Reduction in Sentence for a Guilty Plea Guideline

Consultation

Published on 11 February 2016

The consultation will end on 5 May 2016

A consultation produced by the Sentencing Council.

This information is also available on the Sentencing Council's website:

www.sentencingcouncil.org.uk

About this consultation

To:
This consultation is open to everyone including members of the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.

Duration:
From 11 February 2016 to 5 May 2016

Enquiries (including requests for this paper in an alternative format) to:
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Additional ways to feed in your views:
This consultation exercise is accompanied by a resource assessment and an online questionnaire, which can be found at:

www.sentencingcouncil.org.uk

A series of consultation meetings is also taking place. For further information please use the 'Enquiries' contact details above.

Response paper:
Following the conclusion of this consultation exercise, a response will be published at:

www.sentencingcouncil.org.uk

Freedom of Information:
We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents' names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE – we will disregard automatic confidentiality statements generated by an IT system.

In addition, responses may be shared with the Justice Committee of the House of Commons.

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Introduction

What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines for the courts to use when passing a sentence. The Council's remit includes consulting on guidelines for the sentencing of offenders following conviction.[1]

Why are we producing a new guilty plea guideline?

The Council is required by law to produce a guideline on reductions for guilty pleas.

Section 120(3)(a) the Coroners and Justice Act 2009 states:
The Council must prepare—

(a) sentencing guidelines about the discharge of a court's duty under section 144 of the Criminal Justice Act 2003 (reduction in sentences for guilty pleas).

Section 144 of the Criminal Justice Act 2003 states:
(1) In determining what sentence to pass on an offender who has pleaded guilty to an offence 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.

There is a current definitive guideline issued by the Council's predecessor body, the Sentencing Guidelines Council (SGC) in 2007.[2] Courts are required to follow the SGC guideline and the Court of Appeal has handed down judgments giving further guidance on how the guideline should be applied.[3]

The Council collected data on the timings and levels of guilty pleas using the Crown Court Sentencing Survey, which ran from 1 October 2010 to 31 March 2015. This data, taken together with case law and research carried out with sentencers on the application of the SGC guideline,[4] suggests that the SGC guideline is not always applied consistently and that levels of reductions in some cases appear to be higher than those recommended by the guideline.

The Council has designed the revised guideline for guilty plea reductions to clarify the levels of reduction appropriate for the different stages at which the plea is entered. The revised guideline seeks to encourage those defendants who are aware of their guilt to enter a plea as early in the court process as possible. When this occurs, victims and witnesses are spared having to appear at court to testify and the police and Crown Prosecution Service can apply their resources to the investigation and prosecution of other cases. Offenders who accept their responsibility in this way benefit from receiving a modest reduction in their sentence.

[1] ss.118–136 Coroners and Justice Act 2009
[2] http://www.sentencingcouncil.org.uk/publications/item/reduction-in-sentence-for-a-guilty-plea-definitive-guideline/
[3] Most notably *R v Caley and others* [2012] EWCA Crim 2821
[4] Further details of the research can be found at page 9 below

By producing a new, more concise guideline, the Council aims to improve clarity and consistency in the application of guilty plea reductions. The intention is for the decision-making process in the proposed guideline to provide a clear 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.

What is the Council consulting about?

The Council has produced this consultation paper in order to seek the views of people interested in criminal sentencing.

It is important to clarify that the Council is consulting on the draft guideline on reductions for guilty pleas and **not** the existence of reductions for guilty pleas which is set out in statute. Neither is the Council consulting in this instance on the sentencing levels for individual offences. Sentencing levels are governed by the maximum sentences (and in some cases minimum sentences) laid down by Parliament and relevant offence specific sentencing guidelines.

Through this consultation process, the Council is seeking views on:
- the principles on which the reduction for a guilty plea should be based;
- the levels of reduction that should be available;
- the stage in the court process at which the different levels of reduction should apply;
- any exceptions to the reductions available at various stages;
- the regime that should apply in the case of murder;
- the clarity and accessibility of the guideline; and
- anything else that you think should be considered.

A summary of the consultation questions can be found at Annex A.

What else is happening as part of the consultation process?

This is a 12 week public consultation. During the consultation period, the Council will host a number of consultation meetings to seek views from criminal justice organisations and other groups with an interest in this area, as well as sentencers. We will also be conducting interviews with a sample of defence advocates to explore how they might apply the guideline when advising defendants. Once the consultation is over and the guideline revised, a final guideline will be published and used by all adult courts and youth courts in England and Wales.

Alongside this consultation paper, the Council has produced a resource assessment and an online questionnaire which allows people to respond to the consultation questions through the Sentencing Council website: **www.sentencingcouncil.org.uk**

Section one: Overarching issues and the context of the guideline

Reductions for guilty pleas

The principle that a court should take into account the timing and circumstances of any guilty plea in determining sentences is laid down by Parliament in legislation.[5] The Sentencing Council is required by legislation to prepare a guideline on reduction in sentences for guilty pleas.[6]

This guideline will be used by courts in conjunction with guidelines for sentencing particular offences, where they exist.

The Council's aim is to ensure that the reduction in sentences for guilty pleas should be applied fairly and consistently and that the guideline should encourage defendants who are guilty to plead guilty as early in the court process as possible.

The purpose of making a reduction in sentences for guilty pleas

The purpose of reducing sentences when offenders plead guilty is to encourage them to admit their guilt as early as possible.

By bringing forward the point at which some offenders plead guilty the proposed guideline will generate, to a greater or lesser degree, the following benefits:

- Overall, victims and witnesses in many cases will be informed earlier than in the past that their testimony is not required as the defendant has pleaded guilty. The earlier the plea is entered, the sooner victims and witnesses can be reassured that the offender has accepted responsibility for the offence and that they will not have to worry about having to go to court. In addition, victims will also benefit from seeing a more consistent approach to determining sentence reductions; and
- There will be resource savings for the police, the Crown Prosecution Service (CPS), the Legal Aid Agency and Her Majesty's Courts and Tribunals Service. These savings in turn benefit victims and witnesses in that they allow more time and resources to be concentrated on investigating and prosecuting other cases. The magnitude of these savings is hard to estimate as it will be determined by the degree to which the guideline affects the timing of guilty pleas.

Other benefits that are expected to result from the proposed guideline are:

- The enhanced clarity of the guideline will result in a more consistent application across courts in England and Wales;
- Defence practitioners will have a clearer idea of the likely outcome for the defendant if he or she enters a guilty plea at different stages of the criminal process and they will be better able to advise clients; and
- The guideline will facilitate the work and enhance the effectiveness of other initiatives in the criminal justice system to ensure more timely and effective decision-making (see further below).

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[5] s.144 Criminal Justice Act 2003
[6] s.120(3)(a) Coroners and Justice Act 2009

In addition to noting the goals and likely benefits of the proposed guideline, it is important to state what the guideline is not designed to achieve. Defendants have a clear right to require the state to prove the case against them to a criminal standard. The guideline is directed only at defendants wishing to enter a guilty plea and nothing in the guideline should create pressure on defendants to plead guilty.

The guideline in the context of other criminal justice initiatives

The Council recognises that the guilty plea guideline will operate in the context of the wider criminal justice system and that there are many factors that may influence the decision whether and when to plead guilty. 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] which have been incorporated into the Criminal Procedure Rules, place a requirement on all parties to engage early, make the right decisions, identify the issues for the court to resolve and provide sufficient material to facilitate that process.

These initiatives are considered in a little more detail below:

Under TSJ, following police charge a defendant will normally be released on bail to appear in a magistrates' court either 14 or 28 days later. Defence practitioners and the CPS are required to communicate at the first available opportunity and in any event no later than the beginning of the day of the first hearing.[8] The CPS is committed to reviewing the case and providing the initial details of the prosecution case (IDPC) to the defence prior to the first hearing. This will ensure that at the first hearing a defendant will be facing the correct charge and will know what the allegation is against him. On that basis, in the vast majority of cases there will be no need for further information before deciding whether or not to plead guilty because the defendant will know whether or not he is guilty of the offence charged.

BCM introduces a uniform national scheme in the Crown Court. Under BCM the parties are required to co-operate in the progression of cases and the CPS is required to provide papers in accordance with the requirements set out in the Criminal Practice Directions.[9] All Crown Court cases are listed in a Plea and Trial Preparation Hearing (PTPH) which will usually be held within 28 days of sending. The prosecution and defence will be expected to engage with each other rapidly after a case has been sent to the Crown Court to review and identify those cases that are likely to plead guilty, and identify the issues in contested cases.

It is anticipated that at the PTPH guilty plea cases will be sentenced and not guilty cases will be robustly case managed and the trial date fixed in the majority of cases. A Further Case Management Hearing (FCMH) will only occur in identified complex cases or if a judge decides that the interests of justice require a further hearing. Following which, the next appearance in court should be for trial.

The CJS Common Platform is designed to provide a comprehensive, online case-management system. Following charge, the police will make all the relevant documentation available via a digital case file to the CPS. The CPS will give electronic access to the case papers to the defence. The case will be managed entirely online. The parties and the court will be able to work on the electronic "papers", privately highlighting, editing and making comments.

