



## New guideline published on sentence reduction for early plea

By Elizabeth Tremayne

After lengthy consultation last year the Sentencing Council has published its new guideline on the stages and levels of reduction for a guilty plea

1. The Sentencing Council has published guidance on the 'Reduction in sentence for a guilty plea' at each stage of a prosecution (**the Guideline**). The Guideline defines with greater precision the time limits applicable to each of the percentage discounts. The significant exceptions to those time limits are likely to be of particular interest to practitioners advising individual offenders and organisations charged with regulatory offences including, for example, breaches of the Health and Safety at Work Act 1974 and the Environmental Protection Act 1990.
2. The Guideline applies in the Crown and Magistrates' Courts to any matter in which the first hearing is on or after 1<sup>st</sup> June 2017, regardless of the date upon which the alleged offence was committed. It is expressly intended to encourage those contemplating a guilty plea to do so at the earliest possible opportunity.

### The stages

3. It remains imperative to act quickly to obtain the maximum discount. Where a guilty plea is indicated at the '*first stage*' of proceedings a reduction of one third should be made. The first stage replaces the '*first*

*reasonable opportunity* under the 2007 guideline and will normally be the first hearing at which a plea or indication of plea is sought and recorded by the court. Where the offence is triable either way the guilty plea must be given at the first appearance in the Magistrates' court to ensure a one third reduction. Following *Caley and Others v The Queen* [2012] EWCA Crim 2821 (under the 2007 Guideline) an admission in interview is likely to be treated as a mitigating factor and not an *'indication of guilty plea'* for a percentage adjustment.

4. After the first stage of proceedings the maximum level of reduction decreases to one quarter.
5. The Guideline makes clear that the strength of the evidence should not be taken into account when determining the level of reduction. This is a departure from the 2007 guideline which set out that where the prosecution case was *'overwhelming'* it might not be appropriate to give the full reduction that would otherwise be applicable. Under that guideline where a court was satisfied that a lower reduction should be given for this reason, a reduction of 20% was recommended where the guilty plea was indicated at the first reasonable opportunity.
6. Under the new Guideline factors such as admissions at interview, co-operation with the investigation and remorse should not be taken into account in determining the reduction, but only later, in mitigation, after the reduction has been applied.
7. After the first stage there is a sliding scale of reduction imposed, decreasing from a quarter to a maximum of one tenth on the first day of

trial, having regard to the time when the guilty plea was first indicated to the court relative to the progress of the case and the trial date. The position remains that practitioners should beware of leaving a guilty plea too late: the reduction may decrease to zero if the guilty plea is entered during the course of trial.

8. The Guideline permits the court to achieve the reduction by replacing one type of sentence with another, for example in the case of an individual offender reducing a custodial to a community sentence. However, whether after such a change of type of sentence the court is entitled to further reduce reflecting the guilty plea remains unclear. Whilst there should normally be no further reduction, in circumstances where the less severe sentence is '*justified by other factors*' an additional reduction should be applied in the normal way. In borderline either way offences reducing a sentence to reflect a guilty plea may, of course, enable a magistrates' court to retain jurisdiction.
9. These staged reductions are subject to some significant exceptions which are likely to be particularly relevant to, and most readily deployed in, the defence of complex regulatory prosecutions.

### Exceptions

10. The exceptions in the Guideline are widely drafted. Where the sentencing court is satisfied that there were '*particular circumstances*' which significantly reduced the defendant's ability to understand what was alleged or otherwise made it unreasonable to expect the defendant to indicate a guilty plea sooner than was done, a reduction of one third should still be made.

11. This looks apt to apply to many health and safety and environmental offences which often involve multiple parties, complex factual and technical information and lay and expert evidence, given the Guideline expressly distinguishes between circumstances where the Defendant is simply engaging in delaying tactics and where *'it is necessary to receive advice and/or have sight of the evidence in order to understand whether the defendant is in fact and law guilty of the offence charged'*.
  
12. Another notable exception identified is that if an offender is convicted of a lesser or different offence from that originally charged but has earlier made an unequivocal indication of a guilty plea to that lesser/different offence the court should give the level of reduction that is appropriate to the stage in the proceedings at which that indication of plea was given. This represents a significant factor for strategic consideration when defending regulatory prosecutions involving multiple charges on what are often heavily loaded indictments.

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