

Sentencing Council meeting:
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**SC(23)NOV06 – Reduction in sentence
for a guilty plea**

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1 ISSUE

1.1 There is a substantial backlog of cases in the Crown Court and one way of improving the situation would be to incentivise those who eventually plead guilty to do so earlier. This is a key objective of the [Reduction in sentence for a guilty plea guideline](#) and the suggestion is that the guideline could be amended slightly to make it more effective.

2 RECOMMENDATION

2.1 That the Council considers whether changes could usefully be made to the guilty plea guideline and if so what action should be taken.

3 CONSIDERATION

Background

3.1 The [Reduction in sentence for a guilty plea guideline](#) has been in force since June 2017. It replaced a guideline from the Sentencing Guidelines Council. The aim of the new guideline was to provide more certainty by clearly setting out what the reductions are at different stages and thus to incentivise more defendants to plead earlier in the proceedings.

3.2 The guideline provides for a one-third reduction for a plea at the first hearing and a maximum one-quarter reduction thereafter decreasing to a maximum of one-tenth on the day of trial:

D. Determining the level of reduction

The maximum level of reduction in sentence for a guilty plea is one-third

D1. Plea indicated at the first stage of the proceedings

Where a guilty plea is indicated at the first stage of proceedings a reduction of one-third should be made (subject to the exceptions in section F). The first stage will normally be the first hearing at which a plea or indication of plea is sought and recorded by the court.

D2. Plea indicated after the first stage of proceedings – maximum one quarter – sliding scale of reduction thereafter

After the first stage of the proceedings the maximum level of reduction is **one-quarter** (subject to the exceptions in section F).

The reduction should be decreased from **one-quarter** to a maximum of **one-tenth** on the first day of trial having regard to the time when the guilty plea is first indicated to the court relative to the progress of the case and the trial date (subject to the exceptions in section F). The reduction should normally be decreased further, even to zero, if the guilty plea is entered during the course of the trial.

For the purposes of this guideline a trial will be deemed to have started when pre-recorded cross-examination has begun.

3.3 In 2017, the Council published a resource assessment of the guideline which indicated that if the guideline did not have the intended effect of incentivising earlier pleas then offenders would receive smaller reductions, leading to longer prison sentences and a requirement for more prison places. As the guideline applies to all criminal cases, there was a concern that this increased demand could be very significant if the guideline did not work as intended.

3.4 The Council set up a steering group to monitor the impact of the guideline and to report any issues arising. This group consisted of representatives from across the criminal justice system, including the police, the CPS, HMCTS, Victim Support and MoJ. The group met several times from 2017-2019 to discuss the latest analysis and gather views on the impact on the guideline.

3.5 In 2019 The Council published a report: [Assessing the impact and implementation of the Sentencing Council's Reduction in Sentence for a Guilty Plea Definitive Guideline](#). This found that the guideline had **not** had an impact on the stage at which offenders pleaded guilty, but neither had sentence lengths increased. Potential reasons for these findings were explored with the steering group which noted that there was evidence that the guideline was being followed and, that despite the fact that the proportion of early pleas had not increased, this had not translated into longer sentences. Steering group members felt that one potential explanation for this was that, as anticipated in the resource assessment, judges were making a greater allowance for mitigation before the reduction for a guilty plea, in line with the guideline which states:

Factors such as admissions at interview, co-operation with the investigation and demonstrations of remorse should **not** be taken into account in determining the level of reduction. Rather, they should be considered separately and prior to any guilty plea reduction, as potential mitigating factors.

3.6 In addition, in the context of difficulties reported by defence representatives in obtaining information, the exception at F1 of the guideline (further information, assistance or advice necessary before indicating plea) would potentially apply to some cases allowing courts to give full credit at a later stage if it would have been unreasonable to expect the plea to have been entered sooner.

3.7 The report notes that given the wider context within which this guideline sits – having been introduced during a period of changes within the wider criminal justice system – it is difficult to definitively conclude what the overall impact of it has been.

