

# **Perverting the Course of Justice and Witness Intimidation guidelines**

**Consultation**

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Published on 30 March 2022

The consultation will end on 22 June 2022

# About this consultation

- To:** This consultation is open to everyone including members of the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.
- Duration:** **From 30 March to 22 June 2022**
- Enquiries (including requests for the paper in an alternative format) to:** Office of the Sentencing Council  
Tel: 020 7071 5793  
Email: [info@sentencingcouncil.gov.uk](mailto:info@sentencingcouncil.gov.uk)
- How to respond:** Please send your response by **22 June 2022** to:  
Mandy Banks  
Email: [consultation@sentencingcouncil.gov.uk](mailto:consultation@sentencingcouncil.gov.uk)
- Additional ways to feed in your views:** This consultation exercise is accompanied by a resource assessment, and an online questionnaire which can be found at:  
[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)
- Response paper:** Following the conclusion of this consultation exercise, a response will be published at: [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)
- Freedom of information:** We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents' names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE – We will disregard automatic confidentiality statements generated by an IT system.  
In addition, responses may be shared with the Justice Committee of the House of Commons.  
Our [privacy notice](#) sets out the standards that you can expect from the Sentencing Council when we request or hold personal information (personal data) about you; how you can get access to a copy of your personal data; and what you can do if you think the standards are not being met.



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# Introduction

## What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines which courts in England and Wales must follow when passing a sentence. The Council consults on proposed guidelines before they come into force and makes changes to the guidelines as a result of consultations.

## Why Perverting the Course of Justice and Witness Intimidation offences?

There currently is no guideline for perverting the course of justice. This can be a serious offence and the Council felt that developing a guideline would be of benefit to courts.

There is currently limited guidance for witness intimidation offences in the magistrates' court, but no guidance for cases sentenced in the Crown Court. Again the Council felt that providing a fuller guideline for use across all courts would be beneficial.

This consultation paper has been produced in order to seek views from as many people as possible interested in the sentencing of these offences.

During the 12- week consultation period, views on the draft guidelines will be explored with sentencers. Following the consultation, all the responses will be considered, and definitive guidelines published. The Council has also produced a resource assessment for the guidelines, along with a statistical bulletin and data tables showing current sentencing practice for these offences. These documents can be found on the Council's website: [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk).

Through this consultation process, the Council is seeking views on:

- the principal factors that make any of the offences included within the draft guidelines more or less serious;
- the additional factors that should influence the sentence;
- the types and lengths of sentence that should be passed;
- Whether there are any issues relating to disparity of sentencing and/or broader matters relating to equality and diversity that the guidelines could and should address; and
- anything else you think should be considered.

We would like to hear from anyone who uses sentencing guidelines in their work or who has an interest in sentencing. We would also like to hear from individuals and organisations representing anyone who could be affected by the proposals including:

- victims and their families;
- defendants and their families;
- those under probation supervision or youth offending teams/supervision;
- those with protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

It is important to note that the Council is consulting on sentencing these offences and **not on the legislation upon which such offences are based. The relevant legislation is a matter for Parliament and is, therefore, outside the scope of this exercise.**

## **How to give your views**

The paper discusses each draft guideline section by section. A summary of the consultation questions can be found at **Annex A**. You can give your views by answering the questions within each section (you do not need to respond to any questions or sections that are not relevant to you) either by email or using the online questionnaire on the Sentencing Council website.

## **Age applicability**

When issued as definitive guidelines these will only apply to offenders aged 18 and older. General principles to be considered in the sentencing of children and young people are in the Council's definitive guideline, a link to which is below.

<https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-children-and-young-people/>

# General approach

## Approach to the guidelines

At the start of the project the Council considered whether any other administration of justice offences should be included within the project. The offences of perjury, contempt and assisting an offender were considered. However, the Council decided not to include any of these offences. The volumes for each of them are very low: in 2020, there were less than five offenders sentenced for perjury, around 20 for contempt of court and around 40 for assisting an offender. In addition, the Council felt there was no compelling need to produce guidelines. There have been no requests for these guidelines and the complexity of procedure for some of the offences would make it very difficult to produce a guideline, particularly for contempt and assisting an offender offences.

To develop both the offences included within this guideline, transcripts of sentencing remarks for cases heard in the Crown Court were considered, along with relevant case law and current sentencing statistics. The combined experience of the Council members was also utilised to draft factors and agree draft sentence ranges. The approach the Council has taken is to aim to maintain current sentencing practice and encourage consistency of approach to sentencing these offences. The Council is not aware of any concerns or problems with the sentencing of these offences that new guidelines should address, but of course would be interested to hear any views on issues that should be considered.

