

Consultation Stage resource assessment

Reduction in sentence for a guilty plea

1 Introduction

1.1 This document accompanies the consultation on the draft *reduction in sentence for a guilty plea* guideline and should be read alongside that document. It fulfils the Council’s statutory duty, under section 127 of the Coroners and Justice Act 2009 to publish a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services. The main focus of this assessment is on estimating the impact of the proposed guideline on prison places

2 Rationale and objectives for the draft guideline

2.1 The Sentencing Council has a statutory duty under section 120(3) of the Coroners and Justice Act 2009 to prepare “sentencing guidelines about the discharge of a court’s duty under section 144 of the Criminal Justice Act 2003 (c. 44) (reduction in sentence for guilty pleas)”. In producing this guideline the Council wishes to promote a clear, fair and consistent approach to the way guilty plea reductions are applied in all courts in England and Wales.

2.2 The guideline aims to incentivise offenders who are guilty to plead guilty as early in the court process as possible by restricting the maximum reduction in sentence to those who do so. The goal is to influence the timing of guilty pleas, but not to influence the rate of guilty pleas entered. If the guideline is successful, the proportion of pleas entered at the earliest stage of the court process will increase; the percentage of guilty pleas entered late in the process will decline. However, the overall proportion of cases resolved through a guilty plea should remain largely unchanged.

2.3 The draft guideline is more prescriptive than the existing guideline. In particular, under the draft guideline to receive the maximum one-third reduction for an either-way offence, a guilty plea must be entered in the magistrates’ court, whereas currently a plea at the Crown Court will often receive the maximum reduction. This means that if offenders do not bring forward the timing of their pleas in response to the draft guideline, many will receive a lower reduction, resulting in longer prison terms being served and consequently greater costs in terms of providing prison places. However, if the draft guideline achieves its aim of encouraging earlier pleas, then some offenders will receive the same reduction and others will receive a higher reduction thus reducing any additional costs.

2.4 Encouraging more offenders to plead guilty at an earlier stage of the process will also have benefits, to victims and witnesses, and across the whole criminal justice system. Some of these benefits will be monetary and others will be non-financial. For a detailed discussion of the benefits, see the consultation document pXX.

3 Sentencing practice and guilty pleas

3.1 In 2014, 1,215,695 offenders were sentenced in all criminal courts in England and Wales. Of these, 86,297 were in the Crown Court and 1,129,398 in magistrates' courts. Of those offenders sentenced in the Crown Court, 90 per cent entered a guilty plea at some point in the proceedings.

3.2 The Council has the benefit of detailed data from the Crown Court Sentencing Survey¹ as to when pleas were being entered in the Crown Court and the level of reduction being made in 2014. This data shows that a substantial proportion (22 per cent) of offenders sentenced to custody for either-way offences in 2014, benefited from a reduction of one-third for guilty pleas entered in the Crown Court. In addition 17 per cent of offenders pleading to either-way offences at the Crown Court in 2014 had their sentences reduced by one-quarter. Under the draft guideline, the maximum that offenders in either of these categories would receive is a reduction of one-fifth.

3.3 There are other examples of offenders in the Crown Court who would receive a lower reduction under the draft guideline than they do under current practice. **Without a change in behaviour** there are only a very small number who may benefit from a greater reduction, namely those who currently receive a lower reduction because they are deemed to have pleaded in the face of overwhelming evidence. In all other cases offenders would receive either the same or a lower reduction than in 2014, unless they bring forward the point at which they plead.

4 Assessing the resource implications of the draft guideline

4.1 To estimate the resource effect of a guilty plea guideline, an assessment is required of how it will affect the levels of reductions awarded and therefore the length of custodial sentences imposed. This guideline presents a particular challenge for the Council - in contrast to offence-specific guidelines, which are intended solely to influence sentencer behaviour, it is also intended to affect the behaviour of offenders and their legal representatives. This behaviour change is something that it is not possible to predict with any confidence, given the limited research in this area.

