CREDIT FOR GUILTY PLEAS AT A PTPH

Since the Sentencing Council updated the guideline on 'Reduction in sentence for a guilty plea' (effective from 1 June 2017), the importance of the plea indicated in the Magistrates' Court has significantly increased for cases going up to the Crown Court.

Although the guideline is at pains to point out that it is designed to 'encourage' rather than 'pressure', that comes in the form of severely limited exceptions for when full credit (33%) will be available at anything other than the first appearance in the Magistrates' Court.

Several years on from the introduction of the new guideline, this article looks at cases in the Court of Appeal where claims for full credit have been raised.

Sentencing Guideline on 'Reduction in sentence for a guilty plea'

The key change introduced by the 2017 guidance was a shift from credit running from the 'first reasonable opportunity' to credit running from the 'first stage of proceedings', with a list of exceptions. The guidance now states (at D):

> *Where a guilty plea is indicated at the first stage of proceedings a reduction of one-third should be made (subject to the exceptions in section F). The first stage will normally be the first hearing at which a plea or indication of plea is sought and recorded by the court.*
>
> *…*
>
> *After the first stage of the proceedings the maximum level of reduction is one-quarter (subject to the exceptions in section F).*

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The guidance makes it clear that a defendant will only be entitled to full-credit, even for an indictable-only offence, where they indicate a guilty plea at the first appearance in the Magistrates' Court. This is subject to a list of exceptions (at F):

> *F1: Further information, assistance or advice necessary before indicating plea*
>
> *F2: Newton Hearings and special reasons hearings*
>
> *F3: Offender convicted of a lesser or different offence*
>
> *F4: Minimum sentence under section 51A of the Firearms Act 1968*
>
> *F5: Appropriate custodial sentences for persons aged 18 or over when convicted under the Prevention of Crime Act 1953 and Criminal Justice Act 1988 and prescribed custodial sentences under the Power of Criminal Courts (Sentencing) Act 2000*

The merits of any case falling within one of the listed exceptions is usually very fact-specific; however, several cases have been decided by the Court of Appeal which provide helpful examples:

Successful Exceptions

D's mental state in the Magistrates' Court

In R v Woods [2020] EWCA Crim 84, the defendant did not indicate a plea in the Magistrates' Court to a charge of burglary, but pleaded guilty when his case was listed for PTPH in the Crown Court. He was afforded 25% credit, adopting the default position in the guidelines.

On appeal, it was argued that full (33%) credit should have been afforded instead, due to the defendant's mental state at the time of his first appearance in the Magistrates' Court. A note from the solicitor attending that hearing was relied upon, which recorded that:

> *the appellant was very down when he saw his solicitor at court. He was saying he would kill himself. He was saying there was no point in his being*

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> *represented. They did discuss the evidence; the appellant said he was only going to plead guilty if the court agreed to deal with him that day. He was advised that in view of his record the likely outcome would be a committal for sentence to the Crown Court, in custody. The appellant's partner was present at court on that occasion. She was very worried about the appellant's mental health and explained that he was due to see the Crisis Team. The appellant agreed in the end that he wanted to be represented but he declined to enter a plea and he was duly sent that day to the Crown Court for trial.*

The Court of Appeal agreed that the circumstances fell within the F1 exception in the guidelines:

> *We think that there is force in these submissions. This was an unusual case. The appellant was clearly in very poor emotional shape when he appeared at the magistrates' court. He was evidently depressed and not thinking clearly. He was being treated by then for moderately severe depression. There was never an intention to run a trial. Indeed, by declining to enter a guilty plea immediately he was simply cutting off his nose to spite his face. We are satisfied there should have been a full reduction of one-third for plea in these circumstances.*

Although the judgment describes this as an 'unusual case', all advocates appearing in the Magistrates' Court will recognise its features. Of particular interest is the use of the note taken by the advocate, and perhaps this case is an important reminder that a full note at the first appearance can be very important where the defendant's state of mind might be relevant to a subsequent guilty plea.

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Late addition to the indictment

In R v Shuli and Toska [2020] EWCA Crim 181, the defendants indicated guilty pleas to various drugs and identity document offences. At the PTPH, the indictment was amended to add a further count in relation to drugs that had not been the subject of any of the charges up to that point. Guilty pleas were entered, and 25% credit was afforded to both defendants.

In relation to the count added at the PTPH, the Court of Appeal asked itself:

> *Were there any other reasons here why full credit was not appropriate? It seems to us that there were not. In relation to [the count added at the PTPH], it is certainly right that Shuli only pleaded guilty to that at the hearing on 13th August, but that is because the count was only formulated on that day. Doing our best with the judge's observation about the 500 grams, it seems to us that he simply forgot that count 6 had been added that very day.*

Rather than another exception, this case might be better described as one where the PTPH was actually the 'first stage of the proceedings'. Any similar arguments in other cases will require an analysis of the actual charges in the Magistrates' Court, and whether or not the counts now on the indictment at the PTPH are different offences targeting the same criminality or are entirely new allegations.

