

Sentencing Council meeting:
Paper number:

Lead Council member:
Lead official:

27 January 2023
**SC(23)JAN07 - Perverting the Course of
Justice and Witness intimidation**
Juliet May
Mandy Banks
Mandy.Banks@sentencingcouncil.gov.uk
0207 071 5785

1 ISSUE

1.1 This is the second meeting following the consultation on the draft perverting the course of justice (PTCJ) and revised witness intimidation guidelines. This meeting will focus on responses regarding harm factors, subsequent meetings will look at the responses regarding the rest of the draft guidelines, sentence levels, aggravating and mitigating factors and so on.

2 RECOMMENDATION

2.1 At today's meeting the Council is asked:

- To consider the information on orders/police warnings in relation to witness intimidation
- To consider the consultation responses regarding harm

3 CONSIDERATION

3.1 The changes agreed at the last meeting to the culpability factors have been made and can be seen in track changes with the PTCJ and witness intimidation guidelines, attached at **Annexes A** and **B** respectively. An issue was raised on the witness intimidation guideline during the discussion last time on the high culpability factor of 'breach of bail conditions'. The Chief Magistrate and others had raised a concern that as drafted this factor could cause too many cases to fall into culpability A. They suggested that a distinction needs to be drawn between cases where it is a breach of a condition expressly imposed to prevent an offence of witness intimidation, and cases where the breach occurs incidentally to the offence. The Chief Magistrate also suggested that the words 'and/or protective order and/or after Police warning re conduct' be added to the factor. The Council debated what types of police warnings there are, and their status, and wanted further information before making a

decision. Nick and his colleagues have kindly looked into this issue for the Council and have provided information attached at **Annex C**.

3.2 The Council can see that there are a number of orders and notices available. The high culpability factor could be reworded to 'breach of specific bail conditions imposed to prevent witness intimidation' to deal with the concern that otherwise too many cases could fall into culpability A. Or the factor could be reworded to 'breach of specific bail conditions imposed to prevent witness intimidation and/or protective order and/or after Police warning re conduct'.

Question one: How does the Council wish to reword this high culpability factor?

3.3 Turning now to the consideration of consultation responses regarding harm factors. The proposed harm factors were generally agreed with by respondents, subject to some points of detail discussed below. During the road testing of guidelines sentencers felt the draft guidelines helped them determine which harm category to apply. Starting with the witness intimidation guideline (**Annex B**). A considerable number of respondents including the Magistrates Association (MA), the Justice Committee (JC), the Chief Magistrate, Council of HM Council of District Judges, and the Justices' Clerks' Society (JCS) all suggested that place of work should be added to the first harm factor in category one. This factor currently is 'contact made at or in vicinity of victim's home'. As this is a location in which victims can easily be found, respondents argued that contact at a victim's workplace is also common, particularly in cases with a domestic abuse context, and that this can be very distressing for victims. However, the risk with doing this is that contact at most places a victim could be found could end up falling into category one harm. There is an argument for identifying 'home' within category one as contact there, a place people are entitled to feel safe, is particularly intrusive and threatening, but less so for other places. Therefore, it is suggested that the Council do not reword this factor.

Question two: Does the Council agree not to reword the first category one harm factor to include reference to place of work?

3.4 A number of respondents suggested that there should be a reference to the families or children of victims within the harm factors. Professor Alisdair Gillespie from Lancaster University and the JC both suggested that there should be a reference to harm caused to the family or children of the victim within category one harm. HM Council of Judges suggest that there should be a reference to the impact on family members/children if the contact occurs in

their presence either at step one, or if not, as an aggravating factor. If the Council wish to incorporate harm caused to the victim's family/children this could be done at step one or two. The second factor within category one harm could be reworded to 'serious distress caused to the victim and/or their family and/or children'. Or there could be an aggravating factor of 'contact made in the presence of the victim's family and/or children'. As with the discussion above, the risk in broadening the category one factors is that many more cases will fall into the top category, with far fewer cases captured by the other categories. So, it is recommended that if the Council wish to include a reference to families and children, it is done as a step two factor. If of course contact is made at home in their presence then this will be captured by category one in any case.

Question three: If the Council wishes to include a reference to families and children, does it agree it should be as a step two factor?

3.5 A small number of individual magistrates, one magistrates' bench and the JCS commented on the 'limited effects of the offence' factor in category three harm. The JCS said that this factor is unclear and proposed instead 'harm which falls below categories one and two'. One magistrate disliked the factor saying there were never just 'limited' effects of the offence, another magistrate said that it left too much judgement to the sentencer so instead suggested 'no effect'. One magistrate said this factor needed to be more specific. The magistrates bench suggested instead rewording to 'minimal distress and/or harm caused to the victim'. The JC said that generally additional guidance was needed to distinguish between category two and three harm.

3.6 The proposal by the JCS to reword it as 'harm which falls below categories one and two' is perhaps an attractive one as it avoids the need to use a descriptive word of either 'little', 'limited', or 'minimal', terms people often object to as it can be seen to minimising the harm caused to victims. Although some respondents call for more guidance, the use of more neutral terminology here is an important consideration. Also, some guidance is still provided in that this category is for harm which is below that in category two. The JCS also suggest making the same change within the PTCJ guideline.

3.7 However, it is quite difficult to get the wording of category three right, to ensure that the appropriate level of harm is captured, and the wording does not have the opposite effect and instead push cases into categories one and two. On balance, it is suggested that the original wording of 'limited effects of the offence is kept', so that sentencers can see it as a meaningful option below 'some' harm in category three.

Question four: Does the Council agree not to reword the category three factor, but

leave as consulted on?

3.8 West London Magistrates bench commented that one of the most harmful things that can happen as a result of this offence is victims having to significantly change their lifestyle, either their home or work situation for fear of the consequences to them or their families of further contact. They stated that they did not feel the category one harm factors adequately reflect this. They propose an additional category one factor: 'victim caused to change lifestyle to avoid contact, e.g victim forced to move home or change employment'. Again, the risk with adding this factor is making category one harm top heavy, so it is suggested that if the Council wish to include reference to this impact, it is done as a step two factor.

Question five: Does the Council agree that if reference to a victim having to change their lifestyle to avoid contact is to be added, this should be as an aggravating factor?

3.9 The JCS suggest that there should be a category one factor relating to offences which occur in a custodial establishment. They argue that those in custody may be witnesses in other cases and may have significant grounds to fear violence as unlike other witnesses they are unlikely to be able to move location to avoid the intimidation. There could be a category one factor of 'offence occurred within a custodial establishment.' Perhaps there is a stronger argument for including this factor than the others discussed above, as it is akin to contact in a person's home which is in category one-except here the victim cannot move location.

Question six: Does the Council wish to add an additional category one harm factor of 'offence occurred within a custodial establishment'?

3.10 Now turning to the PTCJ guideline attached at **Annex A**. A small number of respondents questioned the use of terms used such as 'serious' 'substantial' 'some' etc, one magistrate saying they were 'woolly' and another saying they were too open to debate and needed better definition. In particular, the Sentencing Academy and Andrew Ashworth and The JC raised a concern with the harm factors relating to the impact on the administration of justice. They state that by virtue of the offence, almost all cases will result in some impact on the administration of justice. So as currently drafted, they argue almost all cases will be swept into category two harm, it being difficult to see which cases would fall into category three. They also suggest that courts may struggle to see the difference between 'some impact' and 'limited impact', although the difference in sentence severity between the two is significant.

3.11 They suggest rewording the harm factors to 'very significant impact on the administration of justice' in category one, 'significant impact on the administration of justice' in category two and 'low impact on the administration of justice' in category three. The Council will be aware that there have been previous discussions on the gradations of factors between the categories within many guidelines, whether to say 'serious' 'significant' etc. However, for this particular harm factor within this offence, these suggestions seem sensible, and should assist to make sure the appropriate category is selected. The risk otherwise as the respondents suggest is that cases would fall into category two rather than three. As there are the same factors within witness intimidation they also suggest this change is made on both guidelines.

3.12 One Judge within the road testing of the guideline commented that they did not like the phrase 'limited effects of the offence' page five of **Annex D**. As discussed earlier, the JCS proposed that category three within both guidelines is amended to 'harm which falls below categories one and two', but it is recommended that 'limited effects of the offence' is retained. To incorporate the 'low impact on the administration of justice' factor category three could be:

- Limited effects of the offence including, but not limited to, low impact on the administration of justice

Question seven: Does the Council agree to the rewording of the impact on administration of justice factors within both guidelines? And to retaining 'limited effects of the offence' within category three?

3.13 In the road testing of this guideline some comments were made by Judges that when words like 'some' rather than serious or significant were used in category two harm this leads to arguments by Counsel whether a case falls into category one or two. They asked whether there could be some guidance as to what is some or serious distress, like in the manslaughter or death by dangerous guidelines. As noted in paragraphs 3.10 and 3.11 these terms are very carefully considered by the Council. However, people sometimes still take issue with the terms, some like 'serious', some prefer 'significant, others dislike the word 'some' and so on. As they are very different offences and the guidelines are constructed differently It is not thought that anything could be usefully taken from the manslaughter or death by dangerous guidelines, and that additional guidance shouldn't really be needed to decide what constitutes serious harm.

3.14 However one Judge suggested the addition of the word 'some' in front of the first factor in category two harm so that it reads: 'some suspicion cast upon an innocent party as

a result of the offence' and another suggested that the fourth bullet point in category one is amended to: 'serious or substantial delay caused to the course of justice'. The addition of these words may be helpful to address concerns raised about these factors. One Judge noted that there was no explicit reference to the cost/impact on police in investigating false narratives, for example. The Council did consider doing so during guideline development but decided that this type of impact could be captured within the impact on administration of justice factors.

Question eight: Does the Council agree just to add the words 'some' to the category two harm factor and 'serious' to the category one factor but no other changes to the harm factors?

