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Sentencing Guidelines Council

Reduction in Sentence for a Guilty Plea

Definitive Guideline

Revised 2007

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FOREWORD

One of the first guidelines to be issued by the Sentencing Guidelines Council related to the statutory obligation to take account of any guilty plea when determining sentence. As set out in the Foreword to that guideline,¹ the intention was “to promote consistency in sentencing by providing clarity for courts, court users and victims so that everyone knows exactly what to expect”. Prior to that guideline there had been different understandings of the purpose of the reduction and the extent of any reduction given.

Since the guideline was issued, there has been much greater clarity but there still remain concerns about some of the content of the guideline and about the extent to which the guideline has been consistently applied. Accordingly the Council has undertaken a review of the guideline (in accordance with the statutory obligation placed upon it to do so from time to time²); it has also requested that the Judicial Studies Board consider further ways in which judicial training can incorporate the guideline.

The Council is extremely grateful to the Sentencing Advisory Panel for the speed and thoroughness with which it has prepared its Advice following extensive consultation. The Council has accepted almost all the recommendations of the Panel; the issues and arguments are set out fully in the Panel’s advice (see www.sentencing-guidelines.gov.uk). This revised guideline applies to all cases sentenced on or after **23 July 2007**.

The Council has agreed with the Panel that the general approach of the guideline is correct in setting out clearly the purpose of the reduction for a guilty plea, in settling for a reduction no greater than one third (with lower levels of reduction where a plea is entered other than at the first reasonable opportunity) and in continuing to provide for a special approach when fixing the minimum term for a life sentence imposed following conviction for murder.

The Council has agreed with the Panel that some discretion should be introduced to the approach where the prosecution case is “overwhelming”.

The Council has not accepted the Panel’s recommendation in relation to circumstances where a magistrates’ court is sentencing an offender for a number of offences where the overall maximum imprisonment is 6 months. The Council continues to consider that there must be some incentive to plead guilty in such circumstances; this is consistent with other aspects of the guideline.

¹ Published December 2004

² Criminal Justice Act 2003, s.170(4)

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The Council has not accepted the Panel's recommendation in relation to the "capping" of the effect of reduction on very large fines. The number of such fines is very low and the Council was not convinced that the arguments were strong enough to justify a departure from the general approach in the guideline not to "cap" the effect of the reduction.

In addition, the revised guideline provides guidance as to when the 'first reasonable opportunity' is likely to occur in relation to indictable only offences; emphasises that remorse and material assistance provided to prosecuting authorities are separate issues from those to which the guideline applies and makes clear that the approach to calculation of the reduction where an indeterminate sentence is imposed (other than that following conviction for murder) should be the same as that for determinate sentences.

Since the guideline was issued in 2004, there have been changes in the statutory provisions governing the reduction for guilty plea and in those relating to sentences for public protection. The review has provided an opportunity to bring the guideline up to date and those changes have been incorporated.

The Council published a draft guideline in accordance with section 170(8) of the Criminal Justice Act 2003 inviting responses by 14 March 2007. A response has been received from the Home Affairs Committee, a response has been received from the Attorney General and 7 other responses have been received. A summary of the responses and the decisions of the Council has been published separately.

Chairman of the Council
July 2007

CONTENTS

Foreword	i
A. Statutory Provisions	3
B. Statement of Purpose	4
C. Application of the Reduction Principle	5
D. Determining the Level of Reduction	5-6
E. Withholding a Reduction	6-7
F. Application to Sentencing for Murder	7-9
G. Application to other Indeterminate Sentences	9
Annex 1	10

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REDUCTION IN SENTENCE FOR A GUILTY PLEA

A. Statutory Provisions

Section 144 Criminal Justice Act 2003 provides:

- (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.
- (2) In the case of an offence the sentence for which falls to be imposed under subsection (2) of section 110 or 111 of the Sentencing Act,³ nothing in that subsection prevents the court, after taking into account any matter referred to in subsection (1) of this section, from imposing any sentence which is not less than 80 per cent of that specified in that subsection.

Section 174(2) Criminal Justice Act 2003 provides:

- (2) In complying with subsection (1)(a), the court must:
 - (a),
 - (b),
 - (c),
 - (d) where as a result of taking into account any matter referred to in section 144(1), the court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, state that fact, ...
 - (e)
- 1.1 This guideline applies whether a case is dealt with in a magistrates' court or in the Crown Court and whenever practicable in the youth court (taking into account legislative restrictions such as those relevant to the length of Detention and Training orders).
 - 1.2 The application of this guideline to sentencers when arriving at the appropriate minimum term for the offence of murder is set out in Section F.
 - 1.3 This guideline can also be found at www.sentencing-guidelines.gov.uk or can be obtained from the Council's Secretariat at 4th Floor, 8-10 Great George Street, London SW1P 3AE.

