



# **ACPO Position Statement: Maximising the Sentencing Guidelines within a Suspect Interview**

**National Investigative Interviewing  
Strategic Steering Group (NISSG)**

# MAXIMISING THE SENTENCING GUIDELINES WITHIN A SUSPECT INTERVIEW

## Introduction

The use *Sentencing Guidelines* during the interview process with suspects has been the subject of considerable debate and divided opinion amongst investigative interviewers. Responses range from not mentioning the guidelines at all at any stage in the interview process to reference within the pre interview briefing to solicitors and alluding to them in the engage and explain phase within the interview itself. At the present time there is no consistent approach to such use.

## Background

The use of a sliding scale of judicial credit when sentencing taking into account the stage at which a guilty plea is entered is a statutory obligation<sup>1</sup> and the subject of guidance by the Sentencing Guidelines Council. The critical time for determining the reduction for a guilty plea is the first reasonable opportunity for the defendant to have indicated a willingness to plead guilty. This may vary with a wide range of factors and should be judged on each individual case including:

- (a) The first reasonable opportunity may be the first time that a defendant appears before the court and has the opportunity to plead guilty;
- (b) But the court may consider that it would be reasonable to have expected an indication of willingness even earlier, perhaps whilst under interview.

For (a) and (b) to apply the court will need to be satisfied that the defendant (and any legal adviser) would have had sufficient information about the allegations.<sup>2</sup>

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<sup>1</sup> Criminal Justice Act 2003

<sup>2</sup> Reduction in Sentence for a Guilty Plea – Sentencing Guidelines Council, Definitive Guideline 2007.

A core issue is whether the use of *Sentencing Guidelines* to initiate an early admission could be a potential breach of the Police and Criminal Evidence Act (PACE) 1984 by being construed as an inducement, or whether such use may unduly influence an innocent or suggestible person to make false admissions rendering the interview unreliable and inadmissible. It is important to recognise the danger of formulating a prescriptive "one size fits all" process for this reason.

In addition sentencing is ultimately at the discretion of the court and can be a complex issue including consideration regarding the dangerousness of the offender, their overall criminality, the weight of evidence balanced against the guilty plea and a range of other factors including whether the sentence is fixed by law..

Balanced against this is the duty of the solicitor to act in the best interests of their client as well as their role as defined in PACE i.e. "The solicitor's only role in the police station is to protect and advance the legal rights of their client. On occasions this may require the solicitor to give advice which has the effect of their client avoiding giving evidence which strengthens a prosecution case" (extract from PACE Code C, note 6D).

Acting in the best interest of their client includes looking for the most favourable outcome regarding disposal, such a consideration should include obtaining maximum discount for any guilty plea and providing realistic advice based on the information provided by the police, this includes factors such as remorse and assistance provided by the suspect.

Due to legal privilege it is difficult to assess whether legal advisers (with varying experience) are fulfilling these obligations based on the pre interview briefing supplied to them without raising this in interview with the interviewee.

### **The ACPO Position**

Based on these issues a uniformed approach should be established in each force including the following points:

- That while they may be considered during the planning stage of the interview, the use of *Sentencing Guidelines* use should be tailored to each particular interviewee and the circumstances of their case. The blanket use of *Sentencing Guidelines* should be avoided.
- *Sentencing Guidelines* should only be discussed during the pre-interview briefing with the suspect's legal adviser which should be delivered in written format and preferably tape recorded to preserve the integrity of the process.
- A suitable form of words should be formulated for use in the briefing to the legal representative, this should not be able to be misconstrued as an inducement but be short and simple enough to serve as a reminder for the legal representative to discuss the subject in their consultation.
- Consideration should be given in the planning stage to the interviewee's vulnerability to suggestion, compliance or acquiescence. *Sentencing Guidelines* should not be used where there is a risk or suspicion of such vulnerability.
- *Sentencing Guidelines* should not be used with unrepresented suspects.
- *Sentencing Guidelines* may be considered for use with legally represented juveniles subject to a suitable assessment regarding vulnerability to suggestion.
- Consideration should be given to when in the pre-interview briefing phase *Sentencing Guidelines* should be referred to i.e. before the first interview or after final disclosure if this has been phased.
- Any admissions should be explored in detail to provide corroborating information.

## **Acknowledgement**

This position statement was prepared by DCI Steve Hibbitt, an ACPO Approved Interview Adviser from Humberside Police.

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