

Intimidation of Witnesses

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Perverting the Course of Justice

A) Common law:

Perverting the Course of Justice

&

B) Criminal Justice and Public Order Act 1994:

Intimidation, etc., of witnesses, jurors and others

Intimidation of Witnesses

If someone threatens to or actually does carry out an act intended to harm or intimidate a witness, ie someone who is assisting or has assisted in the investigation of an offence or is or will be, or who has been a witness or a juror in any criminal proceedings, then an offence has been committed.

A)

Offence: Perverting the Course of Justice

Legislation: Common law

Mode of Trial: Indictable only

It is a common law misdemeanour to **pervert** the **course** of public **justice**: R. v. Vreones [1891] 1 Q.B. 360, CCR; R. v. Andrews [1973] Q.B. 422, CA. The offence is committed where a person or persons:

- (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**: R. v. Vreones

A positive act is required. Inaction, for example, failing to respond to a summons, is insufficient to constitute the offence: R. v. Headley [1996] R.T.R. 173, CA. An **attempt** or **incitement** or **conspiracy** to **pervert** the **course** of **justice** is likewise indictable: R. v. Andrews; R. v. Sharpe and Stringer, 26 Cr.App.R. 122, CCA; R. v. Panayiotou and Antoniadis, 57 Cr.App.R. 762, CA. (**Archbold 28-1**)

"The real offence here is the doing of some act which has a tendency and is intended to **pervert** the administration of public **justice**." Perverting the **course** of **justice**, is an offence at common law, is triable

on [indictment only](#), carrying a maximum sentence of life imprisonment. However, no sentence above 10 years has been passed in the last century for this offence.

[Downes, Re Application for Judicial Review \[2006\] NIQB 79 \(20 November 2006\)](#) GIRVAN J: "It is at common law an offence to **pervert** or obstruct the **course** of **justice**. The offence is concerned with the **course** of **justice** and not merely the ends of **justice**. It is committed when a person or persons act or embark on a **course** of conduct which has the tendency to and is intended to **pervert** or obstruct the **course** of **justice**. In [R v Selva and Morgan \[1982\] QB 372](#) it was held that in order to lay the charge a **course** of **justice** must have been embarked on in the sense that proceedings of some kind are in being or are imminent or investigations which could or might bring proceedings about are in progress. The conduct must be:

"conduct which relates to judicial proceedings, civil or criminal, whether or not they have been instituted but which are within the contemplation of the defendant whose conduct was designed to affect the outcome. That conduct includes giving false information to the police with the object of among other things putting them on a false trail." (at pp379,399).

In [R v Ratifque \[1993\] QB 843](#) it was held that the answer to the question whether particular conduct had a tendency to **pervert** the **course** of **justice** could not depend on whether investigations of the matter which might become court proceedings had begun. Lord Taylor giving the judgment of the court said that if an intention to **pervert** the **course** of **justice** in relation to the matter was proved the conduct had the same quality whether performed before the matter was investigated or even discovered as it would have had at a later stage."

There are two guideline cases.

R v Tunney [2007] 1 Cr. App. R. (S.) 91

The sentence appropriate for perverting the course of justice essentially depends on three matters:-

1. the seriousness of the substantive offence to which the perverting of the course of justice related;
2. the degree of persistence; and
3. the effect of the attempt to pervert the course of justice on the course of justice itself.

R v Walsh and Nightingale [1993] 14 Cr. App. R. (S.)

Care must be taken to avoid giving the impression that the sentence is on the basis of conviction of the substantive offence rather than of the conspiracy to pervert the course of justice.

Relevant Sentencing Case Law

General sentencing brackets summarised in Archbold at 28-28 as follows:

- threatening or interfering with witnesses - 4 months to 24 months.
- concealing evidence - 4 months to 18 months, possibly longer if serious crime.
- false allegation of crime resulting in arrest of innocent person - 4 to 12 months.

B)

Criminal Justice and Public Order Act 1994

1994 c. 33 Part III Intimidation, etc., of witnesses, jurors and others
Section 51

Intimidation, etc., of witnesses, jurors and others.

