



House of Commons
Justice Committee

Reduction in sentence for a guilty plea guideline

First Report of Session 2016–17



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*Report, together with formal minutes
relating to the report*

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Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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Report

Sentencing guidelines and the role of the Committee

1. The Sentencing Council for England and Wales is an independent non-departmental body of the Ministry of Justice, set up to promote greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary. Its primary role is to issue guidelines on sentencing, which the courts must follow unless it is in the interests of justice not to do so. The Council also assesses the impact of guidelines on sentencing practice and promotes public awareness of sentencing practice in the magistrates' courts and the Crown Court.
2. Under section 120 of the Coroners and Justice Act 2009, the Council is required to publish sentencing guidelines in draft before they are finalised. Section 120(6) of the 2009 Act lists the Justice Committee as a statutory consultee on draft guidelines. The Council must also consult the Lord Chancellor and any person that he directs should be consulted, together with such other persons as the Council considers appropriate.

Draft guideline on reduction in sentence for a guilty plea

3. By section 120(3)(a) of the Coroners and Justice Act 2009, the Sentencing Council is required to produce a guideline on reductions in sentence for guilty pleas. The current definitive guideline¹ was issued by the Council's predecessor body, the Sentencing Guidelines Council (SGC) in 2007 and the Court of Appeal has given guidance on how it should be applied.² Nonetheless, there is evidence from the Crown Court Sentencing Survey that the SGC guideline is not always applied consistently and that, in some cases, the levels of reduction appear to be greater than those that are recommended.
4. The Council's draft guideline³ was published for public consultation on 11 February 2016 and the consultation closed on 5 May 2016. The guideline is designed to incentivise defendants who are going to plead guilty to do so as early as possible in the court process. The Council explains that this normally reduces the impact of the crime upon victims; saves victims and witnesses from having to testify; and saves public time and money on investigations and trial. The incentive to plead guilty as early as possible is provided by maintaining the current level of reduction for a plea at the first stage of court proceedings, with a lower level of reduction thereafter compared to the level that is currently available.
5. The approach taken by the draft guideline, in comparison with the current guideline, can be summarised as follows:
 - The point at which an offender can benefit from the maximum (one-third) reduction will be much more tightly defined; to qualify, they must plead guilty at 'the first stage of proceedings' - that is, the first time they are asked for their plea in court. In contrast, the SGC guideline requires the offender to plead guilty 'at the first reasonable opportunity'.

1 [Sentencing Guidelines Council, 2007. Reduction in sentence for a guilty plea: definitive guideline](#)

2 Most significantly, in the case of [R v Caley and others \[2012\] EWCA Crim 2821](#)

3 [Sentencing Council, 2016. Reduction in sentence for a guilty plea: consultation](#)

- For offenders who plead guilty after that first stage, the maximum reduction they can be given will be one-fifth, rather than one-quarter as under the current guideline.
- Offenders who plead guilty later will thus serve longer sentences than those who plead guilty at an early stage.

6. For summary offences, ‘the first stage of proceedings’ means up to and including the first hearing at the magistrates’ court. For either-way offences, it is defined as up to and including the allocation hearing at the magistrates’ court and, for indictable-only offences, the first hearing in the Crown Court. A modified definition applies to offences dealt with in the Youth Court.

Our response to the consultation

7. We welcome the opportunity to consider this draft guideline. We thank the Sentencing Council for its work in producing the draft and for liaising with us in our scrutiny of it in our role as statutory consultee. We are particularly grateful to the Council for providing us with a useful written summary of its proposals⁴ and for its new practice of informing respondents that their consultation responses may be shared with us, and for doing so. On this basis, we decided that on this occasion it was unnecessary for us to seek separate formal, or informal, evidence.

8. In this report, we do not comment in detail on the current draft of this guideline or make specific suggestions as to how it could be worded differently. Instead, we make a number of observations relating to some broad themes, which relate in the main to the need to retain some degree of flexibility for sentencers and our concern about the potential impact on the prison population. We hope our comments will be useful to the Council in producing a final version of the guideline.

