

Sentencing Council

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Paper number: SC(15)SEP03 – Guilty Pleas
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1 ISSUE

1.1 At the meeting in July 2015, 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 to report back to the Council in September.

1.2 This work has been completed and the resource assessment estimates that the proposed guideline would lead to an increase in the prison population (over time) of between one and five per cent.

2 RECOMMENDATION

2.1 The Council is asked to consider the report at **Annex A** on the work undertaken jointly by the analysts from the office of the Sentencing Council and Analytical Services at the Ministry of Justice.

2.2 The Council is asked to decide on one of three options:

- continue to prepare the proposed guideline for public consultation;
- cease work on a guilty plea guideline; or
- commence work on a new guilty plea guideline afresh.

3 CONSIDERATION

The results of the analysis

3.1 **Annex A** sets out the estimated impact of the proposed guideline. It is important to note that despite the rigorous analytical work undertaken, the findings

are estimates based on a number of assumptions about the behaviour of defendants, their representatives, prosecutors and sentencers. The assumptions underpinning the impact assessment were provided by members of the guilty plea subgroup. The results – that the central estimate is that by 2024/2025 2,500 additional prison places will be required – are very similar to those presented to the Council in May 2015.

3.2 It seems likely, therefore, that the guideline will result in a small but significant increase in prison population which is unlikely to be offset in financial terms by savings elsewhere in the criminal justice system.

3.3 The proposed guideline has the stated aim of benefiting witness and victims by bringing forward the point at which a defendant admits his guilt.

3.4 Based on the assumptions underpinning the resource assessment, for the 86,000 cases that are sentenced in the Crown Court each year:

- between 29% and 48% of guilty pleas would be entered earlier than at present;
- in around 50% of cases the plea would be entered at the same stage as at present;
- in between 3% and 15% of cases the plea would be entered at a later stage than at present; and
- of those, between 1% and 8% of cases where a guilty plea is currently entered would go to trial.

3.5 This indicates that overall the guideline would be likely to achieve the aim of benefiting victims and witnesses by bringing forward the point at which guilt is accepted.

3.6 The Council has drafted the guilty plea guideline based on the principle that offenders should be incentivised to admit guilt as early as possible in the process and that the application of guilty plea reductions should be consistent. Although the guideline could be subject to drafting changes both before consultation and as a result of the consultation process, there are no changes that could be made to the draft guideline which would alter the resource assessment significantly. Therefore, if the Council wishes to proceed to consultation it will be in the knowledge that there is likely to be a significant impact on correctional resources.

3.7 If a decision is taken to proceed to consultation, it is recommended that at least one further Council meeting is taken to finalise the guideline and that thereafter careful consideration will need to be given to the timing and handling of the

consultation process in the light of the wider work plan and the amount of stakeholder engagement needed.

3.8 If the Council does not wish to proceed to consult on the draft guideline, the options are to cease work on a guilty plea guideline or to take a fresh look at the issue going back to first principles. The Council has a statutory duty to prepare a guideline on guilty pleas and the current draft represents the second time the Council has devoted time and resource to developing a guilty plea guideline. The Council will be aware that it has a challenging work plan and that starting again on guilty plea guideline could only be justified if the work would result in a guideline that would improve on the current definitive guideline. Consideration would need to be given to how this work would be accommodated in the work plan.

3.9 If the Council ceases to work on a guilty plea guideline altogether, it will have to justify that decision with regard to its statutory obligations and the expectations of stakeholders. It will also miss the opportunity to update the guilty plea guideline to take into account legislative changes (such as the new minimum sentences for knife offences).

Question 1: Does the Council wish to proceed to consult on the draft guilty plea guideline?

Question 2: If so, does the Council agree to defer a decision on the timing of the consultation until the October meeting?

Question 3: If not, does the Council wish to go back to first principles and commence work on a new guilty plea guideline?

Question 4: Or does the Council wish to cease work on a guilty plea guideline altogether?

4 IMPACT

4.1 The resource impact of the guideline is discussed fully at Annex A.

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 work or to start work afresh 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 due to outside pressures.

Estimated impact of the guilty plea guideline: results of further analysis

Following discussion at the July Council meeting, the Analysis and Research team have undertaken further analysis of the guilty plea guideline in order to produce:

- 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 (e.g. sexual offences);
- models with the capability for sensitivity analysis (e.g. increasing or decreasing the level of reduction available at certain stages); and
- an estimate of the impact on a year by year basis.

In addition to the work undertaken by the OSC, the Ministry of Justice (MoJ) have also completed work looking at the impact in the magistrates' court, and the wider system impacts.

