

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 to produce 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.

2. Rationale and objectives for the new 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 encourage offenders who are guilty to plead guilty as early in the court process as possible. 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 Encouraging more offenders to plead guilty at an earlier stage of the process will have a number of benefits, including:

- Overall, victims and witnesses in many cases will be informed earlier than in the past that their testimony is not required as the defendant has pleaded guilty. The earlier the plea is entered, the sooner victims and witnesses can be reassured that the offender has accepted responsibility for the offence and that they will not have to worry about having to go to court. In addition, victims will also benefit from seeing a more consistent approach to determining sentence reductions; and
- There will be resource savings for the police, the Crown Prosecution Service, the Legal Aid Agency and Her Majesty's Courts and Tribunals Service. These savings in turn benefit victims and witnesses in that they allow more time and resources to be concentrated on investigating and prosecuting other cases.

2.4 The guideline also aims to provide the following benefits:

- The guideline will facilitate the work and enhance the effectiveness of early plea schemes and other initiatives to ensure more timely and effective criminal justice decision-making;
- Defence practitioners will have a clearer idea of the likely outcome for the defendant if he or she enters a guilty plea at different stages of the criminal process and they will be better able to advise clients; and
- The enhanced clarity of the guideline will result in more consistent application across courts in England and Wales. A more consistent application would be a positive, non-financial outcome.

3. Assessing the resource implications of the guilty plea guideline

3.1 The Council is required by section 127 of the Coroners and Justice Act 2009, to provide an assessment of the resource impact of the proposed guideline on prison, probation and youth justice services. The main focus of this assessment is on estimating the impact of the proposed guideline on prison places.

3.2 To estimate the resource effect of a new guideline, an assessment is required of how it will affect the levels of reductions awarded and therefore the length of custodial sentences imposed. However, this guideline presents a particular challenge for the Council, because 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. The implications of this challenge are explained below.

Key assumptions

3.3 The Council is unable to predict with any certainty how the proposed guideline will affect offenders' behaviour or that of their legal representatives. The Council considered the possibility of estimating the costs based on assumptions about offender behaviour, but rejected it because of the highly speculative and subjective nature of any such assessment. Therefore in order to undertake this assessment of the resource impact of the guideline on prison places, it has been assumed that offenders will continue to plead at the same stage in the court process as was the case in 2014 (i.e. it is assumed there is no change in offender behaviour). This is not a prediction of what is expected to happen following implementation of the guideline¹, but it does provide a specific scenario against which costs can be applied. The results must therefore be seen in the context of this assumption, and alongside the benefits identified above and the wider system implications identified below at paragraph 5.1. As well as assuming that defendants do not change their

¹ It should also be noted that it is likely that the timings of pleas and levels of reduction have already changed since 2014.

behaviour, it is also assumed that sentencers will follow the proposed guideline at all times.

3.4 The resource assessment takes no account of any exceptions to the normal application of the 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

3.5 In addition, the assessment 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. 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.

Sentencing practice 2014

3.6 Data from the Crown Court Sentencing Survey³ (CCSS) linked with the Court Proceedings Database⁴ (CPD) provide information about both the level of reduction made for a guilty plea and the stage at which the plea was entered in the Crown Court in 2014. Less detailed information is available for magistrates' courts but estimates have been made based on sentencing data, including initial plea rates and cracked trial rates⁵. It has not been possible to estimate the impact of the guideline on Detention and Training Orders⁶, and as a result only offenders aged 18 or above are included in this assessment.

3.7 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. As this assessment is based on 2014 data it does not take into account any recent changes due to initiatives in the Criminal Justice System (for example, Early Guilty Plea Scheme and Better Case Management).

3.8 Table 1 shows offenders sentenced to custody in 2014 by plea stage and level of reduction in the Crown Court. As can be seen, a substantial proportion of offenders received the maximum reduction after the initial stage. There are legitimate reasons why this might be the case, for example where the charge is changed at a late stage and therefore the first opportunity the offender has to plead is at a very late stage of proceedings. However, it is thought that these exceptional circumstances do not account for the total

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

³ 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.

⁴ Source: Ministry of Justice. For details of data collection and methodology please see <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2014>

⁵ A cracked trial is one that does not go ahead either because the defendant enters an acceptable, guilty plea on the day of trial or the prosecution offer no evidence.

⁶ Detention and Training Order are for set lengths of time (4, 6, 8, 10, 12, 18 and 24 months). Therefore it is difficult to assess the impact of the guideline on these.

number of cases where a higher than recommended level of reduction has been awarded and that the figures indicate some inconsistency in how the existing Sentencing Guidelines Council (SGC) guideline is being applied⁷. Interviews with sentencers during the development of this draft guideline confirm that there is some inconsistency in the application of the SGC guideline. The consequence is that some offenders pleading guilty receive a sentence reduction in excess of what is recommended by the SGC guideline.

Table 1: Proportion of offenders sentenced in 2014 in the Crown Court to immediate custody, by plea stage, percentage reduction and offence type.

