

# Guilty pleas

## Summary

The appropriate reduction to recognise a guilty plea is a proportion of the total sentence that would otherwise be imposed, with reference to the stage in the proceedings at which a guilty plea was entered or at which the offender expressed a willingness to enter a guilty plea to the offence for which he or she was convicted.

The amount of the reduction is to be determined according to a sliding scale, with three benchmarks on that scale as follows:

- First reasonable opportunity – 33% ( 1/3 );
- Status hearing or callover – 20% ( 1/5 );
- Three weeks before trial or hearing – 10% ( 1/10 );

A guilty plea at the conclusion of the prosecution case does not warrant any reduction.

A guilty plea must be recognised in setting the amount of a fine, or the length of a community-based sentence, sentence of home detention, or sentence of imprisonment. It may also affect the length of an order disqualifying the offender from driving. A guilty plea does not affect the imposition or amount of a sentence of reparation.

It is desirable to recognise a guilty plea when setting a minimum period of imprisonment in conjunction with a life sentence for murder or with preventive detention. However, the amount of the reduction is at the judge's discretion.

## Introduction

1. Section 9(2)(b) of the Sentencing Act 2002 states that, in sentencing or otherwise dealing with an offender, the court must take into account whether and when the offender pleaded guilty.
2. In accordance with section 9(2)(b), the [Sentencing methodology](#) requires that, after the appropriate sentence has been determined with reference to aggravating or mitigating factors relating to the offence and the offender, the sentence is then reduced for any guilty plea and/or assistance to the authorities (see step 3 of the Sentencing methodology).
3. This guideline outlines how the reduction for a guilty plea is calculated.

## Purpose of reduction

4. A guilty plea justifies a reduction in an otherwise appropriate sentence for two reasons. First, it relieves victims and witnesses of the trauma, stress, and inconvenience that is caused by a delay in resolving the case and by the trial itself, particularly the need to give evidence. Secondly, it avoids the need for a trial, with the attendant advantages of a reduction in court delays and cost savings.
5. The reduction in sentence to recognise a guilty plea is not intended to provide a credit for any expression of remorse implied by that plea. Genuine remorse is a separate mitigating factor (see the generic guideline on [Mitigating factors](#)).

## Calculating the appropriate reduction in sentence

### Overall approach

6. The appropriate reduction is a proportion of the total sentence that would otherwise be imposed, with reference to the stage in the proceedings at which a guilty plea was entered (see paragraph 7) or at which the offender expressed a willingness to enter a guilty plea to the offence for which he or she was convicted (see paragraphs 15–18).
7. The amount of the reduction is determined according to a sliding scale, with three benchmarks on that scale as follows:

#### *First reasonable opportunity*

- A 33% reduction ( $\frac{1}{3}$ ) if the guilty plea was entered, or the willingness to plead guilty was communicated, at the first reasonable opportunity;

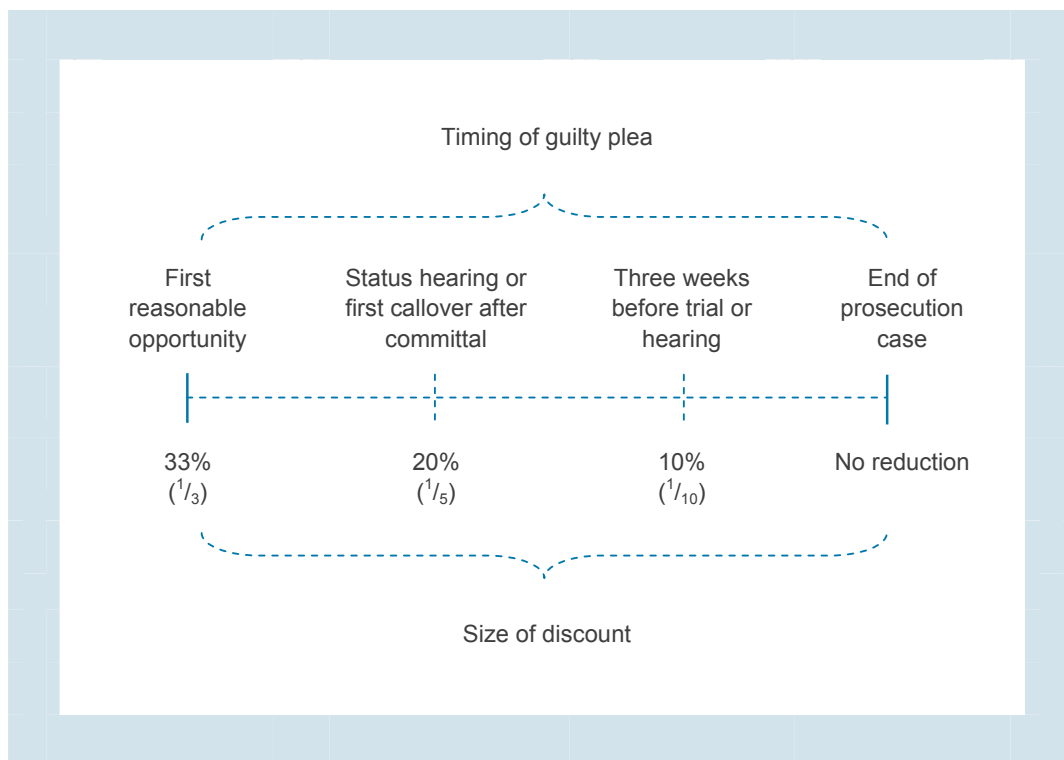
#### *At status hearing or first callover*

