

# Public attitudes to sentences following a guilty plea: findings from a mixed methods research project

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## Summary of Key Findings

- Section 196 of the Criminal Procedure (Scotland) Act 1995 requires that the fact of a guilty plea be considered when passing a sentence. This is sometimes referred to as a 'sentence discount' or 'reduction.' Sentence discounts potentially apply to all offences where there is a plea of guilty. Therefore, a broad range of principles and purposes of sentencing may be relevant. The focus groups highlighted public views on the aims of sentencing commensurate with those in the sentencing guideline on the Principles and Purposes of Sentencing.
- The public highlighted cost savings as the key reason they felt the justice system offered guilty plea discounts.
- Sparing victims what might be the ordeal of a trial was perceived as a compelling reason to discount a sentence in appropriate cases. Several groups felt this was more important than saving costs. However, it was also noted that what victims want/need is complex.
- Many respondents felt that abstract questions about the appropriate levels of discounts (e.g. as a percentage) were difficult to answer. Instead, there was a general preference for tailoring the discount depending on the offence and the sentence. When pressed to pick a notional percentage most came to figures less than 33%.
- There was support for the idea of the absolute size of discounts (not just the proportional size) being constrained by the seriousness of the offence/length of the sentence.
- The term 'sentence discount' was less intuitive to members of the public than the term 'sentence reduction.' The term reduction was strongly preferred to the term discount by all focus group participants. Indeed, all groups objected to the term discount on the basis that it seemed improper and discordant with the seriousness of criminal proceedings.
- A key concern with sentence discounting was that the seriousness of an offence should be marked and that a discount could undermine this. However, there is a lack of knowledge about what real sentences are in Scotland and how the seriousness of an offence is marked. This issue raises questions of public legal information and education.

- There was broad consensus that, if a sentence is to be discounted, then earlier guilty pleas should attract greater discounts than later guilty pleas. Thus, the ‘sliding scale’ of plea discounts, applied in all common law jurisdictions, is consistent with the views of the Scottish public.
- There was a broad consensus that if discounts were to be given, they should be given where a person had offered to plead guilty to a lesser charge, the Crown did not accept the guilty plea, and the person was convicted following a trial of the offence they offered to plead guilty to. This discount was thought appropriate because even though the benefits of the guilty plea were not realised, this was not the offender’s fault.

## Introduction

The Scottish Sentencing Council was established in October 2015 as an independent advisory body following the Criminal Justice and Licensing (Scotland) Act 2010. As part of its business plan, the Council is currently working on a suite of sentencing guidelines that includes one concerning how to take account of a guilty plea in sentencing. To this end, the Council commissioned research to explore public perceptions concerning how guilty pleas should be taken into account at the point of sentencing. This follows an earlier report commissioned by the Council examining the domestic and international legal, jurisprudential and empirical literature on the relationship between sentencing and plea type.<sup>1</sup>

In Scots law, the fact of a guilty plea is something Scottish judges must consider when sentencing by virtue of section 196 of the Criminal Procedure (Scotland) Act 1995 which states that:

‘In determining what sentence to pass on, or what other disposal or order to make in relation to, an offender who has pled guilty to an offence, a court shall 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 that indication was given.’

While the fact of a guilty plea must be considered, section 196 does not prescribe how this should be done. Notably, the statute does not require that any particular discount be awarded on account of a person pleading guilty, it does not specify what the maximum discount might ordinarily be, and it does not set out the rationale(s) for reducing a sentence where there is a guilty plea. For this reason, case law has been

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<sup>1</sup> Jay Gormley, Rachel McPherson, and Cyrus Tata, ‘Sentence Discounting: Sentencing and Plea Decision-Making Literature Review’ (Scottish Sentencing Council, December 2020), <https://www.scottishsentencingcouncil.org.uk/media/2076/20201216-sentence-discounting-lit-review.pdf>.

crucial in the development of what has been called a ‘sentence discount’ (sometimes also known as a ‘sentence reduction’) because of a guilty plea.

A guideline in this area by the Council can further promote transparency and consistency in the law. This guideline will also be important for its wide-ranging application to cases where there is a guilty plea. However, while the guideline will be one of the most important in terms of impact, it will be one of the most complex since it will apply to a broad spectrum of offence and offender combinations.

To carry out this research exploring public perceptions, we employed a mixed methods design. We conducted qualitative focus groups and a quantitative online survey. The findings are detailed below.

## Methodology for qualitative focus groups

### Recruitment and sampling

The qualitative work to understand public opinion entailed seven focus groups that lasted two hours. Five groups were run in person at the University of Glasgow School of Law. The venue was fully equipped and included a projector for slides and a digital drawing board for noting key points of the discussion for later reference. Two of the groups were run online using video conferencing software. The purpose of this was to allow the recruitment to include those who may struggle to attend physically (e.g. those with disabilities and those located outside central Scotland).

For each group, we sought to have approximately eight participants. To allow for 'redundancy' and 'dropouts' we aimed to recruit nine persons for each group. In five groups we had eight participants, in one group we had six participants, and in one group we had nine participants. Consequently, in total, we had a sample of 55 persons for the focus groups.

Our recruiter used experienced regional supervisors overseeing a nationwide network to recruit participants. Participants were recruited in line with our aim for sampling to be as close as possible to nationally representative in terms of gender, age, socioeconomic groups, and ethnicity to facilitate generalisable conclusions. In the end, we achieved groups representing a broad spread of the population. In our groups, 27 participants identified as female and 28 as male. In terms of ethnicity, most (36) identified as 'white Scottish.' The rest of the participants identified as 'Black African', 'Asian', 'Asian Pakistani', 'Black British/African', 'British Pakistani', 'Scottish Arabic', 'White English', 'White Irish', 'White Italian', 'White other', and 'White Polish.' In terms of age, 28 were between 18-44 and in terms of socioeconomic groups, eleven were AB, 20 were C1, 12 were C2, and 12 were DE.<sup>2</sup>

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<sup>2</sup> As the ONS notes, "[Social Grade is a socio-economic classification. This is a way of grouping people by type, which is mainly based on their social and financial situation.](#)"

## Structuring the sessions

In structuring the focus groups, we drew on the work of Dawes et al examining sentence reductions in England and Wales.<sup>3</sup> While we made modifications to the questions posed by Dawes et al, our overall aim was to maintain a degree of comparability between the English and Welsh research and our research in Scotland. We made three notable modifications. Firstly, we carefully explored the terminological differences between Scotland and England and Wales. Secondly, we explored sentence discounts in the context of life sentences. Thirdly we used hypothetical case studies.

For the case studies, we used two types of scenarios for participants to work through. Our expectation was that participants might find working through scenarios where sentence discounts might apply more meaningful than simply abstract discussions – given the wide range of cases that may attract a sentence discount if there is a guilty plea. We also expected scenarios might mitigate against the risk that exceptional cases would dominate the minds of participants in the discussion groups. On both counts the scenarios proved to be fruitful. Firstly, many participants when probed about their views on sentence discounts noted that ‘it depends’ on a range of matters and that it was hard or impossible to generalise in the abstract. For example, Kevin (not their real name)<sup>4</sup> noted that discounts had to be decided on a ‘case by case basis’ and that in the abstract they ‘can’t definitively say’ what ought to happen. Secondly, without direction (notably in the early parts of focus group discussions) especially heinous offences could (to the extent they are exceptionally rare) be overly prominent. For example, cases concerning paedophilia and the infamous Lucy Letby case came up across the groups.<sup>5</sup>

The first type of scenario concerned causing death by driving. The scenario was taken from the Scottish research exploring public perceptions of causing death by

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<sup>3</sup> William Dawes et al., ‘Attitudes to Guilty Plea Sentence Reductions’, *London: Sentencing Council of England and Wales*, 2011.

<sup>4</sup> Fake names are used to refer to participants.

<sup>5</sup> This was a very high-profile case in England and Wales. At the time it was widely reported as a neonatal nurse who was convicted of the murder of several infants.



driving offences.<sup>6</sup> Again, the aim was to have a degree of comparability between the two pieces of research so that we might gain greater insights. However, we adapted the discussion and questions to focus more prominently on guilty pleas and sentence discounts. The second type of scenario concerns (welfare) fraud offences. Fraud was selected because this is an area where the Council has commissioned research previously and because it offers a useful contrast to driving offences in terms of culpability and harm.

