

Research Briefing

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By Francesca Cooney
Shadi Danechi

Sentencing Guidelines (Pre-Sentence Reports) Bill

Summary

The [Sentencing Guidelines \(Pre-sentence Reports\) Bill](#) was published on 1 April 2025. Its second reading is due to take place on 22 April 2025.

The bill would prevent sentencing guidelines, used by judges and magistrates in England and Wales, from referring to personal characteristics such as race, religion or belief, and cultural background in their guidance regarding when a pre-sentence report should be requested.

The bill was introduced in response to planned changes to Sentencing Council guideline on imposing community or custodial sentences. One of the proposed changes was intended to ensure that pre-sentence reports were usually provided where defendants are, among other things, from ethnic, cultural or faith minority communities.

What are the sentencing guidelines and the Sentencing Council?

The Sentencing Council is an independent body, comprising senior members of the judiciary and others. It publishes sentencing guidelines, which the

courts must normally follow when sentencing someone who has pleaded guilty or been convicted of a crime.

What changes did the Sentencing Council propose?

The [existing guideline for imposing community orders and custodial sentences](#) says courts should request a pre-sentence report whenever they are considering imposing a community order or custodial sentence. The court can forgo the report if it considers it unnecessary (for example, if it already has enough information about the offence and the offender).

A pre-sentence report provides background on a defendant, such as their history, personal circumstances and other factors that might have contributed to their behaviour. They are intended to help a court assess what sentence would be most appropriate and effective, and they are prepared by the Probation Service.

The [updated guideline](#) also says that the court must request and consider a pre-sentence report unless it considers it unnecessary. It adds that a pre-sentence report will “normally be considered necessary” in certain circumstances. It includes a non-exhaustive list of these circumstances, which includes when the offender:

- is at risk of their first custodial sentence
- is young (aged 18 to 25)
- is a women
- is from a minority ethnic, cultural or faith community
- is pregnant or post-natal
- is the primary carer for dependent relatives
- has said they are transgender
- has or may have addiction issues, chronic health issues or a disability
- is a victim of domestic abuse, modern slavery or exploitation

Why has the government introduced a bill?

The government objected to potential differential treatment based on race or religion arising from the Sentencing Council's guideline. It introduced the bill to block the guideline.

The bill is narrow in scope, with only two clauses, as the government's aim is to prevent potential differential treatment, reinforce equal access to pre-sentence reports and support consistency in using pre-sentence reports across all demographic groups.

1 Background to the bill

1.1 Pre-sentence reports

Pre-sentence reports (PSRs) are written by probation officers or Probation Service officers who interview people after their plea hearing. They assess the factors that could have contributed to someone's offending, the risk they pose and any needs they have that might affect criminal behaviour. The report aims to give the court an understanding of the background and context of the offending.

PSRs assist the court to impose an appropriate and effective sentence and to decide between a community or custodial sentence. They recommend an appropriate sentence, but sentencers do not have to follow it. When sentencing, sentencers must consider the [Equal Treatment Bench Book \(July 2024\)](#) (PDF), a reference document prepared by the Judicial College intended to help sentencers conduct fair hearings and enable all court users to participate in the legal process (including context on how people from different communities might experience the court).¹

The PSR is the primary means of providing information about an offender to the courts. The previous government's white paper [A Smarter Approach to Sentencing](#) committed to a PSR pilot that would focus on cohorts with complex needs – female offenders, young adult offenders (aged 18 to 25) and offenders on the cusp of custody. The [process evaluation of the pilot](#) found that some respondents believed adding a cohort for minority ethnic people would have been beneficial².

¹ A key work of reference used daily by sentencers, part of the training and commended by the appellate court.

² MoJ [Process evaluation of the pre-sentence report pilot](#) 2023 page 46

[His Majesty's Inspectorate of Probation](#) (HMI Probation) monitors and assesses the Probation Service and reviews whether pre-sentence information and advice provided to court is sufficiently analytical and personalised, to support the court's decision. In its latest [annual report](#) it rated 70% of PSRs it inspected over the preceding year as inadequate, and said they often lacked safeguarding checks.

In [March 2022 HM Courts and Tribunals Service and the Probation Service received approval to target cohorts for PSRs \(PDF\)](#), including people from minority ethnic backgrounds.

There have been concerns about the numbers of people being sentenced without a PSR. In 2014, 85% of people who received a community order had a PSR, while in 2019 only 45% who received a community order had a PSR.³

Ministry of Justice research on the impact of pre-sentence reports⁴ shows that for community sentences, completion of the sentence is more likely when a PSR has been requested and provided than where it has not.

Probation Service guidance on PSRs

HM Prison and Probation Service (HMPPS) published the [Probation Service Court Policy Framework](#) (PDF) in January 2025. The policy says that specific “diversity factors” should be mentioned within a PSR where relevant, rather than merely present.

Section 6.82 says that PSR authors should consider the impact of diversity on:

- the defendant's involvement in the offence, risk of harm or future risk of offending
- the defendant's attitudes, strengths, or protective factors
- how the defendant's identity or belonging to a group that experiences societal injustices such as racism and discrimination has affected their involvement in offending, wellbeing, social disadvantage, attitudes to offending or to authority
- why a specific sentence has been proposed or why an intervention has not been considered suitable
- the person's ability to comply with any recommended sentence and how any barriers might be overcome

³ HMIProbation [The quality of pre-sentence information and advice provided to courts 2022-2023, 2024](#)

⁴ Ministry of Justice [The impact of oral and fast delivery pre-sentence reports \(PSRs\) on the completion of court orders](#) 2023

1.2

The Sentencing Council

The [Sentencing Council](#)'s primary role is to issue guidelines on sentencing through powers granted to it in the Coroners and Justice Act 2009.⁵ Courts must follow Sentencing Council guidelines unless it is in the interests of justice not to do so.

