

### 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 offence<sup>1</sup> 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.

A guilty plea 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 offender'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.

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

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

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

**Stage 3:** State the amount of that reduction.

**Stage 4:** Apply the reduction to the appropriate sentence.

**Stage 5:** Follow any further steps in the offence specific guideline to determine the final sentence.

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<sup>1</sup> 'Offence' includes breach of an order where this constitutes a separate criminal offence but not breach of terms of a sentence or licence.

## D. DETERMINING THE LEVEL OF REDUCTION

**D1. Where a plea is indicated<sup>2</sup> 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 in section F). The first stage 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** the first stage of the proceedings 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.

**For offenders under the age of 18** the first stage of the proceedings will be:

- For offences dealt with in the youth court – the first hearing at the youth court;
- For offences sent or committed to the Crown Court as grave crimes – the allocation hearing at the youth<sup>3</sup> court **unless** it would be in the interests of justice to treat the first hearing at the Crown Court as the first stage;
- For offences sent to the Crown Court under any other provision<sup>4</sup> – 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 in section F).

**For offenders aged 18 or older** the **one-fifth** reduction should be made for pleas indicated:

- For offences dealt with in magistrates' courts – up to 14 days after the first hearing;
- 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 – not more than 28 days after the prosecutor states it has complied with s3 Criminal Procedure and Investigations Act 1996.

**For offenders under the age of 18** the **one-fifth** reduction should be made for pleas indicated:

- For offences dealt with in the youth court – up to 14 days after the first hearing;
- For offences sent to the Crown Court as grave crimes – up to and including the first hearing at the Crown Court **unless** the interests of justice test above applies, in which case not more than 28 days after the prosecutor states it has complied with s3 Criminal Procedure and Investigations Act 1996.
- For offences sent to the Crown Court under any other provision – not more than 28 days after the prosecutor states it has complied with s3 Criminal Procedure and Investigations Act 1996.

### 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 in section F). The reduction may be decreased further, even to zero, if the guilty plea is entered during the course of the trial. For the purposes of this guideline a trial will be deemed to have started when pre-recorded cross-examination has taken place.

<sup>2</sup> 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 24.8) doing so will constitute a formal notification of the plea.

<sup>3</sup> For youths jointly charged with an adult the allocation hearing may be in the adult magistrates' court.

<sup>4</sup> s.51A Crime and Disorder Act 1998

## **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.

If the court has proceeded on that basis 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 **all three** of the following apply:

1. At or before the first stage of the proceedings (see D1 above) the offender – although he has not indicated a guilty plea – has identified to the court and/or the prosecutor the conduct which he admits; 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 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. Initial details of the prosecution case (IDPC) not served before the first hearing**

If the prosecutor has not made the IDPC available to an offender charged with an either way or indictable only offence at or before the beginning of the day of the first hearing **and** the offender indicates a guilty plea to the court and the prosecutor within 14 days of service of the IDPC, the plea should be taken as having been indicated at the first stage of proceedings.

**F3. Newton Hearings and special reasons hearings**

In circumstances where an offender's version of events is rejected at a Newton Hearing<sup>5</sup> or special reasons hearing,<sup>6</sup> 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. 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.

**F5. Offender convicted of a lesser or different offence**

If an offender is convicted of a lesser or different offence from that originally charged, and he has earlier made an unequivocal 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 indication of plea (to the lesser or different offence) was made.

**F6. 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.

**F7. 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 of at least six months falls to be imposed on a person aged 18 or over who has been convicted under sections 1 or 1A of the Prevention of Crime Act 1953; or sections 139, 139AA or 139A of the Criminal Justice Act 1988 (certain possession of knives or offensive weapon offences) **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.

**F8. 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 four months falls to be imposed on a person who is aged at least 16 but under 18, who has been convicted under sections 1 or 1A of the Prevention of Crime Act 1953; or sections 139, 139AA or 139A of the Criminal Justice Act 1988 (certain possession of knives or offensive weapon offences) the court may impose any sentence that it considers appropriate, having taken into consideration the general principles in this guideline.