3.8 The steering group last met in January 2020.

3.9 In January 2023 the Council considered an issue raised by the Senior Presiding Judge (SPJ). He noted that one cause of the continuing backlog of cases in the Crown Court is the need to have more than one hearing in the Crown Court when the defendant pleads guilty at the PTPH in indictable only cases. This situation often arises where a defendant is either unrepresented at the magistrates' court or the representative has insufficient time to advise them properly before sending the case to the Crown Court. The suggestion was that having lost the certainty of a one-third reduction there is then little incentive to indicate a plea before the PTPH.

3.10 As noted above, the guilty plea guideline requires a defendant to indicate a guilty plea at the first hearing (i.e. the magistrates' court) to be entitled to a one-third reduction. If a guilty plea is entered at the first hearing at the Crown Court (the PTPH) the reduction will be one-quarter. This is subject to the exceptions set out in the guideline, the first of which reads:

F1. Further information, assistance or advice necessary before indicating plea

Where the sentencing court is satisfied that there were particular circumstances which significantly reduced the defendant's ability to understand what was alleged or otherwise made it unreasonable to expect the defendant to indicate a guilty plea sooner than was done, a reduction of one-third should still be made.

In considering whether this exception applies, sentencers should distinguish between cases in which it is necessary to receive advice and/or have sight of evidence in order to understand whether the defendant is in fact and law guilty of the offence(s) charged, and cases in which a defendant merely delays guilty plea(s) in order to assess the strength of the prosecution evidence and the prospects of conviction or acquittal.

3.11 As was acknowledged by the SPJ, the court has the discretion to take an indication ahead of the PTPH into account as mitigation or the court could use the exception at F1 to allow a one-third reduction where the plea is indicated as soon as the necessary advice or

information is received, but it was argued that this is open to interpretation and therefore lack certainty.

3.12 The Council was not minded to change the guideline and the Chairman wrote to the SPJ explaining that while the Council acknowledged that the problems identified were real, they could not be resolved by changes to the guideline:

... members were clear that the current rigidity of guideline is principled. The guideline was the subject of lengthy discussion in 2015 and 2016. The restriction of full credit to cases where the defendant indicates their plea at the magistrates' court represented a significant change to the SGC guideline. The change was deliberate. As you set out ... judges still have the residual discretion afforded to them by paragraph F1 in the guideline. Of course, they can only exercise that discretion if they are invited to do so and if the evidence establishes particular circumstances which made it unreasonable to expect the defendant to indicate a guilty plea sooner. That will depend on the defence advocate providing such evidence to the court.

The current issue

3.13 Rosa Dean has raised a concern that judges are often not making use of the exception at F1 when it would be appropriate to do so and has suggested that the applicability of the exception and the need for judges to investigate what has happened at the magistrates' court could be made clearer.

3.14 She would also like the guideline to facilitate more active case management by encouraging judges to set out in clear terms to a defendant what the reduction will be at each stage of the proceedings, bringing it to line with the [Better Case Management Revival Handbook](#) (there are now four clear stages in the pre-trial process which are set out in the [Plea and trial preparation hearing \(PTPH\) forms](#)).

3.15 The Council will be aware of the advantages of guilty pleas being entered as early as possible not only from the point of view of reducing the backlog but more importantly because of the benefits to victims and witnesses.

3.16 The suggestion is not that the guideline prevents the appropriate reduction being applied or that it prevents proactive case management, but rather that changes to the guideline could assist with these matters. For example, F1 could be modified to include a reminder to sentencers to make enquiries about what happened at earlier hearings and the guideline could include a requirement for the court to set out what reduction a defendant can expect at each stage of the proceedings.

3.17 If the Council considers that these issues could be addressed by making changes to the guideline, a Council working group could be set out to bring forward proposals.

Alternatively, the Council may feel that some of these issues could be addressed more effectively through the Criminal Procedure Rules or Criminal Practice Directions.

3.18 Another suggestion from Rosa is that the steering group should be restarted to monitor how the guideline is operating in the current conditions.

Question 1: Does the Council wish to consider amendments to the guilty plea guidelines to address the issues raised?

Question 2: If so, should a Council working group be set up to discuss potential changes?

Question 3: Should the steering group be convened to discuss the operation in present circumstances?

