

Assessing the impact and implementation of the Sentencing Council's Reduction in Sentence for a Guilty Plea Definitive Guideline

Summary

- The Sentencing Council's *Reduction in sentence for a guilty plea* guideline was published in March 2017 and applies to cases where the first court hearing was on or after 1 June 2017. The guideline applies to adults only; separate guidance was provided for defendants aged under 18 in the *Sentencing children and young people* guideline, which came into force at the same time.
- The guideline replaced the previous guideline produced by the Sentencing Guidelines Council (SGC) in 2007. It was introduced during a period in which other changes were taking place in the criminal justice system, including the Transforming Summary Justice (TSJ) programme, the Better Case Management (BCM) initiative and the recommendations in the President of the Queen's Bench Division's Review of Efficiency in Criminal Proceedings.¹
- The aim of the guideline is to encourage those defendants who are going to plead guilty to do so as early in the court process as possible.
- A resource assessment, examining the potential impact of the guideline on correctional resources was produced alongside the guideline. However, given that this guideline is aimed at defendants as well as sentencers, it was difficult for the Council to anticipate the likely impact of the guideline. Two different scenarios were therefore explored for adult defendants, based on assumptions about their behaviour:
 - An optimistic scenario which assumed that more defendants would plead guilty at the first stage of proceedings because this would be the only stage they would receive the maximum sentence reduction of one-third.
 - A pessimistic scenario which assumed that many defendants would continue to plead at a later stage, meaning that a smaller number of defendants would receive the full reduction of one-third, leading to a lower reduction for some defendants and consequently a longer sentence.

¹ <https://www.judiciary.gov.uk/publications/review-of-efficiency-in-criminal-proceedings-final-report/>

- This assessment of the guideline covers analysis of guilty plea measures over time – drawing on Ministry of Justice (MoJ) data sources - to explore the impact of the guideline. It also draws upon a variety of other data, including that from a data collection exercise in a sample of magistrates' courts across England and Wales, transcripts of Crown Court judges' sentencing remarks, small-scale qualitative research undertaken with defendants in two courts and a review of relevant Court of Appeal judgments.
- Analysis of trend data suggests that the guideline did not have an impact on the proportion of defendants who pleaded guilty, which was as expected. The guideline also did not have an impact on the stage at which offenders pleaded guilty or on sentence lengths for adult offenders.
- Content analysis of a small sample of Crown Court judges' sentencing remarks found that the guilty plea reductions applied to sentences seemed to be in line with the guideline in most cases. This is supported by an analysis of judgments from the Court of Appeal (Criminal Division) which were found to interpret the guideline as intended by the Council. Analysis of data collected in a sample of magistrates' courts also found that in most cases, sentencers applied the reductions as we would expect.
- Overall, this suggests that the assumption modelled in the optimistic scenario explored in the resource assessment - has not occurred. However, it is also the case that the assumption modelled in the pessimistic scenario has not occurred.
- Potential reasons for these findings were explored with a steering group, comprising members from across the criminal justice system, that was set up to help monitor the guideline.
- Given the wider context within which this guideline sits – having been introduced during a period of change within the wider criminal justice system - it is difficult to conclude definitively what the overall impact of it has been. However, the analysis reviewed as part of this assessment does not indicate that it has had an adverse effect on prison or probation resources.
- The Council has considered this analysis and has agreed to keep the guideline under review. It will also continue to work with the steering group to obtain further feedback on the guideline.

Introduction

The Sentencing Council was set up in 2010 and produces sentencing guidelines for use by all members of the judiciary in criminal cases.

The Sentencing Council's *Reduction in sentence for a guilty plea* guideline came into force for cases where the first court hearing was on or after 1 June 2017.² It replaced the previous guideline produced by the Sentencing Guidelines Council (SGC) in 2007.

² <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-children-and-young-people/>

Around 1.19 million offenders were sentenced in 2018, and these offenders will either have pleaded guilty or have been convicted after trial. Information on the percentage of offenders who plead guilty is only available for the Crown Court. Of the 69,300 offenders sentenced in the Crown Court in 2018, 61,000 (88 per cent) pleaded guilty and 8,300 were found guilty after a trial.^{3,4}

The aim of the guideline is to encourage those defendants who were going to plead guilty to do so as early in the court process as possible. The guideline states that:

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

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

A guilty plea produces greater benefits the earlier the plea is indicated/entered; therefore the guideline makes a clear distinction between a reduction in sentence available at the first stage of proceedings (which will lead to a reduction in sentence of one-third) and a reduction in sentence available at a later stage of the proceedings (which will usually lead to a reduction in sentence of between one-quarter and one-tenth). This provides an incentive to those who are guilty to indicate a guilty plea as early as possible.

The main features of the new guideline are:

- There is a cap on reduction for a guilty plea of one-third;
- Where a defendant pleads (or indicates) at the first hearing a reduction of one-third will always be made regardless of the strength of the evidence;
- A plea at the second hearing will attract a reduction of one-quarter;
- Thereafter a sliding scale applies to a maximum of a one-tenth reduction on the day of trial;
- This applies regardless of whether the offence is summary only, either way or indictable only;
- Admissions in interview, cooperation with investigation etc are to be treated as mitigation separately from the guilty plea reduction; and,
- Exceptions apply – notably where it would have been unreasonable to expect the defendant to indicate a guilty plea sooner than was done, a one-third reduction should still be made.

Developing the guideline

Research was carried out between 2011 and 2016 to inform different phases of the guideline development. A full report on this research can be found on the Sentencing Council's website.⁵

³ Source: Criminal Justice Statistics Quarterly: December 2018, Sentencing data tool:

<https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2018>

⁴ For a small number of offenders (19) it was not known whether the offender pleaded guilty.

⁵ <https://www.sentencingcouncil.org.uk/publications/item/reduction-in-sentence-for-a-guilty-plea-research-report/>

The *Sentencing Children and Young People* guideline,⁶ which was published at the same time as the *Reduction in Sentence for a Guilty Plea* guideline, also included a section on guilty pleas. The aim of this section was broadly the same as for the adult guideline.

In developing the guideline, it was important to take account of the background of changes in the wider criminal justice system that were occurring at the same time. Several of these were identified at this stage as potentially having an influence on the decision of whether and when to plead guilty, namely: the Transforming Summary Justice (TSJ) programme, the Better Case Management (BCM) initiative and the recommendations in the President of the Queen's Bench Division's Review of Efficiency in Criminal Proceedings.⁷

In addition, the period covered by this report also coincided with other changes in the criminal justice system such as some court closures, the introduction of greater digital working, changes to the legal aid scheme and the increased use of postal requisitions (whereby offenders are not charged and bailed to attend court by the police but are sent a postal notification to attend).