# Perverting the course of justice

This guideline is for perverting the course of justice offences (contrary to common law). In 2020 around 400 offenders were sentenced at the Crown Court. This is an indictable only offence, with a maximum sentence of life imprisonment. This offence covers conduct which hinders or frustrates the administration of justice, the work of police, and prosecutors and courts. The elements of this offence are:

- doing an act or series of acts (the offence cannot be committed by failing to do something);
- which has or have a tendency to pervert; and
- which is or are intended to pervert;
- the course of public justice.

These offences cover a wide range of conduct – examples include: avoiding prosecution, concealing evidence, helping an offender, and interfering with jurors/witnesses where there can be a crossover with witness intimidation offences. The levels of seriousness can vary from giving a false name to police in a minor motoring offence, to falsely accusing an innocent person of a serious offence, resulting in them spending time in custody before the truth comes to light.

In developing this guideline the Council considered the relevant case law. The Council noted that a sentence for doing an act tending to pervert the course of justice should normally be **consecutive** to any sentence for the substantive offence in relation to which the act was committed: Att.-Gen.'s Reference (No.1 of 1990) 12 Cr. App. R. (S.).

The Council also considered *Abdulwahab* [2018] EWCA Crim 1399 in which the court reviewed sentencing authorities and noted:

1. Conduct which tends and is intended to pervert the course of justice strikes at the heart of the administration of justice and almost invariably calls for a custodial sentence. Deterrence is an important aim of sentencing in such cases but the necessary deterrence may sometimes be achieved by the imposition of an immediate custodial sentence without necessarily requiring a sentence of great length.
2. The appropriate sentence depends on the particular circumstances of the specific case. The circumstances vary across a very wide range.
3. Relevant factors include:
  - a. the seriousness of the underlying offence,
  - b. the nature of the deceptive conduct,
  - c. the period of time over which it was continued,
  - d. whether it cast suspicion upon or led to the arrest of an innocent person, and
  - e. the success or otherwise of the attempt to pervert the course of justice.

## Step One

The first step of the guidelines is to consider the culpability level of the offender and the harm caused by the offence by the assessment of a series of factors.

## Culpability factors

The proposed high culpability factors are designed to capture the most serious types of offending within this offence, and reflect the factors outlined above in *Abdulwahab*. The factors proposed are:

- Conduct over a sustained period of time
- Sophisticated and/or planned nature of conduct
- Underlying offence very serious

Continuing the conduct over a prolonged period, as opposed to a one off incident, and planning the offending, perhaps by setting up false email accounts and sending false incriminating messages, make the offending more serious. Also, if the underlying offence was a serious one, such as murder or rape, this makes the act of perverting the course of justice more serious, compared to if the underlying offence was trying to avoid a speeding ticket, for example.

The Council gave careful thought as to what factors should go into the medium culpability category. Offence specific factors were considered, such as '*underlying offence reasonably serious*' or '*conduct was somewhat sophisticated*', but on balance the Council considered that these 'lesser' versions of the high culpability factors may not be that helpful to sentencers. Instead it is proposed that a more general approach is taken, to allow courts to identify cases that are neither the most serious nor least serious of their kind to be identified.

The factors proposed for medium culpability are:

- 'Other cases that fall between categories A and C because:
  - Factors are present in A and C which balance each other out **and/or**
  - The offender's culpability falls between the factors described in A and C'

The factors proposed within lower culpability are:

- Unplanned and/or limited in scope and duration
- Unsophisticated nature of conduct
- Underlying offence was not serious
- Involved through coercion, intimidation or exploitation
- Offender's responsibility substantially reduced by mental disorder or learning disability

The first three factors are offence specific ones designed to capture the least serious types of offending within these offences, such as giving the police a false name for a minor motoring offence, where it wasn't pre-meditated and giving the false name was done on the spur of the moment. The last two are lower culpability factors frequently used in other guidelines. As noted above, the Council felt it was appropriate to identify the most serious, and least serious types of offending within these offences, leaving the medium culpability factors more general to capture the offences that fall in between.

The proposed culpability factors are below. The Council is interested in the views of consultation respondents on the factors included, and any additional factors which should be considered.

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

**Culpability demonstrated by one or more of the following :**

**A - High culpability**

- Conduct over a sustained period of time
- Sophisticated and/or planned nature of conduct
- Underlying offence very serious

**B – Medium culpability**

- Other cases that fall between categories A and C because:
  - Factors are present in A and C which balance each other out **and/or**
  - The offender's culpability falls between the factors described in A and C

**C- Lower culpability**

- Unplanned and/or limited in scope and duration
- Unsophisticated nature of conduct
- Underlying offence was not serious
- Involved through coercion, intimidation or exploitation
- Offender's responsibility substantially reduced by mental disorder or learning disability

***Question 1: Do you have any comments on the culpability factors? Are there any that should be removed or added?***

## Harm factors

Once the court has determined the level of culpability, the next step is to consider the harm caused or intended to be caused by the offence. In developing the draft harm factors the Council considered the factors outlined in *Abdulwahab*. For this offence the types of harm caused can be broad, for example, harm caused to victims, innocent people that are falsely accused of offences, but also harm to the justice system as a whole.