Potential legislation affecting guilty plea reductions

3.19 As discussed briefly at the October meeting, the Government has announced that it will “consider whether to extend the discount to encourage people to plead guilty at the first opportunity”. As yet, we have no further details as to what these plans might involve. We will provide an update if anything further is known by the time of the Council meeting. We have provided the Ministry of Justice with some of the evidence we have regarding guilty plea reductions and the effect on defendant behaviour. This is attached at **Annex A**.

4 EQUALITIES

4.1 The equalities implications of any changes to the guilty plea guideline would need to be considered carefully and raised in consultation.

4.2 There are wider equalities issues relating to guilty plea rates among different demographic groups. The Council was aware of these when the guideline was drafted and while the level of certainty that the guideline provided militates against bias, it does not allow for discretion to take account of the issues of mistrust of the system that are known to exist.

4.3 If the Council wanted to open the project up to an exploration of these issues, the project would become larger and require more time.

5 IMPACT AND RISKS

5.1 The Council has a very full work plan and so any additional projects that we take on may cause delays to others. However, any reconsideration of the guideline necessitated by legislative changes would have to be prioritised.

5.2 The resource impacts of any changes to the guilty plea guideline are potentially significant (given that it applies to all cases), though on the face of it the suggested changes should not lead to a requirement for more prison places. Nevertheless work would need to be done to assess the impact of any changes in the short and longer term.

Question 4: Are there particular issues relating to equalities or impact that should be explored further?

We have published several research reports and evaluations with relevant information:

[Attitudes to Guilty Plea Sentence Reductions \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk)

This was a report of findings from research Ipsos MORI carried out for the Sentencing Council in 2011 to examine attitudes towards guilty plea sentence reductions. Some relevant points:

- the public were generally unaware of the nuances of the guilty plea reductions principle and initially tended to be generally unsupportive of reductions in sentencing for those entering a guilty plea
- the public assume that the key motivation for the guilty plea sentence reduction is to reduce resources (time and money), but they prefer the idea of it as something which helps prevent victims having to give evidence and experiencing emotional trauma whilst doing this. There is a strong sense that the drive for cost savings should not impact on a system effectively delivering justice
- there is more support for sentence reductions if the guilty plea is entered at an early point. The benefits – both economic and emotional – are more tangible at this point, and both the public and victims and witnesses are less likely to feel that the offender can ‘play the system’. On the other hand offenders say they are less likely to enter an early plea, but prefer to weigh up the evidence against them first
- for the general public, there was weak support for higher levels of reductions beyond the current guideline range of up to 33% and a fifth (20%) felt that there should be no reduction at all. Supporting this, when survey respondents were asked whether the reduction should be increased from a third if an offender pleads guilty at the earliest opportunity, 58% disagreed and only 22% agreed. A small number of victims of more serious offences were, however, more supportive if it spared them having to testify in court
- the language and discourse of the reductions did not sit well with people. They were very resistant to the idea of an offender being ‘rewarded’ for admitting they were guilty of an offence; rather they spontaneously suggested that defendants should be further penalised for not admitting guilt if they are subsequently found guilty
- offenders in this study were often unsure what their sentence was likely to be when weighing up how to plead, and felt that decisions on sentence lengths were inconsistent. This made it difficult for them to calculate exactly what the impact of a set reduction to their sentence would be. Offenders also questioned the extent to which reductions for early guilty pleas were actually being applied, with a number feeling that it was very difficult to understand exactly how their final sentence had been determined. However, when probed on the level of reductions, offenders in this study were broadly content with the current discount of a third for an early guilty plea, and felt that without the reduction there was little incentive to admit guilt
- The main factor determining whether or not offenders plead guilty was the likelihood of being found guilty at trial. The key ‘tipping point’ here was when offenders realised that the chances of them being found guilty were greater than being found not guilty. Weight of evidence and advice from solicitors/barristers were pivotal in offenders’ assessments of whether they were likely to be found guilty and therefore crucial in determining when a guilty plea was entered. There was little evidence from the research that increasing the reduction further would encourage more offenders to plead guilty at an earlier stage, given the reduction only becomes a driver of entering a guilty plea at such a point that an offender considers a conviction to be the likely outcome

It should be noted that the sample size of offenders in this study was very small – fifteen.