Background:

1. The draft resource assessment discussed at the May Council meeting indicated that, as a central estimate, the new guideline would have a steady state cost of £80m per year on prison services. The range of estimates in which the resource assessment fell was very wide, ranging from a cost of £35m to a cost of £130m per year.
2. Given the concern over these costs, and the fact that they did not take account of the wider system impacts, it was agreed that further work needed to be undertaken. This would also allow more exploration of where in the process the costs might be arising and an opportunity to revisit the original assumptions associated with the guideline. As a result, two new models have been built to accommodate this work: a magistrates' and a Crown Court model.

3. At the end of July a meeting was held with members of the Sentencing Council to agree the assumptions for use in the modelling work. Members were asked to agree both an optimistic and pessimistic scenario of how offenders might respond to the new guideline. These are presented in Annex B.

The new model:

4. In 2014, 1,215,695 offenders were sentenced in all courts in England and Wales. Of these 86,297 were in the Crown Court and 1,129,398 in the magistrates' courts. Of those offenders sentenced in the Crown Court, 90 per cent entered a guilty plea.
5. The majority of offenders (81 per cent), who entered a guilty plea and were sentenced in the Crown Court, did so before or at the Plea and Case Management Hearing (PCMH). As a result, 76 per cent of these received the maximum reduction in sentence of one-third. However, at present some offenders are still receiving maximum discount at the latest stage: around 11 per cent of those that entered a plea on or after the day of trial received a reduction of a third from their sentence¹.
6. 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 number of cases where an incompatible level of reduction has been given.
7. Under the new guideline offenders would only receive the maximum discount at the first stage of proceedings. The aim is that offenders will have a greater incentive to plead at the earliest hearing and therefore receive the maximum reduction. However, at the other end of the spectrum, having missed the full discount, some offenders might be incentivised to go to trial and therefore receive no discount and a more severe sentence. An optimistic and pessimistic

¹ No data on the size of discounts at magistrates' courts is collected.

scenario has therefore been presented to represent these two opposing scenarios as offenders' behaviour is uncertain.

8. In building the new models, we assume that sentencers will follow the proposed guideline as it is set out; 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.
9. The impact has only been measured in terms of changes to levels of reductions for guilty pleas which are expected to occur as a result of the guideline. Any future changes in sentencing practice which may have occurred whether or not the new guideline was implemented are not included in the estimates.
10. The costs quoted exclude capital build costs and overheads. On this basis, a year in custody is assumed to cost an average of around £25,000 in resource terms, including local maintenance, but excluding any capital build expenditure and overheads that may be necessary. It should be noted that this is a lower figure than previously used in our resource assessments (£30,000) but this aligns with the new estimates used across the Ministry of Justice (MoJ).
11. The Crown Court model has been built using the 2014 Court Proceeding Database (CPD) matched with the Crown Court Sentencing Survey (CCSS) 2014. The matched data gives us information both about the guilty plea and the stage at which the plea was entered. The magistrates' courts model used sentencing data, including initial plea rates and cracked trial rates².
12. The new models have been designed to capture the impact across the whole system including the magistrates' court, Crown Court, changes to hearing times, police time, legal aid and the National Probation Service (NPS). It is also designed to show at what point the costs are occurring and the impact over time, as some costs won't come on stream until several years after the guideline has been in force.

² Cracked trials where the defendant entered an acceptable, late guilty plea.

13. However, since the largest impact on offender management depends on plea behaviour at the Crown Court, this has been the main area of our focus. In addition, the magistrates' court model has been lighter touch due to limited data regarding guilty pleas.

14. Only offenders aged 18 or above have been included in this assessment, as it has not been possible to estimate the change in Detention and Training Orders (DTOs) as a result of the guideline.

Results:

15. Headline results:

- In the Crown Court, using the new assumptions, it is estimated that the guideline would increase the prison population by approximately three per cent. This is based on a central estimate of an increase in the number of prison places required of around 2,500, equating to a cost of £63 million per year. However, not all these places (and therefore costs) come on stream in year one. The build up over time is show in section 18.
- The estimated impact on prison resources is wide-ranging, from £28 million (1,100 places) to £99 million (4,000 places) per year, having reached steady state. This represents an increase in the prison population of between one and five per cent. It is worth noting, that the reduction in costs from the original resource assessment is largely a result of the lower costs used for prison places rather than fewer prison places being required (see point 10).
- Further exploration of the data provides some indication as to where the extra prison places and costs are generated. Table 1 shows that a large number of these extra places result from triable either way (TEW) cases. The reason for the increase in these cases specifically is twofold: there are a lot of these cases which are currently getting a discount of one third after the initial hearing and under the new guideline this level of reduction will no longer be available. In addition, the 25 per cent discount has been

reduced to 20 per cent, so those pleading at the second stage are receiving a smaller reduction than previously. The TEW cases make up the largest group, and so these changes have a significant impact.

