

Research to support the development of a guideline for reduction in sentence for a guilty plea

Summary

- This paper summarises four stages of research that were carried out during the development of the Sentencing Council guideline for reduction in sentence for a guilty plea, between 2011 and 2016.
- The **first stage of research** consisted of a mixed methods study into attitudes towards sentence reduction for a guilty plea, carried out with the public, victims and witnesses of crime, and a small group of offenders.
- The research showed that there was limited understanding of, and confidence in, the criminal justice system amongst the public, but that those who had a better understanding of the system and how it worked were more likely to express confidence in the system and in sentencing policies.
- Whilst there was not universal support for the principle of sentence reduction for a guilty plea amongst victims and witnesses, perceptions were generally more positive than amongst the general public. Victims of more serious crimes were particularly receptive to the benefits of not having to attend court, having been fearful about elements of the process, such as cross-examination and facing the defendant in court.
- Amongst the small group of offenders interviewed, the main factor determining plea was found to be their perception of the likelihood of conviction at trial, the tipping point being the realisation that they were more likely to be found guilty than not guilty. The weight of the evidence against them and their representatives' legal advice on this point were central to this judgement.
- For these offenders, the reduction acted as an incentive to enter a guilty plea, but only at the juncture at which it became clear conviction was likely. These offenders tended to be satisfied with a maximum reduction of one third, and the research found little evidence that increasing the reduction to more than a third would be likely to generate a greater number of earlier pleas.
- The **second stage of research** consisted of qualitative interviews and group discussions with magistrates and judges, focusing on their current practice when giving reductions.
- Whilst magistrates seemed to neither encourage nor discourage early guilty pleas, a number of Crown Court judges and district judges gave the impression of proactively encouraging them by, for example, emphasising to the defendant that an early guilty plea may make a difference to the type of sentence and duration of it.
- Judges gave reasons for giving a greater reduction in sentence than might be expected for the stage in the proceedings. For example, they might consider a relatively late plea to have been made at the first reasonable opportunity in cases where the charge has changed or there has been a late serving of evidence. Judges might also give greater reductions to avoid

particularly long and complex trials, to spare witnesses in sex offence cases, and to encourage pleas in cases where there is more than one defendant.

- Judges appeared to be less disposed to give lesser reductions relative to stage of plea than greater ones. One reason that emerged for withholding the reduction was that in some cases the evidence is overwhelming and hence the defendant arguably has little choice but to plead guilty. However, in an exercise in which the researchers asked the participants to sentence a hypothetical case in which the defendant was caught red handed, no sentencer gave less than a 25 per cent reduction and most gave the full third.
- The **third stage** of research, again carried out with magistrates and judges, looked specifically at their understanding of the draft guideline with a view to improving its clarity and ease of use. Small changes were made to the format and wording of the draft guideline as a result of this work.
- The **final stage** of research was a small qualitative exercise with defence representatives. The guideline met with a mixed response from this group. A few felt that the guideline gave greater clarity and certainty around the amount of reduction available at a given stage in proceedings, and felt that the guideline would have the generally beneficial effect of bringing guilty pleas forward.
- However, most were opposed to elements of the guideline as it then stood, voicing both objections in principle and practical problems with its implementation. In particular, there was a sense that the guideline was placing undue pressure to plead at a very early stage in proceedings, which may be unfair in certain cases.
- The requirement in either way cases to plead in the magistrates' court to receive the full one third reduction received the most opposition, for several reasons, chief amongst these being the frequent inadequacy of initial details of the prosecution case (the information available at this stage, upon which a defendant would need to decide on plea).
- Another area of concern for defence representatives was the drop from a full one-third reduction at the first stage of proceedings, to 20 per cent thereafter, which they felt was overly steep and might induce more defendants to take their cases to trial.
- By contrast, there were elements of the guideline that were welcomed: in particular, the clear statement that the appropriate reduction should be given irrespective of the weight of evidence against a defendant was generally seen as a positive change, which would result in earlier pleas in appropriate cases.

Introduction

To support the development of a guideline for reduction in sentence for a guilty plea, between 2011 and 2016 the Sentencing Council undertook several pieces of research to inform different phases of guideline development. These were:

- Research into public attitudes to guilty plea sentence reductions, including the attitudes of victims, witnesses and offenders: *phase one: research on public attitudes to sentence reduction for a guilty plea.*¹
- Qualitative work to inform the early development of a draft guideline, focusing on sentencers' current practice² when giving reductions: *phase two: research on judges' and magistrates' attitudes towards reduction in sentence for a guilty plea and their current practice.*
- Qualitative work to ensure the clarity of the draft guideline: *phase three: research on judges' and magistrates' understanding of the draft guideline.*
- Qualitative work to explore defence representatives' views of the draft guideline, with a view to ensuring that there were no practical barriers to implementation and gaining any insights into how the guideline might affect defendant behaviour: *Phase four: research with defence representatives.*

Background

Guideline development

The Council first began to scope out the development of a new guideline on reduction in sentence for a guilty plea, to replace the Sentencing Guidelines Council (SGC) guideline, in 2011.³ Work was paused at various points during the period 2011 to 2016 because there were ongoing changes in the criminal justice system which may have had an influence the decision whether and when to plead guilty. These changes included the Transforming Summary Justice and Better Case Management programmes.⁴

By producing a new, more concise guideline, the Council aimed to improve clarity and consistency in the application of guilty plea reductions. The Council intended that the decision-making process in the proposed guideline should provide a clearer structure, not only for sentencers, but also to provide more certainty for offenders and their advisers to encourage early pleas, and to enable victims, witnesses and the public to have a better understanding of how a final sentence has been reached.

The key principle underpinning reduction in sentence for a guilty plea is that although an accused is entitled *not* to admit the offence and put the prosecution to proof of its case, an acceptance of guilt: normally reduces the impact of crime upon victims; saves victims and witnesses from having to

¹ This research was carried out by IpsosMori. The full research report for this phase of work is available at: <http://www.sentencingcouncil.org.uk/publications/item/attitudes-to-guilty-plea-sentence-reductions-research-report/> -

² Current practice as at 2013.

³ The SGC guideline came into force in 2007 and was the guideline which was in force during all the phases of this research; it is available at: <http://tna.europarchive.org/20100519200657/http://www.sentencing-guidelines.gov.uk/guidelines/council/final.html>

⁴ For more details on these initiatives in the context of guideline development, see Section 1 of the consultation document: <http://www.sentencingcouncil.org.uk/wp-content/uploads/Reduction-in-sentence-for-a-guilty-plea-consultation-paper-web.pdf>

testify; is in the public interest in that it saves public time and money on investigations and trials; and produces greater benefits the earlier the plea is made.

In both draft and finalised form, the guideline contains sections on:

- the applicability of the guideline; key principles underpinning reduction in sentence for a guilty plea (sections A and B);
- a staged approach to determining and stating in court the level of reduction within the context of determining the sentence (section C);
- instructions on the levels of reduction to be given for a plea at various stages in the court proceedings (section D);
- instructions on how to apply the reduction (e.g. by imposing one type of sentence rather than another) (section E);
- exceptions that may lead a court to deviate from the general instructions on levels of reduction in accordance with stage in proceedings (section F); and,
- a section on the special case of mandatory life sentences for murder (section G).

