

Sentencing Council meeting:
Paper number:

19 November 2021
**SC(21)NOV04 - Perverting the Course of
Justice and Witness intimidation**

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1 ISSUE

1.1 This is the fourth meeting to discuss the guidelines and will focus on proposed sentencing levels. There is one further meeting to sign off the guideline and to look at the proposed draft resource assessment (RA) ahead of a planned consultation next Spring.

2 RECOMMENDATION

2.1 At today's meeting the Council are asked:

- To consider and agree the sentence levels for the two guidelines

3 CONSIDERATION

Perverting the Course of Justice (PTCJ)

3.1 The proposed sentence levels for this offence can be seen at page 4 of **Annex A**. These have been developed after considering current sentencing practice, reading transcripts of sentenced cases and after discussion with Juliet, the guideline lead. The draft sentence ranges have been tested by resentencing cases from transcripts using the draft guideline, to see what the sentence would be using the guideline, compared to the actual sentence given. The ranges proposed are based on current sentencing practice, with the assumption that the Council does not wish to alter sentencing practice. Page one of **Annex B** tells us that the average custodial sentence (ACSL) in 2020 was 14 months (mean) and 8 months (median).

3.2 The Council will see from page two that the vast majority of offenders received custody for this offence (51 per cent received immediate custody and 42 per cent suspended sentence (SSO) in 2020). Quite a large proportion of offenders received an SSO and this has been accounted for in the sentencing tables by having starting points and ranges around two years, which allows for these sentences to be suspended. Only 4 per cent of offenders received a community order, with just a handful of offenders receiving either a discharge or fine (less than 1 per cent). For this reason, the bottom of the range in C3 starts at a community order, if required courts could depart from the guideline to impose a fine or discharge.

3.3 The spread of sentence lengths can be seen on page two, and the Council will note that in 2020, the majority of offenders were sentenced to 12 months or less (68 per cent). This perhaps reflects the principle stated in *Abdulwahab*¹ that although these offences generally call for a custodial sentence, it doesn't have to be a sentence of great length. Currently, the top of the range is proposed at six years, in A1. Given that the statutory maximum is life imprisonment, this may seem low, but it reflects the sentences being imposed for this offence, 98 per cent of offenders got a sentence of six years or less. If the Council confirms that it does not want to change sentencing practice, but is concerned that six years might seem low, an option might be to have some wording similar to that used in other guidelines:

'For cases of particular gravity, sentences above the top of the range may be appropriate'

This allows courts to sentence above the top of the range for particularly serious cases, while allowing the top of the range to reflect current sentencing practice.

Question 1: Does the Council wish to maintain current sentencing practice for this offence? If so, does the Council agree with the proposed sentence ranges for this offence?

Question 2: Does the Council wish to add the wording regarding cases of particular gravity?

Witness Intimidation

3.4 The proposed sentence levels for this offence can be seen at page 4 of **Annex C**. As with PTCJ, these have been developed after considering current sentencing practice, reading transcripts of sentenced cases and after discussion with Juliet. The draft sentence ranges have been tested by resentencing cases from transcripts using the draft guideline, to see what the sentence would be using the guideline, compared to the actual sentence given. The ranges proposed are based on current sentencing practice, with the assumption that the Council does not wish to alter current sentencing practice. Page six of **Annex B** tells us that the ACSL in 2020 was 9 months (mean) and 8 months (median).

3.5 As with PTCJ, most offenders received a custodial sentence of some kind, however a higher proportion received immediate custody (63 per cent compared to 26 per cent receiving an SSO). Of those sentenced to immediate custody, 72 per cent received a custodial sentence of 12 months or less. The top of the range is proposed at 4 years, just below the statutory maximum of five years. In 2019, the longest sentence given was four years and in 2020 it was three years. Slightly more offenders receive a community order (7

¹ *Abdulwahab* [2018] EWCA Crim 1399.

per cent) than those for PTCJ offences, which is reflected within the draft ranges. The amount of offenders receiving a fine or disposal again is very low (less than 1 per cent) so these disposals have not been included as an option.