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[7] https://www.judiciary.gov.uk/publications/review-of-efficiency-in-criminal-proceedings-final-report/
[8] CrimPR 3.3 http://www.justice.gov.uk/courts/procedure-rules/criminal/docs/2015/criminal-procedure-rules-practice-directions-2015.pdf
[9] http://www.justice.gov.uk/courts/procedure-rules/criminal/practice-direction/2015/crim-practice-directions-II-preliminary-proceedings-2015.pdf

Section two: Developing the guideline

Research into attitudes to guilty plea reductions

In 2011 the Council published research[10] into attitudes to guilty plea sentence reductions among the general public, victims and witnesses and offenders. The research found that whilst not all of the victims who took part supported the idea of offenders receiving a reduced sentence for pleading guilty, the majority recognised the benefits to victims and witnesses especially if the plea was entered at an early stage. Research with a sample of the general public found that there was limited knowledge of the criminal justice system and a general resistance to the idea of giving a reduction for guilty pleas. However, even among this group there was recognition that there would be cases where reductions would be justified.

There was greater support among the public for reductions for guilty pleas for less serious offences. Many participating in the study thought that for the most serious violent or sexual offences there should be no reduction. However, among those who had been the victims of more serious offending, there was support for providing a reduction to encourage guilty pleas even at a late stage. For this group the prospect of attending court and giving evidence was traumatic.

The research also showed that the majority of people involved in the study assumed that the main motivation for giving reductions for guilty pleas was to save time and money. However, they preferred the idea that the purpose of reductions for guilty pleas should be to save victims from the emotional trauma of giving evidence.

The Council has also had regard to research into victims' and witnesses' experiences of attending the Crown Court conducted on behalf of Victim Support.[11] This research highlights the anxiety experienced by victims and witnesses about giving evidence in court.

Taking into account the experiences and views of witnesses and victims, the Council has designed the guideline to encourage pleas as early in the process as possible to maximise the relief to victims and witnesses, while leaving a small level of reduction for pleas late in the court process where they spare victims and witnesses from giving evidence and provide victims with the satisfaction of knowing that the offender has admitted guilt.

[10] http://www.sentencingcouncil.org.uk/wp-content/uploads/Attitudes_to_Guilty_Plea_Sentence_Reductions_web1.pdf
[11] https://www.victimsupport.org.uk/sites/default/files/Out%20of%20the%20shaddows.pdf

The Council has considered the question of how far offenders are influenced to enter a guilty plea by the availability of a reduction in sentence, and how much different levels of reduction are likely to influence behaviour. The research[12] published in 2011 into attitudes to guilty plea sentence reductions among a small number of offenders indicated that the main factor influencing a decision to plead guilty is the strength of the prosecution case. In other words, if an offender thinks or is advised that he is more likely than not to be found guilty, he will plead guilty. This aspect of the research would tend to suggest that a guideline for reductions for guilty pleas would have little or no influence on the behaviour of offenders. However, the research was conducted with a very small group of offenders[13] and so the findings are not representative of offenders more widely. It is also important to note that the practice and procedures of the criminal courts have changed since the research was carried out and are continuing to change (see 'The guideline in the context of other criminal justice initiatives' at page 8 above). The proposed guideline is one of a number of factors that will change the culture of the criminal justice system by providing sharper, clearer guidance than hitherto as a contribution to consistency of approach to the issue of reductions for guilty pleas.

Statistical research and analysis

Virtually all criminal cases start in magistrates' courts. The most recent annual statistics[14] show that approximately 1.47 million defendants were proceeded against at magistrates' courts in 2014. Of those, 1.22 million resulted in convictions in either magistrates' courts or the Crown Court, which means that the offender either pleaded guilty or was convicted after a trial.

Information on the percentage of offenders who plead guilty is only available for the Crown Court. Of the 86,297 offenders sentenced in the Crown Court in 2014, 77,289 (90 per cent) pleaded guilty and 9,008 were found guilty after a trial. Of the 90 per cent who pleaded guilty in the Crown Court, 72 per cent pleaded guilty at what was adjudged to be the 'first reasonable opportunity.'[15]

It would seem likely that there are many factors which influence the decision whether and when to plead guilty. One suggestion is that offenders are likely to be encouraged to plead guilty at an early stage if they believe that by doing so they will avoid a custodial sentence. The published statistics show some evidence of this in the Crown Court; a lower proportion of offenders that pleaded guilty were sentenced to immediate custody (53 per cent) compared to those that pleaded not guilty (71 per cent). There are also differences across offence types, with the rate of guilty pleas among those convicted of indictable sexual offences at the Crown Court at 61 per cent, which is considerably lower than the overall rate for indictable offences (89 per cent).[16]

Research with sentencers

Qualitative research was undertaken with sentencers in June and July 2013 to explore issues surrounding guilty plea sentence reductions. The approach involved semi-structured, face-to-face interviews with eight magistrates, 14 Crown Court judges and two District Judges; plus two focus group sessions with Crown Court judges (the first involving 11 circuit judges and the second four Resident Judges). This work supplemented a small content analysis of sentencing transcripts undertaken in May 2013.

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[12] http://www.sentencingcouncil.org.uk/wp-content/uploads/Attitudes_to_Guilty_Plea_Sentence_Reductions_web1.pdf
[13] 15 offenders of whom 12 were in custody and three were serving community sentences.
[14] https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2014
[15] http://www.sentencingcouncil.org.uk/wp-content/uploads/CCSS-Annual-2014.pdf
[16] https://www.gov.uk/government/statistics/criminal-justice-statistics-quarterly-december-2013

Research focused on the factors taken into consideration when deciding on a particular reduction, as well as circumstances in which sentencers might exercise flexibility and give reductions either higher or lower than the guideline recommendations. In addition, those undertaking an individual interview 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 the sentence.

It should be noted that the sample size was small and is therefore not representative of all judges and so the findings should be treated with caution. The key findings were that for all sentencers the timing of the plea was the key consideration when determining the level of reduction. Other factors taken into account by some (but not all) were: the strength of the evidence; the remorse demonstrated; the vulnerability of victims and witnesses and the extent to which the guilty plea spares them the anxiety of giving evidence and other factors in the system such as the availability and timing of legal advice and timing of the service of the prosecution evidence. It was also found that some sentencers tend to approach the sentencing process in an 'holistic' manner arriving at a final sentence without following distinctive steps.

Further qualitative research was carried out with sentencers in March 2015 on a pre-consultation version of the guideline. In-depth interviews were conducted with 20 sentencers (six magistrates, one district judge, three recorders and 10 Crown Court judges). The research examined, in detail, how sentencers construed the guideline, in order to ensure that the final draft was clear, easy to understand and straightforward to apply across courts. As a result of this research, drafting changes were made to the guideline to improve clarity.

Section three: The proposals in detail

(Guideline at Annex C)

This section considers the draft guideline in detail and explains the decisions made by the Council in arriving at the draft guideline. The overall aim of the Council in producing this guideline is to provide a clear and concise guide for sentencers and other court users on reductions in sentences for guilty pleas.

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[17] *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.

In common with the existing Sentencing Guidelines Council (SGC) guideline, this draft guideline will apply to all offences in the Crown Court, magistrates' courts and youth courts. It applies to individual offenders and to organisations.

The guideline will not apply where criminal courts are dealing with offenders for matters that are not a criminal offence. For example where an offender is brought back to court for failing to comply with a condition of community order and the court is dealing with him for that breach, this guideline would not apply.

The reference to legislative restrictions relevant to Detention and Training Orders[18] refers to the fact that these orders (applicable to offenders under the age of 18) can only be of certain fixed lengths (four, six, eight, 10, 12, 18 or 24 months). The court must take into account any guilty plea when fixing the length of the order, rather than the usual practice of arriving at a sentence and then applying the appropriate reduction as set out at C below.

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

[18] s.101 Powers of Criminal Courts (Sentencing) Act 2000

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.

The key principles set out the rationale for reducing sentences when an offender pleads guilty and highlight the benefits of such pleas being entered as early as possible in the process. The benefits arising from a guilty plea are considerable, particularly in cases where there are vulnerable victims and witnesses. Indeed, most witnesses or potential witnesses find the whole process difficult. A fuller explanation of the purpose of making a reduction for guilty plea is set out at page 7 above.

While an early guilty plea is desirable it is important to note that nothing in the draft guideline should be taken to suggest that an accused who is not guilty should be pressured to plead guilty. The draft guideline explicitly states that it is for the prosecution to prove its case; the guideline does not undermine the presumption of innocence.

The draft guideline makes a distinction between entering a guilty plea at the first stage of the court proceedings (defined at D1 see page 17 below) and making admissions to police or others earlier. The draft guideline states that any pre-court admissions or co-operation with the investigation is to be taken into account when considering mitigation, which may reduce the sentence before any reduction for a guilty plea. This provides a clear incentive for offenders to co-operate as early in the process as possible and is in line with the interpretation of the existing SGC guideline in the leading case of *Caley*.[19]

[19] *R v Caley and others* [2012] EWCA Crim 2821

Question 1

a) Is the rationale in the key principles section set out clearly?

