

Response ID ANON-3BCW-EJUK-X

Submitted to **Reduction in sentence for a guilty plea guideline consultation**

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Introduction

What is your name?

Name:

Peter Dawson

What is your email address?

Email:

peter.dawson@prisonreformtrust.org.uk

What is your organisation?

Organisation:

Prison Reform Trust

Section one: Overarching issues and the context of the guideline

Section two: The proposals in detail

Section two: The proposals in detail (continued)

1. Is the rationale in the key principles section set out clearly?

Question 1:

We welcome the clear separation of the reduction for guilty plea from both the strength of evidence and mitigating factors.

We comment in more detail on later sections, but in our view there is a key principle to include here which is that the operation of this guideline must never have the effect of putting pressure on an innocent defendant to plead guilty. That principle is particularly important in cases where the defendant has one or more disabilities which may impair their ability to understand the choice that is being put to them, the implications of making a particular choice or how to respond to it in their own best interests. Such disabilities might include - but are not restricted to - learning disabilities, autism and certain mental health conditions. The court has a duty to ensure a defendant's effective participation in court proceedings and the right to a fair trial. It should be required to record that the defendant is competent to make a decision in their own best interest, having first received the relevant information in a way that is accessible to and understood by the defendant, supported by reasonable adjustments as necessary, as required by the Equality Act.

Similar considerations arise in relation to defendants who may benefit from the provisions of the Modern Slavery Act 2015, including those who require assistance by way of interpretation to understand the proceedings. The court should be required to record that the defendant is not likely to be affected by the provisions of that Act. There is a particular risk that vulnerable women will be disadvantaged if courts are not alert to the well established evidence of coercion and abuse in the history of many former defendants now serving prison sentences.

Section two: The proposals in detail (continued)

2. a. Do you agree with the approach taken in the draft guideline to overwhelming evidence i.e. that the reduction for a guilty plea should not be withheld in cases of overwhelming evidence?

Question 2:

We support the new draft guideline. The justifications for a reduction in response to an early guilty plea apply regardless of the strength of the prosecution case.

Section two: The proposals in detail (continued)

3. Is the method of applying a reduction at the first stage of the proceedings set out clearly?

Question 3.:

We agree with capping the maximum reduction at one third. A larger reduction risks reducing public confidence in the sentence of the court and creating undue pressure on innocent defendants to plead guilty.

However, the restriction to the first stage of proceedings is problematic on two grounds. First it relies on reforms to the administration of justice which have yet to be fully implemented. We understand that the guideline's implementation would be postponed until there was confidence that the system was working as intended, but there would be a continuing jeopardy for defendants in individual cases where that was not so. The court's discretion to waive this part of the guideline where the prosecution has failed to meet its obligations should be drawn broadly.

Secondly, the impact of this restriction is likely to fall disproportionately on defendants with disabilities that may affect their ability to understand the choice facing them, the implications of making a particular choice and to take a decision in their own best interests. Such disabilities might include - but are not restricted to - learning disabilities, autism and certain mental health conditions. The fact that the defendant may experience such a disadvantage will often not be apparent until after the first stage of proceedings.

We therefore propose a specific saving that a defendant who has, or is suspected of having, such disabilities should be able to benefit from a reduction at any

point in the proceedings if the court is satisfied that they have not received appropriate support before that moment. Secondly, the court should have a duty to satisfy itself that the defendant either has the capacity to make an informed choice or that they receive the necessary support, as required by the Equality Act, in order to do so. Such support, for example, might come from an intermediary. Such an arrangement would be in the interests both of justice and of avoiding the need for a retrospective consideration of the defendant's disabilities/capacity at a later point.

A similar regime should apply in the cases of defendants who may benefit from the provisions of the Modern Slavery Act, as described earlier.

Section two: The proposals in detail (continued)

4. Is the method of determining the reduction after the first stage of the proceedings set out clearly?

Question 4:

We suggest restricting the later reduction to one quarter rather than one fifth. This would more clearly reflect the likelihood that the reasons for delay may be subject to dispute, and that the guidelines depend on a radical overhaul of current procedures. It would leave open the option of the more severe reduction to one fifth as part of any future revision of this guideline.