The council also promotes greater transparency and consistency in sentencing while maintaining the independence of the judiciary. It develops sentencing guidelines, monitors their use and impact, and promotes awareness of sentencing among the public.

It is required to [consult on draft guidelines](#) but once this has happened, it can publish guidelines. It is a statutory requirement that it consults Parliament, through the Justice Committee and the Lord Chancellor.⁶ It must also consider the impact of sentencing decisions on victims of crime.

The President of the Council is the Lady Chief Justice, and the Chair is Lord Justice William Davis (appointed by the then Lord Chief Justice with the agreement of the Lord Chancellor in August 2022). There are another seven members of the judiciary and magistracy, the Director of Public Prosecutions and five members with expertise in each of academia, policing, rehabilitation, welfare of victims and criminal defence.

Previously, the Court of Appeal (Criminal Division) issued guideline judgments, and created and provided guidance in specific appeal cases. The Sentencing Advisory Panel was established by the [Crime and Disorder Act 1998](#) and its role was to provide advice to the Court of Appeal.

Subsequently, the Sentencing Guidelines Council was created by the [Criminal Justice Act 2003](#) and it worked with the Sentencing Advisory Panel to produce guidelines which aimed to ensure consistency in sentencing.

The Sentencing Council was established in April 2010 by the [Coroners and Justice Act 2009](#), replacing both the Sentencing Guidelines Council and the Sentencing Advisory Panel.

⁵ [Section 125 of the Coroners and Justice Act 2009](#)

⁶ [Section 122 of the Coroners and Justice Act 2009](#)

1.3

Ethnicity and religion in the criminal justice system

Minority ethnic groups are overrepresented in the criminal justice system. There is no single explanation for the disproportionate representation of minority ethnic groups.

David Lammy suggested in [his 2017 review of Black, Asian and minority ethnic representation in the criminal justice system](#), that racial disparities in the criminal justice system were due to bias, and sometimes overt discrimination.⁷

In February 2020, the Ministry of Justice (MOJ) published a detailed report [Tackling racial disparity in the criminal justice system](#) with updates on the Lammy Review's recommendations. This report recognised that there remains an overrepresentation of minority ethnic groups in the criminal justice system and disparities in aspects of how people from minority ethnic groups are treated. For example, people from minority ethnic groups continue to be more likely to be remanded in custody while awaiting trial or sentencing at the Crown Court and remain considerably less likely to plead guilty, which means they end up with longer than average sentence lengths if found guilty (pleading guilty at the first opportunity usually reduces the length of a sentence). Over the past 10 years, average custodial sentence length has risen far more steeply for offenders from minority ethnic groups than others.

In its latest annual report, HMPPS says that its commitment to reducing racial discrimination and disproportionality remains. It said:

In line with the recommendations of the 2017 Lammy Review, HMPPS has adopted the “explain or reform” principle to help understand the causes of and tackle disproportionate outcomes identified by monitoring of equalities data.

Data on ethnicity and criminal justice

The Probation Service supervises two groups of people:

- people on a community sentence or suspended prison sentence
- people who have been released from prison and are under post-release supervision

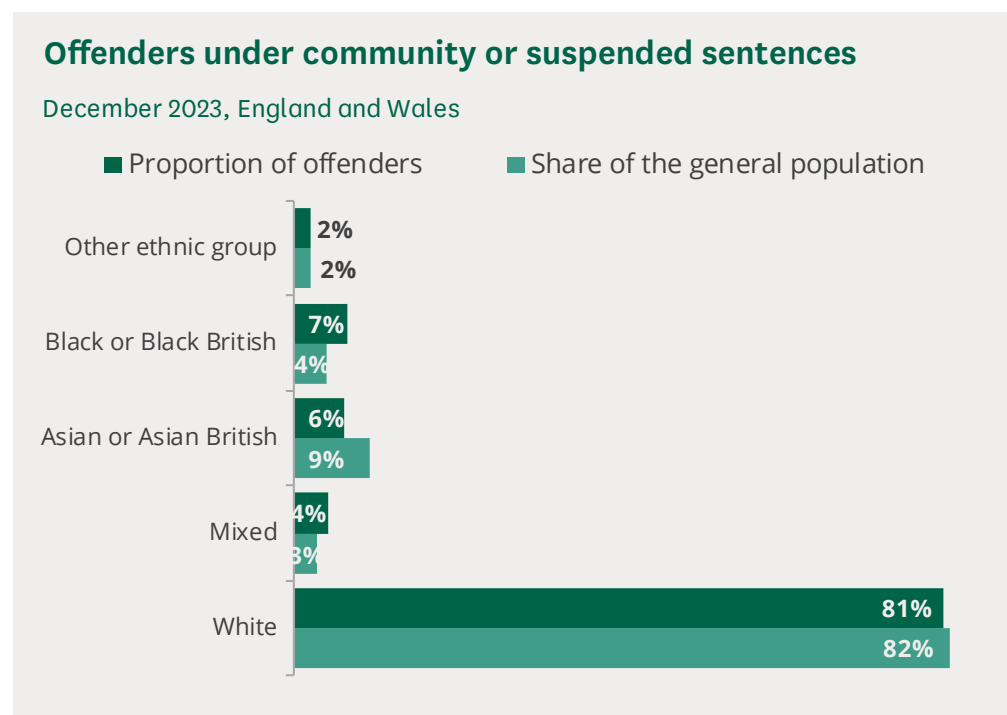
⁷ [Lammy Review Final Report](#)

People on community sentences/suspended sentences

At the end of December 2023, nearly one in five people (19%) on a community order or suspended sentence were from a minority ethnic group, slightly above the rate in the general population (18%).

