The Rt Hon Lord Justice William Davis
Chairman of the Sentencing Council
EB16 East Block
Royal Courts of Justice
Strand
London WC2A 2LL

020 7071 5793
info@sentencingcouncil.gov.uk
www.sentencingcouncil.org.uk
@SentencingCCL

The Right Honourable
Shabana Mahmood MP
Lord Chancellor & Secretary
of State for Justice
102 Petty France
Westminster
London
SW1H 9AJ

27 March 2025

Dear Lord Chancellor

The Imposition of community and custodial sentences guideline

Thank you very much for meeting me on 13 March 2025 to discuss the new Imposition of community and custodial sentences guideline. In the meeting you expressed your appreciation for the work of the Sentencing Council. You also stressed your support for the independence of judiciary. I was very appreciative of your confirmation of the Council's position. The meeting was arranged in order to discuss the inclusion of ethnic, cultural and faith minority groups as a specific cohort in the list of those for whom a pre-sentence report normally would be necessary. In the meeting it was understood that this was the cohort about which you had concerns. We agreed that you would write to me as Chair of the Sentencing Council to set out in greater detail your position in relation to this cohort. We further agreed that, following receipt of that letter, the Council would meet to consider next steps.

On 20 March 2025 you wrote to me as agreed. In your letter you set out your argument in relation to the inclusion of ethnic, cultural and faith minority communities in the list of those for whom a pre-sentence report normally would be necessary. You argued that, in relation to the recognised disparity in sentencing outcomes for ethnic minorities, it was the responsibility of Government to address it. Your view was that the advice in the Imposition guideline in relation to pre-sentence reports and ethnic minorities amounted to impermissible differential treatment. Because the guideline gives general guidance on the circumstances in which a pre-sentence report should be obtained, you suggested that the full list of cohorts should be removed. Alternatively, were the Council not to accept this proposition, you recommended that the opportunity to consult on the guideline should be re-opened. This suggestion was made in the light of the recent public response.

For those who wish properly to understand your arguments, they must read your letter in full. My expectation is that both letter and this reply will be published to allow public debate properly to be informed. In any event, I hope that my summary of your letter is fair.

As I explained in my earlier letter to you on 10 March 2025 the Imposition guideline was the result of many months' work by members and officials of the Council. I will not repeat here the detail of what I said then about the process by which the guideline came into being. The important point is that it involved full public consultation open to any person or organisation with comment to make.

The Council met on the evening of 25 March 2025. This was a special meeting convened with the purpose of discussing your letter of 20 March 2025. The Council concluded that your letter should be taken as a proposal under section 124 of the Coroners and Justice Act 2009. So that others may understand, this is the power available to you as Lord Chancellor to ask the Council to revise a guideline. Upon such a proposal being made by a Lord Chancellor the Council must consider whether to do so. Revising a guideline requires the Council to consult in the normal way i.e. as was done in relation to the Imposition guideline between November 2023 and February 2024. For us to consider revision of a guideline the Council would have to determine that it would be necessary or appropriate to do so. The revision you proposed in your letter was the omission of the entire list of cohorts for whom a pre-sentence report normally would be necessary. Therefore, the Council considered the need or justification for that step. The arguments about the treatment of ethnic, cultural and faith minority groups were part of our consideration. We also had regard to the other groups or cohorts in the list.

The first matter considered by the Council was the purpose of pre-sentence reports. As the Imposition guideline states, a pre-sentence report will inform the judge or magistrate of 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. The crucial point is that a pre-sentence report will provide information to the judge or magistrate. It will not determine the sentence. Rather, it will leave the judge or magistrate better informed about the offender.

Frequently the information provided will not assist the offender's prospect of avoiding a custodial sentence: rather the reverse. By way of example pre-sentence reports set out the attitude of the offender to the crimes they have committed. A probation officer will provide a frank assessment of whether the offender has proper understanding of the damage caused to their victim. If the offender does not, the sentencing court may use that factor in its approach to the offender's culpability and the risk presented by the offender.

Because your initial arguments to the Council related to issue of the disparate treatment of different ethnic groups within the criminal justice system, the next matter considered by the Council was the proposition that this was a matter of

policy for those accountable to the public rather than for the judiciary. As you say in your letter, there is a difference in sentencing outcomes for ethnic minorities. The Council agreed that any systemic issue relating to different ethnic groups will be a matter of policy. It is not for judges to introduce overarching policies to redress the imbalance. However, sentences are imposed by judges and magistrates. Any judge or magistrate required to sentence an offender must to do all that they can to avoid a difference in outcome based on ethnicity. The judge will be better equipped to do that if they have as much information as possible about the offender. The cohort of ethnic, cultural and faith minority groups may be a cohort about which judges and magistrates are less well informed. In our view, providing the sentencing court with information about that cohort could not impinge on whatever policy might be introduced to deal with the underlying problem. Provision of a pre-sentence report in an individual case cannot have damaging consequences for wider policy making.

