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**IN THE COURT OF APPEAL**

**CRIMINAL DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Tuesday, 16 April 2019

**B e f o r e:**

**LADY JUSTICE SHARP DBE**

**MR JUSTICE WILLIAM DAVIS**

**HIS HONOUR JUDGE LEONARD QC**

**(Sitting as a Judge of the CACD)**

**REFERENCE BY THE ATTORNEY GENERAL UNDER**

**S.36 OF THE CRIMINAL JUSTICE ACT 1988**

**R E G I N A**

v

**SHAHIB NAEEM ASAN**

**Ms J Ledward** appeared on behalf of the **Attorney General**

**Mr J Janes** appeared on behalf of the **Offender**

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**J U D G M E N T**

(Approved)

1. LADY JUSTICE SHARP: This is an application by Her Majesty's Attorney General, under section 36 of the Criminal Justice Act 1988, for leave to refer a sentence passed on the offender, Shahib Asan, as unduly lenient. We give leave.
2. The offender is now 23 years old. Until his dismissal by Leicestershire Police on 27 May 2017 he was a Special Police Constable studying for a degree in policing.
3. The material offences were ones of criminal damage, putting a person in fear of violence by harassment, contrary to section 4(1) of the Protection from Harassment Act 1997 ("the 1997 Act") and perverting the course of public justice.
4. The victims of these offences were a young woman (who we shall refer to as "AS") and her family: her father, MS, her mother, LS, and other members of the family.
5. The offender and his family and the victim and her family had been friends for about 9 years. They lived in different villages in Leicester and visited each other frequently. The offender's father and the victim's father worked together as enforcement officers for Leicester Magistrates and Crown Court and were good friends.
6. The offender had a brief relationship with AS in 2016, when she was 17 and he was 20, which she brought to an end. The brief relationship had begun in April 2016 when AS and the offender began to text each other and they met about once a month. By July 2016 they had kissed but the relationship ended soon afterwards. AS then resumed a more serious relationship she had previously had with another young man, KM, and put a picture of the two of them on her Snapchat account to which the offender had access. Thereafter the offender engaged in a prolonged and increasingly sophisticated campaign of threatening conduct and harassment against AS and her family for a period of about 2 years. Once his possible involvement was detected the offender then engaged in increasingly sophisticated attempts to manipulate the evidence for the purpose of demonstrating his innocence. His conduct continued after he was arrested and whilst he was on bail.
7. The offending began in August 2016. On 26 August 2016, at about 3.30 am, the offender was caught by a neighbour's CCTV camera driving to the victim's family home and switching his car lights off as he drove past. He walked up to AS's new car, parked outside the family home, and poured paint stripper or something similar along the driver's side. The offender was also seen doing this by one of the neighbours who later picked him out during an identification procedure. The damage was discovered the following morning. The offender had left a letter purporting to be from an ex-girlfriend (a fictitious character) of KM under the wiper blade. The letter warned AS of continuing her relationship with KM, referred to her as a "whore" and to the damage to her car and said this was the only warning she was going to get. The letter made repeated threats of violence including putting AS in hospital, burning her house down, coming for her family including the "cute little kids", that they would be hurt, that the author of the letter had a knife which would be used to draw AS's blood, that she should watch out wherever she went and it referred to the author's knowledge and where AS worked.