Guideline development is an iterative process involving research, drafting and re-drafting, Council discussion and decision-making, and consultation. Although this basic guideline structure held constant throughout the guideline's development, the precise content and wording were changed and refined across the various iterations as a result of these processes.

The use of research evidence in the development of the guideline

In developing the guideline the Council and its officials drew upon an evidence base which included: consideration of case law and current practice; a review of the academic literature; discussions with stakeholders and experts in the area; statistical analysis of Crown Court Sentencing Survey⁵ data; and original research with the public, judges and magistrates, and defence representatives.

This research paper summarises the four phases of original research that were undertaken and describes how the research helped to shape guideline development at each stage. The first phase of research aimed to give the Council an understanding of public, victim and witness attitudes to this topic and some sense of how the guilty plea reduction influences the defendant's decision to plead. The second phase explored the status quo in terms of judges' and magistrates' sentencing practice and their attitudes towards the reduction, as a starting point for drawing up an initial draft guideline. The third phase aimed to establish how easy the draft guideline was to understand, with a view to refining the wording to make it as clear and unambiguous as possible for users to interpret and implement. The final stage focused on defence representatives (as important users of a guilty plea guideline and mediators of the guideline's influence on defendants) to establish their views on the guideline and how it might work in practice.

Approach

Phase one: research on public attitudes to reduction in sentence for a guilty plea

This initial phase of research was a mixed methods project exploring attitudes towards guilty plea sentence reductions amongst the public in general and amongst groups who are particularly important in the context of the criminal justice system, namely victims and witnesses of crime, and

⁵ A survey of sentencing across all Crown Courts, which ran from 2010 to 2015.

offenders.⁶ The research consisted of the following fieldwork, undertaken between October and December 2010:

- a face-to-face survey with a representative sample of the public (987 interviews conducted across England and Wales with respondents aged 15 and over), comprising 20 questions placed on Ipsos Mori's face-to-face omnibus survey;⁷
- five extended group discussions with members of the general public (each lasting approximately two and a half hours, held in the North, South, East and West of England, and in Wales);
- thirty-five in-depth interviews with victims and witnesses (30 of which were with victims and witnesses of less serious offences, and five with those involved in more serious offences); and,
- fifteen in-depth interviews with offenders (of which 12 were in custody at the time and three were undertaking sentences in the community, two having previously served time in custody for that offence).

This was a preliminary piece of research which aimed to give the Council a good understanding of key groups' opinions and attitudes towards the guilty plea reduction, in particular, amongst the public in general and victims and witnesses: the circumstances in which a reduction should be available, and at what stage; and the extent of any benefits to victims and witnesses; and, amongst both of these groups *and also* offenders: the level of reduction that should be offered and the perceived impact of a guilty plea entered at different stages in the proceedings.

Phase two: research on judges' and magistrates' attitudes towards reduction in sentence for a guilty plea and their current practice

Qualitative research was undertaken in June and July 2013, consisting of: semi-structured, face-to-face interviews⁸ with eight magistrates, 14 Crown Court judges (four of these were recorders)⁹ and two district judges; plus two group discussions¹⁰ with Crown Court judges in the Midlands region (the first involving 11 circuit judges and the second, four Resident Judges).¹¹ This work supplemented a small content analysis of 53 transcripts of judges' sentencing remarks undertaken by Office of the Sentencing Council researchers in May 2013.¹²

⁶ Recruitment for the group discussions with members of the public was carried out in-street. Victims and witnesses were recruited through a database of participants in a survey of victims and witnesses carried out by Ipsos Mori and through Victim Support. Offenders were recruited via the prison and probation system.

⁷ The questions on the survey covered general attitudes to the criminal justice system and sentencing as well as awareness of guilty plea sentence reductions. It examined attitudes towards levels of reduction, possible justifications and rationales for reductions and circumstances in which reductions may be given. Several case studies were included to help understand situational factors and make the subject matter less abstract.

⁸ Semi-structured questionnaires were used in all the interviews with sentencers and defence representatives that are described in this paper. Interviews lasted between 45 minutes and an hour, unless otherwise stated.

⁹ A recorder is a part time judge.

¹⁰ Lasting approximately one and a half hours.

¹¹ Magistrates, district judges and Crown Court judges who were interviewed were recruited from a database of volunteers held by the Office of the Sentencing Council. Crown Court judges for the group discussions were recruited via the Resident Judges of the participating courts.

¹² Content analysis of sentencing remark transcripts involves extracting and coding key information in the text and then analysing this data to help understand patterns in sentencing e.g. factors commonly taken into account when sentencing an offence of a given type and level of seriousness. In this case, the analysis looked at the reasons why judges commonly give reductions of various levels, including the reasons why they sometimes give higher or lower reductions than those specified in the SGC guideline.

Research focused on the factors taken into consideration when deciding on a particular reduction, as well as circumstances in which sentencers might exercise flexibility to give reductions either higher or lower than the guideline recommendations. Those interviewed were also asked to consider two offence scenarios and indicate what type of reduction they might give; slight variations to the circumstances or stage of plea were then introduced to establish the influence of these factors on reduction for a guilty plea.

Phase three: research on judges' and magistrates' understanding of the draft guideline

This phase of research, conducted in March 2015, consisted of a total of 20 in-depth interviews, held with 10 Crown Court judges, three recorders, one district judge and six magistrates. Participants were spread across courts and across the country. The discussion focused largely on sentencers' understanding of the text (so questioning was along the lines of, 'is anything unclear or ambiguous in this section?' and 'please can you summarise this section in your own words'). Six hypothetical sentencing scenarios, designed to test various sets of circumstances relating to guilty plea, were also used to help examine whether the draft guideline was being interpreted as expected.¹³

Phase four: research with defence representatives

In March 2016, concurrent with the consultation on the draft guideline, 21 in-depth interviews were carried out with defence representatives (13 with barristers and 8 with solicitors). Interviews were either face-to-face or by telephone, lasting between 30 and 60 minutes. The sample was characterised by representatives who worked on: a mix of Crown and magistrates' court work, with a bias towards the Crown Court; a mix of private practice and legal aid work; a full range of types of case, with a bias towards more serious crime.

This phase of research focused on understanding plea behaviour from the point of view of the defendant and their representative, and on exploring defence representatives' views on the draft guideline, in particular, its workability. It also explored their assessments of the likely effect of the draft guideline on defendants' plea behaviour.¹⁴

Limitations of the research

It must be borne in mind that much of this work is qualitative in nature, focusing on the detailed opinions of a relatively small number of the populations of interest (in this case, victims and witnesses, offenders, judges, magistrates and defence representatives). As with all qualitative research, sample sizes were small and participants were often self-selecting, which means that the findings from the qualitative work cannot be taken as representative of each population. Rather, they merely provide insights into the range of opinions each group may hold. In particular, phase one of the research included offenders, but it must be remembered that only 15 offenders were interviewed (of whom only three were serving sentences in the community).

¹³ Magistrates, district judges and Crown Court judges were recruited from a database of volunteers held by the Office of the Sentencing Council.

¹⁴ Defence representatives were recruited via a call for volunteers disseminated via the Law Society and Criminal Bar Association, shortly before the guideline consultation period.

