Sentencing Council

Reduction in Sentence for a Guilty Plea

Response to consultation

Contents

Foreword

On behalf of the Sentencing Council I would like to thank all those who responded to the consultation on the reduction in sentence for a guilty plea guideline. The consultation attracted a wide range of responses from individuals and organisations.

This guideline has been many years in development and it is unique amongst Sentencing Council guidelines in that it could potentially affect almost all criminal cases that come before the courts. It is also unique in that in order for the guideline to work as planned for the benefit of victims and witnesses it must influence the behaviour of defendants. Therefore the Council recognised the importance of paying particular regard to the views of those solicitors and barristers who represent defendants. The Council was particularly appreciative of those defence solicitors and barristers who gave their views not only in responses to the consultation but also by taking part in consultation events and our research into the likely effects of the guideline.

As with all Sentencing Council consultations, the views put forward by all consultees were valuable and given careful consideration in finalising the definitive guideline.

Significant revisions have been made to the consultation version of the guideline, in response to the suggestions of consultees and the findings from our research. The Council believes that the definitive guideline is clear and fair and will achieve the Council's stated aims of encouraging those defendants who are going to plead guilty to do so as early in the Court process as possible.

Lord Justice Treacy
Chairman, Sentencing Council

Introduction

The Sentencing Council sought feedback from sentencers, prosecutors, defence representatives, witnesses, victims of crime, and others interested in criminal sentencing to its proposals to produce a new guideline to replace the 2007 Sentencing Guidelines Council (SGC) guideline: *Reduction in sentence for a guilty plea.*

The consultation document set out the reasons for producing a new guideline which can be summarised as follows:

- The Council is required by section 120(3)(a) of the Coroners and Justice Act 2009 to prepare a guideline on reductions for guilty pleas.
- Evidence gathered by the Council indicated that the SCG guideline was not always applied consistently and that in some cases levels of reductions appeared to be higher than those recommended by the guidelines.
- The revised guideline was designed to clarify the levels of reduction appropriate for the different stages at which the plea is entered and encourage those defendants who are aware of their guilt to enter a plea as early in the court process as possible.
- The aim was to benefit witnesses and victims who would be spared having to attend court and thereby free up time for the police and Crown Prosecution Service to investigate and prosecute other cases.

The consultation ran from 11 February 2016 to 5 May 2016, although a few responses were received after that date and were also considered.

Presentations and discussions about the proposals took place as follows:
A meeting hosted by the Serious Fraud Office for agencies prosecuting fraud offences.
A meeting of the Health and Safety Lawyers Association.
A meeting organised by the London Criminal Courts Solicitors Association.
A meeting hosted by Fair Trials.
A meeting of the Whitehall Prosecutors Group.
A meeting of the Law Society Criminal Law Committee.

Interviews were held with defence representatives during the consultation period and again after changes had been made to the guideline.

A full report on the research carried out during the development of the guideline will be published on the Council's website.[1]

[1] http://www.sentencingcouncil.org.uk/publications/item/reduction-in-sentence-for-a-guilty-plea-research-report

Summary of responses and changes

Summary of responses

Category	Individuals	Organisations	Total
Solicitors	54	11	65
Barristers	5	3	8
Health & Safety / Environmental law professionals	3	4	7
Prosecution	3	3	6
Police	6	4	10
Forensic Science	1		1
Government / Parliament		3	3
Judges (Crown Court)	4	4	8
District Judge (MC)	2		2
Magistrates	40	6	46
Non Governmental Organisations		7	7
Academic	3		3
Victims	5	3	8
Individuals	7		7
Total	**133**	**48**	**181**

The Council discussed the results of the consultation at its meetings in June, July, September, October and December 2016 before arriving at the definitive version of the guideline.[2]

Applicability of guideline

No questions were asked in the consultation about the applicability of guideline section, but some respondents suggested that under 18s should be excluded from this guideline and included in the sentencing children and young people overarching principles guideline.