³ These provisions prescribe minimum mandatory sentences in certain circumstances.

B. Statement of Purpose

- 2.1 When imposing a custodial sentence, statute requires that a court must impose the shortest term that is commensurate with the seriousness of the offence(s).⁴ Similarly, when imposing a community order, the restrictions on liberty must be commensurate with the seriousness of the offence(s).⁵ Once that decision is made, a court is required to give consideration to the reduction for any guilty plea. As a result, the final sentence after the reduction for a guilty plea will be less than the seriousness of the offence requires.
- 2.2 A reduction in sentence is appropriate because a guilty plea avoids the need for a trial (thus enabling other cases to be disposed of more expeditiously), shortens the gap between charge and sentence, saves considerable cost, and, in the case of an early plea, saves victims and witnesses from the concern about having to give evidence. The reduction principle derives from the need for the effective administration of justice and not as an aspect of mitigation.
- 2.3 Where a sentencer is in doubt as to whether a custodial sentence is appropriate, the reduction attributable to a guilty plea will be a relevant consideration. Where this is amongst the factors leading to the imposition of a non-custodial sentence, there will be no need to apply a further reduction on account of the guilty plea. A similar approach is appropriate where the reduction for a guilty plea is amongst the factors leading to the imposition of a financial penalty or discharge instead of a community order.
- 2.4 When deciding the most appropriate length of sentence, the sentencer should address separately the issue of remorse, together with any other mitigating features, before calculating the reduction for the guilty plea. Similarly, assistance to the prosecuting or enforcement authorities is a separate issue which may attract a reduction in sentence under other procedures; care will need to be taken to ensure that there is no “double counting”.
- 2.5 The implications of other offences that an offender has asked to be taken into consideration should be reflected in the sentence before the reduction for guilty plea has been applied.
- 2.6 A reduction in sentence should only be applied to the **punitive elements** of a penalty.⁶ The guilty plea reduction has no impact on sentencing decisions in relation to ancillary orders, including orders of disqualification from driving.

⁴ Criminal Justice Act 2003, s.153(2)

⁵ Criminal Justice Act 2003, s.148(2)

⁶ Where a court imposes an indeterminate sentence for public protection, the reduction principle applies in the normal way to the determination of the minimum term (see para. 5.1, footnote and para. 7 below) but release from custody requires the authorisation of the Parole Board once that minimum term has been served.

C. Application of the Reduction Principle

3.1 Recommended Approach

The court decides sentence for the offence(s) taking into account aggravating and mitigating factors and any other offences that have been formally admitted (TICs)



The court selects the amount of the reduction by reference to the sliding scale



The court applies the reduction



When pronouncing sentence the court should usually state what the sentence would have been if there had been no reduction as a result of the guilty plea.

D. Determining the Level of Reduction

- 4.1 The level of reduction should be a proportion of the total sentence imposed, with the proportion calculated by reference to the circumstances in which the guilty plea was indicated, in particular the stage in the proceedings. The greatest reduction will be given where the plea was indicated at the “first reasonable opportunity”.
- 4.2 Save where section 144(2) of the 2003 Act applies,⁷ the level of the reduction will be gauged on a sliding scale ranging from a recommended one third (where the guilty plea was entered at the first reasonable opportunity in relation to the offence for which sentence is being imposed), reducing to a recommended one quarter (where a trial date has been set) and to a recommended one tenth (for a guilty plea entered at the ‘door of the court’ or after the trial has begun). See *diagram below*.
- 4.3 The level of reduction should reflect the stage at which the offender indicated a willingness to admit guilt to the offence for which he is eventually sentenced:
- (i) the largest recommended reduction will not normally be given unless the offender indicated willingness to admit guilt at the **first reasonable opportunity**; when this occurs will vary from case to case (see *Annex 1 for illustrative examples*);
 - (ii) where the admission of guilt comes later than the first reasonable opportunity, the reduction for guilty plea will normally be less than one third;
 - (iii) where the plea of guilty comes very late, it is still appropriate to give some reduction;
 - (iv) if after pleading guilty there is a Newton hearing and the offender’s version of the circumstances of the offence is rejected, this should be taken into account in determining the level of reduction;
 - (v) if the not guilty plea was entered and maintained for tactical reasons (such as to retain privileges whilst on remand), a late guilty plea should attract very little, if any, discount.

