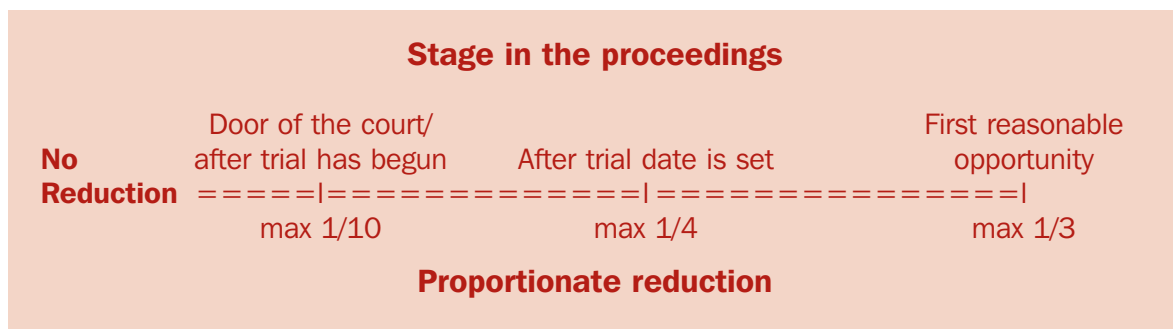


4.3 The level of reduction should reflect the stage at which the offender indicated a willingness to admit guilt to the offence for which he is eventually sentenced.

- (i) The maximum reduction will be given only where the offender indicated willingness to admit guilt at the **first reasonable opportunity**. When this occurs will vary from case to case. See *Annex 2 for illustrative examples*.
- (ii) Where the admission of guilt comes later than the first reasonable opportunity, the reduction for guilty plea will be less than one third.
- (iii) Where the plea of guilty comes very late, it is still appropriate to give some reduction.
- (iv) If after pleading guilty there is a Newton hearing and the offender's version of the circumstances of the offence is rejected, this should be taken into account in determining the level of reduction.
- (v) If the not guilty plea was entered and maintained for tactical reasons (such as to retain privileges whilst on remand), a late guilty plea should attract very little, if any, discount.



E. Withholding a Reduction

On the basis of dangerousness

5.1 Where the court has determined that a longer than commensurate, extended, or indeterminate sentence is required for the protection of the public, the minimum custodial term but not the protection of public element of the sentence should be reduced to reflect the plea.

Where an offender is caught 'red-handed'

5.2 Since the purpose of giving credit is to encourage those who are guilty to plead at the earliest opportunity, there is no reason why credit should be withheld or reduced on these grounds alone. The normal sliding scale should apply.

Where the maximum penalty for the offence is thought to be too low

5.3 The sentencer is bound to sentence for the offence with which the offender has been charged, and to which he has pleaded guilty. The sentencer cannot remedy perceived defects (for example an inadequate charge or maximum penalty) by refusal of the appropriate discount.

Where jurisdictional issues arise

- (i) *Where two or more summary only offences are to be sentenced*
- 5.4 In circumstances where the maximum sentence available is six months imprisonment and the sentence for each offence should be reduced to reflect the guilty plea, it may be appropriate for the sentences to be ordered to run consecutively to each other. The overall sentence would not undermine the general principle that the maximum sentence should not be imposed following a guilty plea, since the decision whether or not to make the individual sentences concurrent or consecutive will follow the normal principles that apply to that decision. However, the totality of the sentence should make some allowance for the entry of a guilty plea.
- (ii) *Where a maximum sentence might still be imposed*
- 5.5 Despite a guilty plea being entered which would normally attract a reduction in sentence, a magistrates' court may impose a sentence of imprisonment of 6 months for a single either-way offence where that offence would have attracted a sentence of in the region of 9 months if it had been committed to the Crown Court.
- 5.6 Similarly, a detention and training order of 24 months may be imposed on an offender aged under 18 if the offence is one which would but for the plea have attracted a sentence of long-term detention in excess of 24 months under the Powers of Criminal Courts (Sentencing) Act 2000, section 91.

F. Application to Sentencing for Murder

- 6.1 Murder has always been regarded as the most serious criminal offence and the sentence prescribed is different from other sentences. By law, the sentence for murder is imprisonment (detention) for life and an offender will remain subject to the sentence for the rest of his/her life.
- 6.2 The decision whether to release the offender from custody during this sentence will be taken by the Parole Board which will consider whether it is safe to release the offender on licence. The Court that imposes the sentence is required by law to set a minimum term that has to be served before the Parole Board may start to consider whether to authorise release on licence. If an offender is released, the licence continues for the rest of the offender's life and recall to prison is possible at any time.
- 6.3 Uniquely, Parliament has set starting points⁵ (based on the circumstances of the killing) which a Court will apply when it fixes the minimum term. Parliament has further prescribed that, having identified the appropriate starting point, the Court must then consider whether to increase or reduce it in the light of aggravating or mitigating factors, some of which are listed in statute. Finally, Parliament specifically provides⁶ that the obligation to have regard to any guilty plea applies to the fixing of the minimum term, by making the same statutory provisions that apply to other offences apply to murder without limiting the courts discretion (as it did with other sentences under the Powers of Criminal Courts (Sentencing) Act 2000).