Do you agree:

b) with the stated purposes of operating a reduction for guilty plea scheme?

c) that the guideline does not erode the principle that it is for the prosecution to prove its case?

d) that factors such as admissions in the pre-court process should be taken into account as mitigating factors before the application of the reduction for guilty plea?

Please give reasons where you do not agree.

Overwhelming Evidence

The draft guideline differs from the existing SGC guideline in the approach to cases where the prosecution case is particularly strong.

> Extract from the SGC guideline:
>
> 5.3 Where the prosecution case is overwhelming, it may not be appropriate to give the full reduction that would otherwise have been given. Whilst there is a presumption in favour of the full reduction being given where a plea has been indicated at the first reasonable opportunity, the fact that the prosecution case is overwhelming without relying on admissions from the defendant may be a reason justifying departure from the guideline.
>
> 5.4 Where a court is satisfied that a lower reduction should be given for this reason, a recommended reduction of 20% is likely to be appropriate where the guilty plea was indicated at the first reasonable opportunity.

The draft guideline makes no provision for treating cases differently because of the strength of the evidence. In the key principles section above the draft guideline explicitly states:

> 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 reasons for this are as follows:

a) The benefits that derive from a guilty plea still apply in cases where the prosecution evidence is overwhelming. If a defendant in such a case pleads guilty, witnesses and victims will still be spared the anxiety and uncertainty of being required to attend court and give evidence, and the resources of the justice system will still be saved the time and expense of a trial.
b) In order for the proposed guideline to work effectively, the Crown Prosecution Service (CPS) will need to review cases at an early stage and identify those cases suitable for listing in early guilty plea courts. Such cases where the police and CPS have identified that the evidence is strong and a guilty plea is likely are those in which the guideline aims to encourage a plea at the first stage of proceedings. An important factor in the incentive to plead at that early stage is the certainty of receiving the maximum reduction for a guilty plea. By removing the chance that the reduction might be withheld, the draft guideline will provide defendants and those advising them with certainty regarding the reduction and will provide the greatest possible incentive to plead early.
c) There is an understandable reluctance to provide those who are guilty with a 'reward' for pleading guilty, especially when they have little or no prospect of being acquitted. However, it is important to recognise that the guilty plea reduction is in place to provide an incentive (with all the benefits outlined above) and not a reward. For it to work effectively it is important that it is a clear and unqualified incentive to the defendant.
d) The Council recognises that this is an aspect of the draft guideline that may be perceived as controversial. It is important that it is considered in the context of the whole guideline, which provides a much tighter framework than the existing guideline and much less scope for offenders to 'play the system' and still receive the maximum discount.
e) The Council is aware that the removal of the option to withhold the reduction in cases of overwhelming evidence may be seen as an erosion of judicial discretion. As stated above, it is the Council's intention to produce a guideline that promotes consistency and certainty.
f) There is evidence from the qualitative research carried out by the Council (referred to at page 10 above) and from reported cases to indicate that the SGC guidance on withholding the guilty plea reduction is not applied consistently. What amounts to an 'overwhelming' case is necessarily a subjective judgement and courts have interpreted it differently. The draft guideline will provide greater certainty and consistency.

The Council has considered an **alternative approach** to cases where the prosecution case is overwhelming without relying on admissions from the defendant. This would require the court to apply the maximum reduction to a plea at the first stage of the proceedings regardless of the strength of the evidence (in order to provide certainty and to incentivise early pleas) but would allow the court the discretion to take into account the strength of the evidence in determining the level of reduction if the offender pleads at a later stage. Thus if an offender were to plead at a stage where the guideline would otherwise set a reduction of one-fifth, in a case where the court considered that the evidence was overwhelming, the court would have the discretion to apply a smaller reduction, for example of one-tenth.

The advantages of this alternative approach would be:

- to maintain the clear incentive to plead at the first stage of proceedings;
- to give greater discretion to sentencers to apply a smaller reduction in cases where the evidence is overwhelming and a plea is entered after the first stage; and
- to allow courts to make a distinction between cases where the strength of the evidence is different.

The disadvantages of the alternative approach would be:

- the removal of certainty as to the reduction to be applied after the first stage;
- the possibility of inconsistent application of the provisions;
- added complication to the guideline with an adverse effect on clarity; and
- practical difficulties in determining the appropriate reduction in cases where the reduction stipulated in the guideline is already very small.

Having considered the alternative approach the Council concluded that the disadvantages in terms of complication and lack of clarity outweighed the advantages in terms of increased discretion. However, the Council is keen to hear the views of respondents on this issue.

Question 2

a) Do you agree with the approach taken in the draft guideline to overwhelming evidence i.e. that the reduction for a guilty plea should not be withheld in cases of overwhelming evidence?

If not:

b) Do you think that the alternative approach (of allowing the court discretion to apply a lower reduction after the first stage of the proceedings) is preferable?

Please give reasons.

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.

The guideline sets out the approach to applying the guilty plea reduction in the sentencing process. This is unchanged from current practice.

D. DETERMINING THE LEVEL OF REDUCTION

D1. Where a plea is indicated[20] 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[21] 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[22] – up to and including first hearing at the Crown Court.

This part of the draft guideline contains the basic instructions for applying the guilty plea reduction in the vast majority of cases. The draft guideline does not use the SGC wording of entering a plea at the 'first reasonable opportunity' in order to obtain the maximum one-third reduction. Instead it refers to the 'first stage of the proceedings' which is defined by the guideline for different types of offence for adults and for youths.

Comparison between proposed guideline and existing guideline		
SGC	Draft guideline	Effect of the change
Recommended one-third where the plea is entered at the first reasonable opportunity.	One-third reduction should be made for a plea entered at the first stage of the proceedings. For adults defined as: • 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.	Under the draft guideline the maximum reduction for a guilty plea is set at one-third. The expectation is that the one-third reduction will be applied where the plea is entered at the first stage of proceedings. The 'first stage of proceedings' is defined more tightly than the 'first reasonable opportunity' in the SGC guideline. Note that for either way offences the first stage of proceedings is in the magistrates' court and not the Crown Court.

[20] 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.

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

[22] s.51A Crime and Disorder Act 1998

Comparison between proposed guideline and existing guideline		
SGC	Draft guideline	Effect of the change
Recommended one-third where the plea is entered at the first reasonable opportunity.	One-third reduction should be made for a plea entered at the first stage of the proceedings. For youths defined as: • 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 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 – up to and including first hearing at the Crown Court.	For youths the draft guideline also defines what is meant by the first stage of the proceedings, but a degree of discretion is built in for grave crimes, to account for the fact that these may be indictable only or either way offences. The wording is designed to ensure that a youth would not be unfairly disadvantaged compared to an adult charged with a similar offence.

The Council considered a recommendation in the President of the Queen's Bench Division's Review of Efficiency in Criminal Proceedings[23] (paragraph 142) that for indictable only cases it should be open to a judge in the Crown Court to reduce the credit for a guilty plea if there had been a not guilty indication at the magistrates' court. The rationale was that the failure to indicate an intention to plead guilty would involve unnecessary time and expenditure on preparing cases that later result in guilty pleas. The Council decided not to follow this recommendation for two reasons: firstly because the first hearing in the Crown Court is the first time that the defendant will be formally required to enter a plea; and secondly because it would erode the certainty and consistency provided by the guideline. The Council noted, however, that a defendant who gave no indication of a guilty plea until the first hearing in the Crown Court would be deprived of the valuable mitigation that would arise from early admissions or an early indication of a willingness to plead guilty.

Question 3

a) Is the method of applying a reduction at the first stage of the proceedings set out clearly?

Do you agree:

b) with capping the maximum reduction at one-third?

c) with restricting the point at which the one-third reduction can be made to the first stage of the proceedings?

d) with the definition of first stage of the proceedings for adults and youths for each type of offence at D1?

Please give reasons where you do not agree.

[23] https://www.judiciary.gov.uk/publications/review-of-efficiency-in-criminal-proceedings-final-report/

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 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.

Comparison between proposed guideline and existing guideline		
SGC	Draft guideline	Effect of the change
Recommended quarter where the plea is entered after a trial date is set.	After the first stage of the proceedings the maximum level of reduction is one-fifth. For adults defined as: • 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 has complied with s3 Criminal Procedure and Investigations Act 1996.	The reduction available under the draft guideline (one-fifth or 20 per cent) is lower than that under the SGC guideline (one quarter or 25 per cent). Thus, there is a steeper drop in the reduction available for an offender who does not plead at the first stage of proceedings than currently. The time period when that reduction is available has been restricted. In magistrates' courts it is available only up to 14 days after the first hearing. In the Crown Court it is available only at the first hearing for either way offences; and for indictable only offences until 28 days after the prosecution serves disclosure.