Assessing the impact of the guideline

The guilty plea guidelines have now been in force since June 2017. As with all guidelines, the Council has monitored the operation and effect of them since implementation.

This report details the results of analysis undertaken to assess the impact of the *Reduction in Sentence for a Guilty Plea* guideline and the guilty plea section of the *Sentencing Children and Young People* guideline. It looks at a number of measures related to guilty pleas, and also examines whether there were any implementation issues.

Approach

The Council's resource assessments are concerned with anticipating any impact on sentencing outcomes that is estimated to occur as a result of the guideline, over and above any changes caused by unrelated or coincidental issues (e.g. changes in the volume and nature of offences coming before the courts). Because of this, the results of our analytic work are framed in terms of whether or not the anticipated changes happened, and/or whether there were any unanticipated changes. Should unanticipated shifts occur, other data are then explored to try and explain the changes, giving consideration to whether there may be any implementation issues with a guideline.

Most of the Council's guidelines are primarily aimed at sentencers, as a tool to be used when sentencing, whereas the *Reduction in Sentence for a Guilty Plea* guideline is also aimed at defendants, by encouraging them to plead guilty earlier in the court process. It was therefore difficult for the Council to anticipate the likely impact of the guideline, and so

⁶ <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-children-and-young-people/>

⁷ <https://www.judiciary.gov.uk/publications/review-of-efficiency-in-criminal-proceedings-final-report/>

the resource assessment⁸ explored two different scenarios for adults, based on assumptions about defendants' behaviour:

- Scenario one (the optimistic scenario) assumed that more defendants would plead guilty at the first stage of proceedings because this would be the only stage they would receive the maximum sentence reduction of one-third.
- Scenario two (the pessimistic scenario) assumed that many defendants would continue to plead at a later stage, meaning that a smaller number of defendants would receive the full reduction of one-third, leading to a lower reduction for some defendants and consequently a longer sentence.

Under the optimistic scenario, it was estimated that the guideline would only require a minimal number of additional prison places in 2018/19. Under the pessimistic scenario, it was estimated that there may be an increase of up to 500⁹ prison places by 2018/19, and the guideline could ultimately¹⁰ result in the requirement for up to 1,500 extra prison places per year.

For children and young people, the resource assessment estimated that any impact was expected to be minimal. Around 98 per cent of offenders sentenced to immediate custody in 2018 were aged 18 or over. Of the 1,400 under 18s sentenced to immediate custody in 2018, 66 per cent were given sentences of one year or less. Therefore, any changes in defendant behaviour, under either scenario, were expected to have minimal effect on overall resources.¹¹

By comparing the expected impacts of the guideline with the actual impact observed in courts and sentencing data, the Council can determine whether the guideline is working as anticipated and decide whether any further work needs to be conducted. Where relevant, comparisons to the resource assessment will be made throughout this report.

Methodology

Evidence has been considered to explore both the impact and implementation of the guideline. This is discussed in more detail in the sections below.

Analysis of trend data

The main analysis drawn upon in this assessment is trend data. A number of Ministry of Justice (MoJ) data sources have been used to produce descriptive statistics to observe whether any changes have occurred since the guideline came into force.

⁸ <https://www.sentencingcouncil.org.uk/publications/item/reduction-in-sentence-for-a-guilty-plea-final-resource-assessment/>

⁹ Figures quoted are averages for the financial year, and are rounded to the nearest 500.

¹⁰ This was the potential impact once steady state had been reached in approximately 2025/26.

¹¹ The resource assessment quoted figures from 2014, and the same measures have been calculated here for 2018. In both periods, figures were similar.

The MoJ's Criminal Court Statistics quarterly publication¹² has been used to consider the guilty plea rate for defendants dealt with in the Crown Court,¹³ the stage at which guilty pleas are entered in the Crown Court,¹⁴ the average number of hearings in the Crown Court,¹⁵ and the effectiveness of magistrates' court trials.¹⁶ This quarterly data is available from 2010 onwards.

The MoJ's published legal aid statistics¹⁷ have been used to consider the proportion of legal aid fee claims which were for early guilty pleas.¹⁸ This quarterly data is available from financial year 2011/12 onwards.

Both these publications cover both adults and under 18s, and are not broken down by the age of the defendant. However, as the vast majority of defendants in the Crown Court will be adults, these data have been used to assess the impact of the guidelines for adults, as any changes to these statistics are likely to be driven by changes for adults.¹⁹

The Ministry of Justice's Court Proceedings Database (CPD) was used to consider the proportion of offenders sentenced at the Crown Court who pleaded guilty at the Crown Court, and average custodial sentencing lengths (ACSLs),²⁰ in a 12 month period before the guideline came into effect (July 2016 to June 2017) and a 12 month period after the guideline came into effect (January to December 2018 for the Crown Court analysis, July 2017 to June 2018 for the magistrates' court analysis). This analysis could be broken down by age and therefore the relevant analysis was included in the sections relating to adults and children and young people. The monthly data were analysed from 2008 onwards.

Other analysis considered

A range of other evidence and analysis has been considered as part of this assessment. This is outlined below.

- A content analysis of Crown Court judges' sentencing remarks:²¹ this was carried out for 60 cases sentenced after the guideline came into force.²² It explored the

¹² <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-april-to-june-2019>

¹³ See Criminal Court Statistics quarterly bulletin (Table C3).

¹⁴ See Criminal Court Statistics quarterly bulletin (Table C4).

¹⁵ See Criminal Court Statistics quarterly bulletin (Table AC14).

¹⁶ See Criminal Court Statistics quarterly bulletin (Table T2).

¹⁷ <https://www.gov.uk/government/collections/legal-aid-statistics>

¹⁸ See Legal Aid Statistics (Tables 4.2 and 4.3).

¹⁹ These publications include some provisional data. In this assessment report provisional data have not been included in the analysis, as they are subject to change.

