

CREDIT FOR PLEA

R v Paddon - a reminder from the Court of Appeal that clarity is key for credit.

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INTRODUCTION - R V PADDON

1. Last week (14.10.2021) in *R v Paddon* [2021] EWCA Crim 1485¹ the Court of Appeal refused permission for appeal on the ground that the appellant should have been afforded one third credit for his guilty pleas rather than twenty-five per cent.
2. The argument came before the Court of Appeal after the appellant's other grounds of appeal against sentence were rejected and then counsel applied to rely on a fresh ground of appeal regarding credit afforded for guilty plea.
3. Mr Justice Lavender and Mr Justice Wall refused permission to appeal, finding that the appellant was afforded the proper level of credit for guilty plea (25%) at an adjourned Plea and Trial Preparation Hearing ('PTPH').

¹ *R v Paddon* [2021] EWCA Crim 1485; <https://www.bailii.org/ew/cases/EWCA/Crim/2021/1485.html>

4. ***R v Paddon*** is the latest in a number of recent appellate cases considering reduction of sentence for guilty plea, notably in 2021: ***R v Plaku & Others***, in 2020: ***R v Hodgkin*** and in 2019: ***R v Davids***, ***R v Khan*** and ***R v Yasin***². The appropriate application of the reduction guideline in Schedule 21 sentencing for murder was also recently considered by Fulford LJ in ***R v Couzens*** (2021).³
5. Across the appellate cases, there has been a clear emphasis by the Court of Appeal on the need for unequivocal guilty pleas at the first opportunity in order to be afforded the maximum one-third reduction (unless an exception applies). In addition, that submissions on credit at sentence must be made with reference to the relevant sentencing guidelines (including the reduction guideline) and the stage at which an unequivocal guilty plea was entered. ‘Likely’ or ‘possible’ guilty pleas will not suffice and the 5 exceptions are applied strictly.

THE LAW – ‘REDUCTION IN SENTENCE FOR GUILTY PLEA’ GUIDELINE

6. The Sentencing Council sets out the appropriate level of reduction of sentence for guilty plea in the ‘Reduction in Sentence for Guilty Plea’ definitive guideline (‘reduction guideline’).⁴
7. Per section 73 Sentencing Code, the Court must take account of (a) the stage in the proceedings at which guilty plea was indicated and (b) the circumstances of the guilty plea indication.⁵
8. As the reduction guideline states – and as practitioners will be familiar from advising clients – the purpose of the reduction for guilty plea guideline is to encourage those who are going to plead guilty to do so as early as possible. It is not supposed to pressure a Defendant to plead and every Defendant is entitled to put the prosecution to proof.⁶

² *R v Plaku & Others* [2021] EWCA Crim 568; *R v Hodgkin* [2020] EWCA Crim 1388; *R v Davids* [2019] EWCA Crim 553; *R v Khan* [2019] EWCA Crim 1752; *R v Yasin* [2019] EWCA Crim 1729.

³ Wayne Couzens Sentencing Remarks – Fulford LJ, 30.09.2021: <https://www.judiciary.uk/wp-content/uploads/2021/09/Wayne-Couzens-Sentencing-Remarks-1.pdf>

⁴ <https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/reduction-in-sentence-for-a-guilty-plea-first-hearing-on-or-after-1-june-2017/>

⁵ S.73 Sentencing Act 2020.

⁶ <https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/reduction-in-sentence-for-a-guilty-plea-first-hearing-on-or-after-1-june-2017/>

APPLICATION: 5 STAGES

9. The Guideline sets out a 5 stage approach to sentencing where a reduction for guilty plea is relevant.
 - a. **Stage 1 - Determine the appropriate sentence** for the offence(s) in accordance with normal sentencing principles, including any offence specific sentencing guidelines;
 - b. **Stage 2 - Determine the level of reduction** for a guilty plea in accordance with the 'Reduction' guideline;
 - c. **Stage 3 - State the amount** of that reduction when sentencing;
 - d. **Stage 4 - Apply the reduction** to stage 1 appropriate sentence;
 - e. **Stage 5 - Take any further steps** in the offence specific guideline to determine the final sentence to be passed (such as considering totality or whether a mandatory minimum applies).