<table>
<tr><th colspan="3">Comparison between proposed guideline and existing guideline</th></tr>
<tr><th>SGC</th><th>Draft guideline</th><th>Effect of the change</th></tr>
<tr><td>Recommended quarter where the plea is entered after a trial date is set.</td><td>After the first stage of the proceedings the maximum level of reduction is one-fifth.

For youths defined as:
• <u>For offences dealt with in the youth court</u> – up to 14 days after the first hearing;
• <u>For offences sent to the Crown Court as grave crimes</u> – 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 has complied with s3 Criminal Procedure and Investigations Act 1996;
• <u>For offences sent to the Crown Court under any other provision</u> – not more than 28 days after the prosecutor has complied with s3 Criminal Procedure and Investigations Act 1996.</td><td>For youths dealt with in the youth court the one-fifth reduction is available only up to 14 days after the first hearing. For offences sent to the Crown Court as grave crimes the one-fifth reduction will be available only at the first hearing unless the court exercises its discretion to treat the offence as equivalent to an indictable only offence committed by an adult. In such cases and in cases sent to the Crown Court under other provisions the one-fifth reduction is available until 28 days after the prosecution serves disclosure.</td></tr>
<tr><td>Recommended one-tenth at the door of the court/ after trial has begun.</td><td>A sliding scale then applies:

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. 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.</td><td>For late pleas the current practice of allowing a reduction of up to one-tenth on the day of trial is continued under the proposed guideline. The draft guideline specifically allows for a reduction below one-tenth (or no reduction at all) once the trial has started. The guideline does not attempt to define the circumstances where no reduction would be appropriate for a plea entered during the course of the trial as the trial judge or magistrates would be in the best position to assess this on the facts of individual cases.

The draft guideline specifically states that where pre-recorded cross-examination has taken place (in accordance with section 28 of the Youth Justice and Criminal Evidence Act 1999) the trial will be deemed to have started. This means that the maximum reduction available for a plea after the pre-recorded cross-examination has taken place is one-tenth.</td></tr>
</table>

Question 4

a) Is the method of determining the reduction after the first stage of the proceedings set out clearly?

Do you agree:

b) with restricting the reduction to one-fifth after the first stage of proceedings?

c) with the definition of the point at which the one-fifth reduction can be given at D2?

d) with the sliding scale reduction (at D3) thereafter?

e) with treating the trial as having started when pre-recording cross-examination has taken place?

Please give reasons where you do not agree.

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.

E1 maintains the position under the SGC guideline, but aims to set out the position more clearly. It explicitly states that the reduction can be taken into account by imposing a suspended sentence of imprisonment rather than immediate custody.[24] The guideline states that where the guilty plea reduction is reflected in the type of sentence imposed, the sentence should not be reduced further to reflect the guilty plea. This does not mean that the court should not make a reduction (for example, to the custodial period of a suspended sentence order) if the decision to impose a different type of sentence was not a reflection of the guilty plea but of other circumstances of the offence or offender.

[24] See, for example Attorney General v Baines [2013] EWHC 4326 (Admin) where a guilty plea to contempt resulted in the sentence being suspended.

Question 5

a) Is the paragraph on imposing one type of sentence rather than another clear?

Do you agree:

b) that it may be appropriate to reflect a guilty plea by suspending a period of imprisonment?

c) that when the guilty plea reduction is reflected in imposing a different (less severe) type of sentence that no further reduction should be made?

Please give reasons where you do not agree.

Paragraphs E2 to E4 reflect the position in the SGC guideline on applying the reduction where certain jurisdictional issues apply.

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.

The guidance at E2 would apply when a court is sentencing an offender for more than one summary offence; in this situation the maximum total sentence that the court may pass is six months' custody. For example D is being dealt with for an offence of driving whilst disqualified and a separate offence of common assault (both carry a statutory maximum of six months' imprisonment). He pleads guilty to both offences at the first hearing. He has a very bad record for driving offences and the court determines that the appropriate sentence would be six months' imprisonment before the reduction for a guilty plea, which equates to four months after guilty plea. For the assault the court determines that the sentence before plea should be three months, so two months after plea. The offences were completely separate so consecutive sentences are appropriate, making a total of six months' imprisonment. In this situation the guidance suggests that the court **may** reduce the total sentence below six months to reflect the benefits of the guilty pleas.

While the approach at E2 reflects that of the SGC guideline, an alternative view would be that given that where there are two proper sentences passed there should be no additional reduction.

The guidance at E3 confirms that a magistrates' court may sentence up to six months' imprisonment for an either way offence where a guilty plea has been entered; the reduction for guilty plea being reflected in the fact that the case has not been committed for sentence to the Crown Court.

The guidance at E4 confirms that a youth court may impose a detention and training order of the maximum length of 24 months where a guilty plea has been entered for an offence which is classified as a grave crime; the reduction being reflected in the fact that the case is not committed to the Crown Court for sentencing under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000.

Question 6

a) Is the guidance at paragraphs E2 to E4 clear?

b) Do you agree with the guidance at E2 that there should be provision for a further reduction in cases where consecutive sentences (after guilty plea reduction) for summary offences total to the maximum of six months?

c) Are there any other jurisdictional issues that the guideline should address?

Please give reasons where you do not agree.

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.

Paragraph F1 provides an important exception to the restriction at D1 which provides that a one-third reduction may only be made when a plea is entered at the first stage of proceedings. There will be a limited number of cases where a defendant is unaware of whether or not he has committed the offence with which he is charged without the benefit of advice and/ or sight of the evidence. However, the exception does not permit a defendant to say nothing until the prosecution has served all its evidence and then receive the maximum reduction. The defendant is required to accept what he knows he has done at an early stage, but in certain situations may need to await advice or information before entering a plea.

The situations where this exception would apply are likely to be rare and may vary considerably on their facts. One example of such a situation might be where an offender has been involved in a car crash and is charged with a driving offence but, as a result of injuries sustained, has no memory of the actual incident. He accepts what he knows he has done (for example he may be able to confirm that he was the driver of the car) but he does not enter a plea until the prosecution has served the evidence as to the manner of his driving and he has been able to take advice on whether that would amount to the offence charged. In these circumstances he would still be entitled to a one-third discount provided that he indicated the plea immediately after receiving the advice.

The intention is that the exception should only apply when the offender genuinely does not know whether or not he is guilty; it is not an invitation to 'play the system'.

The rationale is set out in *Caley*:

> 'whilst it is perfectly proper for a defendant to require advice from his lawyers on the strength of the evidence (just as he is perfectly entitled to insist on putting the Crown to proof at trial), he does not require it in order to know whether he is guilty or not; he requires it in order to assess the prospects of conviction or acquittal, which is different. Moreover, even though a defendant may need advice on which charge he ought to plead guilty to, there is often no reason why uncertainty about this should inhibit him from admitting, if it is true, what acts he did.'[25]

Question 7

a) Is the guidance at F1 clear?

Do you agree:

b) that the exception is a necessary safeguard?

c) that the right cases are captured by this exception?

Please give reasons where you do not agree.

[25] *R v Caley and others* [2012] EWCA Crim 2821 at paragraph 14.

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.

The Criminal Procedure Rules[26] set out the requirements for the service of the initial details of the prosecution case (IDPC). Rule 8.2 states:

"Providing initial details of the prosecution case
(1) The prosecutor must serve initial details of the prosecution case on the court officer—
(a) as soon as practicable; and
(b) in any event, no later than the beginning of the day of the first hearing.

(2) Where a defendant requests those details, the prosecutor must serve them on the defendant—
(a) as soon as practicable; and
(b) in any event, no later than the beginning of the day of the first hearing."

(3) Where a defendant does not request those details, the prosecutor must make them available to the defendant at, or before, the beginning of the day of the first hearing.

The draft guideline is predicated on the assumption that in the majority of cases the prosecution will have complied with its obligations to provide the IDPC and that a defendant will therefore have sufficient information to enter a plea at the first stage of the proceedings. However, there will be cases (especially where a defendant is produced in custody) when the IDPC has not been served by the beginning of the day of the first hearing and the defendant would be unfairly disadvantaged by not having the opportunity to understand the nature of the allegations and discuss these with a lawyer before being required to enter a plea. The exception at F2 therefore provides that in such situations the defendant should have a further 14 days in which to indicate a plea.

The exception only applies to either way and indictable only offences; not to summary offences. The rationale for this is that potential delays in service of IDPC are particularly likely to affect defendants charged with either way offences (especially those produced in custody) who currently would expect to receive a one-third reduction for an early plea at the Crown Court, but under the proposed guideline would only receive a one-fifth reduction for a plea at that stage. In such cases, the time between charge and first appearance may leave insufficient time for the IDPC to be made available by the beginning of the day of the first hearing. Whilst the same time constraints may apply to defendants produced in custody charged with summary only offences, the issues in such cases are likely to be more easily resolved on the day. In all cases, if insufficient information is served for a defendant to know whether or not he has committed the offence the exception at F1 (above) is engaged.

[26] http://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu-2015

Question 8

a) Is the guidance at F2 clear?