Summary of findings from each phase of research

1. Phase one: research on public attitudes to reduction in sentence for a guilty plea

1.1 General attitudes to the criminal justice system, towards sentencing, and guilty plea reductions

The face-to-face survey of the public showed mixed levels of public confidence in the criminal justice system, with only five per cent responding that were very confident in the fairness of the system, a further 43 per cent saying fairly confident, and 50 per cent not confident. Sixty five per cent felt that sentencing was too lenient, with members of the public in the group discussions feeling that the system more often worked in favour of the defendant rather than the victim. Against this backdrop, only five per cent felt that sentencing should be more lenient in all cases where a guilty plea is entered, with a further 16 per cent favouring this in most cases and 45 per cent in some. When initially thinking about the principle of sentence reduction for a guilty plea in the group discussions, the view was often that the offender is the main beneficiary of this policy, with little awareness of the wider benefits to the system and to witnesses and victims.

However, there was some evidence that those who had a better understanding of the justice system and how it works were more likely to report confidence in both the system and sentencing policies. In particular, victims and witnesses in the discussion groups generally tended to have more faith in the system and a greater appreciation of the complexities of sentencing. Whilst there was not universal support for the principle of sentence reduction for a guilty plea amongst this group, perceptions were generally more positive than amongst the general public. Victims of more serious crimes were particularly attuned to the benefits of not having to attend court, having been fearful about elements of the process, such as cross-examination, facing the defendant in court, and the potential for retribution from the defendant's associates present at the court.

Offenders were positive about the opportunity to receive a reduced sentence because of guilty plea and suggested that without such an incentive, they would be very unlikely to enter a guilty plea early in the process. However, understanding of how the practice currently worked was limited. There was a strong sense that the level of reduction was governed by the judge's discretion, and little understanding of the existence of set levels, dependent on stage of plea, apart from the key level of one third.

1.2 Attitudes towards the detail of guilty plea sentence reductions: the general public and victims and witnesses

Whilst the general public perceived reductions in sentence for a guilty plea to be motivated principally by the saving of time (31 per cent) and costs (31 per cent) only two per cent thought the reason was to save victims and witnesses from giving evidence in court. However, 40 per cent felt the benefit to victims and witnesses *should be* the key justification. There was little public appetite for reductions over one third: asked about the appropriate level, 49 per cent of survey respondents said between nought and 10 per cent, with a further 36 per cent favouring a quarter or a third, and only seven per cent favouring reductions of more; asked whether the reduction should be increased from a third for a plea at the first opportunity, 58 per cent disagreed and 22 per cent agreed.

Whilst the attitudes of the members of the public in the group discussions tended to display a slight shift towards seeing the guilty plea reduction as more acceptable the more they heard and thought about it, discussion participants nevertheless resisted the idea of reductions in excess of a third, deeming this unacceptably high.

Whilst the public tended to feel that a scaled approach offered the defendant too many opportunities to plead, victims and witnesses were more positive, with some recognising that even a late plea on the day of trial would save them from having to give evidence.

Generally, amongst both the public and victims and witnesses there was greater acceptance of reductions for minor crimes or offences without an obvious victim, and lesser acceptance of reductions for serious offences like sexual offences and murder. Indeed, 68 per cent of the survey sample felt that those who have committed murder should not receive a reduction for a guilty plea. However, the researchers noted that the victims of more serious offences did not always echo the view that those who had inflicted serious harm should be excluded from any reduction, the reason often being their strong desire to avoid the court process.

1.3 Offender motivations for pleading guilty

The 15 interviews with offenders generated insights into their motivations for entering pleas and their views of the effectiveness of sentence reductions in prompting an early guilty plea, although the reader is reminded of the very small sample size of this particular group.

The main factor determining plea was found to be their perception of the likelihood of conviction at trial, the tipping point being the realisation that they were more likely to be found guilty than not guilty. The weight of the evidence against them and their representatives' legal advice on this point were pivotal to this judgement, and the position could shift in favour of entering a plea as the case progressed through the system. For these offenders, the reduction acted as an incentive to enter a guilty plea, but only at the juncture at which it became clear conviction was likely, the point at which their attention also shifted to length of sentence. These offenders tended to be satisfied with a maximum reduction of one third, which was felt to be substantial, and the research found little evidence that increasing the reduction to more than a third would be likely to generate a greater number of earlier pleas.

1.4 The influence of phase one research on the guideline

This early research provided the context for the Council's early decision-making on the draft guilty plea guideline, rather than directly influencing the formulation of the guidelines. Some decisions made by the Council on a point of principle may have been reinforced by these findings, including, for example, the retention of one third as the maximum reduction allowed by the guideline, and a key purpose of the guideline to create greater clarity and certainty, as well as consistency, around the level of reduction applicable at various stages in the court proceedings.

2. Phase two: research on judges' and magistrates' attitudes towards reduction in sentence for a guilty plea and their current practice

2.1 Sentencers' considerations when deciding the level of reduction

This stage of research focused wholly on current sentencing practice with regard to sentence reduction for guilty pleas. The timing of the plea was the key consideration for sentencers in determining the reduction, with a few Crown Court judges explicitly saying that timing was the *only* consideration, because the rationale behind the reduction is a '*pragmatic*' one (saving of court time and costs) and because the guidance indicates that remorse should be considered separately, under mitigation. Other factors in determining the reduction included the strength of the evidence (see below) vulnerability of victims and witnesses (see below) and wider changes in the system (such as the early guilty plea scheme).¹⁵ Some sentencers also spoke of sentencing in a more holistic way, wherein the reduction for guilty plea was incorporated into a more general judgement of what the fair and proportionate sentence should be, taking into consideration all the relevant factors of the case. In these cases, the actual size of the reduction was less clear.

¹⁵ Early guilty plea schemes run in Crown Courts to list for sentence cases where a guilty plea is anticipated.

Whilst magistrates seemed to neither encourage nor discourage early guilty pleas, some Crown Court judges and district judges gave the impression of proactively encouraging them. For example, at the Preliminary Hearing¹⁶ they may encourage a plea, via counsel, in a case where the defendant is maintaining innocence in the face of overwhelming evidence; they may probe the likelihood of a lesser charge, to which the defendant will plead guilty, being accepted; and they will emphasise that an early guilty plea may make a difference to the type of sentence and duration of it. However, one participant noted that it is important that defendants believe, *'we are not trying to confuse them or con them into doing something they shouldn't be doing'* (Crown Court Judge). Some judges also spoke about offering a 'credit'¹⁷ window', particularly in multi-handed trials, whereby defendants are told what reduction for plea will be offered for a defined period that fits with the timetable of the case, after which it expires.

2.2 High reductions in excess of guideline recommendations

The Sentencing Guidelines Council guilty plea guideline¹⁸ specified that a one third reduction should be given for a plea at the first reasonable opportunity (also known as the FRO), which at that time was usually on or before the Plea and Case Management Hearing, with a sliding scale of reductions relative to stage of plea thereafter. Data from the Crown Court Sentencing Survey at the time of this research indicated that Crown Court judges sometimes gave higher reductions than would be expected for the stage in the court proceedings.¹⁹ In partial explanation,²⁰ participants stated that they sometimes considered a late plea as the FRO, for example, when:

- there is a late change in charge and the defendant has pleaded guilty to that charge (although judges tried to avoid this by covering the issue of whether or not a lesser charge is acceptable to the prosecution at an early hearing);
- there is late service of evidence and the defendant has not had the chance to consider their plea in the light of that evidence until a relatively late stage in the proceedings: whilst some judges felt there was an argument to say that the defendant knows his own guilt irrespective of the evidence, others felt this was not always straightforward, in that he may know he did something, but not specifically the act he is accused of; and,
- the defendant is of low intelligence or has received inadequate advice and so would not be able to make an informed decision at an early stage, although this consideration was less frequently mentioned than the other two reasons.