Question 3: Does the Council wish to maintain current sentencing practice for this offence? If so, does the Council agree with the proposed ranges for this offence?

3.6 At the last meeting the Council discussed the low culpability factor of '*unsophisticated nature of conduct*' in the Witness Intimidation guideline, and asked that it be reworded, perhaps looking at what the corresponding factor was in the MCSG guideline. The MCSG factor is '*sudden outburst in chance encounter*'. Arguably this type of low level offending behaviour is already captured in the other low culpability factor of '*unplanned and limited in scope and duration*'. It is difficult to think of types of offending that wouldn't be captured by the factor '*unplanned and limited in scope and duration*' so the suggestion is that we remove '*unsophisticated nature of conduct*' from the draft guideline, and leave the existing three low culpability factors, as can be seen on page two of **Annex C**.

In the category one harm factors for PTCJ we have '*serious impact on administration of justice*' and '*conduct succeeded in perverting the course of justice*', with '*some impact on administration of justice*' and '*conduct partially successful in perverting the course of justice*' in harm category two. Juliet has raised a concern as to whether both factors are necessary, what the distinction between the two is, as they seem to be different ways of expressing the same thing. Her suggestion is to remove the factor '*succeeded in perverting the course of justice*'. The factors referring to the success or otherwise in perverting the course of justice came from the factors set out in *Abdulwahab*. Also, the factors have evolved as the guideline has developed, prior to '*serious impact on administration of justice*' we had '*high level of financial costs (police/prosecution/court) incurred as a result of the offence*'.

Question 4: Does the Council agree to remove '*unsophisticated nature of conduct*' from low culpability?

Question 5: Does the Council wish to remove the three factors in harm that refer to the success or otherwise in perverting the course of justice?

4 EQUALITIES

4.1 Statistics showing sentencing outcomes by demographic group, (sex, age group and ethnicity of offenders) are attached at **Annex C** (page three for PCTCJ and page seven for witness intimidation.)

4.2 In 2020, the majority of adult offenders sentenced for perverting the course of justice were male (around three quarters). However, female offenders made up a larger proportion of offenders than the overall average for indictable offences. Across all offenders sentenced for indictable offences in 2020, 8 per cent were female compared to 26 per cent of perverting the course of justice offenders. This suggests that female offenders are over-represented for this offence compared with other indictable offences, however, the volumes of female offenders are still low.

4.3 When looking at sentencing outcomes, a higher proportion of males received an immediate custodial sentence than females (58 per cent compared to 31 per cent of females), whereas a higher proportion of females received a suspended sentence (56 per cent compared to 37 per cent of males). The ACSL was fairly consistent between the sexes, at around 14 months.

4.4 Of the adult offenders sentenced in 2020 whose ethnicity was known, 74 per cent were White and the majority of offenders of all ethnicities received a custodial sentence. The proportion of Black and Mixed ethnicity offenders receiving an immediate custodial sentence was higher than for White offenders (64 per cent compared to 53 per cent), however, the volume of Black and Mixed ethnicity offenders sentenced in 2020 was small, so care should be taken when drawing conclusions from this data.

4.5 The volume of adult offenders sentenced for intimidating a witness each year are low and in 2020 the majority of those sentenced were White males (making up 81 per cent of offenders where both sex and ethnicity was known in 2020).

4.6 To note, figures presented here are from 2020, for which volumes were affected by the COVID-19 pandemic, however, the demographic trends seen above are consistent with those seen in 2019.

Question 6: Does the Council have any comments or questions around this data?