- A 20% reduction ( $\frac{1}{5}$ ) if the guilty plea was entered, or the willingness to enter a guilty plea was communicated, at a status hearing or equivalent stage of proceedings in summary cases, or at first callover after committal in cases proceeding by way of indictment;

#### *Three weeks before trial or hearing*

- A 10% reduction ( $\frac{1}{10}$ ) if the guilty plea was entered, or the willingness to enter a guilty plea was communicated, three weeks before the commencement of the trial or hearing.

8. The sliding scale is set out in diagrammatic form below.



9. These percentages are not intended to be precise. The judge may use some “rounding” (for example, of months) to achieve a sentence that is workable.
10. Because reductions are made on a sliding scale, a guilty plea entered in the period between the first reasonable opportunity and the status hearing or first callover warrants a reduction of between 20% and 33%. Similarly, a guilty plea entered between a status hearing or first callover and the date three weeks before trial or hearing warrants a reduction of between 10% and 20%. The extent of the reduction depends on the stage at which the plea was entered, and the degree to which the plea prevented further trauma, stress, and inconvenience for victims and witnesses, and saved resources.
11. A small reduction of less than 10% may be warranted if a guilty plea was entered after the commencement of the trial or hearing. This depends on the stage at which the plea was entered and the extent to which it relieved victims and witnesses of the need to give evidence. A guilty plea at the conclusion of the prosecution case does not warrant any reduction.

### First reasonable opportunity

12. In summary cases, the first reasonable opportunity for the offender to plead guilty is generally when initial prosecution disclosure has occurred and he or she has had a reasonable period to obtain initial legal advice (including the granting of legal aid). Any further adjournments at the request of the defence after that point, which delay an election as to mode of trial or the entry of a plea, reduce the proportionate adjustment to the sentence.
13. In indictable cases, the first reasonable opportunity to plead guilty is the time at which the defendant is reasonably able to request the entry of a guilty plea under section 153A of the Summary Proceedings Act 1957.

## Reduction where the prosecution case is strong

14. The proportionate reduction for plea is intended to encourage those who are guilty to plead at the earliest opportunity. The strength or weakness of the prosecution case is irrelevant to that intent. The sliding scale set out in paragraph 7 therefore applies to all cases equally, regardless of whether conviction was inevitable or the defendant had an arguable case to run at trial.

## Willingness to plead guilty

15. The critical issue in determining the amount of the reduction is whether the defendant had clearly demonstrated a willingness, at a particular stage of the proceedings, to plead guilty to the charge of which he or she was eventually convicted. Therefore, the offender should not be disadvantaged by the fact that the prosecution chose to proceed to trial on a more serious charge that resulted in an acquittal.
16. As a matter of general principle, an offender who is convicted of an offence for which he or she had earlier communicated a willingness to plead guilty should receive the maximum reduction available at the stage of proceedings at which that willingness was communicated. For example, if an offender charged with murder communicated at the first reasonable opportunity that he or she was willing to plead guilty to manslaughter, but the prosecution chose to proceed to trial on the murder charge, the offender should receive the maximum reduction for plea if subsequently convicted of manslaughter.
17. This general principle is subject to two requirements. First, the offender must have communicated his or her willingness to plead guilty to a specified offence, along with an account of his or her version of events, in writing to the prosecutor (with a copy to the court). Secondly, the offender's version of events must be consistent with the accepted basis on which sentencing proceeds.
18. If the charge was amended after a not guilty plea was entered, the reduction for a subsequent plea must be calculated with reference to the time then taken by the offender to enter a guilty plea. For example, if on the morning of a trial, one charge is substituted with another and the offender immediately pleaded guilty, he or she must receive the full benefit of a guilty plea at the first reasonable opportunity.