8. On 8 September 2016 a second letter from the offender, purporting to come from the ex-girlfriend, arrived at AS's home address. It was addressed to "[AS] or the [S] household". The letter boasted of how much the author knew about AS and called her a "slag". The letter made offensive references to AS's relationship with KM. AS was threatened and told: "You best watch your back" especially leaving work in the dark. Her family were told they needed to watch out too "because I am coming for everyone as long as you're talking to [KM]". Reference was also made to people getting hurt and to a plan to put fireworks through the family's front door.
9. The family did not suspect the offender at first but realised he was responsible after recognising him on the CCTV footage.
10. The offender was confronted by his parents. The parents of the two families came to an agreement and the offender agreed to buy AS's car without admitting responsibility for causing the damage on condition that the police were not contacted. This conduct originally formed a count of perverting the course of public justice, a count that was in the event ordered to lie on the file.
11. On 26 September 2016 another letter arrived, addressed to AS and to the S family, referring to AS in similarly offensive terms. It referred to the earlier letters and to the damage to AS's car, to putting fireworks through the front door and said that after this letter there would be no more warnings: "I will carry out all my threats". It referred to knowing where AS lived and worked and what car she drove. It referred to her and her family being hurt. It said that she had been "about 5 seconds away from being jumped the other week" but she had got in her car just in time. It said that many people were looking for her, that she was not safe and that she could be hurt no matter where she was.
12. Between 29 October and 1 November 2016 the offender called AS from an unregistered number and then sent eight text messages to her purporting to be from "Zoe", a female associate of "horrible people" who were targeting her. Amongst other things it said: "My bf [boyfriend] is one of the people who has been asked to get you". It referred to a number of people being out to get AS and her family, the previous threats, knowledge of her movements, a sexual assault (this was an unconnected matter that AS had reported to the police in August 2016) and to targeting her extended family, including children and her grandmother who lived "around the corner". It also said: "Or we can log into Snapchat again and get that fucking Fed to come to ur house again. This time he'll defo get beat". The messages included a demand that AS get in contact with Zoe by the following weekend if she wanted things to stop.
13. On 5 November 2016 MS received text messages sent by the offender. These purported to be from the brother of the ex-girlfriend, someone who had recently been released from prison. It referred to MS's inaction in the face of threats to his daughter and called him a "shit dad". The messages repeated the demand to get in contact by the following way. They continued: "After that ur house, the house round the corner and the house where those kids live will all be targetted(sic)". There would be "one hell of a firework show this weekend". The first message said: "It could have been a lot worse

if that pig got out of the car cuz u would defo got hte(sic) message if he was lying dead on ur doorstep".

14. On 10 November 2016 the offender's home was searched. In his room police found an incapacitant or pepper spray, issued to him as part of his duties as a Special Constable. This spray is a prohibited weapon for the purposes of section 5(1)(b) of the Firearms Act 1968 and should not have been taken to the offender's home. The offender was charged on an indictment. The first indictment containing a single count of possession of a prohibited weapon, contrary to section 5(1)(b) of the Firearms Act 1968. This offence was unrelated to the other offending and his sentence for that offence is immaterial for present purposes.
15. After his arrest and in interview the offender denied being responsible for the damage to the car, or for the letters. He was given police bail and prohibited from entering AS's road or contacting AS or MS by any means.
16. On 24 November 2016 the offender then attempted to mislead the police into believing that hackers were planting evidence in order to incriminate him. The offender contrived to open an e-mail sent to him (from an account he had created) in front of another Special Constable, an e-mail he subsequently provided to one of the investigating officers. This e-mail purported to come from someone who had engaged hackers with "crazy skills on the computer" and who had put copies of letters on the offender's mobile and computer because he was a "Fed" and close to AS.
17. When reading the e-mail in front of the other Special Constable the offender feigned shock. The Special Constable thought he was genuinely shaken and in due course provided a witness statement to the police about what had happened.
18. Between 23 January 2017 and 8 February 2017, in breach of his bail conditions, as was his subsequent conduct, the offender sent 15 long and rambling text messages to MS in a similar vein to those sent previously. These referred to the offender having been "hacked" and falsely incriminated. They congratulated MS on his participation in this and continued to threaten him and his family. The messages referred in detail to the steps taken by the "hackers" to set up the offender, including using e-mails to get viruses onto the offender's computer, the use of GPS, the manipulation of mobile telephone signals "metadata" on his mobile phone and his printer queues and the use of "piggybacking" of his mobile telephones tracking and "location data" on his mobile telephone and to how the hackers have managed to get paper with the offender's fingerprints on it. The threats included repeated references to the sexual assault suffered by S being "nothing compared to what they would do to her", references to one of AS's siblings being the next target and going to AS's workplace. The messages ended with the threat to post a picture of AS in her underwear on the Internet.
19. On 24 February 2017 a false letter was received at the victim's family home posted by the offender. The letter was addressed to AS. It made reference to the offender being set up, threats to AS and her family, to one of her siblings being the next target and to the fact that authors had "straps" (ie guns). AS was referred to in derogatory and offensive terms and with threats made earlier to post pictures of her in her underwear

on the Internet were repeated. Three further messages were sent to MS on 27 March 2017, with an assertion that an image of AS had been posted on the Internet in order to shame her. These included an apparent reference to AS's recently deceased grandfather. There were more references to the techniques used by the hackers to frame the offender.