Do you agree:

b) that the exception will ensure that defendants will know what the allegations are against them before being required to enter a plea?

c) that the exception should apply to either way and indictable only offences but not to summary offences?

d) that 14 days is the appropriate extension?

Please give reasons where you do not agree.

F3. Newton Hearings and special reasons hearings

In circumstances where an offender's version of events is rejected at a Newton Hearing[27] or special reasons hearing,[28] 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.

The exception at F3 reflects the current position in the SGC guideline. The draft guideline (like the SGC guideline) suggests that the reduction for a guilty plea should be halved but allows a degree of discretion for the sentencer depending on the circumstances of the case. A key factor will be whether the benefits of the guilty plea (especially to victims and witnesses) have been eroded by the necessity for a Newton or special reasons hearing. Of course, where an offender's version of events is upheld by a Newton or special reasons hearing, there will be no loss of guilty plea reduction.

Question 9

a) Is the guidance at F3 clear?

b) Do you agree with the proposed reduction in cases where an offender's version of events is rejected at a Newton or special reasons hearing?

Please give reasons where you do not agree.

[27] 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.

[28] A special reason 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.

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.

The exception at F4 is designed to give courts the flexibility to give an incentive to defendants in **very** complex cases to enter guilty pleas even though they have failed to do so at the first stage of the proceedings. An example of the type of case to which this exception is likely to apply is a very complex fraud trial which would otherwise take many months and involve dozens of witnesses. It is envisaged that this exception will apply only rarely. There is no equivalent provision in the SGC guideline, because that guideline does not cap the maximum reduction at one-third and applies a sliding scale compared to the steep drop after the first stage of proceedings in the proposed guideline.

Question 10

a) Is the guidance at F4 clear?

Do you agree:

b) that it is a necessary exception for the small number of cases to which it applies?

c) that the exception is worded appropriately to capture the right cases?

Please give reasons where you do not agree.

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.

F5 provides an important exception in cases where an offender pleads to a different or lesser offence during the course of court proceedings. In such cases the offender should not be unfairly disadvantaged by the change of charge. However, the proposed guideline specifies that the offender can only benefit from a guilty plea reduction from the point at which he has clearly accepted that he is guilty of the different offence. The exception does not enable a defendant to maintain a complete denial (with the consequent disadvantages for victims and witnesses) and still benefit from the maximum reduction.

Taking as an example two defendants charged with dangerous driving:
Offender A accepts that he was driving and that he was at fault, but does not accept that the manner of his driving amounted to dangerous driving. At the outset his representative makes an offer of a plea to careless driving. The prosecution do not accept this so the dangerous driving charge is put to him at the magistrates' court and he pleads not guilty and is sent to the Crown Court for trial. He continues to maintain his position and a trial date is set. The prosecution then review the case and contact the defence to say that they will accept a plea to careless driving. The case is listed and A duly pleads guilty to careless driving. He receives a one-third reduction to his sentence.

Offender B accepts that he was driving, but makes no further comment. He pleads not guilty to dangerous driving at the magistrates' court and is sent for trial to the Crown Court. He maintains his not guilty plea and a trial date is set. A defence statement is served stating that he does not accept the Crown's evidence as to the manner of his driving. The prosecution review the case and contact the defence to ask if B will plead guilty to careless driving. The case is listed and B pleads guilty to careless driving. He receives a reduction to his sentence of between one-fifth and one-tenth.

In the first example A has maintained a clear intention to plead to the lesser offence from the first stage in the proceedings and so is entitled to the maximum one-third reduction that would have applied if the lesser charge had been put at that point. In the second example B has made no such indication and has simply maintained a denial of the offence. He is therefore only entitled to the reduction that applies at the stage in the proceedings when he indicated a willingness to plead to the lesser offence.

Question 11

a) Is the guidance at F5 clear?

b) Do you agree with the proposed treatment of cases where an offender is convicted of a different or lesser offence?

Please give reasons where you do not agree.

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.

Paragraphs F6 to F8 summarise the position with regard to statutory minimum sentences. The guidance does not represent a change from current practice, but brings the guidance up-to-date.

Question 12

Is the guidance at F6 to F8 accurate and clear?

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.

The section on reductions for guilty pleas in cases of murder is largely unchanged from the SGC guideline. However there are some differences, which are outlined below:

- The narrative in the SGC guideline explaining the rationale for treating murder differently has been condensed but the rationale remains unchanged.
- To reflect the decision of the Court of Appeal in *R v Jones [2005] EWCA Crim 3115* the draft guideline explicitly states that the fact that an offender has pleaded guilty may be taken into account in deciding whether it is appropriate to order a whole life term.
- The following paragraph in the SGC guideline has been omitted from the draft guideline. The Council did not consider that it added anything useful to the guidance.

> Extract from the SGC guideline at 6.6, paragraph 2.
> (d) the Court should then review the sentence to ensure that the minimum term accurately reflects the seriousness of the offence taking account of the statutory starting point, all aggravating and mitigating factors and any guilty plea entered.

Question 13

a) Is the guidance in section G on reduction for a guilty plea in cases of murder clear?

b) Do you agree with the guidance in such cases?

Please give reasons where you do not agree.

The SGC guideline contains a section on applying the guideline to other indeterminate sentences:

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

The Council considers that the information on other indeterminate sentences is implicit in the draft guideline and will be well understood by judges who pass discretionary life sentences. In the interests of keeping the draft guideline concise and relevant, this section has not been reproduced in the draft guideline.

Question 14

Do you agree that Section G in the SGC guideline can be omitted from the new guideline?

Please give reasons where you do not agree.

Appendices to the guideline

The Council has provided six flowcharts as appendices to the draft guideline which are designed to illustrate how the guilty plea reductions will apply to summary only, either way and indictable only cases. The flowcharts are necessarily a simplified version of the guideline and are not intended to be used as an alternative to the detailed text.

Question 15

a) **Are the flowcharts at appendices 1 to 6 clear?**

b) **Do you agree that it is helpful to include the flowcharts?**

c) **Is there any other explanatory material that it would be useful to include?**

Section four: Victims and equality and diversity

Victims

When preparing guidelines, the Council must have regard to the impact of sentencing decisions on victims.[29] The Council has sought to have full regard to the impact on victims of the reduction in sentence for a guilty plea guideline. These considerations have been central to the development of this guideline.

The Council would welcome any views on whether it has dealt appropriately with the impact on victims in this draft guideline.

Equality and diversity

The Council has considered whether the draft guideline gives rise to any equality and diversity issues. The Council is aware that rates of plea vary between different ethnic groups. This guideline is designed to affect the timings of pleas rather than the rates of plea. The Council considers that by promoting a more consistent approach to the application of reductions for guilty pleas the guideline will deal fairly with all groups of people. The Council is keen to hear through the consultation of any equality matters that should be considered.

Question 16

a) Are there any further ways in which you think victims can or should be considered?

b) Are there any equality or diversity matters that the Council should consider? Please provide evidence of any issues where possible.

[29] s.120(11)(c) Coroners and Justice Act 2009

Annex A: Summary of consultation questions

Question 1

a) Is the rationale in the key principles section set out clearly?

Do you agree:

b) with the stated purpose of operating a reduction for guilty plea scheme?

c) that the guideline does not erode the principle that it is for the prosecution to prove its case?

d) that factors such as admissions in the pre-court process should be taken into account as mitigating factors before the application of the reduction for guilty plea?

Please give reasons where you do not agree.

Question 2

a) Do you agree with the approach taken in the draft guideline to overwhelming evidence i.e. that the reduction for a guilty plea should not be withheld in cases of overwhelming evidence?

If not:

b) Do you think that the alternative approach (of allowing the court discretion to apply a lower reduction after the first stage of the proceedings) is preferable?

Please give reasons.

Question 3

a) Is the method of applying a reduction at the first stage of the proceedings set out clearly?

Do you agree:

b) with capping the maximum reduction at one-third?

c) with restricting the point at which the one-third reduction can be made to the first stage of the proceedings?

d) with the definition of first stage of the proceedings for adults and youths for each type of offence at D1?

Please give reasons where you do not agree.

Question 4

a) Is the method of determining the reduction after the first stage of the proceedings set out clearly?

Do you agree:

b) with restricting the reduction to one-fifth after the first stage of proceedings?

c) with the definition of the point at which the one-fifth reduction can be given at D2?

d) with the sliding scale reduction (at D3) thereafter?

e) with treating the trial as having started when pre-recording cross-examination has taken place?

Please give reasons where you do not agree.

Question 5

a) Is the paragraph on imposing one type of sentence rather than another clear?

Do you agree:

b) that it may be appropriate to reflect a guilty plea by suspending a period of imprisonment?
c) that when the guilty plea reduction is reflected in imposing a different (less severe) type of sentence that no further reduction should be made?

Please give reasons where you do not agree.

Question 6

a) Is the guidance at paragraphs E2 to E4 clear?
b) Do you agree with the guidance at E2 that there should be provision for a further reduction in cases where consecutive sentences (after guilty plea reduction) for summary offences total to the maximum of six months?
c) Are there any other jurisdictional issues that the guideline should address?