The scenarios entailed different levels of harm and culpability. While the death by driving scenarios involved dangerous/reckless conduct with high harms (e.g. death), the fraud offence entailed intentional conduct and dishonesty but lower harm. As a result, we were able to explore whether elements of offences pertaining to culpability or harm played a role in public opinion. Moreover, to thoroughly examine these dimensions, details of the scenarios were gradually revealed to participants and the details were such that the offences became aggravated and mitigated in various ways. Additionally, the scenarios incorporated some other variables to explore matters such as whether the weight of the evidence against an accused might affect views on the appropriate discount.

## Running the sessions

As with other aspects of sentencing, researching public perceptions of sentence discounting uncovers the potential for gaps in knowledge, misconceptions, etc. However, because discounting is a cross-cutting issue which is relevant to all offence types and all offenders, it means that an even wider range of issues can arise.

Thus, we had to be aware of a wide variety of routes the discussion might take. We had to allow sufficient freedom to thoroughly examine views, and capture potential problems in the public zeitgeist, while also keeping the discussion focused and structured. For this reason, the questions on the slides were starting points and

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<sup>6</sup> Susan Reid et al., 'Public Perceptions of Sentencing in Scotland: Qualitative Research Exploring Causing Death by Driving Offences' (Scottish Sentencing Council, 1 January 2021), <https://www.scottishsentencingcouncil.org.uk/media/b1fhx3r/20210216-perceptions-of-sentencing-for-causing-death-by-driving-final.pdf>.

flexibility was allowed in the discussions. To avoid inhibiting discussion, the moderator purposely limited what information they provided the groups about the law. Indeed, beyond Slide 2A which noted a guilty plea ‘must be taken into account’ and a brief explanation of sentence discounts around Slide 2C, almost no further information was given to confirm or rebut points raised in the discussion or about Scottish practice until after the scenarios at Slide 4A.

Overall, the approach adopted was commensurate with legal consciousness research that seeks to explore perceptions without assuming that participants possess common legal notions and definitions.<sup>7</sup> The aim is to allow views to be articulated free from any legal template. In particular, we were keen to avoid the research on views becoming a quiz or lecture with right or wrong answers. Instead, as we told participants, often there were no objectively right or wrong answers. All we were seeking was to understand what the public knows and thinks. As an example of how we avoided potentially curtailing the discussion, the team purposely avoided inserting terms such as ‘discount’ or ‘reduction’ in the briefing materials and in the discussion until Slide 2C, which was the first mention of discount or reduction: Slide 2B ended with the moderator asking the groups if they knew any terms or ‘jargon’ that might describe this process of ‘taking a guilty plea into account.’ We also made effort to minimise other potentially leading questions to allow views to emerge naturally.

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<sup>7</sup> For example, see Patricia Ewick and Susan S Silbey, ‘The Common Place of Law: Stories from Everyday Life’ (University of Chicago Press, 1998).

## What did participants say about the aims of sentencing and sentence discounts?

Slide 1A posed the question ‘when someone is convicted of a criminal offence, what should the sentence aim to achieve?’ In other words, this question probed participants' views about the purpose of sentencing generally. A range of answers were given, and a note was made of these for further reference throughout the session. In Zoom groups this was by verbal reminders and for in-person groups answers were written on a digital writing board.

The same approach was taken for Slides 2A-2C where the purposes of sentence discounting were discussed and noted. On or about Slide 2C (some groups spontaneously raised the points themselves earlier), a discussion was elicited about the perceived aims of sentencing discounting. This was kept visible to the in-person groups on a digital writing board and in all groups, it was referenced throughout the sessions by the moderator as a probe to examine views for or against sentence discounts.

These responses gave useful insights into general attitudes and provided helpful probes to scrutinise responses in detail. All groups noted various aims of sentencing and sentence discounting. For the aims of sentencing generally, there was a broad consensus over a range of objectives. Objectives (in no order of importance) included:

- Delivering a proportionate punishment.
- Rehabilitation and addressing the causes of offending.
- Deterrence.
- Holding people accountable.
- Facilitating the offender facing up to the wrongfulness of their conduct and reflecting on their life choices.
- Showing victims justice has been done.
- Repairing harms.
- Providing closure (for victims, offenders, the public, etc).

One respondent also specifically noted ‘restorative justice’ and others in the group (after explanation) agreed it was a suitable aim. The term ‘restorative justice’ did not emerge in other groups although discussion of restoration and repairing harms did. While the terms used varied, across all groups there was a broad consensus about what it might be desirable for a sentence to achieve. When asked to rank the aims by importance there was some variation between what might be called consequentialist and retributive objectives of sentencing. However, some did note it was hard to meaningfully prioritise aims in the abstract without knowing, for example, the nature and circumstances of the offence. Indeed, this contextual dependence was, to differing degrees, a feature of all groups at various stages. Still, it is important to highlight that, in the abstract, no objections were raised to any objective, and all were supported in principle. From this, it appears that the participants would agree with the principles and purposes of sentencing set out in the Scottish guideline<sup>8</sup> - although the guideline and Council were not noted by the groups.

## **Guilty plea discount/reduction benefits**

Slide 2A revealed that while all participants were aware to some extent that a plea may affect a sentence, many were unaware that a judge ‘must’ take a plea into account when sentencing. Additionally, almost all were very unsure of the exact mechanism through which an account of a guilty plea might be made.

In terms of taking guilty pleas into account at sentencing, the groups suggested a range of benefits this may bring. Benefits they noted included:

- Deterrence.
- Saving timing (court time, witness time, victim time).
- Saving public/taxpayer money.
- Reducing unnecessary trials/waste.
- Saving victims the emotional toll of a trial and delay (though it was also noted that some victims may prefer ‘to have their say’ or their ‘day in court’).

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<sup>8</sup> Scottish Sentencing Council, ‘Sentencing Guideline: Principles and Purposes of Sentencing’, 26 November 2018.

- Securing a conviction.
- Some (not all) victims may prefer the offender to admit guilt.
- Ensuring the guilty serve their sentence sooner.
- Encouraging the guilty to take responsibility.
- Providing closure (to the offender, victims, the system, etc).

The consensus amongst the groups was that the sentence discount is an important reason that people will plead guilty. As with the general aims of sentencing, there was no disagreement with the merit of any of these aims. However, some also discussed remorse and pleading guilty as part of taking responsibility. While, in Scots law, remorse is properly a part of mitigation rather than the section 196 discount, this discussion was allowed to run as it was relevant to views of guilty pleas more generally. The main criticism of remorse was that the participants were unsure if its authenticity could be ascertained.

The most important objectives of sentence discounting were felt to be saving time and cost and (where applicable) saving victims the emotional distress associated with a trial. Several group discussions distinguished what they thought *is* the most important objective in practice as opposed to what they thought *should* be the most important. Where this was done it was generally thought victims should come first but that, in reality, the discount probably pertained to cost/time reasons.

Multiple groups also considered whether victims would prefer to have their 'day in court.' Reasons given for victims possibly preferring their day in court included having their voice heard, disliking the offender receiving a discount, and (as one participant who was a victim/survivor noted) wishing to learn more about the case. This topic proved to be complex, and the groups debated whether 'victim impact statements'<sup>9</sup> or having victims tell the offender how the offence affected them might fulfil roles such as giving victims a voice. There was also some debate over whether victims should have a say in whether a discount was given. Overall, there was a distinct reluctance to let victims alone decide the sentence/discount. For some, this

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<sup>9</sup> The legislation terms these 'victim statements.'

would risk introducing bias and inequality into the process while for others it risked subjecting victims to pressure.

Overall, it is clear that the public holds nuanced and considered views about matters relevant to sentencing and sentence discounting. While there were some misconceptions or knowledge gaps, (often participants acknowledged they were unsure of the accuracy of their impressions), the groups raised several points relevant to sentencing commensurate with the law. However, perhaps one of the most important points raised concerned unhappiness about the perceived lack of transparency in sentencing.

### **Are sentences too tough, about right, too lenient, or don't know?**

Views on the appropriate discount/reduction may be influenced by broader views about sentencing. This may be especially true in the context of sentence discounting since the broad applicability of discounts leaves more scope for overall impressions to influence opinions. Previous research in Scotland found that 56% of respondents felt that sentencing was 'a little too lenient' (30%) or 'much too lenient' (26%). One might hypothesise that those holding either of these views may be disinclined towards sentence discounts. By contrast, the prior research found that 31% felt sentences were 'about right', three percent felt sentences were too tough, and ten percent did not know or did not answer.<sup>10</sup>

In focus group discussions the picture transpired to be more complex. There was often a reluctance to commit to any option (too tough, about right, or too lenient). The participants expressed views that the appropriateness of sentences may vary based on the offence. For example, Molly noted:

*'It depends. Certain sentences are way too soft in my opinion. Such as things to do with [offences against] kids... It tends to be that if you are stealing from the government or the Crown or that then the sentence seems to be really*

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<sup>10</sup> Carolyn Black et al., 'Public Perceptions of Sentencing: National Survey Report' (Scottish Sentencing Council, 2019), 13.