## Factors that may change the calculation

### General

19. The reduction may be smaller if:
  - (a) the judge is satisfied that a not guilty plea was entered and maintained for tactical reasons (for example, in the hope that one or more witnesses might become unavailable to give evidence, or to postpone the serving of a custodial sentence);
  - (b) the offender prolonged proceedings before entering the plea (for example, by failing to appear for scheduled court appearances);
  - (c) the complainant or other witnesses were required to give evidence in person at a preliminary hearing or at a hearing under section 344A of the Crimes Act 1961.

## Disputed facts hearings

20. If an offender who pleaded guilty required a disputed facts hearing under section 24 of the Sentencing Act 2002, and the judge did not accept his or her version of the disputed facts, no reduction for a guilty plea, or a smaller reduction than would otherwise be appropriate, must be made. In determining the amount of the reduction, the judge must take into account: the extent to which the case was delayed by the need for a disputed facts hearing; the length of the hearing itself; and the number of witnesses that had to be called, including whether the complainant was required to give evidence.

## Sentences and orders to which the reduction applies

### Sentences

21. Subject to paragraph 27, the guilty plea must be recognised in setting the amount of a fine, or the length of a community-based sentence, sentence of home detention, or sentence of imprisonment.
22. The guilty plea does not affect the imposition or amount of a sentence of reparation, because that sentence is designed to provide redress for the loss, damage, or harm suffered by the victim.

### Disqualification from driving

23. The guilty plea may also affect the length of an order disqualifying the offender from driving. However, this is not necessarily so. Subject to the statutory minimum disqualification period, the plea can be recognised in the length of the disqualification, the amount of any other part of the sentence, or both. It is a matter for the judge's discretion to determine how to achieve the appropriate proportionate reduction according to the timing of the plea.

### Minimum periods of imprisonment for life imprisonment or preventive detention

24. It is desirable to recognise a guilty plea when setting a minimum period of imprisonment in conjunction with a life sentence for murder or with preventive detention. Where murder is concerned, for example, a policy of not recognising a plea provides little incentive for offenders to plead guilty and may therefore result in delays in disposing of murder cases and an increase in trauma, stress, and inconvenience for the families of murder victims. While this guideline may help to determine the appropriate reduction as applied to a minimum period of imprisonment, the amount of reduction is at the judge's discretion.

### Making the reduction to non-custodial sentences

25. The proportionate reduction for a guilty plea can be readily made when imprisonment is being imposed, since it can be calculated as a percentage reduction in the sentence that would otherwise be appropriate. A percentage reduction may also be appropriate if a non-custodial sentence such as home detention, community detention, community work, or a fine is the otherwise appropriate sentence.

26. However, it may sometimes be necessary for a guilty plea to be recognised by the imposition of one type of sentence rather than another. For example, if an offence otherwise warrants a short term of imprisonment under the relevant offence-based guideline, it may be appropriate to reduce the sentence below the imprisonment threshold to a sentence of home detention or community detention in order to give the guilty plea appropriate recognition. It may also be appropriate to impose a single sentence instead of a combination of sentences (for example, supervision instead of supervision and community work). In cases such as this, a percentage reduction is not possible. The type and length of sentence that gives appropriate effect to the sliding scale set out in paragraph 7 is a matter of judgement.
27. A reduction to recognise a guilty plea is not necessarily appropriate if the rehabilitative sentences of supervision or intensive supervision are being imposed. A sentence of this type may be preferred to a more severe sentence solely because of the offender's rehabilitative prospects, and a particular length may be required to enable the effective implementation of special conditions (such as residence in a drug treatment facility or attendance on a programme for sex offenders). In these instances, a reduction is not appropriate.

### Acknowledgement of the reduction on sentence

28. In pronouncing the sentence, the judge must state both the sentence that would have been imposed if there had been no reduction as a result of the guilty plea, and the amount or nature of the reduction made.