²⁰ The average custodial sentence length (ACSL) is the average (mean) sentence length for determinate custodial sentences only. It therefore excludes indeterminate sentences (life sentences or Imprisonment for Public Protection, IPPs). This approach for calculating ACSLs is consistent with that used for sentencing statistics produced by the Ministry of Justice. Finally, the ACSLs have been adjusted using data from the Crown Court Sentencing Survey (for further information please see: <http://www.sentencingcouncil.org.uk/analysis-and-research/crown-court-sentencing-survey/>) to provide estimates of the sentence length *prior* to any reduction for guilty plea. These estimates allow a better assessment of the use of sentencing guidelines as the category ranges specified in the guidelines are those before any guilty plea reduction is applied.

²¹ Transcripts of sentencing remarks are not available from magistrates' courts.

²² The Council acquired a sample of transcripts of Crown Court sentencing remarks dating from mid-November 2017 to the end of April 2018. It was expected that if the guideline was having an effect on sentencing outcomes that this should be identifiable from around this period onwards. It was not possible from the information available at the time to

level of reduction being applied, the timings of the pleas and other circumstances which related to the reduction across a variety of different offences and court locations. The aim of this was to try to identify whether judges applied the appropriate reduction for the stage at which the defendant pleaded guilty, and whether there was any evidence to suggest that defendants were pleading earlier or later than before the guideline came into force.

- Data from a data collection exercise: data were collected in a sample of magistrates' courts across England and Wales between the start of November 2017 and the end of March 2018. The data were used to examine the reductions for guilty plea given at different stages in the court process for four offences: possession of a bladed article or offensive weapon, criminal damage, harassment or stalking (without violence), and breach of a protective order. In total, around 1,700 sentences were analysed.²³
- Small-scale qualitative research undertaken with defendants: in June 2018, 26 defendants were interviewed face-to-face in two courts in the Midlands region (7 at one Crown Court and 19 at one magistrates' court).²⁴ The purpose of this research was to understand defendants' knowledge of the guilty plea scheme and the sentence reductions they may be entitled to, as well as to understand their reasons for pleading guilty.²⁵
- Views of legal representatives and other interested parties: since the guideline has been in force, a steering group - comprising of representatives from across the criminal justice system, including the police, the Crown Prosecution Service, Her Majesty's Courts and Tribunal Service, Victim Support and the MoJ – has been in place to help monitor the guideline and feedback any issues arising. The group met several times to discuss the latest analysis and gather views on the impact on the guideline. In addition, information and views have been elicited through the Council's solicitor's panel²⁶ and the Public Defender Service.
- Relevant Court of Appeal judgments relating to guilty pleas.

select a sample that could be confirmed to be representative of all offenders sentenced in the Crown Court during this period, but as the sample included a wide range of offences from 38 different court locations from most regions in England and Wales, it is expected that it provided a broad spread of cases.

²³ Magistrates and district judges were asked to complete a form when they sentenced an offender for one of these offences. Sentencers could provide the data either by filling in an electronic form or a paper form. Only the electronic responses were analysed for this assessment, including a total of around 1,700 completed forms across the four offences, split as follows: around 370 forms for possession of a bladed article/offensive weapon, around 680 forms for criminal damage, around 240 forms for harassment/stalking and around 460 forms for breach of a protective order.

²⁴ The interviews were semi-structured, conducted in court settings and consisted of a short list of simple questions.

²⁵ Unlike most sentencing guidelines, in order for the guilty plea guideline to take effect as intended, defendants need to be aware of the provisions of the guideline and be incentivised to plead at an early stage. It was hoped that if the guideline was having any unintended consequences on defendants' plea behaviour then this could be identified through this research; for example, if defendants felt pressured by the guideline to plead in a certain way then this may have become apparent through the interviews.

²⁶ Six solicitors practising in crime from across the country who agreed to give views on an ad hoc basis. They are not necessarily a representative sample.

In relation to these additional sources of information, it should be noted that there were some limitations that needed to be considered when interpreting the findings from them. These limitations include small sample sizes,²⁷ and non-randomly selected samples.²⁸

In addition, content analysis of sentencing remarks can be problematic: transcripts are not available for magistrates' court cases, interpretation of remarks can be difficult as individual judges express issues in different ways, and the absence of a particular issue in a transcript does not mean that it was not considered in the sentencing process – just that it was not explicitly referred to in sentencing. This means that whilst this additional evidence provides further useful information to feed into this assessment of the guideline, the findings from it should not be regarded as conclusive.

Time periods

The time periods considered in this analysis take into account data published in the Criminal Court Statistics quarterly publication on court timeliness.²⁹ Throughout the report, data for calendar year 2017, the year the guideline came into force, has been used to determine what time periods to compare.

The average time between first listing and completion for Crown Court cases is around six months,³⁰ therefore any effects of the guideline would be expected to be fully apparent six months after the guideline came into force. Statistics relating to the Crown Court have therefore been taken from the 12 months before the guideline came into force (June 2016 to May 2017) and compared with a 12 month period starting seven months after the guideline came into force (January to December 2018).

For magistrates' courts, the average time between first listing and completion is less than a month. As a result, statistics for magistrates' courts have been taken from the 12 months before the guideline came into force, and compared with the 12 months after the guideline came into force (June 2017 to May 2018), as any effects of the guideline on magistrates' courts should be apparent very soon after the guideline came into force.

Overall Findings

The following sections outline the key findings to have emerged from this research and analysis.

²⁷ For example, in relation to the research with defendants.

²⁸ Although the external research with sentencers yielded over 1,000 responses that covered a good spread of different types of sentencers, respondents were not selected randomly. Feedback from the solicitor's panel and Public Defender Service was also based on a general call for evidence through Council networks, rather than through a systematic approach to all solicitors or Public Defenders.

²⁹ See Criminal Court Statistics quarterly bulletin (Tables T2 for magistrates' courts and Table T4 for the Crown Court).

³⁰ The average (mean) number of days between first listing and completion in the Crown Court was 175 days in 2017. Data for calendar year 2017 has been used to determine what time periods to compare, because 2017 is the year in which the guideline came into force. (See Table T2 in the Criminal Court Statistics quarterly bulletin).