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<sup>5</sup> 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.

<sup>6</sup> A special reasons hearing occurs when an offender is convicted of an offence carrying mandatory licence endorsement or 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 endorsement or disqualification. This may involve calling witnesses to give evidence.

### **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:

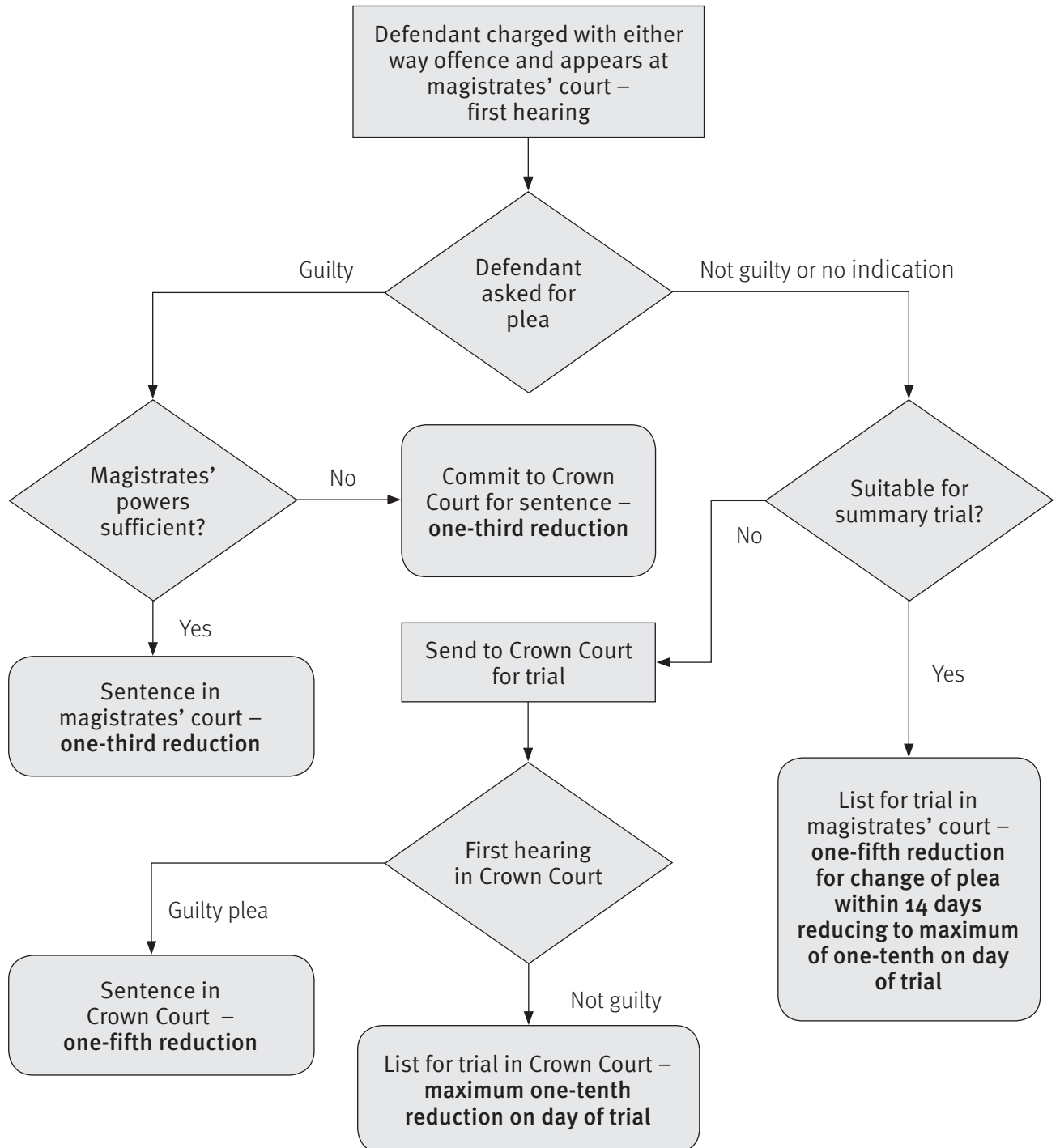
- the court will weigh carefully the overall length of the minimum term taking into account other reductions for which the offender may be eligible so as to avoid a combination leading to an inappropriately short sentence;
- where it is appropriate to reduce the minimum term having regard to a plea of 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, late service of IDPC and Newton hearings, outlined at F1 to F3 above, apply to murder cases.