[F1](1)A person commits an offence if—

(a) he does an act which intimidates, and is intended to intimidate, another person ("the victim"),

(b) he does the act knowing or believing that the victim is assisting in the investigation of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence, and

(c) he does it intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with.

(2) A person commits an offence if—

(a) he does an act which harms, and is intended to harm, another person or, intending to cause another person to fear harm, he threatens to do an act which would harm that other person,

(b) he does or threatens to do the act knowing or believing that the person harmed or threatened to be harmed ("the victim"), or some other person, has

assisted in an investigation into an offence or has given evidence or particular evidence in proceedings for an offence, or has acted as a juror or concurred in a particular verdict in proceedings for an offence, and

(c) he does or threatens to do it because of that knowledge or belief.

(3) For the purposes of subsections (1) and (2) it is immaterial that the act is or would be done, or that the threat is made—

(a) otherwise than in the presence of the victim, or

(b) to a person other than the victim.】

(4) The harm that may be done or threatened may be financial as well as physical (whether to the person or a person's property) and similarly as respects an intimidatory act which consists of threats.

(5) The intention required by subsection (1)(c) and the motive required by subsection (2)(c) above need not be the only or the predominating intention or motive with which the act is done or, in the case of subsection (2), threatened.

(6) A person guilty of an offence under this section shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

(7) If, in proceedings against a person for an offence under subsection (1) above, it is proved that he did an act falling within paragraph (a) with the knowledge or belief required by paragraph (b), he shall be presumed, unless the contrary is proved, to have done the act with the intention required by paragraph (c) of that subsection.

(8) If, in proceedings against a person for an offence under subsection (2) above, it is proved that **[F2]** within the relevant period—

(a) he did an act which harmed, and was intended to harm, another person, or

(b) intending to cause another person fear of harm, he threatened to do an act which would harm that other person,

and that he did the act, or (as the case may be) threatened to do the act,】 with the knowledge or belief required by paragraph (b), he shall be presumed, unless the contrary is proved, to have done the act **[F3]** or (as

the case may be) threatened to do the act] with the motive required by paragraph (c) of that subsection.

(9) In this section—

- “investigation into an offence” means such an investigation by the police or other person charged with the duty of investigating offences or charging offenders;
- “offence” includes an alleged or suspected offence;
- “potential”, in relation to a juror, means a person who has been summoned for jury service at the court at which proceedings for the offence are pending; and
- “the relevant period”—

(a)

in relation to a witness or juror in any proceedings for an offence, means the period beginning with the institution of the proceedings and ending with the first anniversary of the conclusion of the trial or, if there is an appeal or [F4a reference under section 9 or 11 of the Criminal Appeal Act 1995], of the conclusion of the appeal;

(b)

in relation to a person who has, or is believed by the accused to have, assisted in an investigation into an offence, but was not also a witness in proceedings for an offence, means the period of one year beginning with any act of his, or any act believed by the accused to be an act of his, assisting in the investigation; and

(c)

in relation to a person who both has, or is believed by the accused to have, assisted in the investigation into an offence and was a witness in proceedings for the offence, means the period beginning with any act of his, or any act believed by the accused to be an act of his, assisting in the investigation and ending with the anniversary mentioned in paragraph (a) above.

(10) For the purposes of the definition of the relevant period in subsection (9) above—

(a) proceedings for an offence are instituted at the earliest of the following times—

(i) when a justice of the peace issues a summons or warrant under

section 1 of the **M1**Magistrates' Courts Act 1980 in respect of the offence;

(ii)when a person is charged with the offence after being taken into custody without a warrant;

(iii)when a bill of indictment is preferred by virtue of section 2(2)(b) of the **M2**Administration of Justice (Miscellaneous Provisions) Act 1933;

(b)proceedings at a trial of an offence are concluded with the occurrence of any of the following, the discontinuance of the prosecution, the discharge of the jury without a finding [**F5**otherwise than in circumstances where the proceedings are continued without a jury] , the acquittal of the accused or the sentencing of or other dealing with the accused for the offence of which he was convicted; and

(c)proceedings on an appeal are concluded on the determination of the appeal or the abandonment of the appeal.

(11)This section is in addition to, and not in derogation of, any offence subsisting at common law.