Question nine: Does the Council wish to include an explicit reference to the impact on police time/costs?

3.15 The London Criminal Courts Solicitors' Association (LCCSA) and the Suffolk Magistrates Bench both asked if it was necessary to have a separate harm factor for delay caused to the course of justice, as well as impact on the course of justice, arguing that delay would be captured within the impact on the course of justice. In developing the draft guidelines the Council felt it was right to have two separate factors on these points, but it is arguable that delay would be captured within the impact on the course of justice factor.

Question ten: Does the Council still wish to have two separate harm factors? Or just impact on the course of justice?

3.16 The JC, the Criminal Solicitors' Law Association (CLSA) and a magistrate raised a concern about the category one harm factor of 'serious consequences for an innocent party(ies) as a result of the offence' and the category two factor of 'suspicion cast upon an innocent party as a result of the offence (for example time spent in custody/arrest)'. They state that the casting of 'suspicion' could itself be considered to have serious consequences for an innocent party, including serious distress and loss of reputation, a false accusation made against a teacher for example. The magistrate felt that suspicion should also be a category three harm factor. Although there could be real consequences for innocent person of having suspicion cast upon them as suggested- it would not be the same level of harm caused as if they had been arrested or falsely convicted and sent to prison for a time.

Question eleven: Does the Council agree that the harm factor relating to suspicion stays within category two?

4 EQUALITIES

4.1 The consultation asked specific equality and diversity questions-this was also covered during the road testing interviews, this information will be considered at a later meeting.

5 IMPACT AND RISKS

5.1 There have been no risks identified at this time.

Blank page

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.**

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/or planned nature of conduct• <u>Underlying offence very serious</u>• <u>Breach of trust or abuse of position or office</u>
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/or limited in scope and duration• Unsophisticated nature of conduct• Underlying offence was not serious• Involved through coercion, intimidation or exploitation <u>or as a result of domestic abuse</u>• 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 party(ies) 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• Substantial delay caused to the course of justice
Category 2	<ul style="list-style-type: none">• Suspicion cast upon an innocent party as a result of the offence• Some distress caused to innocent party• Some impact on administration of justice• Some delay caused to the course of justice
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 4 years' custody Category Range 2 - 7 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
- 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
- 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, 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](#)

Blank page

Annex B

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.**

CULPABILITY	
Demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• Actual or threat 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/or 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>Contact with witness</u> u 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

HARM	
The level of harm is assessed by weighing up all the factors in the case.	
Category 1	<ul style="list-style-type: none">• Contact made at or in vicinity of victim's home• Serious distress caused to victim• Serious impact on administration of justice
Category 2	<ul style="list-style-type: none">• Some distress caused to the victim• Some impact on administration of justice
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
- 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
 - 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, 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](#)

Blank page

Sentencing Council

NPCC Criminal Justice Co-ordination Committee: Police use of Warnings & Notices.

Action: Use of Police Warnings in Witness Intimidation cases.

Security Classification NPCC Policy: Documents <u>cannot</u> be accepted or ratified without a security classification (Protective Marking may assist in assessing whether exemptions to FOIA <u>may</u> apply):	
OFFICIAL / OFFICIAL-SENSITIVE / OFFICIAL-SENSITIVE-COMMERCIAL/ OFFICIAL-SENSITIVE-PERSONAL / OFFICIAL-SENSITIVE-OPERATIONAL	
Freedom of information (FOI)	
This document (including attachments and appendices) may be subject to an FOI request and the NPCC FOI Officer & Decision Maker will consult with you on receipt of a request prior to any disclosure. For external Public Authorities in receipt of an FOI, please consult with npcc.foi.request@cru.pnn.police.uk	
Author:	AC Nick Ephgrave / CS Darius Hemmatpour
Force/Organisation:	National Police Chiefs' Council
Date Created:	2 nd November 2022
Coordination Committee:	Criminal Justice Co-ordination Committee
Portfolio:	Criminal Justice
Attachments @ para	N/A
Information Governance & Security	
In compliance with the Government's Security Policy Framework's (SPF) mandatory requirements, please ensure any onsite printing is supervised, and storage and security of papers are in compliance with the SPF. Dissemination or further distribution of this paper is strictly on a need to know basis and in compliance with other security controls and legislative obligations. If you require any advice, please contact npcc.foi.request@cru.pnn.police.uk	
https://www.gov.uk/government/publications/security-policy-framework/hmg-security-policy-framework#risk-management	

This paper sets out the types of warnings and notices available to the Police in supporting victims and witnesses against certain acts or behaviour by an offender that may be considered Witness Intimidation or Interfere with the Course of Justice.

In the majority of cases such warnings and notices are available through existing legislation that target areas of high harm or vulnerability. In these instances the legislation provides the opportunity for the Police to apply for a notice from the courts, considered to be an order of the court, restricting the subject/offender on carrying out certain types of act or behaviour or threats thereof, whether directly or indirectly.

In the majority of cases such ancillary orders can be applied from both criminal and civil courts, providing a range of notices that are considered criminal offences if breached.

Such restrictions imposed on the subject of any order often includes a focus on the prevention of witness intimidation and the interference of justice, in addition to any harmful acts towards those it aims to protect.



For the purpose of this document the various types of warnings, notices and orders have been listed into 3 categories:

- 1) Warnings, Notices & Civil Orders directly linked to the prevention of harm, witness intimidation and the interference of justice.
- 2) Warnings, Notices & Civil Orders directly linked to the prevention of harm and further offending **and could also be considered for using** to prevent witness intimidation or interference of justice.
- 3) Warnings, Notices & Civil Orders that solely relate to the prevention of harm or protection of others.

In practice many of the orders listed will be applied for in consultation with other agencies and third party advocacy services. Whilst those working in Police Public Protection and Safeguarding Teams are often seen as being critical in supporting vulnerable victims and witnesses, equally there a number of orders that are more appropriate for Neighbourhood Policing Teams (NPT) or Serious & Organised Crime Units (SOCU) to apply for.

1: Warnings, Notices & Civil Orders that are directly linked to the prevention of harm, witness intimidation and the interference of justice.

This first list of Civil Orders are frequently sought in order to support and protect victims and witnesses from a range of behaviours associated to the perpetrator of both reported crimes and non-crime incidents.

- **Domestic Violence Protection Notice and Order (DVPN/DVPO) - Section 24-33 Crime and Security Act 2010**

DVPNs/DVPOs are a civil order that fills a “gap” in providing protection to victims by enabling the police & magistrates to put in place protective measures in the immediate aftermath of a Domestic Abuse (DA) incident where there is insufficient evidence to charge a perpetrator.

DVPNs are prepared by dedicated officers within Police Safeguarding Teams. They are generally used for DA cases that are likely to end up NFA based on the victim’s limited engagement and history of abuse where the cases have failed to proceed. The focus of the DVPN is to provide an element of “breathing space” for the victim so that support & advocacy services can engage with and support the victim. They can only be obtained whilst the suspect is in custody for a DA related crime where the use of Bail conditions is unlikely.

A Superintendent or above must authorise a DVPN who will consider factors such as proportionality, necessity and protective measures for the victim. Once obtained an application to make the DVPN into a DVPO must occur within 48 hours of the DVPN being issued. The order will come with a power of arrest and if breached is a criminal offence.

Police present the DVPO case to court, either in person or virtually. Once issued details of the DVPO are loaded onto PNC. Management of those on DVPOs varies across forces, in the Metropolitan Police Service (MPS) the Prolific Offender Unit will manage these and target high harm offenders where breaches have occurred, including incidents of victim & witness interference.

DVPNs/DVPOs are soon to be replaced by the Domestic Abuse Prevention Order (DAPO) under the Domestic Act 2021.

- **Stalking Protection Order (SPO) - The Stalking Protection Act 2019**

This 2019 Act provides for early police intervention at the pre-conviction stage, to address stalking behaviour, before it escalates or becomes entrenched, by placing restrictions and/or positive requirements on suspects.

SPOs are generated following details of a reported Harassment or Stalking case recorded on the respective force crime recording system (MPS: CRIS & soon to be CONNECT). The case is reviewed by a nominated Detective within the Safeguarding team to establish if the incident meets the threshold for an SPO, with the OIC subsequently tasked to obtaining the order. The OIC then collates the relevant Statements and arrests the suspect before seeking authorisation from a Superintendent for the SPO. Once authorised a DC within the Safeguarding Unit will present the SPO request to the local court, highlighting the 3 main criteria of: Stalking is occurring, the risk to the victim and necessity to protect the victim.

Once granted a summons is issued which is served by the Safeguarding team on the suspect. Courts can issue full or Interim orders depending if there are issues raised by the defence team during application, however ultimately a full order will be sought and issued. Breach of the order is a criminal offence.

SPOs can be a standalone order- the burden of proof is civil for interim orders but become criminal for a full order. Victims are not required for SPO hearings.

- **Restraining Orders - Restraining Order (RO)- s.5 of the Protection from Harassment Act 1997**

ROs are issued either post-conviction or post-acquittal for the purpose of protecting a victim or victims, or any other person named, from conduct by the perpetrator which amounts to harassment or cause a fear of violence. This could include post-conviction witness intimidation.

In practice the orders can include the same conditions as those documented within an SPO and often sought as part of the post-investigation process by Safeguarding teams once the case has gone to trial and a conviction is likely. Any breach is considered a criminal offence and similar to DVPOs, will be pro-actively monitored by the Police and support services available to the victim. Such breaches often feature during MARAC and MASH meetings.

- **Non-Molestation Order (NMO)- s.42 of the Family Law Act 1996**

An NMO is a type of injunction that you can apply for through the family court. These orders are granted in order to prevent a perpetrator from causing harm to the victim or their children. The term "Harm" includes physical abuse, harassment, intimidation, psychological abuse, threats to cause harm, coercive/controlling behaviour and financial abuse.

