

218.3 Judicial guidance

Att-Gen's Ref Nos 11 and 12 of 2016 2016 EWCA Crim 2312 D and B pleaded to blackmail. They threatened a man whose company had gone bankrupt to pay money that was owed before the company was taken over by the liquidator. Held. The circumstances of such offences can vary enormously, as can indeed the circumstances of the individual offender. In consequence, a relatively wide range of sentences is indicated in the reported decisions. But some general propositions at least can be identified. First, blackmail is, by its very nature, an offence always to be considered as a very serious matter. Immediate terms of custody are ordinarily to be anticipated. Second, offending of this kind justifies an element of deterrent sentencing. Third, where the threats are of a kind to disclose discreditable or embarrassing conduct, be it true or false, that may (depending on the circumstances) make the matter even more serious. Fourth, where the threats are not of such a kind, but are of the kind designed to extract money, not just by way of a protection racket but by way of seeking to recover a sum alleged to be properly due, the court simply will not tolerate people taking the law into their own hands.

218.5 Debt collecting

Att-Gen's Ref Nos 11 and 12 of 2016 2016 EWCA Crim 2312 D and B pleaded late to blackmail after a *Goodyear* indication. V owned a company which went into liquidation in 2009, owing over £300,000. V immediately set up another company with a very similar name and carried on trading. A meeting of creditors was called for March 2014, where it was indicated the liquidator would say no [money] would be paid to creditors. In January 2014, D and B burst into V's office next to his home. Two staff members were present. B called out to V saying, "You owe a lot of money to fucking people. You rip them off. You owe this man £8,000." B then threw some invoices onto V's desk. B then said the figure was now £30,000 because a fine was put on top. B then punched himself on the face and said, "I'll do you over if you don't pay me now." Further he said there were two people up the road who were worse than B. V was petrified and said he would pay. B and D then went to the outer office area where a member of staff transferred £2,000 to B's account. More threats were made. D intervened and ushered V back into his office where asset questions were asked and a truncheon was smashed down on the desk. In tears, V offered to write a cheque for £6,000, payable to B, which D accepted. The whole incident had lasted about 30 minutes. V contacted the police but in fear did not cancel the cheque. On the day after the incident, B phoned V and asked for money from someone D claimed was owed money. When V said he did not have the money, B said he would have to face the consequences. V remained fearful for himself and his family. B's basis of plea said the money was 'rightly owed' and there was no violence. D's basis of plea said D gave moral support to B and that he did not gain financially from the offence. B was now aged 53 and B was now aged 49. B had 16 previous convictions, mostly for dishonesty. He was convicted for fraud in 2012 and 2015 (community order). D had 29 previous convictions for both dishonesty and violence. There were robbery convictions in 1996 (3 years) and 1999 (8 years). D had mental health, heart and kidney problems. Held. This was a bad case of its kind. It had features of robbery and had the following unpleasant features: a) there were two men, b) B and D gave the appearance of muscular back-up, c) grave threats were made, d) staff were present, e) B punching himself was designed to increase the physical menace, and f) £30,000 was demanded, which was more than what was due. The effect on the victim was predictable. For B, after a trial no less than 4 years would be appropriate. For B, the lesser player with the worst record, 3½ years after trial would have been appropriate. The plea was worth 10%. We give a limited reduction because the two were released after the sentence and will now face custody. For B, **40 months** and for D, **34 months**.

R v Atkinson and Others 2018 EWCA Crim 746 D was convicted of conspiracy to commit blackmail. D and the other three defendants acted as enforcers of a drug debt of £300,000 owed by J. J had been involved with drug supply and owed the money to his suppliers who were higher up the hierarchy. The defendants were hired to secure repayment of the debt. J had disappeared to evade detection by his creditors. Unable to locate him, the defendants agreed to intimidate various members of J's family and

friends. They demanded to know where J was and threatened unpleasant consequences if they were not given information. J's brother's house was the main target and the defendants visited the property four times. They spoke to J's sister-in-law and told her to provide a contact number for J or to get him to come to the house within two hours. J's family were told that the people he owed money to were 'not nice'. A photograph of a couple, who were friends with J, was taken from a WhatsApp profile page and sent to the friends in question. The profile picture of the sender was a pair of black leather gloves. D was aged 43 on the date of sentence and had some old and insignificant previous convictions. The Judge identified the following aggravating factors: a) this was a criminal scheme intended to assist another criminal scheme, b) it had involved a number of people who were persistent, c) the scheme had been carried out over a number of weeks, and d) the defendants paid no heed to the vulnerability of their victims, in particular J's sister-in-law, who was heavily pregnant at the time of the visits to her house and had a 2-year-old daughter. The Judge considered that D had the leading role in the scheme of enforcing and had recruited the others, who had become his ' heavies'. Held. There was no violence inflicted. No weapons were used and the offending, though persistent, was of a relatively short duration. For D, **5 years** not 6. For the others, who had visited the house and who all had convictions (which for three of them were old and for the fourth of little relevance), **4 years** not 5, **4 years** not 5 and **3 years, 3 months** not 5 years. The last defendant had a more limited role and better personal mitigation.