

Sentencing Council: 'Reduction in sentence for a guilty plea guideline consultation'

May 2016

1. The Criminal Justice Alliance (CJA) is a coalition of 110 organisations - including charities, voluntary sector service providers and research institutions – working across the criminal justice pathway. Our members employ more than 10,000 people between them. The Alliance works to establish a fairer and more effective criminal justice system.
2. The CJA welcomes the opportunity to respond to this consultation. This response focuses on questions most pertinent to the CJA's work.

Q. 1 b) Do you agree with the stated purposes of operating a reduction for guilty plea scheme?

We broadly agree with the benefits set out in the consultation of defendants pleading guilty early. Most important, we agree that an early plea can shave a beneficial impact on victims, possibly preventing them both from having to testify and go through a lengthy trial.

Structured Mayhem - our recent report based on research by the Institute for Criminal Policy Research - highlighted the often harrowing impact on victims and witnesses of a wide-ranging series of Crown Court cases and made recommendations aimed to minimise this in future. The CJA promotes any efforts to make the court experiences of both victims and witnesses, and their general interaction with the criminal justice system, better.

We also believe that early guilty pleas are in the wider public interest. They save both time and resource on investigations and trials, particularly where they shorten the duration of a trial.

Early guilty pleas can also benefit offenders and their families. The sooner offenders are sentenced, the sooner they can begin addressing their rehabilitation.

Q. 2 a) do you agree with the approach taken in the draft guideline to overwhelming evidence?

Two offenders committing similar offences should be entitled to the same discount regardless of differing levels of evidence against them for the reasons set out in the consultation. This promotes consistency. Research into 'procedural justice' suggests that

offenders better engage both courts and the rehabilitative process if they perceive courts to have been fair.

Q. 3 b) Do you agree with capping the maximum reduction at one-third?

We believe this to be a proportionate incentive while not so generous as to risk tempting innocent individuals to plead guilty. The numbers of early guilty pleas in the Crown Court increased by one quarter (from 56 per cent in 2001, to 70 per cent in 2014) after the one third automatic maximum reduction was introduced. This suggests that it works effectively as an incentive.

Q. 3 c) Do you agree with restricting the point at which the one-third reduction can be made to the first stage of the proceedings?

Q. 4 b) Do you agree with restricting the reduction to one-fifth after the first stage of proceedings?

Our concerns relate similarly to both questions.

We disagree both with the need to limit the one-third reduction to the first stage of proceedings and the proposal to reduce the maximum reduction thereafter from one quarter to one fifth. The changes would unjustifiably impact on judicial discretion, lead to more people in prison with no tangible public benefit, and - most important - risk considerably increasing public expenditure while having minimal benefit also for victims and witnesses.

Judicial Discretion

The current maximum one-third reduction requires the defendant to plead guilty at the 'first reasonable opportunity'. This allows judges to exercise discretion and apply professional judgment as to what a 'first reasonable opportunity' is. With knowledge of the specifics of the case it enables them to take into consideration both the facts and specific characteristics of the defendant. It is expressly a test of reasonableness, one that is regularly and widely applied. Judges may slightly vary in their interpretation but we do not believe that a putative, and minor, improvement in consistency is sufficient justification to apply a more rigid test that might lead to unfair outcomes.

The proposed, complicated, exception to the guideline is extremely inflexible. It risks vulnerable defendants, who might not fully understand proceedings, missing out on the maximum reduction because they fail to plead within the specific new timelines. A judge would no longer be able to take such vulnerabilities into consideration.

Costs

According to the resource assessment accompanying the draft guideline, the proposals might eventually result in the need for an additional 1,000 (optimistic) and 4,000

(pessimistic) prison places each year, at a cost of between £30m and £100m. The optimistic scenario would require 500 additional prison places by 2017/18 while the pessimistic prediction is 2,000. This would cost an estimated £20-£50m in fiscal year 2017/18 (not taking into account capital spending).

The consultation suggests some of this money could be saved in courts costs, by the Crown Prosecution Service and in legal aid fees. However, even taking these into consideration, the most optimistic prediction remains a net annual *cost* of £10m, and pessimistically £120m. In the current fiscal climate our view is that this money, if it has been made available, would be much better spent on improving victim and witnesses services.

- **Victims**

We agree that if more offenders pleaded guilty earlier as a result of the proposed changes victims and witnesses might well feel more confident in the crime and justice system. However, while we regard improved victim and witness experience in the crown court as essential to creating a fair and trusted justice system for the 21st century we are unconvinced that these proposals are the way to achieve this.

Only a very small number of victims and witnesses would, in practice, be affected and only to the extent that they would enjoy a slightly shorter involvement in the court process and less time awaiting a trial.

Under the resource assessment's pessimistic scenario almost £500m over four years would be spent accommodating prisoners, with no significant impact on the vast majority of victims and witnesses. We reiterate our view that this resource would be better deployed to improve services for *all* victims and witnesses.

- **Incentives and Research**

We are unaware of any material evidence base which suggests that the proposed changes will cause defendants to plead guilty earlier. None is cited in the consultation.

The Sentencing Council's own 2011 research into attitudes towards guilty pleas found: 'The one third reduction acts as the key incentive for offenders to indicate a guilty plea, but only at the point at which it becomes obvious to them that they are likely to be found guilty'. The research confirms: 'in instances where offenders felt there was a sufficient chance of being found not guilty, the sentence reduction was not really a consideration – even where the offender knew their own guilt'.

Essentially, if defendants don't believe they are going to be found guilty they are not going to plead any earlier, regardless of what reduction might be on offer. Consequently changing the reduction after the first reasonable opportunity from a maximum of one quarter to one fifth is unlikely to have a material impact.

The Council's research also suggests that the earlier defendants are given accurate advice from professionals they trust the quicker they make a decision as to whether to plead guilty. In our view, in order to encourage defendants to plead guilty earlier more should be done instead to ensure that their solicitors and barristers are providing them with accurate information about the likelihood of being found guilty.

Ninety per cent of offenders in crown court plead guilty. Seventy two per cent of these plead guilty at the 'first reasonable opportunity'. Before implementing changes that might impact deleteriously on the public purse, more evidence needs to be produced by the Sentencing Council as to why. (It is, for example, concerning that fewer black defendants plead guilty and at an early stage than white defendants but there appears to have been no investigation by the Council as to why this is.)

Additionally, there are different levels of early guilty plea across offence types, for example between burglary and sexual offences. Robust analysis of such pleadings might help develop more nuanced methods of persuading specific groups of defendants to plead guilty earlier.

More should also be done to determine why guilty individuals with significant evidence against them do not plead and whether or not better communication between prosecution and the defence, and therefore the defendant, might alter this.

In summary, there is simply not enough evidence in our view that the intended plans will incentivise a substantially greater number of defendants to plead guilty at an earlier date than currently.

Q. 10 b) Do you agree that it is a necessary exception for the small number of cases to which it applies?

No. We don't believe an individual should get an additional incentive to plead guilty simply because they are involved in, say, a complicated fraud case. It is unfair in comparison with an individual who has committed a simple theft, for example, and undermines the important consistency noted in our response to Question 2. All defendants should be allowed such an incentive if the judge in the case believes it is fair to do so. It should not be an exemption in its own right.

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This consultation response does not reflect the individual policy position of any member organisation of the CJA

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