Response

The Council felt that there was considerable merit in the suggestion that under 18s should be dealt with separately and agreed to add a section on reductions to sentence for a guilty plea to the overarching principles sentencing children and young people guideline which is being published at the same time as this guideline.[3]

[2] http://www.sentencingcouncil.org.uk/publications/item/reduction-in-sentence-for-a-guilty-plea-definitive-guideline-2

[3] http://www.sentencingcouncil.org.uk/publications/item/sentencing-children-and-young-people-definitive-guideline

Key principles

The Council consulted on the clarity and content of the key principles section.

Criticisms of the proposals from defence representatives centred on concerns that despite the principle stated in the guideline that 'an accused is entitled not to admit the offence and put the prosecution to proof of its case' the guideline did not sufficiently uphold the presumption of innocence. Others suggested that care should be taken to ensure that the language of the guideline did not undermine its stated intention.

> We welcome the Council's assurance that nothing in the draft guideline should be taken to suggest that an accused who is innocent should be pressurised to plead guilty. We therefore recommend that the guideline should avoid the use of the term 'offender' in relation to any individual who has not yet decided whether to plead guilty and who therefore may, eventually, be acquitted. The exceptions at F1 and F2 are two examples of where the wording might be changed. - **Justice Select Committee**

> In my view this materially erodes the principle that a defendant is entitled to see if the state can prove its case, or to see the nature of the prosecution case and what it establishes. **- Solicitor**

The majority of respondents agreed with the Council's proposed approach to disregarding personal mitigation and factors such as pre-court admissions in determining the level of guilty plea. A majority of (54 per cent) also agreed that a guilty plea reduction should be applied regardless of the strength of the evidence, although there were a significant minority (20 per cent) who strongly disagreed.

The contrasting views can be seen from these responses from judges:

> We do not agree that full credit should be given in the case of every early plea. This could lead to unfairness. Two defendants, D1 and D2. D2 is arrested and fully admits the offence, and implicates D1. D1 makes no reply in interview, even in the face of over whelming evidence. A costly investigation ensues. It would be wrong to allow each the same credit. The disparity may not be cured by differences in the starting point

> In the case of Mahboob and others (2014) EWCA Crim 1123, a judge had withheld credit from a man who had pleaded to a conspiracy to supply drugs at the preliminary hearing on the basis that it was an overwhelming case. The noteworthy aspect of that case was that 2 other defendants who faced the same (overwhelming) evidence were each acquitted of one of the two counts they had each denied. It is right that there should be an assurance for those who do plead early that they will have that early plea recognised by a significant discount

<u>Response</u>

The Council is clear that the guilty plea guideline does not undermine the presumption of innocence and has sought to remove any possibility that it could be misinterpreted in that way including by using the term 'defendant' rather than 'offender' in F1 (see further below).

The Council wanted it to be clear on the face of the guideline that while the purpose of reductions in sentence for a guilty plea are to incentivise pleas as early as possible, reductions should not be used to pressurise a defendant to plead guilty. Consequently a paragraph has been added to the key principles section as follows:

> **The purpose of this guideline is to encourage those who are going to plead guilty to do so as early in the court process as possible. Nothing in the guideline should be used to put pressure on a defendant to plead guilty.**

Other minor formatting changes were made to the key principles section to aid clarity.

In the light of the responses the Council gave fresh consideration to the question of whether in cases of 'overwhelming evidence' the full reduction should be given for an early plea. The Council remains of the view that:

- the benefits that derive from a guilty plea apply equally in cases where the prosecution evidence is overwhelming;
- that what amounts to overwhelming evidence is a subjective judgement; and
- that for the guideline to operate effectively it must provide certainty.

The Council therefore decided that in the definitive guideline the guilty plea reduction should be applied regardless of the strength of the evidence.

The approach and determining the level of reduction

The draft guideline proposed that the reduction for a guilty plea should be capped at one-third. This was widely accepted by respondents as fair both from the perspective of victims and the wider public who would perceive anything higher as undermining the punishment of offenders and from the perspective of those who are keen to ensure that defendants are not pressured into pleading against their interests by the prospect of a larger reduction.