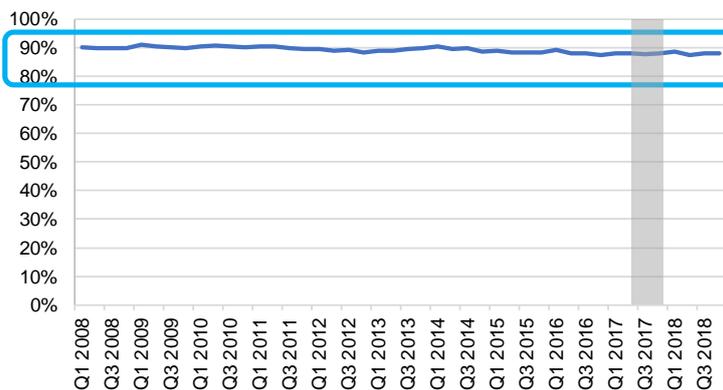
1. Impact on plea rate

The aim of the guideline is to encourage those defendants who are going to plead guilty to do so as early in the court process as possible. The guideline states that *“Nothing in the guideline should be used to put pressure on a defendant to plead guilty.”* The guideline was therefore not intended to have an impact on the proportion of defendants who plead guilty, and this section considers analysis undertaken to monitor the plea rate following the introduction of the guideline.

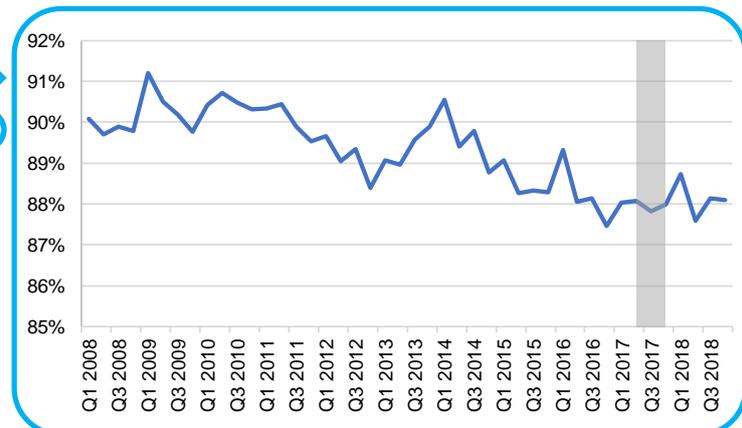
Figure 1, below, shows that the proportion of offenders sentenced who pleaded guilty at the Crown Court has remained broadly stable since 2008, at around 88 to 90 per cent over the whole period. In the year before the guideline came into force, 88 per cent pleaded guilty, and this remained the same in the year after the guideline came into force. This suggests that the guideline has not had an impact on plea rates.³¹ It should be noted that this includes all offences grouped together, and therefore does not account for any possible changes in the mix of offences coming before the Crown Court during this period.

Figure 1: Proportion of adult offenders sentenced in the Crown Court who pleaded guilty, 2008–2018

Chart with axis starting at 0%



Same chart – zoomed in to show detail



The Council also considered the plea rate for different demographic groups. The analysis found that the proportion of offenders sentenced who pleaded guilty remained at 88 per cent for both males and females, before and after the guideline came into force.

³¹ A similar trend has been observed when looking at data on defendants “dealt with” at the Crown Court (in the years before the guideline, the plea rate was generally decreasing; in the year before the guideline came into force, the guilty plea rate was 66 per cent, and then remained at 66 per cent in the comparable year after the guideline came into force). Defendants “dealt with” refers to all defendants in trial cases for whom a final outcome has been recorded in the Crown Court administrative system. This includes those with any outcome, not just those who were convicted. The reporting period is defined by the date on which the defendant was dealt with. This is slightly different to figures on ‘offenders sentenced’ at the Crown Court, which only count offenders that have a sentence recorded against them. The two sets of figures also come from slightly different data sources.

The analysis also found that 90 per cent of White³² offenders sentenced pleaded guilty in 2017, compared to 82 per cent of Black offenders and 82 per cent of Other³³ offenders, and these figures were similar before and after the guideline came into force.³⁴ For Asian offenders sentenced, the proportion pleading guilty decreased from 85 per cent in 2013 to 83 per cent in the year before the guideline came into force. In the comparable year after the guideline came into force there was a further decrease to 81 per cent.

This analysis suggests that the guideline has not had an impact on the plea rate for these groups, because either the plea rate remained the same before and after the guideline came into force, or any changes were in line with existing longer-term trends.

2. Impact and implementation in courts

The resource assessment for the *Reduction in Sentence for a Guilty Plea* guideline explained that the guideline could affect the stage at which offenders plead guilty, and the number of hearings required at court. The analysis below explores the impact of the guideline on these areas. The impact on the Crown Court is considered first, because any impact on the Crown Court has the potential to have the biggest impact on resources. The impact on magistrates' courts is then considered separately.

The Crown Court

The timing of pleas

The MoJ publishes Criminal Court Statistics on the stage at which a guilty plea was entered and accepted in the Crown Court.³⁵ Figure 2 below shows that the proportion of defendants pleading guilty prior to their trial decreased from around 72 per cent in 2014 to 63 per cent in the year before the guideline came into force.³⁶

In the comparable year after the guideline came into force, the proportion continued decreasing to 59 per cent. Conversely, the proportion of defendants with a cracked trial³⁷ (which includes defendants entering a late guilty plea) increased from 24 per cent in 2014 to 32 per cent in the year before the guideline came into force. In the comparable year

³² The CPD ethnicity variable that the Council has access to is police officer-identified, whereby the offender's ethnicity is recorded by a police officer or a member of the administrative or clerical team, based on the visual appearance of the offender. The Council recognises that this is an imperfect way of ascertaining someone's ethnicity.

³³ The 'Other' ethnicity group includes Chinese, Japanese, or South East Asian offenders, Middle Eastern offenders and any other ethnic group not counted within White, Black or Asian.

³⁴ Other studies have found similar patterns, with Black Asian and Minority Ethnic offenders more likely to plead 'not guilty' than White offenders. For example, see the Lammy Review summary report: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

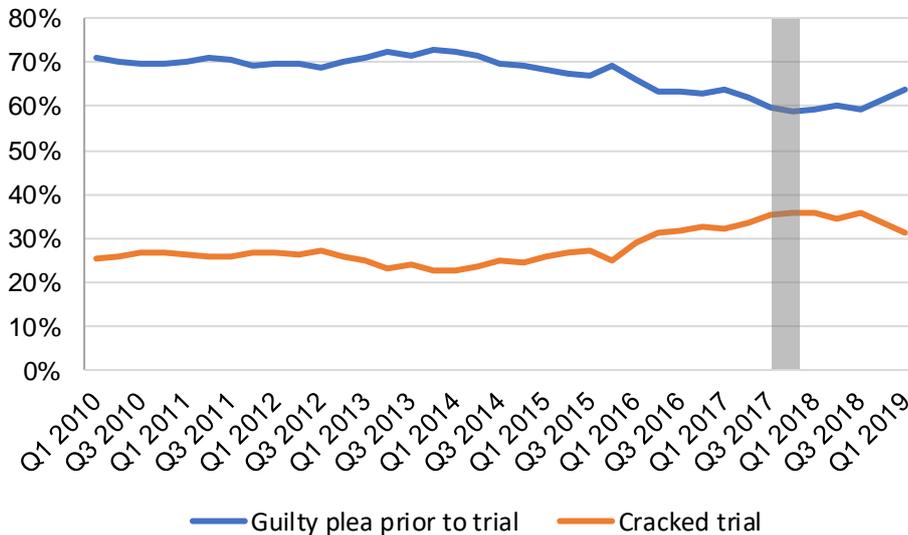
³⁵ Data on defendants "dealt with" were used in this section because this is the most reliable source of data on timings of guilty pleas. However, these data count defendants slightly differently than in the data on defendants sentenced. See footnote 28 for more details.