# Appendix 1

## Flowchart illustrating reductions for either way offences

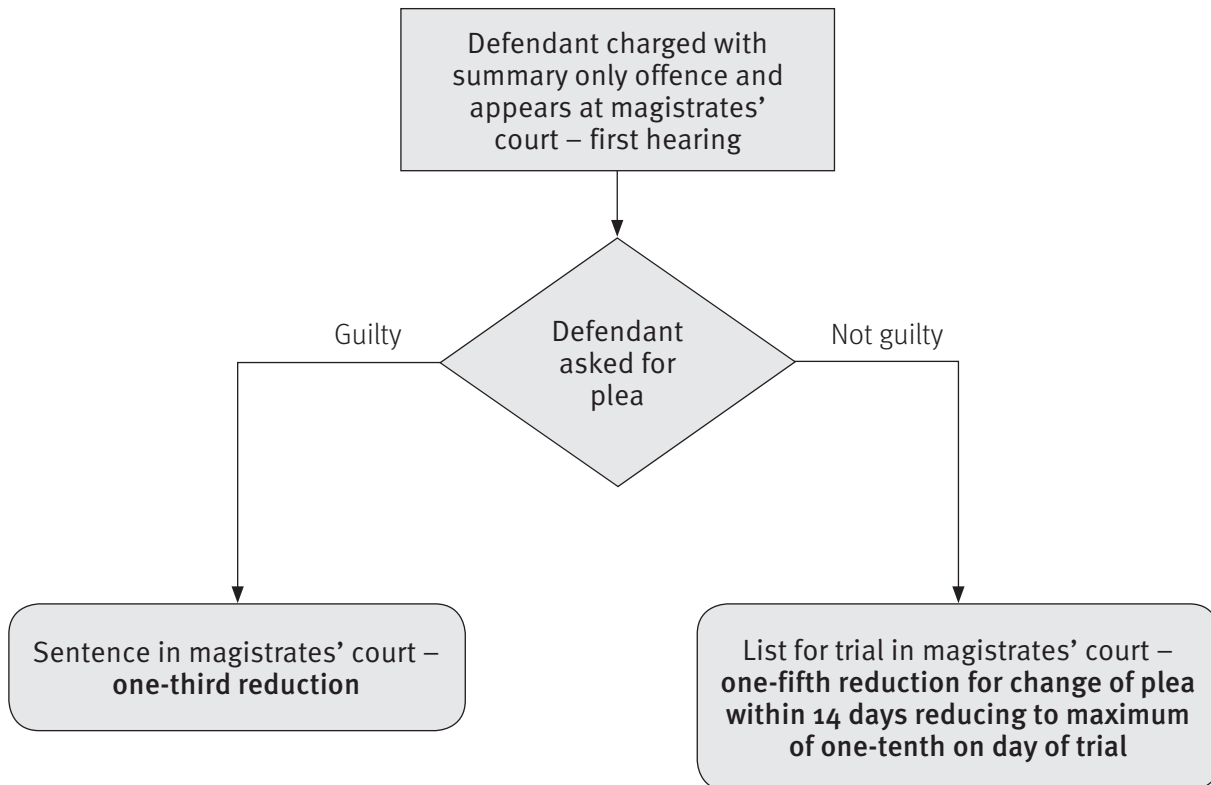
(offences that can be tried in a magistrates' court or the Crown Court)