*harsh. So I think they can be all three, to be honest. They can be too tough, they can be about right, they can be too lenient.'*

Throughout the groups, it was common for sentencing for some offences (such as those against children) to be criticised as lenient. As an example, in one group there was an overt discussion around what might be termed punitive views. Here there was a discussion where chain gangs and capital punishment were noted as more adequate punishments for extremely serious offences. This was something that came up in other groups to a lesser extent (e.g. in another group chain gangs were noted in passing as something for paedophiles specifically).

However, interestingly, in discussing paedophiles, there was not a specific example given of a sentence that was thought to be too lenient. Indeed, the most serious offence to which a specific sentence was noted was that of Lucy Letby and this was *not* viewed as 'way too soft' despite its seriousness. For instance, Patrick noted this as an example that was about right: 'That nurse, she will never see the light of day again and that is right.'

In terms of sentencing tending to be considered too harsh, offences involving fraud or dishonesty were one area noted. For instance, one group entered into a discussion of this:

*Betty - 'I think that when you are talking about fraud and things with Government people. I think when you watch that in the news and you see the things that they can get away with and you think 'What is going on?' Like you are sitting watching this and there are things you are aware of going on in your neighbourhood and people are getting [serious] sentences for things and other people are stealing millions. I think there is definitely a... what would you call it? Not a hierarchy...'*

*Sandy – 'Class!'*

*Betty – 'Yeah, that is maybe the word... yeah'*

*Patrick – 'You get a company defrauding people for twenty million and getting a suspended sentence and you get somebody maybe robbing a bookies or a*

*post office for a couple of grand getting ten years... I think if you've got a good lawyer and can afford the big bucks that certainly helps.'*

*Sandy – 'And again, in that environment they are all upper-class.'*

Some of these areas are of questionable relevance to Scottish sentencing (e.g. the mention of suspended sentences suggests an influence based on English and Welsh media reports), but the discussion serves to show how matters drawn from other jurisdictions may still bleed through into Scottish public opinion research.

Finally, in discussing what people knew of sentences there were also a number of participants who openly said that their knowledge of sentencing was limited. Many noted that their knowledge mostly came from the media. For instance, in one group discussion, there was agreement with the comment of one participant that 'funnily enough, it is as if you know more about American systems because that is what you see on TV.' News stories were also cited as a source of information. However, there was some scepticism that news stories resulted in representative information on sentencing practice generally.



## Terminology: views on sentence discounts versus sentence reductions

The term ‘sentence discounting’ has a long history in Scotland. It was used in the guideline judgment of *Du Plooy*, which considered section 196 of the 1995 Act. However, even before this, the term appeared in *Strawhorn v. McLeod 1987 SCCR: 413*. ‘Sentence discounting’ was also mentioned in some detail in a 1994 White Paper.<sup>11</sup> The White Paper did not give consideration to the terminology itself and, indeed, noted that ‘discounting’ was used in England and Wales. From this, two key points can be noted. Firstly, cases like *Strawhorn* and *Du Plooy* were arguably intended to speak to a niche audience of legal practitioners and academics. Thus, how certain terms might be understood by and resonate with the public generally was unlikely to have been a priority. Indeed, prior to the Council (with its ability to commission research like this), there was little way for judges to gauge public opinion. Secondly, despite the White Paper, England and Wales in their current guidelines use the term ‘reduction’ and not ‘discount.’

Consequently, while in legal practice, the term ‘discounting’ is well understood, for the public (who may well first encounter it in a potential guideline) this terminology may be new. This novelty is important because public perception can be influenced by terminology. For instance, within Scotland, the term ‘automatic early release’ has been argued as a problematic label:

*‘When governments and parliaments themselves use a term like ‘automatic early release’ they provide the media with an easy to use, inaccurate, shorthand term, one which suggests we have a dangerous system, which should be abolished.’<sup>12</sup>*

Consequently, for this research, we took care to examine if the two terms (reduction and discount) were viewed differently by participants. If there is a difference then this

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<sup>11</sup> Scottish Office Home and Health Department, ‘Firm and Fair: Improving the Delivery of Justice in Scotland’ (Cm 2600: 1994).

<sup>12</sup> Cyrus Tata, ‘Sentencing and Release from Prison: The End of ‘Automatic Early Release?’ (Scottish Justice Matters, 9 February 2016), <http://scottishjusticematters.com/sentencing-release-prison-end-automatic-early-release/>.

would be significant as a Scottish Sentencing Council guideline would be the first time 'discount' is used in a UK guideline, which is more accessible to the public than relatively lengthy judgments like *Du Plooy* or *Gemmell*.

As the methodology sections notes, we exercised care to allow participants to express their views on the terminology in their own words. For example, the research materials avoided either term and instead spoke of sentences following a guilty plea rather than a discount/reduction. However, Slide 2C directly asked if participants had 'heard of sentence reductions (also known as discounts).' There are two key findings, which are stark and consistent across all focus groups.

The first finding is that the vast majority of respondents had not heard of the term 'sentence discount', but almost all had heard of a 'sentence reduction.' The significance is that reduction is the term commonly used in England and Wales (including in their guideline) whereas 'sentence discount' is a term more commonly used in Scots law. In part, this familiarity with the English and Welsh term further suggests (along with discussions of cases such as the Lucy Letby case mentioned above) that public opinion in Scotland about sentencing may also be based on cases, that take place in England and Wales; or, at least, on the reporting of such cases in the media.

The second finding is that all participants firmly preferred the term 'reduction' over 'discount.' Views on this were unequivocal. The objections to 'discounts' included that it was discordant with the seriousness of criminal proceedings and was associated instead with retail commerce. For example, one person who favoured 'reduction' joked, 'I've got a student discount code for Barlinnie from UniDays.' Other comments included for example:

- *'Discount doesn't sound professional.'*
- *'Discount sounds a bit flippant. If you were standing in a court and someone got a discount you would be a bit like...sorry?!'*
- *'Reduction doesn't sound appropriate.'*
- *'Discount is the context you'd use for shopping.'*

Indeed, the reaction against ‘discount’ could be described as visceral. By contrast, the term ‘reduction’ fared much better. For instance, Betty noted that discounting sounded ‘insulting’, ‘disgusting’, and ‘offensive.’ They added that:

*Discounts?! That almost sounds like buy one get one free. Really, that is insulting to be honest. Discounts!? Wow!... A sentence reduction, you can understand that because they have pleaded guilty and we kind of know the basis for that. But even then, it is not a nice pill to swallow.*

Likewise, Maurine noted:

*‘What is a discount? Discount sounds like, you know, we’re here to play. The justice system should sound very serious.’*

Jonathan added:

*‘Yeah, I was just waiting to say the connotations of discount do sound like you’re purchasing something and getting money off it. Whereas, if I say reduction, you know exactly what that is and what it means. So it’s clear.’*

Leigh agreed:

*‘Yeah, I think it should be reductions because you think discount, you think like, ‘oh, I’m getting like something off or I’m getting a deal.’ Whereas, if you’re going to jail, it shouldn’t be based on like deals if that makes sense.’*

Consequently, it seems that the reasons for ‘reduction’ being the better term are twofold. Firstly, the aims of a ‘reduction’ are felt to be better understood.

Respondents had a sense that the reduction is in return for something useful on the part of the offender. By contrast, the term discount seems to connote an idea of something for nothing: to ‘discount’ can also mean to disregard or set aside, so people may wonder if ‘sentence discounting’ means that the sentence is, in some way being set aside or disapplied. Thus, even if people are not necessarily enthusiastic about lesser sentences for guilty pleas, there is some concept of reductions serving a function.

Secondly, the term discount was disliked because it was strongly associated with retail shopping and not in keeping with the solemnity of the criminal justice system (e.g. Deena noted discounts 'sounds like a reward when you have a Tesco Clubcard'). Indeed, the term discount was seen as flippant and in every group the term was spontaneously mocked.