9. **In principle, we endorse the Council’s rationale for producing a revised guideline to clarify the levels of reduction appropriate for the different stages when a guilty plea might be entered. In particular, we recognise the value to victims and witnesses of encouraging a more consistent approach to sentence reductions and in providing them with reassurance as early as possible that a case is not proceeding to trial.**

Potential impact on the prison population

10. The Council’s draft resource assessment⁵ states that the goal of the draft guideline is to influence the timing of guilty pleas, but not to influence the rate of guilty pleas entered. Hence, the guideline will be successful if it increases the proportion of guilty pleas at the earliest stage of the court process but does not change the overall proportion of guilty pleas.

11. However, the draft resource assessment also acknowledges the uncertainty as to how defendants will respond to the guideline, given the limited research into this aspect of their behaviour. Some defendants, having missed the full one-third discount, may opt to go to trial and - if found guilty - could serve longer prison terms by losing credit for an

4 The Sentencing Council’s summary of its proposals is at Appendix 1. We do not publish the full responses sent to the Sentencing Council.

5 [Sentencing Council, 2016. Reduction in sentence for a guilty plea: draft resource assessment](#)

early plea. On this assumption, the resource assessment estimates up to 4,000 additional prison places may be needed. Even if more offenders do plead guilty at the first stage of proceedings, the assessment estimates that 1,000 additional prison places would be required; this is because the new guideline is designed to ensure that sentence reductions are applied more consistently than under the current guideline.

12. Taking into account potential savings to both the probation service and the courts arising from earlier guilty pleas, the Council goes on to suggest that the net annual cost over time of these additional prison places is between £10 million and £120 million. However, this calculation excludes capital build costs and overheads in the prison estate. It also excludes savings to the police, the Crown Prosecution Service and the Legal Aid Agency from a higher proportion of guilty pleas being made at an earlier stage. Under the 2009 Act the Council is required to include in its resource assessment the likely effect of guidelines on the provision of both probation and youth justice services. It is not clear from the consultation document what those likely effects will be.

13. Given the difficulty in estimating these resource implications, the Council proposes to conduct early work to assess the consequence of the guideline once it is in force. It will put in place a review group to oversee evidence gathering that will feed into an impact assessment of the guideline in 2017. Based on a review of the findings, the group will advise the Council whether the guideline should be revisited. In the event of such advice being given, it is unclear whether the Council would suspend operation of the guideline until revisions had been drafted, published for consultation and finalised. We note that section 123 of the 2009 Act permits the Council to bypass its usual statutory procedures to revise guidelines in urgent cases.

14. We note that a significant minority of respondents to the Council's consultation have predicted that, by reducing from 25% (as in the SGC guideline) to 20% the discount for a later guilty plea, the guideline will give defendants insufficient incentive to plead guilty; many will instead choose to proceed to trial - incurring a higher sentence if they are convicted (as well as increasing costs to the court system).

15. As the Council recognises, the revised guideline will operate in the context of wider reforms to the criminal justice system, including the Transforming Summary Justice (TSJ) programme, the Better Case Management initiative in the Crown Court, and the recommendations of the Leveson Review. We are aware that the Secretary of State for Justice, Rt Hon Michael Gove MP, has written to the Chairman of the Sentencing Council requesting that the impact of these initiatives be reviewed before deciding how to proceed with the guideline. He has also suggested that the Government's Behavioural Insights Team be given time to test the impact of a proposed new model for providing information about early guilty pleas to defendants at the police station.

16. The potentially serious impact of the new guideline on the prison population is a matter of some concern to us; that population now stands at around 84,500, and prisons are widely perceived as being under intense strain. To increase the prison population over time by up to 4,000 would involve the construction of around four large new prisons. We also conclude that there would be significant risks in introducing the guideline in its present form without assurances from the Ministry of Justice that

it will make resources available to meet any additional demand for prison places or any increase in community-based sentences which would affect resources required for probation and youth justice services.

17. We recommend that the Sentencing Council delay the finalisation and implementation of the new guideline until it has undertaken and published further research into the factors that influence a defendant's decision about whether and when to plead guilty, both in the magistrates' court and the Crown Court. This research should be used to underpin a more comprehensive and robust resource assessment of the draft guideline, taking into account costs and savings to all aspects of the criminal justice system, with particular reference to the potential impact on the size of the prison population and on capital build costs and overheads within the prison estate. As part of that assessment the Sentencing Council should work closely with the Ministry of Justice to ensure that any increase in the prison population resulting from application of the new guideline can be accommodated. We also recommend that the Sentencing Council clarify what steps it proposes to take in the event of its review group recommending that the guideline be revisited after consideration of the proposed impact assessment.

