

Sentence reductions for a guilty plea: The impact of the revised guideline on rates of pleas and ‘cracked trials’¹

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journals.sagepub.com/home/clj**Julian V. Roberts**

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Abstract

In 2017, the Sentencing Council introduced a revised guideline for plea-based sentence reductions. The revisions were designed to provide greater certainty and to accelerate the timing of guilty pleas. Late pleas resulting in ‘cracked trials’ have long been a problem in the court system. The guideline was not intended to change the rate of defendants who plead guilty, but rather to increase the percentage of pleas entered early in the criminal process. This brief article reports findings from an analysis of data from the Crown Court before and after the introduction of the revised sentencing guideline. Findings reveal that the overall guilty plea remained stable over the period 2014–2019. The guideline appears to have had no effect on the timing of guilty pleas entered, and in fact the percentage of ‘cracked’ trials rose in the post-guideline period.

Keywords

Guilty pleas, cracked trials, criminal procedure, sentence reductions for a guilty plea

Introduction

Defendants in all common law jurisdictions² benefit from plea-based sentence reductions, although the magnitude of these reductions is generally left to the discretion of trial

1. Our thanks to Jonathan Bild and Lyndon Harris from the *Sentencing Academy* and the journal’s reviewer for helpful comments on the research and a previous draft of this article.
2. Although civil law countries do not provide the opportunity to formally plead guilty, defendants may still benefit from sentence mitigation for accepting responsibility for the offence; see J Turner and T Weigend, ‘Negotiated Case Dispositions in Germany, England and Wales and the United States’ in K Ambos, A Duff, JV Roberts and T Weigend (eds) *Core Issues in Criminal Law and Criminal Justice*. Volume 1. (Cambridge University Press, Cambridge 2020); M Langer ‘Plea Bargaining, Conviction without trial, and the global administration of criminal convictions’ (2021) 4 *Annual Review of Criminology*, 1–35.

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courts.³ Yet, if individual sentencers are free to determine the appropriate level of reduction, consistency may suffer; judges may differ in their views. Some structure or guidance is needed to ensure that plea-based reductions are not excessive or derisory, and consistently awarded across cases. Without clear guidance from a sentencing council or the appellate courts, *prospectively*, defendants and their legal advisors may have only a vague idea of the level of reduction likely to be awarded. *Retrospectively*, offenders will seldom know exactly how their sentence was affected by their guilty plea, since judgements often fail to identify the specific reduction awarded; the effect of the plea is bundled together with other factors such as remorse, assistance to the prosecution, and personal mitigation.

In contrast to the highly discretionary approach found in other common law jurisdictions such as Australia and Canada, plea-based reductions in England and Wales⁴ are underpinned by statute and regulated by a Sentencing Council guideline.⁵ The guideline regarding plea-based sentence reductions is one of the unique⁶ features of sentencing in this jurisdiction. The current guideline (hereafter 'Revised Guideline') was issued by the Council in 2017 and amended a previous (2007) version from the previous statutory body, the Sentencing Guidelines Council. The 2007 guideline was itself a revised version of a previous guideline issued in 2004.⁷ In this respect the new, Revised Guideline is the latest in a series of developments relating to sentence reductions for a guilty plea.

Overview of the Article

From the perspective of the State, guilty pleas are most valuable when they are entered early – before the onset of the trial. An early plea also relieves victims and witnesses of the burden of appearing at trial to offer evidence. These considerations explain the policy of awarding less generous reductions the later the guilty plea is entered. The guideline issued in 2017 aimed (along with related initiatives such as the early plea schemes) to reduce the volume of 'late' guilty pleas – those occurring after the defendant's first reasonable opportunity to plead. This would also have the effect of reducing the number of 'cracked trials', where a trial is scheduled, only to be cancelled close to opening.

This research addresses the question of whether the 2017 revised guideline has contributed to increasing the number of early pleas. After describing the origins and nature of the revised guideline, we examine guilty plea trends before and since the guideline was issued. In addition to determining whether the timing of guilty pleas has been affected by the guideline, we also examine whether it may have inadvertently changed the overall rate of guilty pleas entered. In short, did the 2017 Guideline achieve its stated objectives or increased the proportion of early pleas without also increasing the overall rate of guilty pleas entered?

