

CONSULTATION STAGE RESOURCE ASSESSMENT: REDUCTION IN SENTENCE FOR A GUILTY PLEA

1 INTRODUCTION

1.1 This document accompanies the consultation on the draft *reduction in sentence for a guilty plea* guideline and should be read alongside that document. It fulfils the Council's statutory duty, under section 127 of the Coroners and Justice Act 2009, to publish a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services. The main focus of this assessment is on estimating the impact of the proposed guideline on prison places.

2 RATIONALE AND OBJECTIVES FOR THE NEW GUIDELINE

2.1 The Sentencing Council has a statutory duty under section 120(3) of the Coroners and Justice Act 2009 to prepare "*sentencing guidelines about the discharge of a court's duty under section 144 of the Criminal Justice Act 2003 (c. 44) (reduction in sentence for guilty pleas)*". In producing this guideline the Council wishes to promote a clear, fair and consistent approach to the way guilty plea reductions are applied in all courts in England and Wales.

2.2 The guideline aims to incentivise offenders who are guilty to plead guilty as early in the court process as possible, by only giving the maximum reduction in sentence to those who do so. The goal is to influence the timing of guilty pleas, but not to influence the rate of guilty pleas entered. If the guideline is successful, the proportion of pleas entered at the earliest stage of the court process will increase; the percentage of guilty pleas entered late in the process will decline. However, the overall proportion of cases resolved through a guilty plea should remain largely unchanged.

2.3 The draft guideline is more prescriptive than the existing guideline. In particular, under the draft guideline to receive the maximum one-third reduction for an either-way offence, a guilty plea must be entered in the magistrates' court, whereas currently a plea at the Crown Court will often receive the maximum reduction. This means that if offenders do not bring forward the timing of their pleas in response to the draft guideline, many will receive a lower reduction, resulting in longer prison terms being served and consequently greater costs in terms of providing prison places. However, if the draft guideline achieves its aim of encouraging earlier pleas, then some offenders will receive the same reduction and others will receive a higher reduction thus reducing any additional costs.

2.4 Encouraging more offenders to plead guilty at an earlier stage of the process will have benefits, to victims and witnesses, and across the whole criminal justice system. Some of these benefits will be monetary and others will be non-financial. The earlier a plea is entered the sooner victims and witnesses can be reassured that the offender has accepted responsibility for the offence and that they will not have to go to court. There will be resource savings for the police, the Crown Prosecution Service, the Legal Aid Agency and Her Majesty's Courts and Tribunal Service. These savings in turn benefit victims and witnesses in that they allow more time and resources to be concentrated on investigating and prosecuting other cases.

3 SENTENCING PRACTICE AND GUILTY PLEAS

3.1 In 2014, 1,215,695 offenders were sentenced in all criminal courts in England and Wales.¹ Of these, 86,297 were in the Crown Court and 1,129,398 in magistrates' courts. Of those offenders sentenced in the Crown Court, 90 per cent entered a guilty plea at some point in the proceedings.²

3.2 The Council has been able to use detailed data from the Crown Court Sentencing Survey³ to establish when pleas were entered in the Crown Court and the level of reduction made in 2014. It should be noted that the timings of pleas and levels of reductions are already likely to have changed since 2014 as a result of initiatives such as Better Case Management. However, 2014 is the latest data available on which to base an assessment.

3.3 To estimate the resource effect of a guilty plea guideline, an assessment is required of how it will affect the levels of reductions applied and therefore the length of custodial sentences imposed. This guideline presents a particular challenge for the Council: in contrast to offence specific guidelines, which are intended solely to influence sentencers' behaviour, it is also intended to affect the behaviour of offenders and their legal representatives. This behaviour is very difficult to predict given the limited research in this area.

3.4 It should be noted that the assessment takes no account of any exceptions to the normal application of the guideline – it is assumed that the appropriate reduction for the stage of plea would be applied in all cases and that none of the exceptions would apply.⁴ In addition, as with any Council resource assessment, the assessment is based on sentencers following the draft guideline at all times.

¹ For details of data collection and methodology please see: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2014>

² Crown Court Sentencing Survey 2014 (<https://www.sentencingcouncil.org.uk/wp-content/uploads/CCSS-Annual-2014.pdf>) p6.

³ From 1st October 2010 to 31st March 2015 the Council conducted the Crown Court Sentencing Survey (CCSS) which collected data on sentencing practice in the Crown Court. This data has been matched with the Ministry of Justice Court Proceedings Database (CPD).

⁴ The draft guideline does provide for a number of exceptions to the levels awarded, the impact of which have not been estimated as part of this assessment.

3.5 The assessment also does not take into account any potential changes to sentence levels prior to the application of the guilty plea reduction (such as treating co-operation with police as mitigation) again, because it is impossible to make any meaningful assessment.

3.6 Any changes in sentencing practice which may have occurred whether or not a new guideline was introduced (such as those arising through the implementation of the Better Case Management initiative) are also not included.

4 RESOURCE IMPACT

4.1 Due to the uncertainty about how offenders might respond to the new guideline, the Council decided to explore two different scenarios based on assumptions about offenders' behaviour, in order to give a range within which the actual estimate may fall.

- **Scenario one:** the optimistic scenario - assumes that more offenders will plead at the first stage of the proceedings than in 2014. The rationale is that this will now be the only stage they will receive the maximum reduction and so they will be incentivised to enter an earlier plea.
- **Scenario two:** the pessimistic scenario - assumes that some offenders, having missed the full discount will now be more likely to go to trial and therefore receive no discount and a longer sentence.