20. On 29 March 2017 the offender answered police bail and was interviewed for a second time. In the face of overwhelming evidence against him, including the CCTV footage and his fingerprints found on letters, he denied all knowledge of further harassment and intimidation of AS and her family or of sending the e-mail of 24 November to himself or of attempting to pervert the course of justice, admitting only possession of the pepper spray saying it was a "mistake" so he admitted it.
21. On 11 April 2017 further similar text messages were sent to MS, including references to how the offender had been framed and threats putting "double shortys" (ie sawn-off shotguns) in people's faces and putting blades to people's necks, threats to AS's siblings and the "lonely old lady round the corner" ie MS's mother-in-law who did indeed live round the corner.
22. On 12 April 2017 the offender answered police bail and was interviewed for a third time. He again denied all knowledge of the offending and said he had no contact with the S family since they had accused him of damaging the car. On 17 April 2017 the offender was charged on a second indictment (indictment 2) with criminal damage, putting people in fear of violence by harassment and two counts of doing acts tending and intended to pervert the course of public justice.
23. On 26 May 2017 the offender appeared for a pre-trial and preparation hearing (PTPH) in relation to indictments 1 and 2. He pleaded guilty to possession of a prohibited weapon and not guilty pleas in relation to the charges relating to the S family on indictment 2. The matter was set down for trial.
24. Part of the evidence served on the offender and summarised in the police case summary included the material linking the offender to the various unregistered mobile telephone numbers used to send messages to the S family, including subscriber checks and cell-site analysis which suggested the messages had been sent from locations consistent with or close to the offender's known location at the relevant time.
25. On 17 August 2018 (the Friday before the trial was due to take place) the case was listed and the offender entered guilty pleas to counts 1, 2, 4 and 5 on indictment 2 on a full-facts basis. These pleas were acceptable to the Crown. The pleas were to one count of criminal damage (count 1), one count of putting a person in fear of violence by harassment, contrary to section 4(1) of the 1997 Act between the 25 August 2016 and the 12 April 2017 (count 2) and two counts of perverting the course of public justice (counts 4 and 5) There was no basis of plea. A further count, count 3 of perverting the course of public justice on 22 September 2016, was left to lie on the file. It was proposed that the offender would be sentenced on 14 December 2018.