Just over one in four (81%) were White, slightly below the general population (82%).

The proportion of offenders on community or suspended sentences from different ethnic groups, and the proportion of people from these ethnic groups in the general population, are shown in the chart below.



Note: Excludes offenders whose ethnicity was not known.

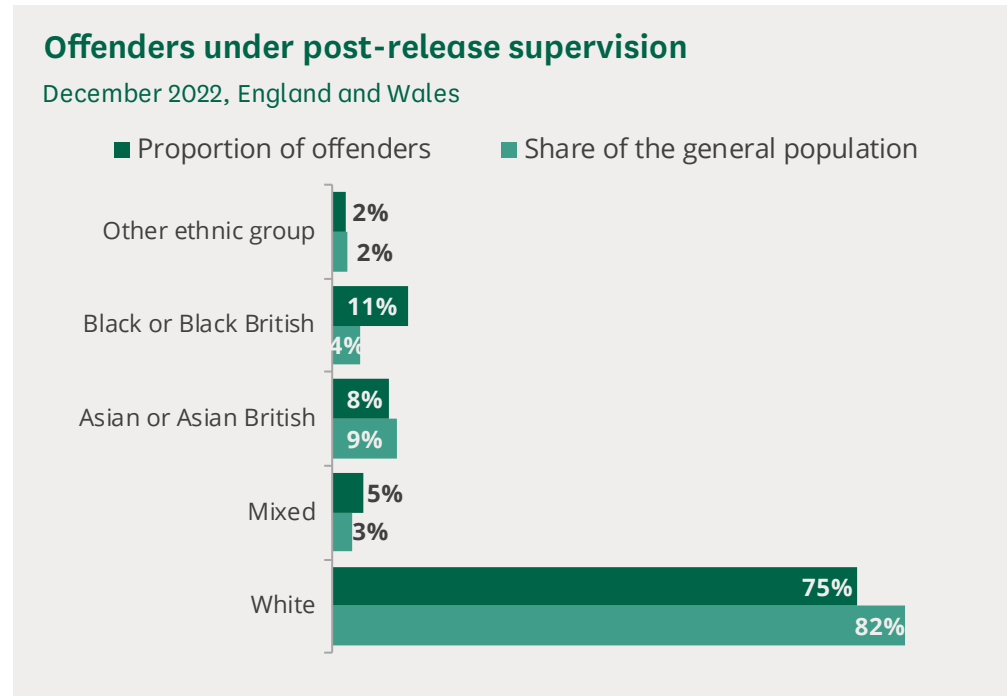
Source: MoJ Offender Management Statistics Quarterly, [Probation: 2023](#), table A6_5; NOMIS, [Census 2021](#), accessed 8 April 2025; NOMIS, [Census 2021](#), accessed 8 April 2025

People on probation who have been released from prison

People on post-release supervision are not included in the figures above. The most recent published data for this group is from December 2022.

In December 2022, 25% of people on supervision following release from prisons were from a minority ethnic group. This is above the rate in the general population (18%). Three quarters of people (75%) under post-release

supervision were White, below the rate in the general population (82%). The chart below provides additional detail.



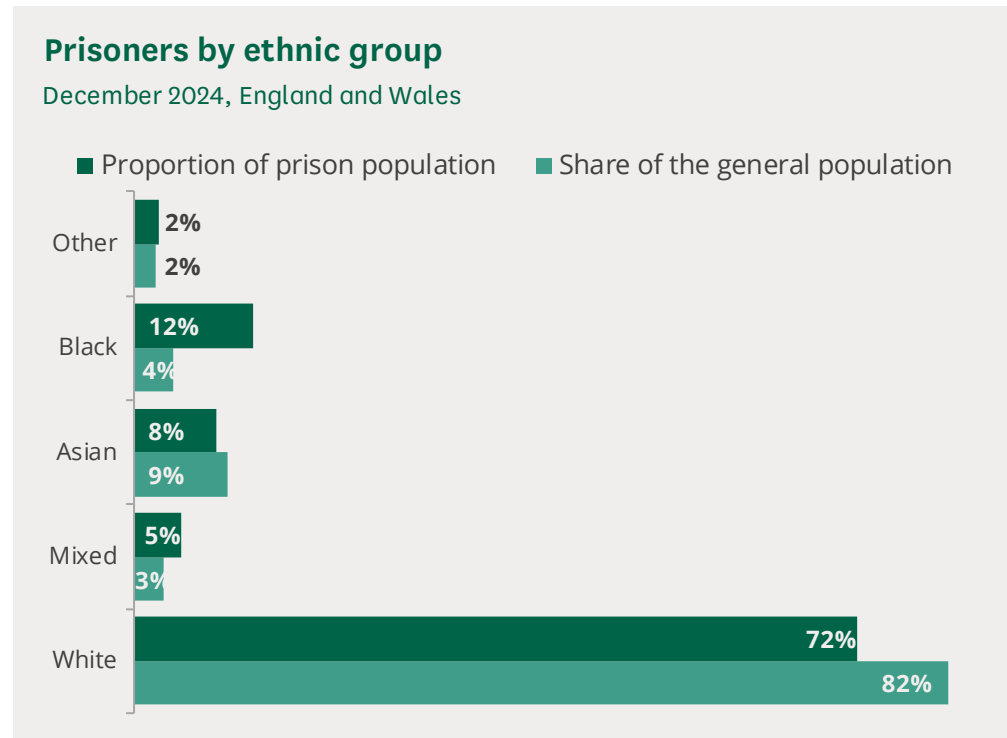
Source: MoJ Offender Management Statistics Quarterly, [Probation: 2023](#), table A6_17; NOMIS, [Census 2021](#), accessed 8 April 2025; NOMIS, [Census 2021](#), accessed 8 April 2025

Ethnic background of people in prison

At the end of December 2024, just over a quarter of the total prison population in England and Wales (27%) was from a minority ethnic group. This rate has stayed relatively constant since 2004.