4.2 In every case in which a plea is entered and an offender is sentenced to immediate custody, the guilty plea reduction has an impact on the sentence length, and so any small change to average sentence lengths may have a very significant cumulative effect on the overall system.⁵

4.3 Using the scenarios, it is estimated that the draft guideline would increase the number of prison places required by approximately 500 under the optimistic scenario and by 2,000 under the pessimistic scenario, by 2017/18. This equates to a cost of between £20 million⁶ to £50 million in 2017/18, across both magistrates' and Crown Court sentences. The increase in prison places under the optimistic scenario results from both fewer offenders getting the maximum reduction and the reduction in discount from 25 to 20 per cent for pleas entered after the first stage of proceedings.

4.4 Ultimately, the guideline could result in the requirement for between 1,000 (optimistic) and 4,000 (pessimistic) extra prison places each year, at a cost of between £30 to £100 million.

⁵ In 2014 there were just over 90,000 prison sentences of immediate custody with an average custodial sentence length of 15.6 months:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/428932/criminal-justice-statistics-december-2014.pdf

⁶ All costs quoted are rounded to nearest £10 million.

4.5 However, these costs reflect the increase in prison places only. Table 1 presents the resource impact under the two scenarios, and includes the savings and costs to prison, probation and the courts. Under the optimistic scenario savings would be generated in the short term, as offenders would plead earlier, reducing court hearing times.

4.6 In the long term, under both scenarios, a cost is incurred. This is because on average sentence lengths will increase, resulting in an increase in the requirement for prison places.

Table 1: Estimated nominal total resource costs excluding capital (savings are shown as negative) by financial year for the optimistic and pessimistic scenarios, £millions

	15/16	16/17	17/18	Annual cost over time ⁷
Optimistic	£0	-£20	-£10	£10
Pessimistic	£0	£20	£50	£120

4.7 The costs quoted exclude capital build costs and overheads. On this basis, a year in custody is assumed to cost an average of around £25,000⁸ in resource terms, including local maintenance, but excluding any capital build expenditure and overheads that may be necessary.⁹

4.8 As well as savings to the prison, probation and court service, where an offender pleads earlier, there would also be some savings to the Crown Prosecution Service, police and Legal Aid.

4.9 It is not possible to summarise accurately these wider system savings, as not all of the costs and savings are available to give a total picture. However, it is possible to provide an indication of where savings would be accrued. For example, the amount of work required to be undertaken by both the police and the Crown Prosecution Service to prepare the case file would reduce. The levels of remuneration paid by the Legal Aid Agency would reduce. However, under the pessimistic scenario where an offender entered a plea much later in the process than at present, this would increase costs when compared to current levels.

4.10 A positive change in offender behaviour would also have a significant non-monetary benefit, in terms of the relief and reassurance felt by victims and witnesses.

⁷ These are the costs once steady state is reached.

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367551/cost-per-place-and-prisoner-2013-14-summary.pdf

⁹ It should be noted that this is a lower figure than previously used in Sentencing Council resource assessments (£30,000) but this aligns with the new estimates used across the Ministry of Justice (MoJ).

4.11 If there were no positive change in offender behaviour, not only would the wider system savings not be realised, but also the significant investment by the police and the Crown Prosecution Service in developing programmes to ensure provision of relevant material in a timely manner to enable a guilty plea to be entered at the first occasion¹⁰ would be undermined. As the purpose of the guideline is to change offender behaviour, failure to introduce the guideline may risk undermining these initiatives. Although it is too early to have firm evidence, early indications are that these initiatives, alongside related judicial initiatives, are having some positive impact on the stage at which pleas are being entered.¹¹

5 CONCLUSION

5.1 The aim of calculating the impact of the guideline under both an optimistic and pessimistic scenario is to show both the potential savings and costs which may be incurred as a result of the guideline.

5.2 While there is considerable uncertainty around the exact resource implications, even where some offenders are incentivised to plead earlier, it is still likely that the guideline will result in a requirement for additional prison places.

5.3 In practice, the costs may be mitigated by the fact that the timings of guilty pleas will already have changed since 2014 by the time the guideline takes effect (which would not be before 2017), with practice more in line with the draft guideline than was the case in 2014. The cost of the prison places will also be partly offset by savings in the wider system, but they will almost certainly not negate this cost completely.

6 RISKS

6.1 Since the application of a sentence reduction for a guilty plea has the potential to apply to all sentences passed in the courts, small changes to offenders' behaviour and to practice by sentencers in applying the *reduction for a guilty plea* guideline have the potential to have substantial resource implications, depending on how these behavioural changes manifest themselves.

6.2 It is not possible accurately to predict how offenders' behaviour or sentencing behaviour will change as a result of the guideline, and hence there

¹⁰ For example, the development of the Transforming Summary Justice programme, Early Guilty Plea and Better Case Management Initiatives and recommendations in the President of the Queen's Bench Division's Review of Efficiency in Criminal Proceedings - which are now being built 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. In many cases, the expectation is that the provision of relevant material in a timely manner will enable a just guilty plea to be entered at the first occasion.

¹¹ From Crown Prosecution Service data, based on Crown Court data.

is considerable uncertainty surrounding the resource implications of the proposed guideline.

6.3 In light of this, it will be important for the Council to conduct early work to assess any consequences of the guideline once it is in force. Prior to the guideline coming into force, the Council will put in place a group comprising representatives of the Sentencing Council, the police, the Crown Prosecution Service, Her Majesty's Courts and Tribunal Service, Victim Support and the Ministry of Justice, to help steer work to collect a range of information that will feed into an assessment of the implementation and impact of the guideline in 2017. This may include, for example, interviews with sentencers and other criminal justice professionals, analysis of transcripts of sentencing remarks, case file analysis, and analysis of data from other criminal justice agencies. The group will review the findings from this data collection and advise the Council if it suggests the need for a review of the guideline.