The proposed factors in category one harm reflect the differing ways in which serious harm can be caused to individuals, covering both '*serious consequences for an innocent party(ies) as a result of the offence (for example time spent in custody/arrest)*' and '*serious distress caused to innocent party (for example loss of reputation)*'. The harm factors that reflect the impact on the justice system are '*serious impact on administration of justice*' (this can be the financial cost to the police in investigating false accusations and alibis and to courts in scheduling hearing or trials which are later abandoned), and '*substantial delay caused to the course of justice*'. This factor is to capture the delay caused by the offence, such as police time spent investigating accusations, and more widely the delay in the truth emerging as to who was responsible for an offence, or for a falsely accused person to be proved innocent. These offences also impact on the justice system as time spent investigating false allegations and so on diverts resources away from other offences.

The proposed category two harm offences are designed to capture offending which is serious, but not as serious as the offending which would fall into category one harm. The wording '*suspicion cast upon an innocent party as a result of the offence*' has been used, with suspicion being not as serious as a person actually being arrested or spending time in custody, which is the category one harm factor. Also in category two harm is:

- Some distress caused to an innocent party
- Some impact on administration of justice
- Some delay caused to the course of justice

Category three harm has one proposed factor of '*limited effects of the offence*'. This factor is designed to capture situations where the harm is limited, and sentencers can place offences in this category if the harm caused by the offence is less serious than cases that fall into category two.

All the proposed harm factors are shown below:

Harm	
The level of harm is assessed by weighing up all the factors of the case.	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Serious consequences for an innocent party(ies) as a result of the offence (for example time spent in custody/arrest)</li> <li>• Serious distress caused to an innocent party (for example loss of reputation)</li> <li>• Serious impact on administration of justice</li> <li>• Substantial delay caused to the course of justice</li> </ul>

<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Suspicion cast upon an innocent party as a result of the offence</li> <li>• Some distress caused to innocent party</li> <li>• Some impact on administration of justice</li> <li>• Some delay caused to the course of justice</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Limited effects of the offence</li> </ul>

**Question 2: Do you agree with the approach to assessing harm? Are there any factors you think should be removed or included?**

**Step two**

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point of the sentence.

**Sentence levels**

The sentence ranges, as shown in the table below, have been formulated using data from the Ministry of Justice's Court Proceedings Database (CPD). This showed that in 2020, around half of offenders (51 per cent) were sentenced to immediate custody and a further 42 per cent were given a suspended sentence order. Community orders accounted for 4 per cent of offences and 2 per cent were recorded as otherwise dealt with<sup>1,2</sup>. For those receiving immediate custody in 2020, the average (mean) custodial sentence length (ACSL) was 1 year 2 months. The ACSL may reflect the approach to sentencing outlined in *Abdulwahab*, that these offences invariably justify a custodial sentence, but that deterrence may sometimes be achieved by imposing immediate custody without necessarily requiring a sentence of great length.

Perverting the course of justice is a common law offence which means that the offence has been developed by the courts over time and is not defined in statute. By default for a common law offence, the maximum sentence is life imprisonment. Current sentencing practice shows that the vast majority of offenders (99 per cent in 2020) receive a sentence of 7 years or less. After careful consideration, the Council decided that the top of the range in the sentence table should be seven years' custody. There is clearly a large gap between this and the maximum sentence theoretically possible, however, that reflects the fact that Parliament has never set a maximum sentence for the offence.

The Council's aim in creating this guideline is to reflect current sentencing practice for this offence, and to encourage consistency of approach to sentencing, not to change current sentencing practice. The Council is not aware of any concerns with sentencing these offences, such as courts being unable to pass the appropriate sentence in cases, therefore 7 years is felt to be the appropriate maximum. The Council will of course be interested to receive any representations on this issue through consultation responses.