4.2 The Council considered the possibility of estimating the costs of the draft guideline based on assumptions about offender behaviour, but rejected

¹ From 1 October 2010 to 31 March 2015 the Council conducted the Crown Court Sentencing Survey (CCSS) which collected data on sentencing practice in the Crown Court.

this because of the highly speculative and subjective nature of any such estimate. Therefore this assessment of the resource implications of the guideline starts from the concept of the “null hypothesis”, which in this context means that offenders will continue to plead at the same stage in the court process as was the case in 2014 (the latest figures that are available).

4.3 The following assessment is in no way a prediction of what is expected to happen following implementation of the guideline, but it provides a baseline against which to consider the costs. The fact that timings of pleas and levels of reductions are already likely to have changed since 2014, and that it is likely that there will be *some* change in defendant behaviour means that that the “null hypothesis” is very much a starting premise.

4.4 It should also be noted that the assessment takes no account of any exceptions to the normal application of the draft guideline – it is assumed that the appropriate reduction for the stage of plea would be applied in all cases and that none of the exceptions would apply.²

4.5 In addition, as with all Council resource assessments, the assessment is based on sentencers following the draft guideline at all times.

4.6 The assessment also does not take into account any potential changes to sentence levels prior to the application of the guilty plea reduction (such as treating co-operation with police as mitigation) again, because it is impossible to make any meaningful assessment.

4.7 Any changes in sentencing practice which may have occurred whether or not a new guideline was introduced (such as those arising through the implementation of the Better Case Management initiative) are also not included.

5 Resource impact

5.1 In every case in which a plea is entered and an offender is sentenced to immediate custody, the guilty plea reduction has an impact on the sentence length, and so any small change to average sentence lengths may have a very significant cumulative effect on the overall system.³

5.2 Applying the “null hypothesis”, it is estimated that the effect of the draft guideline would be an increase of approximately 600 prison places in 2016/17 and 2,000 prison places in 2017/18. The increase in prison places results from longer custodial sentences because smaller reductions would be given. This increase equates to a cost of £15 million and £50 million

² The draft guideline does provide for a number of exceptions to the levels of reduction awarded, the impact of which have not been estimated as part of this assessment.

³ In 2014 there were just under 90,000 prison sentences of immediate custody with an average custodial length of 15.6 months:

respectively,⁴ across both magistrates' court and Crown Court sentences; it also includes costs incurred in the probation service. If brought into force and without a change in behaviour compared to 2014, the guideline could, over time, result in the need for 4,500 additional prison places each year at a cost of £115 million per year.

5.3 The increase in the prison population would cause a temporary reduction in the expected licence population as offenders would be released later. However, this would not generate a significant saving to the public purse as Community Rehabilitation Companies are paid per licence start (i.e. by how many offenders start a licence period) rather than by caseload (the total number of offenders handled in any given period). The caseload for the National Probation Service would initially decrease, producing a saving, but this would then change to a net cost as a result of offenders spending longer on licence (due to longer overall sentences).

5.4 It should, however, be noted that whilst it is likely that the resource implications of the draft guideline will be substantial, it is unlikely that the costs will reach these levels. As already indicated, the timings of pleas and levels of reductions are already likely to have changed since 2014, and it is likely that overall offenders *will* plead at an earlier stage in the court process (for example, some offenders, when faced with only a one-fifth reduction at the Crown Court will enter their plea in the magistrates' court to obtain a one-third reduction).

6 The Wider System

6.1 If the guideline did not bring about any change in offender behaviour, then no wider system savings would be realised. However, as explained above, and in more detail in the consultation document, the purpose of the guideline is to bring about such behavioural change and incentivise early pleas. Where offenders plead earlier there would be some savings to the administration of justice.

6.2 It is not possible to summarise accurately these wider system savings, as not all of the costs and savings are available to give a total picture. However, it is possible to provide an indication of where savings would be accrued.