Please give reasons where you do not agree.

Question 7

a) Is the guidance at F1 clear?

Do you agree:

b) that the exception is a necessary safeguard?
c) that the right cases are captured by this exception?

Please give reasons where you do not agree.

Question 8

a) Is the guidance at F2 clear?

Do you agree:

b) that the exception will ensure that defendants will know what the allegations are against them before being required to enter a plea?
c) that the exception should apply to either way and indictable only offences but not to summary offences?
d) that 14 days is the appropriate extension?

Please give reasons where you do not agree.

Question 9

a) Is the guidance at F3 clear?
b) Do you agree with the proposed reduction in cases where an offender’s version of events is rejected at a Newton or special reasons hearing?

Please give reasons where you do not agree.

Question 10

a) Is the guidance at F4 clear?

Do you agree:

b) that it is a necessary exception for the small number of cases to which it applies?

c) that the exception is worded appropriately to capture the right cases?

Please give reasons where you do not agree.

Question 11

a) Is the guidance at F5 clear?

b) Do you agree with the proposed treatment of cases where an offender is convicted of a different or lesser offence?

Please give reasons where you do not agree.

Question 12

Is the guidance at F6 to F8 accurate and clear?

Question 13

a) Is the guidance in section G on reduction for a guilty plea in cases of murder clear?

b) Do you agree with the guidance in such cases?

Please give reasons where you do not agree.

Question 14

Do you agree that Section G in the SGC guideline can be omitted from the new guideline?

Please give reasons where you do not agree.

Question 15

a) Are the flowcharts at appendices 1 to 6 clear?

b) Do you agree that it is helpful to include the flowcharts?

c) Is there any other explanatory material that it would be useful to include?

Question 16

a) Are there any further ways in which you think victims can or should be considered?

b) Are there any equality or diversity matters that the Council should consider? Please provide evidence of any issues where possible.

Annex B: Background to guidelines

Statutory requirements

Section 125(1) Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

"Every court -
(a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender's case, and
(b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so."

In producing this draft guideline, the Council has had regard to a number of statutory requirements.

The purposes of sentencing are stated in section 142 of the Criminal Justice Act 2003:

- the punishment of offenders;
- the reduction of crime (including its reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and,
- the making of reparation by offenders to persons affected by their offences.

The Sentencing Council has also had regard to the statutory duties in the Coroners and Justice Act 2009 which set out requirements for sentencing guidelines as follows:

- guidelines may be general in nature or limited to a particular offence;
- the Council must publish them as draft guidelines;
- the Council must consult the following persons about draft guidelines: the Lord Chancellor, such persons as the Lord Chancellor may direct, the Justice Select Committee of the House of Commons, such other persons as the Council considers appropriate;
- after making appropriate amendments, the Council must issue definitive guidelines;
- the Council may review the guidelines and may revise them;[30]
- the Council must publish a resource assessment in respect of the guidelines;[31] and,
- the Council must monitor the operation and effect of its sentencing guidelines.[32]

[30] s.120 Coroners and Justice Act 2009
[31] s.127(2) ibid
[32] s.128(1) ibid

When preparing sentencing guidelines, the Council must have regard to the following matters:

- the sentences imposed by courts in England and Wales for offences;
- the need to promote consistency in sentencing;
- the impact of sentencing decisions on victims of offences;
- the need to promote public confidence in the criminal justice system;
- the cost of different sentences and their relative effectiveness in preventing re-offending; and,
- the results of monitoring the operation and effect of its sentencing guidelines.[33]

When publishing any draft guidelines, the Council must publish a resource assessment of the likely effect of the guidelines on:

- the resources required for the provision of prison places;
- the resources required for probation provision; and
- the resources required for the provision of youth justice services.[34]

[33] 120(11) Coroners and Justice Act 2009
[34] s.127(3) ibid

Annex C:
Reduction in sentence for a guilty plea Draft guideline

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[1] 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.

[1] '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[2] 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[3] 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[4] – 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.

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[2] 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.
[3] For youths jointly charged with an adult the allocation hearing may be in the adult magistrates' court.
[4] 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[5] or special reasons hearing,[6] 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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[5] 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.

[6] 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:

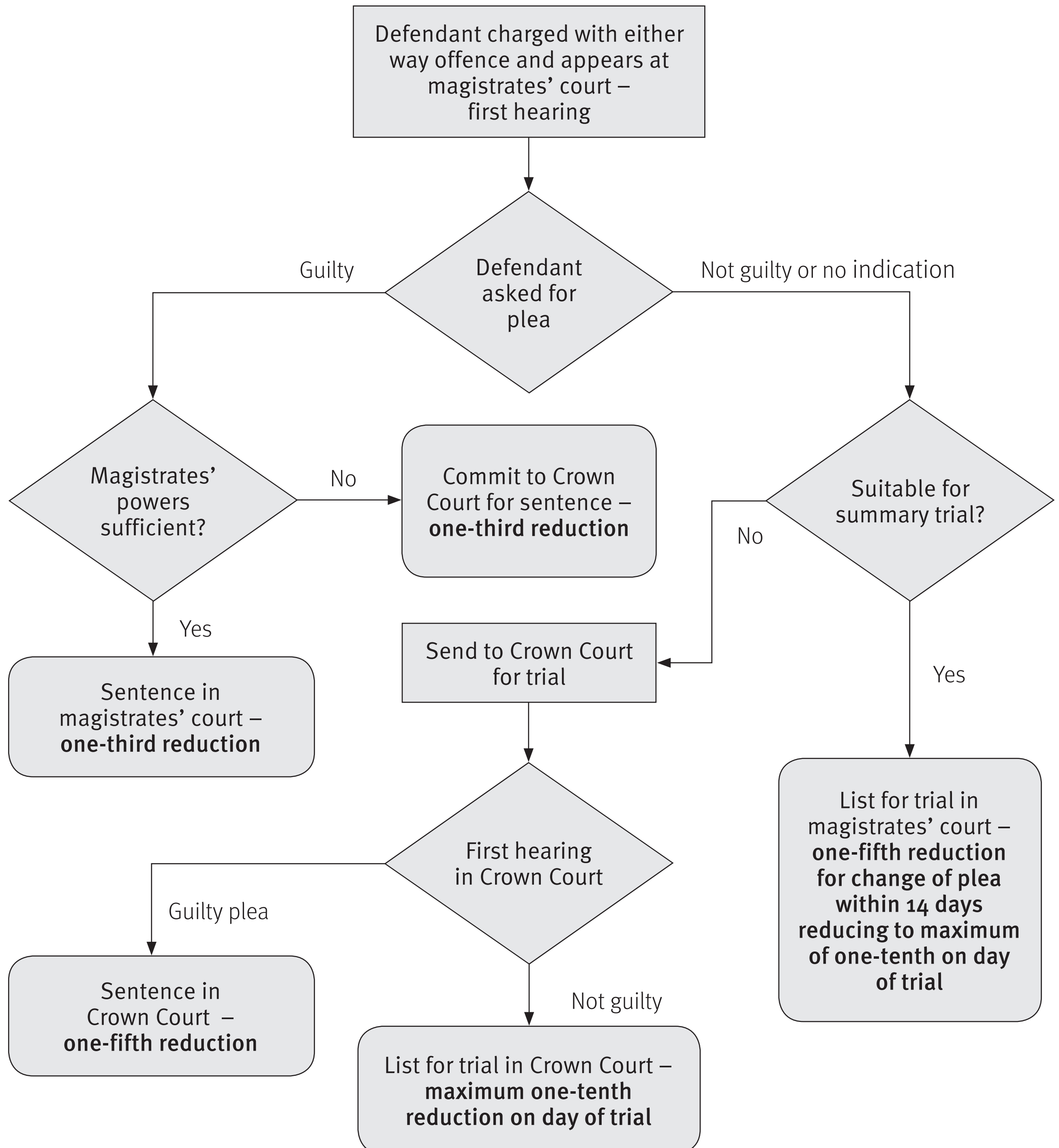
- the court will weigh carefully the overall length of the minimum term taking into account other reductions for which the offender may be eligible so as to avoid a combination leading to an inappropriately short sentence;
- where it is appropriate to reduce the minimum term having regard to a plea of 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)