³⁶ Defendants with unknown plea stage have been excluded from these proportions.

³⁷ A cracked trial is a trial that does not go ahead on the day as an outcome is reached and so the trial does not need to be re-scheduled. This occurs when an acceptable plea is offered by the defendant or the prosecution offers no evidence against the defendant.

after the guideline came into force, the proportion continued increasing, to 35 per cent. These trends were observed for both indictable only and triable either way offences.³⁸

Figure 2: Proportion of defendants dealt with by the stage at which the guilty plea was entered and accepted in the Crown Court, Q1 2010 – Q1 2019



These statistics are further supported by MoJ's published Legal Aid statistics,³⁹ which show that the proportion of legal aid fee claims for early guilty plea claims decreased between 2014 and 2017, and continued decreasing after the guideline came into force (and remained at similar levels in more recent quarters).

This suggests that the guideline has not had an impact on the stage at which the guilty plea is entered in the Crown Court, because the changes to the stage of plea following the introduction of the guideline have been in line with existing trends.

As outlined earlier, there were also a number of changes in the wider criminal justice system that were introduced within a similar timeframe and that may potentially have had an influence on the timing of pleas. Although discussions with defence representatives found no real issues with understanding and applying the guideline, they indicate that for some there had been difficulties obtaining some information (such as witness statements, forensic evidence, CCTV etc.). The representatives considered this type of information necessary to enable them to advise clients and so it is possible that difficulties such as these may have affected the stage at which a plea was entered.

However, as the research only incorporated feedback from a small number of defence representatives, it is not possible to conclude whether any of these (or other factors) may be influencing the timing of pleas and in what way.

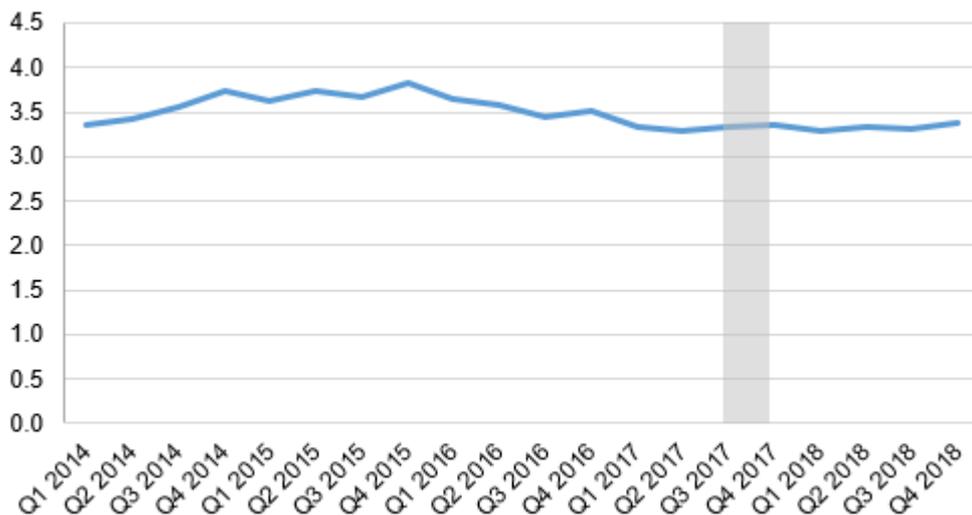
Figure 3 below shows that the average number of hearings has decreased since a peak in 2015 (3.7 hearings). However, it remained relatively stable throughout 2017 and 2018 at 3.3 hearings. These trends were observed for both indictable only and triable either way

³⁸ These data also provide information on the proportion of guilty pleas entered during trial, at other hearings, and where the stage at which the guilty plea was entered was unknown.

³⁹ See *Legal aid statistics quarterly: April to June 2019*: <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-april-to-june-2019>. Trends are shown in tables 4.2 and 4.3 in the published spreadsheets at the link titled 'Legal aid statistics England and Wales tables April to June 2019'.

offences and suggest that the guideline did not have an impact on the average number of hearings required at the Crown Court.

Figure 3: Average number of hearings in the Crown Court for cases closed



Implementation of the guideline

The content analysis of Crown Court judges' sentencing remarks found that the guideline was rarely mentioned explicitly. However, the reductions applied to sentences for a guilty plea seemed to be in line with the guideline in most cases, which suggests that the guideline is largely being implemented as expected, at least in the sample of cases considered here.

This is supported by judgments from the Court of Appeal (Criminal Division)⁴⁰ which were found to interpret the guideline as intended by the Council.

In addition, a small number of interviews (N = 7) were conducted with defendants at the Crown Court. All defendants interviewed were aware of the guilty plea scheme. All defendants had pleaded guilty, saying that this was either because they accepted responsibility for the offending, or because their defence representative advised them to plead guilty. Where the defendants specified the stage of plea, all said they had pleaded guilty at the magistrates' court (i.e. at the first stage of proceedings).

This research suggests that the guideline did not seem to have any noticeable impact on defendants' pleading behaviour, as the reasons for pleading guilty suggest they would have pleaded guilty at the same stage anyway. However, as stated previously this information should be regarded as indicative only due to the small number of interviews conducted and the fact that they did not comprise a representative sample.

⁴⁰ West [2019] EWCA Crim 497 [2019] EWCA Crim 1539 and Davids [2019] EWCA Crim 553 confirmed that a clear indication of plea at the first hearing is needed to attract full credit; Yasin [2019] EWCA Crim 1729 held that while it is best practice for the magistrates' court to enquire as to whether the BCM form has been completed, including the indication of plea, responsibility for any indication as to plea clearly rests with the parties and their legal representatives; Hoddinott [2019] EWCA Crim 1462 confirmed that the maximum credit for a guilty plea is one third - where the defendant was the first in the conspiracy to plead, and by doing so encouraged others to do so; this would be reflected in mitigation.

