

FINAL RESOURCE ASSESSMENT: REDUCTION IN SENTENCE FOR A GUILTY PLEA

1 INTRODUCTION

1.1 This document accompanies the Sentencing Council *Reduction in sentence for a guilty plea* guideline, and the guidance on guilty pleas within the *Sentencing children and young people overarching principles* guideline¹, and should be read alongside those documents. It fulfils the Council's statutory duty, under section 127 of the Coroners and Justice Act 2009, to publish a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services. The main focus of this assessment is on estimating the impact of the proposed guidelines on prison places.

2 RATIONALE AND OBJECTIVES FOR THE NEW GUIDELINE

2.1 The Sentencing Council has a statutory duty under section 120(3) of the Coroners and Justice Act 2009 to prepare "*sentencing guidelines about the discharge of a court's duty under section 144 of the Criminal Justice Act 2003 (c. 44) (reduction in sentence for guilty pleas)*". In producing these guidelines the Council wishes to promote a clear, fair and consistent approach to the way guilty plea reductions are applied in all courts in England and Wales.

2.2 The guidelines aim to encourage defendants who are going to plead guilty to do so as early in the court process as possible, by only giving the maximum reduction in sentence to those who do so. The goal is to influence the timing of guilty pleas, but not to influence the rate of guilty pleas entered. If the guidelines are successful, the proportion of pleas entered at the earliest stage of the court process will increase; the percentage of guilty pleas entered late in the process will decline. However, the overall proportion of cases resolved through a guilty plea should remain largely unchanged.

2.3 The guidelines are more prescriptive than the existing guideline². In particular, under the new guideline, to receive the maximum one-third reduction for an either-way or indictable only offence, a guilty plea must be entered or indicated in the magistrates' court, whereas currently a plea at the Crown Court will often receive the maximum reduction. This means that if defendants do not bring forward the timing of their pleas in response to the

¹ <http://www.sentencingcouncil.org.uk/publications/item/sentencing-children-and-young-people-definitive-guideline>

² *Reduction in sentence for a guilty plea* published by the Sentencing Guidelines Council in 2007

guideline, many will receive a lower reduction, resulting in longer prison terms being served and consequently greater costs in terms of providing prison places. However, if the guidelines achieve their aims of encouraging earlier pleas, then some defendants will receive the same reduction and others will receive a higher reduction thus reducing any additional costs.

2.4 Encouraging more defendants who are going to plead anyway to do so at an earlier stage of the process will have benefits to victims and witnesses, and across the whole criminal justice system. Some of these benefits will be monetary and others will be non-financial. The earlier a 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 go to court. There will be resource savings for the police, the Crown Prosecution Service, the Legal Aid Agency and Her Majesty's Courts and Tribunal 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.

3 SENTENCING PRACTICE AND GUILTY PLEAS

3.1 In 2014, 1,215,695 offenders were sentenced in all criminal courts in England and Wales.³ Of these, 86,297 were sentenced in the Crown Court and 1,129,398 in magistrates' courts. Of those defendants sentenced in the Crown Court, 90 per cent entered a guilty plea at some point in the proceedings.⁴

3.2 The Council has been able to use detailed data from the Crown Court Sentencing Survey⁵ to establish when pleas were entered in the Crown Court and the level of reduction made in 2014. It should be noted that the timings of pleas and levels of reductions are already likely to have changed since 2014 as a result of initiatives such as Better Case Management, which seeks to bring about earlier guilty pleas. However, 2014 is the latest data available on which to base an assessment.

3.3 To estimate the resource effect of guilty plea guidelines, an assessment is required of how they will affect the levels of reductions applied and therefore the length of custodial sentences imposed. These guidelines present a particular challenge for the Council: in contrast to offence specific guidelines, which are intended solely to influence sentencers' behaviour, they are also intended to affect the behaviour of defendants and their legal representatives. This behaviour is very difficult to predict given the many factors that may influence the decision to plead. As a result of these

³ For details of data collection and methodology please see: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2015>

⁴ Crown Court Sentencing Survey 2014 (<https://www.sentencingcouncil.org.uk/wp-content/uploads/CCSS-Annual-2014.pdf>) p6.

⁵ From 1st October 2010 to 31st March 2015 the Council conducted the Crown Court Sentencing Survey (CCSS) which collected data on sentencing practice in the Crown Court. This data has been matched with the Ministry of Justice Court Proceedings Database (CPD).

challenges, the Council will conduct early work to assess any consequences once the guideline comes into force (see paragraph 6.5).