Interestingly, the quantitative survey (discussed below) did not seem to reflect this strong view. This is likely due to a clustering of responses and limitations to the survey instrument (raising interesting methodological points showing the importance of mixed methods research that, for reasons of space, cannot be discussed here).

In sum, based on the unanimous views of the focus groups the conclusion here is clear that the term discount is likely to be seen as problematic by the public. This is a key point that guideline development may wish to note.

## **Transparency in sentencing terminology**

Groups tended to express an overall concern that sentences were not being implemented well. Unhappiness about implementation and transparency was commonly related to release provisions, which could be conflated with sentence discounts/reductions. Overall, there was a sense that for custodial sentences a person would serve only a fraction. Few participants knew about the operation of the release provisions in detail, but this was still an area that came up as a key concern.

On the one hand, the relevance of release provisions to sentencing is dubious since this is classically a matter for the executive.<sup>13</sup> On the other hand, given the statutory nature of discounts by virtue of section 196, it could be argued discounts are also a matter for the executive – albeit the operation of discounts has been worked out through case law and, in the future, a guideline. Regardless, it became relevant here since objections/concerns about discounting were often related to matters such as release provisions. For instance, Betty was against guilty plea discounts since

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<sup>13</sup> Sentencers (e.g. judges) are not involved in operational decisions around release from prison.

sentences were ‘already reduced’ regardless of the guilty plea discount. Likewise, when Louise was asked if sentences were transparent they said:

*‘No. Because, say you get ten years. So then if you plead guilty you get one-third off...that means you can get out eligible for parole and then a year before that you can go to an open prison. Which then means ten years turns into like five. And most people will think ten years means [offenders are] in a jail for ten years. But that is not how it works.’*

In response to this, Elizabeth suggested that these perceived deductions in the sentence should be compensated by greater punitiveness: ‘maybe the judges who give the higher sentences have the right idea then.’ Similarly, some also noted that ‘life should mean life’ while some did not know those serving life sentences could be released.

Thus, it seems there is a possibility that once a sentence prior to the application of a possible discount is stated (e.g. X years), this forms a psychological anchor as to what is appropriate in the minds of participants. Deviations from this anchor then lead to some degree of discontentment – particularly where these are not clear. As a result, the Council may wish to undertake work to determine how to further explain sentencing (e.g. periods spent on licence) and their rationales (e.g. promoting safe reintegration from prison to the community) to promote public confidence.

More broadly, it should be noted that occasionally common legal terms might be misunderstood. For instance, ‘mitigating’ and ‘aggravating’ factors could be used in the reverse of the intended way as occurred when one participant discussed how a sentence might be less if there were ‘aggravating’ factors that made it less serious. While such terms are common in legal discussions this should be a reminder that some terminology can risk public misunderstanding.

With regard to sentence discounting, the idea of sentence discounts and reductions are potentially problematic in conveying the proper meaning of what is a standalone part of the sentencing process (as set out in the sentencing process guideline).<sup>14</sup>

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<sup>14</sup> Scottish Sentencing Council, ‘Sentencing Guideline: The Sentencing Process’, 22 September 2021.

Notably, guilty plea discounts/reductions could become confused with release provisions or mitigation more generally. In some discussions, the articulation of the objection to discounts was related to mitigating/aggravating factors generally rather than the specific *guilty plea* component. This suggests that while in law there is a routine distinction between aggravation/mitigation rather than specific guilty plea discounts, it may be something the public could misunderstand.

Similarly, pre-discount sentences are another area where careful explanation is needed. In the groups, there were participants who objected to the discount on the basis that this would not allow a sentence to account for the seriousness of the offence. However, when asked if the discount would be acceptable if the headline sentence (i.e. the sentence before the application of any potential discount) could take account of the aggravating factors (usually explained as ‘things that make the offence more serious such as...’) then participants tended to say they would be happier with a discount to achieve the benefits they noted earlier (e.g. saving costs and sparing victims).

For example, in one group, there was a lengthy explanation of the sentencing process (in line with the Scottish Sentencing Council’s guideline on the sentencing process). Once the participants understood that the process overall would look at the specifics of the case, they were more content. The exchange below shows this, but also how confounding variables (e.g. overall perceptions of sentencing and not maintaining the compartmentalising of the guilty plea reduction) can interact:

*Lena - ‘I think you would need to take into account all the circumstances and have something like that [the description of the sentencing process] because that would be fair.’*

*Betty - ‘But they’ve already got it [a lesser sentence]. Because let’s face it. That is what the tag is. They’ve got the tags, the community service, the payback (like the money) so they’ve got all these as a reduction anyway. So to me, why should they get a reduction anyway?’*

This exchange shows two things that emerged in the various focus groups. The first is that explanations of reductions seemed able to persuade participants to a

significant degree. Thus, the development of guidelines might well consider asking sentencers to set out explanations carefully to show how sentences are individualised and the benefits of a sentence reduction. Secondly, the development of guidelines could usefully consider encouraging sentencers consistently to use terms such as 'sentence reduction because of the guilty plea' since the latter portion can easily be forgotten. Indeed, previously we noted Betty's preference for the term reduction and that they felt this was understood better, but the fact that the reduction is specific to the guilty plea (to achieve specific benefits) is seemingly forgotten in the above exchange. Similarly, other groups noted that sentences were diminished because of periods spent on licence upon release from prison and this also seemed to lead them to view sentence discounts/reductions in a more negative light.

## Size of discounts

Group discussions about the potential size of sentence reductions proved illuminating. Almost all participants knew from the outset that how a person pleads may affect their sentence. However, not all were aware that a guilty plea was something judges had, by law, to take account of and none claimed to have a full understanding of how the process worked. For example, Billy noted that they knew guilty pleas affected sentencing but that, 'I know they do it, but I don't know anything about the process.' Others then joined in by noting what they had seen in movies, etc.

Discussions were particularly interesting concerning the hypothetical case studies. Before reaching the scenarios there had been a lengthy discussion of the aims of the guilty plea 'reduction' (this was the favoured term) but still, the debate over the scenarios showed that the concept of a *specific guilty plea* reduction proved difficult to compartmentalise. Participants frequently considered aggravating and mitigating factors as part of the guilty plea discount.

At times it was unclear if the lack of compartmentalisation was due to a holistic view of sentencing that did not accord with the sentencing process guideline. Indeed, release provisions for custodial sentences were frequently noted here as reductions/discounts and there was a concern that these 'reductions' could stack up. Thus, views on the size of *guilty plea* reductions became conflated with views on sentencing more generally. When the conversation drifted into these other issues, the views on guilty plea reductions were more negative. When participants were reminded of the potential benefits, there was a trend to be more accepting.

While the lack of compartmentalisation often seemed to be due to a different way of thinking about sentencing or confusion about the specific nature of the *guilty plea* reduction, at times it also seemed related to denunciation or a desire to have offenders held to account. While most participants would express relatively more favourable views about reductions when reminded of the potential benefits, there was a recurring theme that when offences became more serious there was less enthusiasm for a discount. Indeed, the seriousness of the offence was frequently



stated to be a factor against a reduction. In some cases, it was a principled point that the costs of the trial were worth bearing in some cases. In this way, there was a degree of using the sentence reduction (by withholding it) as an additional way to denounce serious misconduct (e.g. when the scenarios discussed revealed aggravating factors). As Kevin noted (although generally agreeing with reductions for cost savings), a reason not to discount could be ‘on principle. If you have harmed a child, you should just be locked up for a severe amount of time.’

Asking people to pick what percentage discounts/reductions should, in general, be resulted in a wide range: from one percent to 50%. The more common range was for a sentence discount of around ten percent to 20%. However, in this exercise of picking a percentage, it was common for participants to express the view that further context was needed. In particular, people were particularly concerned to know what the ‘discount’ was from and the context of the offence and guilty plea. Thus, while many picked a percentage when pressed, there were reservations about selecting an abstract percentage.

Some groups spontaneously suggested a variable system of discounts was needed to balance between appropriate and excessive incentives to plead guilty taking into account a desire not to change ‘the nature’ of the sentence. Others had concerns about the nature of the offence (e.g. violent sexual offences) and this linked to views about public safety, sizes of discounts in absolute terms, and denunciation.