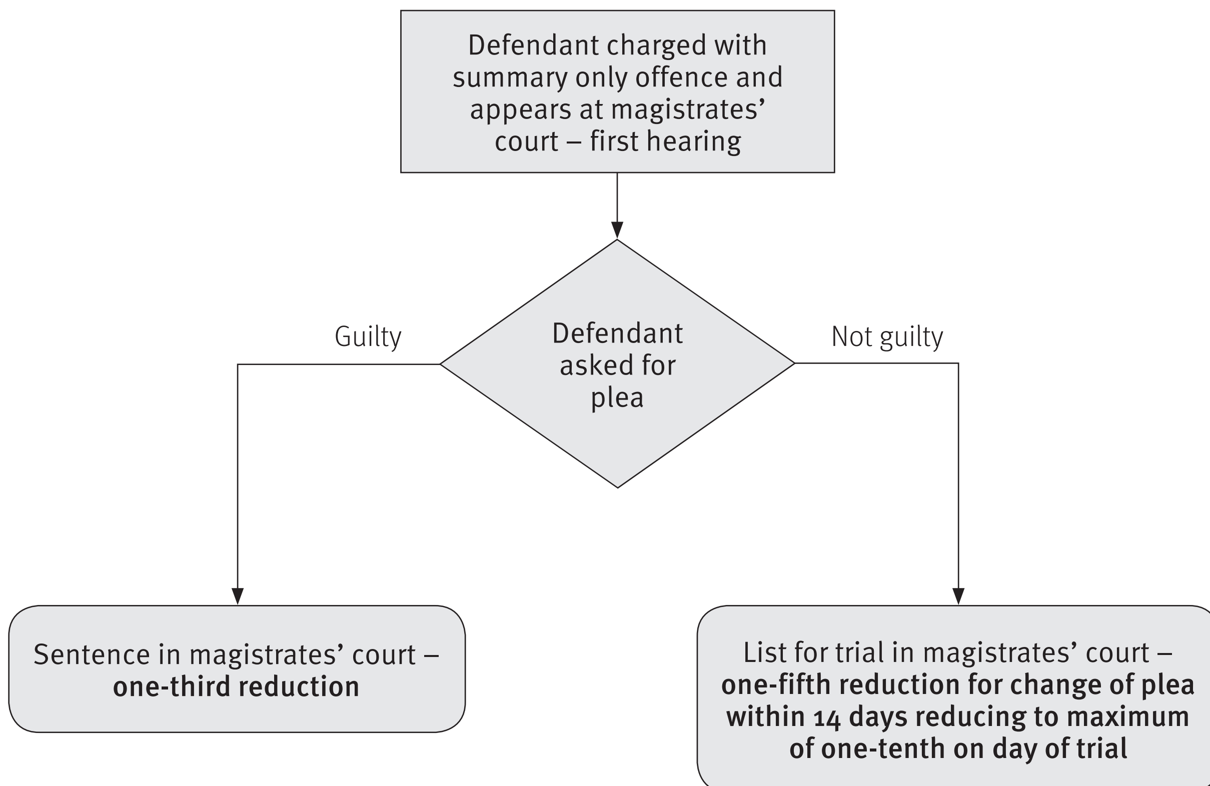
For illustrative purposes only please refer to the guideline for detailed guidance

ANNEX C

Appendix 2

Flowchart illustrating reductions for summary only offences

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

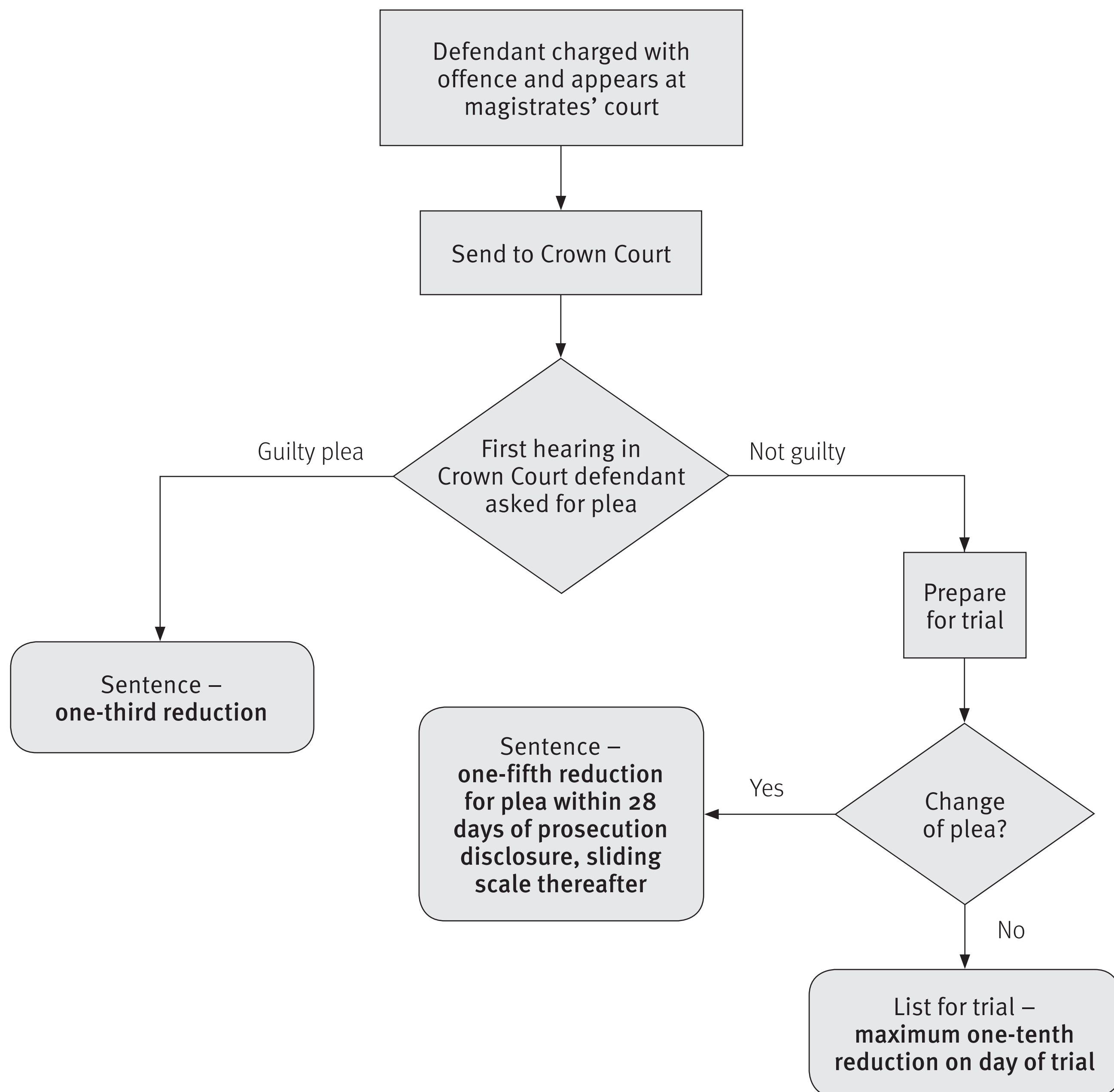


For illustrative purposes only please refer to the guideline for detailed guidance

Appendix 3

Flowchart illustrating reductions for indictable only offences

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



For illustrative purposes only please refer to the guideline for detailed guidance

