

## GENERAL CRIME BRIEFING NOTE

*R v Plaku and others (Credit for Guilty Pleas)*

**Date:** 28 April 2021

**Case:** *R v Plaku and Plaku; R v Bourdon; R v Smith* [2021] EWCA Crim 568

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The Court of Appeal has recently given significant guidance on how to interpret and apply the Definitive Guideline issued by the Sentencing Council on “Reduction in sentence for a guilty plea”.

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### ***What were the cases being appealed?***

The Court of Appeal heard three cases together for the purposes of providing this judgement (1) *R v Isuf Plaku and Eduart Plaku* - an appeal against sentence; (2) *R v Simon Bourdon* - an appeal against sentence; and (3) *R v Benjamin Smith* - an application by the Attorney General on the basis that the sentence passed was unduly lenient.

### ***What did the Court of Appeal say about the relevant Guideline on credit?***

The Court set out the terms of the Guideline - which has been in effect since 1 June 2017 - and stated that it appeared from the issues in the cases under consideration that there was still some misunderstanding of it. The Court emphasised three points [6]:

- (1) A sentencing court must follow the guideline unless satisfied that it would be contrary to the interests of justice to do so (by virtue of s.59 of the Sentencing Code, formerly s.125 of the Coroners and Justice Act 2009).
- (2) The guideline focuses on when a guilty plea is *indicated*, not when it is *entered* (as per the wording of s.73 of the Sentencing Code)
- (3) The guideline drew a clear and deliberate distinction between the reduction available at ‘the first stage of the proceedings’ and the reduction available ‘at any later stage’ (see section D of the guideline)

The Court also highlighted that there was a difference drawn in the guideline (section F1) between (a) cases where it was necessary to receive advice and/or see evidence to determine whether the defendant was in fact and law guilty; and (b) cases where a defendant delays guilty pleas in order to assess the strength of prosecution evidence and the prospects of conviction or acquittal. The former would be entitled to full credit, the latter would not. [9-10]

In disposing of these appeals, the Court focused on the meaning of ‘the first stage of the proceedings’ for the purposes of attracting full credit under the guidelines. The Court noted that in respect of both ‘either-way’ offences (by means of s.17A of the Magistrates’ Court Act 1980) and ‘indictable-only’ offences (by means of rule 9.7(5) of the Criminal Procedure Rules), it was a necessary part of the initial procedure at the Magistrates’ Court that the defendant was asked whether he would, or intended to, plead guilty. Furthermore, the Court observed that the current ‘Better Case Management’ form [the “BCM form”] contains a box recording the defendant’s intention as to plea, and noted that completion of that form by the parties was obligatory. [11-16]

The Court reviewed the relevant recent case law which made it clear that any indication of a guilty plea had to be ‘unequivocal’ in order to attract the relevant level of credit. In particular, the Court considered [17-25]:

- (a) The case of *R v Hodgkin* [2020] EWCA Crim 1388 where it was held that even in respect of indictable offences, the ‘first stage’ of the proceedings for indicating a guilty plea was the Magistrates’ Court. The Court of Appeal here endorsed those principles by observing that an indication of a ‘likely’ or ‘probable’ plea, or any other qualification about the plea, should in future be avoided.
- (b) The case of *R v Yasin* [2019] EWCA Crim 1729, where it was held that it was for the parties and their representatives, not the court, to complete the BCM form. Where a defendant was not asked to indicate a plea, but did not complete a BCM form, a deduction of one-third would not be available if a guilty plea was later entered at the PTPH.

As such, the Court held that, in normal circumstances, only *unequivocal* indications of guilty at the Magistrates’ Court stage in respect of either-way or indictable-only offences would attract one-third credit. The Court was of the view that there would be very few occasions where a defendant who had not indicated a plea at the first stage (or did not come within one of the exceptions in the guidelines) would obtain more than a one-quarter reduction. It followed that even unequivocal indications of guilt entered very shortly after Magistrates’ Court (for example by letter) would not obtain the maximum discount. [26-27] Additionally, it would not normally be correct for any Crown Court judge to be able to order that ‘full credit’ (in the sense of one-third) be preserved as a result of any adjournment of arraignment. [31]

Matters such as early admissions of elements of the offence, co-operation with the police investigation, or being the first of a number of defendants to ‘break ranks’ and plead guilty, were all capable in the Court’s view of being taken into account as separate mitigating factors, but should not affect the amount of credit formally given for a guilty plea under the guideline. [29-30]