The presumption of innocence

18. The presumption of innocence is at the very heart of the criminal justice system, protected under the common law and by international human rights law. As noted above, it is the intention of the guideline to influence the timing of guilty pleas, but not to influence the rate of guilty pleas entered.

19. We welcome the Council's assurance that nothing in the draft guideline should be taken to suggest that an accused who is innocent should be pressurised to plead guilty. We therefore recommend that the guideline should avoid the use of the term 'offender' in relation to any individual who has not yet decided whether to plead guilty and who therefore may, eventually, be acquitted. The exceptions at F1 and F2 are two examples of where the wording might be changed.

'Overwhelming evidence'

20. The draft guideline proposes that the maximum reduction in sentence for a guilty plea should be applied regardless of the strength of the prosecution case, in order to incentivise defendants to plead guilty at the first stage and avoid uncertainty for victims and witnesses. Comments were also sought on an alternative approach, whereby sentencers would have a discretion to take into account the strength of the evidence in determining the level of reduction for offenders, but only for those who plead guilty at a later stage.

21. The main proposal in the consultation represents a departure from the current SGC guideline, which states that the full reduction may not be appropriate if the prosecution's case is overwhelming. The Council's consultation document cites evidence from its qualitative research and from reported cases indicating that the current guideline is not applied consistently, primarily because 'overwhelming' is open to different interpretations.

22. We are aware from the responses to the Council's consultation that this proposal has proved controversial, as indeed the Council predicted, and we recognise the arguments on both sides of this debate. The attraction of retaining judicial discretion is that it allows

responsiveness to the facts of any particular case but - by its very nature - the exercise of discretion may sometimes appear to lead to inconsistent results, especially where the detailed factual background of a case is not widely understood.

23. We note that, in the 2012 *Caley* decision,⁶ the Court of Appeal endorsed the approach taken by the current SGC guideline to such cases, describing its 'cautious terms' as 'deliberate and wise'. It went on to give helpful guidance as to the application of the guideline:

- The public benefits arising from a guilty plea arise as much from overwhelming cases as to less strong ones.
- Judges should be wary of concluding that a case is 'overwhelming' when all they have seen is evidence which is not contested.
- Defendants have a right to force the issue to trial, however strong the case against them, and those that choose to plead guilty should be given recognition for this.

24. **Taking all this into account, we agree with the Sentencing Council's main proposal.**

Exception at F1: Further information/advice necessary before indicating plea

25. The exception set out in the draft guideline at F1 (Further information or advice necessary before indicating a plea) would, in certain circumstances, retain the maximum one-third discount for a defendant who enters a plea of guilty after the first stage of proceedings. As currently drafted, the exception is confined to the rare cases where the defendant admits what they are aware they have done but needs advice and/or sight of the evidence to know whether they have committed an offence. We think this is expressed too narrowly, for a number of reasons.

26. The Sentencing Council's 2011 research into attitudes towards guilty pleas found that both weight of evidence and advice from solicitors/barristers were pivotal in defendants' assessments of whether they were likely to be found guilty and therefore in decisions about making an early guilty plea. For many offenders, such decisions were only made after they had judged the level of evidence against them and/or took on board the legal advice they had been given.⁷

27. The consultation paper explains that the guideline is based on the assumption that in the majority of cases the prosecution will have complied with its obligation under the Criminal Procedure Rules to serve Initial Details of the Prosecution Case (IDPC) no later than the beginning of the day of the first hearing. We also note that, under Characteristic 5 of the TSJ initiative, the IDPC should ideally be sent to the defence solicitors five days before the first hearing, to give them sufficient time to prepare the case.

28. However, we note the findings of the HM Crown Prosecution Service Inspectorate's inspection into the effectiveness of the CPS's role in delivering the TSJ initiative. The inspection found that service of the IDPC was particularly poor. Even when the defence

⁶ [R v Caley and others \[2012\] EWCA Crim 2821](#), paragraph 24

⁷ [Sentencing Council, 2011. Attitudes to guilty plea sentence reductions, Dawes et al](#)

details were known to the CPS before the first hearing (which was the situation in over half the files examined), in less than 17% of cases were the papers served on the solicitors ahead of the hearing.