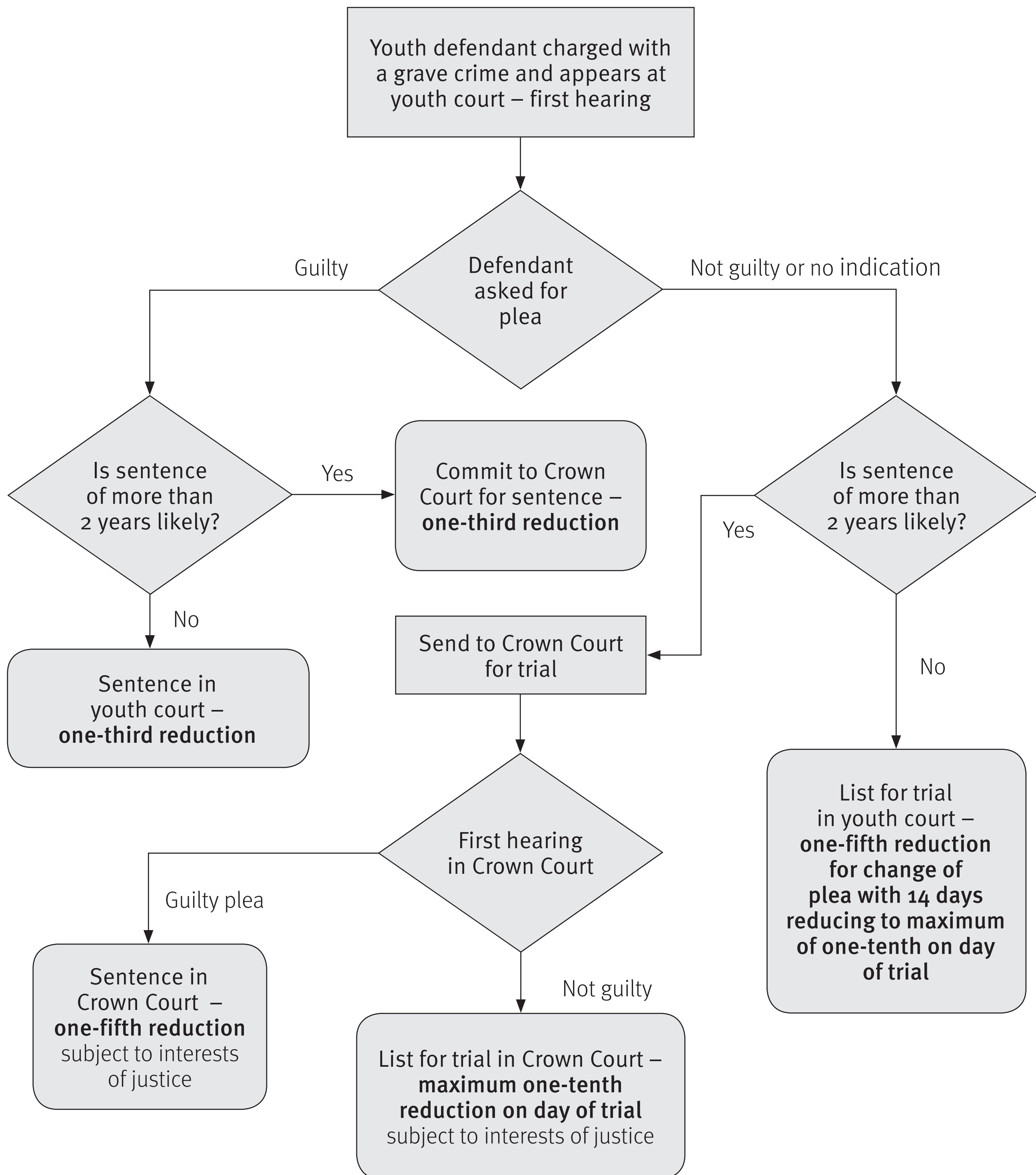
Draft guideline not in force

Appendix 4

ANNEX C

Flowchart illustrating reductions for offenders aged under 18 years

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

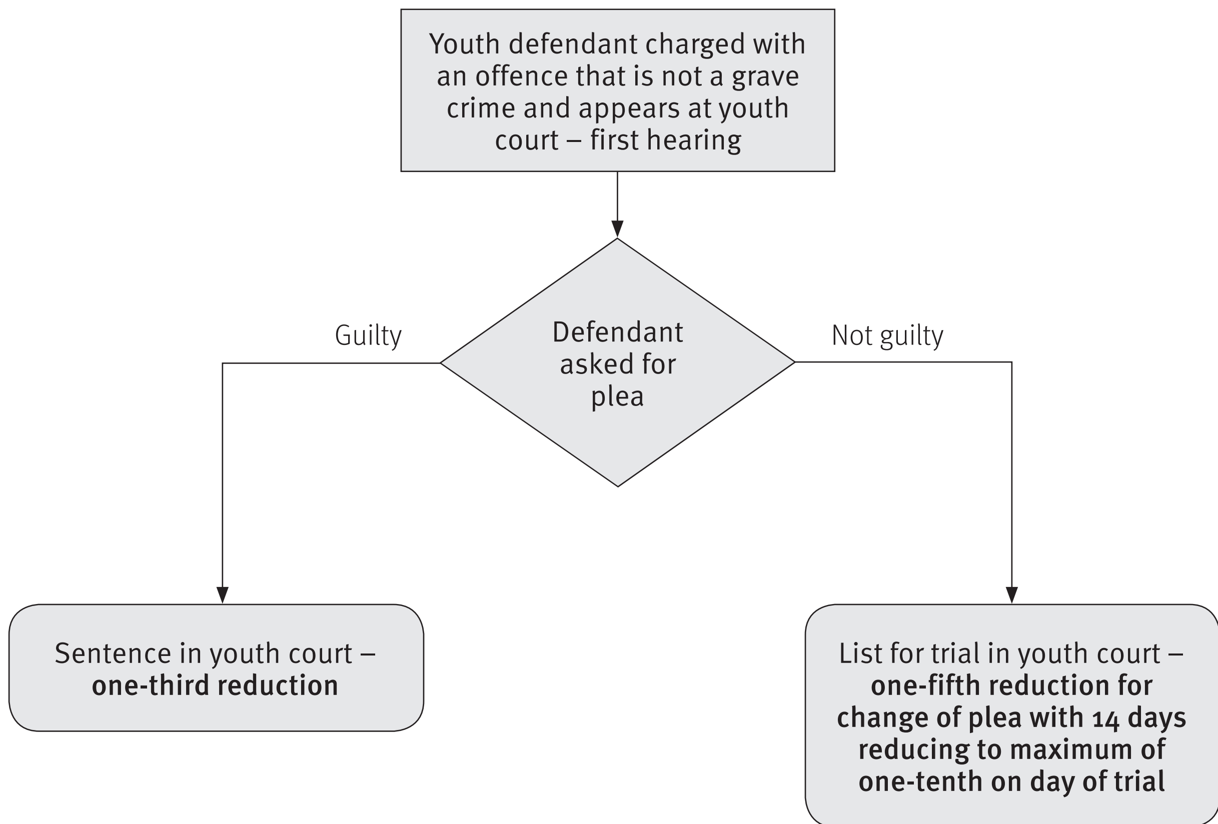


For illustrative purposes only please refer to the guideline for detailed guidance

Appendix 5

Flowchart illustrating reductions for offenders aged under 18 years

(offences that must be dealt with in the youth court)

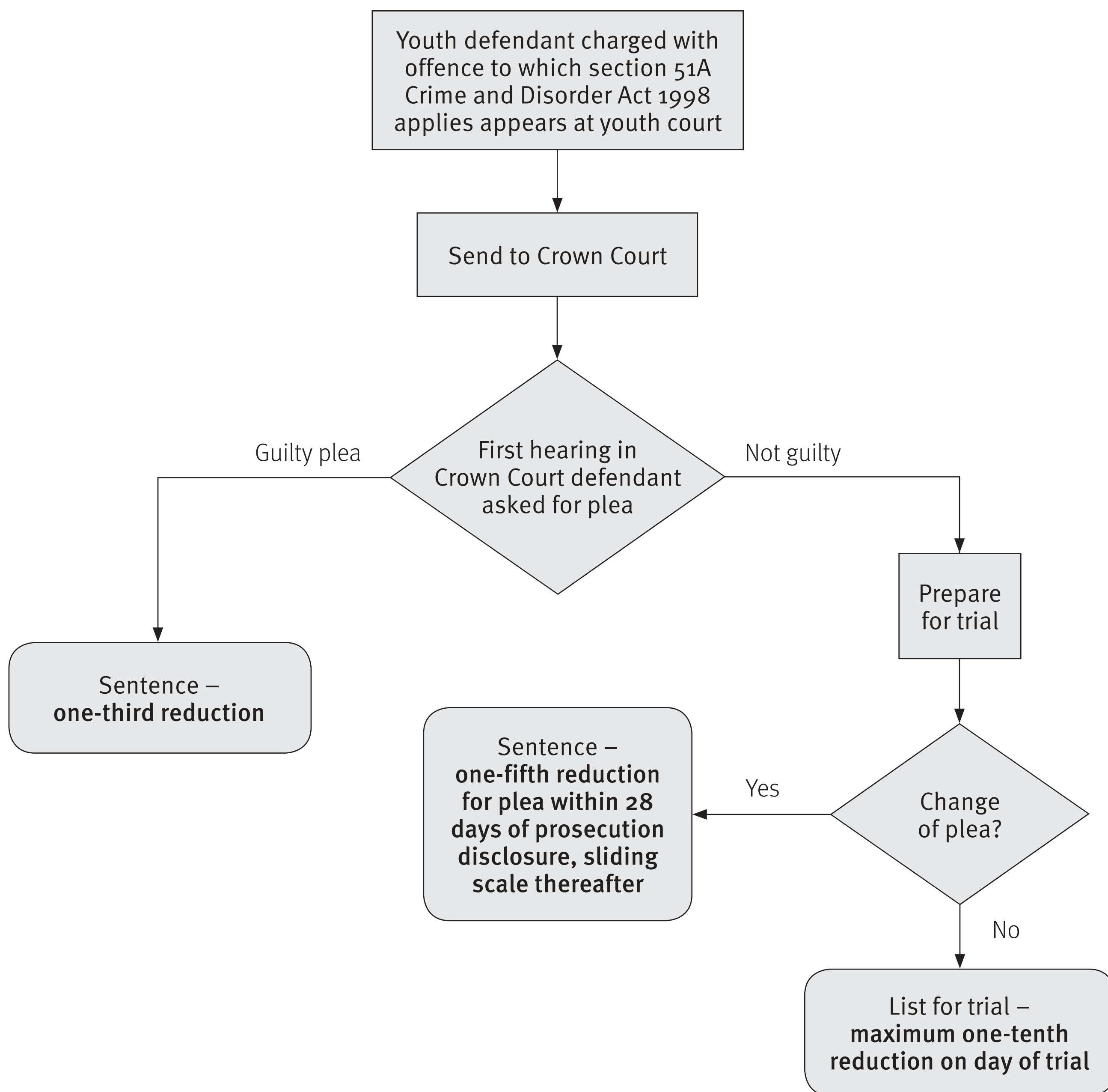


For illustrative purposes only please refer to the guideline for detailed guidance

Appendix 6

Flowchart illustrating reductions for offenders aged under 18 years

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



For illustrative purposes only please refer to the guideline for detailed guidance