



Reduction in sentence for a guilty plea

Standard Note: SN/HA/5974
Last updated: 19 May 2011
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Section: Home Affairs

Offenders who plead guilty will usually receive a reduced sentence, compared to the sentence they would have received had they been convicted following a not guilty plea. This was a well established principle under the common law, and has since been put on a statutory footing supplemented by sentencing guidelines. The rationale behind this is that it encourages defendants who know they are guilty to enter a guilty plea at the earliest possible stage, so saving court time and money and saving witnesses (including victims) from having to attend court to give evidence.

The level of reduction is at the discretion of the court, although sentencing guidelines require that the usual reduction will be one third where the guilty plea was entered at the first reasonable opportunity. A reduced discount of one quarter is suggested where the plea was only entered once a trial date had been set, and one tenth where the plea was entered “at the door of the court” or after the trial had begun.

In December 2010, the Ministry of Justice published a green paper that included a proposal to increase the maximum reduction in sentence for a guilty plea from one third to one half. The Government says that this will encourage more defendants to plead guilty at an early stage, so reducing inefficiencies and “sparing victims needless worry” about attending court. However, critics argue that this change could undermine public confidence in sentencing if it results in much lower sentences for serious offenders.

The green paper’s consultation period closed on 4 March 2011; the Government has not yet published a summary of responses or details of how it plans to proceed, although in response to a PQ on 17 May 2011 the Justice Secretary Kenneth Clarke described this particular proposal as “likely to survive”.

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1 Background

It was a well established principle of common law that an offender who pleaded guilty could usually expect a reduction in his sentence compared to the sentence he would have been given had he been convicted following a plea of not guilty. In 1993 the Royal Commission on Criminal Justice described this practice as going back “decades”.¹ The earlier a guilty plea was entered the greater the discount should have been. The level of discount was left to the court’s discretion, although a general principle developed that a discount of approximately one third would usually be appropriate.²

The rationale behind reduced sentences was to encourage those defendants who knew themselves to be guilty to enter a guilty plea at the earliest possible stage, as this would save public money and court time and spare witnesses (including any victims) from having to attend court to give evidence.

In 1994, the requirement for courts to take account of a guilty plea when sentencing was placed on a statutory footing by section 48 of the *Criminal Justice and Public Order Act 1994*:

48 Reduction in sentences for guilty pleas

(1) In determining what sentence to pass on an offender who has pleaded guilty to an offence in proceedings before that or another court a court shall take into account—

(a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and

(b) the circumstances in which this indication was given.

(2) If, as a result of taking into account any matter referred to in subsection (1) above, the court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, it shall state in open court that it has done so.

Section 48 has since been replaced by section 144 of the *Criminal Justice Act 2003*, discussed in the next section of this note.

¹ Royal Commission on Criminal Justice, *Report*, Cm 2263, 1993, p110

² Lord Taylor CJ in *R v Buffrey*, 14 Cr.App.R.(S). 511

2 The current approach

The current approach to reduced sentences following a guilty plea is set out in a combination of statute and sentencing guidelines.

2.1 The *Criminal Justice Act 2003*

The statutory provision that originated in section 48 of the 1994 Act is now set out in section 144 of the *Criminal Justice Act 2003*:

144 Reduction in sentences for guilty pleas

(1) In determining what sentence to pass on an offender who has pleaded guilty to an offence in proceedings before that or another court, a court must take into account—

- (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
- (b) the circumstances in which this indication was given.

(2) In the case of an offence the sentence for which falls to be imposed under subsection (2) of section 110 or 111 of the Sentencing Act [*minimum 7 year sentence for third class A drug trafficking offence and minimum three year sentence for third domestic burglary respectively*], nothing in that subsection prevents the court, after taking into account any matter referred to in subsection (1) of this section, from imposing any sentence which is not less than 80 per cent of that specified in that subsection.

Section 174(2)(d) of the 2003 Act goes on to provide that where the court imposes a reduced sentence due to a guilty plea it must state that it has done so.

Andrew Ashworth, who served as chair of the former Sentencing Advisory Panel between 2007 and 2009, has made the following comments on section 144:

Since its inception ... the legislation on discounts for pleading guilty has not been specific. Subsection (1) is drafted in a remarkably allusive manner. Not only does it fail to say anything about the scale of the discounts, but it merely hints at the principle that the discount should be larger, the earlier the guilty plea is intimated. In the result, the Court of Appeal dealt with a succession of appeals on the subject between 1994 and 2004, and this underlined the need to establish guidance on the proper approach to sentencing in guilty plea cases.³

2.2 Sentencing guidelines

Guidance on sentencing in guilty plea cases was issued by the Sentencing Guidelines Council (now the Sentencing Council) in December 2004, followed by an updated version in July 2007. The 2007 version, *Reduction in Sentence for a Guilty Plea: Definitive Guideline*, sets out the current guidance for the courts to follow when sentencing an offender who has pleaded guilty.⁴

