



BRIEFING PAPER

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Reduction in Sentence for a Guilty Plea

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Inside:

1. Historical background
2. The current approach
3. Public opinion
4. Previous proposals for change



Contents

Summary	3
1. Historical background	4
2. The current approach	5
2.1 The Criminal Justice Act 2003	5
2.2 Sentencing guidelines	5
3. Public opinion	7
4. Previous proposals for change	8
4.1 2010: The Coalition Government	8
4.2 Sentencing Council consultation 2016	10

Summary

Background

Offenders who plead guilty will usually receive a reduced sentence, compared to the sentence they would have received had they been convicted following a not guilty plea. This was a well-established principle under the common law and has since been put on a statutory footing supplemented by sentencing guidelines. The rationale behind this is that it encourages defendants who know they are guilty to enter a guilty plea at the earliest possible stage, so saving court time and money and saving witnesses (including victims) from having to attend court to give evidence.

Current approach

The level of reduction is at the discretion of the court, although current sentencing guidelines require that the usual reduction will be one third where the guilty plea was indicated at the first stage of proceedings. A reduced discount of one quarter is suggested where the plea was after the first stage of proceedings, reducing on a sliding scale to a maximum of one tenth where the plea was entered on the first day of the trial. The reduction should normally be decreased further, even to zero, if the guilty plea is entered during the course of the trial.

Previous proposals for change

In December 2010, the Ministry of Justice published a green paper that included a proposal to increase the maximum reduction in sentence for a guilty plea from one third to one half. The Coalition Government said that this would encourage more defendants to plead guilty at an early stage, so reducing inefficiencies and "sparing victims needless worry" about attending court. However, critics argued that this change could undermine public confidence in sentencing if it resulted in much lower sentences for serious offenders. The Coalition Government withdrew the proposal in June 2011. The then Prime Minister said the Government had concluded that with a one half reduction, sentences would be too lenient, the wrong message would be sent out to criminals and public confidence in the system would be eroded.

The current guideline was subject to public consultation in 2016 which led to a number of changes to the draft version. The Sentencing Council had, in the draft guideline, proposed lowering the reductions available after the first hearing, but respondents to the consultation said that this could in fact lead to an increase in the number of trials due to defendants deciding not to plead guilty.

1. Historical background

It was a well-established principle of common law that an offender who pleaded guilty could usually expect a reduction in his sentence compared to the sentence he would have been given had he been convicted following a plea of not guilty. In 1993 the Royal Commission on Criminal Justice described this practice as going back “decades”.¹ The earlier a guilty plea was entered the greater the discount should have been. The level of discount was left to the court’s discretion, although a general principle developed that a discount of approximately one third would usually be appropriate.²

The rationale behind reduced sentences was to encourage those defendants who knew themselves to be guilty to enter a guilty plea at the earliest possible stage, as this would save public money and court time and spare witnesses (including any victims) from having to attend court to give evidence.

In 1994, the requirement for courts to take account of a guilty plea when sentencing was placed on a statutory footing by section 48 of the *Criminal Justice and Public Order Act 1994*:

48 Reduction in sentences for guilty pleas

(1) In determining what sentence to pass on an offender who has pleaded guilty to an offence in proceedings before that or another court a court shall 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) If, as a result of taking into account any matter referred to in subsection (1) above, the court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, it shall state in open court that it has done so.

Section 48 has since been replaced by section 144 of the *Criminal Justice Act 2003*, discussed in the next section of this briefing.

¹ Royal Commission on Criminal Justice, [Report](#), Cm 2263, 1993, p110

² Lord Taylor CJ in *R v Buffrey*, 14 Cr.App.R.(S). 511

2. The current approach

The current approach to reduced sentences following a guilty plea is set out in a combination of statute and sentencing guidelines.

2.1 The Criminal Justice Act 2003

The statutory provision that originated in section 48 of the 1994 Act is now set out in section 144(1) of the *Criminal Justice Act 2003*:

144 Reduction in sentences for guilty pleas

(1) In determining what sentence to pass on an offender who has pleaded guilty to an offence in proceedings before that 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.

Section 174(2)(d) of the 2003 Act goes on to provide that where the court imposes a reduced sentence due to a guilty plea it must state that it has done so.

