

New Sentencing Guidelines for Perverting the Course of Justice

The Sentencing Council has published guidelines for perverting the course of justice, along with updated guidelines for the offence of witness intimidation. These will take effect as of 1 October 2023 and apply to offenders aged 18 years and older.

The sentence range for perverting the course of justice extends from a community order to 7 years' imprisonment, with top category cases attracting a starting point of 4 years and a range of 2-7 years¹.

Despite the grandiose title, perverting the course of justice is a crime which takes a seemingly infinite variety of forms. From obvious lies told in blind panic to cases of true cunning and deception such as that of Carl Beech, whose lies to the Criminal Injuries Compensation Board and police were said by the Court of Appeal to have been motivated by "*financial gain, personal pleasure, malice and attention seeking*" - with the effect of his criminality described as "*unique in the scale and duration of the devastation that was inflicted*"².

This type of offending can see varying levels of culpability. So too, the *harm* caused by such offending can be markedly different. Some attempts to derail police investigations or make false allegations are detected and disposed of quickly, whilst other more complex or unusual cases can see a significant depletion of investigative resources and time. Although an extreme case, the investigation into the offending of Carl Beech was said to exceed costs of £2 million.

¹¹ For any future cases as extreme as that of Carl Beech, prison sentences in the order of double figures will continue to apply.

² Regina v Carl Beech [2020] EWCA Crim 1580

The Consultation Process

The Sentencing Council decided against tackling more niche public justice offences such as perjury and contempt of court, owing to their lesser volume and issues of procedural complexity. A copy of *draft* guidelines was circulated last year, prompting feedback from various organisations including the Centre for Women’s Justice (CWJ) and Justice Committee. Some, though not all, of the suggested revisions have been instigated.

The Sentencing Council decided against using mode of trial as a barometer of the seriousness of the underlying offence, noting this could be misleading since it was “...*the seriousness of the offence committed rather than the type of offence that was important*”³. It agreed however to add an additional factor - ‘*Breach of trust or abuse of position or office*’ - to the features listed for “higher culpability”. This was to reflect the fact that such offending is more serious when a defendant has worked within the justice system (or held an equivalent position of authority) and chosen to act in a manner contrary to their professional obligation to facilitate justice⁴. In relation to the criteria for “lower culpability”, the Centre for Women’s Justice (CWJ) pushed for fuller recognition of the way a history of domestic abuse (affecting predominately women) could reduce the seriousness of their offending. The “lower culpability” factors were therefore amended to include ‘*involvement through coercion, intimidation or exploitation or as a result of domestic abuse*’.

Custodial Sentences

The key guidance for sentencing offences of perverting the course of justice has been the case of **Abdulwahab [2018] EWCA Crim 1399** in which the Court of Appeal took the opportunity to review earlier authorities and identify factors relevant to sentence.

In this judgement, the Court of Appeal noted that “*Conduct which tends and is intended to pervert the course of justice, strikes at the heart of the administration of justice and almost invariably calls for a custodial sentence”⁵.*

Sentencing data for such cases in 2021 showed that out of 570 offenders, 51% were sentenced to immediate custody, with a further 43% receiving a suspended sentence order. Community orders accounted for 4% of offences and 2% were recorded as “*otherwise dealt with*”⁶. For those defendants who did receive terms of immediate imprisonment in 2021, the average custodial sentence length was said to be 1 year⁷. This range in disposal reinforces what the Court of Appeal said about such cases in R v Beech, namely that they are “*intensely fact-sensitive*”.

Guideline Categories

The sentencing guidelines for perverting the course of justice contain **three** levels for culpability and harm.

Categorisation will depend on a determination of harm and culpability in the given case, followed by identification of the appropriate starting point (subject to any aggravating or mitigating features). The starting points apply to all offenders irrespective of plea or previous convictions.