29. In addition, we have taken into account concerns raised by several respondents to the consultation about the draft guideline's potential impact on unrepresented defendants, particularly in the magistrates' courts. These concerns are supported by a recent report⁸ from the national charity Transform Justice, based on a survey of prosecutors and observations at court hearings. The findings suggest that around a fifth of defendants are now unrepresented in (non-traffic) trials and sentencing hearings. Prosecutors suggested that among the main reasons were a range of potential barriers to legal aid and limitations on access to the duty solicitor. In addition, those with chaotic lives may not be organised enough to arrange a lawyer and judges were perceived to have become more resistant to granting adjournments to allow defendants to secure legal representation.

30. We were particularly struck by the submission to the Council from the Criminal Cases Review Commission (CCRC). This highlights the fact that a significant proportion (26.7%, based on a sample of CCRC applications over the past three years) of those who apply for a review of their guilty conviction had entered a guilty plea. The CCRC observes that systemic and personal pressures to plead guilty are capable of extending to the factually innocent, as well as the factually guilty, and goes on to suggest that this may be a particular problem for vulnerable groups, such as those with mental health conditions.

31. A defendant's right of access to legal representation is one component of access to justice rights under the common law, and is reflected in the European Convention on Human Rights. **Taking into account the factors discussed above, we conclude that the exception set out at F1 (Further information or advice necessary before indicating a plea) is too narrowly framed. We are particularly concerned about the potential impact on unrepresented defendants whose cases are factually or legally complex, or whose cognitive abilities are affected by learning disabilities, age, injury or a mental health condition.**

32. We therefore recommend that the exception at F1 should be expressly extended to any situation where the defendant wishes to obtain legal advice before deciding whether to plead guilty and has been unable to do so. The exception should also extend to corporate defendants who may need to conduct detailed investigations before deciding how to plead.

Exception at F2: IDPC not served before the first hearing

33. Similarly, we have considered whether the exception at F2 (Initial Details of Prosecution Case not served before the first hearing) may be too narrow - in particular, through its limitation to either-way and indictable only cases.

34. We note that a substantial proportion of the submissions to the Council's consultation have suggested that the F2 exception be extended to summary offences, as it cannot be assumed that in such cases the IDPC issues 'are more likely to be resolved on the day', as

8 [Transform Justice, 2016. Justice Denied? The experience of unrepresented defendants in the criminal justice system](#)

the Council suggests. Respondents also highlighted the potential impact of the maximum custodial sentence (of up to six months) for certain summary offences and have pointed out that some summary matters can be factually or legally complex.

35. In addition, some respondents questioned whether the effect of the F2 exception - that is, giving the defendant a further 14 days from the service of the IDPC to enter a guilty plea without losing the maximum sentence discount - would allow sufficient extra time. Those with experience of criminal defence work have pointed to delays in obtaining legal aid (for example, when defendants do not have the required documentary proof of income) and in obtaining dates for prison visits if the defendant is remanded in custody.

36. The right to know the basis of the prosecution's case is an important element of the right to a fair trial, and one of the established notions of common law fairness that has now been enshrined in the European Convention on Human Rights.⁹ **We conclude that the exception set out in F2 (IDPC not served before the first hearing) is too narrow, and carries a risk of undermining the right to a fair trial.**

37. We recommend that the F2 exception be extended to summary cases, as well as to either-way and indictable only offences. We further suggest that the 14 day extension be lengthened to, say, 21 days to address some of the practical difficulties that respondents have identified.

The impact on children

38. The draft guideline proposes that offenders under 18 whose cases are dealt with in the youth court would have to plead guilty at the first hearing to benefit from the maximum reduction in sentence (one-third). We note that the draft guideline makes limited reference to community sentences, and does not mention the specific rehabilitation principles of community sentences for young offenders.

39. Our predecessor Committee's report on Youth Justice¹⁰ concluded that the high proportion of young offenders with speech, language and communication needs and/or a learning disability face enormous difficulties in understanding court proceedings, which may jeopardise their right to a fair trial. It also noted strong neurological evidence of differential rates of maturity among young individuals. The Committee encouraged the Sentencing Council to continue with its approach of including age and/or lack of maturity, where relevant, as a factor in offence guidelines and to keep the matter under review.

