

# **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: x – xx 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>• Threats of violence to witnesses and/or their families; deliberately seeking out witnesses</li><li>• Breach of bail conditions</li><li>• Sustained period of conduct</li><li>• Offender involves others in the conduct</li><li>• Offence committed in the context of other serious criminal activity</li></ul>
<b>B-</b> Medium culpability	<ul style="list-style-type: none"><li>• Non-violent conduct amounting to a threat (for example staring at, approaching or following witnesses)</li><li>• Attempts to alter or stop evidence</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>C-</b> Lower culpability	<ul style="list-style-type: none"><li>• Offence 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>	
The level of harm is assessed by weighing up all the factors in the case.	
Category 1	<ul style="list-style-type: none"><li>• Considerable detrimental impact on administration of justice</li><li>• Considerable distress caused to victim</li><li>• Contact made at or in vicinity of victim's home</li></ul>
Category 2	<ul style="list-style-type: none"><li>• Some detrimental impact on administration of justice</li><li>• Some distress caused to the victim</li></ul>
Category 3	<ul style="list-style-type: none"><li>• Limited effect 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 years' custody <b>Category Range</b> 6 months-2 years' custody	<b>Starting Point</b> 6 months' custody <b>Category Range</b> High level community order - 1 years' custody
<b>Category 2</b>	<b>Starting Point</b> 1 years' custody <b>Category Range</b> 6 months -2 years' custody	<b>Starting Point</b> 6 months' custody <b>Category Range</b> High level community order - 1 years' custody	<b>Starting Point</b> High level community order <b>Category Range</b> Medium level community order - 6 months' custody
<b>Category 3</b>	<b>Starting Point</b> 6 months' custody <b>Category Range</b> High level community order - 1 years' custody	<b>Starting Point</b> High level community order <b>Category Range</b> Medium level community order – 6 months' custody	<b>Starting Point</b> Medium level community order <b>Category Range</b> Low level community order – High level community order

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:*

- Offence committed in a domestic context
- Commission of offence whilst under the influence of alcohol or drugs

- Leading role in group
- 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
  - Admissions to police in interview
  - Ready co-operation with the authorities
  - 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
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**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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