### ***What was the result of the specific cases under consideration?***

- (1) Isuf and Eduart Plaku were brothers charged with one count of conspiring to supply a substantial quantity (43kg) of cocaine to another. No indication of guilt was made at the Magistrates’ Court when the case was sent to the Crown Court, and no BCM form appeared to have been completed on their behalf at that stage. At an adjourned PTPH, both brothers pleaded guilty, and were sentenced to imprisonment to 15 years and 15 years 9 months, taking account of a credit figure of 25% for their pleas of guilty entered at that stage. [33-37]

**Result:** Given *Yasin*, the sentencing judge was correct to withhold full credit. [39-41]

- (2) Simon Bourdon was charged with stalking causing serious alarm or distress and other related offences. At the Magistrates' Court, a BCM form was completed stating 'G pleas anticipated to most of these charges at PTPH' on the basis that it was hoped that discussions with the prosecution might reduce the number of charges. At the PTPH, Mr Bourdon pleaded guilty to the offences listed above. He was sentenced to an extended determinate sentence of imprisonment for 8 years and other concurrent sentences, all taking into account a credit figure of 25% for the pleas of guilty. [43-51]

**Result:** The appellant had chosen 'to keep his options open' at the Magistrates' Court, in the hope of a better result, and as such the sentencing judge was correct to withhold full credit. [52-56]

- (3) Benjamin Smith was charged with two offences of aggravated burglary, an offence of false imprisonment and an offence of unlawful wounding relating to an incident where he broke into the home of a couple in their seventies, tied them up and assaulted one of them with a hammer. The BCM form completed at the Magistrates' Court stated, 'potential indicated plea' and 'possible basis of plea to be mooted'. It appeared that at the Magistrates' Court, the defence indicated that Mr Smith was likely to plead guilty but did not accept some of the matters alleged. At the PTPH he pleaded guilty to all counts on the indictment and did not put forward a basis of plea. He was sentenced to an extended determinate sentence of imprisonment for 13 years and other concurrent sentences, all taking into account a credit figure of 33% for the pleas of guilty. This was on the basis that counsel for the parties agreed that the defendant had entered those pleas at the first reasonable opportunity, given the indictable-only nature of the offences. [59-69]

**Result:** Given *Hodgin*, the judge was led into error in allowing full credit and only 25% credit should have been given. However, as conceded on behalf of the Attorney General, that error alone did not make the sentence passed unduly lenient. [70-75]

### ***What is the major impact of this case likely to be?***

The Court of Appeal has re-affirmed, and, if anything, enhanced the importance of defendants, where possible, entering an unequivocal plea of guilty at the Magistrates' Court. Phrases such as 'likely guilty plea' or 'probable guilty plea' are now effectively worthless for the purposes of preserving full credit, and no practitioner should, in normal circumstances, use them. Furthermore, all practitioners must, in future, complete the BCM form, including an unequivocal indication of guilty pleas, to be sure of attracting the full one-third discount.

### ***What problems may this present?***

As anyone involved in representing defendants at the early stages of the criminal justice process knows, there can be significant difficulties in providing proper and full advice by the stage of the police interview or first appearance. The case against the individual may well be substantially unparticularised, with a significant risk of any allegations later growing in scale and scope. In very

many cases, particularly publicly funded ones, those representing people at the police station or Magistrates' Court are the most junior in the legal system and therefore the least experienced.

The more serious a crime is, the greater the benefit of obtaining 33% credit rather than 25% will be (more than a year in respect of sentences of imprisonment of over 12.5 years). Equally however, the more likely it also is that the defendant will appear in court immediately after charge (and in custody), with few details as to the evidence against them, adding exponentially to the difficulties of advising them fairly. This judgment does not address or alleviate those issues.

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*This briefing note was produced by [Philip Stott](#). This note should not be taken as constituting formal legal advice. To obtain expert legal advice on any particular situation arising from the issues discussed in this note, please contact our clerking team at [barristers@qebhw.co.uk](mailto:barristers@qebhw.co.uk). For more information on the expertise of our specialist barristers in criminal and regulatory law please see our website at [www.qebholliswhiteman.co.uk](http://www.qebholliswhiteman.co.uk).*