<sup>1</sup> The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution

<sup>2</sup> Percentages may not sum to 100 per cent due to rounding

Culpability			
Harm	A	B	C
Category 1	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 year's custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 2– 7 years' custody	<b>Category range</b> 1 – 4 years' custody	<b>Category range</b> 9 months – 2 year's custody
Category 2	<b>Starting point</b> 2 year's custody	<b>Starting point</b> 1 years' custody	<b>Starting point</b> 9 months custody
	<b>Category range</b> 1 –4 years' custody	<b>Category range</b> 9 months – 2 years custody	<b>Category range</b> 6 months – 1 year's custody
Category 3	<b>Starting point</b> 1 years' custody	<b>Starting point</b> 9 months' custody	<b>Starting point</b> High level community order
	<b>Category range</b> 9 months – 2 years' custody	<b>Category range</b> 6 months – 1 year's custody	<b>Category range</b> Medium level community order – 6 months custody

**Question 3: Do you agree with the proposed sentence table for this offence? If not, please tell us why.**

### Aggravating and mitigating factors

The proposed aggravating and mitigating factors are shown below. There is an aggravating factor of '*offender involves others in conduct*' for cases where offenders have involved other people in the crime, perhaps asking them to send false incriminating messages or to make false allegations and so on. There is then a mitigating factor of '*the offender was in a lesser or subordinate role if acting with others/performed limited role under direction*', to capture cases where an offender acts in a limited role or takes a lesser role in the offending.

The rest of the factors are standard ones used in other guidelines. The Council did give careful thought as to whether there were other offence specific factors that should be included but concluded that there were not. As the list is non-exhaustive courts can take any other factors into account where relevant. The Council will be interested to hear views

from respondents as to whether there are any other aggravating or mitigating factors that should be considered.

### Factors increasing seriousness

#### Statutory aggravating factors:

- Previous convictions, having regard to a) **nature** of the offence to which condition relates and **relevance** to current offence; and b) **time** elapsed since conviction
- Offence committed on bail

#### Other aggravating factors:

- Offender involves others in conduct
- Vulnerable victim
- Commission of offence whilst under the influence of alcohol/drugs
- Evidence concealed/destroyed
- Offence committed on licence or post sentence supervision or while subject to court order(s)

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- Determination, and/or demonstration of steps taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability (where not taken into account at step one)
- Age and/or lack of maturity
- Sole or primary carer for dependent relatives

**Question 4: Do you agree with the proposed aggravating and mitigating factors?**

**Question 5: Do you have any other comments on this guideline?**

# Witness intimidation

This guideline is for witness intimidation offences (Criminal Justice and Public Order Act 1994, s.51(1) and s.51(2)).

- S.51(1) creates an offence directed at acts against a person assisting in the investigation of an offence or a witness or potential witness or juror or potential juror whilst an investigation or trial is in progress; and
- 51(2) creates an offence directed at acts against a person who assisted in an investigation of an offence or who was a witness or juror after an investigation or trial has been concluded.

The offence is triable either way with a maximum penalty of 5 years' imprisonment. In 2020 around 180 offenders were sentenced for intimidating a witness. The vast majority of offenders are sentenced for s.51(1) offences. Most offenders sentenced for offences of witness intimidation are sentenced in the Crown Court (73 per cent in 2020).

There is existing guidance for the s.51(1) offence in the magistrates' court but currently no guidance for the Crown Court and no guidance for the s.51(2) offence. This revised guideline now provides guidance for both s.51 offences, across all courts. These offences cover a much narrower form of offending than perverting the course of justice offences, generally involving offenders intimidating witnesses to withdraw allegations or witness statements, or not to give evidence at court and so on. Although there can be some crossover between the two offences, witness intimidation is a distinct offence in its own right, so although there are some common factors between the two offences, there are factors solely specific to this offence.

## Step One

The first step of the guidelines is to consider the culpability level of the offender and the harm caused by the offence by the assessment of a series of factors.

### Culpability factors

The high culpability factors are designed to capture the most serious instances of offending, such as *'actual or threat of violence to witnesses and/or their families'*. Also proposed is *'deliberately seeking out witnesses'* to cover cases where the offender goes to considerable length to find out where witnesses live. *'Breach of bail conditions'* is also proposed as this makes the offending more serious if, in committing the offence, the offender breaches their bail conditions such as not to contact the witness involved. *'Conduct over a sustained period of time'* is included as a prolonged period of conduct is more serious than a one-off incident which would fall into lower culpability. If an offender plans the offending and uses a variety of different methods to commit the offence, recruiting others to assist in the offence, sometimes whilst they themselves are in custody, or using social media, and so on, this makes the offending more serious so a factor of *'sophisticated and/or planned nature of conduct'* is proposed for high culpability.

In medium culpability a proposed factor is *'non-violent conduct amounting to a threat'*. This is less serious than the actual or threat of violence in high culpability and could comprise of approaching witnesses, following them, making verbal comments and so on. Also included

are the factors below to help courts assess if offending should fall into medium culpability, being neither the most, nor least serious offending of its type.