## **How views on discounts/reductions are contextualised**

The group discussions illustrate how answers on the appropriate level of reduction could change during the sessions as new information was provided or different considerations were made. As an example, in one group a participant suggested a 50% discount initially but others felt this was too much. Instead, between ten percent and 20% was felt appropriate. The group went on to discuss different types of cases and whether very serious cases (such as Lucy Letby) should be dealt with differently with the possibility that they ‘never see the light of day.’ During this, Louise reflected:

*'I've maybe changed my mind on the ten-fifteen percent [I voted for initially]. See if you think about it, it depends on what your ultimate goal is and why you want people to plead guilty, and if it is things like saving the victim going through it [a trial]. If it [the discount/reduction] is ten percent and they're going to get ten years then it is not really all that much, is it?.... So is their lawyer going to say, 'You should plead guilty and you'll get a reduced sentence?' No, they're going to go, 'No actually, odds-wise, you are better to go through the trial and trying to get away free.' So then I come back to I don't know.'*

Most of the others in the group agreed with this point. Later on, in covering the scenarios, Kevin (who was in favour of a 20% reduction before) changed their mind once given the aggravating factors for the first driving scenario:

*'That is hard because I didn't know that before.... no reduction because that is too severe.'*

This prompted a debate where others noted the potential benefits of an early guilty plea such as for the families. The others also noted that the headline sentence would increase to account for the greater culpability. Kevin reflected and noted:

*'That's true, I didn't think of the families... See, you don't think of any of that when you are reading it!'*

Thus, views on the appropriate discount varied based on a range of factors such as, when set out, the rationales for discounting. Views could also vary based on the severity of the offence (e.g. the culpability of the offender), the nature of the offence (e.g. whether the offence was sexual in nature or committed against children), etc. For this reason, it is difficult to isolate a single figure of what was felt appropriate in the focus groups as views appeared to vary depending on what issues were prominent in participants' minds at the time. The views on culpability also suggest the discount was not always being compartmentalised as it might be in the sentencing process guideline.

Consequently, any percentage figures suggested by the public should be considered in light of the fact that information about the official purposes of discounting can alter

views, often becoming more favourable to discounting. Moreover, serious cases and custodial sentences tended to dominate the discussions, which is important since most sentences are non-custodial and for less serious offences. Indeed, it should be stressed that selecting a notional percentage for a sentence discount in the abstract was felt to be problematic by many.

## Views on capping sentence discounts

Slide 4B directly raised the question of whether the maximum discount might be capped for some (e.g. serious) offences. The discussions over Slide 4B broadly agreed with an approach of capping the maximum discount where the sentence was long to limit the size of the discount in absolute (rather than proportional) terms. For instance, a discount of one-third off a 37-year sentence was thought to be too high by many. Likewise, discounting ten years from a 30-year sentence was thought to be large a deduction for many participants.

Although for the sake of simplicity (and to avoid the risk of biasing the discussion) case law was not presented to the groups, it is worth noting in the analysis that this view parallels cases such as *HM Advocate v Boyle* 2010 SLT 29. In this case, the court noted that the maximum discount could be capped at 20% or five years (whichever is less) for life sentences. This approach is also similar to that in the English and Welsh guidelines where the cap is one-sixth or five years. Accordingly, it may be helpful if a guideline clearly noted that discounts have upper limits in terms of years. While some may still feel five years is too much of a reduction, it could go some way towards assuaging the concerns expressed by participants that discounts could be over ten years.

The discussion of discounts/reductions also highlighted some different variations in how these should apply. Some participants made suggestions that do not fit within the current system. One suggestion was that the reductions should affect parole eligibility rather than sentence length. Other suggestions were, perhaps, not entirely dissimilar to current practice. For example, one participant in Group 6 was quite strongly against discounts. Reasons given included ensuring people take

responsibility and receive appropriate punishment. Instead, they argued there should not be a separate discount but that there should be a range of appropriate sentences and a guilty plea should move the imposed sentence closer to the bottom end of this range. In practice, this is arguably not entirely dissimilar to what is permissible in Scotland. While a one-third maximum is the typically prescribed discount for a guilty plea at the first opportunity, it is still subject to judicial discretion so that the final sentence remains within a broadly appropriate range – although the counterargument is that a discount still ‘involves the court's passing a sentence that, in its considered judgment, is less than the offence truly warrants.’<sup>15</sup>

## **Should Unaccepted Guilty Pleas Lead to Discounted Sentences?**

It is possible for an accused to offer to plead guilty to different offences than those they are charged with. Sometimes this may mean a guilty plea to a different charge (usually a less serious one) or a guilty plea to some charges but not others. In such cases, the Crown will decide whether or not to accept the guilty plea. Where the Crown does not accept the guilty plea, the case may proceed to trial and the accused may sometimes be convicted of the offence(s) to which they initially offered a guilty plea.

Part 3 of Scenario B sought to elicit views on cases where guilty plea offers are not accepted but later found to be meritorious. The scenario used the example of an offer to plead guilty to a charge entailing causing death by careless driving rather than dangerous driving. It was noted that careless driving is a less serious charge than dangerous driving. The dilemma that these types of cases present is that while an accused may have offered a firm guilty plea at the earliest opportunity, the benefits underlying the sentence discount were not obtained: e.g. the costs of a trial and any disruption to witnesses, victims, etc have not been prevented.

In all the groups, if there was to be a general system of discounting, there was broad support that such cases should still receive a sentence discount. The broad rationale

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<sup>15</sup> *Gemmell v HMA*, [2011] HCJAC 129 para 34.

was that while the benefits of a guilty plea had not been obtained, this was not the fault of the accused. This finding was interesting as it might have been an area where those less enthusiastic about discounts might have sought to curtail their use.

## **Conclusion on size of sentence discounts**

What the size of a sentence discount should be is a question for the guideline development process to consider. The focus groups generally suggested that the public feel it should be the minimum amount needed to secure the necessary aims (e.g. saving the costs of a trial). This leads to a vital question that future research might seek to address: what level of discount/reduction is likely to provide a suitable incentive to plead guilty for an accused/defendant in a given case? Certainly, a one-third maximum discount/reduction is commonly prescribed in several jurisdictions, but we are not aware of this being based on any empirical evidence about one-third providing accused/defendants with a likely level of incentive. Indeed, it is unknown what hypothetical maximum discount would have meaningful effects on offenders' plea decision-making. We cannot speculate further here, but we do highlight this as an area where future enquiry would seem beneficial.

## The influence of England and Wales on Scottish perceptions

From the preceding analysis, it is clear that the participants' views drew heavily on what they perceived to happen in England and Wales. It is unclear why the English and Welsh terms and cases featured so prominently. In light of the fact that many participants reported knowledge stemming from media sources, the media may be a factor. As a larger jurisdiction, England and Wales tend to have more offences reported in the news. Indeed, there were several instances of non-Scots law terms entering the discussion and examples included terms such as 'manslaughter' rather than the Scottish offence of 'culpable homicide.' For example, in Group 4 there was debate amongst the group about whether a driving offence would be murder or manslaughter, and no one noted culpable homicide as the relevant Scottish offence.

Other elements of the discussions also raise a distinct possibility that, to some extent, perceptions about Scotland may be influenced by news stories pertaining to England and Wales. Certainly, the Lucy Letby serial killings were raised frequently by participants. While this was to be expected given the notoriety, it is notable that when this occurred there was no discussion of Scotland having its own unique legal system. For example, no one queried what would have happened were the offences sentenced in Scotland. Instead, the English and Welsh practice was discussed as being synonymous with Scotland.

The potential to conflate (or at least equate) the Scottish and English and Welsh systems was not an issue that could be further explored in the focus groups here. However, future research on public perceptions of Scottish sentencing may wish to scrutinise in more detail the extent to which the public distinguishes between the different sentencing regimes in Scotland and England and Wales. Exploring this would be worthwhile as knowing the effects of England and Wales on Scottish public perceptions would be helpful in determining strategies to engage with the Scottish public going forward.

## Qualitative conclusion: do the public support sentence discounts/reductions?

The most obvious question to address from this research, unsurprisingly, proves the most complex and the answer hinges upon many variables. The complexity largely stems from the nuanced views of participants and their responsiveness to contextual factors, which meant that answers could change throughout the groups. As one participant in Group 4 noted of the broad questions:

*'This is all so general though. You could be talking about somebody who has shoplifted or somebody who has killed someone. It is too hard to say anything specific about such different things.'*

Indeed, when discussing the appropriateness of discounts/reductions and their size, groups frequently noted a desire for more information.

