

**Sentencing Council meeting:**  
**Paper number:**

**27 January 2023**  
**SC(23)JAN09 – Reduction in sentence  
for a guilty plea**

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## **1 ISSUE**

1.1 There is a concern that the [Reduction in sentence for a guilty plea guideline](#) fails to incentivise some offenders to plead before the PTPH in indictable only cases.

## **2 RECOMMENDATION**

2.1 That the Council agrees whether changes are required to the guilty plea guideline and if so what action should be taken.

## **3 CONSIDERATION**

3.1 The Senior Presiding Judge (SPJ) has issued [the Better Case Management Revival Handbook](#) with the aim of increasing efficiency in the Crown Court. His concern is to tackle the very substantial backlog of cases in the Crown Court. One cause of the continuing backlog identified by the SPJ is the need to have more than one hearing in the Crown Court when the defendant pleads guilty at the PTPH in indictable only cases. Sentence often has to be adjourned for a report. While each individual extra hearing is relatively insignificant in terms of court time taken, collectively they result in a considerable amount of court and judge time being taken away from other work.

3.2 The guilty plea guideline requires a defendant to indicate a guilty plea at the first hearing (i.e. the magistrates' court) to be entitled to a one-third reduction. If not and a guilty plea is entered at the first hearing at the Crown Court (the PTPH) the defendant will be entitled to a one-quarter reduction. This is subject to the exceptions set out in the guideline, the first of which reads:

### **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.

3.3 The scenario which is causing concern is one where a defendant is either unrepresented at the magistrates' court or the representative has insufficient time to advise them properly before sending. The suggestion is that having lost the certainty of a one-third reduction there is then little incentive to indicate a plea before the PTPH.

3.4 It is acknowledged by the SPJ that the court has the discretion to take an indication ahead of the PTPH into account as mitigation or the court could use the exception at F1 to allow a one-third reduction where the plea is indicated as soon as the necessary advice or information is received, but it is argued that these are open to interpretation and therefore lack certainty.

3.5 There appear to be several possible ways in which this issue could be addressed, including:

- Amend the guideline so that for indictable only cases the one-third reduction is available for an indication prior to the first hearing in the Crown Court. This is not recommended as it would disadvantage those who do indicate at the magistrates' court and would undermine the certainty provided by the guideline
- Allow a sliding scale between the one third at the first hearing and the one quarter at the second hearing. This again is not recommended as it would undermine certainty and therefore would not provide the clear incentive sought.
- Make no change to the guideline and leave it to the Court of Appeal to clarify that where a defendant does not receive the information and advice necessary at the first hearing but indicates a plea (through his representative) as soon as possible thereafter, the one-third reduction should be applied. This relies on a suitable case coming before the CACD and the judgment being understood and applied consistently.
- Make an amendment to the F1 exception in the guideline to clarify that an indication of a guilty plea should be made as soon as the defendant has received the necessary advice and information without waiting for the next hearing and that in those circumstances the one-third reduction is preserved.

3.6 The final option appears to be the best solution, subject to finding the right formulation of words. It would have the advantage of applying to all types of cases; a similar

issue could apply to either way offences in the Crown Court and to cases tried in magistrates' courts which are far more numerous (around 15% of cases sentenced in the Crown Court are indictable only).

3.7 If the Council is minded to consider making a change to the guilty plea guideline, the next issue is how and when to go about it. The next two Council meetings are very busy so if the Council wished to respond fairly quickly, we could form a small working group to draft the changes and bring them to the May meeting. Any substantive changes to the guideline would need to be consulted on – this could be done as part of the 2023/24 miscellaneous amendments or, if it was felt that the change should be made more quickly, run as a separate targeted consultation perhaps over a shorter period than usual.

**Question 1: Does the Council wish to take any action to address the issue raised by the SPJ?**

**Question 2: If so, should a working group be set up to discuss potential changes?**

**Question 3: If changes are agreed by the Council how should these be consulted on?**

#### **4 EQUALITIES**

4.1 The equalities implications of any proposed changes would need to be considered carefully and raised in consultation.

4.2 There are wider equalities issues relating to guilty plea rates among different demographic groups. The Council was aware of these when the guideline was drafted and while the level of certainty that the guideline provided militates against bias, it does not allow for discretion to take account of the issues of mistrust of the system that are known to exist.

4.3 If the Council wanted to open the project up to an exploration of these issues, the project would become larger and require more time.

#### **5 IMPACT AND RISKS**

5.1 The Council has a very full work plan and so any additional projects that we take on may cause delays to others.

5.2 The resource impacts of any changes to the guilty plea guideline are potentially significant (given that it applies to all cases), though on the face of it the proposed changes should not lead to a requirement for more prison places. Nevertheless work would need to be done to assess the impact of any changes.

5.3 If any changes were subject to a targeted consultation over a reduced period there is a risk that the Council would be seen as failing to consult widely and fully. However, if it were

included as part of the miscellaneous amendments it might not receive as much attention as if consulted on separately.

**Question 4: Are there particular issues relating to equalities or impact that should be explored further?**