As matters stand, we would also suggest that 14 days is not long enough for defendants remanded in custody to receive a legal visit. Implementation of any change should not occur until the Prison Service can give confidence that legal representatives are able to arrange visits and that defendants can access all the material relevant to the decision they are to make.

Section two: The proposals in detail (continued)

5. Is the paragraph on imposing one type of sentence rather than another clear?

Question 5:

We support these proposals.

Section two: The proposals in detail (continued)

6. a. Is the guidance at paragraphs E2 to E4 clear?

Question 6:

We agree with the proposal at b), but given the court's duty to bear in mind the principle of totality, we suggest the correct wording is that "the court is likely to make a modest additional reduction" rather than "the court may..."

Section two: The proposals in detail (continued)

7. Is the guidance at F1 clear?

Question 7:

We agree that this exception is a necessary safeguard, but it is not sufficient. In particular, the reasons for a defendant not choosing to plead guilty at this first opportunity may relate to the defendant's ability to understand and communicate effectively and the nature of the advice or support they require in order to make a decision in their own best interests. Individuals with a particular disabilities such as a learning disability, autism and certain mental health problems, are likely to be disadvantaged. The interests of justice are clearly best served by individual defendants receiving appropriate advice at the point of arrest, and in a way that they can understand, and consistently thereafter, but there can be no confidence that this happens at present.

We therefore suggest that the court should have a duty to satisfy itself that the individual before them does not require such advice and support before ruling out the possibility of a reduction for a later guilty plea. This would have the significant benefit of ensuring that defendants vulnerable in this way would also be properly advised and supported for the remainder of any proceedings against them, regardless of plea.

In the event that the court does not identify such a need, but it later becomes apparent, the individual should be entitled to the full one third reduction for a guilty plea, regardless of the point that proceedings have reached.

Section two: The proposals in detail (continued)

8. Is the guidance at F2 clear?

Question 8:

No comments

Section two: The proposals in detail (continued)

9. a. Is the guidance at F3 clear?

Question 9:

No comments

Section two: The proposals in detail (continued)

10. Is the guidance at F4 clear?

Question 10:

We agree with this proposal.

Section two: The proposals in detail (continued)

11. a. Is the guidance at F5 clear?

Question 11:

No comments

Section two: The proposals in detail (continued)

12. Is the guidance at F6 to F8 accurate and clear?

Question 12:

No comments

Section two: The proposals in detail (continued)

13. a. Is the guidance in section G on reduction for a guilty plea in cases of murder clear?

Question 13:

The restriction of the maximum reduction to five years dates from a time when tariffs for murder were significantly lower than they have now become. Average tariffs for mandatory lifers have increased by a third in a decade, from just under 16 years to 21 years in 2014. Although rare, tariffs over 30 years are less exceptional than they once were, not least because 30 years is set as the minimum tariff for certain very grave circumstances defined in the Criminal Justice Act 2003.

We therefore propose the abolition of the five year limit, and that all life sentences with a tariff period should be treated in the same way as determinate sentences, with the possibility of a reduction of one third, regardless of the length of tariff.

Section two: The proposals in detail (continued)

14. Do you agree that Section G in the SGC guideline can be omitted from the new guideline? Please give reasons where you do not agree.

Question 14:

If our proposal in answer to question 13 is accepted, the distinction between mandatory and other forms of life sentence is lessened, but in any event we are concerned that omitting the current specific guidance on forms of discretionary life sentence risks a mistake being made, albeit rarely, and that it should remain.

Section two: The proposals in detail (continued)

15. a. Are the flowcharts at appendices 1 to 6 clear?

Question 15.:

No comments

Section four: Victims and equality and diversity

16. a. Are there any further ways in which you think victims can or should be considered?

Question 16:

Our concerns in relation to people with particular disabilities that may affect their communication and comprehension skills are set out in preceding answers. We believe there is a significant risk of unlawful discrimination if measures are not taken to prevent it, and that a duty lies with the court in each individual case to be satisfied that that risk is not present. A similar risk may exist in relation to vulnerable female defendants, given the prevalence of women affected by trafficking and abuse and likely to benefit from the provisions of the Modern Slavery Act.