Overall, given the benefits participants identified, most respondents were in favour of a reduced sentence to encourage an early guilty plea - in some cases at least. The majority of participants felt that without some sort of incentive, desirable guilty pleas would be less forthcoming and that a guilty plea discount could be a price worth paying to reap the benefits noted at the start of the sessions (e.g. saving costs and sparing victims or victims' families the ordeal of a trial where applicable). However, during the sessions, views could change. Group 1 provides a useful example. In Group 1, the participants started talking about sentence discounts at Slide 1A. Nicole noted at the outset that:

*I agree with the fact that it should be a lesser sentence if the person pleads guilty. Because that is saving court time, and you have to have some kind of encouragement [to plead guilty].*

This prompted some debate and Mary initially disagreed:

*I think the opposite. I don't think they should get rewarded if they are guilty because if you have done it, you've done it.*

Nicole noted that the guilty plea discount did not have to be a 'massive difference in sentence.' Sean (who had lived experience of the criminal justice system) added that the difference could be one-third off a sentence. Nicole initially thought this was too high and the discussion drifted towards contextualising this. Jamie argued that the appropriateness depends on the offence and sentence. They used the example of a one-third reduction from a £90 fine and the group (including Mary) felt this was ok. Joe then used the example of 'manslaughter' where a guilty plea might change a sentence from 15-20 years to 5 years. Their view was that it was 'all to do with circumstances.' Mary was still uneasy about the sentence reduction on the basis that it might undermine deterrence in sentencing but did see a purpose to it.

Later in the session at Slide 2D, 7 out of 8 supported the idea of a sentence discount in the abstract. However, during the first two scenarios, the person who was not in favour did occasionally change their mind, two who were in favour stayed consistently against a discount, and one who was in favour changed their view at different points as scenario information was gradually revealed to participants. Reasons for rejecting a discount included that it might not mark the seriousness of the offence, that it might undermine deterrence, might encourage reoffending, and that innocent persons might plead guilty.

One explanation for the variation is that the scenarios turned abstract discussions into more visceral debates that better reflected the complexities of real cases. Additionally, the scenarios included the sorts of information that people may read or hear about in a media report. During the discussions, throughout the groups, it was common for the focus to revolve around the harm of the offence and the culpability of the offender. This again suggests that the groups did not always keep the sentencing process compartmentalised to maintain the distinction that the law draws between headline sentences and discounts.

In Slide C, the focus shifted to the cost savings of a guilty plea. Some questioned how much a trial costs and one participant noted 'it costs an absolute bomb to go through a trial. Tens of thousands of pounds' and that even a one-third discount might be just a few months of a reduction. In this light, all participants were in favour of reducing a sentence by a few months to save tens of thousands of pounds. The



two factors of note were that the one-third figure was given a concrete expression that made it seem less drastic and the idea of costs was also made less abstract. Thus, contextualising the effects of a guilty plea seems very important in terms of public opinion.

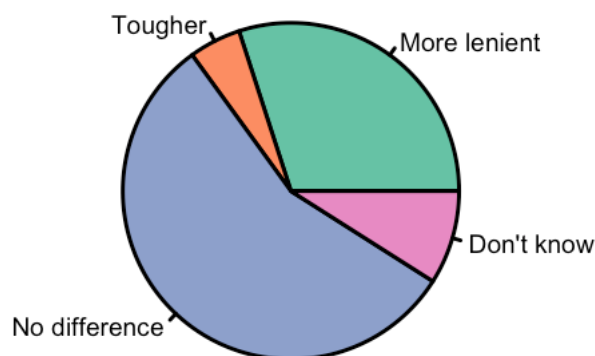
## Findings from a representative sample of Scottish respondents

As noted in the introduction, we commissioned YouGov to conduct a survey of the Scottish public to supplement the findings from the principal research component (the focus groups). The quantitative survey draws upon a standard frame using a representative sample of the general public in Scotland. The first general question – posed to all respondents -- explored public reactions to sentencing offenders who have pleaded guilty. Participants were asked to express their view and offered multiple alternatives, including the possibility that pleading guilty would result in the imposition of a harsher sentence. The specific question was:

**Q: Do you think pleading guilty to a criminal offence and avoiding a trial should make a sentence more lenient, tougher, or make no difference, compared to if the accused pleaded not guilty and was convicted (found guilty) during a trial?**

Nine percent responded 'don't know'; five percent chose 'make the sentence tougher'; and 30% favoured making the sentence more lenient when the offender had pleaded guilty. The most popular option - accounting for 56% of the sample - was that the guilty plea should make no difference to the sentence. This pattern of findings reflects the limited public support for plea-based sentence discounts – at least when they are asked the question without having been informed about the legal justifications for the practice. From here we proceeded to more detailed questions.

Figure 1 Public reactions to the effect of a guilty plea on sentence outcomes



### ‘Top of the head’ vs informed opinion

A great deal of research across many countries has demonstrated that public attitudes change when people are provided with some information about the issue – and not just confronted with a question without context.<sup>16</sup> For the next question two groups were created. Some respondents were asked to answer the question without any legal context, i.e., without being informed as why plea should affect sentencing outcomes. A second group of respondents were asked whether they were in favour of or opposed to the practice, but they were *also* given the official justifications for awarding sentence discounts to offenders who have pleaded guilty. Our hypothesis was that making the justifications for sentence discounts salient would increase public support for the practice. The two versions were, respectively, a condition with no justifications provided, and a condition with justifications provided:

**Q: Generally speaking, are you in favour of, or opposed to, courts reducing sentences when an accused pleads guilty and avoids a trial?**

**Q: While those accused of an offence have the right to a trial, accused persons who plead guilty may receive a sentence reduction.**

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<sup>16</sup> See Mike Hough and Julian V. Roberts, ‘Public Opinion, Crime, and Criminal Justice’, in *The Oxford Handbook of Criminology* (Oxford: Oxford University Press, 2023), <https://doi.org/10.1093/oxf/9780198860914.003.0010>.

**The legal justifications for giving guilty plea reductions are that guilty pleas save time and money and prevent victims and witnesses from giving evidence at trial. Generally speaking, are you in favour of, or opposed to, courts reducing sentences when an accused pleads guilty and avoids a trial?**

In addition to providing the legal rationale for these discounts we also introduced a second experimental manipulation. For one group, the question used the term 'sentence reduction' while respondents in the other group were asked about 'sentence discounts'. (Respondents were randomly assigned to one of the two experimental conditions). Discussions in the focus groups suggested that participants reacted far more negatively towards the concept of sentence 'discounts' than the more neutral term 'reduction'. Informed by the earlier focus groups, we hypothesized that support for this sentencing practice would be greater (regardless of level of whether justifications were provided) when the question used the term 'reduction' rather than 'discount'.

Sentence reduction version:

**Q: While those accused of an offence have the right to a trial, accused persons who plead guilty may receive a sentence reduction. The legal justifications for giving guilty plea reductions are that guilty pleas save time and money and prevent victims and witnesses from giving evidence at trial. Generally speaking, are you in favour of, or opposed to, courts reducing sentences when an accused pleads guilty and avoids a trial?**

Sentence discount version:

**Q: While those accused of an offence have the right to a trial, accused persons who plead guilty may receive a sentence discount. The legal justifications for giving guilty plea discounts are that guilty pleas save time and money and prevent victims and witnesses from giving evidence at trial. Generally speaking, are you in favour of, or opposed**

## to, courts discounting sentences when an accused pleads guilty and avoids a trial?

Tables 1 and 2 summarise findings from the comparisons.

Table 1 Attitudes to plea reductions/ and discounts (all subjects)<sup>17</sup>

	Justifications provided	No justifications
Strongly in favour of sentence reductions/ discounts for people who plead guilty	8%	4%
In favour of sentence reductions/ discounts for people who plead guilty	27%	23%
Neither in favour nor opposed to sentence reductions/ discounts for people who plead guilty	23%	21%
Opposed to sentence reductions/ discounts for people who plead guilty	22%	24%
Strongly Opposed to sentence reductions/ Discounts for people who plead guilty	11%	19%
<i>Don't Know</i>	9%	10%
<b>Total</b>	<b>100%</b>	<b>100%</b>

The results show that respondents who were given the justifications viewed guilty plea reductions more favourably than those who did not receive this information (35% as opposed to 27%) and this difference was statistically significant ( $t = -5.15$ ;  $p = <0.001$ ). The provision of justifications therefore made a significant difference in public attitudes to plea-based sentence discounts.

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<sup>17</sup> Percentages were rounded for this and all subsequent tables.