> The US system has particular features which tend to increase the coercive effect of the guilty plea regime, where incentives to plead guilty are particularly intense due to high and inconsistently applied sentencing discounts and prosecutors operate without regulation or transparency. To its credit, the Guideline protects against this kind of coercion by limiting the sentence discount to 1/3 and applying it equally and transparently to nearly all cases regardless of the strength of the evidence. – **Fair Trials**

> It is important to cap the maximum reduction to ensure consistency and to avoid wide differences in the reductions being applied. There are also mitigating factors that can be taken into account. So capping the maximum reduction to a third would ensure the sentence is not too lenient. – **Victim's Commissioner**

Support was less widespread for the proposals to restrict the one-third reduction to the first stage of the proceedings and of the proposed definition of 'first stage of the proceedings'.

The majority of negative responses took the view that the proposed regime was too restrictive particularly in respect of either way cases, but also included those who considered that the first stage of the proceedings should be at the magistrates' court for indictable only cases.

I do not agree with the distinction between either way and indictable only offences. 1/3 should remain available at all PTPH [Plea and trial preparation hearings]. In reality there is often no difference between the information a defendant is given at the first hearing. I do not agree with the discredited notion that a defendant 'knows if he is guilty of the charge'. All practitioners are aware of the problems with charging decisions and then number of times they are amended, replaced, changed or the factual matrix is altered. It should remain within the discretion of the judge. – **Solicitor**	The guideline should say that the one-third reduction should be made for a plea entered or indicated at the first stage of the proceedings in all cases, summary, either way and indictable only, which will be defined as the first hearing / allocation hearing at the Magistrates' Court, unless it would be in the interests of justice to treat a later date or the first hearing at the Crown Court as the first stage. The guideline should then allow for cases, which will usually only be custody cases, in which there was insufficient material provided before the magistrates in which the Crown Court Judge will be able to say that the PTPH was the 1st opportunity and so full credit may still be allowed. – **Judges**

The draft guideline proposed that after the first stage of proceedings the maximum reduction should be one-fifth. The rationale behind this proposal was that a steep drop from the one-third available at the first stage would provide a greater incentive for defendants to plead early. However, many respondents felt strongly that the actual effect of such a steep drop would be that those who missed the one-third reduction would either wait until the day of trial to plead (where a one-tenth reduction is available) or not plead at all. These views were shared by participants in research carried out during the consultation period.

Once the first stage has passed, 1/5 discount is such a small reduction that it is likely to result in more defendants having a trial. Moreover, where the discount is limited to between 1/5 and 1/10, there is even more incentive for defendants to wait to see if the witnesses turn up for the trial, as they only risk losing a further small percentage of credit. - **Judges**	Too restrictive. Circumstances of the case may justify a higher reduction even if plea is not given at first stage in the proceedings. Therefore a maximum reduction of 25% is a better approach as the court has more flexibility depending on the circumstances of the case. - **Solicitor**

Many respondents considered that the proposed time limits for the one-fifth reduction were too restrictive and that they made the guideline was unduly complicated.

The majority of respondents agreed that the maximum reduction on the day of trial should remain at one-tenth.

9 Reduction in sentence for a guilty plea response to consultation

The Council asked for views on its proposal that in cases where there is pre-recorded cross-examination of a vulnerable witness, the trial will be deemed to have started. Some respondents disagreed with this proposal stating a trial has started only once the jury are sworn, but others recognised that the proposal was consistent with the principle of guilty pleas sparing victims and witness from giving evidence.

Response

The Council reconsidered its approach to indictable only cases in the light of some carefully argued responses from the judiciary that in practice there was no distinction between an either way and an indictable only case by the time it reaches the Crown Court. The Council was persuaded that the change of practice that had occurred since the introduction of Better Case Management[4] in the Crown Court meant it should follow the recommendation in the Leveson Report[5] and the guideline should require an indication of plea at the magistrates' court in indictable only cases in order to qualify for the maximum reduction. In doing so, the Council recognised that there would be cases where it would not be fair to expect a defendant to enter a plea (in a summary only or an either way case) or make an indication (in an indictable only case) at the first hearing and it addressed this by amending the exceptions (see further below).

D1 in the definitive guideline defines the first stage of proceedings as 'normally the first hearing at which a plea or indication of plea is sought and recorded by the court'. This wording is designed to apply regardless of future procedural changes which might affect the location of the first hearing.