3. See A Flynn and A Freiberg, *Plea Negotiations* (2018) (Palgrave: London 2018); D Cole and JV Roberts, 'What's the Point of Pleading Guilty?' 44 *Criminal Reports* (2018), 44.

4. For a review of current issues and the latest research, see J Gormley, JV Roberts, J Bild and L Harris, *Sentence Reductions for Guilty Pleas. A Review of Policy, Practice and Research*. (London, Sentencing Academy 2020); <https://sentencingacademy.org.uk/wp-content/uploads/2020/12/Sentence-Reductions-for-Guilty-Pleas-3.pdf>; J Gormley, R McPherson and C Tata (2020) *Sentence Discounting: Sentencing and Plea Decision-Making*. <https://www.scottishsentencingcouncil.org.uk/media/2076/20201216-sentence-discounting-lit-review.pdf>.

5. <https://www.sentencingcouncil.org.uk/wp-content/uploads/Reduction-in-sentence-for-a-guilty-plea-consultation-paper-web.pdf>.

6. In a number of jurisdictions, courts follow guidelines issued by the senior judiciary. The latest example is Tanzania where offence-specific sentencing guidelines include sentence reductions for a guilty plea. The reductions prescribed are modelled on the English guideline, and establish a sliding scale of reductions capped at one-third for early guilty pleas. See: *Tanzania Sentencing Manual for Judicial Officers* (The Judiciary of Tanzania, Dar es Salaam 2020).

7. The SGC guideline was based upon another document issued by the other statutory body with a responsibility for sentencing guidance – the Sentencing Advisory Panel. See *Advice to the Sentencing Guidelines Council – 2. Reduction in Sentence for a Guilty Plea* (London Sentencing Advisory Panel).

The Context

Plea-based reductions should be transparent, reasonably predictable, and should rest upon a principled foundation. Important issues relating to retributive and preventive sentencing are at stake. Regarding the former, sentencing in England and Wales is guided by retributivism; sentences should be consistent with, or at least not greatly undermine the principle of proportionality.⁸ Very large reductions would undermine proportional sentencing, as two equally culpable defendants convicted of the same crime could receive very different sentences if one enters an early plea while the other is convicted after a contested trial. Since an early plea may change the sentence from custody to a community order, one defendant may be spared custody while his co-accused was imprisoned. The Revised Guideline attempts to protect proportionality by imposing a maximum reduction of one-third, even for early pleas.

With respect to utilitarian objectives, plea reductions need to achieve a balance. Large reductions may encourage ‘wrongful’ pleas as innocent defendants plead guilty, having been blinded to the full consequences of a criminal conviction and attracted by the greatly reduced sentence. In this way, substantial incentives may undermine the presumption of innocence. However, trivial sentence reductions will result in some defendants who otherwise would have pleaded guilty deciding to take their chances at trial. Very small reductions are also inappropriate because defendants are being asked to forgo a key due process entitlement, namely requiring the State to prove the offence beyond all reasonable doubt in a public forum.

A sentence reduction guideline needs to avoid two adverse, unintended consequences: (a) increasing the number of pleas from defendants who have a legal defence, but who are pleading guilty purely to benefit from the reduction; and (b) discouraging guilty pleas through a lack of incentive (as defendants see little benefit in pleading guilty). If fewer defendants plead guilty, this will inevitably increase court and prison costs. Fewer guilty pleas create more trials, more admissions to prison, and for longer terms. It also means more victims and witnesses are required to testify at trial. With respect to the possibility of wrongful convictions, the Guideline makes it clear that its purpose is only to encourage *earlier* but not *more* guilty pleas: ‘If the guidelines are successful, the proportion of pleas entered at the earliest stage of the court process will increase; the percentage of guilty pleas entered late in the process will decline. However, the overall proportion of cases resolved through a guilty plea should remain largely unchanged.’⁹