The proportion of people from a minority ethnic background in the general population is 18%.⁸ The biggest disparity between representation in the prison population and the general population was for Black people, who make up 12% of the prison population and 4% of the general population, as shown in the chart below.

⁸ MoJ Offender Management Statistics Quarterly, [Prison population: December 2024](#), table 1.Q.7; NOMIS, [Census 2021](#), accessed 8 April 2025



Note: All prisoners includes people on remand and civil prisoners. It does not include people whose ethnicity is unknown.

Source: MoJ Offender Management Statistics Quarterly, [Prison population: December 2024](#), table 1.Q.7; NOMIS, [Census 2021](#), accessed 8 April 2025

The Prison Reform Trust, a charity advocating for improvements in the prison system, has calculated that if our prison population reflected the ethnic make-up of England and Wales, we would have over 9,000 fewer men and boys in prison — the equivalent of 12 average-sized male prisons.⁹

Religious background of people in prison

At the end of December 2024, 44% of the prison population had identified as Christian, which was a decrease of 14 percentage points compared with June 2002.

Over the same period the proportion of Muslim prisoners has increased by 10 percentage points, from 8% in 2002 to nearly one in five (18%) in 2024. The proportion of prisoners with no religion in 2024 (31%) was roughly the same as in 2002.¹⁰

More than one in five people (22%) identified as belonging to a religion other than Christianity in December 2024. This compares with around one in ten (12%) in the general population.

⁹ Prison Reform Trust, [Bromley Briefings Prison Factfile](#) February 2025 page 43

¹⁰ MoJ Offender Management Statistics Quarterly, [Prison population: December 2024](#), table 1.Q.7; NOMIS, [Census 2021](#), accessed 8 April 2025

The proportion of prisoners with no religion in 2024 was 31%, compared with 37% in the general population.¹¹ This data is shown in the table below.

Prisoners by religion			
December 2024, England and Wales			
	Number of prisoners	Proportion of prison population	Share of the general population
Christian	37,867	44%	46%
Muslim	15,630	18%	7%
Hindu	350	0%	2%
Sikh	582	1%	1%
Buddhist	1,711	2%	1%
Jewish	511	1%	1%
No religion	26,079	31%	37%

Note: All prisoners includes people on remand and civil prisoners.

Source: MoJ Offender Management Statistics Quarterly, [Prison population: December 2024](#), table 1.Q.8; NOMIS, [Census 2021](#), accessed 8 April 2025

There is no published data on the religious background of people on probation.

Ethnic background of judges and magistrates

As of 1 April 2024, 13% of all magistrates were from minority ethnic backgrounds. This is an increase of five percentage points from 2014 when 8% declared themselves as from an ethnic minority. More specifically for each ethnic minority group:

- Asian or Asian British people constituted 7% of magistrates
- Black or Black British people constituted 4% of magistrates
- people from the Mixed ethnic group constituted 2% of magistrates
- people from other ethnicities constituted 1% of magistrates

These proportions vary regionally: London had at least double the proportion of Asian magistrates compared with all but one of the regions, and at least treble the proportion of Black magistrates compared with all other regions.

The proportion of magistrates from a minority ethnic background is higher than the proportion of judges.

¹¹ MoJ Offender Management Statistics Quarterly, [Prison population: December 2024](#), table 1.Q.8; NOMIS, [Census 2021](#), accessed 8 April 2025

In April 2024, 11% of judges (both court and tribunal judges) in England and Wales were from a minority ethnic group, compared with 18% of the general population in England and Wales.¹² The table below provides further detail.

Judges by ethnic group			
April 2024, England and Wales			
	Proportion of court judges	Proportion of tribunal judges	Share of the general population
White	89%	87%	82%
Mixed	3%	3%	3%
Asian or Asian British	5%	7%	9%
Black or Black British	1%	2%	4%
Other ethnic group	1%	1%	2%

Source: MoJ, [Diversity of the judiciary 2024 statistics: data tables](#), table 3_1_JO_APPT; NOMIS, [Census 2021](#), accessed 8 April 2025

Ethnicity and current sentencing guidance

The Sentencing Council produces a set of [general sentencing guidelines](#), which contains a section on aggravating and mitigating factors that courts can consider. The court would usually be informed of these through a PSR.

The latest iteration, in effect in since April 2024, contains a section on difficult and/or deprived background or personal circumstances,

It explains that the court may be assisted by a PSR that assesses whether there are any factors relevant to sentencing. One of the 12 factors listed is experience of discrimination.

It explains that these factors may be relevant to the offender's responsibility for the offence and/or the effect of the sentence. It says:

Courts should consider that different groups within the criminal justice system have faced multiple disadvantages which may have a bearing on their offending.