Safeguarding teams will consider a non-molestation application alongside any SPO where the investigation is for a DA offence only, as both can run hand in hand. Often the restrictions in the NMO are the same as that in an SPO. Any breach of a NMO is a criminal offence with the breach recorded on PNC. Like ROs they are often monitored by Police Safeguarding Teams and 3rd party support services (for example IDVAs), again featuring frequently at MARAC & MASH meetings.

- **Protection from Harassment Order - Section 3A Protection from Harassment Act 1997**

Harassment warnings/notices. These no longer exist and were replaced by SPOs.

2: Warnings, Notices & Civil Orders directly linked to the prevention of harm and further offending and could also be considered to assist in preventing witness intimidation or interference of justice.

The following category of orders are not specifically designed to prevent offences such as witness intimidation or the interference of justice. However the behaviours they are associated with and the restrictions available within these orders can be considered in the management or prevention of such offences.

- **Violent Offences Protection Order and Notification (VOPO) - Section 98 of the Criminal Justice and Immigration Act 2008**

These orders are issued post-conviction for a specified offence or where the subject would have been convicted but is not guilty by reason of insanity or unfit to be tried (but charged).

VOPOs are used for offenders who continue to pose a risk of serious violence after their release from prison or when their licence has ceased. They are a preventative measure which are used to place controls on violent offenders in circumstances where they could potentially pose a danger to the public by placing restrictions on their behaviour.

Restrictions can include banning or limiting the offender from doing certain activities, visiting certain places or seeing certain people. In doing so the restrictions on seeing other people may well prevent cases of witness intimidation.

In practice these often form part of the MAPPA process as a consideration in managing Category 3 offenders who are deemed particularly violent individuals. They can also be applied for subjects who have committed offences & crimes abroad.

- **Serious Crime Prevention Order (SCPO)- Serious Crime Act 2007**

SCPOs are applied for via the Crown Court if a person has been convicted of a serious offence, or the High Court for a standalone application where the person has been involved in serious crime.

The aim of the order is to protect the public by preventing, restricting or disrupting involvement of the subject in serious crime. Restrictions imposed include financial, property or business dealings, travel restrictions and association/communication with other persons.

Given the severity of the cases these relate to in practice they are generally applied for by Police SOCUs and other specialist commands. Depending on the restrictions applied for regarding people associations, SCPOs could be considered for cases of witness intimidation or interference of justice.

- **Criminal Behaviour Order (CBO) - Section 22 Anti-social Behaviour, Crime and Policing Act 2014**

A CBO is designed to tackle the most serious and persistent anti-social individuals where their behaviour has brought them before a criminal court. The anti-social behaviour to be addressed does not need to be connected to the criminal activity which led to the conviction.

CBOs replaced Anti-Social Behaviour Order's (ASBO). They can be issued following conviction for any criminal offence by the courts and can prohibit the offender from doing anything described in the order. Courts must be satisfied that the offender has engaged in activity that amounts to harassment, alarm or distress. They typically last 1 to 3 years.

In practice CBOs are often coordinated through a multi-agency approach and can address typical ASB related issues, Hate Crime, Gang related crime and occasionally Domestic Abuse (DA). Whilst not often used for DA they can be an effective tool where a lesser type of order is required or where other civil orders may not be deemed suitable or available. These will often be considered at a MARAC or MASH. Given the issues of ASB linked to vulnerable victims they can be a useful notice/order in preventing witness intimidation or further offences.

Civil versions of CBOs namely Community Protection Notices (CPN) are available but only to address ASB, therefore not appropriate for managing witness intimidation.

- **Civil Injunction - Section 1 Anti-Social Behaviour, Crime and Policing Act 2014**

An injunction can be made against any person aged ten or over who has acted in an anti-social manner. It's a type of civil law remedy and isn't intended to punish the offender. An injunction is a court order to prohibit a person from continuing to carry out specified anti-social acts.

Injunctions can include a power of arrest in cases where the perpetrator has used or threatened violence, or if there is a significant risk of harm to others. Breaching an injunction is not a criminal offence. These could be considered for witness intimidation but in practice other available orders are more likely to be sought.

[3: Warnings, Notices & Civil Orders that solely relate to the prevention of harm or protection of others.](#)

The following listed set of orders and notices are based on protecting the wider public from harm and/or to prevent the subject from committing further offences. Whilst commonly used by Police Forces they do not have a direct correlation to offences of witness intimidation.

- **Gang Related Violence Injunction - Sections 34-50 Policing and Crime Act 2009**

Gang injunctions allow courts to place a range of prohibitions and requirements on the behaviour and activities of a person involved in gang-related violence. These conditions could include prohibiting someone from being in a particular place or requiring them to participate in rehabilitative activities.

Police and local authorities can apply for injunctions to prevent gang related violence and drug dealing activity. They typically last for 2 years.

- **Sexual Risk Order (SRO) - Section 122A of the Sexual Offences Act 2003**
- **Sexual Harm Prevention Order (SHPO) - Section 103A of the Sexual Offences Act 2003**

SHPO/SROs can be applied for either whilst the offender is in court in relation to an offence in Schedule 3 or 5 of the SOA 2003 or where a Chief Officer of Police or the Director General of the National Crime Agency applies by complaint to a Magistrates' Court.

Prohibitions imposed by a SHPO are those which are necessary for the purpose of protecting the public from sexual harm from the defendant. An order may, for example, prohibit someone from undertaking certain forms of employment or prohibit the offender from engaging in particular activities on the internet. Breach of an SHPO is a criminal offence.

- **Notification Order (NO) - Section 97 Sexual Offences Act 2003**

Section 97 provides a power for the police to apply to the magistrates' court for an order making an offender who has been convicted, cautioned or had a relevant finding made against them, in respect of a "relevant offence" (certain Sexual related offences within the 2003 Sexual Offences Act & relevant offence if abroad). The order requires the subject to register their personal details with the Police. Breaches will result in arrest and conviction at court for a more stringent sentence.

Notification Orders can be made where a person has a conviction for an equivalent sexual offence, outside of the United Kingdom and they are found, or anticipated to reside within the force area. There is no requirement to consider that the person is currently subject of investigation for another matter, or poses an identified risk of harm, mere confirmation of a qualifying foreign offence is sufficient for the order to be made.

- **Slavery and Trafficking Prevention Order - Section 14 & 15 of the Modern Slavery Act 2015**
- **Slavery and Trafficking Risk Order - Section 23 of the Modern Slavery Act 2015**

STPOs are civil orders aimed at protecting the public in general or specific persons from the physical or psychological harm which would result if the defendant committed a slavery or trafficking offence. They are a preventative measure to deter unlawful and harmful activity.

An STPO on conviction can be made by a court at the point of conviction of a defendant convicted of a slavery or trafficking offence where there is a risk that the defendant may commit another slavery or human trafficking offence and poses a risk of harm to the public.

- **Threats to Life Warning Notices (Osman Warning)- 1998 legal case of Osman vs United Kingdom**

Threat to life warnings (Commonly known as Osman warnings) are issued if police have intelligence of a real and immediate threat to the life of an individual. Police officers will visit the subject at home to inform them of the potential danger. Advice to the subject will include changing their daily schedule, vigilance for suspicious activity and a temporary home move.

Threat to life warnings' are a police response to the human rights court's requirement that the state sometimes has to be proactive in protecting people from threats.

- **Female Genital Mutilation Order (FGMO) - Section 5A of the FGM Act 2003**

Protecting persons at risk or known to be at risk of FGM or had FGM carried out on them.

- **Forced Marriage Protection Order (FMPO) - Section 63A Family Law Act 1996**

Protecting people from being forced into marriages or already in a forced marriage.

- **Section 59 warning - Section 59 Police Reform Act 2002.**

For the anti-social use of motor vehicles.

- **Premises Closure Order (PCO)- ASB Anti-social Behaviour, Crime and Policing Act 2014**

Applications for PCOs are effective in targeting premises where residents have engaged in disorderly, offensive or criminal behaviour on the premises, or that the use of the premises has resulted in serious nuisance to members of the public. The PCO is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring.

Darius Hemmatpour
C/Supt
National Criminal Justice Coordinator

Blank page

Perverting the Course of Justice and Witness Intimidation: road testing summary

Introduction

Perverting the course of justice offences cover a wide range of conduct. Despite being a serious Common Law and indictable-only offence, with a statutory maximum sentence of life imprisonment, no current guideline exists.

Witness intimidation offences include any attempt to threaten or persuade a witness not to give evidence, or to give evidence in a way that is favourable to the defendant. While the Sentencing Guidelines Council (SGC) published Magistrates' Court Sentencing Guidelines (MCSG) in 2008, no current guideline exists for use in Crown Courts.

The Council therefore consulted on (March to June 2022) a new guideline for perverting the course of justice and a revised guideline for witness intimidation.

Methodology

Small-scale qualitative road testing took place in April 2022 to explore if the draft guidelines work as anticipated and to identify any issues. For perverting the course of justice, attention was paid to whether the guideline assists judges to sentence the broad types of behaviour under this offence. For witness intimidation, it was important to understand if the draft guideline reflects the more personal nature of the offence, as well as the broad range of cases covered. For both, sentencing levels are expected to remain consistent after the introduction of the new/ revised guidelines.

As perverting the course of justice is indictable-only and the majority of witness intimidation cases are tried in the Crown Court, interviews were conducted with Crown Court judges only. Fifteen interviews were completed for perverting the course of justice; nine for witness intimidation. Each judge sentenced two scenarios using **either** the draft guideline for perverting the course of justice or for witness intimidation. Scenarios were based on real cases.