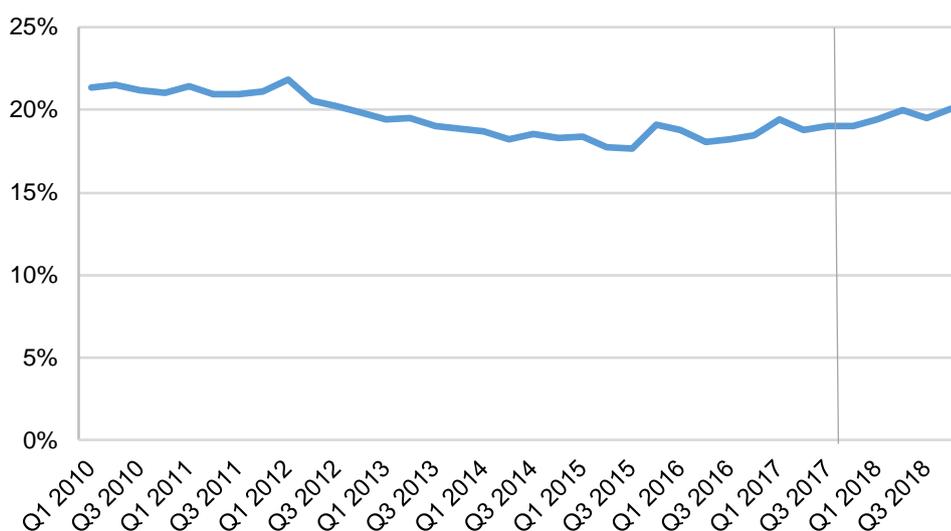
Magistrates' courts

The timing of pleas

Information is not available on the number and proportion of defendants dealt with at magistrates' courts, by the stage at which the guilty plea was entered and accepted. Therefore the following analysis of stages of plea at magistrates' courts has considered published MoJ Criminal Court Statistics on the effectiveness of magistrates' court trials. This includes information on the number of cracked trials due to acceptable guilty plea(s) being entered late.⁴¹

Figure 4 below shows that the proportion of all magistrates' court trials that were cracked trials due to acceptable guilty plea(s) being entered late, decreased from around 21 per cent in 2010 to 18 per cent in 2015. It then increased to 19 per cent in the year before the guideline came into force, and remained at 19 per cent in the year after the guideline came into force. This suggests that the guideline did not have an impact on the proportion of defendants pleading guilty on the day of trial.

Figure 4: Proportion of all magistrates' court trials that were cracked trials due to acceptable guilty plea(s) being entered late, 2010 – 2018



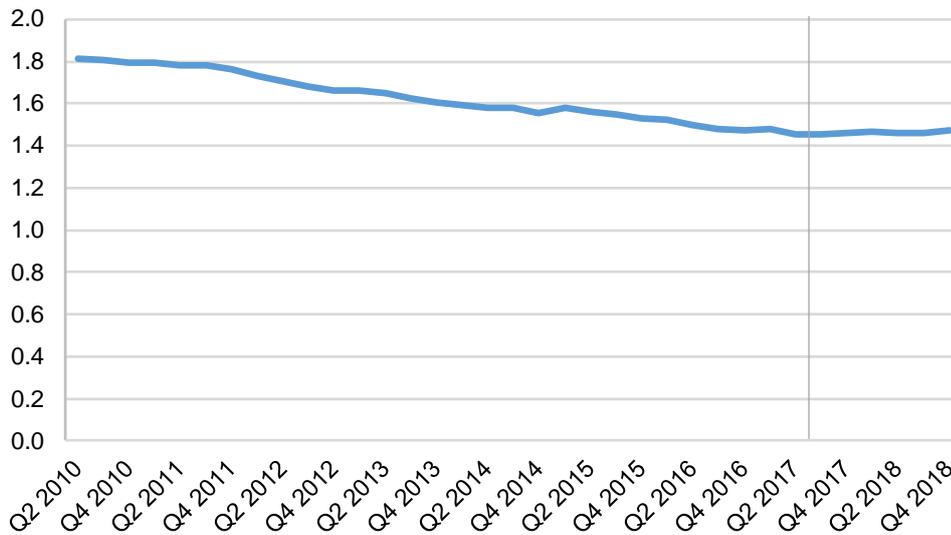
The MoJ publishes data on the average number of hearings for cases dealt with in magistrates' courts. Figure 5 below shows that the average number of hearings decreased from 1.8 hearings in 2011 to 1.5 hearings in the year before the guideline came into force.⁴² The average number of hearings remained the same in the year after the guideline came into force. The average number of hearings also remained similar before and after the guideline came into force across the different types of offences – summary motoring, summary non-motoring offences triable either way, and indictable only.

This analysis again suggests that the guideline did not have an impact on the average number of hearings required at magistrates' courts.

⁴¹ Acceptable guilty plea(s) entered late covers all trials that crack due to 'Acceptable guilty plea(s) entered late, offered for the first time by defence' and 'Acceptable guilty plea(s) entered late, previously rejected by the prosecution'.

⁴² See Criminal Court Statistics quarterly bulletin (Table T2).

Figure 5: Average number of hearings for cases dealt with in magistrates' courts, 2010⁴³–2018



Implementation of the guideline

Analysis of data from a data collection was also conducted to enable consideration of the reductions applied for a guilty plea.⁴⁴ This analysis found that in most cases, sentencers applied the reductions we would expect based on the stage of guilty plea, as specified in the guideline.

In terms of the impact on defendant behaviour, the small number of interviews (N = 19) conducted with defendants at one magistrates' court found that the majority interviewed were aware of the guilty plea scheme. Where defendants pleaded guilty, they said this was because they accepted responsibility for the offending, or thought they would be found guilty at trial, or that they pleaded guilty to reduce costs or reduce the length of their sentence.

This research again suggests that the guideline did not seem to have any noticeable impact on their pleading behaviour, as the reasons for pleading guilty suggest they would have pleaded guilty at the same stage anyway. Again, however, these findings should be treated with caution due to the small sample size involved.

