

**Sentencing Council meeting:**  
**Paper number:**

**30 July 2021**  
**SC(21)JUL04 - Perverting the Course of  
Justice and Witness intimidation**

**Lead Council member:**  
**Lead official:**

**Juliet May**  
**Mandy Banks**  
**0207 071 5785**

## **1 ISSUE**

1.1 This is the first meeting to discuss and agree the scope of the project. There are three further meetings scheduled, with a consultation to start in January next year, although timings are only indicative at this stage. In order to progress the work it would be helpful if the offences to be included in the project are agreed today, in order for guideline development to take place over the summer.

## **2 RECOMMENDATION**

2.1 At today's meeting the Council are asked:

- To agree the offences to be included within the project

## **3 CONSIDERATION**

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

3.1 Previously in a discussion of future guidelines and priorities the Council agreed that perverting the course of justice (PTCJ) and witness intimidation should be added to the work plan. Due to pressure of other work there has not been time to start this project until now. There are also a number of other related offences that could potentially be included within the project, which are discussed further on in the paper.

3.2 Volumes for all the offences discussed in the paper are shown at **Annex A**. Volumes for 2020 offences are included however, these should be treated with caution as this is the first year of Covid-19 affected data and its possible that volumes of offenders may be lower than they would otherwise have been. Therefore, 2019 figures have been used in the discussion, however, it is worth noting that the distribution of sentencing outcomes seen in 2020 are broadly in line with those seen in 2019. Generally, as can be seen in **Annex A** and in line with the overall trends seen in sentencing, volumes for these offences have been decreasing over time.

3.3 Starting with PTCJ, there is no current guideline for this offence. It is a common law offence, triable only on indictment, with a maximum penalty of life imprisonment. In 2019, around 580 offenders were sentenced for this offence, with the majority receiving a custodial sentence (51 per cent received immediate custody and 43 per cent suspended). The ACSL was around 14 months.

3.4 For witness intimidation, Section 51 of the Criminal Justice and Public Order Act 1994 creates two offences:

- 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**.

3.5 There was a guideline for the [s.51\(1\) offence](#) only in the old Magistrates Court Sentencing Guideline (MCSG). This was not included in the recent work to revise the MCSG, so it is in need of revising as it currently offers little in the way of guidance. Both offences are triable either way, with a maximum penalty of five years imprisonment.

3.6 In 2019, around 210 offenders were sentenced for the s.51(1) offence, with the majority receiving a custodial sentence (60 per cent received immediate custody and 31 per cent suspended). The ACSL was around 10 months. In 2019 for the s.51(2) offence only around 20 offenders were sentenced. A decision needs to be made as to whether to include a guideline for the s.51(2) offence or not given the low volumes, and if it is to be included, whether it would be feasible to develop one guideline for both the s.51(1) *and* the (2) offence.

***Question 1: Does the Council wish to include guidance for the s.51(2) offence? If so, is the Council content that further work is carried out over the summer to see whether or not it would be practical to develop one guideline for both s.51(1) and s.51(2)?***

*Other related offences not currently within the scope of the project*

*Perjury*

3.7 There currently is no guideline for perjury offences. By section 1(1) of the Perjury Act 1911, perjury is committed when:

- a lawfully sworn witness or interpreter in judicial proceedings
- wilfully makes a false statement

- which he knows to be false or does not believe to be true, and
- which is material in the proceedings.

The offence is triable only on indictment and carries a maximum penalty of seven years' imprisonment and/or a fine.

3.8 Volumes for these offences are very low. For the s.1 offence, there have been very few offenders sentenced over the last 11 years and no offenders sentenced since 2015. For a s.1A offence, (false unsworn statement under evidence) there were 4 offenders sentenced in 2019. All offenders sentenced in 2019 received a custodial sentence of some kind. As noted above, volumes of offenders sentenced are virtually nil. Although the Council has on occasion produced guidelines for offences with very low volumes, it is suggested that there are no compelling reasons to justify developing a guideline for this offence, so it is recommended that this offence is not included in the project.

***Question 2: Does the Council agree not to include perjury offences within the scope of the project?***

*Contempt*

3.9 There is also no current guideline for contempt cases. These cases are a mixture of common law and statute and are dealt with differently depending on the type of contempt and the type of court. Magistrates' courts can only deal with a contempt that takes the form of disruptive behaviour in the court or a refusal to give evidence and, in those situations the court can deal with the offender summarily (ie on the day). The Crown Court can deal with a larger range of contempt summarily or for other types of contempt an application must be made to the High Court.

3.10 There can be civil contempt cases, such as breach of an order made, and criminal contempt, conduct which goes beyond mere non-compliance with a court order or undertaking and involves a serious interference with the administration of justice. Criminal contempt of court may arise in many ways and in a variety of forms, such as newspapers publishing information in breach of reporting restrictions; disorderly behaviour in court; taking photographs or recording in court; disobeying a witness summons.

3.11 There is considerable overlap between contempt and other offences against public justice and between the various types of contempt. In 2019 there were around 50 offenders (summary only) sentenced for this offence. There has been only one indictable only case sentenced since 2010.