Classifying Trials

The Ministry of Justice assigns all cases to one of three categories.¹⁰ *Effective trials* in the magistrates’ courts are those which start on the scheduled date and reach a conclusion. In the Crown Court, a trial is recorded once a jury has been sworn. *Ineffective trials* are those which, for a variety of reasons, do not begin on the due date, and which require rescheduling. Finally, *cracked trials* do not commence on the scheduled date and are not rescheduled, as they are no longer required (following the guilty plea). Again, a variety of circumstances may result in the trial being abandoned. The prosecution may offer no evidence at trial – effectively ‘dropping the case’¹¹ – or the defendant may plead guilty near or after the

8. One example of this is found in s. 152(2) of the Criminal Justice Act 2003 which creates a seriousness threshold for the imposition of a term of custody; see discussion in A Ashworth, *Sentencing and Criminal Justice*, sixth edition (Cambridge, Cambridge University Press 2015) at 311.

9. Sentencing Council, *Final Resource Assessment: Reduction in Sentence for a Guilty Plea* (London, Sentencing Council 2016), para. 2.2; and further: ‘The guideline is directed only at defendants wishing to enter a guilty plea and nothing in the guideline should create pressure on defendants to plead guilty.’ <https://www.sentencingcouncil.org.uk/wp-content/uploads/Reduction-in-sentence-for-a-guilty-plea-consultation-paper-web.pdf>

10. Ministry of Justice, *Guide to Criminal Court Statistics* (London, Ministry of Justice 2020), p.8.

11. For example, where it has decided not to proceed (such as where a guilty plea from a co-accused is accepted) or where there are issues with witnesses.

commencement of the trial. Some impending trials are cancelled close to the trial date as a result of the defendant changing plea from not guilty to guilty. By the time a case nears the trial stage, significant resources may have been consumed, by the police, the Crown Prosecution Service and Her Majesty's Courts and Tribunals Service. The volume of late pleas has long been a cause for concern. Almost 20 years ago, the Royal Commission on Criminal Justice argued that a 'clearer system of graduated discounts would help alleviate the problem of cracked trials'.¹²

The Evolution of the Sentencing Guideline

Structure of the Revised Guideline

As with the offence-specific guidelines, the Council's plea-based sentence reduction guideline lays down a staged approach for courts to follow when determining the appropriate reduction for a guilty plea. The guideline prescribes levels of reduction according to a sliding scale: later pleas attract more modest sentence reductions. If a plea is indicated at the first stage¹³ of the proceedings, a maximum sentence reduction of one-third should normally be awarded. A plea entered after this point in the process attracts a maximum reduction of one-quarter (subject to several exceptions noted in the guideline). The reduction decreases to a maximum of one-tenth if the defendant pleads guilty on the first day of trial, and may decline still further if the plea is entered during the trial. In addition to reducing the quantum of punishment, a guilty plea may also result in the imposition of a different, less severe sanction. In this way, a plea can change the *nature* as well as the *quantum* of punishment imposed.

A guideline containing a system of graduated reductions was introduced by the Sentencing Guidelines Council (SGC) in 2004.¹⁴ The SGC reviewed its guideline following feedback from practitioners and issued a revised version in 2007.¹⁵ In 2010, the SGC was replaced by the Sentencing Council, created by the Coroners and Justice Act 2009. Curiously, although a guideline had been in place for 6 years (and had been revised only 3 years earlier), s. 120(3(a)) of the Coroners Act required the Council to 'prepare sentencing guidelines about the discharge of a court's duty under section 144 of the Criminal Justice Act 2003 (c.44) (reduction in sentences for guilty pleas)'. The Council suspended its work on a revised guideline when the government indicated it might legislate a 50% reduction, only to ultimately resile from this proposal. The Council then resumed its research and consultation and ultimately issued the Revised Guideline in 2017.

Objectives of the Revised Guideline

The Sentencing Council noted in its consultation document that the previous guideline was 'not always applied consistently'¹⁶ and that the new guideline was intended to 'provide more certainty'.¹⁷ As noted, the 2017 guideline was intended only to encourage *earlier* guilty pleas and not *more* guilty pleas: If the guideline has contributed towards accelerating the timing of guilty pleas, the proportion of pleas entered at the earliest stage of the court process should have increased while the percentage of guilty pleas entered late in the process would have declined. However, the overall proportion of cases resolved through a guilty plea should remain largely unchanged. One possible benefit of the 2017 guideline may have

12. The Royal Commission on Criminal Justice, Cm 2263 (1993) p. 11.

13. The first stage will normally be the first hearing at which the defendant's plea (or indication of plea) is recorded by the court.