LEVELS OF REDUCTION – 1/3 TO NOTHING

10. **The maximum level of reduction in sentence for a guilty plea is one-third.** A one-third reduction should be made where a guilty plea is indicated at the **first stage of proceedings**, which is normally the first hearing at which a plea or indication of plea is sought and recorded by the court (often first appearance in the Magistrates' Court, though it may be PTPH in the Crown Court).
11. **After the first stage of proceedings**, the maximum level of reduction is one-quarter. This decreases on a sliding scale from one-quarter to a maximum of one-tenth on the first day of trial.
12. In line with Criminal Procedure Rules on section 28 pre-recorded cross-examination, 'Any reduction for a guilty plea shall reflect **the day of the recorded cross-examination as the first day of trial**'⁷
13. **If a guilty plea is entered during the course of trial, the applicable reduction further decreases from one-tenth to zero.**

⁷ Criminal Procedure Rule 18E.46; <https://www.judiciary.uk/wp-content/uploads/2017/07/amendment-no-5-cpd-july-2017-update.pdf>

14. This sliding scale is consistent with the fact of the underlying principles for reduction, that guilty pleas can:
 - a. Reduce the impact of the crime upon victims;
 - b. Prevent victims and witnesses from having to testify and/or;
 - c. Serve the public interest by saving resources that would otherwise be used in investigation/trial.
15. The Sentencing Council provides flow charts for application of the reduction guideline for each offence type.⁸

APPLICATION: 5 EXCEPTIONS

16. There are a number of exceptions to the standard application of the reduction for plea, which are set out in **section F of the reduction guideline**:
17. **EXCEPTION (1) FURTHER INFORMATION/ASSISTANCE/ADVICE NECESSARY BEFORE INDICATING PLEA** – this is where the court is satisfied that particular circumstances significantly reduced the Defendant’s ability to indicate a guilty plea sooner than was done.
18. In *R v Paddon*, the Court considered two such examples relating to a need for further psychiatric evaluation, which did not apply on the facts of the case at [12]:

‘had there been a proper issue as to his fitness to plead such that a psychiatric report was necessary before the appellant could have been given proper legal advice, a delay in entering the pleas would have been explicable and full credit [i.e., one-third] should have been afforded to him. Likewise, had counsel thought that potentially there was a defence available to the appellant which could only be run on the basis of psychiatric evidence (e.g., diminished responsibility on a charge of murder)’⁹
19. **EXCEPTION (2) NEWTON & SPECIAL REASONS HEARINGS** – where the Defendant’s version of events is rejected at a Newton or Special reasons hearing, **the reduction which would have been available at the stage of proceedings where plea was indicated is normally halved.**

⁸ <https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/reduction-in-sentence-for-a-guilty-plea-first-hearing-on-or-after-1-june-2017/#Flowcharts%20illustrating%20reductions>

⁹ *R v Paddon* [2021] EWCA Crim 1485 at [12].

20. **Where witnesses are called in the hearing and the Defendant’s version of events is rejected, the Court may further decrease the reduction.** Where the Defendant’s version of events is accepted, then the normal reduction applies.
21. **EXCEPTION (3) CONVICTION FOR LESSER/DIFFERENT OFFENCE** – where the Defendant is convicted of a lesser or different offence than the original charge. For example, if they indicate a guilty plea at first appearance to simple possession of drugs when originally charged with possession with intent to supply drugs and on review this is acceptable to the Crown. If a new charge is first laid after first appearance and the Defendant enters a guilty plea at the first opportunity to do so, then the full third reduction should be afforded – even if this happens during trial.
22. **EXCEPTION (4) MINIMUM SENTENCE (PROHIBITED FIREARMS)** – where a minimum sentence applies under s.311 Sentencing Code (prohibited firearms, 3 year minimum term under 18s, 5 year minimum term adults) there can be **no reduction to the extent that the sentence is taken below the required minimum term.**¹⁰
23. **EXCEPTION (5) MINIMUM SENTENCE (SECOND STRIKE KNIFE, THIRD STRIKE CLASS A DRUG OR THIRD STRIKE DOMESTIC BURGLARY)** – the Court may apply the reduction for guilty plea to 80% of the appropriate custodial period – i.e., the reduction can be no greater than 20% below the minimum term.¹¹
24. **MURDER** – though not considered an ‘exception’ to the guideline, the provisions for sentencing the offence of murder under Schedule 21 of the Sentencing Code require different application of the reduction guideline.¹² This was explained by Lord Justice Fulford in *R v Couzens* – first noting ‘guilty pleas for which he is entitled to the appropriate full credit as a mitigating factor’, then noting that guilty pleas were a factor in considering whether it would be appropriate to make a whole life order.
25. After it was determined that a whole life order was the appropriate sentence, Lord Justice Fulford remarked ‘**self-evidently there can be no reduction for the Defendant’s guilty pleas**’¹³

¹⁰ S.311 Sentencing Act 2020.