Table 2 Attitudes to plea-based sentence reductions vs discounts (all respondents)

	Sentence 'reductions'	Sentence 'discounts'
Strongly in favour of sentence reductions/ discounts for people who plead guilty	6%	6%
In favour of sentence reductions/ discounts for people who plead guilty	25%	25%
Neither in favour nor opposed to sentence reductions/ Discounts for people who plead guilty	23%	21%
Opposed to sentence reductions/ discounts for people who plead guilty	22%	24%
Strongly Opposed to sentence reductions/ discounts for people who plead guilty	16%	14%
<i>Don't Know</i>	8%	10%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Respondents who were given the term 'discounts' were only marginally more favourable than those who were given the term 'reduction', and this difference was not statistically significant ( $t= 0.32$ ;  $p = 0.75$ ). The language employed did not seem to make a significant difference to public perceptions of guilty plea discounts. It is somewhat surprising that the label applied did not appear to be as significant, given the nature of the discussion in the focus groups. One likely explanation may be that reading a brief text does not have the same impact as hearing the term 'discount' repeatedly during the focus group discussions. This is a question which would benefit from further research.

## Public recommendations for sentence reductions in specific cases

Before asking respondents about the effect of a guilty plea on the sentence imposed in a specific case, we examined their expectations of the typical discount awarded.

Specifically, respondents were asked:

**Q: Those who plead guilty and avoid a trial may receive a sentence. What do you think is the typical sentence reduction /discount following a guilty plea?**

Regrettably, it is not possible to compare public estimates of the typical or average guilty plea discount in Scotland with the reality of typical, first-instance sentencing practices because the latter is not available in official statistics.<sup>18</sup> However, an estimate, based on reported cases and case law (focusing on cases which are appealed), would be approximately one-third. Assuming this as a comparator, it would appear that the public underestimates the magnitude of sentencing discounts. Just under half (43%) estimated the typical discount to be less than 20%, while approximately 60% provided an estimate under 30%. It is worth noting that a sizeable proportion (one quarter) of the sample responded 'don't know'.

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<sup>18</sup> On data in Scotland, see Jay Gormley et al., 'Assessing Methodological Approaches to Sentencing Data and Analysis: Final Report' (Ireland: Sentencing Guidelines & Information Committee, Judicial Council of Ireland, 1 March 2023), sec. 3.4, <https://judicialcouncil.ie/publication-of-sentencing-data-research-report/>.

Table 3 Public Estimates of Typical Sentence Discount, Scotland

Estimate of typical reduction	Percent of respondents
0	8%
1-9%	14%
10-19%	21%
20-29%	18%
30-39%	7%
40-49%	2%
50-59%	3%
60-100%	2%
<i>Don't know</i>	25%
	<b>100%</b>

The Scottish public estimates of the typical discount are comparable to those provided by the public in England and Wales.<sup>19</sup> As can be seen in Table 4, 62% of the English and Welsh respondents provided an estimate under 30%,<sup>20</sup> compared to 60% in Scotland. The proportion of the samples answering 'don't know' was also very comparable: 23% in England and Wales compared to 25% in Scotland (Table 4).

<sup>19</sup> The survey in England and Wales used a slightly different question and was conducted in 2011 (see William Dawes et al., 'Attitudes to Guilty Plea Sentence Reductions', *London: Sentencing Council of England and Wales*, 2011). The specific question on that earlier survey was the following: 'What percentage or proportion do you think they get taken off their sentence if they plead guilty *at the first opportunity?*' (emphasis added). The Scottish survey used an online methodology while the earlier survey in England and Wales was conducted face-to-face.

<sup>20</sup> England and Wales follow a guideline which stipulates that the maximum reduction is one third (see [Reduction in sentence for a guilty plea – first hearing on or after 1 June 2017 – Sentencing \(sentencingcouncil.org.uk\)](http://sentencingcouncil.org.uk)). For a discussion of data trends, see Julian V. Roberts and Ben Bradford, 'Sentence Reductions for a Guilty Plea in England and Wales: Exploring New Empirical Trends', *Journal of Empirical Legal Studies* 12, no. 2 (1 June 2015): 187–210, <https://doi.org/10.1111/jels.12069>.



Table 4 Comparison between public estimates of discount in England and Wales and Scotland

Estimate of typical reduction	England and Wales <sup>21</sup> (2011)	Scotland (2023)
0	13%	8%
1-9%	7%	14%
10-19%	17%	21%
20-29%	25%	18%
30-39%	8%	7%
40-49%	2%	2%
50-59%	5%	3%
60-100%	1%	2%
Don't know	23%	25%
	<b>100%</b>	<b>100%</b>

## Public recommendations for sentence discounts in specific cases

The survey asked respondents to consider two cases, one involving welfare fraud and the other a serious assault. For both questions, respondents were asked 'What discount should be applied, if any because [the accused] pleaded guilty?' The specific questions are below.

Welfare Fraud:

**Lindsay is charged with welfare fraud. They avoid a trial by pleading guilty at the first opportunity to do so. What discount should be applied, if any, because [the defendant] pleaded guilty?**

Serious Assault:

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<sup>21</sup> W. Dawes et al., 'Attitudes to Guilty Plea Sentence Reductions', *London: Sentencing Council of England and Wales*, 2011).

**Alex is charged with assaulting an innocent member of the public in a pub, causing serious injuries to the victim. They avoid a trial by pleading guilty at the first opportunity to do so. What discount should be applied, if any, because [the defendant] pleaded guilty?**

Responses to these case-specific questions confirm findings from many previous studies on other sentencing-related issues, namely that the public is less punitive when considering individual cases rather than responding to a general, abstract question about sentencing.<sup>22</sup> Figure 1 revealed that less than one-third (30%) of respondents favoured sentence discounts for accused convicted after pleading guilty. However, when asked what reduction would be appropriate for the first, nonviolent crime, only 36% favoured no discount; slightly more than half (51%) recommended some level of discount. One-fifth recommended a discount of 20% or more. The percentage recommending a discount for the serious assault was lower, just over four in ten (41%; see Table 5). In both cases, the public recommendations are likely lower than the discounts typically awarded for crimes such as these.

Table 5 confirms that public opposition to sentence discounting was greater when the case involved violence. Approximately half the sample recommended no discount in the assault case, compared to approximately one-third in the welfare fraud. More strikingly, only around five percent of the sample favoured a sentence discount in the assault case that corresponded to the discount prescribed in such a case. The difference between cases was statistically significant ( $t = 2.79$ ;  $p = 0.005$ ). This pattern of results suggests a significant gap between public opinion and judicial practice with respect to this issue. It underlines the importance of public legal education and engagement in this area, to inform and discuss with the public potential benefits arising for the police, the prosecution, the courts, and victims and witnesses when the accused enters a timely guilty plea. The results suggest that

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<sup>22</sup> For example, see Lenny Roth, 'Public Opinion on Sentencing: Recent Research in Australia' (Victoria: New South Wales Parliamentary Research Service, 1 June 2014), <https://www.parliament.nsw.gov.au/researchpapers/Documents/public-opinion-on-sentencing-recent-research-in-public%20opinion%20on%20sentencing.pdf>; Julian V Roberts and Anthony N Doob, 'Sentencing and Public Opinion: Taking False Shadows for True Substances', *Osgoode Hall LJ* 27 (1989): 491.

people are less likely to oppose plea-based sentence discounts if they are aware of the benefits to the criminal justice system and crime victims.

Table 5 Public responses to specific cases

	<i>Welfare fraud</i>	<i>Serious assault</i>
No discount	36%	49%
1-9%	16%	16%
10-19%	15%	15%
20-29%	10%	6%
30-39%	3%	2%
40-49%	1%	0%
50-59%	3%	1%
60-100%	3%	1%
<i>Don't know</i>	13%	10%
<b>Total</b>	<b>100%</b>	<b>100%</b>

## Conclusion

We can summarise our findings with four key points. Firstly, in terms of language, the public is strongly averse to the term ‘discount.’ While it is a longstanding term used in Scotland in a legal context, the focus groups (who were strikingly unanimous) suggest the term carries undesirable connotations and may also be misleading. Therefore, a guideline using this term would seem less likely to have public support.

Secondly, public attitudes to sentence discounts are more favourable when the reasons for it are made clear. This does not mean that the public is enthusiastic about such discounts, but a reasonable discount which may benefit victims and/or save time/money is considered more tolerable.