5 IMPACT AND RISKS

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

Annex A

Perverting the Course of Justice

Common law

Triable only on indictment

Maximum: Life imprisonment

Offence range: Low level Community order – 6 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.**

CULPABILITY	
Demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• Conduct over a sustained period of time• Sophisticated and planned nature of conduct• Underlying offence very serious
B- Medium culpability	<ul style="list-style-type: none">• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ 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	<ul style="list-style-type: none">• Unplanned and 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

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

	<ul style="list-style-type: none">• Some delay caused to the course of justice
Category 3	<ul style="list-style-type: none">• Conduct did not succeed in perverting the course of justice• Limited effects of the offence

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
Category 1	Starting Point 4 years' custody Category Range 2 - 6 years' custody	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 years' custody Category Range 9 months - 2 years' custody
Category 2	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 years' custody Category Range 9 months - 2 years' custody	Starting Point 9 months' custody Category Range 6 months - 1 years' custody
Category 3	Starting Point 1 years' custody Category Range 9 months - 2 years' custody	Starting Point 9 months' custody Category Range 6 months - 1 years' custody	Starting Point High level community order Category Range 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
- Offence committed in a domestic context
- 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](#)).

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](#)

Annex B: Perverting the course of justice and witness intimidation data tables

Perverting the Course of Justice

Number and proportion of adult offenders sentenced for perverting the course of justice, 2010-2020

	Number of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Discharge	27	11	9	6	11	12	5	5	4	4	2
Fine	17	6	2	5	6	7	3	5	1	2	1
Community sentence	176	91	81	46	70	47	25	18	26	14	15
Suspended sentence	446	406	352	360	409	380	341	350	245	246	171
Immediate custody	441	463	420	510	430	447	402	394	338	294	206
Otherwise dealt with	7	7	6	5	3	5	5	16	15	16	9
Total	1,114	984	870	932	929	898	781	788	629	576	404

	Proportion of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Discharge	2%	1%	1%	1%	1%	1%	1%	1%	1%	1%	0%
Fine	2%	1%	0%	1%	1%	1%	0%	1%	0%	0%	0%
Community sentence	16%	9%	9%	5%	8%	5%	3%	2%	4%	2%	4%
Suspended sentence	40%	41%	40%	39%	44%	42%	44%	44%	39%	43%	42%
Immediate custody	40%	47%	48%	55%	46%	50%	51%	50%	54%	51%	51%
Otherwise dealt with	1%	1%	1%	1%	0%	1%	1%	2%	2%	3%	2%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Final average custodial sentence length (ACSL) for adult offenders sentenced to immediate custody for perverting the course of justice, 2010-2020

ACSL (years) ¹	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Mean	0.9	0.9	1.0	1.0	0.9	1.1	1.0	1.1	1.0	1.1	1.2
Median	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.8	0.7	0.8	0.7
Proportion of indeterminates ^{2,3}	0.2%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Notes:

1) Excludes life and indeterminate sentences

2) This is calculated as the number of offenders given an indeterminate custodial sentence, out of the number of offenders given a sentence of immediate custody.

- 3) For 2010-2012, the indeterminate sentence figures include the sentences of Imprisonment for Public Protection (IPP) and Extended Sentences for Public Protection (EPP). These sentences were introduced in 2005 and abolished in 2012.

Final sentence lengths⁴ received by adult offenders sentenced to immediate custody for perverting the course of justice, 2010-2020

	Number of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 1 year	340	359	298	389	345	329	300	270	259	197	140
1 to 2	78	73	88	73	53	75	70	76	54	72	38
2 to 3	12	20	19	29	20	24	20	27	16	17	17
3 to 4	0	2	0	0	0	0	0	1	0	1	1
4 to 5	9	7	11	12	12	13	8	16	6	5	6
5 to 6	0	1	1	1	0	1	2	2	2	0	0
6 to 7	0	1	1	1	0	0	1	2	0	0	2
7 to 8	0	0	2	4	0	0	0	0	0	0	1
8 to 9	0	0	0	0	0	1	0	0	0	0	0
9 to 10	0	0	0	1	0	1	1	0	0	0	0
Greater than 10 years	2	0	0	0	0	3	0	0	1	2	1
Indeterminate	0	0	0	0	0	0	0	0	0	0	0
Total	441	463	420	510	430	447	402	394	338	294	206