⁵ Criminal Justice Act 2003, schedule 21

⁶ Criminal Justice Act 2003, schedule 1 para 12(c)

- 6.4 There are important differences between the usual fixed term sentence and the minimum term set following the imposition of the mandatory life sentence for murder. The most significant of these, from the sentencer's point of view, is that a reduction for a plea of guilty in the case of murder will have double the effect on time served in custody when compared with a determinate sentence. This is because a determinate sentence will provide (in most circumstances) for the release of the offender⁷ on licence half way through the total sentence whereas in the case of murder a minimum term is the period in custody before consideration is given by the Parole Board to whether release is appropriate.
- 6.5 Given this difference, the special characteristic of the offence of murder and the unique statutory provision of starting points, careful consideration will need to be given to the extent of any reduction and to the need to ensure that the minimum term properly reflects the seriousness of the offence. Whilst the general principles continue to apply (both that a guilty plea should be encouraged and that the extent of any reduction should reduce if the indication of plea is later than the first reasonable opportunity), the process of determining the level of reduction will be different.

APPROACH

1. Where a Court determines that there should be a *whole life* minimum term, there will be no reduction for a guilty plea.
2. In other circumstances,
 - a) the Court will weigh carefully the overall length of the minimum term taking into account other reductions for which offenders may be eligible so as to avoid a combination leading to an inappropriately short sentence.
 - b) where it is appropriate to reduce the minimum term having regard to a plea of guilty, the maximum reduction will be one sixth.
 - c) in the special circumstances of a conviction for murder, even where a minimum term of over 30 years (but not whole life) is fixed, the reduction should never exceed 5 years.
 - d) the sliding scale will apply so that, where it is appropriate to reduce the minimum term on account of a guilty plea, the maximum reduction (one sixth or five years whichever is the less) is only available where there has been an indication of willingness to plead guilty at the first reasonable opportunity, with a maximum of 5% for a late guilty plea.
 - e) *the Court should then review the sentence to ensure that the minimum term accurately reflects the seriousness of the offence taking account of the statutory starting point, all aggravating and mitigating factors and any guilty plea entered.*

⁷ In accordance with the provisions of the Criminal Justice Act 2003

CRIMINAL JUSTICE ACT 2003

On the 4th April 2005, the provisions of section 152 Powers of Criminal Courts (Sentencing) Act 2000 will be repealed and replaced by provisions in sections 144 and 174 Criminal Justice Act 2003.

To assist users of this guideline, the provisions of the 2003 Act are reproduced below.

Section 144 Criminal Justice Act 2003

- (1) In determining what sentence to pass on an offender who has pleaded guilty to an offence in proceedings before that or another court, a court must take into account—
 - (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
 - (b) the circumstances in which this indication was given.
- (2) In the case of an offence the sentence for which falls to be imposed under subsection (2) of section 110 or 111 of the Sentencing Act⁸, nothing in that subsection prevents the court, after taking into account any matter referred to in subsection (1) of this section, from imposing any sentence which is not less than 80 per cent of that specified in that subsection.

Section 174(2) Criminal Justice Act 2003

- 2) In complying with subsection (1)(a), the court must—
 - (a),
 - (b),
 - (c),
 - (d) where as a result of taking into account any matter referred to in section 144(1), the court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, state that fact, and
 - (e) in any case, mention any aggravating or mitigating factors which the court has regarded as being of particular importance.

⁸ These provisions prescribe minimum mandatory sentences in certain circumstances.

ANNEX 2

FIRST REASONABLE OPPORTUNITY

1. The critical time for determining the maximum reduction for a guilty plea is the first reasonable opportunity for the defendant to have indicated a willingness to plead guilty. This opportunity will vary with a wide range of factors and the Court will need to make a judgement on the particular facts of the case before it.
2. The key principle is that the purpose of giving a reduction is to recognise the benefits that come from a guilty plea both for those directly involved in the case in question but also in enabling Courts more quickly to deal with other outstanding cases.
3. This Annex seeks to help Courts to adopt a consistent approach by giving examples of circumstances where a determination will have to be made.
 - a) the first reasonable opportunity may be the first time that a defendant appears before the court and has the opportunity to plead guilty.
 - b) but the court may consider that it would be reasonable to have expected an indication of willingness even earlier, perhaps whilst under interview.

Note: For a) and b) to apply, the Court will need to be satisfied that the defendant (and any legal adviser) would have had sufficient information about the allegations

- c) where an offence triable either way is committed to the Crown Court for trial and the defendant pleads guilty at the first hearing in that Court, the reduction will be less than if there had been an indication of a guilty plea given to the magistrates' court (maximum reduction of one third) but more than if the plea had been entered after a trial date had been set (maximum reduction of one quarter), and is likely to be in the region of 30%.
- d) where a defendant is convicted after pleading guilty to an alternative (lesser) charge to that to which he/she had pleaded not guilty, the extent of any reduction will have to be judged against the earliness of any indication of willingness to plead guilty to the lesser charge and the reason why that lesser charge was proceeded with in preference to the original charge.