⁶ <https://www.sentencingcouncil.org.uk/html-publication/item/perverting-the-course-of-justice-and-witness-intimidation-offences-final-resource-assessment/>

⁷ <https://www.sentencingcouncil.org.uk/html-publication/item/perverting-the-course-of-justice-and-witness-intimidation-offences-final-resource-assessment/>

Assessment of Harm

The guidelines note that the level of harm caused will be assessed by “*weighing up all the factors in a case*” – with harm caused by such offending articulated in the following way:

Category 1

- *Serious* consequences for an innocent party as a result of the offence (for example time spent in custody/arrest).
- *Serious* distress caused to an innocent party (for example loss of reputation).
- *Serious* impact on administration of justice.
- *Substantial* delay caused to the course of justice.

Category 2

- *Suspicion cast* upon an innocent party as a result of the offence.
- *Some distress* caused to an innocent party.
- *Some impact* on administration of justice.
- *Some delay* caused to the course of justice.

Category 3

- *Limited distress* caused to an innocent party.
- *Limited impact* on the administration of justice.
- *Limited delay* caused to the course of justice.

In July 2022 the Justice Committee raised concerns about the distinction between “*serious consequences for an innocent party as a result of the offence*” (category 1) and “*suspicion cast upon an innocent party as a result of the offence*” (category 2) noting that: “...*the casting of suspicion could itself be considered to have serious consequences for an innocent party, including serious distress and loss of reputation that can have significant adverse social and professional consequences*”. In relation to the category 2 harm factors, the same

committee also made the observation that “...it was difficult to foresee how this offence could not cause at least “some impact on the administration of justice”⁸.

The wording remains unchanged, with submissions on the semantics of “serious” and “some” perhaps now inevitable.

Assessment of Culpability

Factors relevant to assessment of the liability of an offender are dealt with in the following way:

- **Higher culpability** cases will be those that include conduct over a sustained period of time, conduct that could be said to be sophisticated or planned, cases involving a breach of trust (or abuse of position or office) and cases where the underlying offence was serious.
- **Lower culpability** is characterised by offending that was unplanned or limited in scope or duration, unsophisticated conduct, the underlying offence not being serious and the offender’s involvement resulting from “*coercion, intimidation or exploitation or as a result of domestic abuse*”. A final factor will be where it can be said that the offender’s responsibility was “*substantially reduced*” by a mental disorder and/or learning disability.
- **Medium culpability** cases will be those that “*fall between Categories A and C - where either factors are present in both which balance each other out, or the offender’s culpability is found to fall between the factors described in A and C*”. 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*”.

⁸ <https://committees.parliament.uk/publications/23218/documents/169549/default/>

Aggravating & Mitigating Factors

The guidelines for perverting the course of justice contain a non-exhaustive list of factors which may increase or reduce the seriousness of the offending and issues the usual caution against double-counting factors already take into account when assessing culpability or harm. For perverting offences committed by a group rather than an individual, the guidelines note it can qualify as mitigation where the court finds the offender to have had “*a lesser or subordinate role...or performed a limited role under direction*”.

Conclusion

The sentencing guidelines for perverting the course of justice are silent on the issue of deterrence, although in Abdulwahab the Court of Appeal stated that “*Deterrence is an important aim of sentencing in such cases but the necessary deterrence may sometimes be achieved by the imposition of an immediate custodial sentence without necessarily requiring a sentence of great length*”⁹.

According to the Sentencing Council the intention behind the guidelines is “*not to change sentencing practice and, as such, sentencing ranges have been set with current sentencing practice in mind*”. All of the starting points in the guidelines are custodial, with the Council stating that “*...it is anticipated that at least some offenders currently receiving a fine or community order would receive a custodial sentence under the new guideline*”. According to the Council, this will only affect “*a small proportion of offenders (around 4% received a fine or community order in 2021) with sentencers able to suspend sentences between 14 days and 2 years, and eight of the nine categories in the sentence table for this offence having a starting point which is eligible for suspension*”.

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⁹ See Abdulwahab, para. 14.