6.3 There would be a reduction in the average sitting days per case in the Crown Court, leading to those cases that do go to trial being listed more quickly. The amount of work required to be undertaken by both the police and the Crown Prosecution Service to prepare the case file would reduce.

⁴ The costs quoted exclude capital build costs and overheads. On this basis, a year in custody is assumed to cost an average of £25,000, including local maintenance, but excluding any capital build expenditure and overheads that may be necessary. This is a lower figure than previously used in Sentencing Council resource assessments (£30,000) but this aligns with the new estimates used across the Ministry of Justice (MoJ). For more details see: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367551/cost-per-place-and-prisoner-2013-14-summary.pdf.

Conversely, if contrary to the aim of the guideline a defendant entered a plea much later in the process than at present, this would increase costs when compared to current levels.

6.4 A positive change in offender behaviour would also have a significant non-monetary benefit, in terms of the relief and reassurance felt by victims and witnesses.

6.5 If there were no positive change in offender behaviour, not only would the wider system savings not be realised, but also the significant investment by the police and the Crown Prosecution Service (CPS) in developing programmes to ensure provision of relevant material in a timely manner to enable a guilty plea to be entered at the first occasion⁵ would be undermined. As the purpose of the guideline is to change offender behaviour, a failure to introduce the guideline may risk undermining these initiatives. Although it is too early to have firm evidence, early indications are that these initiatives, alongside related judicial initiatives, are having some impact on the stage at which pleas are being entered.⁶

7 Conclusion

7.1 The aim of calculating the impact of the guideline under the “null hypothesis” (of no change in offender behaviour) is to provide a starting premise for any assessment of potential resource implications of the proposed guideline. Under the no change scenario there is a substantial increase in prison places. Even where there is behaviour change and some offenders are incentivised to plead earlier, it is still highly likely that the guideline will result in a requirement for additional prison places.

7.2 In practice, the actual implications may be mitigated both by a change in offender behaviour and by the fact that the timings of guilty pleas will already have changed by the time the guideline takes effect (which will not be before 2017) as practice moves more in line with the draft guideline than was the case in 2014. The cost of the prison places will also be partly offset by savings in the wider system, but they will not negate this cost completely.

8 Risks

8.1 Since the application of a sentence reduction for a guilty plea has the potential to apply to all sentences passed in the courts, small changes to offenders’ behaviour and to practice by sentencers in applying the *reduction for a guilty plea* guideline have the potential to have substantial resource

⁵ For example, the development of the Transforming Summary Justice programme, Early Guilty Plea and Better Case Management Initiatives and recommendations in the President of the Queen’s Bench Division’s Review of Efficiency in Criminal Proceedings - which are now being built into the Criminal Procedure Rules - place a requirement on all parties to engage early, make the right decisions, identify the issues for the court to resolve and provide sufficient material to facilitate that process. In many cases, the expectation is that the provision of relevant material in a timely manner will enable a just guilty plea to be entered at the first occasion.

⁶ From Crown Prosecution Service data, based on Crown Court data.

implications, depending on how these behavioural changes manifest themselves.

8.2 It is not possible accurately to predict how offenders' behaviour or sentencing behaviour will change as a result of the guideline, and hence there is considerable uncertainty surrounding the resource implications of the proposed guideline.

8.3 In light of this, it will be important for the Council to conduct early work to assess any consequences of the guideline once it is in force. Prior to the guideline coming into force, the Council will put in place a group comprising representatives of the Sentencing Council, the police, CPS, Her Majesty's Courts and Tribunal Service and the Ministry of Justice, to help steer work to collect a range of information that will feed into an assessment of the implementation and impact of the guideline in 2017. This may include, for example, interviews with sentencers and other criminal justice professionals, analysis of transcripts of sentencing remarks, case file analysis, and analysis of data from other criminal justice agencies. The group will review the findings from this data collection and advise the Council if it suggests the need for a review of the guideline.