Summary of main points

- The judges felt **both guidelines could be applied to the wide range of offending behaviour** covered, and they found **both guidelines** were generally '*clear*' and '*easy to interpret*'.
- The judges felt both guidelines helped them determine the **category of culpability** to apply, although there were some conflicting views on the 'medium' category, and while application of culpability across three of the scenarios was largely consistent, it was more mixed in the scenario that was expected to be medium culpability.
- The judges felt both guidelines helped them determine the **category of harm** to apply, with application of harm largely consistent across the scenarios, with the exception of one scenario that was on the cusp of 2/3, which was reflected in sentencing outcomes.
- There were mixed views on the **sentencing tables for perverting the course of justice**: while some felt the ranges and starting points were '*about right*', others noted a starting point of a community order (CO) '*sends out the wrong message*', and asked for clarification on the more serious (A1) offences. There were no particular comments on the **sentencing tables for witness intimidation**.
- There were **mixed views on whether figures for suspended sentence orders (SSO) would be maintained under either guideline**, with some judges perceiving these would be unchanged, while others felt levels would shift.

This paper discusses the results of road testing on the draft perverting the course of justice guideline, then the revised witness intimidation guideline. Summary tables for each scenario are presented in Annex A.

Perverting the course of justice

Scenario A

R, aged 22, was a passenger in a car driven by her boyfriend when they were involved in an incident with another car. Her boyfriend had been tailgating the car in front and driving aggressively. The two cars then drew level at traffic lights and her boyfriend got out of the car and shouted abuse towards the occupant of the other car and tried to make him get out of the car to fight. The occupant refused and drove off. The cars drew level again and again R's boyfriend got out of the car and behaved aggressively towards the other driver. The other driver did not engage and drove off. He called the police and told them what happened, giving the licence plate of the car R had been travelling in. The police interviewed R's boyfriend who claimed that he was the victim in the incident, and that it was the other driver who had been abusive and threatening towards him. He said his girlfriend could corroborate his version of events. He then persuaded R to back up his version of events. The police telephoned R who maintained her boyfriend's version of events, saying it was the other driver who was the instigator. The police asked her to come in for an interview to discuss the incident during which she admitted what the correct version of events was, that her boyfriend was the instigator. R was charged with perverting the course of justice. She pleaded guilty at the first opportunity. The court saw medical evidence stating that she suffers from depression. She has no previous convictions and is in her final year of university. She was very remorseful. (Her boyfriend was also charged with the same offence.)

This was expected to be medium culpability (C), medium harm (2) case, bordering C3. C2 starting point is nine months, range six months to one years' custody. There are no aggravating factors; there are a number of mitigating factors; and a guilty plea. The sentence could therefore reduce to a six-month suspended sentence order (SSO). Key findings are below; the summary table can be found in Annex A, Table 1.

Key findings

- Fourteen judges sentenced this as **culpability** C, citing factors such as it being unplanned, unsophisticated, and the underlying offence was not serious; one as B¹.
- As anticipated, there was some disagreement about the level of **harm**: three judges sentenced this as 2 (citing there was suspicion cast on an innocent party, some distress caused to an innocent party, or some delay to the course of justice), four were borderline 2/3, and eight stated 3 (all cited 'limited effects of the offence').
- Accordingly, there were a range of **starting points**: the three judges selecting harm level 2 all chose nine months' custody; three of the judges selecting 2/3 gave COs (one explicitly stated six months, the others did not) while the fourth would impose a conditional discharge²; and of the eight who chose level 3 harm, one chose a CO of six months, five chose higher level COs (HLCOs), and two chose custodial sentences (one of six months, one of nine months).
- All 14 of the judges who completed the exercise agreed there were no **aggravating** factors.

¹ The judge noted that it wasn't unplanned but also did not involve coercion, intimidation or exploitation so chose B.

² The judge felt a case of this kind 'should not be tried in the Crown Court' and would therefore impose a conditional discharge; they did not therefore complete the rest of the sentencing exercise for this scenario.

- The majority of the judges completing the exercise noted **mitigating** factors such as: no previous convictions, remorse, and mental disorder (some noted they would require further evidence). Other factors mentioned were: *'final year at university'* with one noting the possible *'consequence of a sentence'*, another *'thus she's got every prospect'* and another *'potential good career'*, as well as *'coercion'* or *'under pressure'*.
- A range of **pre-guilty plea final sentences** were given³: two of those selecting harm level 2 gave six month custodial sentences, one nine months; the three selecting 2/3⁴ all gave COs (with one explicitly stating six months); and a more mixed picture emerged for the eight who chose 3 – one would defer sentencing for six months, one stated it would be *'the bottom of the range [in the table]'*, two would give HLCOs, with one additionally specifying 240 hours of unpaid work and 15 rehabilitation activity requirement (RAR) days, one would suspend the sentence, one would give nine months custody, and two did not give pre-guilty plea sentences.
- The 14 judges completing the exercise all amended their sentences in light of the **guilty plea**: eight gave various levels of CO (CO through to HLCO) with attachments such as unpaid work and RAR, and six judges gave SSOs.
- When asked for their **views of the final sentence**, those who gave COs were generally *'pleased'* or *'happy'* with their sentences, with one noting *'the expectation is custody and at the very least a SSO... ordinarily I would not have considered to justify for a CO, although that is exactly the right disposal in this case'* and another noting they *'cannot ever remember imposing a CO for an offence of this nature... this is giving a judge... some flexibility'*. Those who gave SSOs were also generally content: one noted they were *'very comfortable with it'*, another that it *'may appear lenient but... she has lost her good character – serious impact'*, another that *'she can get her life back on track with a suspended sentence'*, one wondered *'could I have brought it down to HLCO?'*, while another noted a *'HLCO would be too low'* and another noted *'I'm not very happy about a non-custodial sentence for this sort of crime... I take the view it should be marked by a prison sentence'*

Scenario B

W, worked as a police officer investigating the supply of class A drugs and was trusted to do undercover work. He falsely accused another police officer, who was also his romantic partner, of drug use and class A drug dealing. Over a period of months, he made phone calls to other police officers and agencies asserting this allegation, and also involved his brother to act out certain roles to assist in the conspiracy to make the allegations more believable. He also planted drugs within her possessions, for the investigating officers to find. His partner was arrested and spent several hours in custody following her arrest, and then had to wait 6 weeks while the case was investigated. After 6 weeks she was told no further action would be taken, as W's allegations were proved to be false. The court was told that there would be considerable further work for the authorities due to appeals against conviction from cases which he had had involvement in. He was found guilty after a trial. He is aged 30. It seemed the reason he had committed the offence was because he was jealous of her success at work and of her being around male colleagues.

This was expected to be a high culpability (A), high harm (1) case: starting point four years, with a range of two to seven years' custody. There is an aggravating factor of involving others, and mitigation of previous good character, however it is such a serious offence the sentence is likely to be at the top

³ Some did not explicitly state a pre-guilty plea sentence.

⁴ As noted, one Judge did not complete the exercise.

of the range (seven years). Key findings are summarised below, followed by a summary of comments from using the guideline across both scenarios and through further questions. Table 2 is in Annex A.

Key findings

- All 15 judges agreed this was **culpability A**, citing factors such as it was sophisticated and/ or planned, over a sustained period of time, and the underlying offence was very serious.
- Fourteen judges agreed this was **harm 1**, mainly citing there were serious consequences for an innocent party, and a serious impact on the administration of justice; one judge selected level 2 stating there was suspicion cast upon, and some distress caused, to an innocent party.
- The majority of judges chose a **starting point** of four years; of those who did not, one noted the *'quantity of drugs could make a difference to the starting point'* and therefore raised the starting point from four to six years, another stated eight years (but did not specify why), while a third had chosen A2, and chose the corresponding starting point of two years.
- Eleven judges selected **aggravating** factors such as the offender involved others (six judges), evidence concealed/ destroyed (two judges), as well as listing other factors not specified in the guideline such as *'in a position of trust'* or *'abuse/ misuse of that position'*.
- Eight judges said there were no **mitigating** factors, while the remaining seven noted no previous convictions or previous good character.
- There were a range of **final sentences** given, from three years and three months, through to seven years, with most sentences (12) falling between five to seven years.
- When asked for their **views of the final sentence**, there were a range of views. The three judges who gave lower sentences (between three years and three months to three years and eight months) thought their sentences were *'ok'*, they had given a *'reasonably substantial discount for good character [and] it didn't seem out of kilter'*, with those giving sentences between five and six years also generally appearing content with their sentences, noting it *'needs a significant sentence for a police officer to conduct themselves like that'* and *'it's proportionate [to] the serious nature of the offence [and] I may have been tempted to go higher'*, and *'very comfortable with it'* and three between six and seven years noting that *'there was no aggravating feature in terms of position of public duty/trust – I had to put it in to explain why I upped it to 6 years'* and *'the range is not big enough for these top level crimes'* and *'it's a bit higher than I first thought... but the more you look at it... it's hard to actually think of a more serious example'*.

Comments on the guideline

The following summarises a small number of comments made using the guideline across both scenarios, with the majority coming from follow-up questions:

- All of the judges felt the **guideline could be applied to the wide range of offending behaviour** covered by this offence, noting *'it has broadened the way I can approach sentencing offences of this sort... this is much fairer'* and *'the guideline covers a large range of activity and sentences'*. However, a couple of judges also noted *'it's important to give judges leeway'* and *'[I] imagine most of the factors identified will cover most cases, but there are going to be cases where judges may struggle to fit it in and have to use their own discretion'*.
- All of the judges felt the guideline was **clear and easy to interpret**.
- All of the judges felt the guideline helped them determine the **category of culpability** to apply, although there were conflicting views on *'medium'*, with one judge noting *'I don't like how medium culpability it treated in this guideline (and others)... category B seems to be quite large'*, while two noted they *'quite agree that medium has to be whatever isn't in A and C'* and *'it is*

quite well established now and works quite well... if you try and put too many things in medium, people get confused'. One also noted, under high culpability, 'what counts as sustained? Better to have the quantity of activity'.