There were also particular types of case that Crown Court and district judges felt were sometimes deserving of higher reductions for pleas made even beyond the FRO, and these included: serious sex offence cases, where the benefit was seen as not only sparing the victim from the traumatic experience of giving evidence, but also the psychological value of the victim's story being vindicated; domestic abuse cases, for similar reasons; long and expensive trials e.g. fraud or drugs trials, in

¹⁶ At the time of this research, the Preliminary Hearing was the first hearing in the Crown Court, in many cases.

¹⁷ Participants in this research, particularly judges and defence representatives, often referred to the guilty plea sentence reductions as credit for guilty plea. In this report, 'reduction' and 'credit' mean the same thing.

¹⁸ The SGC guideline specifies that the full third reduction should be given for a guilty plea entered at the point which the court deems to be the first reasonable opportunity.

¹⁹ See: <http://www.sentencingcouncil.org.uk/publications/item/crown-court-sentencing-survey-annual-publication-2014-full-report-2/>

²⁰ Other research undertaken around that time suggested that judges sometimes made data recording errors on guilty plea sentence reduction when filling out the CCSS forms, possibly because of the structure of that part of the form.

which time and cost savings would be maximised; multi-defendant cases, in which a plea from one defendant could have a domino effect in triggering pleas by other defendants; and cases where early admissions were made to police, where extra credit seemed to be given on occasions as a reward for moral or courageous behaviour (e.g. for an early admission made in the face of weak evidence).

2.3 Low reductions relative to stage of plea

Sentencers appeared to be less disposed to give lower reductions relative to stage of plea than higher ones. Reasons that emerged for doing so included cases where a judge felt that the defendant is 'playing the system' (e.g. a defendant who waits to see if the victim attends court before pleading) and cases where the evidence is overwhelming and hence the defendant arguably has little choice but to plead guilty. However, practice (in terms of a simulated sentencing exercise) did not necessarily follow theory: in one of the offence scenarios tested, the defendant was caught red handed, and even in these circumstances no sentencer gave less than a 25 per cent reduction and most gave the full third (even though the SGC guideline indicated that a reduction of 20 per cent may be appropriate for a defendant who pleads at the FRO where the evidence is overwhelming).

2.4 Guilty plea reductions for non-custodial sentences

Participants generally agreed that applying the reduction to a non-custodial sentence was less straightforward than for a custodial sentence. For all sentencers in this exercise, a guilty plea, either singly or with other factors, could make the difference between immediate custody and a suspended sentence, or custody and a community order. When asked, many Crown Court judges indicated that downgrading of the sentence would constitute the reduction, and that they would not then further reduce the number of unpaid work hours, for example, or the term of the suspended custody. A few, however, said they sometimes reduced the onerousness of the punitive element of the sentence as well, and one said he may actually increase it, to help highlight the seriousness of the offence. It was suggested that a new guideline should make the guidance on moving between types of sentence on the basis of plea clearer and more prominent.

2.5 The influence of phase two research on the guideline

This stage of research provided key information which formed the basis for the content of the new guideline. For some of this content, the Council elected to change existing practice as described in this research: for example, generous interpretations of the FRO was one of the factors that led the Council to link the maximum reduction to the first stage of the proceedings, specifying what this should be and offering only limited exemptions to this rule. In other areas of the guideline, existing practice as described here was followed: for example, the exceptions, although tightened in the new guideline, related to some of the factors that judges described as warranting relatively high credit relative to stage in proceedings, such as where there has been a change of charge or late serving of evidence. One or two parts of the guideline also directly reflect sentencers' requests for greater clarity: for example, the draft guideline contained a discrete section on moving from one type of sentence to another on the basis of plea.

3. Phase three: research on judges' and magistrates' understanding of the draft guideline

This phase of research focused in detail on how sentencers construed an early version of the draft guideline (see Appendix). Although the aim of the research was to help improve the clarity of the guideline, some of the judges also made some observations on its substantive content.

3.1 Findings relating to the wording of the guideline

Overall, sentencers had few problems understanding the guideline and when they sentenced scenarios using the draft, they rarely gave unexpected justifications or sentencing outcomes,

suggesting they mostly construed the guideline as intended. Only a few ambiguities or questions arose, the most notable of which were:

- In section B ('Key principles', which outlines the key benefits of the guilty plea),²¹ one judge and one magistrate both said they were not clear what the 'greater benefits' referred to were, over and above bullet points a. to c. (covering sparing victims and witnesses and saving resources), so they misconstrued this as *other* benefits not mentioned above rather than meaning that the benefits are greater the earlier the defendant pleads, as intended.
- In section C ('The approach', which outlines the process of how the guilty plea reduction should be applied)²² several sentencers thought that the 'steps' in applying the reduction were meant to correspond to those in the offence-specific guidelines. Therefore they were confused that Step 1 in the guilty plea guideline ('Determine the appropriate sentence for the offence(s) in accordance with any offence-specific guideline') condensed multiple steps in, say, the drug offences guideline.
- In section F1 (covering the exception in which further information or advice is necessary before the defendant can be expected to enter a plea)²³ some magistrates and judges failed to read the three bullet points as conditions that *all* needed to be met in order for the third reduction to be retained after the first stage of proceedings.

As a consequence of these observations, small changes were made to the draft of the guideline that was published for consultation. For example, in section C, the word 'steps' was changed to 'stages', and in section F1, the three conditions were preceded with the phrase, 'Where **all three** of the following apply'.

3.2 Findings relating to the content of the guideline

Although the principal point of this research was to test sentencers' understanding of the guideline, a few interview questions related to their opinion of it, and some sentencers also gave opinions spontaneously. These included:

- A resistance from some judges to treating either way and indictable only cases²⁴ differently, given that they arrive in the Crown Court via the same mechanism, and, in some courts, very quickly after the magistrates' court hearing, a period in which they felt no additional work is carried out by the Crown Prosecution Service. Fairness was also seen as a consideration in this respect: one judge said that because a particular case is an either way offence it is not necessarily less serious than an indictable only, using the example of a very serious theft compared to a low level robbery, implying he did not think it necessarily fair that the latter would be given a longer window for full credit than the former.
- Some general resistance to denying either way cases full credit at the first appearance in the Crown Court, an occasion which judges felt tended to focus the defendant's mind on the seriousness of their circumstances, prompting pleas. However, one Crown Court judge noted that this change supported comments he had heard from district judges to the effect that they warn either way defendants that their credit will diminish if they fail to plead in the

²¹ See section B in the appendix.

²² See section C in the appendix.

²³ See section F1 in the appendix.

²⁴ An either way offence can be dealt with either in the magistrates' or Crown Court. An indictable only offence may only be dealt with in the Crown Court.

magistrates' court, a warning which is then undermined when they are given full credit in the Crown Court. The one district judge in the sample welcomed this change.