The aim of the [Equal Treatment Bench Book](#) is to increase awareness and understanding of the different circumstances of people appearing in courts, particularly where their circumstances may be different to the background of the sentencer. The [judiciary website](#) states that it helps to enable effective communication and suggests steps that should increase participation by all parties:

¹² MoJ Offender Management Statistics Quarterly, [Prison population: December 2024](#), table 1.Q.7; NOMIS, [Census 2021](#), accessed 8 April 2025

To ensure equality before the law, a judge must be free of prejudice and partiality and conduct themselves, in and out of court, so as to give no ground for doubting their ability and willingness to decide cases solely on their legal and factual merits, as appears from the exercise of an objective, independent and impartial judgment (to paraphrase Lord Bingham).

True equal treatment may not, however, always mean treating everyone in the same way. As Justice Blackmun of the US Supreme Court commented: “In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently.”

Treating people fairly requires awareness and understanding of their different circumstances, so that there can be effective communication, and so that steps can be taken, where appropriate, to redress any inequality arising from difference or disadvantage

The Equal Treatment Bench Book has sections on racism, cultural/ethnic differences, antisemitism and Islamophobia and how these factors affect court users:

Sections 12 to 14 say:

It is necessary to understand the experiences and perspectives that many people from Black backgrounds bring with them to the courts. Distrust amongst many has roots in many decades of social disadvantage and discrimination.

In his report, David Lammy concluded that there would “continue to be a pervasive sense of “them and us” without a step change in diversity among the judiciary itself.

This is not simply a perception issue. People from Black backgrounds experience some of the highest levels of racism in all areas of life and some of the worst outcomes. There is concern that racial bias plays a role in the justice system.

The Independent Sentencing Review

The [Independent Sentencing Review](#) launched by the Justice Secretary, Shabana Mahmood, in October 2024 aims to address prison overcrowding by evaluating the current sentencing framework and finding long-term solutions, including exploring alternatives to custody and reducing sentence inflation (where sentences for the same offence increase over time).

One of the sections from the terms of reference refers to whether sentencing should account for the specific needs of different groups:

considering whether the sentencing framework should be amended to take into account the specific needs or vulnerabilities of specific cohorts such as young adult offenders, older offenders, and women

It also refers to “considering specifically sentencing for offences primarily committed against women and girls”.

In February 2025 the review published the first part of its report, [Independent Sentencing Review: History and trends in sentencing](#). It says that:

This review seeks to properly recognise the needs and vulnerabilities of certain offender cohorts, to successfully drive down reoffending and prevent future victims.

Annex 1 of the report details key offender and offence characteristics, noting that as the use of custody has increased analysis has identified several key characteristics of those incarcerated.

The annex has a section on race and ethnicity, noting that minority ethnic groups are overrepresented in prison (while the White British ethnic group is underrepresented). The report also says that prisoners from some minority ethnic groups spend longer in prison and are more likely to receive a prison sentence than the average:

Additionally, Asian and Black prisoners, as well as prisoners from a Mixed-ethnic background of both sexes tend to have higher average custodial sentence lengths compared to White prisoners. Ethnic minorities have also been shown to have longer prison sentences, and higher odds of receiving a prison sentence. Since 2018, White defendants have consistently received shorter average custodial sentence lengths (ACSL) for indictable offences compared to all other ethnic groups combined. In 2022, the ACSL for White offenders was 21.2 months, while it was 30.5 months for Asian offenders, 27.9 months for Black offenders, 25.2 months for those of mixed ethnicity, and 22.9 months for offenders from other ethnic groups. [...] MoJ statistics also show a statistically significant association between offenders of Black and mixed ethnicity and a higher likelihood of receiving a custodial sentence compared to those from the White ethnic group.

2

Consultation on draft guideline

The Sentencing Council consulted on the draft [imposition of community and custodial sentences guideline](#) between 29 November 2023 and 21 February 2024.

Although the individual consultation responses were not published, the Sentencing Council published a [consultation response document](#) (PDF), which summarises the consultation responses it received and the process it followed to finalise the guideline.

2.1 Parliamentary engagement with the consultation

The [Justice Committee](#) saw a sample of responses and held a roundtable discussion with stakeholders before submitting their response. In March 2024, with the Sentencing Council in attendance, the committee heard from representatives from criminal justice voluntary organisations, HM Prison and Probation Service (HMPPS), the Magistrates Association, the Sentencing Academy and Jonathan Cooper, Resident Judge at Aylesbury and Amersham Crown Court.

The [Justice Committee response to the consultation on the guideline](#) 28 March 2024 did not raise concerns about including cohorts of people who may generally need a pre-sentence report (PSR). It did comment that it should be clear this is a non-exhaustive list and a PSR can still be necessary for people outside of these categories. The Sentencing Council therefore ensured that this line is in bold in the guideline.

The letter from Sir Robert Neill, then Chair of the Justice Committee said:

We wish to recognise the effectiveness of this consultation exercise, both in terms of the quality of the responses received and the way that the Council has engaged with stakeholders. Overall, we are supportive of the changes proposed by the Council which will make the imposition guideline more comprehensive in its nature and should encourage sentencers to better tailor the sentence to the individual offender, which will hopefully lead to positive outcomes in terms of rehabilitation and the likelihood of re-offending.

The [Minister for Sentencing at the time, Gareth Bacon also welcomed the extended guidance](#) on PSRs and did not raise any concerns.

2.2 Section on ethnicity, faith and culture

The [consultation response](#) explains that:

- many respondents called for ethnicity to have a higher profile across the guideline
- some respondents suggested including considerations for sentencing offenders from a minority ethnic background in various sections or throughout the guideline
- Some individual respondents, including an MP, called for the section on those from a minority ethnic, cultural, and faith communities to be removed from the guideline

The report says that the council considered and discussed these suggestions at length. It explains that there were strong views both for and against the list, but overall, a much higher number of respondents supported retaining the list.