3. Impact on sentences

Adult offenders

The resource assessment published alongside the guideline anticipated that the guideline would have a minimal impact on sentence lengths under the optimistic scenario, while offenders would receive longer sentences under the pessimistic scenario, including additional time spent on licence (because a smaller number of defendants would receive the full reduction as many would continue to plead guilty at a later stage and consequently

⁴³ Timeliness figures are only available from April 2010, so data for 2010 is presented above for Q2 to Q4 only.

⁴⁴ A total of around 1,700 completed data collection forms were analysed (i.e. covering around 1,700 offenders sentenced).

receive a smaller reduction). This section considers whether the guideline has had an impact on sentence lengths.

Figure 6 below shows that ACSLs for adult offenders sentenced for triable either way offences in the Crown Court increased between 2008 and the year before the guideline came into force, for both offenders who pleaded guilty and offenders who did not plead guilty. In the comparable year after the guideline came into force, the ACSL for offenders who pleaded guilty remained the same, at 1 year 10 months. The ACSL for offenders who did not plead guilty increased from 3 years 4 months to 3 years 8 months. This analysis suggests that the guideline did not increase sentences for offenders who pleaded guilty to triable either way offences in the Crown Court.

Figure 6: Average custodial sentence lengths for adult offenders sentenced for triable either way offences in the Crown Court, by plea type, 2008-2018

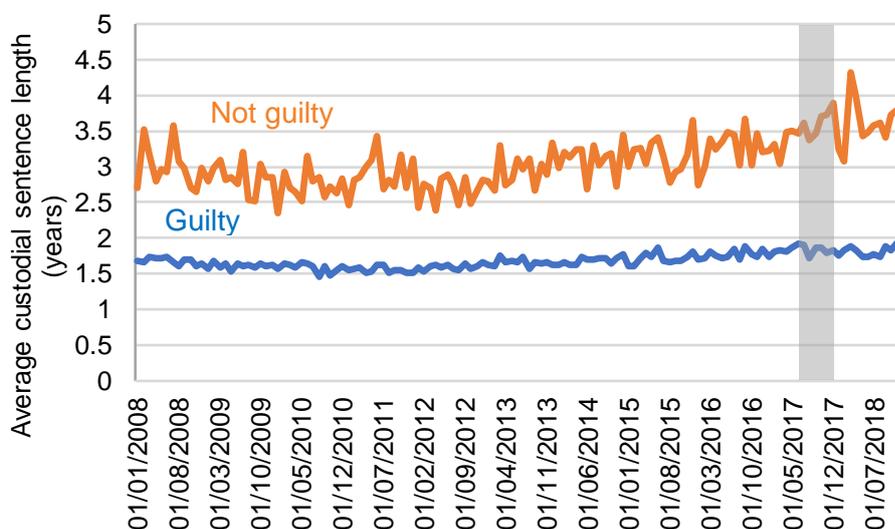
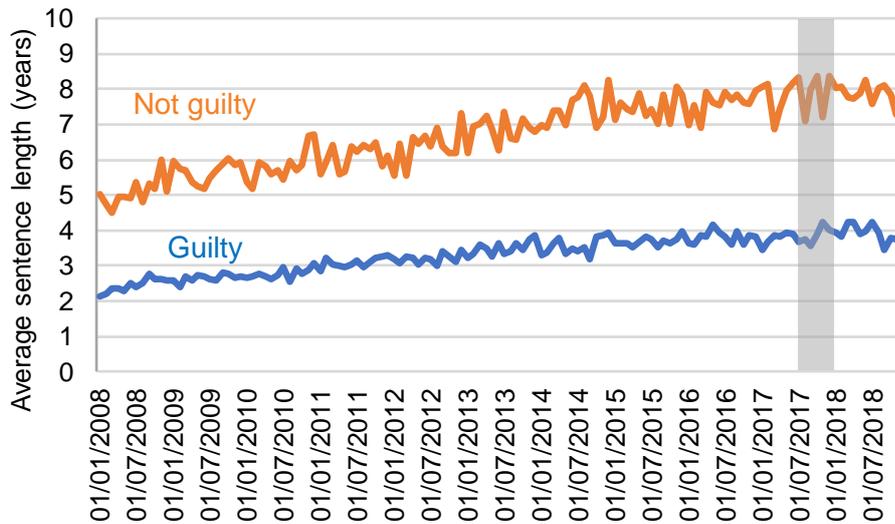


Figure 7 below shows that ACSLs for adult offenders sentenced for indictable only offences in the Crown Court were increasing between 2008 and the year before the guideline came into force, for both offenders who pleaded guilty and offenders who did not plead guilty. In the comparable year after the guideline came into force, the ACSLs continued increasing, by two months, for both offenders who pleaded guilty and offenders who did not plead guilty.

Given that there was an increase to the ACSL for offenders who did not plead guilty (whose sentence length would not be affected by the guideline), the increase in sentence length for offenders pleading guilty (whose sentence could be affected by the guideline), appears to be part of longer term trends of increasing sentences for these types of offences. This analysis again suggests that the guideline did not cause any substantial increase to sentence lengths for offenders who pleaded guilty to indictable only offences in the Crown Court. It is not possible to ascertain whether the lack of an increase in ACSL for those who did plead guilty is due to an increase in the average reduction for a guilty plea or other factors such as a difference in case mix.

Figure 7: Average custodial sentence lengths for adult offenders sentenced for indictable only offences in the Crown Court, by plea type, 2008-2018



Plea information is not available for magistrates' courts; however, analysis shows that the ACSL in magistrates' courts (for both offenders who pleaded guilty, and offenders who did not plead guilty) remained at two months in the year before and after the guideline came into force. This further suggests that the guideline has not had an impact on sentence lengths.

Given that the guideline does not appear to have had an impact on sentence lengths, it will also not have had an impact on the time offenders spend on licence in the community or under post-sentence supervision.

As noted earlier, the resource assessment considered two different scenarios:

- The optimistic scenario assumed that more defendants would plead guilty at the first stage of proceedings because this would be the only stage they would receive the maximum sentence reduction.
- The pessimistic scenario assumed that a smaller number of defendants would receive the full reduction as many would continue to plead at a later stage and consequently receive a smaller reduction and a longer sentence.

In fact, what the evidence set out above indicates is that while in general more pleas are not being entered at the first stage of proceedings, neither have average sentence lengths increased. Potential explanations are explored below.

Offenders aged under 18

The resource assessment set out that the guideline was expected to have a minimal effect on resources for children and young people under the age of 18.