- An observation from some judges that whilst the wording in section E1 (on moving between types of sentence) was unambiguous, in practice they often suspend *and* reduce a sentence in response to a guilty plea, which would seem to contradict the guideline's instruction that the reduction can only be the transformation of the sentence. Two judges noted that if this was the case, the suspended sentence would be longer than the immediate custodial term *with* guilty plea would have been (had they imposed an immediate custodial sentence in the first instance), so if the offender breached their suspended sentence, the time served would be longer than if an immediate custodial sentence had been imposed originally.
- Discomfort from several magistrates who felt that being invited to give a modest additional reduction to the overall sentence in cases of more than one summary offence where consecutive sentences amount to six months felt like rewarding offenders for committing more offences.
- Mixed feelings around use of the requirement for the defendant to state 'what he knows he has done' at F1 (Further information or advice necessary before indicating plea), with some judges liking the phrase, but others finding it hard to envisage how this would be implemented or feeling that this was unrealistic, given that a solicitor is likely to have advised a client *not* to make admissions, and that if the client makes some admissions then chooses to plead not guilty this could damage his case.

There were also indications in this research that judges felt it would be challenging to change the status quo in guilty plea reductions. In particular, several judges said that as they or their colleagues tended to reach a sentence by evaluating the factors and the plea in the round, the new guideline might have a limited effect in practice. Others referred to their own or their colleagues' cultural resistance to, for example, no longer giving a reduction of one quarter for a plea at a Plea and Case Management Hearing.²⁵ One or two judges also implied that they did not think defendant behaviour would change easily – for example, several said that a reduction of one fifth may be so low that defendants will decide to 'take their chance' and go to trial, and one or two judges noted the importance of other factors in determining when defendants plead e.g. retention of privileges such as visiting rights whilst on remand.

However, when asked about the draft guideline compared to the current, sentencers almost universally said the draft is clearer, albeit more prescriptive.

4. Phase four: research with defence representatives

4.1 General findings

As per the earlier research with defendants (see section one) defence representatives stated that the strength of the evidence is the key factor determining plea behaviour, with other factors (including credit for guilty plea) as influential, but secondary to this. The reduction was sometimes thought to be more influential in more serious cases in which likely custodial sentences tended to be longer, or where a guilty plea might mean the difference between immediate custody and a lesser disposal. Most said that discussions regarding plea would begin at their first meeting with the client, and there was a sense that this was a very important series of conversations, with care and sensitivity often required because of the need to avoid putting pressure on a defendant to plead, or

²⁵ In accordance with the judgement in R v Caley and others (2012) EWCA Crim 2821.

because of the client's agitated state of mind. Participants also emphasised that it can take time to build trust with clients and that some clients need to be given time to reflect on the offence and their representative's advice properly before pleading.

Opinions about how consistent sentencers currently are in applying the reduction varied: whilst most felt that practice was fairly consistent, some felt there was appreciable variability, around, for example:

- pleas that come at a later stage in proceedings;
- some judges counting the police station as the first reasonable opportunity;
- some judges retaining the one third credit beyond the first opportunity;
- some judges rolling mitigation and guilty plea credit into one global reduction;
- some judges 'back calculating' from their desired end point ("*they have an idea where they want to get to...*" – solicitor).

4.2 Overall responses to the guideline

The guideline which was published for consultation²⁶ met with a mixed response from the defence solicitors and barristers who were interviewed. A few said that the guideline gave greater clarity and certainty around the amount of reduction available at a given stage in proceedings, and felt that the guideline would have the generally beneficial effect of bringing guilty pleas forward. However, most were opposed to elements of the guideline, voicing both objections in principle and practical problems with its implementation. The objections in principle to the changes set out in the guideline often emerged early in the interviews, in relation to the change to either way cases (the requirement in the consultation guideline for defendants in either way cases to plead in the magistrates' court in order to obtain the full third reduction) and the key exception at F1 (more information/advice needed). However in some cases their objections seemed to apply to the whole thrust of the guideline, permeating the whole interview.

The issues of principle were:

- that the guideline is creating a pressure to plead by bringing deadlines forward and lowering credit (e.g. by requiring a plea in the magistrates' court in either way cases and by lowering credit from 25 to 20 per cent for a plea after the first stage in the proceedings);
- the guideline is prioritising speed and cost saving over fair and proper justice, because the new proposals will not allow defence representatives the opportunity and time they need in order to give proper advice on which a client can make an informed decision;
- elements of the guideline, such as the exception at F1 as then drafted, are undermining the prosecution's duty to prove its case;
- either way cases can be very serious, deserving of time to consider plea in the same way as indictable only cases;
- the idea of what 'he knows he has done' is faulty: the defendant does not always know what he has done (e.g. because he was drunk, or the case is complex, as per multiple counts in a historical sex abuse case), and this downplays the strength of the evidence and role of a lawyer's advice on points of law; and,
- there are equality issues: the guideline will disadvantage those who justifiably need time and careful handling to reach a decision, including: some young defendants; those with a low IQ

²⁶ The guideline which was published for consultation is available at:
<http://www.sentencingcouncil.org.uk/wp-content/uploads/Reduction-in-sentence-for-a-guilty-plea-Draft-guideline.pdf>

or learning problems; defendants with poor English language skills; and clients in custody, who may not be seen by their representatives in time to meet the various deadlines.

4.3 Issues with the content of the draft guideline

Most participants did not agree with the requirement for defendants in either way cases to plead in the magistrates' court in order to receive the full reduction. As well as objecting in principle, they saw practical problems. The most frequently mentioned issue was the inadequacy of the initial disclosure (the IDPC), which, they felt, frequently contains insufficient information on which to base a plea. They also said that important evidence is often outstanding at the first hearing (e.g. CCTV evidence or full witness statements, or even just accurate summaries of witness statements).

Several participants also spoke of the structure of legal aid fees as a barrier to implementing obtaining a plea in the magistrates' court in either way cases: namely, if an either way case is tried in the magistrates' court and then committed for sentence to the Crown Court, the litigator's and advocate's fees are around a quarter of the fee that they would have received had the case been sent up for possible trial at the Crown Court²⁷ – the implication being it may be in the solicitor's and barrister's financial interest for a client to plead in the Crown Court – and a good, experienced barrister may not accept the work for a quarter of what they are used to being paid before this change to the guideline. One solicitor also noted that legal aid is means tested in the magistrates' court whereas if Crown Court rules apply, nearly everyone receives it, subject to a contribution, the implication being there may be a perverse incentive to elect to go to the Crown Court and receive legal aid (lessening the effect of the guideline) and/or, if more defendants do plead in the magistrates' court, more will be unrepresented at the sentencing hearing.

A number of representatives, particularly solicitors, also objected to this change on the basis of problems with the physical environment of the prison or the magistrates' court, where video equipment (on which clients in custody are shown CCTV evidence) may be faulty or lacking, and even basic facilities, such as a quiet place in a magistrates' court to advise, may be lacking too. This, they felt, may compromise their ability to communicate promptly and clearly with their client regarding their plea.

Most participants also disliked what they saw as an overly steep drop from a reduction of one third to a fifth after the first stage in proceedings. In particular, the marker of 14 days (after the first hearing) in the magistrates' and youth courts as the deadline for being given a reduction of a fifth was seen as unfeasibly soon (a similar objection was raised in relation to the 14 day deadline at F2). There was also quite a strong sense that lessening the reduction steeply in this way may well result in more defendants taking their cases to trial because a fifth was felt to be appreciably less generous, and less of a pull, than a quarter, as in the SGC guideline.