- The majority of the judges felt the guideline helped them determine the **category of harm** to apply, however, some did raise some thoughts: one noted there's 'nothing really about... cost to the police and impact on police in terms of time spent in man hours and costs and expert costs in investigating the false narrative'; one that 'when we have words like 'some' rather than serious or significant in Harm 2, there is always argument from counsel about whether this falls into 1 or 2... [could] some guidance... be included – what is some or serious distress – like in the death by dangerous or manslaughter guidelines?'; another that 'you could put "some" in front of suspicion in the first bullet... and on point four... add "serious or substantial"'; and one that 'I don't particularly like the expression "limited effects of the offence"'.
particularity like the expression "limited effects of the offence".
- There were a variety of comments about the **starting points and ranges**. The majority thought they were 'about right', noting these were 'pretty much in the expected range', 'the law of the diagonal... makes sense... balancing culpability and harm', 'there are overlaps [which] gives judges the flexibility', that 'it's particularly important that there is scope to pass the custody threshold, even in C3 – to suggest [this offence] could never pass the custody threshold would send out the wrong message', while one was 'surprised it's four years as a starting point in A1, a range of up to 7 is about right'. However, six judges noted some concerns: three commented about the top of the range, asking for 'extra guidance on cases above A1', '[there is a] danger when you have a range of CO to 7 years that some sentencers may feel 7 years is the top end... when it is not' with one noting that 'it might be useful to remind that you can go outside of the range – like you do in other guidelines'; two noted that a 'starting point of a CO... sends out the wrong message/ is inappropriate for this perverting the course of justice; and one that they would like 'more of an overlap between the ranges in C3 and B3, so the top of the range should be nine months in C3'.
- In terms of the **factors increasing seriousness**, five judges had no suggestions for change, with two stating that they were 'fairly standard' and 'cover everything', and two that it's 'better to keep it short and simple because these cases are very different' and 'keep them general [and] short, don't be over prescriptive'. The remaining six did provide some suggestions: three felt that 'being in a position of trust' should be included; one noted 'should it be concealed, destroyed or planted?' while another wondered whether it should be 'an aggravating feature or harm'; one thought influence of alcohol or drugs 'doesn't sit very well... more relates to violence', while another thought it 'could... be a mitigating factor... stupid thing to do and wouldn't have done it had they been sober' (although they noted it 'can be dealt with on a case-by-case basis'). One noted a 'risk of double counting' between offender involves others in the conduct in aggravating and assessment of harm.
- On the **factors reducing seriousness**, 12 judges had no suggestions for change, with two noting they were 'fairly standard', and one that they 'cover everything'; one judge queried 'when you've got no previous convictions and then good character and/ or exemplary conduct, do you mean over and above not having previous convictions? Slightly confusing because no previous convictions would mean someone of good character – exemplary conduct is a description of what you're talking about in the sense that they got things in their like marked out as otherwise being a good, upstanding citizen', and two suggested related factors: 'being subjected to pressure to commit the offence depending on their social circumstance', and 'if you want to consider some kind of impact of a cultural/ religious situation, it may be something that would reduce seriousness/ reflect in personal mitigation, but it may be that it increases seriousness, not

decreases.... *If something was put in, it needs to be sufficiently broad [and refer the sentencer] to the Equal Treatment Bench Book*'.

- Judges also provided **general comments on the guideline**, such as: *'I liked it because it broadened the range, which is absolutely right... [previously], we felt under pressure that it had to be seen to be prison... this will hopefully change that dynamic'*; several commented positively on the clear, familiar, standard format of the guidelines, for example *'they mirror the format of our existing guidelines... before guidelines were introduced, there was no consistency in sentencing'*; *'good to see a guideline on this, beyond case law... judges do struggle sometimes with this type of offence'*.
- There were **mixed views on whether figures for SSO would be maintained**⁵ under the revised guideline: six judges felt levels wouldn't change, noting they will *'be about the same... the guideline will... make it easier to produce the sort of results that we're already producing'*, with one stating the *'draft guideline, unless it's a very minor offence, steers towards immediate custody... could find you've got more prison sentences'* but then said *'for those below the two year custody, judges are under a duty to consider suspending it [and] it probably does allow for that in the lower categories'*; one judge noted they didn't know, *'but... the guideline will help is consider cases more seriously (and rightly so), so we might get better charging decisions'*; the remaining eight judges gave more nuanced responses: one thought figures would stay the *'same for immediate custody but... the non-custodial will get split between suspended sentences and other disposals'*, one thought there could be an increase in non-custodial sentences, with more COs in particular, two judges agreed there could be more COs, two thought there could be an increase in non-custodial sentences/decrease in immediate custody, and two thought there might be an increase in immediate custody. When looking at the results from the first scenario, which tested this, eight of the judges completing the exercise gave various forms of CO, and six gave SSOs.
- The judges were asked to consider two questions relating to equality and diversity. When prompted to think about whether there were **'any particular words in the guideline that may contribute to disparities in sentencing'**, the majority did not think there were any, but some provided thoughts, such as: *'it is important to emphasise being able to speak to a defendant in clear unambiguous language that they understand'*; *'[there] maybe cultural considerations - a lot of types of family issues that may affect people particularly, for example Muslim people - see pressures that come up on them from the mosque, from the imams telling them that Allah will not forgive them if they don't side with their family and things...'*; *'where medium culpability is defined as neither high or low, this might increase discretion and potential disparities'*; and, *'looking at mitigation... the phrase offender was in a lesser or subordinate role... it goes far enough to deal with people who are under pressure... I think pressure goes beyond limited role – limited role in drugs might put somebody in the lowest category of culpability, but being subject to pressure goes beyond that... it is particularly an issue that arises in drugs where you've got young offenders subject to pressure from their peers... and a related issue for young black men in inner city areas. I think there's probably some space for something else in mitigation to reflect that'*. When asked whether they thought the guideline **'gives enough guidance on how to deal with specific equality and diversity issues'**, the judges generally felt it did, noting they have training on it and that the guidance refers them to the Equal Treatment Bench Book (ETBB; one

⁵ It is anticipated that sentencing levels will remain consistent with levels before the new guideline is introduced. To test this, judges were informed that in 2020, about 400 offenders were sentenced to this type of offence, of which 51% received immediate custody and 42% a SSO. They were then asked what their views were regarding future volumes of immediate custody and SSOs, and whether they thought these figures will be maintained under the draft guideline or not.

noted adding ‘inclusivity, or equality and diversity’ in the box that refers to ETBB). However, four judges did offer some suggestions, including whether guidelines could ‘cite parts of ETBB in particular guidelines’, ‘make reference to the ETBB as a step in every guideline... [to] force judges to look at it in a more proactive way... and if there are factors from ETBB relevant to a case, to identify them’, noting that ‘the practical bits are very useful and could be highlighted, such as in the format of a compendium sidebar or dropdown menus such as in the Judicial College Trial Compendium’, and that ‘diversity issues are a much broader topic... a judge has to be much more alive to it... it is a matter we need to have more education about, probably through Judicial College’, but in terms of guidelines, ‘I’m not sure how you would do it’.

Witness intimidation

Scenario A

The victim lived next door to the offender, C aged 50, and there had been a previous incident of anti-social behaviour involving the offender which she had reported to the police. The offender whilst drunk went to her back door, shouting and swearing and generally being abusive. He threatened her and said, ‘I know it’s you who called the police on me before. If you know what’s good for you, you’ll drop the case, or else’. This terrified the victim, who felt too scared to leave her house or go into her back garden in case she met the offender. She did however go ahead with giving evidence. The offender pleaded guilty at the first opportunity. The court heard that the offender had a long-standing drink problem but in recent months had gone to his GP to seek help for it and had been sober for a number of months, attending AA meetings. He had also moved away from the area to live with his daughter in an attempt to turn his life around.

This was expected to be a medium culpability (B), high harm (1): starting point one year, range of nine months to two years’ custody. There is an aggravating factor of commission of offence while under the influence of alcohol or drugs; a mitigating factor of determination and demonstration of steps taken to address addiction or offending behaviour; and a guilty plea. The final sentence could be eight months’ custody, which could be suspended. Key findings are below; Table 3 is in Annex A.

Key findings

- Five judges chose **culpability A** (citing deliberately seeking out witnesses), three chose B (citing non-violent conduct or a factor from A and from C and therefore it would be B), and one was between B and C, noting ‘there was a threat of violence but it was spontaneous and in drink’.
- Seven judges chose **harm 1** (citing contact made at the victim’s home), one was between 1 and 2 (noting while there was serious distress, there was no impact on the administration of justice), and one chose 2, noting ‘it was in the vicinity of the home, but that’s because they are neighbours anyway’.
- There were a range of **starting points** from nine months (one participant), ten months (one participant), one year (two participants) through to two years (four participants)⁶.
- Eight judges noted the **aggravating factor** under the influence of alcohol with one also adding ‘previous anti-social behaviour’; one did not state any factors.
- Eight judges noted **mitigating factors** such as steps taken to address addiction (seven respondents) and remorse (four), with only one stating there were none.

⁶ One judge did not state a starting point.

- **Pre-guilty plea final sentences** ranged from a nine-month SSO, through to a custodial sentence of one year and eight months, with the majority agreeing it would be a sentence between one year and one year and eight months⁷.
- For the **final sentences after GP**, one judge selected a six-month CO, three chose to suspend sentences (which were for six months, ten months and one year and two months), and five gave custodial sentences ranging from 28-30 weeks to one year.
- The judges were asked their **views of the final sentence**: the judge who gave a CO stated *'It's below the custody threshold'*; the three who gave SSOs noted these were *'about right'*, or the *'same as would have passed without the guideline'*; while the five who gave custodial sentences expressed views such as *'the most important question would be whether to suspend it or not'*, and *'it is so serious to interfere with the course of justice... a suspended sentence or community order... [doesn't] reflect how important it is'*.