Of the 150 respondents, 17 did not agree with one or more of the cohorts or did not agree with having a list of cohorts at all. Of those, eight (four individuals and four magistrates) referred to the inclusion of those “from an ethnic minority, cultural minority and/or faith minority community” as being part of their reasoning for objecting to the list.

The council references the HMI Probation [thematic report on race equality in probation](#) (PDF) which placed considerable importance on high-quality PSRs for Black, Asian and ethnic minority offenders. The council says that they therefore disagreed with the justifications given for removing this cohort from the list of cohorts included in the guideline.

In brief, the HMI Probation report found that there was no national strategy for service delivery to minority ethnic people on probation, there was little evidence that probation staff had spoken with people on probation about their ethnicity, culture, religion, and experiences of discrimination, and probation services were worse for people from minority ethnic groups than for White people.

3

Publication of guideline

The guideline was published on 5 March 2025 and was due to be implemented on 1 April. The guideline includes a section on PSRs which says that a PSR will normally be considered necessary if the offender belongs to one (or more) of the following cohorts:

- at risk of first custodial sentence and/or at risk of a custodial sentence of 2 years or less (after taking into account any reduction for guilty plea)
- a young adult (typically 18-25 years; see further information below at section 3)
- female (see further information below at section 3)
- from an ethnic minority, cultural minority, and/or faith minority community
- pregnant or post-natal
- sole or primary carer for dependent relatives

Or if the court considers that one or more of the following may apply to the offender:

- has disclosed they are transgender
- has or may have any addiction issues
- has or may have a serious chronic medical condition or physical disability, or mental ill health, learning disabilities (including developmental disorders and neurodiverse conditions) or brain injury/damage
- or; the court considers that the offender is, or there is a risk that they may have been, a victim of:
 - domestic abuse, physical or sexual abuse, violent or threatening behaviour, coercive or controlling behaviour, economic, psychological, emotional or any other abuse
 - modern slavery or trafficking, or
 - coercion, grooming, intimidation or exploitation.

The guideline also says that this is a non-exhaustive list and a PSR can still be necessary if the individual does not fall into one of these cohorts.

3.1 Government response to the guideline

The government has expressed concern that the guideline would allow courts to treat people from different ethnic groups differently, rather than equally before the law.

Correspondence between the Justice Secretary and Sentencing Council

The [Justice Secretary Shabana Mahmood wrote to the Sentencing Council](#) on 6 March 2025. She asked it to review the guideline and explained that she would be reviewing the role and powers of the Sentencing Council.

The Chair of the Sentencing Council [Lord Justice Davis responded to the Justice Secretary on 10 March 2025](#) (PDF), outlining the consultation process the guideline had gone through and mentioning the evidence that for some offences there is a disparity in sentence outcomes as between White offenders and offenders from minority ethnic groups. He said the purpose of the guideline was to remind sentencers of the kinds of cases that were likely to require more information, and the guideline did not mandate a pre-sentence report but gave instances where one would normally be considered necessary.

The Justice Secretary and the Chair of the Sentencing Council met on the 13 March 2025¹³. On 20 March 2025 [the Justice Secretary wrote to the Sentencing Council](#) accepting that there is a difference in sentencing outcomes for people from minority ethnic groups and saying this was a question of policy for the government to address. She asked the council to review the guideline or at least re-open the consultation.

The [Chair of the Sentencing Council responded](#) on the 27 March. He explained that the Sentencing Council had met and considered the request from the Justice Secretary as a request under [section 124 of the Coroners and Justice Act 2009](#), which gives her the power to ask the council to revise guidance. The council considered that the rule of law requires that all offenders are treated fairly and justly by judges and magistrates who are fully informed about the offences, the effect on the victims and the offenders. The council concluded that the guideline did not require revision but decided that clarifying language of the relevant part of the guideline might correct the widespread misunderstanding of the guideline.

Comments from the Shadow Justice Secretary

The Shadow Justice Secretary [Robert Jenrick said that the guideline would create “two tier justice”](#) in an interview with Sky News on 6 March 2025.

On 24 March Robert Jenrick wrote in Conservative Home:

If this goes ahead, justice will no longer be blind – and confidence in the criminal justice system will be severely damaged as a result. But it is not just a sacred constitutional principle that will be vandalised.¹⁴

Proposal of legislation

On 30 March it was [reported in the media](#) that legislation was imminent. On 1 April 2025 the Justice Secretary [announced her intention to introduce legislation to block the new sentencing guidelines](#).

On 31 March 2025 [the Sentencing Council issued a statement](#) explaining that it views the guideline as drafted as necessary and appropriate but would not introduce a guideline when an imminent draft bill would make it unlawful, and on that basis, they have decided to delay implementing the guideline.

¹³ Referenced in the letter [the Justice Secretary wrote to the Sentencing Council on 20 March 2024](#)

¹⁴ Robert Jenrick [We are on the brink of two-tier justice under two-tier Kier](#), Conservative Home, 24 March 2025

4

The bill

The [Sentencing Guidelines \(Pre-sentence Reports\) Bill](#) was published on 1 April 2025. Its second reading is due to take place on 22 April 2025.

The following supporting government documents have been published alongside the bill:

- [Explanatory notes](#) (PDF)
- [Equalities impact assessment](#) (PDF)

The [supporting documents can be found on the bill page](#). The bill applies to England and Wales only.

4.1

Clause 1

Clause 1 is the only substantive clause and would amend [section 120 of the Coroners and Justice Act 2009](#) so that sentencing guidelines about obtaining pre-sentence reports (PSRs) could not be framed by reference to the personal characteristics of an offender.

