve the issues identified. As we agreed at that time, this letter sets out my position for the Council to consider before the guideline is due to come into effect.

The Imposition guideline was published on 5 March 2025, and is due to come into force on 1 April 2025. This contained new guidance on pre-sentence reports which set out that these will '*normally be considered necessary if the offender belongs to one (or more) of the following cohorts*', including '*those from an ethnic minority, cultural minority, and/or faith minority community.*'

I appreciate that the development of these guidelines involved a detailed consultation. This included, as obliged by legislation, consulting with the Government of the day. The previous Government responded to that consultation welcoming the guidelines.

However, since the consultation ended, in February 2024, there has been a change in Government. I am aware it is unusual in the Council's history for the publication of a guideline to occur under a different administration than was in place at the time of consultation. But as this Government has not been consulted on these guidelines, we have not been able to provide our view. For that reason, I am grateful to you for agreeing in this context that the Council will give this matter its urgent attention.

I should start by noting that I consider this issue to be a question of policy. The question of differential outcomes, particularly but not exclusively for different races, is a systemic one. Its causes are varied and complex. As you noted in your letter to me, on 10 March 2025, "why this disparity exists remains unclear". I consider how the state addresses a cohort issue that is systemic, complex and unclear to be the domain of policymakers. I think it is vital that the decisions taken on this question should be accountable to the public, both in parliament and at the ballot.

Given this, I think it is important to set out this Government's policy – and why this new guidance runs counter to it.

It is firstly important to note that this Government does not deny there is a difference in sentencing outcomes for ethnic minorities. The disparity is clearly real and it is the responsibility of Government to address it.

However, it is this Government's policy to oppose differential treatment on the basis of race or ethnicity in our courts. Doing so offends the principle of fair treatment before the law. In relation to the Imposition guidelines, I consider that encouraging a judge to request a pre-sentencing report for one named cohort but not another, amounts to differential treatment.

Pursuing this path also risks eroding public confidence in our justice system. The recent response to the publication of these new guidelines has already shown the considerable depth of feeling this elicits. I know this will be of as much concern to you as it is to me, particularly given the Sentencing Council's obligation, as set out in statute, to "*promote public confidence in the criminal justice system*".

The appearance of differential treatment before the law is particularly corrosive, and its impact could easily be counterproductive. A Muslim woman, like me, is safer in this country when she is treated no differently to her fellow citizens, regardless of the colour of her skin or the nature of her faith.

It is important to note, however, that this Government supports the wider use of pre-sentence reports within our courts. They can be valuable in *all* cases and for all defendants, regardless of their membership of a certain cohort, should a judge believe them to be required. I want to ensure they are available when needed and have already committed publicly to creating more capacity in the Probation Service to ensure it is able to do valuable work like this.

For that reason, I welcome the lines in the Imposition guidance, where the Council states:

"PSRs are necessary in all cases that would benefit from an assessment of one or more of the following: the offender's dangerousness and risk of harm, the nature and causes of the offender's behaviour, the offender's personal circumstances and any factors that may be helpful to the court in considering the offender's suitability for different sentences or requirements."

I consider these to be widely drawn and correctly so. This gives judges ample cause to request a pre-sentence report whenever they feel they need to, for whoever they determine may require one.

Given the breadth of the lines above, and this Government's policy position as already stated, I am however requesting that the full list of cohorts for whom a pre-sentence report will "normally be considered necessary" is removed.

As set out above, whilst it is important that any disparities between cohorts are addressed, I consider these are best pursued through policy. I have recently commissioned my Department to conduct a thorough review of sentencing disparity and its causes, particularly given the lack of clarity we have both noted. I think good policymaking depends on a greater understanding of the challenge we face, and that decisions made outside of that could have damaging consequences.

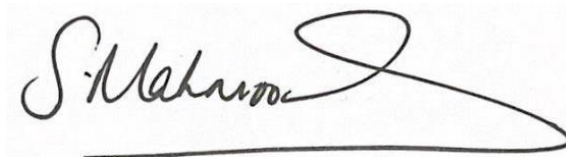
I hope the Council will be able to reconsider this issue. While it only affects a small part of these guidelines, it is of great importance to the Government and the public. I believe these changes could also be made without delaying overall implementation.

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Should the Council not be persuaded of the arguments made in this letter, I would recommend at the very least that the opportunity to consult on these guidelines be re-opened, in light of the recent public response. It has become clear, in the last few weeks, that many people hold strong views on this question.

My Department stands ready to provide any further information you wish to request ahead of your upcoming discussion on this matter. As I have noted, I have already instructed the Department to review disparities in sentences by cohort. We would further welcome any suggestions you have for how the Government can continue to address gaps in our evidence base on these important issues.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Mahmood', with a long horizontal flourish extending to the right.

RT HON SHABANA MAHMOOD MP

LORD CHANCELLOR AND SECRETARY OF STATE FOR JUSTICE