3.4 As with any Council resource assessment, the assessment is based on sentencers following the guidelines at all times⁶. The assessment does not take into account any potential changes to sentence levels prior to the application of the guilty plea reduction again, because it is impossible to make any meaningful assessment. The annual number of offenders sentenced is assumed to continue at the 2014 level, and so any changes in volumes will alter the impact of the guideline.

4 RESOURCE IMPACT

4.1 As there are separate guilty plea guidelines for adults and children and young people, the impact on resources has been assessed for each group individually. These estimates should be seen in the context of the significant non-monetary benefits that a positive change in offender behaviour would produce, such as the relief and reassurance felt by victims and witnesses.

Adults

4.2 Due to the uncertainty about how defendants might respond to the new guidelines, the Council decided to explore two different scenarios based on assumptions about defendants' behaviour. These assumptions look at both the possibility of the guideline bringing about benefits, including cost savings, and the possibility of the guideline incurring costs:

- **Scenario one:** the optimistic scenario – this assumes that more defendants will plead at the first stage of the proceedings than in 2014. The rationale is that this will now be the only stage they will receive the maximum reduction and so they will be encouraged to enter an earlier plea.
- **Scenario two:** the pessimistic scenario – this assumes that a smaller number of defendants receive the full reduction as many will continue to plead at a later stage and consequently receive a smaller reduction and a longer sentence.

4.3 The assumptions underpinning all of the estimates in this resource assessment were devised by making predictions about defendant behaviour and then applying these to data covering a period when the court system was quite different to how it is today (as this was the most recent period of data available). Additionally, the estimates assume that offenders will have the same type of sentence under the new guideline as they were given previously. In reality, sentencers will have the option to move to a different outcome as a result of a guilty plea. All figures should therefore be treated with considerable

⁶ Sentencers must follow the guideline unless it would not be in the interests of justice to do so, but the resource assessment works on the assumption that the guideline will be followed for all cases.

caution and should only be used as approximate indications of the effect that the guideline may have on the justice system.

Impact on prisons

4.4 In every case in which a plea is entered and an offender is sentenced to immediate custody, the guilty plea reduction has an impact on the sentence length, and so any small change to average sentence lengths may have a significant cumulative effect on the overall system.⁷

4.5 Under the optimistic scenario, it is estimated that the guideline will only require a minimal number of additional prison places in 2018/19 and therefore minimal costs would be incurred. Under the pessimistic scenario, however, there may be an increase of up to 500 prison places by 2018/19⁸, equating to a cost of up to £10 million^{9,10} in 2018/19, across both magistrates' and Crown Court sentences (see Table 1). This represents just under two per cent of the overall costs of prison places in 2015/16.

Table 1: Estimated total costs of prison places, excluding capital, by financial year for the optimistic and pessimistic scenarios, £millions, 2015/16 real prices

	17/18	18/19	19/20	20/21	21/22	Annual cost over time ¹¹
Optimistic	£0	£0	£0	£0	£0	£0
Pessimistic	£0	£10	£20	£20	£30	£30

4.6 Under the pessimistic scenario, the guideline could ultimately¹¹ result in the requirement for up to 1,500 extra prison places each year, at a cost of £30 million. However, these figures represent the upper end of the pessimistic scenario and even if costs are incurred, they are likely to be less than this.

4.7 There are two main reasons for concluding that the actual costs are likely to be lower than the pessimistic scenario. Firstly the assessment does not take account of the fact that the new guideline clearly states that factors such as admissions in interview and co-operation with the investigation should be taken into account as mitigation **before** any guilty plea reduction. This is in contrast to the SGC guideline which envisages that in some cases the first reasonable opportunity to indicate a willingness to plead may be in interview. Clarification of this issue may lead to shorter sentences prior to the application

⁷ In 2015, there were just under 90,000 adult prison sentences of immediate custody with an average custodial sentence length of 16.2 months
<https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2015>

⁸ Figures quoted are averages for the financial year, and are rounded to the nearest 500.

⁹ All costs quoted are rounded to the nearest £10 million.

¹⁰ Costs are in 2015/16 real prices.

¹¹ These are the costs once steady state is reached in approximately 2025/26.

of the guilty plea reduction in some cases, although there are no means of quantifying this effect.