The Council accepted the arguments of respondents that the drop in reduction from one-third to one-fifth would not achieve the aims of the guideline. In the definitive guideline the maximum reduction after the first hearing is now one-quarter which equates to the reduction available under the SGC guideline. Research with defence representatives after the consultation supported the view that one quarter would represent a sufficient reduction to incentivise pleas in many cases.

The Council also agreed that the definition of the stages of proceedings at which the reductions would apply in the draft guideline was unnecessarily complicated. Removing the distinction between different types of cases as to what represents the first hearing, meant

[4] BCM introduced a uniform national approach to ensure that cases progress through the Crown Court efficiently and effectively and promotes robust case management, a reduced number of hearings, the earlier resolution of pleas and the identification of the issues in the case, the participation of all parties and effective compliance with the Criminal Procedure Rules.

[5] The President of the Queen's Bench Division's Review of Efficiency in Criminal Proceedings https://www.judiciary.gov.uk/publications/review-of-efficiency-in-criminal-proceedings-final-report/

that there was no longer a need to define the point at which the next level of reduction would be available separately for each type of case. The definitive guideline therefore just defines the first stage of proceedings and adopts a sliding scale from one-quarter to one-tenth thereafter. The removal of under 18s from the scope of the guideline also removes a level of complexity.

Having considered the views of respondents the Council decided that in keeping with the stated aim of the guideline to incentivise guilty pleas to spare witnesses giving evidence it should maintain its position that pre-recorded cross-examination marked the start of the trial for the purposes of the guideline. The only change made is to clarify that the start of the trial will be deemed to be when pre-recorded cross-examination has **begun**.

Applying the reduction

Several respondents disagreed with aspects of E1: *Imposing one type of sentence rather than another.* In particular the example of reducing an immediate custodial sentence to a suspended sentence was felt to be problematic. The Magistrates' Association pointed out that a suspended sentence was not generally to be considered a reduction from immediate custody and others felt that the guideline was not clear about how the reduction would take effect.

Some magistrates who responded disagreed with E2: *More than one summary offence*; they felt that in the circumstances described, there should be no additional reduction and a six month sentence should be imposed. Others said that E2 was necessary in order to provide an incentive and noted the discretionary nature of the provision.

There was some concern expressed about E3: *Keeping an either way case in the magistrates' court to reflect a guilty plea* – suggesting that it could prompt magistrates to impose a six month sentence in such cases notwithstanding that the wording in the draft guideline was 'up to six months'.

Response

The Council agreed that it was unhelpful to provide the example of reducing an immediate custodial sentence to a suspended sentence at E1 and that it could cause confusion when compared to the Imposition of Community and Custodial Sentences definitive guideline[6]. That example has therefore been removed. Further text has been added to clarify that where the less severe type of sentence is justified by other factors the guilty plea reduction should be applied in the normal way.

[6] http://www.sentencingcouncil.org.uk/wp-content/uploads/Definitive-Guideline-Imposition-of-CCS-final-web.pdf

The Council noted that the provision at E2 was not new – the SGC guideline contains a similar provision and that it merely provides sentencers with the discretion to make an additional reduction, it does not require them to do so. The Council considered that this provision provided an important incentive to plead with the consequent benefits for victims and witnesses and should be retained.

In the light of the consultation responses, the Council has reworded E3 to clarify the procedure that should be applied.

Exceptions

Further information, assistance or advice necessary before indicating plea

The exceptions at F1 and F2 in the consultation version of the guideline were designed to provide a safeguard for those defendants who could not be expected to plead at the first stage of proceedings because of factors such as the failure of the prosecution to comply with the requirements to serve IDPC,[7] a lack of access legal advice, or a lack of knowledge or understanding as to what was alleged.

Some respondents questioned the specific reference to IDPC suggesting that it could cause confusion to reference specific requirements under the Criminal Procedure Rules which may be subject to change.

The majority of responses from defence representatives considered that these exceptions were too narrowly drawn and would lead to injustice. Some judges were also concerned that vulnerable defendants would be unfairly penalised by the inflexibility in the draft guideline.