# Appendix 2

## Flowchart illustrating reductions for summary only offences

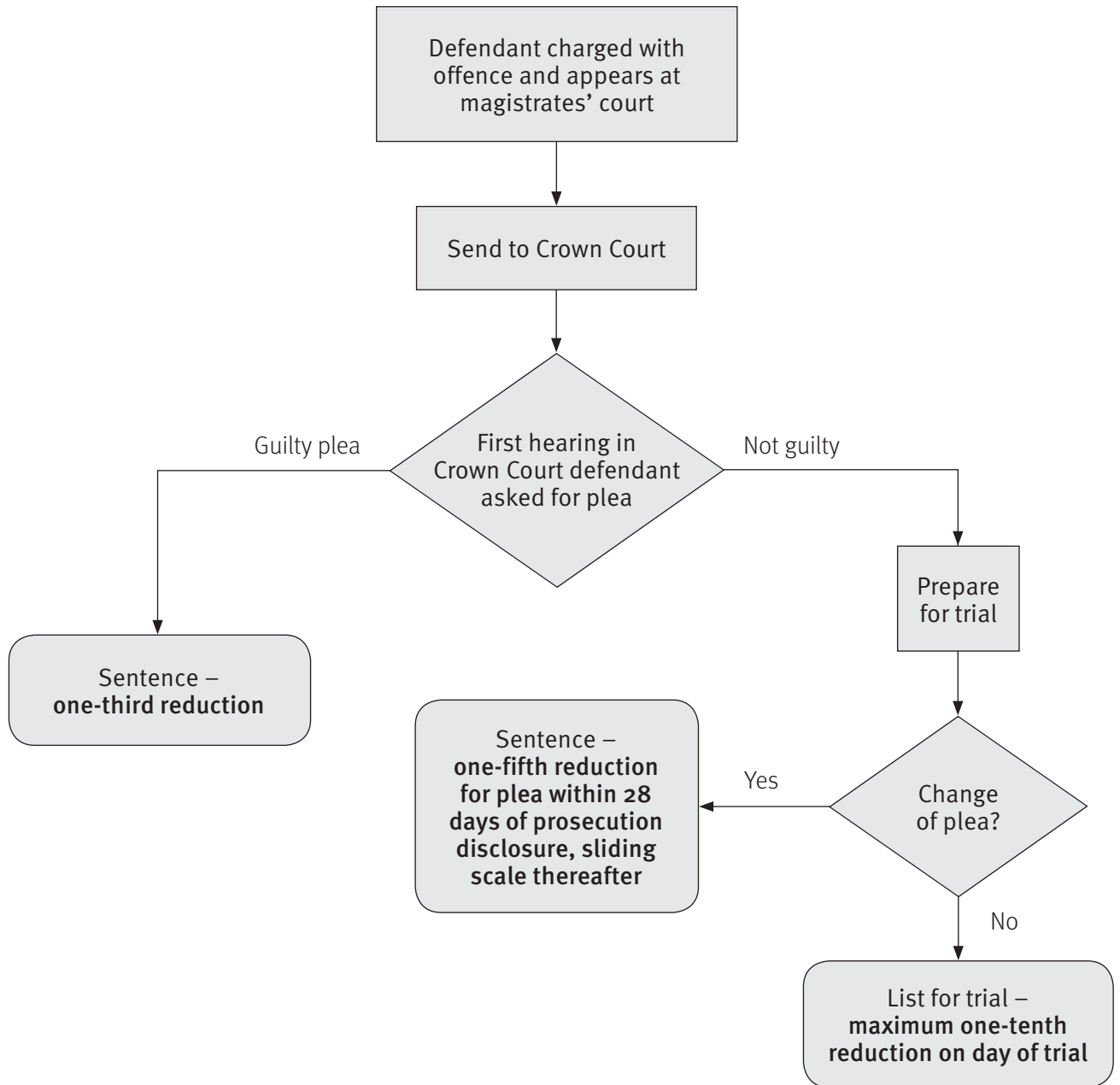
(offences that can be tried only in a magistrates' court)



