

## Minority and trans criminals could avoid jail under new rules

**Shabana Mahmood, the justice secretary, has already called for the changes to sentencing guidelines to be reversed**

Ethnic minority and transgender criminals may be more likely to avoid prison under changes to sentencing guidelines that take effect next month.

Updated guidance sent to judges says that they should consider whether an offender is from an ethnic, cultural or religious minority when deciding whether to impose a custodial or community sentence.

Other factors include whether an offender has disclosed that they are transgender, according to the Sentencing Council, an independent body that provides guidance for judges and courts to ensure consistency and transparency across the country.

The new guidance has sparked claims of a “two-tier” sentencing policy that treats ethnic minorities favourably.

Shabana Mahmood, the justice secretary, was unaware of the new guidance before it was published on Wednesday and said she would request its reversal. A Ministry of Justice source said she was “incandescent” when made aware.

Mahmood said: “The Sentencing Council is entirely independent. These guidelines do not represent my views or the views of this government. I will be writing to the council to register my displeasure and recommend reversing this change to guidance.

“As someone who is from an ethnic minority background myself, I do not stand for any differential treatment before the law, for anyone of any kind.

“There will never be a two-tier sentencing approach under my watch.”

Robert Jenrick, the shadow justice secretary, called the guidance “completely outrageous” and said it confirmed claims made after the Southport riots last summer of a two-tier approach to sentencing in England and Wales.

He said: “Under this guidance there is blatant discrimination against straight white men.”

He added: “Under ‘Two-Tier Keir’, our justice system is set to have an anti-white and anti-Christian bias. Starmer sneered at people who said we have a two-tier justice system — and Angela Rayner labelled them ‘conspiracy theorists’. But here we have it in black and white. It’s unarguable.”

Minutes from a meeting of the Sentencing Council that rubber-stamped the guidelines on January 24 reveal that a senior Ministry of Justice official was present at the meeting. However, sources close to Mahmood said the changes were not flagged to ministers.

A Labour source pointed out that the last government was aware of the change in guidance during a consultation that ended in February last year.

Under the guidance, which take effect from April 1, judges and courts must consider a wider range of factors pertaining to an offender’s background when deciding whether to impose a community or custodial sentence.

The guidance relates to the pre-sentence report, drawn up when an offender is from a cohort that judges and courts may deem relevant when considering a sentence. The council states that such a report can be “pivotal in helping the court decide whether to impose a custodial or community order and, where relevant, what particular requirements or combination of requirements are most suitable for an individual offender on either a community order or a suspended custodial sentence”.

The new guidance adds factors such as whether an offender is from an “ethnic minority, cultural minority and/or faith minority community”, and whether an offender has disclosed that they are transgender.

Existing factors taken into consideration when deciding the type of sentence include whether an offender has previously served a custodial sentence; is a young adult aged 18 to 25; is a woman; is pregnant or post-natal; has addiction issues; is suffering from a chronic medical condition or physical disability or mental ill health; or is a victim of domestic abuse.

The council insisted that the guidance does not dictate the sentence but simply gives additional information and context to courts when considering the nature of the sentence. A source pointed out that some demographic cohorts suffer disadvantages in the criminal justice system.

The changes were based on research that included evidence showing the proportion of black offenders receiving a community order has been lower than the proportion of white offenders.

The Sentencing Council, while independent, reports to the Ministry of Justice. It was set up in 2010 and the current chairman is Lord Justice William Davis, a Court of Appeal judge. He took over the role in August 2022.

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