	Proportion of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 1 year	77%	78%	71%	76%	80%	74%	75%	69%	77%	67%	68%
1 to 2	18%	16%	21%	14%	12%	17%	17%	19%	16%	24%	18%
2 to 3	3%	4%	5%	6%	5%	5%	5%	7%	5%	6%	8%
3 to 4	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
4 to 5	2%	2%	3%	2%	3%	3%	2%	4%	2%	2%	3%
5 to 6	0%	0%	0%	0%	0%	0%	0%	1%	1%	0%	0%
6 to 7	0%	0%	0%	0%	0%	0%	0%	1%	0%	0%	1%
7 to 8	0%	0%	0%	1%	0%	0%	0%	0%	0%	0%	0%
8 to 9	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
9 to 10	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Greater than 10 years	0%	0%	0%	0%	0%	1%	0%	0%	0%	1%	0%
Indeterminate	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Notes:

- 4) Sentence length intervals do not include the lower bound but do include the upper bound sentence length. For example, the category 'Less than 1 year' includes sentence lengths less than or equal to 1 year, and '1 to 2 years' includes sentence lengths over 1 year and up to and including 2 years.

Number and proportion of adult offenders sentenced for perverting the course of justice, by **sex** and sentence outcome, 2020

Sex	Number of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
Female	2	1	4	60	33	7	107
Male	0	0	11	111	173	2	297
Not recorded/not known	0	0	0	0	0	0	0

Sex	Proportion of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
Female	2%	1%	4%	56%	31%	7%	100%
Male	0%	0%	4%	37%	58%	1%	100%
Not recorded/not known	-	-	-	-	-	-	-

Number and proportion of adult offenders sentenced for perverting the course of justice, by **age group** and sentence outcome, 20'20

Age group	Number of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
18 to 20	0	0	1	8	13	1	23
21 to 24	0	0	0	0	0	0	0
25 to 29	2	0	3	50	78	5	138
30 to 39	0	0	2	43	68	1	114
40 to 49	0	1	4	40	28	1	74
50 to 59	0	0	3	26	15	1	45
60 to 69	0	0	2	4	4	0	10
70 and over	0	0	0	0	0	0	0
Not recorded/not known	0	0	0	0	0	0	0

Age group	Proportion of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
18 to 20	0%	0%	4%	35%	57%	4%	100%
21 to 24	-	-	-	-	-	-	-
25 to 29	1%	0%	2%	36%	57%	4%	100%
30 to 39	0%	0%	2%	38%	60%	1%	100%
40 to 49	0%	1%	5%	54%	38%	1%	100%
50 to 59	0%	0%	7%	58%	33%	2%	100%
60 to 69	0%	0%	20%	40%	40%	0%	100%
70 and over	-	-	-	-	-	-	-
Not recorded/not known	-	-	-	-	-	-	-

Number and proportion of adult offenders sentenced for perverting the course of justice, by **ethnicity** and sentence outcome, 2020

Ethnicity	Number of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
Asian	0	0	3	14	14	0	31
Black	0	0	0	8	16	1	25
Mixed	0	0	0	4	9	1	14
Other	0	1	1	0	2	0	4
White	1	0	11	81	111	5	209
Not recorded/not known	1	0	0	64	54	2	121

Ethnicity	Proportion of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
Asian	0%	0%	10%	45%	45%	0%	100%
Black	0%	0%	0%	32%	64%	4%	100%
Mixed	0%	0%	0%	29%	64%	7%	100%
Other	0%	25%	25%	0%	50%	0%	100%
White	0%	0%	5%	39%	53%	2%	100%
Not recorded/not known	1%	0%	0%	53%	45%	2%	100%

Final average custodial sentence lengths (ACSL) received by adult offenders sentenced for perverting the course of justice, by sex, 2020

Sex	ACSL (years) ⁵	
	Mean	Median
Female	1.1	1.0
Male	1.2	0.7
Not recorded/not known	-	-