# Appendix 3

## Flowchart illustrating reductions for indictable only offences

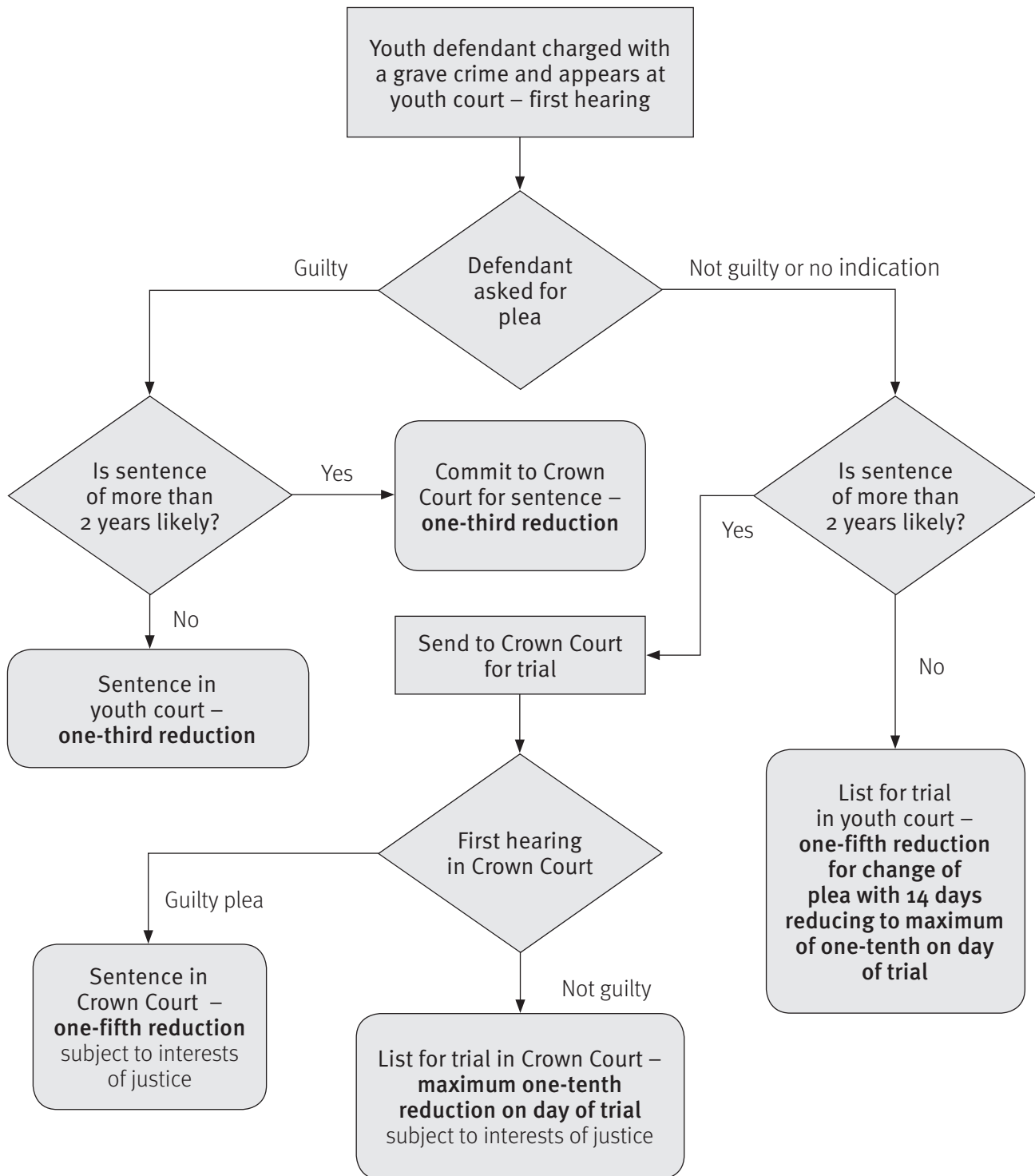
(offences that can be tried only in the Crown Court excluding murder)





