



Eoin Guilfoyle

Jose Pina Sanchez

Sara Geneletti

April 9th, 2025

Ethnic disparities in sentencing and the perception of fairness

The publication of new guidelines on pre-sentencing reports by the Sentencing Council focussing on offenders from ethnic and faith minorities has sparked claims of “two-tier justice”. Eoin Guilfoyle, Jose Pina Sanchez and Sara Geneletti defend the intentions of the new guidelines, but argue that it’s important that they not only contribute to greater fairness in sentencing, but that they are also perceived to do so by the public.

Enjoying this post? Then sign up to our [newsletter](#) and receive a weekly roundup of all our articles.

Ethnic disparities in sentencing have once again taken centre stage in the political debate. This time sparked by the Sentencing Council publishing a [revised guideline](#) encouraging the use of pre-sentence reports, particularly for certain demographic groups such as offenders from ethnic and faith minority communities. The publication has been met with strong resistance from the Shadow Justice Minister [Robert Jenrick](#), who branded the revised sentencing guideline an example of “two tier justice”. This argument was given some validity by the Justice Minister [Shabana Mahmood](#), who wrote to the Council requesting the reversal of the changes. Claims of two-tier justice were strongly opposed by the [Sentencing Council](#) and [others](#), who asserted that by redressing existing ethnic disparities in sentencing, the revised guideline will not undermine, but rather will promote equality under the law. While the Council initially [resisted calls to reverse the changes](#), the day before the guideline was to come into effect the revisions were [suspended](#).



The reality is that ethnic disparities in sentencing do exist,

although they are not as widespread as commonly reported.



This complex issue strikes at the foundations of our criminal justice system—which is precisely why it deserves careful, informed debate. Unfortunately, the ongoing discussions have been clouded by politically motivated misinformation, misinterpretation, and selective reporting of research findings. This not only obstructs the development of evidence-based sentencing policy, but also undermines public trust in the justice system—something that ultimately affects us all, regardless of where we stand in the debate.

Dispelling misinformation

The reality is that **ethnic disparities in sentencing do exist**, although they are not as widespread as commonly reported. They appear to be primarily **confined to drug offences**. Importantly, these disparities **cannot be fully explained by statistical bias**, meaning they are likely the result of some form of direct or indirect discrimination.



Pre-sentence reports provide judges with a greater understanding of an offender's attitude and circumstances, including barriers to rehabilitation.



Given this evidence, the revised guideline's aim to increase the use of pre-sentence reports for ethnic minority offenders is clearly well-intended. Pre-sentence reports provide judges with a greater understanding of an offender's attitude and circumstances, including barriers to rehabilitation. The additional information on such matters helps sentencers in assessing mitigating factors that have been shown to be more difficult to assess for offenders from different cultures and ethnicities (e.g. genuine remorse) or other mitigating factors that are **disproportionately applied in favour of white offenders** (e.g. good character and ability to rehabilitate). There is a strong evidence-based case that providing sentencers with this additional information will help reduce ethnic disparities in sentencing outcomes.

The perception problem

The primary problem with the current approach then does not lie in its intent – nor even in its potential to reduce ethnic disparities in sentencing – but rather in how it can be perceived.

Sentencing is hugely symbolic – as the ongoing political row demonstrates. Perceived fairness is just as important as actual fairness, especially when it comes to maintaining public trust in the justice system. By explicitly listing certain demographics, the guideline leaves itself open to accusations of preferential treatment for one disadvantaged group over others.



Perceived fairness is just as important as actual fairness, especially when it comes to maintaining public trust in the justice system.



In fact, **recent evidence** demonstrates that offenders from more deprived areas are subject to a similar form of sentencing disparities. As such, the guideline could be said to be addressing some disparities (ethnic and faith) while ignoring others (class and deprivation), which fuel claims of “two-tier justice”.

Making sentencing fairer

Our concern is that longer-term effect of this controversy and political posturing is that we lose sight of the imperative need to address unwarranted disparities in sentencing. **Evidence** clearly shows that ethnic disparities exist, they are most pronounced in drug offences and they likely stem, at least in part, from the subjective assessments of mitigating factors – such as **remorse, good character, and the ability to rehabilitate**.



Considering social class could not only push back against the perceived unfairness that has ignited the current controversy, but at the same time more comprehensively redress unwarranted disparities in sentencing.



With these insights, solutions can be developed to address disparities without giving rise to perceptions of differential treatment. Solutions can be more targeted at the specific mechanisms leading to minority offenders being disadvantaged without impacting perceptions of fairness at sentencing. For example, the range of rehabilitation programs could be expanded to acknowledge their **differential level of access and effectiveness across ethnic groups**.

Another option would be to also target deprivation related disparities. Unlike ethnicity or faith, deprivation overlaps – to some degree – with all demographic groups. This is why considering social class could not only push back against the perceived unfairness that has ignited the current controversy, but at the same time more comprehensively redress unwarranted disparities in sentencing.

Policy-makers must not let the current controversy hinder efforts to address unwarranted disparities in sentencing. Instead, lessons should be learnt from it. A key one being: sentencing must not only be just, it must also be seen to be just.

All articles posted on this blog give the views of the author(s), and not the position of LSE British Politics and Policy, nor of the London School of Economics and Political Science.

*Image credit: **Victor Moussa** in Shutterstock*

Enjoyed this post? Then sign up to our **newsletter** and receive a weekly roundup of all our articles.

About the author

Eoin Guilfoyle

Eoin Guilfoyle is Lecturer in Criminal Law and Criminal Justice at Brunel University London.

Jose Pina Sanchez is Professor in Quantitative Criminology at the University of Leeds.
Jose Pina Sanchez

Sara Geneletti

Sara Geneletti is Associate Professor at the Department of Statistics, LSE.

Posted In: Law and Order | LSE Comment | Police



© LSE 2025