14. Sentencing Guidelines Council, *Reduction in Sentence for a Guilty Plea. Definitive Guideline* (London, Sentencing Guidelines Council 2004).

15. JV Roberts and B Bradford 'Sentence Reductions for a Guilty Plea: New Empirical Evidence from England and Wales' (2015) 12(2) J Empirical Legal Stud 187–210.

16. Sentencing Council, *Reduction in Sentence for a Guilty Plea Guideline. Consultation* (London, Sentencing Council 2016) at 5.

17. Sentencing Council, *Reduction in Sentence for a Guilty Plea Guideline. Consultation* (London, Sentencing Council 2016) at 6.

been a reduction in the number of cracked trials, by encouraging defendants who intend to plead guilty to do so early rather than late in the process.¹⁸ In 2015, as the Council was revising its guideline, cracked trials accounted for approximately 30% of guilty plea cases.¹⁹

Changes Introduced by the Revised Guideline

The 2017 guideline sought to achieve its objectives by modifying the previous guideline in two ways. First, the previous (2007) guideline contained recommendations for levels of reduction rather than maximum reductions. The Revised Guideline specifies *maximum* levels of reduction. Another change was that to benefit from the maximum reduction of one-third, a defendant must plead guilty, or indicate a guilty plea at the first hearing. This applies to all cases, including indictable only cases.

Findings

Effects of the Revised Guideline on Pleas in the Crown Court

(a) Guilty Plea Rates in the Crown Court

The guilty plea rate is the number of defendants pleading guilty as a proportion of all defendants who entered a plea. As noted, one of the guideline's objectives was to encourage defendants intending to plead guilty to enter their plea earlier rather than later in the criminal process. The guideline was not intended to change the rate of cases resolved by a guilty plea. Table 1 summarises trends in guilty pleas in the Crown Court and reveals that overall, guilty plea rates remained stable following the introduction of the 2017 Guideline. Data from the 2 years prior to the introduction of the Guideline (2015/2016) reveal an average guilty plea rate of 67.5%²⁰ compared to 67% after 2017 (2018/2019).²¹ One potential adverse impact – a higher proportion of defendants pleading guilty, including some who are innocent – appears to have been avoided.

(b) Timing of Guilty Pleas

Although the overall plea rate remained stable, the distribution of pleas over the period examined did change. Using the Ministry statistics, we defined all guilty pleas entered prior to trial as 'early' pleas. This category includes pleas entered at the Plea and Case Management Hearing ('PCMH') or at a 'Newton' hearing (with no further trial time required). We combined the categories of 'guilty plea cracked trial' and 'plea at trial' to constitute 'late' pleas. (Almost all of these cases (99% in each year) involved a cracked trial rather than a late plea entered once the trial has commenced.)

With respect to the balance of early versus late pleas, Table 1 reveals that the percentage of early pleas actually declined from 70% in 2014 to a low of 58% in 2018, rising slightly to 61% in 2019 (Table 1). The proportion of late pleas rose from 23% in 2014 to 31% in 2019. If we exclude cases where the timing of the plea was unknown, in 2014, 75% of these pleas were early, 25% late; in 2019 early pleas fell to 66%, late pleas 34%. In short, early pleas accounted for a smaller percentage of pleas after the introduction of the Revised Guideline – the opposite of expectation.

18. The effect of guilty plea reductions upon the volume of 'cracked trials' has long been discussed in this jurisdiction. The Royal Commission on Criminal Justice advocated making the system of sentence reductions more 'effective' because they believed a 'clearer system of graduated discounts would help alleviate the problem of "cracked" trials' CM 2263 (1993), para. 45.

19. Ministry statistics for 2015 record 66,033 cases resolved by a guilty plea. Of these, 45,929 or 72% involved a plea before trial, 28% involved a cracked trial. <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-january-to-march-2020>.