This would mean the Sentencing Council could not issue guidelines making it necessary to obtain a PSR based on an offender's membership of a particular demographic cohort, rather than the circumstances of the individual.

The clause sets out a non-exhaustive list of personal characteristics including race, religion or belief and cultural background. This clause would remove reference to particular cohorts from the guideline and prevent the Sentencing Council from issuing guidance to the same effect in future.

The government's view is that it is not acceptable for guidelines to take demographic cohorts as a factor in determining whether a PSR is required, rather than specific individual circumstances¹⁵. It believes this creates differential treatment before the law.

The guideline was due to come into effect on 1 April 2025 and the government is making use of fast-tracking as it wishes to urgently address the cohort-specific aspects of the guideline. The Sentencing Council decided to pause the introduction to await the outcome of this bill.

¹⁵ [Explanatory Notes](#) (PDF) para 24

4.2 Equality impact assessment

The government has published an [equality impact assessment](#) (PDF) with the bill. This says:

It is the intention of the Bill to disapply the part of the Sentencing Council's Imposition Guideline relating to how courts should request pre-sentence reports for particular cohorts. To that end, it is the Government's expectation that this will result in a preservation of current practices. Courts are, in any event, required to obtain and consider a PSR unless, in the circumstances of the case, it is considered unnecessary. We have assessed that there are therefore no significant negative equalities impacts.¹⁶

5 Stakeholder reaction to the bill

Some charity groups welcomed the revised guideline and have criticised the government's decision to block it.

In contrast, there have been several articles in the national print mainstream media and comments on social media criticising the guideline for creating a system that would disadvantage people from White backgrounds.

Some lawyers and magistrates have expressed concern that the guideline had been misrepresented.

5.1 Terminology

There has been some concern that the terminology in the bill is unclear. For instance, Joshua Rozenberg, a legal commentator writing in Substack says:

The legislation is intended to let sentencers consider an offender's personal *circumstances* but not the offender's personal *characteristics*. What's the difference?¹⁷

He suggests that circumstances could mean what has happened to someone and characteristics are who or what someone is. He asks whether 'pregnant or post-natal' and 'young adult' – both groups in the original list of cohorts – are circumstances or characteristics.

¹⁶ Sentencing Guidelines (Pre-Sentencing Reports) Bill Equalities Impact Assessment para 3 1 April 2025

¹⁷ Joshua Rozenberg, Characteristics or circumstance? Substack 2 April 2024

The [Joint Committee on Human Rights also wrote to the Lord Chancellor on 8th April](#) requesting clarification on the terminology in the bill.

The explanatory notes accompanying the bill say:

Nothing in the bill prevents the council from issuing guidelines advising courts to consider the offender's personal circumstances in deciding whether to request a pre-sentence report.

Race is a protected characteristic under the [Equality Act 2010](#). The Probation Service is covered by the [Public Sector Equality Duty](#). The three aims of the general duty are to have regard to the need to:

- put an end to [unlawful behaviour that is banned by the Equality Act 2010](#), including discrimination, harassment and victimisation
- advance equal opportunities between people who have a protected characteristic and those who do not
- foster good relations between people who have a protected characteristic and those who do not

5.2 Response from criminal justice charities

When the guideline was initially published, it was welcomed by several organisations working within the criminal justice system.

Hibiscus Initiatives noted that Black women and women from other minority ethnic groups in the criminal justice system are more likely to have been a victim of violence, and they are disproportionately affected by other factors such as poverty.¹⁸ It supported the guideline, describing it as a promising step towards a fair justice system. Six charities working with women in the criminal justice system have jointly called for the guideline to be reinstated.¹⁹

Groups advocating for the rights of women in prison, particularly pregnant women also welcomed the changes. Level Up, which campaigns for gender justice, described it as [a result of five years of campaigning and a huge milestone for its work](#).

Clinks, an infrastructure organisation supporting charities working in criminal justice made [a statement on X \(formerly Twitter\) on 1 April](#). It said that the voluntary sector had been extensively involved in trying to highlight racial disparities in the criminal justice system, but that progress had stalled in

¹⁸ Hibiscus Initiatives [Statement on the sentencing council's imposition of community and custodial sentences](#) accessed on 14 April 2025

¹⁹ Hibiscus Initiatives [Joint Statement by members of the Justice Reimagined Coalition on the suspension of new sentencing guidelines](#) accessed on 14 April 2025

recent years. It said outcomes remained unequal for Black defendants compared with White defendants. It argued that the guidelines should be viewed in a wider context, given that they would cater for groups facing inequality, including women, pregnant women and young adults. It also said that ensuring sentencers have a full picture of the circumstances of specific people, through PSRs, was an important part of addressing disparities.

5.3 Commentary from lawyers

The Law Society Gazette has published articles about the sentencing guideline, including one saying that the new guideline would improve the current “two-tier system” of justice and another detailing concerns around the political backlash over the sentencing guideline and an opinion piece stating that sentencing is for judges not politicians.²⁰

The Guardian quoted the [Society of Black Lawyers](#), which said the guideline was an attempt to achieve “equal treatment” after “racist two-tier policing for 500 years”.²¹ Peter Herbert, the chair of the Society of Black Lawyers, said:

If we achieve equal treatment that is not two-tier, as it is long overdue. We have never asked for special treatment only equal treatment.

Keir Monteith KC, quoted in the same article, said there had been a deliberate misreading of the rules to generate a row.