40. The conclusions of our predecessor Committee are supported by the recent report of the Law Commission on unfitness to plead.¹¹ The Law Commission received evidence from consultees on the prevalence of participation issues in the youth court, where there is no 'unfitness to plead' framework in spite of the potential gravity of offences that are tried there. The Commission noted research indicating the inadequate functional and decision-making abilities of juveniles under 16, particularly those of below average IQ. The high incidence of mental health difficulties among the young people who offend is also supported by research.

9 Under Article 6(3)(b) of the European Convention on Human Rights, everyone charged with a criminal offence has the right to have adequate time and facilities for the preparation of his defence; this has been held to include access to prosecution evidence.

10 [House of Commons Justice Committee, Seventh Report of Session 2012–13: Youth Justice, HC 339](#)

11 [Law Commission, 2016. Unfitness to plead \(report 364\)](#)

41. We note that responses to the Council's consultation from organisations specialising in young offenders - including the Youth Justice Board - have argued in favour of developing distinct guidelines for cases involving children and young persons. Taking into account the evidence cited above, we agree that this would be a sensible approach. The Sentencing Council is currently consulting on its overarching principles for the sentencing of youths, which presents an opportunity for developing a more flexible approach for guilty plea reductions in these cases. We expect to respond to that consultation in due course.

Assessment of equality impact

42. The Council states that it has considered whether any equality and diversity issues arise from the draft guideline. Noting that rates of plea vary between different ethnic groups, the consultation paper suggests that the guideline will deal fairly with all groups of people by promoting consistency. It invites further views on any equality matters that should be considered.

43. We find it surprising that the consultation paper does not mention the potential impact of the guideline on defendants who are disabled - in particular, those with learning disabilities, autism or mental health conditions. As noted above, the narrow scope of the proposed exception at F1 is likely to have a disproportionate impact on vulnerable defendants. For people in these circumstances, being treated consistently with other defendants would not necessarily be fair treatment.

44. We are aware of research identifying difficulties in recognising adults with mental health problems within the criminal justice system.¹² The Bradley Report¹³ concluded that people with learning disabilities (estimated to be 20% to 30% of offenders) may face problems in dealing with the workings of a courtroom, particularly in understanding questions that are leading or complex.

45. We also note that the Law Commission's recent report on 'unfitness to plead' makes recommendations for the reform of the whole legal framework relating to this area. In particular, the Commission concludes that procedures should be urgently introduced to address participation difficulties in magistrates' courts, comparable to procedures already available in the Crown Court. However, it may be some time before this recommendation bears fruit.

46. In the light of the above, we recommend that the Council undertake a comprehensive analysis of the equality impact of its draft guideline, with particular reference to defendants who have mental health conditions, autism or learning disabilities. Based on this analysis, we recommend that the Council consider what modifications could be made to the draft guideline to mitigate any adverse impacts relating to defendants with protected characteristics, including disability.

¹² [National Institute for Health and Care Excellence \(2014\). Mental health of adults in contact with the criminal justice system](#)

¹³ [Department of Health \(2009\). The Bradley Report: Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system](#)

Appendix 1: Sentencing Council's Overview of its consultation on a proposed guideline for reduction in sentence for a guilty plea

1 Aim and summary of the proposals

1.1 The guideline aims to encourage offenders who are going to plead guilty to do so as early in the court process as possible. This will mean that cases will be dealt with more quickly. Consequently more victims and witnesses will be spared the stress of worrying about a trial from an earlier stage in the proceedings and the police, prosecutors and courts will be able to focus on other cases.

1.2 The guideline provides this incentive by maintaining the current level of reduction for those who plead at the first stage of court proceedings but after that giving a lower reduction compared to that available currently. In summary:

- a) The point at which an offender can benefit from the maximum (one third) reduction will be much more tightly defined—in essence under the draft guideline an offender must plead guilty the first time they are asked for their plea in court to qualify for the maximum reduction.
- b) For offenders who plead guilty after that first stage the maximum reduction they can be given will be one-fifth compared to one-quarter under the current guideline.
- c) Offenders who plead later will serve longer sentences than those who accept their guilt and plead at an early stage.

1.3 The proposals provide for some specific exceptions to the general rules to cater for situations such as where a defendant does not have sufficient information to know whether or not he is guilty of a particular offence or where the offence originally charged has changed.

1.4 Because the proposed guideline is stricter than the existing guideline, unless offenders are incentivised to plead at the earliest stage they may go to prison for longer and this would have an impact on the prison population.