26. Unbeknown to the investigating officers two days earlier, on the evening of 15 August 2018 and shortly after the offender had a meeting with his legal advisers, a newly activated mobile telephone was used to make two calls to MS. The first call lasted 6 minutes but went to voicemail and nothing was said. The second call was answered by MS but it was again a silent call, although MB was later to say he could hear breathing. The offender was later to tell the police that at the time these calls were made he was having coffee at a Starbucks at junction 21 services on the M1 with another Special Constable, Special Constable Lodhia.
27. The CCTV footage from Starbucks and Special Constable Lodhia confirmed this account and that they had spent most of that evening together. Yet the cell siting of these two calls showed they were made using a mast very close to the offender's family home some distance away.
28. On the morning of the following day, the 16 August 2018, 17 further messages were sent to MS from the same number. These were to form the bases of count 1 of a third indictment. The messages were long and rambling and very similar in style to the messages that the offender had sent to MS in 2016 and early 2017. The messages implied that the offender had been set up because of what had happened to the sister of the author, there were threats to the S family, references to violence, including six or seven people coming to MS's house with knives, that they had many "straps", the whole family would end up like "Swiss cheese" and they would continue to use psychological threats because it was about "making your enemy fear you and the unknown". There were more derogatory and offensive references to AS and references to a medical problem she had had 2 years earlier which few people knew about. One of those who did was the offender's father. The messages suggesting it would have been great if during the biopsy and in relation to that medical problem "they slipped with a needle and killed her". The messages also included statements such as "you see the damage to the car was a mental game and a small indication of what we are capable of. We did that because now you constantly worry about your vehicles, yours safety, your family's safety, you fear unknown" and "the fear we can cause by simple threats is massive". Whilst they could be carried out "the fun would be over". Further examples were given which amounted to boasting about the psychological manipulation engaged in order to increase the fear and distress felt by the S family.
29. Once again, cell siting showed the messages had been sent starting from very close to the offender's home address but then travelling some distance up the A46. CCTV footage however showed that the offender had returned home in the early hours of the morning and had not left by the time the messages were being sent.
30. The prosecution case at trial, which the jury by their verdict accepted, was that the offender knew that he was linked to the messages sent in 2016 and 2017 in part by cell-site evidence. The most recent messages had been sent by the offender or at his instigation, most likely using message delaying technology. This was a feature of the Samsung handset which had been used to send them and the offender had deliberately placed himself away from the handset at the time the message was scheduled to be sent in order to provide himself with an alibi and ensuring his movements were confirmed by CCTV footage and/or by witnesses. The timing of this new evidence was part of an

elaborate plan, said the prosecution, to confirm that the offender was innocent and indeed had been set up and to derail the imminent trial for the 2016/2017 offences.

31. By happenchance this particular plan did not work. MS had attempted to contact the officer in the case after receiving these messages but the officer had been on her rest day. These developments were therefore not known to the police or to the prosecution before the case was listed and the offender was compelled to enter guilty pleas to the counts on indictment 2 in the face of the overwhelming evidence against him.
32. These further messages came to light however and on 20 August 2018 the offender was rearrested, interviewed and charged on indictment 3, with one count of harassment, contrary to section 4(1) of the 1997 Act and one count of perverting the course of justice. On this occasion he was remanded in custody.
33. The second count on the third indictment concerned similar messages sent to the offender's own father. On 1 October 2018 the offender appeared for the PTPH in relation to indictment 3, as well as for sentencing on indictment 1 and 2. He pleaded not guilty to both counts on indictment 3 and he indicated that he wished to consider applying to vacate the guilty pleas to the counts on the second indictment entered on 17 August 2018. His legal representative withdrew and the representation order was transferred. A trial date of 28 January 2019 was set in relation to indictment 3 and a further hearing proposed for 22 October 2018 for any application to vacate. The offender remained in custody.
34. On 22 October 2018 the offender abandoned his application to vacate his guilty pleas.
35. On 28 January 2019 the trial of indictment 3 was listed before His Honour Judge Mooncey. The judge indicated to the offender that if he were to enter a guilty plea to this indictment he would consider a non-custodial option. The offender maintained his not guilty pleas. The trial was adjourned and re-listed on 11 February 2019 before the same judge. The judge again told the offender that if he pleaded guilty before the trial began it would demonstrate remorse which would allow him to pass a sentence which did not result in immediate custody but, if he had a trial, all options would remain open. The offender continued to maintain he was not guilty.
36. The prosecution applied to amend the indictment so that the charge of perverting the course of justice (count 2 on indictment 3) would relate to MS and not to the offender's father who had refused to provide a statement. That application was refused. The judge indicated that in so far as the conduct towards MS also involved an element of perverting the course of justice, this would be an aggravating feature should the offender be convicted of count 1 on that indictment. The trial therefore proceeded at the Crown Court at Leicester in relation to count 1 on indictment 3 only. The offender was convicted of that offence on 14 February 2019.
37. The offender had no previous convictions. There was no pre-sentence report before the court, although one has recently been prepared for this court to which we shall refer in a moment.