Scenario B

The victim was due to give evidence against her partner B for a s.20 GBH offence. He had been remanded in custody ahead of the trial. He recently had a previous conviction for turning up at her workplace with a knife. Ahead of the trial B arranged for his cellmate who had recently been released from prison to go to her home and put a letter through the door (while she was at home). The letter warned her not to turn up at court for the trial. He threatened to slash her face, burn her house down, burn her family and friend's houses down, and stab her, and that he was willing to 'do life' for her. Due to his past behaviour the victim believed the threats to be very real. However, she reported this to the police and gave evidence at court. B, aged 35, pleaded guilty on the day of the trial. During the case the judge observed that a year on from the events the victim remained terrified.

This was expected to be a high culpability (A), high harm (1) case: starting point two years, range of one to four years' custody. There are aggravating factors of a recent relevant previous conviction and involving others in the conduct, no mitigating factors, and a small credit for a guilty plea on the day of the trial. The sentence could move up to three years' custody. Key findings are presented below, followed by a summary of comments from using the guideline across both scenarios and further questioning. Table 4 is in Annex A.

Key findings

- All nine judges agreed it was **culpability A**, citing threats of violence, seeking out witnesses, and sophisticated and/ or planned.
- All nine judges agreed it was **harm 1**, citing contact made at the victims' home and serious distress caused.
- The judges selected a range of **starting points**, from one year and eight months (one participant, noting it would *'perhaps be slightly below the starting point'*), through to four years (one participant who stated *'there are a number of factors under culpability... I would increase from the starting point of two years'*). Within that range, one judge stated two to four years, another three years (stating that *'I think I go right to the top of the category and might even go above, but as the statutory maximum is only five years' custody and this isn't actual violence, it can't be in the very top 20 per cent of offences'*), and five selected two years.

⁷ Two judges did not state a pre-guilty plea sentence.

- Eight judges noted the **aggravating factor** of previous convictions, with four also noting offence committed on bail, four that the offender involved others, and three also mentioning domestic abuse/ violence.
- Six judges said there were no **mitigating factors**, while three did note the guilty plea.
- A range of **pre-guilty plea sentences** were given, from two years four months to *'outside of the top of the range'*⁸.
- The six judges who gave specific pre-guilty plea sentences all took into consideration the late guilty plea, and reduced their sentence to give a range of **final sentences**: three explicitly noted a ten per cent reduction, while others adjusted their sentences down (for example, from three years down to two years and eight months). There was a range of final sentences from one year and six months through to an extended sentence, with the majority (six) between two to three years.
- Of those providing their **views of their final sentences**, two noted it was *'about right'* or they were *'happy with the sentence'*, and two felt *'easier about imposing a very severe sentence because it's... acknowledged by the guideline'* or *'the guideline gave me more confidence to go higher than I would have done'*.

Comments on the guideline

The following summarises comments made using the guideline across both scenarios and through follow-up questions:

- All of the judges felt **the guideline could be applied to the wide range of offending behaviour** covered by this offence, commenting that they *'are good and work well'*, *'they cover all the scenes'*, although one did note that *'the one thing I think isn't really set out in the guidelines is the index offence... the offence that leads to the witness intimidation'*.
- All of the judges felt the guideline was **clear and easy to interpret**.
- All of the judges felt the guideline helped them determine which **category of culpability** to apply, although some did provide comments: one noted *'I wonder if it's possible to further differentiate "deliberately seeking out the witness" between medium and high culpability'*, another whether the *'differentiation between A, B and C could be improved'*, and that they *'understand.. that it's difficult to put medium culpability into words that allow for sufficient judicial discretion... you could roll these out... and maybe keep an eye on medium culpability to think whether there's different wording'*, and one noted that they were *'not clear [about] the distinction between an actual or threat of violence... as well as non-violent conduct amounting to a threat... should it read "actual threatening violence"?'.*
- All of the judges felt the guideline helped them determine which **category of harm** to apply, although one commented that they were not sure *'how being by the victim's home is enough to put a case into category 1'*.
- The majority of judges did not have any particular comments on the **starting points and ranges** in the sentencing tables, noting, for example, *'it's important and right that at the bottom of every category... custody is a potential'*, *'sentencing ranges are appropriate'*, *'I'm glad it goes up to four years... I always wonder why it doesn't go up to give years or whatever the maximum is, but judges know you can go above the category range if you need to'* although one did query whether the starting point of two years in A1 is *'too low'*.
- Five judges had no further comments on the **factors increasing seriousness**, while four did raise suggestions: *'not sure whether the use of social media is an aggravating factor?'*, *'should offence*

⁸ Two did not give pre-guilty plea sentences.

committed while on remand be included?’, ‘I would probably add a specific reference to domestic violence’, and ‘I would add ongoing effect on victim, also in the longer term’.

- There were no comments on the **factors reducing seriousness**.
- There were two **comments on the guideline as a whole**: one noted *‘I’m not quite sure that the vulnerability of the victim is sufficiently emphasised’*, while another that *‘The Council ought to think whether or not totality really has a part to play in witness intimidation’* noting *‘let’s say the witness intimidation will get you three years, and the offence would get you three years, if a judge starts sating well, because of totality, I’m going to reduce that to four and a half or five years, it puts a bit of a premium on interfering with witnesses... if you undermine justice by stopping people giving evidence, it seems a bit paradoxical’.*
- Four judges thought that **figures for SSO will be maintained**⁹ under the revised guideline, while four thought there may be less SSO’s as there will be *‘less in “suspendable” territory’* and *‘immediate custodial sentences might increase’*, while one thought *‘in category A case[s] those would all end up being immediate sentence... but B and C would get us a suspended sentence, so it would depend on... what percentage ends up being category A’.*
- The judges were then asked to consider two questions relating to equality and diversity. When prompted to think about whether there were **‘any particular words in the guideline that may contribute to disparities in sentencing’**, the majority did not think there were any, but some provided thoughts, such as: *‘descriptions of the level of distress are always quite difficult – difficult to discern between some and serious’* and another that *“some” and “serious” descriptions of harm may lead to disparity – some victims may be more able and articulate than others’*; and one noted *‘when we come to impose sentence, we have to look at whether there is a realistic prospect of rehabilitation... somebody who’s middle class, got a job, got family support, has gone to their GP and done all of the things that demonstrate they’re capable of rehabilitation is far more likely to get a suspended sentence... someone who is homeless, or has no family support, isn’t going to have that same evidence to convince us that sentence can be suspended’.* When asked whether they thought the guideline **‘gives enough guidance on how to deal with specific equality and diversity issues’**, some judges thought it did, with a couple referring to the ETBB, noting that was *‘enough’* or that *‘it is good on mental health and learning disabilities’.* Others had more specific thoughts, such as: *‘nothing on racial/ religious issues? Possibly not able to do so?’*; another that *‘there may need to be a separate guideline and overarching guideline for [equality and diversity]’*, although another noted *‘we’ve got so many overarching guidelines... many times it’s not clear which one(s) to use in particular... could be useful to state, at Step 3, to consider any other specific guidelines?’.*

⁹ It is anticipated that sentencing levels will remain consistent with levels before the new guideline is introduced. To test this, judges were informed that in 2020, about 180 offenders were sentenced to this type of offence, of which 63% received an immediate custody and 26% an SSO. They were then asked what their views were regarding future volumes of immediate custody and SSO, and whether they thought these figures will be maintained under the draft guideline or not.

Annex A: Summary tables

Table 1: Perverting the course of justice, Scenario A, sentenced using the draft guideline

	Culp	Factors	Harm	Factors	SP	Agg factors	Mitigating factors	Pre-GP sentence	Post-GP sentence
Expected sentencing	C	<ul style="list-style-type: none"> • Unplanned and/or limited in scope and duration • Unsophisticated nature of conduct • Underlying offence was not serious 	2 ¹⁰	<ul style="list-style-type: none"> • Suspicion cast upon an innocent party as a result of the offence • Some impact on administration of justice • Some delay caused to the course of justice 	9 months' custody	• None	<ul style="list-style-type: none"> • No previous convictions • Remorse • Good character and/or exemplary conduct • Offender was in a lesser or subordinate role if acting with others/performed limited role under direction • Mental disorder • Age and/or lack of maturity 	9 months' custody	6 months SSO
1	C	<ul style="list-style-type: none"> • Unplanned and/or limited in scope and duration • Unsophisticated nature of conduct • Underlying offence was not serious • Involved through coercion, intimidation or exploitation 	3	<ul style="list-style-type: none"> • Limited effects of the offence 	HLCO ¹¹	• None	<ul style="list-style-type: none"> • No previous convictions • Remorse • Mental disorder • <i>Final year at university and consequence of sentence</i>¹² 	Bottom of range ¹³	MLCO + 80 hours UPW
2	C	<ul style="list-style-type: none"> • Unplanned and/or limited in scope and duration • Unsophisticated nature of conduct • Underlying offence was not serious 	2/3	<ul style="list-style-type: none"> • None stated 	HLCO 6 months	• None	<ul style="list-style-type: none"> • No previous convictions • Age and/or lack of maturity • Mental disorder • <i>Under pressure</i> 	CO 6 months	CO 2 months suspended for 1 year, UPW
3	C	<ul style="list-style-type: none"> • Unsophisticated nature of conduct 	2/3	<ul style="list-style-type: none"> • Some impact on administration of justice • Borderline 3 as limited effects of the offence 	CO 6 months	• None	<ul style="list-style-type: none"> • No previous convictions • Age and/or lack of maturity • Remorse • Mental disorder • <i>Final year at university may make a difference in how she is dealt with</i> 	CO	CO ¹⁴

¹⁰ This was deemed category 2 harm, but could be at the very bottom, bordering 3 (limited effects of the offence), as evidenced in responses.

