



Sentencing Guidelines Council

Reduction in Sentence for a Guilty Plea

Response to Consultation

July 2007

Foreword

On 20 July 2007, the Sentencing Guidelines Council published a guideline in relation to the approach to be adopted by a court which, in accordance with the provisions of section 144 of the Criminal Justice Act 2003, is determining the reduction to be given for an offender who has pleaded guilty. By law, courts are required to have regard to this guideline.

The guideline has been agreed by the Council after careful consideration of advice from the Sentencing Advisory Panel and of responses to its consultation guideline, published simultaneously on 18 January 2007. It is the first occasion on which the Council has reviewed an existing guideline.

This document sets out the main issues raised in the responses, the conclusions of the Council and the reasoning behind the conclusions.

The Council is grateful for the comments received which have broadly confirmed the draft guideline

The definitive guideline can be found at www.sentencing-guidelines.gov.uk or can be obtained from the Sentencing Guidelines Secretariat, 4th Floor, 8-10 Great George Street, London SW1P 3AE.



Chairman
Sentencing Guidelines Council
July 2007

1. The draft guideline was published for consultation on 18 January 2007. Those invited to respond were:
 - Home Secretary
 - Lord Chancellor
 - Attorney General
 - Home Affairs Committee
 - Party Leaders and the Convenor of the Crossbench Peers in the House of Lords
2. A detailed response was received from the Attorney General and from the Home Affairs Committee. Additional responses were received from:
 - HH Judge Milford
 - Peter Forrester JP
 - Peter R Douglas-Jones - Solicitor
 - Warwickshire Area Judicial Forum
 - Mr Justice Crane
 - Ross Johnson
 - Doncaster Magistrates
3. The Panel and Council had devoted considerable resources to conducting this review rapidly but thoroughly. The Panel prepared and published a detailed consultation paper within one month of the notification from the Council; its summary and analysis of the many responses and its advice were produced within three months after the completion of the consultation.
4. The normal two month consultation period was allowed by the Council for consultation on its draft guideline but, despite two extensions of the consultation period, no response has been received from the Home Secretary or the Lord Chancellor. This has been unfortunate both because the Council has not benefited from those responses and because of the three month delay caused to the development of the definitive guideline.
5. Each of the points raised is listed under the appropriate section heading drawn from the consultation guideline.

General points

6. The response from the Home Affairs Committee expressed concern about the lack of evidential basis for the guideline and recommended that research should be commissioned (by the Council and the Home Office) to provide clearer understanding of how the possible reduction influences offenders' decisions. **The Council noted this proposal. It also noted that there has been a steady increase in the proportion of offenders who plead guilty though it is not possible to determine the extent to which this is attributable to the reduction principle.**

7. The Committee also recommended that the Home Office should consider how to establish a system that monitors all guidelines so that their effect can be objectively assessed. **This is a recommendation for the Home Office. However, the Council intends to give consideration to monitoring the effect of its guidelines.**
8. The Home Affairs Committee was further concerned that the general public does not fully understand the rationale for having this reduction. The Home Office (in liaison with the Council) should be pro-active in seeking to extend public understanding. **This is a recommendation for the Home Office (and now the Ministry of Justice).**
9. The Home Affairs Committee expresses concern about the notices in use in some police stations; clear guidance should be given to the police and Crown Prosecution Service on the terms on which attention can be drawn to the reduction. **The Council undertakes to involve the National Policing Improvement Agency and will monitor progress.**
10. The response from the Warwickshire Area Judicial Forum unanimously endorsed the proposals in the consultation guideline.
11. A number of responses suggested that worked examples or greater exemplification should be given to assist in consistent application of the guidelines. **In each instance, the Council considered that it would not be possible to insert further detail and so determined not to accept those suggestions.**

Application of the Reduction Principle

12. One response suggested there is a conflict between the third section of the diagram in para. 3.1 and the content of 2.6. The latter states that the reduction can be the factor that causes a lesser type of sentence to be imposed whereas the diagram suggests that it is only a reduction within the type of sentence. **Whilst the diagram is designed to describe the stages in the process rather than the details of the decision, the Council agreed that it may be helpful to be clearer and so agreed to shorten the third part of the diagram.**

Determining the Level of Reduction

13. The Home Affairs Committee welcomed the move to “maximum” (rather than absolute) entitlements but considered that this may be insufficient to achieve the less rigid approach that it considered to be desirable. The Committee considered that there should be clearer and more explicit guidance on the use of judicial discretion – it was particularly concerned that a Judge dealing with a case of exceptional gravity will still feel constrained to make inappropriate reductions. However, it recognised the need for consistency and certainty and offered no criterion that could balance these two objectives other than to suggest that the guideline should make it clear that any reduction should be

minimal or non-existent in “exceptionally serious cases”. **The Council considered that the general approach of the guideline properly reflected the policy justifying the principle of a reduction following a guilty plea and that no change is necessary.**

14. One response suggested that the maximum reduction ought to be one quarter rather than one third which would provide a sufficient incentive without departing too far from a proper sentence. **The Council noted that the responses to the Panel consultation gave broad support for the maximum being one third for a plea at the earliest possible opportunity and that no change was justified.**
15. One response considered that the reference in para. 4.3(iii) to “some” reduction for a very late plea would be better stated as “minimal”. **The Council considered that the text does not describe the amount of the reduction but asserts the principle – the amount (10%) is described elsewhere. Accordingly, no change was necessary.**

Withholding a Reduction – Overwhelming prosecution case

16. The response from the Attorney General emphasised the importance of giving a lesser reduction (or none) where the prosecution case was overwhelming and that this should be given greater prominence in the guideline. **The Council had concluded that greater flexibility should be introduced in such circumstances but that there should continue to be an incentive to plead guilty. The Council concluded that no further change was necessary.**
17. One other response considered that the change from one third to 20% would do little to allay public concern (and that it should be 10%) but others endorsed the proposal. **Accordingly, the Council concluded that no change was necessary.**

Withholding a Reduction – two or more summary offences

18. Three responses commented in support of these proposals and none opposed them.

Application to other indeterminate sentences

19. The response from the Attorney General proposed that there should be a different and lesser scale of reduction. **The Council considered that the approach to the fixing of the minimum term closely followed that for fixing the length of a determinate sentence and that the two approaches should be the same.**
20. The response from the Home Affairs Committee urges the Council to give specific guidance on how a Judge should present an indeterminate sentence. It encourages emphasis on the indeterminate nature of the sentence and the strictly conditional nature of the earliest possible release date. **However, this is an issue that is outside the scope of the guideline.**

Annex 1 – First Reasonable Opportunity

21. The Attorney General proposed that greater emphasis should be given to the likelihood that the first reasonable opportunity would be under interview in a police station. Whilst two further responses also raised concerns about aspects of this Annex, overall it was considered that it gave sufficient guidance given the wide variety of situations and that it properly balanced the interests of the prosecution and the defence. **Accordingly, the Council concluded that no change was necessary.**