3.12 It may also be helpful to note that the Law Commission may undertake some work in this area as part of its 14<sup>th</sup> Programme, a review of the law of contempt of court as it

interacts with the criminal law. In earlier work on contempt the Commission identified a lack of clarity surrounding what behaviour counts as a contempt in the face of the court and the fact that it is dealt with differently by different courts. They have also stated that there may be merit in considering a more general review and codification of the law. If this work goes ahead any proposals for amending offences or changes to legislation would be some way off.

3.13 It is recommended that contempt cases are not included within the scope of this project for a number of reasons. Volumes of cases sentenced are low and given the complexity of procedure for these cases it would be very difficult to develop a guideline, it would probably need to be 3 or 4 guidelines, depending on venue, type of contempt, and so on. The fact that it would be difficult is not a reason by itself not to try to develop the guidelines, but it would be time consuming and for such volumes it may not be the best use of Council's limited time with a full work plan. In addition, there is also the potential work in this area by the Law Commission. If the Council wished to develop guidelines for contempt more work would need to be done to scope out exactly what this would involve and would slow down the project from the timescales outlined at the start of the project. It may be helpful to note that Juliet, the guideline lead, supports both recommendations not to include perjury or contempt offences within the scope of the project.

***Question 3: Does the Council agree not to include contempt offences within the scope of the project? Or are there any compelling reasons why the Council think it should be included?***

*Assisting an offender*

3.14 There is also no current guideline for assisting an offender offences. This offence (section 4 of the Criminal Law Act 1967) occurs when someone who knows or believes another person has committed an offence (and that person **has** committed that or another offence) does something to impede the arrest or prosecution of the other person. The offence of assisting an offender can be an alternative to the principal offence – so, for example, if two defendants are charged with murder it is possible that one might be convicted of the murder and the other of assisting an offender.

3.15 The offence can only be committed where a relevant offence has previously been committed by the person assisted, and proof of that person's guilt is an essential element in proof of this offence – although this does not necessarily mean that the other person has to have been convicted of the principal offence. Where there are issues around proving that the principal offence was committed an alternative would be to charge perverting the course of

justice. The maximum sentence depends upon the offence committed by the other person:

- Where the principal offence is murder: maximum is 10 years
- Where the principal offence is subject to a sentence of 14 years, the maximum is 7 years
- Where the principal offence is subject to a sentence of 10 years, the maximum is 5 years
- In other cases: the maximum is 3 years

3.16 In 2019, around 80 offenders were sentenced for this offence. The different statutory maximum depending on the principal offence would make this a complicated guideline to develop. It is recommended that this offence is not included within the project for a number of reasons. There are very low volumes of cases each year, and although there are guidelines for other offences with low volumes and there are guidelines which have more than one stat max, the project would be time consuming and for low volumes it may not be the best use of Council resources to include this offence with a full work plan. In addition, courts could use the new PTCJ guideline as an analogous offence to this one to assist when sentencing in the absence of an offence specific guideline.

***Question 4: Does the Council agree not to include assisting an offender offences within the scope of the project? Or are there any compelling reasons why this offence should be included?***

***Question 5: Are there any other related offences the Council thinks should be considered to be included within the project?***

#### **4 EQUALITIES**

4.1 The available demographic data, (sex, age group and ethnicity of offenders) will be provided and examined to see if there are any concerns around potential disparities within sentencing. However, due to the low volumes of many of these offences it may not be possible to draw any conclusions on whether there are any issues of disparity of sentence outcomes between different groups. However, care can be taken to ensure that the guideline operates fairly.

***Question 6: Does the Council have any particular concerns around equalities for these offences at this early stage of the project?***

#### **5 IMPACT AND RISKS**

5.1 There have been no risks identified at this early stage of the project.

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**Annex A:** Number of adult offenders sentenced for perverting the courts of justice offences, 2010-2020.

	Number of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>1</sup>
Perverting the course of justice	1,114	984	870	932	929	898	781	788	629	576	404
Intimidating a witness	430	438	322	327	364	405	413	324	275	213	154
Threatening a witness	105	80	67	48	50	52	48	48	30	24	21
Perjury (section 1)	0	1	1	3	5	4	0	0	0	0	0
Perjury (section 1A)	0	2	3	1	6	11	12	11	3	4	3
Contempt of court (summary)	0	66	55	60	67	73	70	86	76	52	20
Contempt of court (indictable)	0	0	0	0	0	1	0	0	0	0	0
Assisting an offender - murder	11	16	10	17	12	23	28	16	18	26	16
Assisting an offender - indictable offence (except murder)	51	38	34	57	40	38	47	33	31	41	18
Assisting an offender - triable either way offences only	5	15	14	14	15	16	7	17	10	12	8
<b>Total</b>	<b>1,716</b>	<b>1,640</b>	<b>1,376</b>	<b>1,459</b>	<b>1,488</b>	<b>1,521</b>	<b>1,406</b>	<b>1,323</b>	<b>1,072</b>	<b>948</b>	<b>644</b>

Source: Court Proceedings Database, Ministry of Justice

Note:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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