Participants agreed with the idea of a provision allowing the higher reductions to be extended if more information or advice is necessary before indicating plea, although a number felt that having evidence outstanding was the norm, rather than an exception. The requirement to fulfil all three conditions of F1 (he has admitted what he knows he has done; has had insufficient information to know he is guilty; and needs to see evidence or receive advice) was felt to set the threshold for a given situation to count as an exception unnecessarily high. In particular, participants felt that it was unlikely that a client would make early admissions in the face of insufficient information and that it is unfair to expect him to, and there is a lack of clarity over how he would do this, in terms of the

²⁷ Unless the defendant elects to be tried in the Crown Court (as opposed to jurisdiction being declined by the magistrates) and subsequently changes their plea to guilty, in which case a lower rate applies.

process or mechanism. They also wondered who would be the arbiter of whether or not the defence has sufficient information.

4.4 Areas of the guideline meeting with approval

However, not all the changes in the guideline met with criticism. In particular, most defence representatives welcomed the guideline's explicit guidance that early admissions at the police station should be given credit as mitigation (i.e. before credit for plea), feeling, for example, that this is fair, because most clients are not represented at the police station, and that it might stop a harsh judge from withholding the reduction on the basis of failure to make these very early admissions.

Likewise, almost all the participants in this phase of research supported the guideline's position that the levels of reduction should apply irrespective of the strength of the evidence, feeling that this direction adds clarity, making it easier to advise clients on what reduction they will receive. Several gave examples of cases of overwhelming evidence in which they felt they might have secured a guilty plea earlier had they been able to give assurances that full credit would apply.

4.5 Predicted effects of the guideline on defence representatives' advice, and on client behaviour

In terms of how the guideline might affect defence representatives' advice the picture was mixed, with some feeling that it would make little change and some saying their advice would be firmer, buoyed by the certainty of knowing what reduction would be given at which point in the proceedings, and emphasising the opportunity to take the sizeable reduction whilst it is on offer. However one barrister said she would add extra emphasis to her instruction not to plead if they have not done it, to lessen the risk of innocent defendants pleading to keep themselves out of prison (which she and several others felt was more of a risk with this more prescriptive guideline).

Similarly, there was a mixed picture of predictions around how the guideline might affect client behaviour. There was a clear sense that some clients are always going to plead guilty from the start, almost needing to confess their crime, whilst others are always going to contest their case, irrespective of reduction for plea. For the remaining majority that sit between these poles, some felt that pleas would be generally brought forward, as influenced by what one solicitor called "*the take it or leave it-ness of the first appearance plea*" and some felt that there would be more pleas in the magistrates' courts but that these could well be wrong or inappropriate, being based on fear and/or inadequate advice. As discussed previously, quite a number also felt that there would be fewer guilty pleas after the window for one third has passed because the steep reduction to a fifth thereafter feels appreciably lower than the the current level of one quarter.

4.6 The influence of phase four research on the definitive guideline

In conjunction with the consultation responses, this phase of research prompted the Council to introduce more flexibility into the guideline. In particular, the finalised guideline simplifies the instructions around determining the level of reduction, setting only the first stage of the proceedings as the point at which a third reduction will normally be given, and identifying this as the first hearing during which a plea or indication of plea is asked for. Whilst this gives parity to both indictable only and either way cases, it does of course mean that a plea or indication is normally required in the magistrates' court in both types of case.

Thereafter the maximum reduction after the first stage of proceedings was increased from a fifth to a quarter on the basis that a quarter feels appreciably higher than a fifth (even though in terms of its effect on time served in prison, the difference may be small), potentially lessening the risk of more defendants electing to go to trial because they were indifferent to what may be perceived as a low reduction.

Lastly, the exceptions at F1 and F2 were simplified and amalgamated to allow the sentencing court to evaluate whether or not it was unreasonable to expect a plea sooner, giving the court licence to give full credit if it is judged that the client's understanding or practical ability to plead was impaired by a circumstance beyond his control. It is made clear however, that this exception does not apply where the only reason for delaying a plea is to assess the strength of the prosecution case, meaning that this should not be the prime factor governing stage of plea.

Conclusion

The research discussed above has helped to shape various iterations of the guilty plea guideline, not only influencing the guideline's content but also helping to make sure the guidance is clear and unambiguous to interpret, and practical to implement. Further work to assess the impact of the guideline will be carried out once it has been in force for some months, to be published at a later date.

Acknowledgements

We would like to thank all the judges, magistrates and defence representatives who kindly gave up time to participate in this work.

Appendix: Draft guideline used in phase three research with sentencers

A. APPLICABILITY OF GUIDELINE

The Sentencing Council issues this guideline as a draft guideline in accordance with section 120 of the Coroners and Justice Act 2009.

Section 144 of the Criminal Justice Act 2003 provides:

(1) In determining what sentence to pass on an offender who has pleaded guilty to an offence²⁸ 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.*

When issued as a definitive guideline this guideline will apply regardless of the date of the offence to all individual offenders aged 18 and older, to organisations, and to offenders aged under 18 subject to legislative restrictions such as those relevant to the length of Detention and Training orders. The guideline applies equally in magistrates' courts (including youth courts) and the Crown Court.

B. KEY PRINCIPLES

Although an accused 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;
- c) is in the public interest in that it saves public time and money on investigations and trials and
- d) produces greater benefits the earlier the plea is made

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, the 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.

The purpose of reducing the sentence for a guilty plea is to yield the benefits described above and the guilty plea should be considered by the court to be independent of the defendant's personal mitigation. Thus factors such as admissions at interview, co-operation with the investigation and demonstrations of remorse should **not** be taken into account in determining the level of reduction. Rather, they should be considered separately and prior to any guilty plea reduction, as potential mitigating factors.

²⁸ 'offence' includes breach of an order where this constitutes a separate criminal offence but not breach of terms of a sentence or licence.

The benefits apply regardless of the strength of the evidence against an offender. The strength of the evidence should **not** be taken into account when determining the level of reduction.

The guideline applies only to the punitive elements of the sentence and has no impact on ancillary orders including orders of disqualification from driving.

C. THE APPROACH

Step 1: Determine the appropriate sentence for the offence(s) in accordance with any offence specific sentencing guideline.

Step 2: Determine the level of reduction for a guilty plea in accordance with this guideline.

Step 3: State the amount of that reduction.

Step 4: Apply the reduction to the appropriate sentence.

Step 5: Follow the remainder of the decision making process for the offence to determine the final sentence.

DETERMINING THE LEVEL OF REDUCTION

D1. Where a plea is indicated²⁹ at the first stage of the proceedings a reduction of one-third (and not more than one-third) should be made (subject to the exceptions overleaf). This will be the first point at which the charge is put to the offender in court and a plea (or indication of plea) is sought.

For offenders aged 18 or older this will be:

- For summary offences - up to and including the first hearing at the magistrates' court;
- For either way offences - up to and including the allocation hearing at the magistrates' court;
- For indictable only offences - up to and including the first hearing at the Crown Court.

Where the offender is under the age of 18 the first stage of the proceedings will be:

- Offences dealt with in the youth court – the first hearing at the youth court;
- Offences sent or committed to the Crown Court as grave crimes – the allocation hearing at the youth³⁰ court;
- Offences sent to the Crown Court under any other provision³¹ – up to and including first hearing at the Crown Court.