Final average custodial sentence lengths (ACSL) received by adult offenders sentenced for perverting the course of justice, by sex, 2020

Age group	Mean	Median
18 to 20	1.1	0.8
21 to 24		
25 to 29	0.9	0.7
30 to 39	1.1	0.7
40 to 49	1.5	0.9
50 to 59	2.5	0.7
60 to 69	*	*
70 and over	-	-
Not recorded/not known	-	-

Final average custodial sentence lengths (ACSL) received by adult offenders sentenced for perverting the course of justice, by sex, 2020

Ethnicity	Mean	Median
Asian	1.0	0.8
Black	1.1	1.0
Mixed	0.6	0.5
Other	*	*
White	1.2	0.7
Not recorded/not known	1.4	0.8

* = ACSL has not been calculated where the number of offenders sentenced to immediate custody is fewer than 5.

- = No offenders were sentenced to immediate custody.

Notes:

5) Excludes life and indeterminate sentences

Witness Intimidation

Number and proportion of adult offenders sentenced for witness intimidation, 2010-2020

	Number of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Discharge	13	7	5	2	4	3	6	4	2	1	0
Fine	4	3	0	2	0	5	3	2	1	1	1
Community sentence	106	73	54	39	46	51	32	22	29	15	13
Suspended sentence	145	140	95	102	115	147	143	128	88	71	46
Immediate custody	256	277	227	223	238	243	266	208	178	142	110
Otherwise dealt with	11	18	8	7	11	8	11	8	7	7	5
Total	535	518	389	375	414	457	461	372	305	237	175

	Proportion of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Discharge	2%	1%	1%	1%	1%	1%	1%	1%	1%	0%	0%
Fine	1%	1%	0%	1%	0%	1%	1%	1%	0%	0%	1%
Community sentence	20%	14%	14%	10%	11%	11%	7%	6%	10%	6%	7%
Suspended sentence	27%	27%	24%	27%	28%	32%	31%	34%	29%	30%	26%
Immediate custody	48%	53%	58%	59%	57%	53%	58%	56%	58%	60%	63%
Otherwise dealt with	2%	3%	2%	2%	3%	2%	2%	2%	2%	3%	3%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Final average custodial sentence length (ACSL) for adult offenders sentenced to immediate custody for witness intimidation, 2010-2020

ACSL (years) ¹	2010	2011 ⁶	2012	2013	2014	2015	2016	2017	2018	2019	2020
Mean	0.8	0.8	0.8	0.7	0.8	0.8	0.8	0.9	0.9	0.9	0.9
Median	0.6	0.7	0.7	0.5	0.7	0.7	0.7	0.8	0.8	0.8	0.8
Proportion of indeterminates ^{2,3}	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Notes:

6) Excludes 1 case of witness intimidation in 2011, where the data suggested that the sentence was above the statutory maximum for this offence (5 years' custody).

Final sentence lengths⁴ received by adult offenders sentenced to immediate custody for witness intimidation, 2010-2020

	Number of adult offenders sentenced										
	2010	2011 ⁶	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 1 year	200	220	185	185	187	191	198	152	128	102	79
1 to 2	41	48	38	31	45	44	60	48	40	36	28
2 to 3	10	6	2	6	5	8	7	6	7	3	3
3 to 4	1	0	0	0	0	0	0	0	0	0	0
4 to 5 years	4	2	2	1	1	0	1	2	3	1	0
Total	256	276	227	223	238	243	266	208	178	142	110

	Proportion of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 1 year	78%	80%	81%	83%	79%	79%	74%	73%	72%	72%	72%
1 to 2	16%	17%	17%	14%	19%	18%	23%	23%	22%	25%	25%
2 to 3	4%	2%	1%	3%	2%	3%	3%	3%	4%	2%	3%
3 to 4	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
4 to 5	2%	1%	1%	0%	0%	0%	0%	1%	2%	1%	0%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Number and proportion of adult offenders sentenced for witness intimidation, by sex and sentence outcome, 2020