For certain sentences with a mandatory minimum sentence, the maximum available discount is 20 per cent.³

There can be no reduction for a guilty plea if the effect of doing so would reduce the length of sentence for certain firearms offences below the required minimum term.⁴

Andrew Ashworth, who served as chair of the former Sentencing Advisory Panel between 2007 and 2009, has made the following comments on section 144:

Since its inception ... the legislation on discounts for pleading guilty has not been specific. Subsection (1) is drafted in a remarkably allusive manner. Not only does it fail to say anything about the scale of the discounts, but it merely hints at the principle that the discount should be larger, the earlier the guilty plea is intimated. In the result, the Court of Appeal dealt with a succession of appeals on the subject between 1994 and 2004, and this underlined the need to establish guidance on the proper approach to sentencing in guilty plea cases.⁵

2.2 Sentencing guidelines

The Sentencing Council's [Reduction in Sentence for a Guilty plea Definitive Guideline](#), effective from 1 June 2017 sets out the current guidance for the courts to follow when sentencing an offender who has pleaded guilty.⁶

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice

³ Section 144(2) and 144(3) of the Criminal Justice Act 2003

⁴ Minimum sentences for certain offences are specified in section 51A of the Firearms Act 1968

⁵ Ashworth, *Sentencing and Criminal Justice*, 6th edition, 2015, p180

⁶ Previous guidelines were issued by the Sentencing Guidelines Council in December 2004 and July 2007: Sentencing Guidelines Council, [Reduction in Sentence for a Guilty Plea: Definitive Guideline](#) 2007

This guideline applies regardless of the date of the offence to all offenders aged 18 and older where the first hearing is on or after 1 June 2017.⁷ The guideline applies in both the magistrates' courts and the Crown Court.

The guideline sets out the purpose of the guideline and restates the rationale for reduced sentences for guilty pleas

The purpose of this guideline is to encourage those who are going to plead guilty to do so as early in the court process as possible. Nothing in the guideline should be used to put pressure on a defendant to plead guilty.

Although a guilty person is entitled not to admit the offence and to put the prosecution to proof of its case, an acceptance of guilt:

- a) normally reduces the impact of the crime upon victims;
- b) saves victims and witnesses from having to testify; and
- c) is in the public interest in that it saves public time and money on investigations and trials.

A guilty plea produces greater benefits the earlier the plea is indicated. In order to maximise the above benefits and to provide an incentive to those who are guilty to indicate a guilty plea as early as possible, this guideline makes a clear distinction between a reduction in the sentence available at the first stage of the proceedings and a reduction in the sentence available at a later stage of the proceedings.⁸

The maximum level of reduction in sentence for a guilty plea is one-third. The guideline sets out how the court should determine a sentence reduction in any particular case. In summary:

- Where a guilty plea is indicated at the first stage of proceedings a reduction of one-third should be made. The first stage will normally be the first hearing at which a plea or indication of plea is sought and recorded by the court.
- After the first stage of the proceedings the maximum level of reduction is one-quarter.
- The reduction should be decreased from one-quarter to a maximum of one-tenth on the first day of trial.
- The reduction should normally be decreased further, even to zero, if the guilty plea is entered during the course of the trial.

As an exception to the above, the guideline states that 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.⁹

The [Sentencing Council](#) issues guidelines on sentencing which the courts must follow unless it is in the interests of justice not to do so

⁷ Guidance on reductions in sentence for a guilty plea for under 18s is contained in the [Sentencing Children and Young People: Overarching Principles and Offence Specific Guidelines for Sexual Offences and Robbery: Definitive Guideline](#), effective from 1 June 2017, see section 5

⁸ Sentencing Council, [Reduction in Sentence for a Guilty plea Definitive Guideline](#), effective from 1 June 2017, p4

⁹ Sentencing Council, [Reduction in Sentence for a Guilty plea Definitive Guideline](#), effective from 1 June 2017, p7

3. Public opinion

In May 2011 the Sentencing Council published the results of research it had commissioned into public attitudes towards reduced sentences for offenders who plead guilty.¹⁰ The research also looked at the attitudes of victims and offenders. Some of the key findings were as follows:

- The public assumes the key motivation for the guilty plea reduction is to save time and money, but prefers the idea of it as something to help victims avoid the emotional trauma of giving evidence.
- There is more support for sentence reductions if the guilty plea is entered at an early point, and the public, victims and witnesses are less likely to feel that the offender can 'play the system'.
- Offenders, however, say that they are less likely to enter an early plea, but prefer to weigh up the evidence against them first.
- There was weak support from the general public for higher levels of reductions beyond the current guideline range of up to 33%, and a fifth felt that there should be no reduction at all.
- The main factor determining whether or not offenders plead guilty is the likelihood of being found guilty at trial. Weight of evidence and advice from legal representatives were pivotal in offenders' assessments of the likelihood of being found guilty. There was little evidence from the research that increasing the reduction would encourage more offenders to plead guilty at an earlier stage, given the reduction only becomes a driver of entering a guilty plea at a point that the offender considers a conviction to be the likely outcome.

¹⁰ Sentencing Council Research Series 02/11, [Attitudes to guilty plea sentence reductions](#), May 2011

4. Previous proposals for change

4.1 2010: The Coalition Government

In December 2010 the Ministry of Justice published a green paper, *Breaking the Cycle*, on the punishment, rehabilitation and sentencing of offenders.¹¹ One of the proposals on which views were sought was to increase the maximum sentence discount for a guilty plea from one third to half:

One of the worst inefficiencies is that more than two-thirds of the cases reaching the Crown Court end in a guilty plea. Well over 10,000 such cases in 2009 pleaded at the door of the court. In most instances the defendant could have pleaded in the magistrates' court. The failure to do so means that resources – court costs, police and prosecution costs, legal aid – are wasted on cases that do not need to progress any further. Moreover, victims and witnesses have longer to wait before they discover whether they will have to give evidence. This can be traumatic, particularly where the defendant pleads guilty at the last minute. Victims and witnesses will have prepared themselves to appear in court and relive the events that took place, all for nothing.

The sentencing framework has long recognised the benefits of early guilty pleas in terms both of efficiency and of sparing victims needless worry. We want to ensure that defendants are encouraged to plead guilty at the earliest opportunity by reducing the sentence given for an early guilty plea (the "sentence discount"). We are considering whether this could be better achieved by introducing a maximum discount of up to 50 per cent that would be reserved for those who plead guilty at the earliest stage.¹²

The Ministry of Justice, in December 2010, estimated that this change would result in a reduction of 3,400 in prisoner numbers in 2014/15, and financial savings of £130 million.¹³ Some of the other anticipated benefits were listed in response to a PQ:

Mr Blunt: If an increased discount for an early guilty plea had the desired effect of encouraging defendants to plead guilty at an earlier stage in the proceedings, it would potentially reduce burdens on the police (and the Crown Prosecution Service) to the extent that less effort would need to be devoted to assembling evidence, and on the probation service to the extent that where shorter sentences were imposed, a smaller percentage of offenders would be subject to post release supervision and these periods of supervision would also be shorter resulting in a reduction in probation workload, although it would also be possible for there to be greater demand on the service through a long community order rather than a short prison sentence. Victims and witnesses would benefit from a prompt resolution of the case, as they would no longer need to worry about having to go to court to give evidence. We would not anticipate that there would be any effect on businesses.¹⁴

In 2010 the Ministry of Justice consulted on a proposal to increase the maximum discount for a guilty plea from one third to half

¹¹ Ministry of Justice, [Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders](#), Cm 7972, December 2010

¹² *Ibid*, paras 2.15 to 2.16

¹³ Ministry of Justice, [Impact Assessment MOJ051](#), December 2010, p21

¹⁴ [HC Deb 21 March 2011 c802W](#)

9 Reduction in Sentence for a Guilty Plea

Most responses to the consultation were opposed to the proposal to increase the discount for a guilty plea from one third to one half, with many expressing concern that it might damage public confidence in sentencing.