- 'Other cases that fall between categories A and C because:
  - Factors are present in A and C which balance each other out **and/or**
  - The offender's culpability falls between the factors described in A and C'

In lower culpability there are the factors listed below. The first is designed to capture offending that was the result perhaps of a chance encounter with a witness in a street, a brief incident that was not planned and during which they took the opportunity to intimidate them. The other two factors are common within other guidelines, and are designed for offenders who have been coerced into the offending, or whose responsibility for the offence is reduced.

- Unplanned and/or limited in scope and duration
- Involved through coercion, intimidation or exploitation
- Offender's responsibility substantially reduced by mental disorder or learning disability

The proposed culpability factors are below. The Council is interested in the views of consultation respondents on the factors included, and any additional factors which should be considered.

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

**Culpability demonstrated by one or more of the following :**

#### **A - High culpability**

- Actual or threat of violence to witness and/or their families
- Deliberately seeking out witnesses
- Breach of bail conditions
- Conduct over a sustained period of time
- Sophisticated and/or planned nature of conduct

#### **B – Medium culpability**

- Non-violent conduct amounting to a threat
- Other cases that fall between categories A and C because:
  - Factors are present in A and C which balance each other out **and/or**
  - The offender's culpability falls between the factors described in A and C

#### **C- Lower culpability**

- Unplanned and/or limited in scope and duration

- Involved through coercion, intimidation or exploitation
- Offender's responsibility substantially reduced by mental disorder or learning disability

**Question 6: Do you have any comments on the culpability factors? Are there any that should be removed or added?**

## Harm factors

The proposed category one harm factors for this offence consider both the impact of the offence on victims, and the impact on the justice system. The first factor in the list, '*contact made at or in vicinity of victim's home*', reflects the impact on the victim if the offence takes place near their home, a place they are entitled to feel safe, causing fear and anxiety that the offender knows where they live and may return again. The second factor is '*serious distress caused to the victim*' to reflect the serious distress and upset caused to victims of this offence, regardless of where the offence takes place. The last factor in the list is '*serious impact on the administration of justice*', to reflect the impact this offending can have on the justice system, such as trials being halted, cases being unable to proceed, criminality going unchecked, and so on.

The proposed factors in harm category two are designed to capture offending which is serious, but not as serious as the offending which would fall into category one harm, so '*some distress caused to victims*' and '*some impact on administration of justice*'. Category three harm has one proposed factor of '*limited effects of the offence*', designed to capture cases where the harm caused is quite limited. Sentencers can place offences in this category if the harm caused by the offence is less serious than cases that fall into category two.

The proposed factors are set out below.

Harm	
The level of harm is assessed by weighing up all the factors of the case.	
Category 1	<ul style="list-style-type: none"> <li>• Contact made at or in vicinity of victim's home</li> <li>• Serious distress caused to victim</li> <li>• Serious impact on administration of justice</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• Some distress caused to the victim</li> <li>• Some impact on administration of justice</li> </ul>
Category 3	<ul style="list-style-type: none"> <li>• Limited effects of the offence</li> </ul>

**Question 7: Do you agree with the approach to assessing harm? Are there any factors you think should be removed or included?**

**Step two**

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point of the sentence.

**Sentence levels**

The sentence ranges, as shown in the table below, have been formulated using statistical data from the Ministry of Justice's CPD. This shows that 63 per cent of offenders were sentenced to immediate custody. A further 26 per cent received a suspended sentence, 7 per cent received a community order, 1 per cent received a fine and 2 per cent were otherwise dealt with<sup>3</sup>. The ACSL for this offence was 11 months. Of those sentenced to custody, 72 per cent received a custodial sentence of 12 months or less.

The Council's aim in creating this guideline is to reflect current sentencing practice for this offence, and to encourage consistency of approach to sentencing, not to change current sentencing practice. The top of the range is proposed at 4 years, as in 2020 the longest sentence given was 3 years' custody and, since 2010, there have been no offenders sentenced to a custodial sentence of more than 4 years.

<b>Culpability</b>			
<b>Harm</b>	<b>A</b>	<b>B</b>	<b>C</b>
<b>Category 1</b>	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 9 months' custody
	<b>Category range</b> 1– 4 years' custody	<b>Category range</b> 9 months-2 years' custody	<b>Category range</b> 6 months- 1 year's custody
<b>Category 2</b>	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 9 months custody	<b>Starting point</b> 6 months' custody
	<b>Category range</b> 9 months-2 years' custody	<b>Category range</b> 6 months – 1 year's custody	<b>Category range</b> High level community order -9 months' custody
<b>Category 3</b>	<b>Starting point</b> 9 months' custody	<b>Starting point</b> 6 months' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b>	<b>Category range</b>	

<sup>3</sup> Ibid

	6 months – 1 year's custody	High level community order- 9 months' custody	<b>Category range</b> Low level community order- 6 months' custody
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**Question 8: Do you agree with the proposed sentence table for this offence? If not, please tell us why.**

### Aggravating and mitigating factors

The majority of these factors are the same as those discussed for perverting the course of justice, for a discussion on these please see pages 9-10.

