

DRAFT SENTENCING GUIDELINE – PERVERTING THE COURSE OF JUSTICE

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Introduction – What is Perverting the Course of Justice?

The offence of perverting the course of justice is committed when a person(s):

- (a) Acts or embarks upon a course of conduct
- (b) Which has a tendency to, and
- (c) Is intended to pervert,
- (d) The course of public justice.¹

The offence is contrary to common law and triable on indictment (Crown Court). It carries a maximum sentence of life imprisonment.

¹ *R v Vreones* [1891] 1 Q.B. 360

An example of perverting the course of justice includes false allegations. The course of public justice includes the process of criminal investigation; to expose individuals, identified or not, to the risk of arrest, imprisonment pending trial and wrongful conviction and punishment.² It must be proven that the person making the false allegation intended that it should be taken seriously by the police.³

The offence may also be committed where acts are done to conceal evidence in relation to a criminal offence. This can apply even where no proceedings have been commenced in relation to that criminal offence.

Other examples of perverting the course of justice can include:

- Assisting a person to evade lawful arrest.
- Preventing a witness from giving evidence.
- Interference with exhibits or potential evidence.
- Any approach to a jury/juror to discuss a case or express views about it.
- A publication of matter calculated to prejudice the fair trial of a pending case.
- Making a false statement.

Current Sentencing Position

As the new Guidelines for Perverting the Course of Justice are in draft form for consultation only until 22 June 2022 there are currently no sentencing guidelines for the offence.

The Draft guideline makes clear that it should not be taken into account when sentencing and that since no offence-specific guideline exists reference should be made to the General guideline: overarching principles.⁴

² *Archbold - Archbold Criminal Pleading Evidence and Practice* (2022 Ed.) Chapter 28 - Offences against Public Justice, Part I. Perverting the Course of Justice, Section B. Acts Capable of Constituting the Offence, (2) False allegations – 28-3

³ *Ibid.*

⁴ Sentencing Council General Guideline: Overarching Principles
<https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/general-guideline-overarching-principles/>

The General Guideline states that to arrive at a provisional sentence the court should take account of:

- The statutory maximum sentence (and if appropriate minimum sentence) for the offence;
- Sentencing judgments of the Court of Appeal (Criminal Division) for the offence; and
- Definitive sentencing guidelines for analogous offences.⁵

The seriousness of the offence is assessed by considering the culpability of the offender and the harm caused by the offending.

The court should consider which of the five purposes of sentencing it is seeking to achieve through the sentence imposed. These purposes include:

- 1) The punishment of offenders
- 2) The reduction of crime (including its reduction by deterrence)
- 3) The reform and rehabilitation of offenders
- 4) The protection of the public
- 5) The making of reparation by offenders to persons affected by their offences.⁶

When sentencing the case of *Abdulwahab* [2018] EWCA Crim 1399, the Court of Appeal identified a number of relevant principles from cases such as *Ratcliffe* [2016] EWCA Crim 27. These are:

- 1) 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, but an immediate custodial sentence does not necessarily have to be of great length to achieve the important aim of deterrence.
- 2) Circumstances vary, so only limited assistance can be derived from considering previous decisions in other cases.

⁵ Sentencing Council - General Guideline: Overarching Principles
<https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/general-guideline-overarching-principles/>

⁶ Ibid

- 3) In assessing the seriousness of a particular offence, relevant factors include the seriousness of the underlying offence, the nature of the deceptive conduct, the period of time over which it was continued, whether it cast suspicion upon or led to the arrest of an innocent person, and the success or otherwise of the attempt to pervert the course of justice.
- 4) In addition, the offender's previous character and any personal mitigation must be taken into account.⁷

Draft Sentencing Guideline – Perverting the Course of Justice

The Sentencing Council in its Consultation states that perverting the course of justice can frustrate the work of the police, the prosecution and the courts, which can add to the cost of justice. Additionally, it could, potentially, lead to victims being sent to prison wrongly or suffering reputational damage.⁸

The Sentencing Council felt that developing a guideline would be of benefit to the Courts.⁹ The consultation for the draft guideline runs until 22 June 2022.

The offence range contained within the guideline is from a community order to seven years' custody.

The culpability ranges from high, medium to low culpability and relevant factors include:

- A - High Culpability:
 - Conduct over a sustained period of time.
 - Sophisticated and/or planned nature of conduct.
 - Underlying offence very serious.
- B - Medium Culpability:

⁷ *Abdulwahab* [2018] EWCA Crim 1399

⁸ Sentencing Council – Perverting the Course of Justice and Witness Intimidation: Consultation <https://www.sentencingcouncil.org.uk/publications/item/perverting-the-course-of-justice-and-witness-intimidation-consultation/>

⁹ *Ibid*

- Other cases that fall between categories A and C because:
 - 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 - Low Culpability
- Unplanned and/or limited in scope and duration.
 - Unsophisticated nature of conduct
 - Underlying offence was not serious
 - Involved through coercion, intimidation or exploitation
 - Offender's responsibility substantially reduced by mental disorder or learning disability.¹⁰

The harm is measured in three categories including:

- Category 1
- Serious consequences for an innocent party(ies) 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 innocent party.
 - Some impact on administration of justice.
 - Some delay caused to the court of justice.
- Category 3
- Limited effect of the offence.¹¹

¹⁰ Sentencing Council – Perverting the Course of Justice – for consultation only
<https://www.sentencingcouncil.org.uk/offences/crown-court/item/perverting-the-course-of-justice-for-consultation-only/>

¹¹ Ibid.

Having determined the category, the court should then use the corresponding starting point to reach a sentence within the category ranges. Category 3(c) has a starting point of a high level community order and a range of medium level community order-six months in custody. Category 1(a) has a starting point of four years custody and a range of two years-seven years custody.

Impact

Whilst it is still in consultation stage and subject to change, a sentencing guideline for this offence would be a welcome addition. A significant amount of case law has developed for this offence depending on the facts on which perverting the course of justice occurred.

A guideline will ensure a consistent approach is taken to sentencing this offence and will make the sentencing process easier to understand for all involved.