

# Sentencing Council

**Sentencing Council meeting:** 17 July 2015  
**Paper number:** SC(15)JULY06 – Guilty Pleas  
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## **1 ISSUE**

1.1 At the meeting in May 2015, the Council decided to delay the consultation on the proposed guilty plea guideline due to concerns about the resource impact of the guideline. The Council agreed that further work should be done to understand the likely impact of the proposed guideline both in terms of the impact on correctional resources and the wider system costs and savings associated with the guideline.

1.2 It was agreed that the Ministry of Justice would coordinate work on the wider system analysis and would report back to the Council in July.

1.3 The OSC were tasked with re-running the resource assessment model using data from the 2014 CCSS to see if trends noted previously of offenders pleading earlier were continued, which would mitigate the effect of the guideline. The model was also to be run substituting a reduction of one quarter for the proposed reduction of one-fifth to see the extent to which this aspect of the guideline was contributing to the resource impact.

1.4 Concerns were voiced by Council members about the negative impact on the police and CPS of not going ahead with the consultation and ultimately with the implementation of the guideline.

## **2 RECOMMENDATION**

2.1 Given the complexity of the necessary work, it is recommended that the Council notes that this work will continue over the summer with the results being presented to the Council at the September meeting.

2.2 That the Council should confirm that the scope of the work being undertaken meets their requirements and will enable a decision to be made at the September meeting as to whether the consultation can go ahead.

### **3 CONSIDERATION**

#### *The whole system analysis*

3.1 Stephen Muers will provide the Council with a progress report on the work being undertaken by MOJ which will enable the Council to have a clearer understanding of the impact of the guideline and linked initiatives on the criminal justice system in order that the wider resource implications of proceeding or not proceeding with the guideline can be assessed. The results of this work will not be available at the July meeting due to the complexity of assessing these impacts, although work is already underway.

#### *The guideline resource assessment*

3.2 The model that was used to produce the resource assessment presented at the May meeting cannot be adapted satisfactorily to carry out the additional analysis required by the Council. Unfortunately, due to staff turnover, there are no members of staff (either in the OSC or Analytical Services at MoJ) who are sufficiently experienced with the software used to produce the model to adapt it as required. A decision has therefore been made to build a new model.

3.3 The OSC has been without an analyst to conduct this work from January to July 2015. In addition, there has been a delay in obtaining access to the MoJ data that will allow us to update current figures. At the time of writing, therefore, we are unable to say whether there has been any change in offender behaviour in terms of rates and timings of guilty pleas. However, the new post holder, Liz Whiting, joined the office on 6 July 2015 and MoJ Analytical Services have agreed to provide some assistance with building the model during July and August. We therefore hope to be able to provide some basic information on this at the meeting.

3.4 The wider work on the model, conducted after the July Council meeting, will be designed to provide the following (where feasible):

- a range of estimates of the correctional resource costs/savings attributable to the proposed guideline based on different assumptions of offender behaviour;

- a breakdown of the estimates by summary, either way and indictable only offences;
- a subset of estimates for different offence types (eg sexual offences, violent offences etc);
- an estimate of the impact on a year by year basis;
- sufficient flexibility to provide a facility to estimate the impact of the guideline if certain features are altered (eg increasing or decreasing the level of reduction available at certain stages); and
- an estimate of how the wider system costs and benefits would be affected by variations to the model (based on the outcomes of analysis conducted by the MoJ analysts).

3.5 While every attempt will be made to make the model as robust as possible, the Council should be in no doubt that any results will still be subject to a very large margin of error. There are a number of areas of uncertainty that contribute to this:

- the data regarding current practice is taken from the CCSS, and any inaccuracies or inconsistencies in the way that information is recorded or interpreted will affect the reliability of the model;
- CCSS data does not cover magistrates' courts and does not cover every case in the Crown Court (national response rate for the CCSS in 2014 was 64 percent) and therefore we will have to extrapolate from the data we have to cover these gaps;
- the model will assume that sentencers will follow the proposed guideline (research carried out in March 2015 confirmed that sentencers had no difficulty in understanding and following the guideline), but if sentencers do not apply the guideline correctly or if they subvert the guideline for example by choosing a lower starting point to achieve a desired outcome, the model will not reflect this;
- the model will assume mathematically correct levels of reduction, but in practice sentences are likely to be rounded (usually down) to the nearest month. This means that the distinction between the one quarter reduction currently used and the proposed one-fifth reduction may not be as significant in practice as it is in the model (particularly for shorter sentences);