Table 1: Estimated increase in prison places for indictable and either way offences in the Crown Court under the new guideline³

	IND	TEW	TOTAL
Central Estimate	400	2,200	2,500
Optimistic scenario	100	1,100	1,100
Pessimistic scenario	700	3,300	4,000

16. Changes to discount:

- Under the new guideline the discount available at the second stage is 20 per cent, compared to 25 per cent under the existing guideline. As already indicated above, changing the discount at the second stage has a substantial impact on the estimates.
- A 20 per cent discount gives a central estimate of an additional 2,500 prison places, where as a 25 per cent discount gives a central estimate of 1,700 prison places. Therefore the reduction in discount costs an additional 900 places.

17. Sexual offences:

- The analysis also looked at the impact that offenders sentenced for sexual offences might be having on resources. Sexual offenders are more likely

³ These estimates show the increase in prison places in steady state in the Crown Court broken down by offence type. Table 2 shows the build-up in places resulting from changes in the magistrates' and Crown Court after the introduction of the guideline, using the MoJ prison projection model.

to plead late or not enter a plea at all. In the Crown Court, 46 per cent of those sentenced for sexual offences in 2014 didn't enter a plea, compared to 10 per cent of those sentenced for other offence types. This is only of those who ultimately received a custodial sentence. In order to explore the impact these offenders were having, they were removed from the model.

- A lot of sexual offenders don't enter a plea and it is assumed that this would remain unchanged under the new guideline. In addition, sexual offenders tend to enter a plea late and receive long sentences, and largely it is assumed this would remain unchanged under the new guideline. However, there are currently some offenders receiving the maximum discount after the first hearing but before the PCMH and this would no longer happen. These offenders already have a large impact on prison resources, and therefore this is not expected to increase substantially under the new guideline. It is estimated that the number of prison places required would increase by approximately 60 to 290 prison or £2 to £7 million, per year in steady state.

18. Magistrates' court and annual impact:

- The new guideline has minimal impact in the magistrates' court, compared to the Crown Court. It is estimated that the magistrates' court contributes 80 to 280 extra prison places or around £2 to £7 million. These extra places build up quickly over a period of 12 to 18 months.
- The figures quoted in section 15 are the additional prison places generated in the Crown Court, once the model has reached steady state. However, it takes time for the places to build up. The MoJ prison projection model has been used to give the increase in the number of places required over time. Table 2 shows the extra places required as a result of changes in both the magistrates' and Crown Court.
- Table 2 shows that steady state is not reached until around 2024/25. These figures are not cumulative.

Table 2: Build-up in the prison population for all courts

	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24	24/25
Central estimate	0	400	1300	1800	2000	2400	2500	2600	2600	2700
Optimistic	0	200	600	800	900	1100	1200	1200	1200	1200
Pessimistic	0	500	1900	2700	3100	3700	3900	4000	4100	4100

19. Wider system impact

- The increase in the prison population in both the Crown and magistrates' court results from longer sentences. This causes a temporary reduction in the expected licence population as offenders are released later. However, this does not have a significant impact on payments made by MoJ to Community Rehabilitation Companies as they are paid per licence start rather than on a caseload basis. The caseload for the National Probation Service initially decreases, producing a saving of between £1 and £3 million in 2017/18, but this then changes to a net cost of £2 to £6 million per year in the longer term as a result of offenders spending a longer amount of time on licence (due to longer overall sentences).
- The impact on sitting days at the Crown Court is difficult to estimate as average total hearing times are not broken down by the seven stages of the current guideline or the five stages of the new guideline. The analysis is based on assumptions, and the results are sensitive to those assumptions. In the optimistic scenario, where offenders plead earlier as a result of the guideline, we estimate a saving of about five per cent of Crown Court hearing time. In the pessimistic scenario, where offenders who miss the largest discount, then decide to go to trial, there is an increase of 11 per cent. This is equivalent to a saving of £8 million or a cost of £18 million per year. If the reduction in court workload from the guilty plea guideline is used to address the backlog in cases at the Crown Court, there would be no saving in cost.
- The total costs across the system are shown in Table 3. The costs continue to increase over time beyond 2019/20, to reach a steady state of between £23 million and £123 million per year by around 2024/25.