20. <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-january-to-march-2020>.

21. <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-january-to-march-2020>.

Table I. Distribution of Guilty Pleas by Time of Plea, Crown Court (2014–2019).

	2014	2015	2016	2017	2018	2019
Early Plea	44,697 70%	42,406 66%	36,544 64%	31,123 60%	26,084 58%	25,157 61%
Late Plea	15,014 23%	16,573 26%	16,536 29%	17,121 33%	14,372 32%	12,856 31%
Timing unknown	4582 7%	5410 8%	4377 8%	3502 7%	4513 10%	3421 8%
Guilty Plea Total	64,293 100%	64,389 100%	57,457 100%	51,746 100%	44,969 100%	41,434 100%

Notes: percentages rounded; see text for definitions of 'early' and 'late'.

Specific Offence Categories

The next analyses explore variation across offence categories. Figure 1 confirms that plea rates for four offence categories (violence; theft; sexual offences and drug offences) were stable both before and after introduction of the guideline for all offence categories, with the exception of sexual offences. The proportion of guilty pleas rose for sexual offences, from 36% in 2014 to 42% in 2019. It is unclear why the guilty plea rate rose for this category of offence but the explanation is unlikely to be related to the guideline. To summarise, the revised 2017 guideline appears to have failed to encourage early guilty pleas.

Figure 2 and 3 illustrate category-specific trends and confirms for the individual categories the pattern emerging for the total sample of cases. As shown in Figure 2, the percentage of early pleas (before trial) had been declining prior to 2017, but remained stable thereafter for crimes of violence, theft and drugs. Once again, a different pattern emerged for sexual offences. For this category of offence, early pleas accounted for a slightly higher percentage of pleas a year after the guideline came into force.

Finally, Figure 3 displays the offence-specific rates of cracked trials, which were increasing prior to 2017, but again remained relatively stable thereafter. The average percentage of cracked trials in the Crown Court from the third quarter of 2017 to the first of 2020 (11 quarters in total) was 34.31%. The average across the 11 quarters up to the second quarter of 2017 was 34.46%.

Why did the cracked trial rate fail to decline following implementation of the 2017 guideline? Perhaps the elements of the guideline designed to encourage earlier guilty pleas were too modest to have any effect on defendants' decision-making. Indirect support for this explanation comes from research conducted by the Sentencing Council. The Council's content analysis of Crown Court judges' sentencing

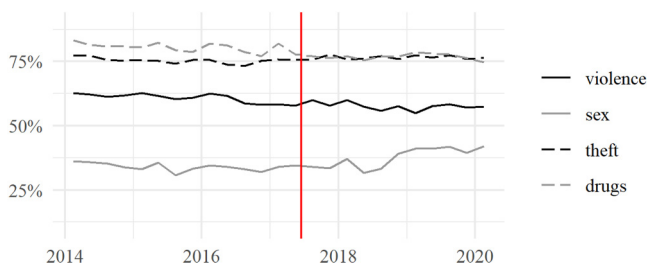


Figure 1. Guilty pleas as a percentage of all cases, four offence categories, before and after the 2017 Guideline. Note: These figures have been created using data from the Ministry of Justice criminal court statistics quarterly (<https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-january-to-march-2020>).

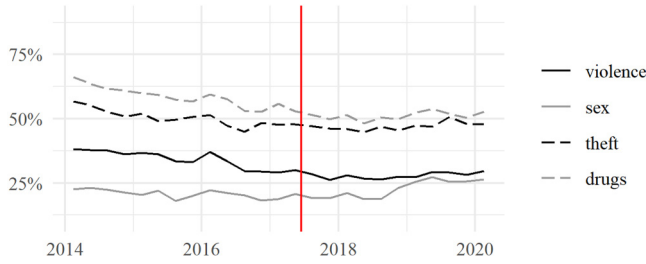


Figure 2. Early Guilty pleas as a percentage of all cases, four offence categories before and after the 2017 Guideline.

remarks found that the new guideline was ‘rarely mentioned’²², suggesting that any changes to the guideline were not sufficiently significant to be noted in judges’ reasons for sentence. Moreover, although it was based on a small sample of interviews, the Council’s report concluded that: ‘the guideline did not seem to have any noticeable impact on defendants’ pleading behaviour.’²³ Had the guideline been effective in changing defendants’ perceptions, it should have been detected by research of this nature. A second explanation is that factors unrelated to the level of sentence reduction guideline determine when the defendant decides to plead guilty. If this is the case, tweaking the guideline is unlikely to achieve any benefits in terms of expediting pleas from defendants who accept their guilt.

