

Sentencing Guidelines Update

By [Holly Fagan](#)

3PB Barristers

New Guidelines for Perverting the Course of Justice, Witness Intimidation, Dangerous Driving and Causing Serious Injury by Dangerous Driving.

Perverting the Course of Justice (effective from 1 October 2023)

New sentencing guidelines have been introduced for the offence of Perverting the Course of Justice. This will no doubt be welcomed as providing universal guidance and enabling consistency in a sentencing exercise which has previously been governed by case law. The guidelines will be of particular assistance to defence practitioners when determining possible sentences and advising clients.

It is notable that category C3 offences (e.g. giving false driver details for a speeding offence) carry the possibility of a community order but only where mitigating factors give the Court reason to move down from the starting point of 6 months' custody. This reflects existing caselaw: immediate imprisonment might be avoided in exceptional circumstances (*A-G's Ref No 35 of 2009* [2009] EWCA Crim 1375) but usually a prison sentence is inevitable (*R v Williams* (1995) 16 Cr App R (S) 191).

Every other culpability and harm combination incurs a custodial sentence reflecting the potential of the offence to undermine the justice system and devastate lives. In a case which exemplified both those outcomes, Eleanor Williams was sentenced earlier this year to 8 and a half years' imprisonment for lying about being groomed and abused by an Asian gang. If imposed today, this would be a sentence which, perhaps understandably, departs from the new guidelines (A1 offences have a starting point of 4 years' custody and a range of 2 to 7 years' custody. The maximum sentence is life imprisonment).

Witness Intimidation (effective from 1 October 2023)

Until now there has only been limited guidance in the Magistrates' Court for Witness Intimidation. The new guidelines set out three categories of culpability and harm. The highest culpability category covers cases involving a threat of violence, breach of bail or other court order, sophistication and conduct over a sustained period. Harm focuses on the degree of

distress caused to the victim and the impact on the administration of justice. The least serious cases do include medium and high-level community orders within the sentencing range. It has been commonplace for a custodial sentence to mark the gravity of the offence and case law suggests that a deterrent sentence is usually appropriate (R v Chinery [2002] EWCA Crim 32). It will be interesting to see how often a community penalty is imposed in practice.

Dangerous Driving (effective from 1 July 2023)

The long-anticipated guidelines for dangerous driving cases in the Crown Court took effect on 1 July 2023. Previously, the guidelines had simply indicated that the most serious cases should be dealt with in the Crown Court. Mr Bloggs might be surprised to hear that prolonged use of a mobile phone would take him into the highest category of culpability. Less surprising culpability A factors include: racing; evading police; driving impaired; and, a prolonged and deliberate course of dangerous driving. The starting point for an A1 offence, where injury or damage is caused, is 18 months' custody with a range of 1 to 2 years' custody. All offenders will be disqualified for 1 year and made subject to an extended retest.

Causing Serious Injury by Dangerous Driving (effective from 1 July 2023)

A new guideline has also been produced for causing serious injury by dangerous driving. As far as culpability is concerned, the new guideline reflects the death by dangerous driving guideline. Harm is split into two categories with harm 1 including particularly grave, life-threatening or irreversible injuries/conditions. Harm 2 is all other cases. Every categorisation for this offence carries a custodial sentence. The minimum being 26 weeks and maximum 5 years' imprisonment. The offence must also be marked by a minimum 2-year disqualification and extended retest.

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Holly Fagan

Barrister
3PB

01962 868 884
Holly.fagan@3pb.co.uk
3pb.co.uk