



Justice Committee

**The Right Honourable Lord Justice Holroyde
The Sentencing Council for England and Wales**

20 July 2022

By email only

Justice Committee response to Sentencing Council consultation: Perverting the Course of Justice and Witness Intimidation guidelines

Dear Tim,

Thank you very much for giving my Committee the opportunity to respond to the Sentencing Council's consultation on the Perverting the Course of Justice and Witness Intimidation guidelines. We are grateful also to the Council for sharing the other responses to the consultation with us in advance of our submission.

Perverting the course of justice and witness intimidation are serious offences that strike at the heart of the criminal justice system. It is important that these offences result in proportionate sentences that serve as a deterrent to others. We welcome the Council's decision to develop these guidelines so as to encourage consistency in sentencing for these offences.

Perverting the course of justice guideline

In relation to the proposed culpability factors, the high culpability factor of "underlying offence very serious" and the lower culpability factor of "underlying offence was not serious" could be problematic. We recognise that the seriousness of the underlying offence is an established factor for the courts to take into account when deciding on the sentence for perverting the course of justice. Nevertheless, if these factors are to be included, it could be beneficial to offer more guidance on whether, for example, summary offences should be considered "not serious". Similarly, without further guidance sentencers will have to decide what constitutes "a very serious" offence, which could result in unintended consequences.

In terms of the proposed harm factors, the distinction between "serious consequences for an innocent party as a result of offence", which is a category 1 harm factor, and "suspicion cast upon an innocent party as a result of offence", which is a category 2 harm factor, could be problematic. The casting of "suspicion" could itself be considered to have "serious consequences for an innocent party", including serious distress and loss of reputation that can have significant adverse social and professional consequences. In relation to the category 2 factors, it is difficult to foresee how this offence could not cause at least "some impact on the administration of justice". As an alternative, the Council could consider expanding category 3 and using intermediary factors for category 2 harm, so "limited impact on administration of



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justice” as a category 3 harm, “significant impact on administration of justice” as category 2 and “very significant impact on administration of justice” for category 1.

In relation to the proposed sentence table, given the established position of the courts that only the most exceptional case of perverting of course of justice would not result in an immediate sentence of imprisonment, it would seem appropriate that category 3 C should have a starting point of 3 months custody as opposed to a high level community order.

We would also note that as the maximum sentence for this offence is life imprisonment, it would be appropriate to include a reminder above the table that in cases of exceptional gravity, sentences above the top of the range may be appropriate. We note that this reminder was included in the domestic burglary guideline.

In relation to the aggravating factors, we consider that it could be appropriate to include a factor “Offender holds position of trust”. Given that this offence causes such damage to the integrity of the justice system, it is particularly important that where offenders hold a position of trust within society, for example as a holder of public office or a role within the justice system, that should be considered a factor that increases the seriousness of the offence.

It could also be relevant to include an additional mitigating factor to cover the situation where the offender has been subject to domestic violence. We acknowledge that in such circumstances the sentencer would be able to use the lower culpability factor of “Involved through coercion, intimidation or exploitation”, but we nonetheless thought it should be considered whether it should be included as a specific mitigating factor.

Witness intimidation

In relation to the culpability factors, the distinction between the high culpability factor of “actual or threat of violence to witnesses and/or their families” and the medium culpability factor of “Non-violent conduct amounting to a threat” could lead to some difficulties for sentencers. The Council should consider if each of these factors could be made clearer. At present, it is unclear whether an implied threat of violence would be caught by “threat of violence” or “Non-violent conduct amounting to a threat”.

In relation to the category 1 harm factor of “contact made at or in vicinity of victim’s home”, we would suggest that this should also include the vicinity of the victim’s place of work. The Council could also consider whether any threats made in the presence of children could also be included as a category 1 harm. We would also suggest that the Council consider whether sentencers may need some additional guidance to distinguish between category 2 and category 3 levels of harm.

In relation to the proposed sentence table, we would ask the Council to consider whether Category 3 C should have a starting point of a high level community order instead of a medium level community order.



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Finally, the Council should consider whether threats conducted in the vicinity of court should be an additional aggravating factor.

Yours sincerely,

Sir Robert Neill MP
Chair
Justice Committee