In May 2011 the then Justice Secretary, Kenneth Clarke, described the increase in discount as “likely to survive”:

We are going to give the outcome of our consultation shortly, but I think that that proposal is likely to survive. The fact is that we have always had a reduced tariff for early guilty pleas in this country. It always startles the public when they discover that this has underlined our sentencing policy for many years. It is true that we are thinking of putting up the reduction to a half. It makes an enormous difference to costs, police time and the involvement of unnecessary preparations for trial if everybody leaves guilty pleas to the last possible moment. As my hon. Friend the Under-Secretary rightly said, victims and witnesses are put through an ordeal if they are preparing for a trial where they expect to be accused of lying because the man has not been induced to plead at an early enough stage. Those are the considerations that lay behind this proposal.¹⁵

However on 21 June 2011 the then Prime Minister David Cameron noted the opposition to the proposal and confirmed that the Government had decided not to pursue it:

In the Green Paper we consulted on a proposal to increase the current discount available for an early guilty plea at the earliest possible stage to 50%. For the most serious crimes we have concluded this would certainly not be right. The sentence served would depart far too much from the sentence handed down by the judge and this is simply not acceptable. We also looked at whether the 50% discount could only be applied to less serious crimes, but again we reached the same conclusion: the sentence would be too lenient, the wrong message would be sent out to the criminal and it would erode public confidence in the system. What’s more, in reaching our conclusions we considered the strong views expressed by serious people working in the criminal justice system that 50% was just too high and that we needed to find better ways of speeding up the process for victims and witnesses and for the police and the courts. So there will be no change to the current position on early guilty pleas for any category of case. The money that would have been saved through this proposal will be saved through greater efficiency in other parts of the Ministry of Justice budget.¹⁶

In 2011 the Prime Minister confirmed that the Coalition Government had decided not to pursue the proposed increase

This was echoed by Kenneth Clarke in answer to a PQ on 28 June 2011:

Because we could not find a resolution to the risk of some of the more serious offences attracting too short a period in custody, and judicial discretion could not be devised to cover that, we have now decided to stick with the long-standing process whereby a one-third discount is available for an early guilty plea.¹⁷

The Government response to the consultation, published in June 2011, made no reference to the abandoned proposal.¹⁸

¹⁵ [HC Deb 17 May 2011 c150](#)

¹⁶ [Number10.gov.uk, PMs press conference on sentencing reforms](#), 21 June 2011

¹⁷ [HC Deb 28 Jun 2011 c748](#)

¹⁸ Ministry of Justice, [Breaking the Cycle: Government Response](#), Cm 8070, June 2011

4.2 Sentencing Council consultation 2016

Statistical research and research with sentencers undertaken by the Sentencing Council suggested that the 2007 guideline was not always applied consistently and that levels of reductions in some cases appeared to be higher than those recommended in the guideline.¹⁹

Therefore, in February 2016, the Sentencing Council published a [consultation](#) on a draft [revised guideline](#). The Council said that the revised guideline was designed to clarify the levels of reduction appropriate for the different stages at which the plea is entered.

A [press release](#) issued by the Council explained the key points of the draft revised guideline:

The draft guideline aims to bring forward the point at which offenders plead guilty. It will do this by maintaining the current level of reduction (one third) for those who plead at the first stage of court proceedings, but giving a lower reduction than that available currently for a guilty plea entered any later in proceedings. The stage at which an offender can benefit from the maximum one-third reduction will be much more tightly defined.

Under the Council's proposals, to qualify for the maximum reduction, an offender must plead guilty the first time they are asked for their plea in court. 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 process. Reductions then drop further the closer to the trial date the plea is entered.

This stricter system will mean that more guilty pleas will be entered earlier in the court process than they are now since offenders will be in no doubt that they will face a longer sentence if they do not admit that they are guilty early on.²⁰

The Sentencing Council published a response to the consultation²¹ which said that the consultation responses had influenced the Council's consideration of the guideline and had resulted in significant changes.

The draft had originally proposed lowering the reductions available after the first hearing, but respondents to the consultation said that this could in fact lead to an increase in the number of trials due to defendants deciding not to plead guilty.²²

The consultation response stated that the Council will monitor the impact of the new guideline and, if necessary, consider any changes that may be required over time.

¹⁹ Sentencing Council, [Reduction in sentence for a guilty plea guideline: Consultation](#), 11 February 2016

²⁰ Sentencing Council, press release, Sentencing Council proposes stricter rules for sentencing offenders who plead guilty, 11 February 2016

²¹ Sentencing Council, [Reduction in Sentence for a Guilty Plea: Response to consultation](#), 7 March 2017

²² Sentencing Council, [Sentencing Council publishes new guidelines on sentencing children and young people and offenders who plead guilty](#), 7 March 2017

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