4.8 The second factor that makes the pessimistic scenario less likely over time is that once the guideline has 'bedded in', defendants and their advisers will be aware of the consequences of failing to plead at the first hearing, which means that the behaviour that the guideline aims to encourage is more likely to be achieved.

Impact on prisons, probation and court services

4.9 The costs set out above reflect the increase in prison places only and the new guideline is also likely to bring about savings and costs to probation and court services. This is because there may be changes in the number of hearings required at court if defendants plead guilty at a different stage, or due to changes in the length of time spent on licence in the community or under post-sentence supervision if sentence lengths change. Table 2 presents the resource impact under the two scenarios, and includes the savings and costs to prison, probation and the courts.

Table 2: Estimated total costs of prison places, probation and court hearings, excluding capital (savings are shown as negative¹²) by financial year for the optimistic and pessimistic scenarios, £millions, 2015/16 real prices

	17/18	18/19	19/20	20/21	21/22	Annual cost over time ¹³
Optimistic	£0	-£10	-£10	-£10	-£10	£0
Pessimistic	£0	£0	£10	£10	£20	£30

4.10 A year in custody is assumed to cost an average of around £22,000¹⁴ in resource terms, including local maintenance, but excluding any capital build expenditure and overheads that may be necessary.¹⁵

4.11 The prison and probation estimates were produced using similar sets of assumptions. Models were created to forecast the impact of the guideline over time, and link together the expected changes throughout the system (from sentencing to prison to probation). Assumptions about the stages at which guilty pleas are expected to be entered, and the associated expected

¹² It should be noted that any potential savings are not necessarily cashable; for example, although there may be a theoretical saving in terms of court hearings, it may not mean that the number of court sitting days will reduce, rather that the increased efficiency will instead mean that more cases can be dealt with in the same period of time.

¹³ These are the costs once steady state is reached in approximately 2031/32.

¹⁴ Rounded to the nearest thousand pounds

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/563326/costs-per-place-cost-per-prisoner-2015-16.pdf

¹⁵ It should be noted that this is a lower figure than previously used in Sentencing Council resource assessments (£30,000) but this aligns with the new estimates used across the Ministry of Justice (MoJ).

reductions in sentence are applied to sentence lengths to produce estimates of the guideline's impact on sentences. This can then be used to anticipate how long offenders will spend in custody, when they are released, and how long they will spend on licence in the community (and under post-sentence supervision).

4.12 For example, if a defendant is assumed to plead guilty earlier under the new guideline and receive a greater guilty plea reduction, then they will receive a shorter final sentence, they will be released from custody earlier, and will join the licence population earlier.

4.13 It should be noted that the probation estimates only include the impact of changes in custodial sentence lengths, and do not include any changes in requirements or lengths of suspended sentence orders or community orders. This is because no reliable information is available on lengths or requirements, and so it is not possible to assess the potential impact that a change in guilty plea reduction would have on these sentences.

4.14 The cost per year of an offender in custody is much greater than the cost of an offender on licence or under post-sentence supervision. Some probation costs are calculated per offender (per probation 'start') and are not related to the length of sentence, so changes in sentence lengths do not have as large an impact on probation costs as they have on prison costs.¹⁶

4.15 The impact on court hearings was calculated by combining the estimates of the stages at which offenders are expected to plead guilty, with the average lengths of hearings. If an offender pleads guilty at an earlier stage in the court process, there may be fewer court hearings for their case and this is expected to save court time.

4.16 As well as savings to the prison, probation and court service, where a defendant pleads earlier, there may also be some savings to the Crown Prosecution Service, police and the Legal Aid Agency.

4.17 It is not possible to summarise accurately these wider system savings, as not all of the costs and savings are available to give a total picture. However, it is possible to provide an indication of where savings would be accrued. For example, the amount of work required to be undertaken by both the police and the Crown Prosecution Service to prepare the case file would decrease the earlier a plea is entered.

Children and young people

4.18 Estimating the resource impact of the children and young people guilty plea guideline is challenging. While it is possible to analyse trends in overall sentencing (for example, the number of children and young people sentenced at court each year), there is very limited data available for guilty pleas.

¹⁶ Costs are rounded to the nearest £10 million, and so any small changes will not necessarily be discernible.

4.19 Data from the Crown Court Sentencing Survey is the most reliable source of information on stages and reductions, but those aged under 18 make up less than two per cent of this¹⁷. As the vast majority of children and young people are sentenced at magistrates' courts (96 per cent of offenders aged under 18 in 2014), data from the Crown Court Sentencing Survey is not deemed to be sufficiently representative of this population to produce any meaningful estimates on guilty pleas.

