



¹ London School of Hygiene and Tropical Medicine, London, UK

² University College London, London, UK

Cite this as: *BMJ* 2025;389:r729

<http://doi.org/10.1136/bmj.r729>

Published: 10 April 2025

Dispute over sentencing guidelines is warning for England's public health community

Faced with a row over guidance to improve consistency on sentencing by the courts, the British government chose a populist narrative. This sends a worrying message to public health professionals promoting inclusivity, write **Martin McKee** and **Christina Pagel**

Martin McKee,¹ Christina Pagel²

If health really is part of all policies,¹ then we in the public health community can't ignore what might seem like arcane and complex discussions in other policy areas. A pertinent example is the recent dispute over a proposal to tackle potential inequalities in sentencing by the courts in England and Wales.² The lord chancellor and justice secretary, Shabana Mahmood, has intervened,³ raising issues that have potential consequences for those working to reduce health inequalities. This sentencing guideline dispute is a concerning example of government interference in what should be an independent expert process.

The dispute concerned the Sentencing Council, an independent body with a majority of judicial members and a remit to promote greater transparency and consistency in sentencing.⁴ It arose when the council published guidance on pre-sentence reports prepared by the probation service to give the courts additional information on people being sentenced. These pre-sentence reports should be requested by the courts whenever a custodial sentence or community order is being considered. They enable the court to form a better assessment of, for example, the scope for rehabilitation or the risk of reoffending.⁵ As with all guidance, the court can make a case for not requesting a pre-sentencing report.

The guidance responded to evidence that in some cases in which a report was not requested, including those involving pregnant women and sole carers, it would have led to a different decision.⁵ The council also noted how, given gaps in the diversity of the judiciary, its members may be less familiar with the circumstances of certain groups. These include some cultural or ethnic groups and people from challenging circumstances, such as carers and victims of abuse. Crucially, the Sentencing Council had no evidence that having a report leads the courts to impose more lenient sentences. Indeed, it may do the opposite, particularly when the report indicates a risk to the public beyond what emerged in the trial.⁵

The council was created to prevent political interference in sentencing. Yet this is exactly what has just happened. The shadow justice secretary, Robert Jenrick, claimed that the guidance represented “blatant bias against Christians and straight white men” despite the guideline having been praised and approved by Rishi Sunak's Conservative government in 2024.⁶ The idea that it somehow established “two tier sentencing” that benefited people from ethnic minorities was taken up by various political commentators and promoted widely by sympathetic

media outlets.^{7 8} Rather than challenging this spurious argument, Shabana Mahmood, who as lord chancellor has a legal duty to uphold the independence of the judiciary, joined the criticism of the council and threatened to introduce emergency legislation to over-rule the council if it failed to withdraw the guidance—which it then did.⁹

How is this relevant to those working in public health? The imperative to tackle the structural inequalities that threaten the health and wellbeing of our population lies at the heart of our work. We saw firsthand the differential impact of covid-19 on minority communities¹⁰ and how they face additional barriers every day. For instance, structural racism contributes to much higher rates of neonatal and maternal death among black and brown women in western countries.¹¹ Or consider informal carers, who are subject to many structural inequalities, from low income to lack of opportunity to exercise. Now we are seeing that efforts to level a tilted playing field in sentencing are being misrepresented at the highest political levels as favouring ethnic minority and other populations.

In less divisive times, it might have been possible to view this as a temporary aberration. A minister facing sustained criticism from the tabloid press and other media outlets chooses short term political advantage over the facts, as has happened many times before. But in the current political climate these actions have greater significance. The Trump administration has declared war on what is termed diversity, equality, and inclusion with policies that promote these goals being rolled back across government, the education sector, and private companies in the US.¹² Images of women, people of colour, and other marginalised groups are being erased from public records.¹³ Research projects that contain language now deemed unacceptable, such as “diversity” are being cancelled.¹⁴ University departments studying contentious issues are being closed.¹⁵

It is tempting to think that what is happening in the US could not happen here. But it absolutely could. The UK lacks a written constitution, instead depending on what the historian and crossbench peer Peter Hennessy has described as the “good chaps” theory of government, which relies on those in power to do the right thing.¹⁶ Worryingly in the UK, some mainstream politicians openly discuss withdrawing from one of our ultimate protections in law, the European Convention on Human Rights.¹⁷

BMJ: first published as 10.1136/bmj.r729 on 10 April 2025. Downloaded from <https://www.bmj.com/> on 11 April 2025 by guest. Protected by copyright, including for uses related to text and data mining, AI training, and similar technologies.