1.5 A more detailed explanation of the differences is provided at Annex A.

2 Why produce a new guilty plea guideline?

2.1 The Council is required by law to produce a guideline on reductions for guilty pleas. Section 120(3)(a) the Coroners and Justice Act 2009 states:

The Council must prepare—

- (a) sentencing guidelines about the discharge of a court's duty under section 144 of the Criminal Justice Act 2003 (reduction in sentences for guilty pleas).

2.2 Section 144 of the Criminal Justice Act 2003 states:

(1) In determining what sentence to pass on an offender who has pleaded guilty to an offence in proceedings before that court or another court, a court must take into account:

- (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
- (b) the circumstances in which this indication was given.

2.3 There is a current definitive guideline issued by the Council's predecessor body, the Sentencing Guidelines Council (SGC) in 2007. Courts are required to follow the SGC guideline and the Court of Appeal has handed down judgments giving further guidance on how the guideline should be applied.

2.4 The Council collected data on the timings and levels of guilty pleas using the Crown Court Sentencing Survey, which ran from 1 October 2010 to 31 March 2015. This data, taken together with case law and research carried out with sentencers on the application of the SGC guideline, suggests that the SGC guideline is not always applied consistently and that levels of reductions in some cases appear to be higher than those recommended by the guideline.

2.5 This risks undermining the work being done across the criminal justice system to improve efficiency.

3 The guideline in context

3.1 The Council recognises that the guilty plea guideline will operate in the context of the wider criminal justice system and that there are many factors that may influence the decision whether and when to plead guilty.

3.2 The Transforming Summary Justice (TSJ) programme, the Better Case Management (BCM) initiative and the recommendations in the President of the Queen's Bench Division's Review of Efficiency in Criminal Proceedings which have been incorporated 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.

3.3 The guideline is designed to complement this work and help to promote a more efficient system for the benefit of all those who come into contact with it especially victims and witnesses.

4 Pressure to plead?

4.1 The Council is clear that the guideline is directed only at defendants wishing to enter a guilty plea and nothing in the guideline should create pressure on defendants to plead guilty. Defendants have a clear right to require the state to prove the case against them to a criminal standard.

4.2 It is a fundamental principle of our legal system that a person accused of a criminal offence is presumed to be innocent and an accused person has the clear right to require the prosecution to prove the case against them. In this respect the proposals do not represent a change from the existing guideline

5 Overwhelming evidence

5.1 Unlike the current guideline, the proposed guideline states that the reduction for guilty plea should be applied regardless of the strength of the prosecution case.

5.2 The benefits that can be gained from a guilty plea still apply in cases where the prosecution evidence is overwhelming. If a defendant in such a case pleads guilty, witnesses and victims will still be spared anxiety and uncertainty about whether they will be required to attend court and give evidence, and the resources of the justice system will still be saved the time and expense of preparing for a trial.

5.3 In order for the proposed guideline to work effectively, the Crown Prosecution Service (CPS) will need to review cases at an early stage and identify those cases where an early plea is expected. Such cases where the police and CPS have identified that the evidence is strong and a guilty plea is likely are those in which the guideline aims to encourage a plea at the first stage of proceedings. An important incentive to plead at that early stage is the certainty of receiving the maximum reduction for a guilty plea. By removing the chance that the reduction might be withheld, the draft guideline will provide defendants and those advising them with certainty regarding the reduction and will provide the greatest possible incentive to plead early.

6 Proportion of offenders pleading guilty and levels of reduction given

6.1 Information on the percentage of offenders who plead guilty is only available for the Crown Court. Of the 86,297 offenders sentenced in the Crown Court in 2014, 77,289 (90 per cent) pleaded guilty and 9,008 were found guilty after a trial. Of the 90 per cent sentenced in the Crown Court who pleaded guilty, 72 per cent pleaded guilty at what was adjudged to be the 'first reasonable opportunity.'

6.2 Information on the levels of reduction given to offenders is only available for the Crown Court. The detailed information is complex but for example of those offenders sentenced in 2014 in the Crown Court for either-way offences (offences that can be dealt with in the Crown Court or magistrates' court—for example theft, fraud or supplying drugs): 61 per cent received a reduction of one third; 19 per cent received a reduction of one quarter; and 10 per cent received a reduction of one tenth. The remaining 10 per cent were convicted after a trial and received no reduction.