38. Two victim personal statements from AS were before the court. In her first statement, dated 4 February 2017, AS described herself as a hard working and ambitious girl who always sees the good in others. The first offence, the criminal damage, came as a real shock. She had saved every penny she could since 15 in order to afford the car which had been a real achievement for her, giving her freedom and independence. She was scared and embarrassed as a result of the further offending. She had lost all confidence and become isolated. She rarely left the house and fell constantly ill at ease. Panic attacks she had suffered when she was younger had resumed and with greater frequency and intensity. She had suffered one such attack at her cousin's 21st birthday party, an event to which she had been looking forward. The offender had ruined years of her teenage life which she would never get back. She was no longer able to do her evening job, working in a public house, without getting her mother and father to come and pick her up. She had been provided with a panic alarm by the police. She also felt shame and responsibility for what her family were having to endure and as she felt she had brought it upon them. Normal activities such as shopping were now extremely frightening as she felt she could be attacked at any moment. Having known and trusted the offender and his family since she was 7 years old, she now felt unable to trust anyone. She was fearful of what was going to happen next and did not know how she would even start to get over what had happened to her.
39. In her second statement, dated 19 August 2018, she said she had quit her job at the public house because she did not feel safe there, knowing the offender knew where she worked. She now had a job that involved a longer journey to work and thus had suffered personal financial loss. However, in that job she could not function as her employers expected to as, for example, she was unable to have an online profile on LinkedIn for fear of the offender discovering how to locate her. She had to endure further embarrassment by having to explain the reasons for this to her managers. She was unable to use social media as her peers did for the same reasons. She felt unable to trust people and found great difficulty in forming new relationships. She had been embarrassed by the sexual content of the messages and the fact that they were sent to her father. The offender's impact on her life continued. She had been terrified at the prospect of going to court and had been unable to move on, particularly with the court case hanging over her.
40. Two victim personal statements from MS were before the court. In the statement dated 27 April 2017, MS described his entire world as having been turned upside down during the preceding 9 months. He felt that he could no longer trust anyone and lived every second of every day dreading what would be coming next. Every time he had a text message come through on his phone, he feared it was another message threatening to hurt his family. He felt helpless and vulnerable, unable to protect those dearest to him. His family could not go about their daily business, his physical health was affected and he was unable to sleep at night because of worry. The seriousness of the threats were such that the letter box at the family home had to be arson-proofed and the house fitted with a panic alarm. He also mourned the loss of what had been a great family friendship with the offender's family. He did not know how the family would overcome what had been done to them.



41. In a further statement 16 months later, dated 19 August 2018, MS referred to the fact that the family had endured living in fear and a daily state of anxiety for 2 years. He worried constantly about harm coming to his family, lying awake at night worrying about how to protect them.
42. In September 2017 he had began a lengthy period of sick leave from his work as a result of depression and anxiety caused by the offending. In July 2018 he took the decision to go on a career break in order to try to recover so he could go back to the job he loved in due course. The family had to reassess their entire lives and were still constantly looking over their shoulders. He referred to the ordeal which his daughter had suffered and worried about how it was affecting her. By the time of sentencing, MS had resumed his employment but because of these events he was no longer able to partner with the offender's father. This meant that both men had been reassigned to new partners in different cities and MS was now required to travel to Nottingham every day in order to keep his job.
43. A victim personal statement from LS was also before the court, dated 27 April 2017. She described the family's lives as being "a constant hell", not knowing what was coming next. She described fear, anxiety, feelings of helplessness and not knowing who to trust. It was very hard to be positive and to support their daughter whose own anxiety and vulnerability were plain. She felt within the future the family would never know what the offender was capable of, whether he would seek revenge, whether they would ever be safe and whether, at some point, the threats would start all over again.
44. For this catalogue of prolonged and serious offending in respect of the offences on all three indictments, on 14 February 2019 the offender was sentenced to a total of 12 months' imprisonment suspended for 24 months with an unpaid work requirement of 180 hours.
45. It is difficult to comprehend how the judge came to this conclusion. Nothing in his brief sentencing remarks enlightens us. Certainly there is no reference to any matters that were central to the passing of an appropriate sentence, either an analysis of the seriousness of the offences themselves or to the relevant sentencing principles or the applicable guidelines. In particular, the Intimidatory Offences Definitive Guideline, to which the judge was obliged to have regard but to which he made no mention.
46. As it was, the suspended custodial terms were structured as follows. On the first indictment, 1 months' imprisonment for possession of a prohibited weapon, on the second indictment, 1 month imprisonment concurrent for the criminal damage, 6 months' imprisonment concurrent for the first offence of putting a person in fear and 6 months' imprisonment consecutive for perverting the course of justice and 6 months concurrent for the second offence of perverting the course of justice. On the third indictment the sentences were 9 months' imprisonment concurrent for putting a person in fear.
47. The prosecution had offered no evidence in relation to the further charge of doing acts tending and intending to pervert the course of public justice. A restraining order was