⁷ See section A above

In each category, there is a presumption that the recommended reduction will be given unless there are good reasons for a lower amount.

First reasonable
opportunity

After a trial
date is set

Door of the court/
after trial has begun

===== | ===== | ===== |

recommended 1/3

recommended 1/4

recommended 1/10

E. Withholding a Reduction

On the basis of dangerousness

- 5.1 Where a sentence for a “dangerous offender” is imposed under the provisions in the Criminal Justice Act 2003, whether the sentence requires the calculation of a minimum term or is an extended sentence, the approach will be the same as for any other determinate sentence (see also section G below).⁸

Where the prosecution case is overwhelming

- 5.2 The purpose of giving credit is to encourage those who are guilty to plead at the earliest opportunity. Any defendant is entitled to put the prosecution to proof and so every defendant who is guilty should be encouraged to indicate that guilt at the first reasonable opportunity.
- 5.3 Where the prosecution case is overwhelming, it may not be appropriate to give the full reduction that would otherwise be given. Whilst there is a presumption in favour of the full reduction being given where a plea has been indicated at the first reasonable opportunity, the fact that the prosecution case is overwhelming without relying on admissions from the defendant may be a reason justifying departure from the guideline.
- 5.4 Where a court is satisfied that a lower reduction should be given for this reason, a recommended reduction of 20% is likely to be appropriate where the guilty plea was indicated at the first reasonable opportunity.
- 5.5 A Court departing from a guideline must state the reasons for doing so.⁹

⁸ There will be some cases arising from offences committed before the commencement of the relevant provisions of the Criminal Justice Act 2003 in which a court will determine that a longer than commensurate, extended, or indeterminate sentence is required for the protection of the public. In such a case, the minimum custodial term (but not the protection of public element of the sentence) should be reduced to reflect the plea.

⁹ Criminal Justice Act 2003, s. 174(2)(a)

Where the maximum penalty for the offence is thought to be too low

- 5.6 The sentencer is bound to sentence for the offence with which the offender has been charged, and to which he has pleaded guilty. The sentencer cannot remedy perceived defects (for example an inadequate charge or maximum penalty) by refusal of the appropriate discount.

Where jurisdictional issues arise

- (i) *Where sentencing powers are limited to 6 months imprisonment despite multiple offences*

- 5.7 When the total sentence for both or all of the offences is 6 months imprisonment, a court may determine to impose consecutive sentences which, even allowing for a reduction for a guilty plea where appropriate on each offence, would still result in the imposition of the maximum sentence available. In such circumstances, in order to achieve the purpose for which the reduction principle has been established,¹⁰ some modest allowance should normally be given against the total sentence for the entry of a guilty plea.

- (ii) *Where a maximum sentence might still be imposed*

- 5.8 Despite a guilty plea being entered which would normally attract a reduction in sentence, a magistrates' court may impose a sentence of imprisonment of 6 months for a single either-way offence where, but for the plea, that offence would have been committed to the Crown Court for sentence.
- 5.9 Similarly, a detention and training order of 24 months may be imposed on an offender aged under 18 if the offence is one which would but for the plea have attracted a sentence of long-term detention in excess of 24 months under the Powers of Criminal Courts (Sentencing) Act 2000, section 91.

F. Application to Sentencing for Murder

- 6.1 Murder has always been regarded as the most serious criminal offence and the sentence prescribed is different from other sentences. By law, the sentence for murder is imprisonment (detention) for life and an offender will remain subject to the sentence for the rest of his/her life.
- 6.2 The decision whether to release the offender from custody during this sentence will be taken by the Parole Board which will consider whether it is safe to release the offender on licence. The Court that imposes the sentence is required by law to set a minimum term that has to be served before the Parole Board may start to consider whether to authorise release on licence. If an offender is released, the licence continues for the rest of the offender's life and recall to prison is possible at any time.