Defence representatives in research interviews and at consultation events expressed very strongly held views that in practice these exceptions would not achieve the Council's stated aim that sufficient information should be disclosed for a defendant to know what is alleged before entering a plea. Many expressed the view that a lawyer cannot properly advise a defendant as to plea until they have assessed the strength of the prosecution evidence.

[7] Initial details of the prosecution case

We agree that this exception is a necessary safeguard, but it is not sufficient. In particular, the reasons for a defendant not choosing to plead guilty at this first opportunity may relate to the defendant's ability to understand and communicate effectively and the nature of the advice or support they require in order to make a decision in their own best interests. Individuals with particular disabilities such as a learning disability, autism and certain mental health problems, are likely to be disadvantaged. The interests of justice are clearly best served by individual defendants receiving appropriate advice at the point of arrest, and in a way that they can understand, and consistently thereafter, but there can be no confidence that this happens at present. – **Prison Reform Trust**	Yes it is necessary, but it does not go far enough. It does not cover cases for example, where there are issues of capacity which need defence reports to be obtained, or technical evidence will be required by the defence to ascertain whether the defendant is guilty. It does not cover cases where the defendant is represented by a busy duty solicitor or solicitor covering a heavy caseload, who does not have time to go into the detailed examination of the defendant's case (especially with vulnerable defendants) which is required to set out his stall at the first hearing. - **Solicitor**

Those representing corporate clients noted that F1 was drafted in such a way as to apply to individuals only and that there would be cases where a corporate defendant would require further information and/or advice before being able to make an informed plea.

Newton hearings

The exception relating to Newton hearings (F3 in the draft guideline and F2 in the definitive guideline) attracted mixed responses. Some felt that the guideline was too prescriptive and others that more guidance was needed. Many recognised that the proposals were largely unchanged from current practice and considered them fair.

Long and complex cases

Responses to the exception relating to long and complex cases at the Crown Court (F4 in the draft guideline) included those who thought that the guideline was unclear as to what cases would come under this exception. One judge noted the dilemma that this exception may encourage those advising defendants in such cases to delay entering a guilty plea in just the sort of case where early resolution would be most advantageous. Some responses questioned the fairness of making an exception for complex fraud cases but not for other cases where the consequences for the defendant may be just as serious. Some were concerned by what they saw as the additional pressure that could be put on defendants facing long trials to ‘cave in’. Some noted that it appeared that expense had been considered ahead of justice in making this exception. Others felt that it was a necessary exception.

Offender convicted of a lesser or different offence

There were largely positive responses (including from The Council of HM Circuit Judges) to the questions on the exception relating to offenders convicted of a lesser or different offence (F5 in the draft guideline and F3 in the definitive guideline). Some defence representatives disagreed stating that provided a defendant indicates a guilty plea in a timely fashion once the different or lesser charge is put full credit should be given.

Minimum sentences

The exceptions relating to minimum terms were widely accepted by respondents as a statement of the law, but some suggested changes to aid clarity.

Response

The Council gave careful and detailed consideration to the concerns raised about whether the guideline would operate fairly in practice, and decided that greater flexibility should be built into the guideline.

Further information, assistance or advice necessary before indicating plea

The Council was clear that the guideline should allow for sufficient information to be disclosed for a defendant to know what is alleged before requiring a plea. It was decided that the best way to do this was by revising and broadening the exception at F1. The Council did not accept, however, that defendants should be entitled retain full credit for a guilty plea if they delay the plea until they know the strength of the case against them. This would be going back on the principles set out in the case of Caley[8] and discussed in the consultation document.

The consultation version read as follows:

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.

[8] R v Caley and other [2012] EWCA Crim 2821 at paragraph 14.

The Council decided that the exception at F1 should be redrafted as follows:

F. EXCEPTIONS

F1. Further information, assistance or advice necessary before indicating plea

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

In considering whether this exception applies, sentencers should distinguish between cases in which it is necessary to receive advice and/or have sight of evidence in order to understand whether the defendant is in fact and law guilty of the offence(s) charged, and cases in which a defendant merely delays guilty plea(s) in order to assess the strength of the prosecution evidence and the prospects of conviction or acquittal.