Cordella Bart-Stewart, co-founder and Director of the [Black Solicitors Network](#), argues that “two-tier policing and sentencing has always existed, just not in the direction that the justice minister and the opposition appear to believe”.²²

5.4 Magistrates

The [Magistrates Association issued a statement on the new guidelines](#) on 6 March 2025 because it was concerned that it had been misrepresented in the media. It said:

Magistrates must follow the law and the guidance that is given to them. [...] However there is widespread concerns about disparities in sentencing

²⁰ [New sentencing guidance improves two-tier system](#), the Law Gazette, 7 March 2025; [Lawyers attack political backlash over sentencing guidance](#), the Law Gazette, 7 March 2025; Joshua Rozenberg, [Sentencing is for judges not politicians](#), the Law Gazette, 26 March 2025

²¹ [Lawyers attack ‘dangerous’ decision to halt Sentencing Council guidelines](#), The Guardian, 1 April 2025

²² [Minority groups have always faced two-tier justice in Britain](#), The Guardian, 8 April 2025

outcomes for different parts of the population, that need to be addressed. For example, minority ethnic men and boys are far more likely to be in prison than people from other ethnic groups. Addressing disparities like this is not about treating people differently, but ensuring sentencing is applied fairly across all groups. Recommending that pre-sentence reports (PSRs) are considered in more cases is one step towards addressing this – indeed we would like to see them for all defendants.

5.5 Parliamentary debate

There have been two debates on the guideline and the bill in the House of Commons and two in the House of Lords.

Debates in both Houses considered the independence of the judiciary, the effect of guidelines on the principle of equality before the law, and disparities in the criminal justice system between people from different ethnic groups.

Commons debate on the guideline

In a [debate in the Commons on 17 March 2025](#) members from both government and opposition raised concerns about the guideline and its effect on the principle of equality before the law, raising concerns that availability of PSRs should not be determined by ethnicity, culture or faith.

Some questioned whether the Sentencing Council, as an arm's length body, should be able to go against the Justice Secretary's wishes. The Junior Minister for Sentencing, Sir Nic Dakin, and other Labour MPs pointed out that the consultation on the guideline was undertaken during the previous government, who had welcomed the draft guideline at that time.

Some members commented on the importance of PSRs and requested that they be available for all defendants. Concerns were raised about the guideline eroding public confidence in the criminal justice system and the impact on victims.

The minister was asked if he would consider abolishing the Sentencing Council, and separately, if he would support the Chair of the Sentencing Council. He explained the council had been written to and the Justice Minister was awaiting the response. The Green Party said that sentencing guidelines should not be dictated by ministers and if they were, this would breach an important principle. Throughout the session the minister reiterated the government's respect for the independence of the judiciary.

Lords debate on the guideline

The [Lords debated the guideline on 19 March 2025](#), and a question was asked about the Sentencing Council not being accountable to any minister. The Minister for Prisons, Lord Timpson, responded that the Sentencing Council is

independent of Parliament and government and the council decides on its own priorities and workplan for producing guidelines.

A few members of the House of Lords commented that the imposition guideline did not suggest lighter sentences for offenders from minority ethnic groups but set out when PSRs were particularly important.

The debate also mentioned strong evidence that offenders from minority ethnic groups are more likely than their White counterparts to receive immediate custodial sentences, and that the guideline is intended not to encourage unfair sentencing but to prevent it. The minister's response was that tackling disproportionate outcomes in the criminal justice system was a matter of policy and should be addressed by government ministers and not the Sentencing Council.

The minister was also asked to explain why judges requesting a PSR because they might not fully understand the background of those from different ethnic or social groups amounted to two-tier justice. He responded that the independence of the judiciary and the fact that everybody should be treated equally in the eyes of the law means that PSRs should remain to be determined by the judiciary.

A comment was also made that having more PSRs in more cases would help sentencers arrive at fair, appropriate, transparent and effective sentences for all offenders.

Commons debate on introduction of the bill

On [1 April 2025 the Justice Minister Shabana Mahmood introduced the bill](#), acknowledging that the guideline was attempting to address inequalities in the justice system but stating that the guideline moved away from the principle of equality before the law and that this was a matter for parliament and for policy. She also explained that she was reasserting the boundary between Parliament and judiciary. She said that she was considering the wider role and powers of the Sentencing Council and planned to bring further proposals before Parliament.

Much of the debate repeated issues from the previous House of Commons debate on the 17 March. The Chair of the Justice Committee, Andy Slaughter (Lab) noted that the council is a judicial body whose president is the Lady Chief Justice, the chair is a distinguished Court of Appeal judge, and its function was previously executed by the Court of Appeal. He pointed out that the Justice Committee is a statutory consultee for all guidelines and that its judicial leadership, independent and democratic accountability are held in high esteem across the criminal justice system. He asked for reassurance that these attributes would remain integral to the council. The minister confirmed her commitment to the principle of the independence of the judiciary, and her oath to that duty. She explained her disagreement with the Sentencing

Council is that this is an area of policy rather than a tool for the consistency of judicial practice in sentencing.

Another question was raised about disproportionality for minority ethnic groups in the justice system and the minister reiterated her commitment to reducing disparity through policy alone. One new question was raised about sentencing for pregnant women and the minister confirmed the desirability of a court obtaining PSRs before it passes sentence in cases involving pregnant women and women who have recently given birth.

Further debate in the Lords

[Questions were asked in the Lords on 2 April 2025](#) and the Minister, James Timpson said that he was concerned that the numbers of PSRs had reduced by 44% between 2013 and 2023. The [bill was debated in the Lords on 3 April 2025](#) and including discussion of the relationship between government and the judiciary.

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