¹¹ HLCO – high level community order; MLCO – medium level community order; UPW – unpaid work; RAR – rehabilitation activity requirement.

¹² Factors in italics are not listed in the guideline.

¹³ The judge noted this was 'bottom of the range, difficult to apply a discount for the guilty plea, would say it has been taken into account but not specify how much'.

¹⁴ The judge noted the 'credit for the guilty plea is that the sentence is not custodial and in rejecting use of unpaid work and curfew as not appropriate'

4	C	<ul style="list-style-type: none"> • Unplanned and/or limited in scope and duration • Unsophisticated nature of conduct • Underlying offence was not serious • Involved through coercion, intimidation or exploitation 	3	<ul style="list-style-type: none"> • Limited effects of the offence 	HLCO	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • No previous convictions • Remorse • Good character • Mental disorder • <i>Final year at university, thus good prospects</i> 	Defer sentence for 6 months ¹⁵	Then a CO 9 months
5	C	<ul style="list-style-type: none"> • Unplanned and/or limited in scope and duration • Unsophisticated nature of conduct • Involved through coercion, intimidation or exploitation 	3	<ul style="list-style-type: none"> • Limited effects of the offence 	HLCO	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Good character • Remorse • In a lesser or subordinate role¹⁶ • Mental disorder (limited factor) • <i>Coercion</i> • <i>Admitted at first opportunity</i> 	HLCO, 240 hours UPW, 15 days RAR	HLCO, 160 hours UPW, 15 days RAR
6	C	<ul style="list-style-type: none"> • Unplanned and/or limited in scope and duration • Unsophisticated nature of conduct 	2	<ul style="list-style-type: none"> • Suspicion cast upon an innocent party as a result of the offence • Some delay caused to the course of justice 	9 months' custody	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • No previous convictions • Good character • Remorse • In a lesser or subordinate role • <i>Offence wasn't committed whilst on bail</i> 	6 months' custody	4 months' custody suspended for 1 year
7	C	<ul style="list-style-type: none"> • Unplanned and/or limited in scope and duration • Unsophisticated nature of conduct 	3	<ul style="list-style-type: none"> • Limited effects of the offence 	HLCO	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • No previous convictions • <i>Coercion</i> 	Suspended sentence	Suspended sentence
8	C	<ul style="list-style-type: none"> • Would be a C2/3¹⁷ 	2/3						Cond'l discharge
9	C	<ul style="list-style-type: none"> • None stated 	3	<ul style="list-style-type: none"> • Limited effects of the offence • <i>Dealt with pretty quickly</i> 	CO 6 months	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Good character • Mental disorder • <i>Pleaded guilty</i> • <i>University and potential good career</i> 	None stated	CO 100 hours

¹⁵ The judge noted they would 'consider deferring the sentence for six months to see if the couple have split up, how she got on in the final part of her university, and how she was getting on with her depression'.

¹⁶ The judge noted 'not double counting'.

¹⁷ The judge felt this 'should not be tried in the Crown Court... and instead I would impose probably a conditional discharge... if I had to apply the guideline, it would be C2/3'.

10	C	<ul style="list-style-type: none"> • Unplanned and/or limited in scope and duration • Unsophisticated nature of conduct • <i>Underlying offence on the cusp to being medium to not serious</i> • <i>Depression (would want to explore to see if relevant or not)</i> 	2/3	<ul style="list-style-type: none"> • Some impact on administration of justice (possibly) • Some delay caused to the course of justice (possibly) • Suspicion cast upon an innocent party as a result of the offence (possibly) 	6 months' custody	• None	<ul style="list-style-type: none"> • No previous convictions • Good character • Remorse • In a lesser or subordinate role • Mental disorder (depression - would need more information) 	CO – would need to look at bands for low/med / high	MLCO (possibly UPW)
11	C	<ul style="list-style-type: none"> • None stated 	3	<ul style="list-style-type: none"> • Limited effects of the offence • <i>Dealt with pretty quickly</i> 	6 months' custody	• None	<ul style="list-style-type: none"> • No previous convictions • Remorse 	None stated	4 months' custody suspended for 1 year
12	B	<ul style="list-style-type: none"> • Between A and C – wasn't unplanned but also not involved through coercion, intimidation or exploitation 	3	<ul style="list-style-type: none"> • Limited effects of the offence • <i>Not much impact on administration of justice</i> • <i>No real delay</i> 	9 months' custody	• None	<ul style="list-style-type: none"> • No previous convictions • Good character • Remorse • In a lesser or subordinate role 	9 months' custody	4 months' custody suspended for 1 year, UPW
13	C	<ul style="list-style-type: none"> • Unplanned and/or limited in scope and duration • Unsophisticated nature of conduct • Underlying offence not serious • Involved through coercion, intimidation or exploitation 	2	<ul style="list-style-type: none"> • Suspicion cast upon an innocent party • Some distress caused to innocent party 	9 months' custody	• None	<ul style="list-style-type: none"> • No previous convictions • Mental disorder 	9 months' custody	6 months' custody suspended for 1 year, UPW/ working with women course
14	C	<ul style="list-style-type: none"> • Unsophisticated nature of conduct • Unplanned and/or limited in scope and duration • Underlying offence not serious • Involved through coercion, intimidation or exploitation 	3	<ul style="list-style-type: none"> • Limited effects of the offence 	HLCO	• None	• None	HLCO	MLCO, RAR, UPW
15	C	<ul style="list-style-type: none"> • <i>Unplanned but of some duration</i> • Unsophisticated nature of conduct • Involved through coercion, intimidation or exploitation 	2	<ul style="list-style-type: none"> • Some distress caused to innocent party • <i>Limited duration</i> 	9 months' custody	• None	<ul style="list-style-type: none"> • No previous convictions • <i>Admitted in interview</i> • <i>GP at earliest opportunity</i> 	6 months' custody	4 months' custody suspended for 1 year, 20 RAR days for thinking skills

Table 2: Perverting the course of justice, Scenario B, sentenced with the draft guideline

	Culp	Factors	Harm	Factors	SP	Aggravating factors	Mitigating factors	Final sentence
Expected sentencing	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct • Underlying offence very serious 	1	<ul style="list-style-type: none"> • Serious consequences for an innocent party as a result of the offence • Serious distress caused to an innocent party • Serious impact on administration of justice • Substantial delay caused to the course of justice 	4 years	<ul style="list-style-type: none"> • Offender involves others in the conduct 	<ul style="list-style-type: none"> • Previous good character and/or exemplary conduct 	7 years
1	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct • Underlying offence very serious 	1	<ul style="list-style-type: none"> • Serious consequences for an innocent party • Serious impact on administration of justice 	4 years	<ul style="list-style-type: none"> • Offender involved others in conduct 	<ul style="list-style-type: none"> • No previous convictions 	5 years
2	A	<ul style="list-style-type: none"> • Sophisticated and/or planned nature of conduct • Underlying offence very serious 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious impact on administration of justice 	6 years ¹⁸	<ul style="list-style-type: none"> • Abuse of position as police officer, and an undercover police officer • Domestic violence 	<ul style="list-style-type: none"> • None 	6 years
3	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious impact on administration of justice • Substantial delay caused to the course of justice 	4 years	<ul style="list-style-type: none"> • Evidence concealed/destroyed • Commission of another offence in the course of the activity 	<ul style="list-style-type: none"> • No previous convictions 	7 years
4	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct • Underlying offence very serious 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious impact on administration of justice 	4 years	<ul style="list-style-type: none"> • No remorse • In a position of trust as a police officer and in relation to his girlfriend 	<ul style="list-style-type: none"> • No previous convictions • Good character • Offence was not committed on bail 	5 years

¹⁸ Judge noted that the quantity of drugs could make a difference to the starting point.

5	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct • Underlying offence very serious 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious distress caused to innocent party • Serious impact on administration of justice 	4 years	<ul style="list-style-type: none"> • Offender involved others in conduct 	<ul style="list-style-type: none"> • None 	5 years
6	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct • Underlying offence very serious 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious impact on administration of justice • Substantial delay caused to the course of justice 	4 years	<ul style="list-style-type: none"> • None (thought involvement of others in conduct had been taken care of in harm) 	<ul style="list-style-type: none"> • No previous convictions 	3 years, 6 months
7	A	<ul style="list-style-type: none"> • Sophisticated and/or planned nature of conduct 	2	<ul style="list-style-type: none"> • Some distress caused to an innocent party • Suspicion cast upon an innocent party as a result of the offence 	2 years	<ul style="list-style-type: none"> • Offender involved others in conduct • <i>In a position of trust as a police officer</i> 	<ul style="list-style-type: none"> • None 	3 years, 8 months
8	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious impact on administration of justice 	4 years	<ul style="list-style-type: none"> • Offender involved others in conduct • <i>In a position of trust as a police officer</i> 	<ul style="list-style-type: none"> • None 	6 years
9	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious distress caused to innocent party • Serious impact on administration of justice 	4 years	<ul style="list-style-type: none"> • Evidence concealed/destroyed • <i>In a position of trust as a police officer</i> 	<ul style="list-style-type: none"> • None 	5 years
10	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious distress caused to innocent party • <i>Some</i> impact on administration of justice • Suspicion cast upon an innocent party as a result of the offence 	4 years	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • No previous convictions • Good character 	3 years, 3 months