The sentencing guideline dispute, described by gender justice advocate Janey Starling as a “populist pantomime,”¹⁸ may seem like an arcane dispute among lawyers, but it is much more than that. It is about government interference for political expediency to appease the populist right. As is playing out in the US right now, the notion of structural inequalities offends right wing populists. So, while it is affecting the criminal justice system today, it could easily affect public health tomorrow.

Competing interests: MM is a former president of the BMA.

Provenance and peer review: Not commissioned; not externally peer reviewed.

- 1 Greer SL, Falkenbach M, Siciliani L, McKee M, Wismar M, Figueras J. From health in all policies to health for all policies. *Lancet Public Health* 2022;7:-20. doi: 10.1016/S2468-2667(22)00155-4. pmid: 35907422
- 2 Sentencing Council. Imposition of community and custodial sentences—Effective from (to be confirmed). 2025. <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/imposition-of-community-and-custodial-sentences-overarching-guideline/>
- 3 Francis S. Sentencing council to be reviewed after two-tier row. BBC News 1 Apr 2025. <https://www.bbc.co.uk/news/articles/cn8vjd3n3dzo>
- 4 Sentencing Council. 2025. <https://www.sentencingcouncil.org.uk/>
- 5 Davis W. The imposition of community and custodial sentences guideline Sentencing Council, 27 Mar 2025. <https://www.sentencingcouncil.org.uk/wp-content/uploads/2025-03-26-Letter-to-the-Lord-Chancellor-from-William-Davis-LJ-1.pdf>
- 6 Robert Jenrick says new sentencing guidelines have ‘blatant bias against Christians and straight white men’: Sky News 6 Mar 2025. <https://news.sky.com/story/anger-over-two-tier-sentencing-as-justice-secretary-shabana-mahmood-rejects-new-guidelines-13322444>
- 7 Shipley D. The Sentencing Council has been humiliated. *Spectator* 1 Apr 2025 <https://www.spectator.co.uk/article/the-sentencing-council-has-been-humiliated/>
- 8 Wilde G. ‘Wrong and unfair!’ Robert Jenrick fumes as ‘two-tier’ justice coming to UK in Just Hours: ‘Must be stopped’: GB News 31 Mar 2025. <https://www.gbnews.com/politics/sentencing-council-robert-jenrick-two-tier-justice>
- 9 Elgot J. Sentencing Council suspends plans for new guidelines amid ‘two-tier’ justice row. Guardian 31 Mar 2025. <https://www.theguardian.com/law/2025/mar/31/sentencing-council-expected-to-suspend-plans-for-new-guidelines>
- 10 Public Health England. Beyond the data: Understanding the impact of COVID-19 on BAME groups. 2020. https://assets.publishing.service.gov.uk/media/5ee761fce90e070435f5a9dd/COVID_stakeholder_engagement_synthesis_beyond_the_data.pdf
- 11 Arcilla JT, Nanou A, Hamed S, Osman F. Racialized migrant women’s discrimination in maternal care: a scoping review. *Int J Equity Health* 2025;24:. doi: 10.1186/s12939-025-02384-8. pmid: 39828704
- 12 Pagel C. Donald Trump’s ‘war on woke’ is fast becoming a war on science. That’s incredibly dangerous: Guardian 26 Mar 2025. <https://www.theguardian.com/commentis-free/2025/mar/26/donald-trump-war-on-woke-science-diversity>
- 13 Jingnan H, Lawrence Q. Here are all the ways people are disappearing from government websites. NPR 19 Mar 2025. <https://www.npr.org/2025/03/19/nx-s1-5317567/federal-websites-lgbtq-diversity-erased>
- 14 Mervis J. Is your research on Trump’s spending hit list? Science 28 Jan 2025 <https://www.science.org/content/article/your-research-trump-s-spending-hit-list>
- 15 Reuters. Columbia University caves to demands to restore \$400m from Trump administration. Guardian 21 Mar 2025. <https://www.theguardian.com/us-news/2025/mar/21/columbia-university-funding-trump-demands>
- 16 Blick A, Hennessy P. *Good chaps no more: safeguarding the constitution in stressful times*. The Constitution Society, 2019.
- 17 McKiernan J, Francis S. UK may have to leave human rights treaty, says Badenoch. BBC News 24 Feb 2025. <https://www.bbc.co.uk/news/articles/c981r84013o>
- 18 Starling J. Labour’s populist pantomime over sentencing rules plays into the hands of the right. Guardian 1 Apr 2025. <https://www.theguardian.com/commentisfree/2025/apr/01/labour-prison-reform-justice-system>