The revised guideline may have introduced greater certainty into the sentence reduction regime but it does not appear to have elicited earlier guilty pleas. At least this is the conclusion we draw from the trends 2 years after the revised guideline was introduced. It is possible that the guideline may still have this effect, but only after a longer period. The 2017 data reflect decision-making by defendants during the implementation period. Over the period 2017–2019 the late plea rate was steadily rising – for unknown reasons. This rising rate may be changing, as seen in the data in Table 1. The Covid pandemic will inevitably obscure attempts to understand the longer term effect of the revised guideline on defendants’ decisions; research over a longer period is necessary.

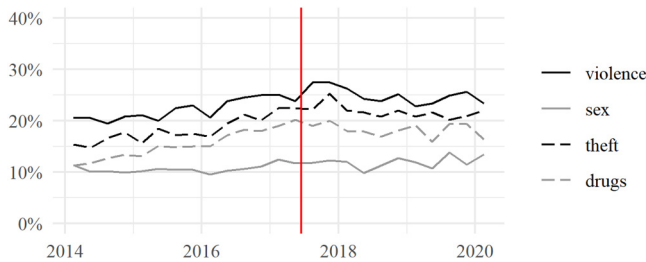


Figure 3. Guilty pleas associated with a cracked trial as a percentage of all cases, four offence categories before and after the 2017 Guideline.

22. Sentencing Council, *Assessing the Impact and Implementation of the Sentencing Council’s Reduction in Sentence for a Guilty Plea Definitive Guideline* (London, Sentencing Council 2020) 12.

23. Sentencing Council, *Assessing the Impact and Implementation of the Sentencing Council’s Reduction in Sentence for a Guilty Plea Definitive Guideline* (London, Sentencing Council 2020), 12.

Table 2. Reasons for Cracked Trial, Percentage and Number of Cases (2019).

Guilty plea entered late, offered first time by defence	53% (22,276)
Guilty plea entered late, previously rejected by prosecution	2% (777)
Guilty plea to alternate charge, first time offered by defence	4% (1619)
Guilty plea to alternative new charge, previously rejected by prosecution	<1% (261)
Prosecution end case, insufficient evidence	16% (6668)
Prosecution end case, witness absent/withdrawn	15% (6223)
Prosecution end case on public interest grounds	6% (2534)
Prosecution end case, adjournment refused	4% (1902)
Other	<1% (154)
Total number of Cracked Trials	100% (42,414)

Source: HMCTS Libra Management Information System and HMCTS XHIBIT systems.

Causes of Cracked Trials

Some information on the causes of trials being ‘cracked’ is available from the Ministry of Justice. Table 2 provides a breakdown of the reasons why a trial was cracked in the most recent complete year (2019). As can be seen, a late plea entered for the first time accounted for just over half the cracked trial cases. These data provide no insight into the reasons for these late guilty pleas (for example whether it was due to late disclosure by the Crown Prosecution Service (CPS), strategic decision-making by the defence, or some other reason). In light of the failure of the revised guideline to influence defendants’ decision-making (and thereby reduce the number of cracked trials), perhaps it is time to explore other solutions to the problem of a high incidence of cracked trials.

Table 2 suggests that reasons relating to the CPS, including issues relating to witnesses and termination on public interest grounds, accounted for a significant percentage of cases. Of all cracked trials, 17,327 or 41% arose from reasons related to the CPS. The most common cause would appear to have been ‘insufficient evidence’, which accounted for 16% of all cracked trial cases (see Table 2). The sentencing guideline regulating plea-based reductions focuses upon decision-making by the defendant. Perhaps efforts to reduce the number of ‘cracked trials’ should pay more attention to problems arising with respect to the prosecution. Finally, this analysis has not been able to explore the effect on guilty pleas of other forces in the court environment. Other recent changes in the criminal justice system, such as the swinging cuts to legal aid and the streamlined forensic reporting may also have affected the timing of guilty pleas.

