

SENTENCING EXPLAINED

SENTENCE REDUCTIONS FOR A GUILTY PLEA

Why do defendants who plead guilty benefit from lighter sentences? How great a reduction do they receive? Do all defendants who plead guilty get a reduction? Is the level of reduction the same for all offenders, regardless of the nature of the crime? Do offenders convicted of murder receive a reduced sentence if they plead guilty?

This note explains the practice of plea-based reductions in England and Wales. First, however, some background points are important to note. The practice is near universal: all common law countries – including the US, Canada, Australia, and New Zealand – award sentence reductions if the defendant pleads guilty. The practice has a clear statutory basis in English law.¹ Plea-based sentence reductions have long been a part of sentencing in the nations of the United Kingdom. Finally, the practice affects high numbers of cases: most defendants charged with a criminal offence plead guilty, usually early in the process. In 2018-19, 78% of cases in the magistrates' courts and 71% of cases in the Crown Court were resolved by a guilty plea.²

Justifications for plea-based sentence reductions

There are several justifications for plea-based sentence reductions. First, without a trial, crime victims and witnesses are spared the experience of having to come to court to testify. For many victims, particularly victims of violent crime, testifying in court can be traumatic, and is often time-consuming. As well, victims often benefit from knowing that the offender has accepted responsibility by admitting guilt. Witnesses are also often keen to avoid the experience of reliving the crime in a public forum. Testifying may also involve multiple trips to a court if proceedings are adjourned.

Second, the courts save a great deal of time and money by avoiding a trial, particularly for the more serious cases which are prosecuted in the Crown Court. This saving permits the police and the Crown Prosecution Service to conserve their limited resources to prosecute the most serious crimes.

¹ The current provision is section 73 of the Sentencing Code that provides that when passing sentence on an offender who has pleaded guilty: 'The court must take into account the following matters: (a) the stage in the proceedings for the offence at which the offender indicated the intention to plead guilty; and (b) the circumstances in which the indication was given'.

² <https://www.cps.gov.uk/sites/default/files/documents/publications/CPS-Annual-Report-and-Accounts-2018-19.pdf>

Third, the possibility of a reduced sentence encourages defendants who are guilty to take responsibility for their actions, and this may constitute a step towards returning to a law-abiding life.

How does the scheme work?

Once defendants are apprised of the prosecution case against them, they have an opportunity in the magistrates' court to enter a plea. If they plead guilty at this first stage in the criminal process, the court will proceed to sentencing without needing to conduct a trial. Defendants who enter an early plea will normally benefit from a one-third reduction in the custodial sentence. The level of reduction diminishes the longer the defendant waits before entering a guilty plea. A defendant who at first pleads not guilty, but who later changes plea to guilty on the day of trial will receive only a very small reduction – 10%. The logic operating here is that the benefit to victims, witnesses and the court system declines the longer the defendant waits before pleading guilty. The result is that the reduction declines accordingly. If the plea is entered before the day of trial but after the first opportunity to do so, the defendant will receive a reduction less than one-third but more than one-tenth.

At the time of sentencing, a court will first establish a provisional sentence for the offence, taking into account all relevant circumstances related to the crime or the offender. Then, if a guilty plea has been entered, the court will apply the plea-based sentence reduction guideline (see below), determining the appropriate level of reduction in this particular case. Finally, the court will state clearly the level of reduction awarded and the effect of the reduction on the sentence imposed. This requirement ensures that the offender, the crime victim and all interested parties understand the impact of the plea.

Role of the definitive guideline on plea-based sentence reductions

The level of reduction is regulated by a guideline issued by the Sentencing Council and endorsed by the Court of Appeal.³ Why is a sentencing guideline necessary or useful? The guideline explains the justifications for the practice of awarding reductions, and lays out the levels of reduction appropriate in different scenarios. A guideline brings greater transparency and clarity to sentencing. Defendants who wish to accept responsibility have a clear idea of what the impact of pleading guilty will be on the sentence they receive. In other countries (such as Australia or Canada), defendants and their lawyers are unable to know with the same degree of certainty what level of reduction will follow a guilty plea.