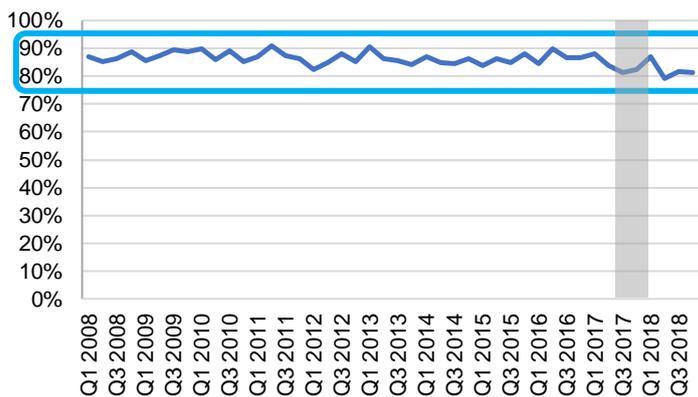
The vast majority of children and young people are sentenced at magistrates' courts (96 per cent of offenders under 18 in 2018), where plea information is not available. For the four per cent of children and young people sentenced in the Crown Court, Figure 8 below shows that the proportion of offenders sentenced pleading guilty decreased from 88 per

cent in 2011 to 86 per cent in the year before the guideline came into force. The proportion continued decreasing to 82 per cent in the year after the guideline came into force.

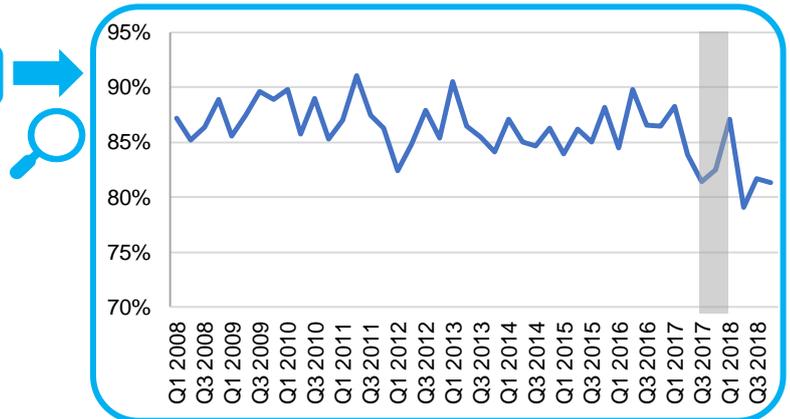
As this decrease appears to be part of an existing trend, it is not clear whether the guideline has had an impact on the proportion of children and young people pleading guilty.

Figure 8: Proportion of children and young people sentenced in the Crown Court who pleaded guilty, 2008–2018

Chart with axis starting at 0%



Same chart – zoomed in to show detail



Published data on the stage of plea and average number of hearings is not broken down by age, and therefore statistics are not available for children and young people.

Data on sentence lengths for children and young people in the Crown Court are available. However, an analysis of sentence lengths by plea type would not be comparable due to the small number of children and young people sentenced to immediate custody (around 400 offenders were sentenced to immediate custody at the Crown Court in 2018).

The Council has also published a separate assessment of the *Children and Young People* guideline, which will include more details on sentences for this group⁴⁵.

4. Summary and conclusion

As outlined in this report, the analysis undertaken for this assessment of the guideline suggests that there was no evidence that it has led to an impact on the plea rates for adult offenders,⁴⁶ the stage at which the guilty plea is entered in the Crown Court, and the average number of hearings required at both the magistrates' courts and the Crown Court. In addition, the guideline did not appear to have an impact on sentence lengths for adult offenders. Any changes observed appear to be in line with pre-existing, longer-term, trends.

⁴⁵ www.sentencingcouncil.org.uk/publications/item/children-and-young-people-assessment-of-guideline

⁴⁶ The vast majority of children and young people are sentenced at magistrates' courts where plea information is not available. For the four per cent sentenced in the Crown Court, the proportion of offenders sentenced pleading guilty has decreased over time suggesting this may be part of an existing trend.

This research also indicated that the guideline did not seem to have any noticeable impact on the timings of defendants' pleas; the reasons reported in the small sample of defendants included in this work highlighted that they would have pleaded guilty at the same stage regardless of the guideline.

In summary, this suggests that the assumption modelled in the optimistic scenario in the resource assessment for the guideline⁴⁷ - that more defendants would plead guilty at the first stage of proceedings because this would be the only stage they would receive the maximum sentence reduction - has not occurred. However, it is also the case that the assumption modelled in the pessimistic scenario - that a smaller number of defendants would receive the full reduction as many would continue to plead at a later stage and consequently receive a smaller reduction and a longer sentence - has not occurred.

Potential reasons for these findings were explored with the steering group that was set up to help monitor the guideline. The group, which comprised members from across the criminal justice system, noted that there was evidence that the guideline was being followed and, that despite the fact that the proportion of early pleas had not increased, this had not translated into longer sentences.

Members felt that one potential explanation for this was that, as anticipated in the resource assessment, judges were making a greater allowance for mitigation before the reduction for a guilty plea, in line with the guideline which states:

*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.*

In addition, in the context of the difficulties noted in section 2 by defence representatives in obtaining information, the exception at F1 of the guideline⁴⁸ (further information, assistance or advice necessary before indicating plea) would potentially apply to some cases. This allows courts to give full credit at a later stage if it would have been unreasonable to expect the plea to have been entered sooner.

Given the wider context within which this guideline sits – having been introduced during a period of changes within the wider criminal justice system – it is difficult to definitively conclude what the overall impact of it has been. However, the analysis reviewed as part of this assessment does indicate that it has not had an adverse effect on prison or probation resources.

The Council has considered this analysis and has agreed to keep the guideline under review. It will also continue to work with the steering group to obtain feedback on the guideline.

⁴⁷ <https://www.sentencingcouncil.org.uk/publications/item/reduction-in-sentence-for-a-guilty-plea-final-resource-assessment/>

⁴⁸ 'Where the sentencing court is satisfied that there were particular circumstances which significantly reduced the defendant's ability to understand what was alleged or otherwise made it unreasonable to expect the defendant to indicate a guilty plea sooner than was done, a reduction of one-third should still be made.'

Acknowledgements

The Council would like to thank the members of the steering group for their input throughout the monitoring process to date, and also those from the Council's solicitor's panel and the Public Defender Service who provided information and views to feed into this process.

Author

Pamela Jooman and Amber Isaac
Office of the Sentencing Council