Discussion and Research Priorities

Research involving offenders reported by the Sentencing Council suggests that the magnitude of the reductions is not a significant factor affecting their decision to plead. The Council’s report notes that ‘The main factor determining whether or not offenders plead guilty was the likelihood of being found guilty at trial’.²⁴ However, the study involved only a small number of defendants. If this finding can be generalised more widely, adjusting the levels of reduction awarded is unlikely to change the pattern of pleas. Further research with litigants or their legal advisors would clarify this issue.

The large proportion of late pleas is likely to contain two problematic profiles of the defendant. The most worrying profile is the individual who has a legal defence to the charges laid, but who ultimately pleads guilty simply to secure a reduced sentence. People who are held in remand are likely to be particularly vulnerable in this respect. As Helm notes, the likelihood of defendants with a defence but

24. Sentencing Council, *Attitudes to Guilty Plea Reductions* (London, Sentencing Council 2011), p. 32.

who plead guilty simply to escape detention has been increased by the lengthy waiting times for a trial, and the expeditious means to enter a guilty plea.²⁵ In addition, defendants with dependents or who are acting as carers may be sufficiently anxious about these individuals to enter a guilty plea solely in order to avoid imprisonment. The other profile of concern is defendants who delay their plea for purely strategic reasons – possibly in the hope that Crown witnesses may fail to attend at the trial. Any reform would seek to discourage this kind of decision-making. Taken together, a successful reform of the guideline would remove both profiles of late pleaders, reducing the incidence of wrongful convictions and conserving criminal justice resources by attracting earlier, legitimate guilty pleas.

Conclusion

The failure to reduce the proportion of trials, which ‘crack’ prior to opening should not distract us from the benefits of greater transparency achieved by the existence of the guideline. Defendants in all other common law jurisdictions must rely on their legal advisors to predict the likely benefits of pleading guilty. These predictions are often inaccurate as there is no clear regime of reductions to guide defendants and their legal advisors.²⁶ Defendants will also likely regard – reasonably – the plea reductions as reflecting the subjective views of individual judges. If both parties have a clear understanding of the likely sentence and reduction, this should facilitate negotiations (in the event that these take place). Publicly declared levels of reduction also contribute to a level playing field, pre-trial. If the potential range of reductions is wide, and the sentence hard to predict, ‘equality of arms’ is compromised, as prosecutors may create great apprehension about the sentence, only to reassure the defendant with a steep reduction in the event that he or she pleads guilty.²⁷

A word about costs is in order. Had the Council’s guideline successfully reduced the volume of late guilty pleas (including cracked trials), cost savings would have ensued. The Council’s own resource assessment generated both an optimistic and a pessimistic projection of the costs, or cost savings of the guideline. The optimistic scenario predicted savings of £40 million by 2021–2022, while the pessimistic scenario predicted additional costs of £40 million.²⁸ The optimistic scenario assumed that the cracked trial rate would decline and the early plea rate would increase, hence the savings. The pessimistic scenario assumed that fewer defendants would plead guilty, creating the need for more trials. The Council’s latest evaluation of the impact and implementation of the guideline did not address the issue of costs. It is important, however, to understand the effect of the guideline on criminal justice expenditures, as the plea regime itself, of which the guideline is a key element, is founded in large part on conserving resources. Understanding the fiscal impact of the revised guideline should be a priority for the Council to address.

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25. R Helm, ‘Conviction by Consent? Vulnerability, Autonomy and Conviction by Guilty Plea’ (2019) 83(2) *J Crim Law* 161–172.

26. See discussion in Cole and Roberts, note 3.

27. This has been the case in the US, see R. Lippke, *The Ethics of Plea Bargaining*. (New York, Oxford University Press 2011).

28. Sentencing Council, *Final Resource Assessment: Reduction in Sentence for a Guilty Plea* (London, Sentencing Council 2017) 5.