The guideline begins by restating the rationale behind reduced sentences for guilty pleas:

³ Ashworth, *Sentencing and Criminal Justice*, 5th edition, 2010, p172

⁴ The courts must follow this guideline in relevant cases unless satisfied that it would be contrary to the interests of justice to do so: section 125 of the *Coroners and Justice Act 2009*

A reduction in sentence is appropriate because a guilty plea avoids the need for a trial (thus enabling other cases to be disposed of more expeditiously), shortens the gap between charge and sentence, saves considerable cost, and, in the case of an early plea, saves victims and witnesses from the concern about having to give evidence. The reduction principle derives from the need for the effective administration of justice and not as an aspect of mitigation.⁵

Section D of the guideline sets out how the court should determine a sentence reduction in any particular case. The maximum discount, generally reserved for cases where the guilty plea was entered at the first reasonable opportunity, will usually be one third.⁶ A reduced maximum of one quarter will usually be suitable where the plea was only entered once a trial date had been set, and this will reduce further to one tenth where the plea was entered “at the door of the court” or after the trial had begun.⁷

3 Proposals for change: *Breaking the Cycle*

In December 2010 the Ministry of Justice published a green paper on the punishment, rehabilitation and sentencing of offenders.⁸ One of the proposals on which views were sought was to increase the maximum sentence discount for a guilty plea from one third to half:

One of the worst inefficiencies is that more than two-thirds of the cases reaching the Crown Court end in a guilty plea. Well over 10,000 such cases in 2009 pleaded at the door of the court. In most instances the defendant could have pleaded in the magistrates’ court. The failure to do so means that resources – court costs, police and prosecution costs, legal aid – are wasted on cases that do not need to progress any further. Moreover, victims and witnesses have longer to wait before they discover whether they will have to give evidence. This can be traumatic, particularly where the defendant pleads guilty at the last minute. Victims and witnesses will have prepared themselves to appear in court and relive the events that took place, all for nothing.

The sentencing framework has long recognised the benefits of early guilty pleas in terms both of efficiency and of sparing victims needless worry. We want to ensure that defendants are encouraged to plead guilty at the earliest opportunity by reducing the sentence given for an early guilty plea (the “sentence discount”). We are considering whether this could be better achieved by introducing a maximum discount of up to 50 per cent that would be reserved for those who plead guilty at the earliest stage.⁹

The Ministry of Justice has estimated that this change will also result in a reduction of 3,400 in prisoner numbers in 2014/15, and financial savings of £130 million.¹⁰ Some of the other anticipated benefits were listed in response to a PQ:

Philip Davies: To ask the Secretary of State for Justice pursuant to the answer of 10 March 2011, Official Report, column 1283W, on sentencing, what assessment has been made of the potential effects on (a) the police, (b) businesses, (c) individuals and (d) the probation service of increasing the maximum discount available for an early guilty plea. [47393]

⁵ Sentencing Guidelines Council, *Reduction in Sentence for a Guilty Plea: Definitive Guideline*, 2007, para 2.2

⁶ Although note that the guideline suggests reducing this maximum to 20 per cent in cases where the prosecution evidence is overwhelming: para 5.3

⁷ Ibid, pp5-6

⁸ Ministry of Justice, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, Cm 7972, December 2010

⁹ Ibid, paras 2.15 to 2.16

¹⁰ Ministry of Justice, *Impact Assessment MOJ051*, December 2010, p21

Mr Blunt: If an increased discount for an early guilty plea had the desired effect of encouraging defendants to plead guilty at an earlier stage in the proceedings, it would potentially reduce burdens on the police (and the Crown Prosecution Service) to the extent that less effort would need to be devoted to assembling evidence, and on the probation service to the extent that where shorter sentences were imposed, a smaller percentage of offenders would be subject to post release supervision and these periods of supervision would also be shorter resulting in a reduction in probation workload, although it would also be possible for there to be greater demand on the service through a long community order rather than a short prison sentence. Victims and witnesses would benefit from a prompt resolution of the case, as they would no longer need to worry about having to go to court to give evidence. We would not anticipate that there would be any effect on businesses.¹¹

The green paper's consultation period closed on 4 March 2011. The Government has not yet published a summary of responses or details of how it plans to proceed. However, a number of organisations have made their responses available online, including:

- **Victim Support**, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders – A response by Victim Support*, March 2011, p15
- **Justice**, *Response to Sentencing Green Paper Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, March 2011, paras 23 to 24
- **Criminal Bar Association**, *Breaking the Cycle Consultation: Response on behalf of the Criminal Bar Association*, March 2011, p20
- **Sentencing Council**, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders - Response from the Sentencing Council*, 2011, pp11 to 12
- **Lord Justice Thomas and Lord Justice Goldring**, *Response to Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, 2011, pp16 to 18
- **The Criminal Sub-Committee of the Council of HM Circuit Judges**, *Breaking the Cycle – Observations of the Criminal Sub Committee of the Council of HM Circuit Judges*, March 2011, pp14 to 15

Most of these responses were opposed to the proposal to increase the discount for a guilty plea from one third to one half, with many expressing concern that it might damage public confidence in sentencing. However, in May 2011 the Justice Secretary Kenneth Clarke described it as “likely to survive”:

We are going to give the outcome of our consultation shortly, but I think that that proposal is likely to survive. The fact is that we have always had a reduced tariff for early guilty pleas in this country. It always startles the public when they discover that this has underlined our sentencing policy for many years. It is true that we are thinking of putting up the reduction to a half. It makes an enormous difference to costs, police time and the involvement of unnecessary preparations for trial if everybody leaves guilty pleas to the last possible moment. As my hon. Friend the Under-Secretary rightly said, victims and witnesses are put through an ordeal if they are preparing for a trial where they expect to be accused of lying because the man has not been induced to

¹¹ [HC Deb 21 March 2011 c802W](#)

plead at an early enough stage. Those are the considerations that lay behind this proposal.¹²

4 Sentencing Council research into public opinion

In May 2011 the Sentencing Council published the results of research it had commissioned into public attitudes towards reduced sentences for offenders who plead guilty.¹³ The research also looked at the attitudes of victims and offenders. Some of the key findings were as follows:

- The public assume that the key motivation for the guilty plea sentence reduction is to reduce resources (time and money), but they prefer the idea of it as something which helps prevent victims having to give evidence and experiencing emotional trauma whilst doing this. There is a strong sense that the drive for cost savings should not impact on a system effectively delivering justice.
- There is more support for sentence reductions if the guilty plea is entered at an early point. The benefits – both economic and emotional – are more tangible at this point, and both the public and victims and witnesses are less likely to feel that the offender can ‘play the system’. On the other hand offenders say they are less likely to enter an early plea, but prefer to weigh up the evidence against them first.
- There is generally little support for a reduction for a guilty plea made at the court door or once the trial has started amongst the public and many victims and witnesses, although the small number of victims of more serious offences included in this study often felt that reductions at this stage could be acceptable. There was an indication that the prospect and reality of attending court proved more traumatic for this group, and they therefore may be more open to late reductions.
- For the general public, there was weak support for higher levels of reductions beyond the current guideline range of up to 33% and a fifth (20%) felt that there should be no reduction at all. Supporting this, when survey respondents were asked whether the reduction should be increased from a third if an offender pleads guilty at the earliest opportunity, 58% disagreed and only 22% agreed. A small number of victims of more serious offences were, however, more supportive if it spared them having to testify in court.
- The public (and some victims and witnesses) do not like the idea of a universal approach to reductions – in fact, the public in the survey were less likely to say that an offender pleading guilty to an offence should be given a more lenient sentence in **most/all** cases (21%) and more likely to say it **never** should result in a more lenient sentence (29%). They instead think that this should depend on certain factors/circumstances relating to the offender or offence type. For instance, views were often much more punitive towards violent crimes as opposed to those against businesses, and likewise towards repeat offenders versus first time offenders.

(...)

- Offenders in this study were often unsure what their sentence was likely to be when weighing up how to plead, and felt that decisions on sentence lengths were inconsistent. This made it difficult for them to calculate exactly what the impact of a set reduction to their sentence would be. Offenders also questioned the extent to which reductions for early guilty pleas were actually being applied, with a number

¹² [HC Deb 17 May 2011 c150](#)

¹³ Sentencing Council Research Series 02/11, [Attitudes to guilty plea sentence reductions](#), May 2011

feeling that it was very difficult to understand exactly how their final sentence had been determined. However, when probed on the level of reductions, offenders in this study were broadly content with the current discount of a third for an early guilty plea, and felt that without the reduction there was little incentive to admit guilt.

- The main factor determining whether or not offenders plead guilty was the likelihood of being found guilty at trial. The key 'tipping point' here was when offenders realised that the chances of them being found guilty were greater than being found not guilty. Weight of evidence and advice from solicitors/barristers were pivotal in offenders' assessments of whether they were likely to be found guilty and therefore crucial in determining when a guilty plea was entered. There was little evidence from the research that increasing the reduction further would encourage more offenders to plead guilty at an earlier stage, given the reduction only becomes a driver of entering a guilty plea at such a point that an offender considers a conviction to be the likely outcome.¹⁴

¹⁴ Ibid, pp1 to 2