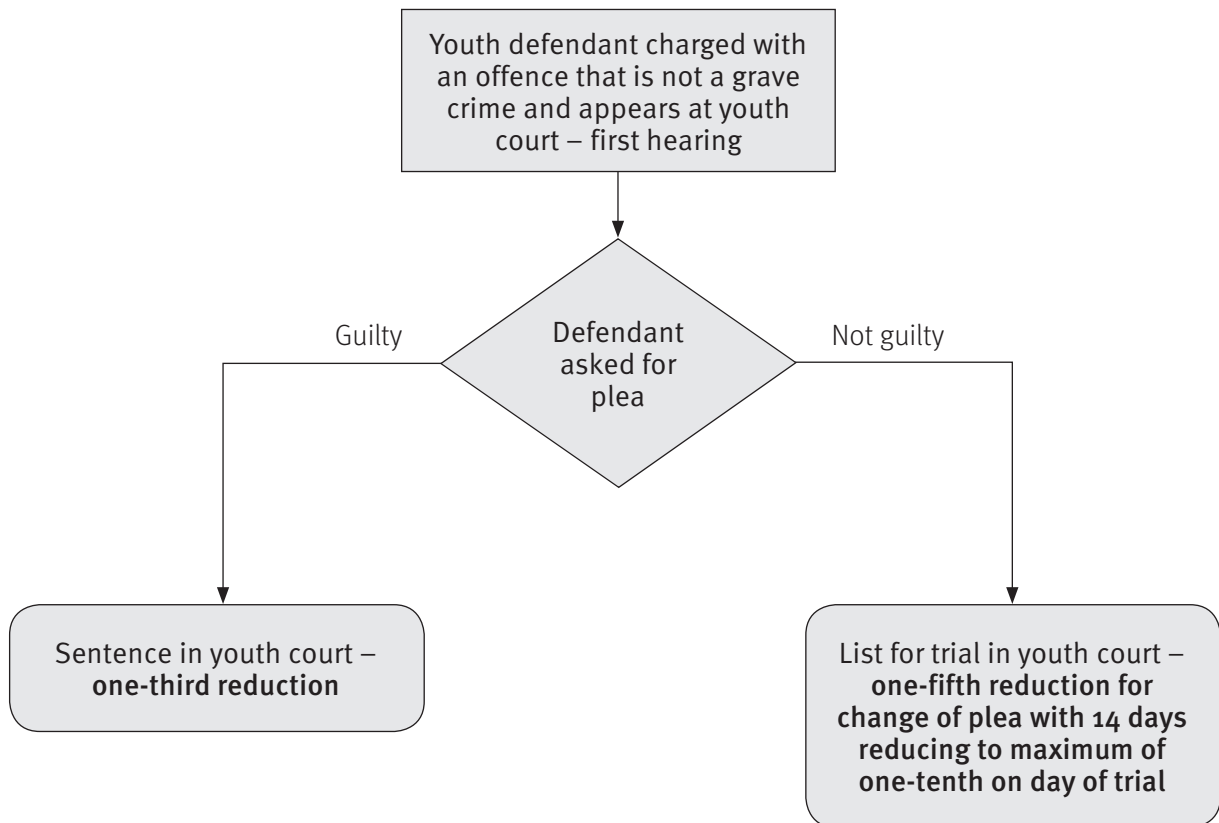
# Appendix 4

Flowchart illustrating reductions for offenders aged under 18 years  
(offences that can be tried in a youth court or the Crown Court)



# Appendix 5

## Flowchart illustrating reductions for offenders aged under 18 years (offences that must be dealt with in the youth court)



# Appendix 6

Flowchart illustrating reductions for offenders aged under 18 years  
(offences that must be tried in the Crown Court excluding murder)