The Council considered listing the circumstances where this exception would apply. Examples might include where a defendant is remanded in custody by police on a very serious and complicated matter and is produced in court for the first hearing with minimal information about the allegations and little or no time to consult with a solicitor. The situation would be exacerbated if the defendant suffered from mental health problems, had communication difficulties or was in some other way vulnerable. Alternatively the exception would not apply where a defendant appears in court (whether in custody or on bail) for a first hearing on a straightforward charge (albeit a serious one) where the details of what is alleged are clear from the material served by the prosecution and adequate time is available for a consultation with a solicitor. The Council recognised that even within these two scenarios there are innumerable possible variations. Perhaps the defendant in the second example needed to obtain further evidence to know whether there was defence in law to the offence. The Council decided that it was not possible to provide a list of circumstances where it would or would not be unreasonable to expect a defendant to enter a plea at the first stage of proceedings.

The drafting of F1 now contemplates that the defendant could be either an individual or a corporation.

The wording at F1 is designed to give sentencing courts sufficient discretion to prevent injustices whilst setting clear boundaries on that discretion. The Council considered that the exception at F2 in the draft guideline was now redundant and has removed reference to IDPC from the definitive guideline. However, the Council wished to emphasise that the guideline will operate in the context of obligations created under the Criminal Procedure Rules. Text has therefore been added to the front of the guideline as follows:

> **Nothing in this guideline affects the duty of the parties to progress cases (including the service of material) and identify any issues in dispute in compliance with the Criminal Procedure Rules and Criminal Practice Directions.**

Newton hearings

The Council decided that there were no changes that could usefully be made to the exception relating to Newton hearings to address the competing concerns and it therefore remains unchanged from the consultation version (except for the change of numbering - now F2).

Long and complex cases

The Council considered the divergent responses to the questions on the exception relating to long and complex cases at the Crown Court (F4 in the draft guideline) and noted that as drafted it did not provide sufficient clarity. The Council felt that the argument for removing it on the basis of fairness and consistency with other cases and because it could provide a perverse incentive for a delay in plea in some cases was persuasive. The number of cases that this exception was designed to address was extremely small. The redrafted exception at F1 would provide some discretion for judges in such cases and in truly exceptional cases a court could depart from the guideline if it was satisfied that it would not be in the interests of justice to follow it.

Offender convicted of a lesser or different offence

Having considered the views expressed by respondents the Council decided to retain the exception at F5 in the draft guideline (F3 in the definitive guideline) relating to conviction for a different or lesser offence. The principle behind this (and the rest of the guideline) is to ensure that a defendant who is going to plead does so as early in the court process as possible in order to reduce the impact on victims and witnesses. Changes have been made to the wording to note that the other exceptions (notably F1) would apply in such cases and to clarify the procedure in the Crown Court.

Minimum sentences

The exception relating to minimum sentences (F7 in the draft guideline and F5 in the definitive guideline) has been reworded to reflect more closely the statutory language and a footnote has been added to signify that these are statutory provisions.

Mandatory life sentences for murder

The majority of responses to questions on the section on murder were supportive of the proposals. Negative responses included those who felt that there should never be any reduction in murder cases (or any other where a death has been caused); those who felt that the regime should be more relaxed for murder cases because of the complexities involved; those who failed to see why a special regime is needed for murder cases; those who felt that the proposals provided little or no incentive to plead; and those who favoured greater judicial discretion.

Response

The Council recognised that the regime for guilty pleas in murder cases was harsher than for all other offences but considered that as murder is the most serious criminal offence and is subject to a special statutory sentencing regime there was no justification for changing it.

Flowcharts

The flowcharts were generally well received but some respondents suggested that it should be made clear that exceptions may apply.

Response

The Council is aware that during the life of the guideline there may be procedural changes in the court system that would render the flowcharts (but not the guideline itself) out of date. The Council therefore made the decision to retain the flowcharts but to label them as illustrative only and not part of the guideline. In this way, if appropriate, the flowcharts can be updated without the need to modify the guideline. The date at the top of each flowchart will indicate when it was last updated. The most recent version will always be available on the Council's website.