Specific to this offence is an aggravating factor of '*use of social media*', as, if an offender uses social media to intimidate witnesses, this could aggravate the offence.

The proposed aggravating and mitigating factors are shown below.

#### Factors increasing seriousness

##### Statutory aggravating factors:

- Previous convictions, having regard to a) **nature** of the offence to which condition relates and **relevance** to current offence; and b) **time** elapsed since conviction
- Offence committed on bail

##### Other aggravating factors:

- Offender involves others in conduct
- Use of social media
- Vulnerable victim
- Commission of offence whilst under the influence of alcohol/drugs
- Evidence concealed/destroyed
- Offence committed on licence or post sentence supervision or while subject to court order(s)

#### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- Determination, and/or demonstration of steps taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability (where not taken into account at step one)
- Age and/or lack of maturity
- Sole or primary carer for dependent relatives

***Question 9: Do you agree with the proposed aggravating and mitigating factors?***

***Question 10: Do you have any other comments on this guideline?***

# Equality and diversity

The Sentencing Council considers matters relating to equality and diversity to be important in its work. The Council is always concerned if it appears that the guidelines have different outcomes for different groups. The Council has had regard to its duty<sup>4</sup> under the Equality Act 2010 in drafting these proposals, specifically with respect to any potential effect of the proposals on victims and offenders with protected characteristics. There may be many causes for disparities in sentencing, some of which the Council is not able to do anything about.

The Council has also commissioned an independent external contractor to undertake a project to review our work for any potential to cause disparity in sentencing across demographic groups. Aspects to be examined will include those such as the language used, factors, offence context, expanded explanations and structure of sentencing guidelines. The work will also consider whether any aspects of our processes of guideline development and revision have any implications for equalities and disparity in sentencing and how the Council can best engage with underrepresented groups to increase awareness and understanding of sentencing guidelines.

The available demographic data, (sex, age group and ethnicity of offenders) is examined as part of the work on each guideline, to see if there are any concerns around potential disparities within sentencing. For some offences it may not be possible to draw any conclusions on whether there are any issues of disparity of sentence outcomes between different groups caused by the guidelines. However, the Council takes care to ensure that the guidelines operate fairly and includes reference to the Equal Treatment Bench Book in all guidelines:

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<sup>4</sup> The Public Sector Equality Duty (PSED) is a duty set out in section 149 of the Equality Act 2010 (the 2010 Act) which came into force on 5 April 2011. It is a legal duty which requires public authorities (and those carrying out public functions on their behalf) to have “due regard” to three “needs” or “limbs” when considering a new policy or operational proposal. Complying with the duty involves having due regard to each of the three limbs:

The first is the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act. The second is the need to advance equality of opportunity between those who share a “protected characteristic” and those who do not. The third is to foster good relations between those who share a “protected characteristic” and those who do not.

Under the PSED the protected characteristics are: race; sex; disability; age; sexual orientation; religion or belief; pregnancy and maternity; and gender reassignment. The protected characteristic of marriage and civil partnership is also relevant to the consideration of the first limb of the duty.

Section 149 of the Equality Act 2010 contains further detail about what is meant by advancing equality of opportunity and fostering good relations

Guideline users should be aware that the  [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Where the data has shown evidence of disparity in sentence outcomes for some groups of offenders, the Sentencing Council has placed wording in the relevant guidelines, to draw sentencers' attention to these disparities and to signpost courts to important information within the Equal Treatment Bench Book. Once the Council has considered the latest available data for this offence alongside responses received to this consultation, the Council will consider before publishing a definitive guideline whether similar wording is necessary. The current available demographic data can be seen within the data tables at: [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

The potential for disparities in sentencing to arise from aspects of sentencing guidelines may not be obvious and we are therefore seeking views widely on any such potential impacts. We would like to hear from those reading this document on these matters.

We would like to know whether there is anything in the draft guidelines we are consulting on which could cause, or contribute to, such disparities across different groups, and / or whether any changes to the draft guidelines could be made to address any disparities. These could relate to:

- the language used;
- culpability and harm factors;
- mitigating and aggravating factors;
- the expanded explanations;
- the context in which the offending takes place;
- the structure of the guidelines.