¹¹ Minimum sentences under sections 312, 313, 314 and 315 Sentencing Act 2020; s.73(3) and (4) Sentencing Act 2020 - Second Strike possession of offensive weapons, knives and blades – 6 months minimum if 18 years old + (or 4 months minimum DTO if 16 or 17 years old); third strike class A – 7 years minimum if 18 years old +; domestic burglary third strike – 3 years minimum if 18 years old +

¹² Schedule 21 Sentencing Code

¹³ Wayne Couzens Sentencing Remarks – Fulford LJ, 30.09.2021: <https://www.judiciary.uk/wp-content/uploads/2021/09/Wayne-Couzens-Sentencing-Remarks-1.pdf> at paragraphs [13] and [21].

KEY PRINCIPLES – CLEARLY UNEQUIVOCAL PLEAS

26. In determining the correct level of credit for guilty plea, the Court of Appeal has highlighted:
27. ***R v Paddon*** – on exceptions, further information must be necessary to advice, not general assessment - per Lavender J and Wall J at [16] **the further information exception applies where further information is a necessary pre-requisite** to advising the appellant of their legal position rather than assessing the strength of the prosecution evidence and prospects of conviction/acquittal;
28. ***R v Plaku & Others*** – ‘likely’ guilty plea is not enough per Holroyde LJ at [17] a guilty plea must be an unequivocal indication ‘An indication of a "likely" or "probable" plea is not enough, as by definition such an indication keeps open the possibility of a not guilty plea and thus negates the advantages referred to in the "key principles" section of the guideline’;¹⁴
29. ***R v Hodgkin*** – indications must be unequivocal even for indictable only offences in the Magistrates’ Court - per Spencer J at [37] for indictable only offences ‘in order to receive full credit of one-third pursuant to the guideline, where at the magistrates' court it is not procedurally possible for a Defendant to enter a guilty plea, there must be an unequivocal indication of the Defendant's intention to plead guilty. An indication only that he is likely to plead guilty is not enough’, upheld in ***R v Davids*** ‘likely to be guilty pleas on a basis’ insufficient; ***R v Khan*** ‘likely to plead guilty’ insufficient;¹⁵
30. ***R v Yasin*** - indication must be made on BCM form – where no plea was taken at Magistrates’ Court and BCM form did not record guilty plea, maximum one third not available for plea first entered at PTPH (25% afforded).¹⁶

¹⁴ *R v Plaku & Others* [2021] EWCA Crim 568.

¹⁵ *R v Davids* [2019] EWCA Crim 553; *R v Khan* [2019] EWCA Crim 1752.

¹⁶ *R v Yasin* [2019] EWCA Crim 1729.

PRACTICAL LESSONS – CLEARLY COMPLETE THE FORM

31. The updated Part 3 Criminal Procedure Rule Forms all have sections asking for indication of plea (including to alternative offences) so practitioners must ensure that the Court has a record of plea status – especially for guilty pleas regardless of whether the Court formally asks for such an indication.¹⁷
32. In the Magistrates’ Court this may become particularly relevant where the Court simply sends indictable only matters rather than asking for plea and so the Better Case Management (‘BCM’) form is a crucial record of an unequivocal guilty plea at first opportunity. 18
33. The Magistrates’ Court (or specialist Youth Court) Preparation for Effective Trial (‘PET’) form¹⁹ or the Crown Court PTPH form²⁰ may also assist submissions of maximum credit where the Defendant wishes to plead Not Guilty to the charges put, but guilty to alternative offences.

CONCLUSION: FOR CREDIT, CLARITY IS KEY

34. Three key points arise from *R v Paddon*

(1) *R v Paddon* confirms a clear trend in the case law to refuse permission or dismiss appeal grounds relating to credit for plea unless the reduction has been misapplied to unequivocal pleas.

(2) There are 5 stages and 5 exceptions in the application of the reduction guideline (except when sentencing murder), which must be carefully observed when advising, making submission at sentence and considering appeal;

(3) Guilty pleas must be unequivocal and wherever possible indicated on the relevant case management forms, especially in circumstances where the maximum one-third reduction is being sought.

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¹⁷ <https://www.gov.uk/guidance/criminal-procedure-rules-forms>

¹⁸ Current BCM form updated 27.05.2020: <https://www.gov.uk/government/publications/case-sent-to-the-crown-court-for-trial>

¹⁹ Current Magistrates’ Court and Youth Court PET forms updated 4.6.2021
<https://www.gov.uk/government/publications/preparation-for-trial-in-a-magistrates-court>

²⁰ Current PTPH form updated 1.7.2019: <https://www.gov.uk/government/publications/plea-and-trial-preparation-hearings-ptph-for-1-to-5-defendants>