¹⁰ see section B above on page 4

- 6.3 Uniquely, Parliament has set starting points¹¹ (based on the circumstances of the killing) which a Court will apply when it fixes the minimum term. Parliament has further prescribed that, having identified the appropriate starting point, the Court must then consider whether to increase or reduce it in the light of aggravating or mitigating factors, some of which are listed in statute. Finally, Parliament specifically provides¹² that the obligation to have regard to any guilty plea applies to the fixing of the minimum term, by making the same statutory provisions that apply to other offences apply to murder without limiting the courts discretion (as it did with other sentences under the Powers of Criminal Courts (Sentencing) Act 2000).
- 6.4 There are important differences between the usual fixed term sentence and the minimum term set following the imposition of the mandatory life sentence for murder. The most significant of these, from the sentencer's point of view, is that a reduction for a plea of guilty in the case of murder will have double the effect on time served in custody when compared with a determinate sentence. This is because a determinate sentence will provide (in most circumstances) for the release of the offender¹³ on licence half way through the total sentence whereas in the case of murder a minimum term is the period in custody before consideration is given by the Parole Board to whether release is appropriate.
- 6.5 Given this difference, the special characteristic of the offence of murder and the unique statutory provision of starting points, careful consideration will need to be given to the extent of any reduction and to the need to ensure that the minimum term properly reflects the seriousness of the offence. Whilst the general principles continue to apply (both that a guilty plea should be encouraged and that the extent of any reduction should reduce if the indication of plea is later than the first reasonable opportunity), the process of determining the level of reduction will be different.
- 6.6 **APPROACH**
1. Where a Court determines that there should be a whole life minimum term, there will be no reduction for a guilty plea.
 2. In other circumstances,
 - (a) the Court will weigh carefully the overall length of the minimum term taking into account other reductions for which the offender may be eligible so as to avoid a combination leading to an inappropriately short sentence;
 - (b) where it is appropriate to reduce the minimum term having regard to a plea of guilty, the reduction will not exceed one sixth and will never exceed 5 years;
 - (c) the sliding scale will apply so that, where it is appropriate to reduce the minimum term on account of a guilty plea, the recommended reduction (one sixth or five years whichever is the less) is only available where there has been an indication of willingness to plead guilty at the first reasonable opportunity, with a recommended 5% for a late guilty plea;

11 Criminal Justice Act 2003, schedule 21

12 Criminal Justice Act 2003, schedule 1 para 12(c)

13 In accordance with the provisions of the Criminal Justice Act 2003

- (d) the Court should then review the sentence to ensure that the minimum term accurately reflects the seriousness of the offence taking account of the statutory starting point, all aggravating and mitigating factors and any guilty plea entered.

G. Application to other Indeterminate Sentences

- 7.1 There are other circumstances in which an indeterminate sentence will be imposed. This may be a discretionary life sentence or imprisonment for public protection.
- 7.2 As with the mandatory life sentence imposed following conviction for murder, the Court will be obliged to fix a minimum term to be served before the Parole Board is able to consider whether the offender can be safely released.
- 7.3 However, the process by which that minimum term is fixed is different from that followed in relation to the mandatory life sentence and requires the Court first to determine what the equivalent determinate sentence would have been. Accordingly, the approach to the calculation of the reduction for any guilty plea should follow the process and scale adopted in relation to determinate sentences, as set out in section D above.

FIRST REASONABLE OPPORTUNITY

1. The critical time for determining the reduction for a guilty plea is the first reasonable opportunity for the defendant to have indicated a willingness to plead guilty. This opportunity will vary with a wide range of factors and the Court will need to make a judgement on the particular facts of the case before it.
2. The key principle is that the purpose of giving a reduction is to recognise the benefits that come from a guilty plea not only for those directly involved in the case in question but also in enabling Courts more quickly to deal with other outstanding cases.
3. This Annex seeks to help Courts to adopt a consistent approach by giving examples of circumstances where a determination will have to be made:
 - (a) the first reasonable opportunity may be the first time that a defendant appears before the court and has the opportunity to plead guilty;
 - (b) but the court may consider that it would be reasonable to have expected an indication of willingness even earlier, perhaps whilst under interview;

Note: For a) and b) to apply, the Court will need to be satisfied that the defendant (and any legal adviser) would have had sufficient information about the allegations

- (c) where an offence triable either way is committed to the Crown Court for trial and the defendant pleads guilty at the first hearing in that Court, the reduction will be less than if there had been an indication of a guilty plea given to the magistrates' court (recommended reduction of one third) but more than if the plea had been entered after a trial date had been set (recommended reduction of one quarter), and is likely to be in the region of 30%;
 - (d) where an offence is triable only on indictment, it may well be that the first reasonable opportunity would have been during the police station stage; where that is not the case, the first reasonable opportunity is likely to be at the first hearing in the Crown Court;
 - (e) where a defendant is convicted after pleading guilty to an alternative (lesser) charge to that to which he/she had originally pleaded not guilty, the extent of any reduction will be determined by the stage at which the defendant first formally indicated to the court willingness to plead guilty to the lesser charge, and the reason why that lesser charge was proceeded with in preference to the original charge.

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