[Reduction in sentence for a guilty plea research report \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk)

This report summarises four stages of research (the first being that summarised above) carried out during the development of the Sentencing Council guideline for reduction in sentence for a guilty plea, between 2011 and 2016

A small qualitative exercise with defence representatives found that:

- there was a sense that the guideline was placing undue pressure to plead at a very early stage in proceedings, which may be unfair in certain cases
- there were elements of the guideline that were welcomed: in particular, the clear statement that the appropriate reduction should be given irrespective of the weight of evidence against a defendant was generally seen as a positive change, which would result in earlier pleas in appropriate cases

[Assessing the impact and implementation of the Sentencing Council's Reduction in Sentence for a Guilty Plea Definitive Guideline](#)

This report (published in 2019) explored the impact of the 2017 guideline. Findings include:

- Analysis of trend data suggests that the guideline did not have an impact on the proportion of defendants who pleaded guilty, which was as expected. The guideline also did not have an impact on the stage at which offenders pleaded guilty or on sentence lengths for adult offenders.
- Content analysis of a small sample of Crown Court judges' sentencing remarks found that the guilty plea reductions applied to sentences seemed to be in line with the guideline in most cases. This is supported by an analysis of judgments from the Court of Appeal (Criminal Division) which were found to interpret the guideline as intended by the Council. Analysis of data collected in a sample of magistrates' courts also found that in most cases, sentencers applied the reductions as we would expect.

As part of this assessment small-scale qualitative research was undertaken with defendants: in June 2018, 26 defendants were interviewed face-to-face in two courts in the Midlands region (7 at one Crown Court and 19 at one magistrates' court). The purpose of this research was to understand defendants' knowledge of the guilty plea scheme and the sentence reductions they may be entitled to, as well as to understand their reasons for pleading guilty.

- Of the 7 defendants interviewed at the Crown Court all were aware of the guilty plea scheme. All had pleaded guilty, saying that this was either because they accepted responsibility for the offending, or because their defence representative advised them to plead guilty. Where the defendants specified the stage of plea, all said they had pleaded guilty at the magistrates' court (i.e. at the first stage of proceedings). This research suggests that the guideline did not seem to have any noticeable impact on defendants' pleading behaviour, as the reasons for pleading guilty suggest they would have pleaded guilty at the same stage anyway.
- Of the 19 defendants interviewed at magistrates' courts the majority were aware of the guilty plea scheme. Where defendants pleaded guilty, they said this was because they accepted responsibility for the offending, or thought they would be found guilty at trial, or that they pleaded guilty to reduce costs or reduce the length of their sentence. This research again suggests that the guideline did not seem to have any noticeable impact on their pleading behaviour, as the reasons for pleading guilty suggest they would have pleaded guilty at the same stage anyway.

In addition to the research outlined above, the Council consulted on the draft guilty plea guideline in 2016 and published a response to that consultation in 2017. Of particular relevant to the current proposals is this extract from the [consultation response document](#) (at page 7):

The draft guideline proposed that the reduction for a guilty plea should be capped at one-third. This was widely accepted by respondents as fair both from the perspective of victims and the wider public who would perceive anything higher as undermining the punishment of offenders and from the perspective of those who are keen to ensure that defendants are not pressured into pleading against their interests by the prospect of a larger reduction.

The US system has particular features which tend to increase the coercive effect of the guilty plea regime, where incentives to plead guilty are particularly intense due to high and inconsistently applied sentencing discounts and prosecutors operate without regulation or transparency. To its credit, the Guideline protects against this kind of coercion by limiting the sentence discount to 1/3 and applying it equally and transparently to nearly all cases regardless of the strength of the evidence. – **Fair Trials**

It is important to cap the maximum reduction to ensure consistency and to avoid wide differences in the reductions being applied. There are also mitigating factors that can be taken into account. So capping the maximum reduction to a third would ensure the sentence is not too lenient. – **Victim's Commissioner**

In summary, we have no evidence that the amount of the guilty plea reduction is a strong influence on the decision to plead guilty. Factors such as the strength of the evidence, legal advice and an acceptance of guilt all appear to be influential. We have evidence that reductions for pleading guilty are not widely popular with the public (in that they are seen as leniency) and that those representing the interests of defendants have concerns over the fairness of regimes with very high reductions.

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