D2. After the first stage of the proceedings the maximum level of reduction is one-fifth (subject to the exceptions overleaf).

The one-fifth reduction should be made for pleas indicated:

- For either way offences sent to the Crown Court for trial - up to and including the first hearing at the Crown Court.
- For indictable only offences - until the time expires for the service of a defence statement.

²⁹ A plea is indicated for the purpose of this guideline either by entering the plea in court or by a formal notification of the plea to the prosecution and the court. In cases where the offender is given the opportunity to enter a plea by post (in accordance with Criminal Procedure Rule 37.8) doing so will constitute a formal notification of the plea.

³⁰ For youths jointly charged with an adult the allocation hearing may be in the adult magistrates' court.

³¹ Section 51A Crime and Disorder Act 1998

- For offences dealt with in magistrates' or youth courts – up to 14 days after the first hearing.

D3. Sliding scale of reduction thereafter

The reduction should be decreased from one-fifth to a maximum of one-tenth on the first day of trial proportionate to the time when the guilty plea is first indicated relative to the progress of the case and the trial date (subject to the exceptions overleaf). The reduction may be decreased further, even to zero, if the guilty plea is entered during the course of the trial.

E. APPLYING THE REDUCTION

E1. Imposing one type of sentence rather than another

The reduction in sentence for a guilty plea can be taken into account by imposing one type of sentence rather than another; for example:

- by reducing a custodial sentence to a community sentence,
- by reducing an immediate custodial sentence to a suspended sentence order or,
- by reducing a community sentence to a fine.

In such cases there should be no further reduction on account of the guilty plea.

E2. More than one summary offence

When dealing with more than one summary offence, the aggregate sentence is limited to a maximum of six months. Allowing for a reduction for each guilty plea, consecutive sentences might result in the imposition of the maximum six month sentence. Where this is the case, the court **may** make a modest *additional* reduction to the *overall* sentence to reflect the benefits derived from the guilty pleas.

E3. Keeping an either way case in the magistrates' court to reflect a guilty plea

Reducing a custodial sentence to reflect a guilty plea may enable a magistrates' court to retain jurisdiction of an either way offence rather than committing the case for sentence at the Crown Court. In such cases a magistrates' court may pass a sentence of up to six months

E4. Sentencing up to 24 months detention and training order for youth offences

A detention and training order of 24 months may be imposed on an offender aged under 18 if the offence is one which but for the plea would have attracted a sentence of detention in excess of 24 months under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000.

F. EXCEPTIONS

F1. Further information or advice necessary before indicating plea

Where:

1. The offender has stated to the court and/or the prosecutor what he knows he has done at or before the first stage of the proceedings (see D1 above); and
2. had insufficient information about the allegations to know whether he was guilty of the offence; and
3. it was necessary for him to receive advice and/or to see evidence in order for him to decide whether he should plead guilty,

a reduction up to but not exceeding the maximum of one-third should be made where the guilty plea is indicated immediately after he receives the advice and/or sees the evidence.

For the avoidance of doubt this exception does not apply where an offender has exercised his right not to admit what he knows he has done until he sees the strength of the evidence against him.

F2. Exceptionally complex and time consuming cases in the Crown Court

A reduction up to but not exceeding the maximum of one-third **may** be made for a plea indicated later than the first stage of the proceedings if the trial was likely to have taken up a **very** substantial amount of court time and/or would have involved a **very** substantial number of witnesses having to give evidence.

F3. Newton Hearings and special reasons hearings

In circumstances where an offender's version of events is rejected at a Newton Hearing³² or special reasons hearing³³, the reduction which would have been available at the stage of proceedings the plea was indicated should normally be halved. Where witnesses are called during such a hearing, it may be appropriate further to decrease the reduction.

F4. Offender convicted of a lesser or different offence

If an offender is convicted of a lesser or different offence to that originally charged, and he has earlier made an unequivocal written indication of a guilty plea to this lesser or different offence to the prosecution and the court, the court should give the level of reduction that is appropriate to the stage in the proceedings at which this written indication of plea (to this lesser or different offence) was made.

F5. Minimum sentence under Section 51A of the Firearms Act 1968

There can be no reduction for a guilty plea if the effect of doing so would be to reduce the length of sentence below the required minimum term. Where there is a finding of exceptional circumstances which justifies not passing the required minimum term, no further reduction for a guilty plea will normally be appropriate.

F6. Appropriate custodial sentences for persons aged 18 or over when convicted under the Prevention of Crime Act 1953 and Criminal Justice Act 1988 and prescribed custodial sentences under the Power of Criminal Courts (Sentencing) Act 2000

In circumstances where:

- an *appropriate* custodial sentence falls to be imposed on a person aged 18 or over upon conviction under Section 1A of the Prevention of Crime Act 1953 (offence of threatening with an offensive weapon in public) or Section 139AA of the Criminal Justice Act 1988 (offence of threatening with an article with a blade or point or offensive weapon) or
- a *prescribed* custodial sentence falls to be imposed under Section 110 of the Power of Criminal Courts (Sentencing) Act 2000 (drug trafficking offences) or Section 111 of the Power of Criminal Courts (Sentencing) Act 2000 (burglary offences),

The maximum reduction available for a guilty plea is one-fifth of the *appropriate* or *prescribed* custodial period

³² A Newton hearing is held when an offender pleads guilty but disputes the case as put forward by the prosecution and the dispute would make a difference to the sentence. The judge will normally hear evidence from witnesses to decide which version of the disputed facts to base the sentence on.

³³ A special reason hearing occurs when an offender is convicted of an offence carrying a mandatory disqualification from driving and seeks to persuade the court that there are extenuating circumstances relating to the offence that the court should take into account by reducing or avoiding disqualification. This may involve calling witnesses to give evidence.

F7. Appropriate custodial sentences for persons aged at least 16 but under 18 when convicted under the Prevention of Crime Act 1953 and Criminal Justice Act 1988

In circumstances where an appropriate custodial sentence of a Detention and Training Order of at least 4 months, falls to be imposed on a person who is aged at least 16 but under 18 who has been convicted under Section 1A of the Prevention of Crime Act 1953 (offence of threatening with an offensive weapon in public) or Section 139AA of the Criminal Justice Act 1988 (offence of threatening with an article with a blade or point or offensive weapon), the court may impose any sentence that it considers appropriate, having taken into consideration the general principles in this guideline.

G. MANDATORY LIFE SENTENCES FOR MURDER

Murder is the most serious criminal offence and the sentence prescribed is different from all 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 life.

Given the special characteristic of the offence of murder and the unique statutory provision in Schedule 21 of the Criminal Justice Act 2003 of starting points for the minimum term to be served by an offender, careful consideration has to be given to the extent of any reduction for a guilty plea 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 stage of the proceedings), the process of determining the level of reduction will be different.

Determining the level of reduction

Whereas a court should consider the fact that an offender has pleaded guilty to murder when deciding whether it is appropriate to order a whole life term, where a court determines that there should be a whole life minimum term, there will be no reduction for a guilty plea.