also made without limit of time in respect of AS, MS and other members of their family.

48. Mr Janes, who appeared for the offender below and appears before us today, concedes that the sentence was lenient and lower than might have been expected. However, he says that the offender was of good character, he had spent time on remand and for these offences had been a productive and hard working young man but now he had lost his career prospects. These were matters, he submits, which properly weighed heavily in the scales in the decision taken by the sentencing judge to pass a sentence of a length that could be and was in fact suspended.
49. The submission on behalf of the Attorney General, made by Ms Ledward, is that the sentence passed in this case was unduly lenient whether one considers the overall sentence or its individual parts. We agree.
50. We consider firstly, substantive offences, primarily those contrary to the section 1997 Act. In our view, these merited a custodial sentence of some length in excess of that which was capable of being suspended. As Ms Ledward submits, the offences were serious, persistent, sophisticated and caused great harm to the victims. There were also a number of aggravating features including that much of the offending had been committed whilst the offender was on bail and in breach of the bail conditions that were imposed to protect the S family. The offences of perverting the course of justice were also serious, persistent, sophisticated and had involved the use of two police colleagues in an attempt to bolster the deception. They merited consecutive and immediate sentences of some length in their own right.
51. We turn first to the Definitive Guidelines for intimidatory offences. In respect of the offences contrary to section 4(1) of the 1997 Act, category B1 of those guidelines applies for offences of high culpability and high harm and that category has a starting point of 2.6 years with a sentencing range of 1 to 4 years. On the facts of this case there were three factors out of the four identified in the guidelines indicating high culpability: conduct intended to cause maximum fear or distress; a high degree of planning and/or sophisticated offences and persistent conduct over a prolonged period. Two factors indicated these were category 1 offences - very serious distress caused to the victims and the victims being caused to make considerable changes to life-style to avoid contact.
52. It is also to be noted that offending falls into category A1 of that guideline, where there is very high culpability shown by the extreme nature of one or more of the category B features or where extreme culpability indicated by a combination of culpability B factors may elevate offending to category A. The starting point for a category A1 offence is 5 years' custody with a sentencing range of 3 years and 6 months to 8 months' custody. In the light of the factors to which we have referred we consider that a starting point at the top of the range in category B1 was appropriate for the offending contrary to section 4(1) of the 1997 Act.
53. There were the following further aggravating features: the offences in the latter part of indictment 2 and all of the indictment 3 offence were committed whilst the offender

was on bail and in breach of bail conditions not to contact the victim. The threats were of increasing gravity. They were ones of gross violence and included multiple threats to kill. The threats were directed at and had an impact on a number of people including children and the elderly. The threats of violence were supplemented by derogatory and offensive remarks by threats to post intimate images on the Internet. There were persistent multiple and increasingly sophisticated attempts to pervert the course of public justice, conduct engaged in to mislead the police investigation, to provide false alibis, to exonerate the offender and to suggest fictitious third parties were responsible for his offending. Two police colleagues were used to bolster these attempts, thus exposing them to the risk of investigation, prosecution and dismissal.