	1. Indictable only				2. Triable either way			
	% Reduction				% Reduction			
	33%	25%	10%	None	33%	25%	10%	None
1. Magistrates court	-	-	-	-	16%	2%	1%	-
2. Early Guilty Plea Hearing	28%	3%	2%	-	22%	4%	1%	-
3. Pre PCMH	4%	1%	0%	-	4%	1%	0%	-
4. PCMH	13%	7%	1%	-	13%	8%	1%	-
5. Post PCMH	2%	2%	1%	-	2%	2%	1%	-
6. Trial	3%	2%	5%	-	4%	2%	4%	-
7. No Plea	-	-	-	25%	-	-	-	10%

3.9 Table 2 shows the number of offenders who pleaded in the Crown Court at each stage in 2014, and received a custodial sentence, and where this would place them in relation to the draft guideline if there was no behaviour change, for both indictable only and triable either way offences.

Table 2: Number of offenders pleading in the Crown Court at each stage in 2014 and at the equivalent stage in the proposed guideline, by offence type.

4. Resource impact

Current stage of plea	1. Indictable only					2. Triable either way and summary				
	Future stage of plea					Future stage of plea				
	1. First Hearing Crown Court (33%)	2. Within 28 days of disclosure (20%)	3. Pre Trial (10-20%)	4. Trial (10%)	5. No plea	1. Magistrates court (33%)	2. First Hearing Crown Court (20%)	3. Pre Trial (10-20%)	4. Trial (10%)	5. No plea
1. Magistrates court	-	-	-	-	-	19%	-	-	-	-
2. Early Guilty Plea Hearing	33%	-	-	-	-	-	27%	-	-	-
3. Pre PCMH	-	5%	-	-	-	-	3%	3%	-	-
4. PCMH	-	21%	-	-	-	-	-	23%	-	-
5. Post PCMH	-	-	5%	-	-	-	-	5%	-	-
6. Trial	-	-	-	10%	-	-	-	-	10%	-
7. No Plea	-	-	-	-	25%	-	-	-	-	10%

4.1 On the basis of the assumptions set out above, if offenders were to plead at the same stage as in 2014, it is estimated that the effect of the guideline would be an increase in the prison population of approximately five

⁷ <https://www.sentencingcouncil.org.uk/wp-content/uploads/CCSS-Annual-2014.pdf> (page 6)

per cent. This is based on an increase in the number of prison places required of around 4,500, equating to a cost of approximately £115 million per year, having reached steady state. This is as a result of changes in both the magistrates and Crown Court.

4.2 Not all these places, and therefore costs, would come on stream in year one. In addition, there is a cost to the probation service over time (see 4.3). The build up in costs, for both the prison and probation service are shown in table 3, in nominal terms.

Table 3: Estimated nominal total resource costs excluding capital by financial year for the ‘no change’ scenario, £millions

15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24	24/25	Steady state
0	15	50	70	85	105	110	115	115	120	120

*rounded to nearest £5m

4.3 The increase in the prison population in both the Crown and magistrates’ court results from longer custodial sentences, as smaller reductions are given. 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 of around £4 million in 2018/19, but this would then change to a net cost of £7 million per year in the longer term as a result of offenders spending longer on licence (due to longer overall sentences).

4.4 The costs quoted exclude capital build costs and overheads. On this basis, a year in custody is assumed to cost an average of around £25,000⁸ in resource terms, including local maintenance, but excluding any capital build expenditure and overheads that may be necessary⁹.

5. The Wider System

5.1 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

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367551/cost-per-place-and-prisoner-2013-14-summary.pdf

⁹ It should be noted that 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).

pleas. Where offenders plead earlier then there would be some savings to the administration of justice.

5.2 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.

5.3 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. On average an offender who pleads on the day of trial costs the police, CPS and Legal Aid Agency budgets approximately £5,500 in total. If that offender entered their plea at a much earlier stage, such as the first hearing at the Crown Court, this would save the system approximately £3,000 per case. 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. These numbers are purely indicative, as costs will vary, and should be treated with caution.

5.4 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 (see section 2.3).

5.5 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 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 occasion¹⁰ 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 indications¹¹ are that these initiatives, alongside related judicial initiatives, are having some impact on the stage at which pleas are being entered.

6. Conclusion

6.1 The aim of modelling assumptions under a '*no change*' scenario is to provide more certainty about the starting point for any potential resource implications of the proposed guideline. Under the no change scenario there is a substantial increase in prison places.

¹⁰ 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.

¹¹ From Crown Prosecution Service data, based on Crown Court data.

6.2 While there is uncertainty around the exact resource implications, even if some offenders are incentivised to plead earlier, it is still highly likely that the guideline will result in additional prison places. The cost of this will be partly offset by savings in the wider system, but they will not negate this cost completely.

7. Risks

7.1 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 implications, depending on how these behavioural changes manifest themselves.

7.2 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.

7.3 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, CPS, police, HMCTS and MoJ - 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.

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