**Question 11: Are there any aspects of the draft guidelines that you feel may cause or increase disparity in sentencing?**

**Question 12: Are there any existing disparities in sentencing of the offences covered in this guideline that you are aware of, which the draft guideline could and should address?**

**Question 13: Are there any other matters relating to equality and diversity that you consider we ought to be aware of and / or that we could and should address in the guideline?**

**Question 14: Do you have any other comments on the proposed guidelines that have not been covered elsewhere?**

# Annex A

## Consultation Questions

### Perverting the course of justice

**Question 1: Do you have any comments on the culpability factors? Are there any that should be removed or added?**

**Question 2: Do you agree with the approach to assessing harm? Are there any factors you think should be removed or included?**

**Question 3: Do you agree with the proposed sentence table for this offence? If not, please tell us why.**

**Question 4: Do you agree with the proposed aggravating and mitigating factors?**

**Question 5: Do you have any other comments on this guideline?**

### Witness intimidation

**Question 6: Do you have any comments on the culpability factors? Are there any that should be removed or added?**

**Question 7: Do you agree with the approach to assessing harm? Are there any factors you think should be removed or included?**

**Question 8: Do you agree with the proposed sentence table for this offence? If not, please tell us why.**

**Question 9: Do you agree with the proposed aggravating and mitigating factors?**

**Question 10: Do you have any other comments on this guideline?**

### Equality and Diversity

**Question 11: Are there any aspects of the draft guidelines that you feel may cause or increase disparity in sentencing?**

**Question 12: Are there any existing disparities in sentencing of the offences covered in this guideline that you are aware of, which the draft guideline could and should address?**

**Question 13: are there any other matters relating to equality and diversity that you consider we ought to be aware of and / or that we could and should address in the guideline?**

**Question 14: Do you have any other comments on the proposed guidelines that have not been covered elsewhere?**

# Annex B

## Draft Guidelines

## Perverting the Course of Justice

**Common law**

**Triable only on indictment**

**Maximum: Life imprisonment**

**Offence range: Community order – 7 years' custody**

**STEP ONE****Determining the offence category**

The court should determine the offence category with reference only to the factors in the table below. In order to determine the category the court should assess **culpability** and **harm**.

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

<b>CULPABILITY</b>	
Demonstrated by one or more of the following:	
<b>A-</b> High Culpability	<ul style="list-style-type: none"> <li>• Conduct over a sustained period of time</li> <li>• Sophisticated and/or planned nature of conduct</li> <li>• Underlying offence very serious</li> </ul>
<b>B-</b> Medium culpability	<ul style="list-style-type: none"> <li>• Other cases that fall between categories A and C because:               <ul style="list-style-type: none"> <li>○ Factors are present in A and C which balance each other out <b>and/or</b></li> <li>○ The offender's culpability falls between the factors described in A and C</li> </ul> </li> </ul>
<b>C-</b> Lower culpability	<ul style="list-style-type: none"> <li>• Unplanned and/or limited in scope and duration</li> <li>• Unsophisticated nature of conduct</li> <li>• Underlying offence was not serious</li> <li>• Involved through coercion, intimidation or exploitation</li> <li>• Offender's responsibility substantially reduced by mental disorder or learning disability</li> </ul>

<b>HARM</b>	
<b>The level of harm is assessed by weighing up all the factors in the case.</b>	
Category 1	<ul style="list-style-type: none"> <li>• Serious consequences for an innocent person(s) as a result of the offence (for example time spent in custody/arrest)</li> <li>• Serious distress caused to innocent party (for example loss of reputation)</li> <li>• Serious impact on administration of justice</li> <li>• Substantial delay caused to the course of justice</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• Suspicion cast upon an innocent person as a result of the offence</li> <li>• Some distress caused to innocent party</li> <li>• Some impact on administration of justice</li> <li>• Some delay caused to the course of justice</li> </ul>
Category 3	<ul style="list-style-type: none"> <li>• Limited effects of the offence</li> </ul>

## STEP TWO

## Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<b>Starting Point</b> 4 years' custody <b>Category Range</b> 2 - 7 years' custody	<b>Starting Point</b> 2 years' custody <b>Category Range</b> 1 -4 years' custody	<b>Starting Point</b> 1 year's custody <b>Category Range</b> 9 months - 2 years' custody
<b>Category 2</b>	<b>Starting Point</b> 2 years' custody <b>Category Range</b> 1 -4 years' custody	<b>Starting Point</b> 1 year's custody <b>Category Range</b> 9 months - 2 years' custody	<b>Starting Point</b> 9 months' custody <b>Category Range</b> 6 months - 1 year's custody
<b>Category 3</b>	<b>Starting Point</b> 1 year's custody <b>Category Range</b> 9 months - 2 years' custody	<b>Starting Point</b> 9 months' custody <b>Category Range</b> 6 months - 1 year's custody	<b>Starting Point</b> High level community order <b>Category Range</b> Medium level community order - 6 months custody