Your letter requested that the full list of cohorts should be removed. You argued that the general and widely drawn guidance in the guideline gave judges and magistrates a good reason to request a pre-sentence report whenever they needed one. If we had been satisfied that courts currently requested a pre-sentence report wherever and whenever one was necessary, we may not have included a list of cohorts. As I said in my letter of 10 March 2025, the Council had evidence to the contrary. For example, sole carers (male or female) of young children and pregnant offenders are cohorts in relation to which detailed information for the sentencing court is essential. There have been recent stark examples of cases involving those cohorts in the Court of Appeal where sentence had been imposed without a pre-sentence report. Had a pre-sentence report been prepared, the outcome would have been different. For most of the cohorts, the need for a pre-sentence report arises from some characteristic of the offender. In the case of ethnic, cultural and faith minority groups, the issue is the need to provide full information to the sentencing court. The Council consulted on the inclusion of a list of cohorts. As I explained in my previous letter, the overall response to the consultation was positive.

The Council posed itself two questions in its consideration of your proposal that we should revise the Imposition guideline in relation to the cohorts. First, did the Council make a mistake in the process of preparing and consulting on the guideline? Were any matters ignored which should have formed part of our consideration? Were things taken into account which ought not to have been? Was our response to the consultation inadequate or wrong? We concluded that no errors were made. In relation to the cohorts, the consultees were generally supportive. There were no arguments of principle affecting any individual cohort. We acted on appropriate suggestions made by, amongst others, the Justice Select Committee. The Council understood that you did not criticise any part of the process by which the guideline was developed. The Council could see no basis on which it should revise the guideline because of the process up to the date of publication.

Second, is there new evidence or new material available now which shows that the basis of the guideline is not sustainable? Is there material which requires us to revise the guideline, in particular the list of cohorts? The Council understood and respected the arguments you have put in relation to policy. Those arguments were not raised in the course of the consultation. However, for the reasons I already have set out, the Council respectfully disagreed with the proposition that the list of cohorts in the guideline represented an expression of policy. In providing a list of cohorts, the Council was and is only concerned with judges and magistrates being provided with as much information as possible.

The Council acknowledged that there was a change of government after the consultation process concluded. This is not something which has occurred previously in the life of the Council. If our consultations were restricted by law to contributions from the government in office at the time of the consultation, the Council could see that a change of government might be significant. In fact, as with every Council guideline, the full public consultation was open to anyone interested in the issues raised by the proposed guideline. By way of example, on the issue of the list of cohorts, the responses to the consultation included a contribution from an MP who was not a member of the then government.

The issue which has arisen since the publication of the guideline is the view expressed by the shadow Lord Chancellor, a view which has been adopted by others. As you say in your letter, many people have expressed strong views. In exchanges in the House of Commons on 5 March 2025 the shadow Lord Chancellor said this:

“Lastly, the new sentencing guidelines published alongside this statement will make a custodial sentence less likely for those

“from an ethnic minority, cultural minority, and/or faith minority community”.

Why is the Justice Secretary enshrining this double standard—this two-tier approach to sentencing? It is an inversion of the rule of law.”

If the Imposition guideline did make a custodial sentence less likely for someone from an ethnic minority simply by reference to their ethnicity, the guideline would be open to proper criticism. That is not what the guideline does. If it did, one might expect that it would have been identified by the then Lord Chancellor or the Justice Committee as then constituted. They would have objected in unequivocal terms. As I have explained, a pre-sentence report of itself does not make a custodial sentence less likely. It provides the sentencing court with information. The list of cohorts relates to offenders about whom a court is likely to require as much information as possible. It is important to note the following matters. First, the guideline does not instruct or mandate judges and magistrates to request a pre-sentence report. A sentencing court may decide that a pre-sentence report will not be necessary in relation to an offender within a particular cohort. Second, the guideline is explicit. The list of cohorts is non-exhaustive. A pre-sentence report may be necessary for an offender

outside the list. Third, all of the other cohorts are silent as to ethnicity. Those cohorts concern characteristics of the offender unaffected by their ethnicity.

On 17 March 2025 in further exchanges in the House of Commons the shadow Lord Chancellor said:

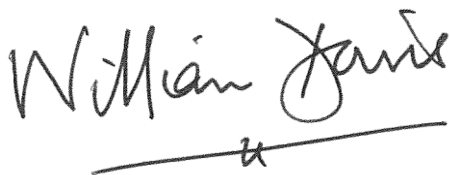
"In just 14 days, new two-tier sentencing rules will come into force. These sentencing rules will infect our ancient justice system with the virus of identity politics, dividing fellow citizens on the basis of their skin colour and religion. The rules will ride roughshod over the rule of law and destroy confidence in our criminal justice system."

If the Imposition guideline had the effect set out by the shadow Lord Chancellor, it would undoubtedly require the Council to consult on a revision of the relevant part of the guideline. One of the matters to which we must have regard is the need to promote public confidence in the criminal justice system. Were our guideline to ignore the rule of law, that would seriously diminish confidence in the sentencing process. As I hope you will agree, no part of the guideline is a set of rules which ignore the rule of law. In relation to sentencing, 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 section of the guideline relating to pre-sentence reports is directed to the issue of information about offenders, no more and no less.

For all of these reasons the Council concluded that the guideline did not require revision. The Council decided that some clarification of the language of the relevant part of the guideline should be included in the hope that this would correct the widespread misunderstanding which has emerged in the last few weeks. It also was determined that an explanatory statement in relation to this clarification should be published on the Council website.

Should you wish to meet to discuss further any matters relating to the Imposition guideline, I will be very pleased to do so when our respective diaries permit.

Yours sincerely



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