6.3 There are differences across offence types, with the rate of guilty pleas amongst those convicted of indictable sexual offences at the Crown Court at 61 per cent, which is considerably lower than the overall rate for indictable offences (89 per cent).

6.4 Under the proposed guideline fewer offenders would receive the one-third reduction unless they enter their plea earlier. This is because the proposed guideline replaces the concept of the ‘first reasonable opportunity’ with more tightly defined stages of the court process.

7 Reaction to the proposals

7.1 At the time of writing (19 April 2016) the consultation is still open and the Council has not yet considered any responses. Officials have held a number of meetings with interested parties and some concerns have been raised about the proposals. Concerns have also been raised in some of the responses seen so far.

7.2 The issues that have been raised so far include the following:

- a) from the perspective of many defence representatives, the proposals (including the exceptions) are too tightly drawn and will require defendants to enter a plea on insufficient information and with insufficient time to get advice. Vulnerable defendants may feel pressured to plead and lawyers may be conflicted as to how best to advise clients. This applies particularly to either way offences where a plea must be entered at the magistrates’ court in order to obtain the maximum reduction;
- b) some judges also feel that the proposal to limit the reduction of one third in either way cases to defendants who plead guilty in the magistrates’ court is too inflexible. They consider that in some cases a defendant may receive only perfunctory advice at the magistrates’ court;
- c) from the perspective of some prosecutors and some judges the proposals do not go far enough and an indication of plea should be given in the magistrates’ court to indictable only offences to qualify for the one-third reduction;
- d) from the perspective of most professional respondents the clear distinction between matters which go to mitigation (such as remorse and pre court admissions) and the reduction for a guilty plea is welcomed;
- e) from the perspective of some police, a defendant should have to make admissions at the police station to qualify for the maximum discount and some suggest a higher maximum for those that do so;
- f) from the perspective of some prosecutors a higher maximum reduction would give more incentive to plead and could help to ‘crack’ long and complex cases;
- g) from the perspective of NGOs concerned with fair trials and offender rehabilitation limiting the maximum reduction to one third is welcome as a higher reduction could result in defendants feeling under pressure to plead;
- h) from the perspective of some (but by no means all) judges the removal of the ‘overwhelming evidence exception’ removes an important aspect of judicial discretion and could result in unfairness;
- i) from the perspective of most defence and prosecution representatives and some judges the removal of the ‘overwhelming evidence exception’ is fair and welcome;

- j) most professional respondents have welcomed the clarity of the proposed guideline and acknowledge the benefits that arise from a guideline that offers certainty, albeit that some feel that the certainty has been achieved at the expense of flexibility and fairness.

8 The Council's response

8.1 The Council will discuss the responses to the consultation (including the response from the JSC) at its meetings in June, July and September with a view to publishing the definitive guideline in November 2016. However, this timetable may change if the Council considers that more time is needed to refine the proposals or to ensure that other reforms to the criminal justice system are in place and working well enough for the guideline to operate effectively.

Office of the Sentencing Council
19 April 2016

Formal Minutes

Tuesday 7 June 2016

Members present:

Robert Neill, in the Chair

Alex Chalk	John Howell
Alberto Costa	Dr Rupa Huq
Philip Davies	Victoria Prentis
Mr David Hanson	Marie Rimmer

Draft Report (*Reduction in sentence for a guilty plea guideline*), proposed by the Chair, brought up and read the first time.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 46 read and agreed to.

A Paper was appended to the Report as Appendix 1.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 14 June at 9.15am

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2015–16

First Report	Draft Allocation Guideline	HC 404
Second Report	Criminal courts charge	HC 586 (HC 667)
Third Report	Appointment of HM Chief Inspector of Prisons and HM Chief Inspector of Probation	HC 624
Fourth Report	Criminal Justice inspectorates	HC 724 (HC 1000)
Fifth Report	Draft sentencing guideline on community and custodial sentences	HC 876
Sixth Report	Prison safety	HC 625
First Special Report	Women offenders: follow-up: Government response to the Committee's Thirteenth Report of Session 2014–15	HC 374
Second Special Report	Criminal courts charge: Government Response to the Committee's Second Report of Session 2015–16	HC 667
Third Special Report	Criminal justice inspectorates: Government Response to the Committee's Fourth Report of Session 2015–16	HC 1000