The guideline also serves as a cap or limit on the reduction: defendants may not receive a reduction in excess of one third. This cap serves to ensure that a plea does not radically change the amount of time in prison an offender may evade by pleading guilty. A practical example illustrates.

Imagine co-defendants convicted of a serious robbery committed together. Defendant A pleads not guilty but is convicted following a trial. He is sentenced to 12 months immediate custody. This means he will serve six months in prison, six months in the community. Defendant B

³ See *Caley and Others* [2012] EWCA Crim 2821.

pleads guilty to the same charge and receives an eight month prison term, of which he serves four months in prison and four months in the community. The difference in terms of time in prison between these two offenders is therefore two months.

Exceptions to the guidelines

The guideline permits courts to award different levels of reduction if certain circumstances arise. For example, if a defendant has not been fully apprised of the case against her, and therefore enters a guilty plea after the first opportunity to do so, she may still be awarded the maximum one-third reduction. The guideline also contains exceptions for vulnerable defendants who may have needed more time to comprehend the nature of the evidence against them.

How do the reductions in England and Wales compare to other countries?

In other countries, defendants who plead guilty receive more generous sentence reductions. When this occurs, there is the danger that some defendants who have a legitimate defence to the charge may plead guilty, just to get the greatly reduced sentence. If this happened it would be a wrongful conviction and the English system attempts to minimise the likelihood of this occurring by keeping the sentence reductions modest. Sentence reductions are offered to defendants to encourage those who accept their guilt to move forward without a trial; the reductions are not intended to elicit guilty pleas from defendants who are not guilty or not guilty of the crime charged.

The purpose of the guideline is therefore three-fold:

- (i) to ensure that sentence reductions are consistently applied across all courts;
- (ii) to improve the predictability of sentencing outcomes; and
- (iii) to improve the transparency of sentencing when all parties, and the general public have a clearer idea of how a particular sentence was reached.

The effect of a guilty plea on sentencing for murder

Finally, what about defendants charged with murder? Offenders pleading guilty to murder will also receive some reduction in the number of years that they must serve before becoming eligible to apply for release on life licence. Again, the justification for offering a sentence reduction is clear. Murder trials may take weeks of court time and consume a great deal of police and Crown Prosecution Service resources, both of which have been reduced in recent years. In addition, participating in a murder trial is likely to be very traumatic for secondary victims, relatives of the deceased, as well as any witnesses who may have to testify. Although offenders convicted of murder receive a reduction for a guilty plea, the effect of a plea is capped. A defendant pleading guilty to murder will normally receive a reduction in the minimum term of no more than one-sixth, and the number of years reduced may not exceed five.

Do the reductions in practice follow the guideline?

Research on judicial practice shows a relatively close fit between the guideline recommendations and the reductions actually awarded. For example, one analysis found that approximately one-third of defendants entering a prompt plea received the recommended reduction of one-third.⁴ This suggests that defendants who accept that they are guilty and who are considering pleading guilty know before they enter their plea what the benefit will be.

What do the public think of plea-based sentence reductions?

Research with the general public has revealed that people are generally unaware of the benefits of a guilty plea to victims and witnesses. Most people support the concept of some reduction in sentence to recognise a guilty plea, but the public generally oppose reductions in excess of one-third, particularly for offenders convicted of the most serious crimes.

What do victims and witnesses think of plea-based sentence reductions?

The limited research on crime victims and witnesses suggests that many of these people see a benefit if the defendant elects to plead guilty.

⁴ Roberts, J.V. and Bradford, B. (2015) Sentence Reductions for a Guilty Plea: New Empirical Evidence from England and Wales. *Journal of Empirical Legal Studies*, 12(2): 187-210.