- the behaviour of offenders and their advisers is extremely difficult to predict. The model will produce a range of results based on different estimates of offender behaviour but these will be no more than estimates;
- the model will not take into account any future changes in legislation or in the types of offences being committed or prosecuted; and
- the model will not be able to account for the possible effect of the Criminal Courts Charge on rates and timings of plea – there is a suggestion that some offenders may be incentivised to plead to avoid the higher charges, but the data we will be using pre-dates the implementation of the charge and so we have no evidence relating to this.

### *Timetable*

3.6 The progress and timetable for developing the model is as follows:

- June: Cross CJS meeting held with officials from MoJ, police, CPS and Sentencing Council to discuss the issues, the scope of the model and the division of responsibilities;
- June: liaising with the Sentencing Analysis Team at MoJ and securing resource to help take the project forward;
- Early July: discussions with MoJ Analytical services to initiate the building of the new model, analysis of 2014 CCSS data to identify trends in timings and rates of pleas compared to 2013 data;
- Mid July: begin building the model in conjunction with analysts from MoJ;
- Late July – early August: agree assumptions to be used in the model with the guilty plea sub-group (or their nominees);
- mid August: start running the model;
- mid August – mid September: test and refine the model;
- September Council meeting: present results from the model.

### *The position of the police and CPS*

3.7 Chris Eyre and Peter Lewis will be attending the Council meeting in place of Lynne Owens and Alison Saunders, and will be able to explain how delays to the implementation of the proposed guilty plea guideline would have a negative impact on police and prosecutors.

***Question 1: Is the Council content with the scope of the model as set out at 3.4 above bearing in mind the caveats set out at 3.5 above?***

***Question 2: Bearing in mind the limitations set out at 3.5 above, is the Council satisfied that it will have the information it needs to make a decision on the future of the guilty plea guideline at its September meeting?***

***Question 3: Is the Council content with the timetable at 3.6 above?***

***Question 4: Are members of the subgroup able to assist with agreeing the assumptions to be used?***

## **4 IMPACT**

4.1 The guilty plea guideline will affect about 90 per cent of criminal cases and so even any small impact on individual cases has the potential to have a very significant effect on the system overall.

4.2 As will be apparent from this paper, even with the additional work planned over the next two months, the precise impact of the guilty plea guideline cannot be known.

4.3 The concerns raised at the May meeting regarding the resource impact of the proposed guideline related to the central estimate that the guideline could result in a requirement for 2,700 additional prison places per year at an annual cost of £80 million. There was a discussion as to whether the cost would be mitigated by savings elsewhere in the criminal justice system, hence the work referred to at 3.1 above. However, the Council should be aware that even if there are equivalent financial savings elsewhere in the system, a projected increase in prison places of 1,500 or more is still likely to be regarded as unfeasible by MoJ.

## **5 RISKS**

5.1 The Council will be aware that it has a statutory duty to prepare a guideline for reductions for guilty pleas and that the guideline is in its published work plan. There is an expectation from the PQBD's Review, from the SPJ and others, including many judges and magistrates, that a guideline will be consulted on in the near future. Any decision to discontinue or to significantly delay the guideline would have to be very carefully explained to key stakeholders including police, prosecutors, judiciary, and the courts service.

5.2 There are risks to political and public confidence in the Council if it either fails to consult on the guideline, or if it consults on a guideline which it is unable to deliver because of the likely impact. Equally, the Council will want to maintain its independence and avoid any perception that the guideline has been cancelled or radically altered due to outside pressures.

***Question 5: Is there any other information that the Council will require at the September meeting to enable it to make a decision about the future of the guideline?***