Unsuccessful Exceptions

Magistrates' Court did not formally ask for an indicated plea

In R v Yasin [2019] EWCA Crim 1729, the defendant was charged with conspiracy to commit fraud. At first appearance in the Magistrates' Court, he did not indicate a plea on the BCM form. Although there was some dispute about it, it appeared that the Magistrates' Court had not asked for any indication of plea (advocates frequently dealing with first appearances may recognise this procedural 'shortcut', often adopted by the court when an indictable-only offence is being dealt with). At the PTPH in the Crown Court, the defendant pleaded guilty and was afforded 25% credit.

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In the Court of Appeal, it was argued that the Magistrates' Court's failure to ask for an indication of plea should have preserved 33% credit until the PTPH, presumably relying on the words in the guidance that "the first stage will normally be the first hearing at which a plea or indication of plea is sought and recorded by the court".

Rejecting that argument, the Court of Appeal held that:

> *the [BCM Form] makes it clear that it is incumbent on the parties to complete the [BCM Form], not the court. The box to which we have referred is in Part 1 of the [BCM Form] which states expressly: "To be completed by the parties before the hearing". Whilst best practice would be that at the hearing before the Magistrates' Court enquiry is made by the Court as to whether the [BCM Form] has been completed, including the box in question, responsibility for the completion of Part 1 and for any indication as to plea clearly rests with the parties and their legal representatives. It follows that, if Part 1 of the [BCM Form] and the box in relation to an indication of plea were not completed on behalf of the appellant in this case (as appears to have happened) and if no indication of plea was given by his representative at the hearing, that is not a matter for which the Magistrates' Court can be held responsible. In the circumstances the judge was correct to proceed on the basis that no indication of plea had been given in the Magistrates' Court. We reject the contention that the appellant should have been given full credit for his plea.*

Equivocal assertions made on the BCM form

In R v Davids [2019] EWCA Crim 553, the defendant did not indicate a plea in the Magistrates' Court to a drugs dealing offence but "Likely to be guilty pleas on a basis" had been written in the

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"Real issues in the case" section of the BCM form. At the PTPH in the Crown Court, a guilty plea was formally entered and the defendant was afforded 25% credit.

On appeal, it was argued that the words written on the BCM form should have attracted full credit at the PTPH. The Court of Appeal disagreed, stating that:

> *In our view, leaving aside that it was in the wrong place, that was not an indication of plea such as to entitle the applicant to full credit. It was keeping options open, both as to whether a guilty plea would be offered and the basis on which it would be offered. It invites the question: how likely is the plea to be offered very likely, quite likely or, on balance, more likely than not?*

This is another example of the courts requiring the defendant to formally indicate a guilty plea at the first appearance to retain full credit.

Admissions made in interview but no plea entered in the Magistrates' Court

In R v Price [2018] EWCA Crim 1784, the defendant did not indicate a plea in the Magistrates' Court to a third-strike dwelling burglary offence. At the PTPH in the Crown Court, he entered a guilty plea and was afforded 25% credit.

On appeal, it was argued that full credit should have been awarded instead, as the defendant had made admissions in interview. The Court of Appeal rejected this, stating that:

> *His admissions in interview did not affect the percentage discount, but could be taken into account at the stage of personal mitigation. On that issue, although the Judge noted the Appellant's admissions in his interview, he was clearly unimpressed by what he called the Appellant's account a "complete cock 'n' bull story" and so he refused to give any further reduction.*

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This point was reiterated by the Court of Appeal in R v Bold [2019] EWCA Crim 1539, where the court stated that an admission at the police station amounted to potential mitigation rather than triggering a reduction in credit. The court went on to find that the equivocal nature of the defendant's prepared written statement in his police interview did not amount to mitigation anyway.

Other Points

Lack of admissions in interview should not affect credit if a plea had been entered in the Magistrates' Court

Another point raised in R v Shuli and Toska [2020] EWCA Crim 181 was whether the court could reduce credit for a guilty plea indicated in the Magistrates' Court because the defendant had not made admissions in interview.

The Court of Appeal dealt with the point briefly and unequivocally:

> *In his sentencing remarks in this case, Judge Mooney suggested that full credit was not appropriate because there was no indication of a guilty plea during the police interviews. In our view, that was an error of law. Police interviews are not "the first stage of proceedings"; indeed, at that stage, proceedings have not and may never start. A defendant cannot be denied full credit because the judge considers that he or she was less than helpful in interview. That is not how the guidelines work.*

As in R v Price, the Court of Appeal followed the wording in the guideline itself, and distinguished between the investigation stage and the court stage. Credit should neither be increased nor decreased as a result of admissions made or withheld in interview.

Conclusion

The take-home message is that the courts are reinforcing the strict and narrow words of the guideline. Advocates would be wise to ensure that they advise on the implications of indicating a

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not guilty plea (or not indicating a plea at all) in the Magistrates' Court at the first appearance, even for an indictable-only offence and even when the court does not expressly ask for an indication.

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