Sex	Number of adult offenders sentenced							Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with		
Female	0	0	5	4	6	1	16	
Male	0	1	8	42	103	4	158	
Not recorded/not known	0	0	0	0	1	0	1	

Sex	Proportion of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
Female	0%	0%	31%	25%	38%	6%	100%
Male	0%	1%	5%	27%	65%	3%	100%
Not recorded/not known	0%	0%	0%	0%	100%	0%	100%

Number and proportion of adult offenders sentenced for witness intimidation, by **age group** and sentence outcome, 2020

Age group	Number of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
18 to 20	0	1	4	8	15	0	28
21 to 24	0	0	0	0	0	0	0
25 to 29	0	0	3	11	28	3	45
30 to 39	0	0	5	17	44	1	67
40 to 49	0	0	1	5	12	0	18
50 to 59	0	0	0	4	7	1	12
60 to 69	0	0	0	1	4	0	5
70 and over	0	0	0	0	0	0	0
Not recorded/not known	0	0	0	0	0	0	0

Age group	Proportion of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
18 to 20	0%	4%	14%	29%	54%	0%	100%
21 to 24	-	-	-	-	-	-	-
25 to 29	0%	0%	7%	24%	62%	7%	100%
30 to 39	0%	0%	7%	25%	66%	1%	100%
40 to 49	0%	0%	6%	28%	67%	0%	100%
50 to 59	0%	0%	0%	33%	58%	8%	100%
60 to 69	0%	0%	0%	20%	80%	0%	100%
70 and over	-	-	-	-	-	-	-
Not recorded/not known	-	-	-	-	-	-	-

Ethnicity	Number of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
Asian	0	0	0	0	6	0	6
Black	0	0	1	1	3	0	5
Mixed	0	0	1	1	0	0	2
Other	0	0	0	0	0	0	0
White	0	1	9	37	77	4	128
Not recorded/not known	0	0	2	7	24	1	34

Ethnicity	Proportion of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
Asian	0%	0%	0%	0%	100%	0%	100%
Black	0%	0%	20%	20%	60%	0%	100%
Mixed	0%	0%	50%	50%	0%	0%	100%
Other	-	-	-	-	-	-	-
White	0%	1%	7%	29%	60%	3%	100%
Not recorded/not known	0%	0%	6%	21%	71%	3%	100%

Final average custodial sentence lengths (ACSL) received by adult offenders sentenced for witness intimidation, by sex, age and ethnicity, 2020

Sex	ACSL (years) ⁵	
	Mean	Median
Female	0.6	0.5
Male	0.9	0.8
Not recorded/not known	*	*

Age group	Mean	Median
18 to 20	0.9	0.8
21 to 24	-	-
25 to 29	0.9	0.8
30 to 39	0.8	0.7

40 to 49	0.6	0.6
50 to 59	1.4	1.5
60 to 69	*	*
70 and over	-	-
Not recorded/not known	-	-

Ethnicity	Mean	Median
Asian	0.7	0.5
Black	*	*
Mixed	-	-
Other	-	-
White	0.9	0.8
Not recorded/not known	0.9	0.8

Please note: The figures above include those 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.

Annex C

Witness Intimidation

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

Triable either way

Maximum when tried summarily: 6 months or level 5 fine

Maximum when tried on indictment: 5 years

Offence range: Low Level 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.**

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

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
Category 1	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 years' custody Category Range 9 months-2 years' custody	Starting Point 9 months' custody Category Range 6 months - 1 years' custody
Category 2	Starting Point 1 years' custody Category Range 9 months -2 years' custody	Starting Point 9 months' custody Category Range 6 months - 1 years' custody	Starting Point 6 months custody Category Range High level community order - 9 months' custody
Category 3	Starting Point 9 months' custody Category Range 6 months -1 years' custody	Starting Point 6 months custody Category Range High level community order – 9 months' custody	Starting Point Medium level community order Category Range 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
- Offence committed in a domestic context
- 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](#)).

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](#)

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