Table 3: Estimated nominal total resource costs excluding capital (savings are shown as negative) by financial year for the optimistic and pessimistic scenarios, £millions

	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24	24/25
Central	£0	£12	£35	£46	£54	£64	£68	£71	£72	£73
Optimistic	£0	-£3	£6	£11	£14	£19	£21	£22	£23	£23
Pessimistic	£0	£27	£63	£81	£93	£109	£115	£119	£122	£123

- It has not been possible to estimate the potential savings to the Crown Prosecution Service or the Police due to the lack of any unit cost data. In discussion with police analysts, it was decided that, whilst changes to workload could be discussed qualitatively, sufficiently robust unit costs were not available to make a cost estimate. It may be possible to estimate the cost impact on the CPS, but the relevant unit costs have not been made available. It has also not been possible to estimate the savings to Legal Aid due to limited data. In the case of Legal Aid, it is not thought that these savings would be significant anyway.
- Costs and savings are presented in current values. In reality, it may not be possible to realise any of the savings, as this would entail closing offices and courts, and reducing the number of employees. The costs involved have not been modelled. Neither have the capital costs of increasing capacity to deal with the increases in demand.

Conclusions:

20. The guideline is estimated to increase the prison population by between 1 and 5 per cent. While this may not seem substantial, because the prison population is already operating at maximum capacity, this does present an issue.
21. This equates to between 1,100 to 4,000 extra prison places and costs of £23 to £123 million. The prison places and costs build up over several years, reaching a steady state by around 2024/25.

22. A lot of validation of the models has been conducted, and we are confident in the estimates generated. However, the model is dependent on the assumptions going into it, and the reality could be very different depending on offenders and sentencers' behaviour. Therefore these estimates should be treated as a guide only.

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ANNEX B: GUILTY PLEA ASSUMPTIONS

Indictable only offences

Future Assumptions		Existing Assumptions															
		1. Early Guilty Plea Hearing			2. PrePCMH			3. PCMH			4. PostPCMH			5. day of Trial			6. No plea
Scenario		10%	25%	33%	10%	25%	33%	10%	25%	33%	10%	25%	33%	10%	25%	33%	
1. 1st hearing at Crown Court - one third reduction	OPT	100%	100%	100%	80%	80%	75%	60%	60%	50%	40%	40%	40%	20%	20%	20%	
	PES	100%	100%	100%	65%	65%	65%		30%	30%		20%	20%		10%	10%	
2. Until time expires for service of defence statement - one fifth	OPT				20%	20%	25%	40%	40%	40%	30%	30%	30%	30%	30%	30%	
	PES				30%	30%	30%	100%	40%	40%		20%	20%		10%	10%	
3. Thereafter up to day of trial - 10-20% reduction	OPT									10%	30%	10%	10%				
	PES								20%	20%	100%	20%	20%		30%	30%	
4. day of trial 10%	OPT											10%	10%	50%	50%	50%	
	PES											20%	20%	100%	30%	30%	
5. No plea	OPT											10%	10%				100%
	PES				5%	5%	5%		10%	10%		20%	20%		20%	20%	100%

Yellow = greater than or equal to 10% of offenders

Existing Assumptions

Future Assumptions	Scenario	1. Magistrates Court			2. Early Guilty Plea Hearing			3. PrePCMH			4. PCMH			5. PostPCMH			6. Day of Trial			7. No plea
		10%	25%	33%	10%	25%	33%	10%	25%	33%	10%	25%	33%	10%	25%	33%	10%	25%	33%	
1. Magistrates Court One third reduction	OPT	99%	99%	100%	60%	50%	50%	55%	50%	50%	50%	50%	50%	50%	50%	50%				
	PES	95%	95%		50%	20%	20%	35%	20%	20%	20%	20%	20%	20%	20%	20%				
2. 1st hearing at Crown Court - one fifth reduction	OPT	1%	1%		40%	50%	50%	40%	45%	45%	40%	40%	40%	40%	40%	40%	40%	40%	40%	
	PES	5%	5%		50%	80%	50%	50%	65%	50%	50%	50%	50%	50%	50%	50%	0%	0%	0%	
3. After first hearing and up to day of trial - 20-10% reduction	OPT																40%	40%	40%	
	PES																10%	10%	10%	
4. Day of trial - 10% reduction	OPT							5%	5%	5%	5%	5%	5%	5%	5%	5%	20%	20%	20%	
	PES						10%	15%	15%	15%	15%	15%	15%	15%	15%	15%	90%	90%	90%	
5. No plea	OPT										5%	5%	5%	5%	5%	5%				100%
	PES						20%			15%	15%	15%	15%	15%	15%	15%				100%