

Developing the guideline

Research into attitudes to guilty plea reductions

In 2011 the Council published research¹ into attitudes to guilty plea sentence reductions amongst 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 amongst 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, amongst 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.² 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

¹ http://www.sentencingcouncil.org.uk/wp-content/uploads/Attitudes_to_Guilty_Plea_Sentence_Reductions_web1.pdf

² <https://www.victimsupport.org.uk/sites/default/files/Out%20of%20the%20shadows.pdf>

giving evidence and provide victims with the satisfaction of knowing that the offender has admitted guilt.

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 research³ published in 2011 into attitudes to guilty plea sentence reductions amongst 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 offenders⁴ 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' 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 statistics⁵ 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

³ http://www.sentencingcouncil.org.uk/wp-content/uploads/Attitudes_to_Guilty_Plea_Sentence_Reductions_web1.pdf

⁴ 15 offenders of whom 12 were in custody and three were serving community sentences.

⁵ <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2014>

cent who pleaded guilty in the Crown Court, 72 per cent pleaded guilty at what was adjudged to be the 'first reasonable opportunity.'⁶

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 amongst 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).⁷

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.

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

⁶ <http://www.sentencingcouncil.org.uk/wp-content/uploads/CCSS-Annual-2014.pdf>

⁷ <https://www.gov.uk/government/statistics/criminal-justice-statistics-quarterly-december-2013>

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.