The flowcharts have been updated to reflect the changes made to the guideline. A reference to the exceptions in the guideline has been added in text above the flowcharts.

Victims, Equality and diversity

Respondents gave thoughtful and helpful responses to the questions relating to victims and equality and diversity.

One theme was that the inflexibility of the draft guideline could lead to it having a disproportionate impact on BAME or vulnerable defendants.

> The guidelines lack flexibility and discretion and may impact upon BME or vulnerable defendants disproportionately. That may well be the case in matters requiring an interpreter or where there are mental health/learning difficulties. - **Solicitor**

> Things like the 14 day time limits fail to reflect the difficulty in sourcing interpreters and booking prison visits for those who need this service. Fails to acknowledge differences in legal systems and therefore the additional time needed to provide explanations as to law and procedure. Treats everybody as if they were white and educated and capable of understanding matters immediately, and ignores the difficulties often inherent in guilty pleas for sensitive matters. It is mechanical and therefore can't reflect equality and diversity matters as it applies equally to all. - **Solicitor**

Another theme was that victims needed information in order to understand the sentencing process.

> Greater publicity regarding the calculations of discounts, reasons they are applied may help victims and witnesses. Perhaps a brochure available from victim/ witness support.' **Magistrate**

> I think victims need to be kept informed of the system and how it works in practice, and these guidelines should help, i.e. they can be informed as to how and why the process may result in certain sentences. **Magistrate**

> Increased clarity in guidelines and greater consistency in the application of those guidelines are the key route towards helping to reduce the negative impact of sentencing decisions upon victims. If victims are able to fully comprehend the logic of and thinking behind sentencing decisions then it can be hoped that they will be likely to be more willing to be satisfied with sentencing outcomes. It is where sentencing decisions appear to be random, illogical and incoherent that anger and resentment arise - and justifiably. **Magistrate**

<u>Response</u>

The Council took the above views regarding vulnerable and BAME defendants into account when making revisions to the guideline (in particular when revising the exception at F1). The Council has sought to achieve a balance between providing certainty and consistency (both of which were recognised by respondents as integral to equality and fairness) and providing sentencers with the discretion to enable them to take into account the individual circumstances of defendants in applying the guideline. The Council believes that the clear structure of section D (Determining the level of reduction) coupled with the exception at F1

(Further information, assistance or advice necessary before indicating a plea) achieve that balance.

With this guideline, as with all of its guidelines, the Council has victims at the forefront of its thinking. Section B (Key principles) sets out the benefits to victims and witnesses of guilty pleas, and the flowcharts may be helpful in explaining the court process to victims. Nevertheless, the Council recognises that many victims would appreciate a fuller explanation. The Council will therefore work with victims' organisations to produce information in various formats to assist victims and witnesses to understand the sentencing process in general and guilty plea reductions in general.

Conclusion and next steps

As can been seen from the preceding sections the consultation responses have influenced the Council's consideration of the guideline and have resulted in significant changes.

The definitive guideline will apply to organisations and to individuals aged 18 or over in cases where the *first hearing* takes place on or after **1 June 2017** regardless of the date of the offence. This is a departure from most Sentencing Council guidelines which apply to cases *sentenced* on or after the effective date. The reason for this is that the guilty plea guideline seeks to influence the behaviour of offenders *before* the sentencing hearing and it would be unfair for someone to be disadvantaged for failing to comply with a guideline that was not in force at the time.

This guideline has the potential to influence almost all criminal cases and the impact of the guideline on correctional resources (probation and prison services) and the wider criminal justice system could be significant. A resource assessment[9] is published on the Council website. Following the implementation of the definitive guideline, the Council will monitor the impact of the guideline and, if necessary, consider any changes that may be required over time.