11	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct • Underlying offence very serious 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious impact on administration of justice • <i>Ruined her career, long lasting consequences</i> 	8 years	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • None 	6-7 years
12	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct • Underlying offence very serious 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious impact on administration of justice • Delay caused to the course of justice 	4 years	<ul style="list-style-type: none"> • Offender involved others in conduct • <i>Interfered with administration of justice</i> • <i>Use of position of authority – grave impact on public trust and confidence</i> 	<ul style="list-style-type: none"> • None 	6 years
13	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct • Underlying offence very serious 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious distress caused to innocent party • Serious impact on administration of justice • Delay caused to the course of justice 	4 years	<ul style="list-style-type: none"> • Offender involved others in conduct • <i>Use of position of authority to add credibility to claim</i> • <i>Motivated by malice and hostility</i> 	<ul style="list-style-type: none"> • None 	5 years
14	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct • Underlying offence very serious 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious distress caused to innocent party • Serious impact on administration of justice 	4 years	<ul style="list-style-type: none"> • None (not double counting) 	<ul style="list-style-type: none"> • No previous convictions 	5-6 years
15	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious distress caused to innocent party 	4 years	<ul style="list-style-type: none"> • <i>Abuse of position - serving police officer expected to uphold, respect and act within the law</i> 	<ul style="list-style-type: none"> • No previous convictions 	5 years, 6 months

Table 3: Witness Intimidation, Scenario A, sentenced using the draft guideline

	Culp	Factors	Harm	Factors	SP	Aggravating factors	Mitigating factors	Pre-GP sentence	Final sentence
Expected sentencing	B	<ul style="list-style-type: none"> • Non-violent conduct amounting to a threat • Other cases that fall between categories A and C¹⁹ 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 	1	<ul style="list-style-type: none"> • Contact made at or in vicinity of victim’s home • Serious distress caused to victim • Serious impact on administration of justice 	1 years’ custody	<ul style="list-style-type: none"> • Commission of offence whilst under the influence of alcohol or drugs 	<ul style="list-style-type: none"> • Determination, and/or demonstration of steps taken to address addiction or offending behaviour 	1 years’ custody	8 months’ custody ²⁰
1	B	<ul style="list-style-type: none"> • Deliberately seeking out witnesses (A) • Unplanned and/or limited in scope and duration (C) 	1	<ul style="list-style-type: none"> • None stated 	9 months	<ul style="list-style-type: none"> • Under influence of alcohol 	<ul style="list-style-type: none"> • None 	42-45 weeks	28-30 weeks
2	A	<ul style="list-style-type: none"> • Deliberately seeking out witnesses • Breach of bail conditions 	1	<ul style="list-style-type: none"> • Contact made at victim’s home 	2 years	<ul style="list-style-type: none"> • Under influence of alcohol 	<ul style="list-style-type: none"> • Remorse • Steps taken to address addiction 	1 year 8 months	1 year 2 months SSO
3	A	<ul style="list-style-type: none"> • Deliberately seeking out witnesses • Actual or threat of violence to witnesses and/or their families 	1	<ul style="list-style-type: none"> • Contact made at victim’s home • Distress caused to victim 	2 years	<ul style="list-style-type: none"> • Under influence of alcohol 	<ul style="list-style-type: none"> • Remorse • Steps taken to address addiction 	1 year 3 months	10 months, suspended for 1 year 6 months
4	B	<ul style="list-style-type: none"> • Deliberately seeking out witnesses at home 	1	<ul style="list-style-type: none"> • Distress caused to victim 	1 year	<ul style="list-style-type: none"> • Under influence of alcohol • Previous anti-social behaviour 	<ul style="list-style-type: none"> • Pleading guilty 	1 year	8 months

5	A	<ul style="list-style-type: none"> Deliberately seeking out witnesses at home 	1	<ul style="list-style-type: none"> Contact made at victim's home 	2 years	<ul style="list-style-type: none"> Under influence of alcohol 	<ul style="list-style-type: none"> Remorse Real prospect of rehabilitation – moved away <i>Pleaded guilty</i> 	1 year 3 months	10 months
6	A	<ul style="list-style-type: none"> Deliberately seeking out witnesses 	1	<ul style="list-style-type: none"> Contact made at or in vicinity of victim's home <i>Confined victim to home</i> 	2 years	<ul style="list-style-type: none"> Under influence of alcohol <i>A single occasion</i> 	<ul style="list-style-type: none"> Steps taken to address alcoholism and moved away 	1 year 6 months	1 year
7	B/C	<ul style="list-style-type: none"> Threat of violence to witnesses and/or their families 	2	<ul style="list-style-type: none"> Contact made at or in vicinity of victim's home (<i>because they were neighbours</i>) 	None stated	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Steps taken to address alcoholism and moved away 	9 months, suspended sentence	6 months, suspends sentence
8	B	<ul style="list-style-type: none"> Non-violent conduct amounting to a threat 	1/2	<ul style="list-style-type: none"> Serious distress caused to victim <i>No impact on admin of justice</i> 	10 months	<ul style="list-style-type: none"> Under influence of alcohol 	<ul style="list-style-type: none"> Remorse Steps taken to address issue Pleaded guilty at first opportunity 	-	6 months CO
9	A	<ul style="list-style-type: none"> None stated 	1	<ul style="list-style-type: none"> None stated 	1 year	<ul style="list-style-type: none"> Under influence of alcohol 	<ul style="list-style-type: none"> Steps taken to address issues and moving away 	-	8 months

¹⁹ Factors for A: Actual or threat 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/or planned nature of conduct. Factors for C: 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

²⁰ Could suspend the sentence due to realistic prospects of rehabilitation.

Table 4: Witness Intimidation, Scenario B, sentenced with the draft guideline

	Culp	Factors	Harm	Factors	SP	Aggravating factors	Mitigating factors	Pre-GP sentence	Post-GP sentence
Expected	A	<ul style="list-style-type: none"> • Actual or threat 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/or planned nature of conduct 	1	<ul style="list-style-type: none"> • Contact made at or in vicinity of victim’s home • Serious distress caused to victim • Serious impact on administration of justice 	2 years’ custody	<ul style="list-style-type: none"> • Previous convictions • Offender involves others in the conduct 	• None	Up to 10 per cent reduction	3 years’ custody
1	A	<ul style="list-style-type: none"> • Threat of violence to witnesses and/or their families • Deliberately seeking out witnesses • Sophisticated and/or planned nature of conduct 	1	<ul style="list-style-type: none"> • Contact made at or in vicinity of victim’s home • Serious distress caused to victim 	2 years	<ul style="list-style-type: none"> • Previous convictions 	• GP	2 years 8 months	2 years 4 months
2	A	<ul style="list-style-type: none"> • Threat of violence to witnesses and/or their families • Deliberately seeking out witnesses • Sophisticated and/or planned nature of conduct 	1	<ul style="list-style-type: none"> • Contact made at or in vicinity of victim’s home • Serious distress caused to victim 	3 years	<ul style="list-style-type: none"> • Previous convictions • Committed while on bail • <i>Domestic Abuse</i> 	• None	3 years	2 years 8 months
3	A	<ul style="list-style-type: none"> • Threat of violence to witnesses and/or their families • Deliberately seeking out witnesses • Sophisticated and/or planned nature of conduct 	1	<ul style="list-style-type: none"> • Contact made at or in vicinity of victim’s home • Serious distress caused to victim • Risk of serious impact on administration of justice 	2 years	<ul style="list-style-type: none"> • Relevant previous convictions • Offender involves others in conduct • Committed while on bail 	• GP	3 years 4 months	3 years
4	A	<ul style="list-style-type: none"> • Threat of violence to witnesses and/or their families • Planned nature of conduct 	1	<ul style="list-style-type: none"> • Contact made at or in vicinity of victim’s home (<i>although delivering a letter seems like a loose link to someone’s house</i>) 	2 years	<ul style="list-style-type: none"> • Previous convictions • Offender involves others in conduct • Committed whilst on bail 	• GP	2 years 9 months	2 years 6 months

5	A	<ul style="list-style-type: none"> • Threat of violence to witnesses and/or their families • Deliberately seeking out witnesses • Sophisticated nature of conduct 	1	<ul style="list-style-type: none"> • Contact made at or in vicinity of victim's home • Serious distress caused to victim 	2-4 years	<ul style="list-style-type: none"> • Previous convictions 	<ul style="list-style-type: none"> • None 	Outside the top of the range	Extended sentence
6	A	<ul style="list-style-type: none"> • Threat of violence to witnesses and/or their families • Deliberately seeking out witnesses • Planned nature of conduct 	1	<ul style="list-style-type: none"> • Contact made at or in vicinity of victim's home • Serious distress caused to victim 	2 years	<ul style="list-style-type: none"> • Previous convictions • Committed whilst on remand • Offender involved others in conduct • <i>Domestic violence – level of threat</i> 	<ul style="list-style-type: none"> • None 	3 years	2 years 8 months
7	A	<ul style="list-style-type: none"> • Threat of violence to witnesses and/or their families (<i>persistent threat</i>) 	1	<ul style="list-style-type: none"> • Serious distress caused to victim • <i>Domestic violence</i> 	1 year 8 months	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • None 	-	1 year 6 months
8	A	<ul style="list-style-type: none"> • Threat of violence to witnesses and/or their families • Deliberately seeking out witnesses 	1	<ul style="list-style-type: none"> • Contact made at or in vicinity of victim's home • Serious distress caused to victim 	2 years	<ul style="list-style-type: none"> • Previous convictions • Offender involves others in conduct • <i>Domestic violence – level of threat</i> 	<ul style="list-style-type: none"> • None 	2 years 4 months to 2 years 6 months	2 years 2 months
9	A	<ul style="list-style-type: none"> • Threat of violence to witnesses and/or their families • Deliberately seeking out witnesses • Sophisticated and planned nature of conduct 	1	<ul style="list-style-type: none"> • Serious distress caused to victim 	4 years	<ul style="list-style-type: none"> • Previous convictions 	<ul style="list-style-type: none"> • None 		3 years 4 months