

Ruth Pope
Office of the Sentencing Council
Room EB20
Royal Courts of Justice
Strand
London, WC2A 2LL

6 May 2016

Dear Ruth Pope,

The Howard League welcomes the opportunity to respond to the Sentencing Council's consultation on the Reduction in Sentence for a Guilty Plea Guideline.

About the Howard League

Founded in 1866, the Howard League for Penal Reform is the oldest penal reform charity in the world. The Howard League has some 13,000 members, including prisoners and their families, lawyers, criminal justice professionals and academics. The Howard League has consultative status with both the United Nations and the Council of Europe. It is an independent charity and accepts no grant funding from the UK government.

The Howard League works for less crime, safer communities and fewer people in prison. We achieve these objectives through conducting and commissioning research and investigations aimed at revealing underlying problems and discovering new solutions to issues of public concern. The Howard League's objectives and principles underlie and inform the charity's parliamentary work, research, legal and participation work as well as its projects.

Since 2002 the Howard League for Penal Reform has provided the only legal service dedicated to representing children in custody. We also provide a dedicated legal service for young adults in prison (under 21).

Introduction

The Howard League welcomes the clarity the guideline provides about a reduction in sentence following a guilty plea. We agree with the ethos set out in the guideline that a reduction for an early guilty plea reflects the administrative benefit to the court system and should be separated from mitigating factors when calculating a sentence. Clearly setting out that overwhelming evidence against a defendant should not impact the degree of sentence discount following a guilty plea is also a positive step.

However, the charity has several serious concerns about the guideline in its current form, namely: the impact on the prison population; potential undue pressure on defendants to plead guilty before they have had a chance to consider and be advised on the case against them; assumptions around future court reforms; the inconsistency in application to those facing mandatory life sentences; and the worrying language regarding those who exercise their fundamental right to have the prosecution prove the case against them. The draft guideline requires significant revision before implementation.

Impact on the prison population

It is deeply concerning that the Sentencing Council is aware that the implementation of this draft guideline would increase the prison population significantly yet has not rethought its whole approach. As the impact assessment accompanying the guideline states, '[u]ltimately, the guideline could result in the requirement for between 1,000 (optimistic) and 4,000 (pessimistic) extra prison places each year, at a cost of between £30 to £100 million.'

The prison population currently stands at almost 86,000. The prison estate is grossly overcrowded, with over 20,000 people sharing small cells with an open toilet designed for one person. Levels of violence and self-injury in prisons are at an all-time high, as is the number of people taking their own lives in custody. Reoffending rates remain high and likely to increase under these conditions. The Sentencing Council will also be aware that the Ministry of Justice is required to make further budget cuts over the next few years. If the prison population continues to rise whilst resources are reduced further, conditions will continue to deteriorate at a cost to the safety of prisoners, prison staff and the public.

Introducing measures that will push up prison numbers with little consideration of the impact on the people, staff and resources involved is silo working at its worst and amounts to irresponsible policy making. The Howard League urges the Sentencing Council to take a much greater interest in the reality of the sentences it encourages through its guidelines in terms of the effectiveness, costs and the resources available to provide them. The approach to sentence reductions for guilty pleas should be revised to ensure that it does not add to our already far too high prison population.

Potential undue pressure on defendants

Under the current system a defendant is innocent until proven guilty and the burden of proof requires the prosecution to prove the case beyond reasonable doubt. Great care must be taken before any measure is introduced that could undermine these principles.

Bearing this in mind, the period of time that is classified as a first opportunity to submit a guilty plea could place undue pressure on defendants to plead guilty before they have had a chance to consider and be advised on the case against them. The changes also restrict the period of time available to obtain legal advice about whether to make an early guilty plea. There are many instances where a defendant might reasonably require some more information about the offences they are charged with or the evidence against them. The current very limited exceptions to expanding the definition of first reasonable opportunity are too restrictive to not result in unfair applications of the guilty plea discount.

Restricting the window in which a guilty plea attracts a full sentence reduction may also be disproportionately unfair to children, young people and defendants with mental health issues who are often overwhelmed by the criminal justice process.

Research shows that children and young adults in particular often do not fully understand the court process, the decisions they are required to make and what the impact on their future might be. Academics have concluded that young people often feel confused and isolated when in court and report a lack of understanding of the legal proceedings or language, with events often only explained after they have left the court.

The Howard League's participation project supports young people in the criminal justice system to secure their legal rights and to have an impact on policy, practice and the services that affect them. Through interactive group-work sessions, 1:1 work and a young person friendly questionnaire, we have supported young people to tell us about their sentencing experiences. Some of their responses include:

'I still remember thinking about not really understanding what they were saying.' (Young adult, aged 21)

'It can be confused and it's not explained well. I do not understand the terminology used.' (Young adult, aged 20)

Far greater discretion ought therefore to be given to the judiciary in determining whether a guilty plea has been entered early enough to merit the maximum discount of a third. Judges should be allowed to take into account the specifics of each case and any vulnerabilities of those pleading.

Assumptions around court reforms

Whilst it is understandable that the draft guideline has been developed with reference to the recent reforms affecting the courts, police and CPS, the Howard League is concerned these changes are not yet reflected in practice.

Reforms intended to speed up and digitalise the court system have been embarked upon in various forms for over a decade. As have policies to improve timely and full disclosure of charging decisions and evidence. However, in our experience changes around prompt collection and disclosure of information to defendants and defence lawyers has not yet been achieved. The Howard League legal team frequently experiences delays in decision-making and disclosure in respect of young people who are recalled or remanded to custody.

Without prompt and full disclosure many defendants could not be reasonably expected to submit their plea within the narrow period set out in this guideline. If the Sentencing Council does proceed with the draft guideline in its current form, it should wait until it is assured that the reforms upon which it is reliant are fully embedded across the country.

Inconsistency regarding application to mandatory life sentences

There appears to be no clear rationale for the inconsistency in approach in regard to life sentences. At the beginning of the guideline the purpose and justification of giving a sentence reduction following a guilty plea is clearly set out: it incentivises defendants to plead guilty to save victims and witnesses having to endure potentially distressing trials and saves resources for various agencies including the police, CPS and HMCTS. An early guilty plea to an offence

carrying a mandatory life sentence arguably provides the greatest benefits to both of these aims. The five year limit on a tariff reduction therefore appears arbitrary and ought to be removed.

Risk that the language used in the guideline undermines the burden of proof

It is a fundamental principle of law in England and Wales that the prosecution must prove the case against the defendant. Every person coming before the courts has the right to have a fair trial.

Some of the language used in the guideline risks undermining the burden of proof. Phrases such as defendants should admit 'what they have done' and 'not to play the system' give the misleading impression that those who do not plead guilty at the earliest stage are seeking to abuse the court process for their own advantage, rather than simply exercising their right to a fair trial based on the established burden of proof.

The insulting language used in connection with defendants who exercise their right to a trial could be interpreted to mean that not admitting guilt at an early stage and then being found guilty is an aggravating factor, rather than a basic right of any accused person.

The Howard League is happy to discuss any of these points further at a later stage of the consultation.

Yours sincerely,

Frances Crook