[9] http://www.sentencingcouncil.org.uk/publications/item/reduction-in-sentence-for-a-guilty-plea-final-resource-assessment

Annex A: 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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

Question 14

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

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: list of respondents

Paul Abraham

Alison

Angela Allcock

Steven Ames

Avon and Somerset Constabulary

Deborah Backhaus

Andrew W Baker QC

Birmingham Law Society

BLM

Ian Borrington

Juliana Breitenbach

Julie Brice

Ben Brocklehurst

Teresa Brooke

Mark Brown

BSB Solicitors

Michael Cadman

David Camidge

Geoffrey Carr

Central and SW Staffordshire Magistrates

Circuit Judges at Kingston Crown Court

Circuit Judges at Leeds Crown Court

Circuit Judges at Teesside Crown Court

Anthony Clark

A Clarke

Deborah Clarke

Dennis Clarke

John Clucas

Tim Cosham

Council of HM Circuit Judges

Jonathan Cousins

Ann Coxall

Professor MJC Crabbe

Criminal Bar Association

Criminal Cases Review Commission (CCRC)

Criminal Justice Alliance

Criminal Law Solicitors' Association

Crown Prosecution Service

Benjamyn H Damazer JP DL

Janetta Davies

John Dehnel

Andrew Denby

Department for Business Innovation and Skills and Whitehall Prosecutors Group

Gregory Earnshaw

Anthony Edwards

Barry Ellis

Henry Emblem

Environmental Litigation Working Party of the UK Environmental Law Association (UKELA)

Aimée Blattmann Esswood

John Evans

Fair Trials

Gerard Forlin QC

Peter Forster

George and Giulietta Galli-Atkinson

Garden Court Chambers

Tim Gir

Mark Giuliani

Greenwich African Caribbean Organisation

His Honour Judge Gregory

Susan Grey

Grimsby Cleethorpes Bench

Janice Hall

Dr Jenifer Harding

Anthony Hardwell

John Haythorn

His Honour Judge Henderson

Ben Hibbert

David Hill

Dr Lilian Hobbs JP

Alan Hobden

Mark Hollands

Robert Holt

Juliet Horne

Wendy van der Horst

Howard League for Penal Reform

HSLA

Professor Hungerford Welsh

Sheelagh James

Just for Kids Law and Youth Justice Legal Centre

Justice Select Committee

SA Kelly

Kennedys

Dave Kerfoot

Stephen Krebs

Law Society

LCCSA

Phil Lloyd

Jim Ludlam BE JP

Chris Macmaster

Aurindam Majumdar

Martin Murray and Associates solicitors

Simon Massarella JP

Rod Mayall

Alan McGrath

Gavin Mckenzie

Christopher Milligan

David Milner-Scudder

Ministry of Justice

J Morgan

Paul Morgan

Robin Murray

Angus Nairn

Scott Neilson

David Roy Nelson

Gerard Nolan

Nottinghamshire Magistrates

Roger Page

Keima Payton

PCC for Northumbria

Simon Perkins

Peter Pickthall

Pinsent Masons

Celia Plafrey

Police & Crime Commissioner for Cheshire

Police Federation of England and Wales

Graham Pressler

Prison Reform Trust

Jane Puncher

Andrew Purkiss

Cliff Purvis

David Ralph

R Rees-Pulley

Silas Reid

Barbara Richardson

RoadPeace

Stephen Russell

Caroline Ryder

DJ (MC) Sanders

Senior District Judge (Chief Magistrate)

Serious Fraud Office

Fatima Shah

Jonathan Sharp

Jason Shepherd

Nigel Shepherd

Philip Sherrard

Barry Smith

Chris Smith

Peter E Smith

Solicitors Association of Higher Court Advocates (SAHCA).

Somerset Bench

South East London bench

South Eastern Circuit

Dr Findlay Stark

Andrew Storch

Nick Symonds

Tina Symons

The Chartered Institution of Wastes Management (CIWM)

The City of London Law Society Corporate Crime Committee

The Magistrates' Association

Ian Thomas

Jim Tindal

Stephen Toghill

Kelvin Tolson

Richard Trahair

Mark Troman

Peter Turner

Turnstone Law

Martyn Underhill

Eve Vamvas

Victim Support

Victims' Commissioner

Sean Waters

Andrew Watts-Jones

Stephen Webb

David Weddle

Andrew Wesley

Seona White

James Whyley

Gareth Williams

David R.Williams JP

Owain Williams

Penny Williams

Peter Williams

Tim Taylor Willson

Rebecca Wood

Dr Duncan Woods

Michael Woolaghan

Youth Justice Board