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

## Factors increasing seriousness

*Statutory aggravating factors:*

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

*Other aggravating factors:*

- Offender involves others in the conduct
- Vulnerable victim
- Commission of offence whilst under the influence of alcohol or drugs
- Evidence concealed/destroyed
- Offence committed on licence or post sentence supervision or while subject to court order(s)

#### **Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder, learning disability (where not taken into account at step one)
- Age and/or lack of maturity
- Sole or primary carer for dependent relatives

#### **STEP THREE**

##### **Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

#### **STEP FOUR**

##### **Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

#### **STEP FIVE**

##### **Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

#### **STEP SIX**

##### **Compensation and ancillary orders**

In all cases, the court should consider whether to make compensation and/or other ancillary orders. Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

- [Ancillary orders – Magistrates’ Court](#)
- [Ancillary orders – Crown Court Compendium](#)

## STEP SEVEN

### Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

## STEP EIGHT

### Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 52 of the Sentencing Code](#)

# **Witness Intimidation**

**Criminal Justice and Public Order Act 1994, s.51(1) and s.51(2)**

**Triable either way**

**Maximum: 5 years' custody**

**Offence range: Community Order- 4 years' custody**

**STEP ONE****Determining the offence category**

The court should determine the offence category with reference only to the factors in the table below. In order to determine the category the court should assess **culpability** and **harm**.

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

<b>CULPABILITY</b>	
Demonstrated by one or more of the following:	
<b>D-</b> High Culpability	<ul style="list-style-type: none"> <li>• Actual or threat of violence to witnesses and/or their families</li> <li>• Deliberately seeking out witnesses</li> <li>• Breach of bail conditions</li> <li>• Conduct over a sustained period of time</li> <li>• Sophisticated and/or planned nature of conduct</li> </ul>
<b>E-</b> Medium culpability	<ul style="list-style-type: none"> <li>• Non-violent conduct amounting to a threat</li> <li>• Other cases that fall between categories A and C because:               <ul style="list-style-type: none"> <li>○ Factors are present in A and C which balance each other out <b>and/or</b></li> <li>○ The offender's culpability falls between the factors described in A and C</li> </ul> </li> </ul>
<b>F-</b> Lower culpability	<ul style="list-style-type: none"> <li>• Unplanned and/or limited in scope and duration</li> <li>• Involved through coercion, intimidation or exploitation</li> <li>• Offender's responsibility substantially reduced by mental disorder or learning disability</li> </ul>
<b>HARM</b>	
<b>The level of harm is assessed by weighing up all the factors in the case.</b>	
Category 1	<ul style="list-style-type: none"> <li>• Contact made at or in vicinity of victim's home</li> <li>• Serious distress caused to victim</li> <li>• Serious impact on administration of justice</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• Some distress caused to the victim</li> <li>• Some impact on administration of justice</li> </ul>
Category 3	<ul style="list-style-type: none"> <li>• Limited effects of the offence</li> </ul>

## STEP TWO

## Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<b>Starting Point</b> 2 years' custody <b>Category Range</b> 1 -4 years' custody	<b>Starting Point</b> 1 year's custody <b>Category Range</b> 9 months-2 years' custody	<b>Starting Point</b> 9 months' custody <b>Category Range</b> 6 months - 1 year's custody
<b>Category 2</b>	<b>Starting Point</b> 1 year's custody <b>Category Range</b> 9 months -2 years' custody	<b>Starting Point</b> 9 months' custody <b>Category Range</b> 6 months - 1 year's custody	<b>Starting Point</b> 6 months custody <b>Category Range</b> High level community order - 9 months' custody
<b>Category 3</b>	<b>Starting Point</b> 9 months' custody <b>Category Range</b> 6 months -1 years' custody	<b>Starting Point</b> 6 months custody <b>Category Range</b> High level community order – 9 months' custody	<b>Starting Point</b> Medium level community order <b>Category Range</b> Low level community order – 6 months custody

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

**Factors increasing seriousness***Statutory aggravating factors:*

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

*Other aggravating factors:*

- Offender involves others in the conduct
- Use of social media

- Vulnerable victim
- Commission of offence whilst under the influence of alcohol or drugs
- Evidence concealed/destroyed
- Offence committed on licence or post sentence supervision or while subject to court order(s)

**Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions **or** no relevant/recent convictions
  - Remorse
  - Good character and/or exemplary conduct
  - The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
  - Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
  - Mental disorder, learning disability (where not taken into account at step one)
  - Age and/or lack of maturity
  - Sole or primary carer for dependent relatives
-

**STEP THREE****Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

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If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

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In all cases, the court should consider whether to make compensation and/or other ancillary orders. Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

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[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

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The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 52 of the Sentencing Code](#)