In other circumstances,

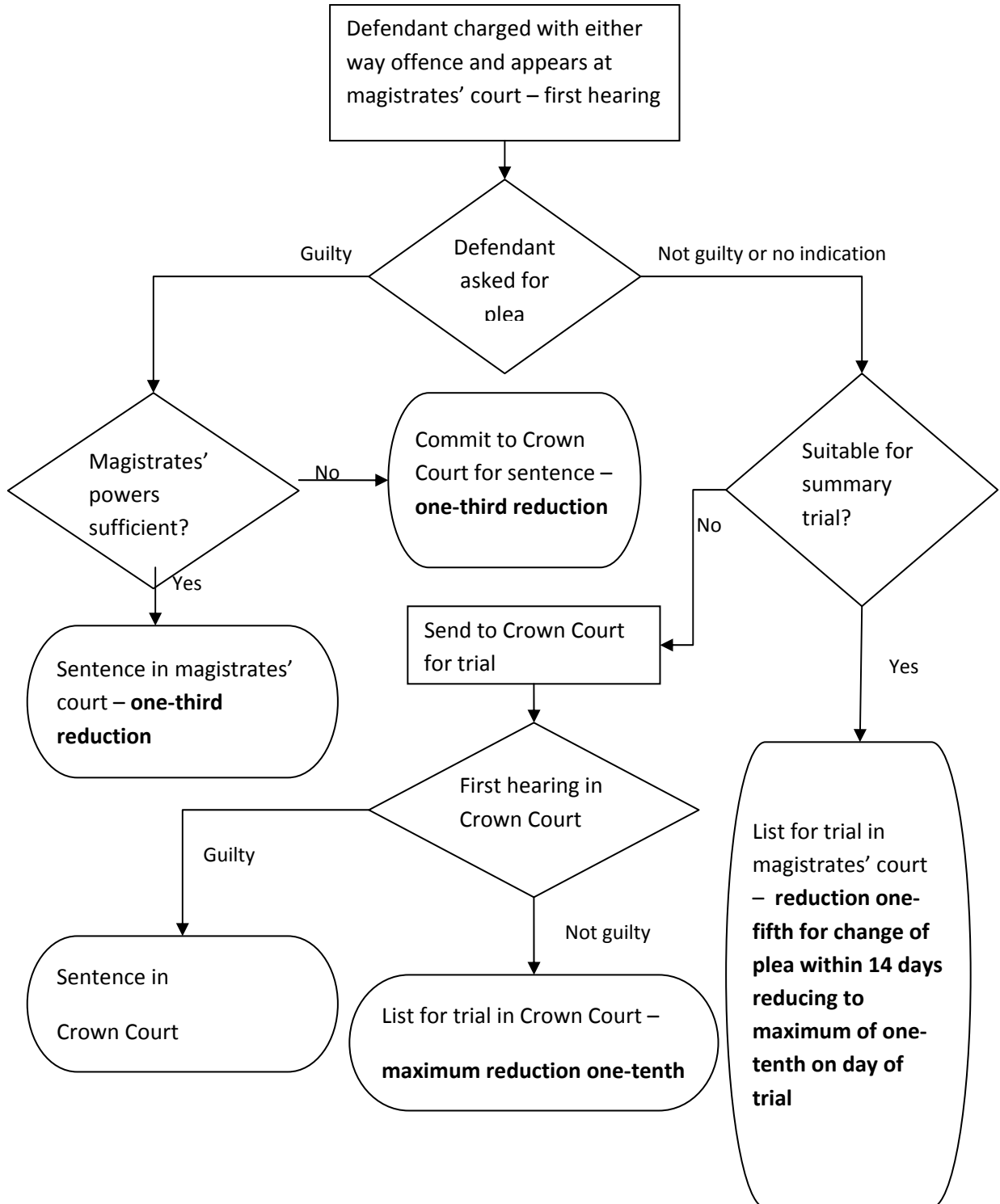
- the Court will weigh carefully the overall length of the minimum term taking into account other reductions for which the offender may be eligible so as to avoid a combination leading to an inappropriately short sentence;
- where it is appropriate to reduce the minimum term having regard to a plea of guilty, the reduction will not exceed one-sixth and will never exceed five years;
- The maximum reduction of one sixth or five years (whichever is less) should only be given when a guilty plea has been indicated at the first stage of the proceedings. Lesser reductions should be given for guilty pleas after that point, with a maximum of one twentieth being given for a guilty plea on the day of trial.

The exceptions relating to further information or advice necessary before indicating a plea and Newton hearings outlined at F1 and F3 above, apply to murder cases.

Appendix 1

Flowchart illustrating reductions for either way offences

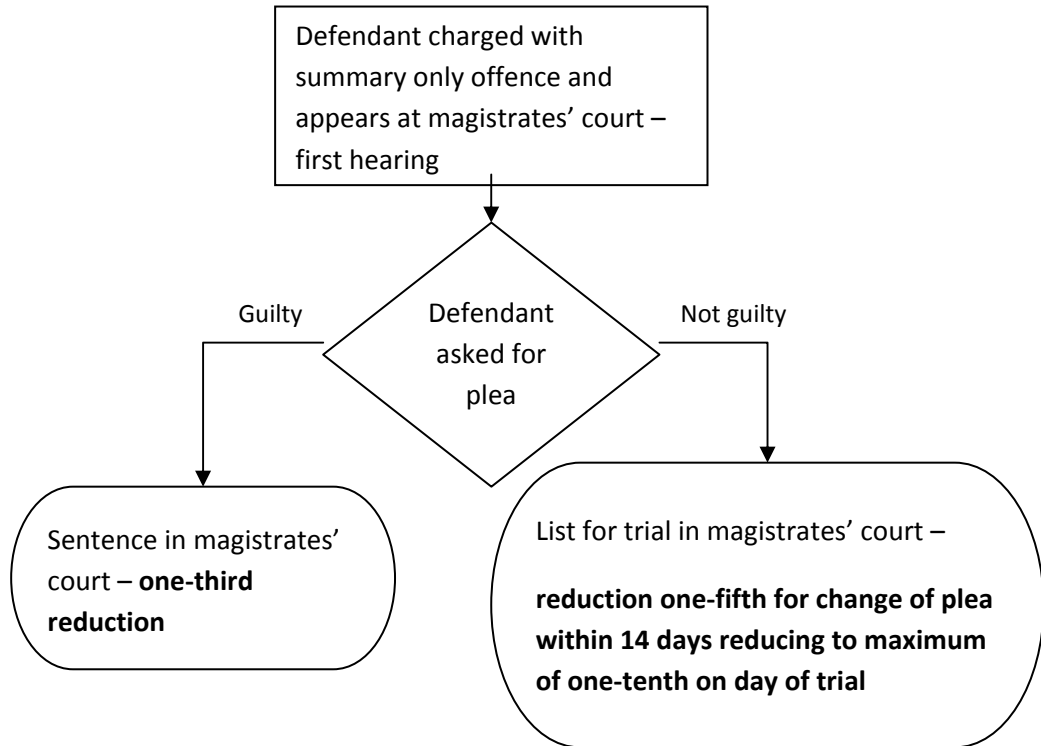
(offences that can be tried in a magistrates' court or the Crown Court)



Appendix 2

Flowchart illustrating reductions for summary only offences

(offences that can be tried only in a magistrates' court)



Appendix 3

Flowchart illustrating reductions for indictable only offences (excluding murder)

(offences that can be tried only in the Crown Court)