4.20 The lack of data on the stages of the court process at which children and young people currently plead and the reductions received for pleas makes it difficult reliably to assess the impact of changes in behaviour. However, it is expected that the overall impact of the guilty plea guidelines will be driven by the impact on adults. Around 98 per cent of offenders sentenced to immediate custody in 2014 were aged 18 or over. Of the 1,900 under 18s sentenced to immediate custody in 2014, 73 per cent were given sentences of one year or less. Therefore any change in defendant behaviour, under either scenario, will have minimal effect on overall resources.

4.21 Although this resource assessment only looks at the impact of the guilty plea guidelines, it should be considered alongside the new children and young people overarching guideline. The overarching guideline encourages sentencers to use custodial sentences only when absolutely necessary when sentencing children and young people, and so the corresponding resource assessment anticipates a slight decrease in the use of custodial sentences. It could therefore be concluded that any increase in prison place requirements for children and young people as a result of the children and young people guilty plea guideline would be at least partly offset by the expected reduction in children and young people sentenced to custody from the overarching guideline.

5 CONCLUSION

5.1 The aim of calculating the impact of the adult guideline under both an optimistic and pessimistic scenario is to show both the potential savings and costs which may be incurred as a result of the guideline. These need to be seen in the context of the other significant non-monetary benefits that a positive change in defendant behaviour would produce, such as the relief and reassurance felt by victims and witnesses.

5.2 While there is considerable uncertainty around the exact resource implications, even where some defendants are encouraged to plead earlier, it is still likely that the guideline will result in a requirement for a small number of additional prison places. This is partly because, under the existing guideline, a substantial number of offenders receive the full reduction to their sentence quite late in the court process. Under the new guideline, offenders are less likely to qualify for the full reduction for a late plea.

¹⁷ This is based on the 2014 dataset – the most recent full year of data.

5.3 In practice, any costs may be mitigated by the fact that the timings of guilty pleas will already have changed since 2014 by the time the guideline takes effect in June 2017, with practice more in line with the guideline than was the case in 2014. The cost of prison places may also be partly offset by savings in the wider system.

5.4 The issues with calculating the impact of the children and young people guilty plea guideline mean that an estimate has not been produced. However, although the guideline is likely to impact defendant behaviour and may lead to an increase in the requirement for custodial places, this is expected to be minimal.

6 RISKS

6.1 Since the application of a sentence reduction for a guilty plea has the potential to apply to all sentences passed in the courts, small changes to defendants' behaviour and to practice by sentencers in applying the *reduction in sentence for a guilty plea* guidelines have the potential to have resource implications, depending on how these behavioural changes manifest themselves.

6.2 It is not possible accurately to predict how defendants' behaviour or sentencing behaviour will change as a result of the guidelines, and hence there is considerable uncertainty surrounding the resource implications of the guideline.

6.3 An important input into developing sentencing guidelines is an assessment of current sentencing practice. The data used to compile the estimates for the resource impact is from 2014, the most recent period for which detailed data on stages of guilty pleas and reductions in sentence was available. There have been changes in the court system and in sentencing practice since 2014 which may lead to inaccuracies in the Council's assessment.

6.4 The risk is mitigated by information that has been gathered by the Council as part of the guideline development and consultation phase. This includes working with defence practitioners to understand their use of the guideline in providing advice to defendants; and qualitative interviews and group discussions with magistrates and judges, focusing on their current sentencing practice when giving reductions and on their understanding of the draft guideline, leading to improvements in its clarity and ease of use for the definitive version. However, there are limitations on the scope of the research and its ability to inform accurate predictions of sentencer and defendant behaviour, so the risk cannot be fully eliminated.

6.5 In light of the issues with estimating the resource impact, it will be important for the Council to conduct early work to assess any consequences of the guidelines once in force. Prior to the guidelines coming into force, the Council will put in place a group comprising representatives of the Sentencing Council, the police, the Crown Prosecution Service, Her Majesty's Courts and

Tribunal Service, Victim Support and the Ministry of Justice, to help steer work to collect a range of information that will feed into an assessment of the implementation and impact of the guidelines. This may include, for example, interviews with sentencers and other criminal justice professionals, analysis of transcripts of sentencing remarks, case file analysis, and analysis of data from other criminal justice agencies. The group will review the findings from this data collection and advise the Council if it suggests the need for a review of the guidelines.