54. There was little mitigation. The offender had no previous convictions and was of positive good character before the offending began. He had also proffered guilty pleas to indictment 2 on the day before trial. Set against this however, was the prolonged period of the offending and the circumstances in which the guilty pleas were proffered, namely that they were only proffered following the failed attempt to derail the trial on indictment 2, by perverting the course of justice and in the face of overwhelming evidence.
55. There are no sentencing guidelines for the offence of perverting the course of public justice, an offence which can occur in a wide range of circumstances. Nonetheless there are a number of guideline principles which are well settled when sentencing for such offences to none of which the judge referred.
56. As was observed in Attorney-General's Reference No 17 of 2008 [2008] EWCA Crim 1342 (R v Smith & Ors), custodial sentences should be imposed for such offences in all but the most exceptional cases. Further, such a sentence should normally be consecutive to any sentence for the substantive offence in which the act was committed - see Attorney-General's Reference No 1 of 1990 12 Cr App R(S) 245; indeed this offence is given of the circumstances in which a consecutive sentences will ordinarily be appropriate in the offences taken into consideration and Totality Definitive Guideline - again a guideline to which the judge did not refer.
57. In addition, where the defendant lies to exonerate himself or herself the seriousness of the substantive offence, the nature of deception, the degree of persistence and the misleading conduct and the effect on the course of justice are also material - see R v Mercer [2009] EWCA Crim 2100; [2010] 1 Cr App R(S) 104 citing R v Tunney [2017] 1 Cr App R(S) 91.
58. In R v Radcliffe [2016] 1 Cr App R(S) 665, for example, a sentence based on 19 months' imprisonment, after a trial, was regarded as severe but not manifestly excessive, where the offender had committed a minor substantive traffic offence convening a red light but then engaged in a number of acts designed to exonerate himself.
59. In that case Davies LJ said at paragraph 13:

"Cases of perverting the course of justice of this particular kind almost

inevitably call for custodial sentences. Such offending strikes at the very heart of the administration of justice. Accordingly, deterrence is indeed called for, although it is right to say that sometimes necessary deterrence can be found in the making of an immediate custodial sentence and not one necessarily requiring a term of imprisonment of any very great length; all will depend on the circumstances of the particular case."

60. We have before us a pre-appeal report prepared for the purposes of this hearing, the contents of which we have carefully considered. On the plus side the offender has completed slightly more than 100 hours of the unpaid work requirement. However, we should refer to the report's conclusion, which say this:

"Notwithstanding both his latest conviction and his earlier admissions, Mr Asan now resolutely continues not only to reject the motivation attributed to him for these offences, but also to deny their commission. However his inability to produce any convincing evidence to support his continued insistence that he had been 'framed' by the real perpetrator betrays not only his failure to accept any responsibility in the matter, but also a possible element of self-delusion in the thinking and attitudes which may reflect the comment made to him by the sentencing Judge that he appeared to display *'an air of arrogance'* during the original proceedings".

Earlier the report's author said this:

"Throughout my discussion with him Mr Asan maintained his denial of these offences, despite the weight of contrary evidence. In doing so he also made counter allegations against [MS's] character and integrity, suggesting that he now works in Nottingham for reasons other than those suggested in this case."

61. In summary, the offences contrary to section 4(1) of the 1997 Act were serious ones of their kind, on the cusp of being of the most serious having regard to a number of factors elevating culpability and the numerous aggravating features to which we have referred. The level of culpability was high, as was the level of harm. The offender had deliberately subjected this family to a degree of mental torture and over a prolonged period including by threats of serious violence. When considering the harm that such conduct causes it is important not to use hindsight. The gravamen of the offending is putting a person in fear of violence by harassment, although the perpetrator is known now and a view can be taken about whether any of the threats were intended to be carried out (this would not have been known to the victims of the offending at the time). The offences of perverting the course of public justice were also serious ones of their kind. Regard had to be had to the seriousness of the underlying conduct, of which the offender sought to exonerate himself, to the sophisticated and persistent attempts at deception, to the fact that the offender had drawn in two innocent colleagues in an attempt to bolster his deception and to the fact that the conduct was persisted in even after the offender's arrest and whilst he was on bail.