Thirdly, the public is wary of discounts being too large – particularly for longer sentences and more serious cases – and most favoured a discount under one-third. The focus groups show there are a few issues at play here including a framing issue whereby in less serious cases one-third seems large until it is set out in real terms (e.g. one-third off a £90 fine). They would also appear to support the current practice of capping the discount.

Fourthly, and in conclusion, public views of sentence discounting are complex and influenced by many factors. One of the most significant influences on public opinion is knowledge and understanding of actual sentencing practice. Indeed, in discussions about the size of the discount, the headline sentence was a common concern. While the respondents raised concerns relating to normative and pragmatic sentencing issues, they often highlighted that it was hard to know what normal sentences really were for different kinds of cases and hence, how guilty plea discounts would affect these in the real world. This suggests a need to enhance the provision of publicly accessible, digestible information about normal patterns of sentencing in different types of case scenarios.

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## Appendix: Questions

### Opening Questions

1. When someone is convicted of a criminal offence, what should the sentence aim to achieve?
2. In general, would you say that sentences given by the courts, are too tough, about right, too lenient, or do not know? Why?
3. Did you know that in cases where an offender pleads guilty, the judge must take that into account in sentencing?
  - a. For those who said yes. What do you know of taking guilty pleas into account in sentencing?
4. Have you heard of sentence reductions (also known as discounts)? Do you know how these work?
5. Would you say that you are in favour of this or against this reduction (also known as a 'discount') because of a guilty plea? Why?
6. Are there any particular circumstances where you think this reduction (also known as a discount) is a good thing?
7. Are there any particular circumstances where you think this reduction (also known as a discount) is a bad thing?
8. Are these reductions (also known as discounts) an important issue?
  - a. What impact do you think this could have on whether the criminal justice system is fair?

### Scenario 1

- On the evening in question the accused was driving a car with four passengers; three males in the rear of the car; one female in the front of the car.
- The driver was driving fast (no less than 60mph in a 30mph limit area) not long after midnight on a busy urban high street. The radio volume was loud.

- The driver overtook two vehicles and while trying to overtake a third vehicle, failed to get back onto the correct side of the road and struck a double decker bus.
- One of the rear passengers was ejected by the impact of the collision and suffered fatal injuries. Another rear passenger suffered life changing injuries including the collapse of both lungs and fractured ribs. The two passengers that suffered injuries were the only people in the car not wearing a seatbelt.
- The driver had been drinking: the breath test analysis from the incident was more than double the legal limit for driving. Before getting in the car, the accused and two of the rear passengers consumed one large and one small bottle of brandy between them.
- The group decided to drive to an off-licence to buy more alcohol. They were driving back from an off-licence when the incident occurred. The off-licence was in walking distance from the group's location.
- The person who was fatally injured and the person with serious injuries were the two rear passengers who had been drinking with the accused.
- Some or all of the male passengers in the rear of the car were reported to have been calling for the driver to drive faster and overtake cars. The female passenger in the front seat had not been drinking and asked the accused (who was driving) to slow down.
- The driver was taking prescribed medication which carries a warning that it interacts with alcohol and that alcohol must not be consumed whilst taking the medication. The medication also warns it may affect ability to drive or operate machinery.
- The driver's car had been refused an MOT certificate so it was uninsured.
- The driver had shown genuine remorse in court and in the pre-sentence criminal justice social work report.
- The driver did not intend to kill or injure anyone.
- The driver entered a guilty plea at the earliest opportunity.
- What if, instead:
  - The driver had shown genuine remorse in court and in the pre-sentence criminal justice social work report.



- They did not intend to kill or injure anyone.
- The driver only pleaded guilty after the trial had commenced. By which point witnesses had been cited and the family of the deceased attended court.
- The family of the deceased blame the accused and has been unwilling to accept any apology. They have indicated to the prosecution that they would like to attend a trial.
- Age: the driver is a 22 year old female
- Responsibility: The driver is the primary carer of her two-year-old son. The father only has periodical contact with the child. She lives in a rented flat from the council with her two-year-old son.
- Career: The driver has obtained a training course place that would lead on to a university placement and nursing degree qualification. Due to the nature of the offence and the fact the accused will have a criminal record, the accused may have to pursue another career.
- Family background: The driver has a good relationship with her mother but has not met her father who had perpetrated domestic violence against the accused's mother.
- Personal views: The driver claimed to have only two drinks of small measures and they believed they were below the legal limit and their judgement was sufficient to drive safely.
- Experience: The driver had been driving for only six months at the time of the offence. The accused had no previous convictions.

## Scenario 2

- On the afternoon in question, the driver was reversing out of a parking space in a supermarket.
- At the time the driver was momentarily inattentive while setting up their SatNav.
- There was a low-speed collision with an elderly person who fell, hit their head, and died from their injuries.

- After the collision, the driver fled left the scene and was tracked down by the police. The police informed the driver of CCTV evidence. The driver indicated that they blamed the victim for ‘stupidly’ walking behind a reversing vehicle. The driver pleaded guilty at the first opportunity.
- What if, instead: The driver had offered to plead guilty to a less serious charge of causing death by **careless driving** at the first opportunity. The prosecution did not accept this plea offer, and the case went to trial with the charge being the more serious offence of causing death by **dangerous driving**. At trial, the driver was not convicted of dangerous driving but of the less serious charge they had offered to plead guilty to.
- The accused is a 45-year-old male who first obtained a driving licence 20 years ago. They have previous convictions for careless driving and driving while using a mobile device.

### Scenario 3

- The person is convicted of fraud in relation to benefits. They failed to properly disclose their circumstances and income. They had set up a small online business and did not disclose an income of approximately £12k.
- The offender was directly asked if they had any other sources of income and intentionally lied knowing this would affect their benefits. The investigation found the accused had purchased several luxury goods including a designer watch.
- When charged they pleaded guilty at the first opportunity. However, there was no realistic prospect of a defence as a bank account showing the income had been found (i.e. they were caught red-handed).
- At sentencing, the judge is made aware that the accused had previously been convicted of a similar offence.
- The offender is a 28 year old female. She is the mother and primary carer of an eight-year-old who has cerebral palsy which affects the lower half of his

body. He cannot walk unaided. The father has no contact with the child and there is no family support. While she claimed sums to which she was not legally entitled and did buy some luxury goods, the vast majority of the money was spent primarily on her son – including mobility aids.

## Final Questions

1. Often, a sentence reduction (also known as a discount) can be up to one-third off a sentence for a guilty plea at the earliest opportunity. Do you have any opinions on this?
2. Some custodial sentences are long. Life sentences must be given for murder, but they can also be given for other extremely serious offences. If a person is sentenced to life imprisonment, the judge must set a minimum term known as the 'punishment part'. This is the minimum time the person must spend in prison before they can apply to the parole board for **conditional** release. If a person sentenced to life imprisonment is released into the community, they will be on licence for the rest of their life and can be recalled to prison if they breach the terms of their licence. The longest minimum term so far is 37 years. What do you think of sentence reductions or 'discounts' in cases where the offence is serious and/or the sentence lengthy?
3. There are two rationales for reducing (also known as discounting) a sentence because of a guilty plea. One rationale is to encourage defendants who are going to plead guilty to plead guilty earlier. If a guilty plea is made early, the case does not take up as much court time. Offenders who plead guilty save the taxpayer the costs of conducting the trial.
  - a. What do you think about this? Do you think this justifies reducing or discounting sentences? Why/why not? Should this apply in all cases or some? Why do you say that?

4. A second purpose of reducing (also known as discounting) a sentence because of a guilty plea is that it means victims and witnesses may not have come to court or give evidence.
  - a. What do you think about this? Do you think this justifies reducing or discounting sentences? Why/why not? Should this apply in all cases or some? Why do you say that?
5. What are the main considerations *for* reductions (also known as a 'discounts')? Which consideration is most important?
6. Can you think of any drawbacks of reductions (also known as a 'discounts')? What are they? What are the implications?
7. A reduction/discount is a proportion of the total sentence that would have been imposed had the guilty verdict been reached after a trial. When deciding on the size of a reduction/discount, the court must take into account the stage at which the offender indicated their intention to plead guilty. Earlier guilty pleas can attract the greatest reductions/discounts.
  - a. What do you think about this? Why do you say that?
  - b. Should when offender pleads guilty make a difference to the amount of adjustment they get on their sentence (why/why not?). Are there other factors to consider (e.g. type of crime)? What else is important here?
8. Is there anything you would like to add?

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