62. The sentence of 1 months' imprisonment in respect of the offence of possession of prohibited weapon on indictment 1 (T20177129) Part 1 shall remain in place and shall be made concurrent to all other sentences. However, the sentences for the offences of harassment (times two), for perverting the course of justice (times two) and for criminal damage are quashed. In considering what sentences should be substituted for the sentence that are quashed and in arriving at the total sentence, we take account of totality, such mitigation as is available to the offender, to the number of hours of unpaid work completed and to the very limited credit he should be afforded for his guilty pleas to the counts on indictment 2. We also have regard to the fact that his sentence was originally suspended and he must now be placed in custody. Also the substituted sentences shall run from the date of sentence and the offender is to be given credit for the time spent on remand in custody. Some of the sentences are uplifted to take account of the number of counts for the same offence.
63. It should be noted that it is common ground before us that once section 36 of the Criminal Justice Act 1988 is triggered by the perverting the course of public justice counts, as a matter of law, the rest of the sentence is at large. The point is one we understand that has been decided by a decision of this court this week, if not before, by a constitution presided over by Gross LJ in a case called R v Clews - see further the terms of section 36(3) itself.
64. The overall sentence will be one of 4 years and 9 months' imprisonment on the three indictments. We have already referred to the disposal of the single count on indictment 1. The remaining sentences will be structured as follows: on indictment 2 (T20177129 Part 2) count 1, criminal damage on 26 August 2016, contrary to section 1(1) of the Criminal Damage Act 1971, 3 months' imprisonment concurrent to the remaining sentences; count 2, putting a person in fear of violence by harassment between the 25 August 2016 and 12 April 2017, contrary to section 4(1) of the 1997 Act, 30 months' imprisonment; count 4, doing an act intending and intended to pervert the course of public justice on 24 November 2016, 18 months' imprisonment consecutive; count 5, doing acts tending and intended to pervert the course of public just between 25 August 2016 and 12 April 2017, 18 months' imprisonment concurrent to the sentence on count 4. On indictment 3 (T20187291), for the single count of putting a person in fear of violence by harassment between the 14 August 2018 and 17 August 2018, contrary to section 4(1) of the 1997 Act, of which the offender was convicted after a trial and having regard to the features of perverting the course of public justice, which aggravated that offence, the sentence is one of 9 months' imprisonment, consecutive to the sentence on count 2 on indictment 2. It follows that the reference for which we have given leave is disposed of in that way.
65. LADY JUSTICE SHARP: Mr Janes, we now have to consider the issue of the offender surrendering to custody in accordance with I think an earlier direction I have given in relation to another case, this matter has helpfully been sorted out in advance it appears and we have information - please tell me if this is correct - he will surrender to Keyham Lane Police Station, Colin Grundy Drive, Leicester, LE5 1FY by 4.00 pm today.
66. MR JANES: Can I indicate that that is the correct police station. I am assisted, as the court is, by the presence today of the officer in the case and investigation, the lady who

sits behind me in the pink jacket, that that is the correct local police station. The defendant was aware of today's hearing, letters having been received by him via my instructing solicitor. I do have his personal details. I do, of course, have the details of my instructing solicitor who is anticipating and expecting a call from me as soon as I can make it today. I hope that that allows enough time between now and 4 o'clock to communicate with him to surrender faithful to the court's order.

67. LADY JUSTICE SHARP: The information I have includes details, which I will not read out, but which I hope are available to you of the contact details for the officer in the case who is here and for the custody suite inspector, her e-mail address and her telephone number.
68. MR JANES: Thank you. Between us we will be able to make sure that the court order is complied with.
69. LADY JUSTICE SHARP: Can I thank both counsel for their assistance in this matter and also the court staff who I am very grateful to for sitting well past the lunch time adjournment.
70. THE REGISTRAR: There is one ancillary matter: the victim surcharge order was £140 because it was a suspended sentence, that should now be increased to £170.
71. LADY JUSTICE SHARP: That will be done.
72. MR JANES: That must be done. I think that follows. Thank you my Lady.
73. THE REGISTRAR: The restraining order remains.
74. LADY JUSTICE SHARP: For the avoidance of doubt, all other orders including the restraining order shall remain in place.
75. Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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