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**RESPONSE TO THE CONSULTATION ON PROPOSALS TO
TERRORISM OFFENCES**

The Criminal Solicitors Law Association (CLSA) has responded to the consultation on the proposed sentencing guidelines for terrorism type offences. The CLSA is an Association which is comprised of Solicitors who practise in the area of criminal law, and whose members have varied experiences in a number of fields, the consultation is prepared on behalf of the Association, but its views are not intended to be taken in any way to have any political, Social or Religious bias. The views put forward deal with the experience acquired as criminal law practitioners in sentencing and interpretation of guidelines.

As with all sentencing aspects, it is the view of the CLSA that the overarching principles must be proportionate. It is acknowledged that currently, not just in the United Kingdom, but throughout the world, terrorism appears to be increasing, and that steps must be taken to address the causes, and deal with those involved in such acts. However, there can be no room for knee jerk reactions, either in the drafting of the law, and the implementation of its sentencing. All threats must be real, as opposed to being perceived, and consistency is required in both assessing the risk and assessing the seriousness of offences.

Many of the comments to the questions are deliberately short, as the guidelines are in many ways, no different to sentencing guidelines for other offences. However, the concerns that the CLSA has in respect of this consultation is the level of subjectivity in the terms used and the factors outlined. There needs to be certainty and proper definitions. Off concern is that, for example, at Question 51, there is a proviso that the Government will change the guidelines if legislation is to be reviewed. Law, and its principles require certainty, not subjectivity. It must be questioned why guidelines are now being published if a review is already being considered. There is a need to restate the principles of certainty, clarity and independence of the Judiciary in implementing both legislation and the sentences to be imposed within the guidelines.

Question 1.

Culpability; the factors outlined are adequate, however, the content is too subjective. The legislation does not explain how it is to be decided where preparations are complete, or almost complete.

Question 2.

The suggestions here are that the Harm factors should be as follows:-

- a. This should read loss of life and or endangerment of life.
- b. This should include intent to create widespread and serious damage.

Question 3. Nothing to add, these are subjective views

Question 4. This is a standard comment and invites no further comment.

Question 5. No

Question 6. No

Question 7. No

Question 8. No, this is fairly standard

Question 9. There is nothing to add

Question 10. As above.

Question 11. As above

Question 12. As Above

Question 13.

“Encouragement of terrorism” needs to be properly defined in legislation. This needs to be viewed carefully due to the subjective nature of the clause, and also due to the current political climate. Knee jerk reactions in sentencing are to be avoided at all costs.

Question 14. Nothing to add

Question 15. As Above

Question 16. As Above

Question 17. As above

Question 18. As above

Question 19. As above

Question 20. As above

Question 21. As above

Question 22. As above

Question 23. As above

Question 24. Nothing to add

Question 25. Nothing to add

Question 26. Nothing to add

Question 27. Nothing to add

Question 28. As above

Question 29.

The response is the same. There is a level of standardisation in the guidelines and application within the scenarios set which the CLSA considers to be appropriate and non-controversial.

Question 30. As above

Question 31. As Above

Question 32. As above

Question 33. No

Question 34. No

The CLSA is concerned about the manner in which it is proposed to address such issues as failure to disclose information regarding acts of terrorism, and whilst the issue of knowledge is to be defined, the one aspect for consideration which should be included is mitigation whereby the defence of duress is not made out, but there is clear coercion.

Question 35. No

Question 36. No

Question 37. No

Question 38. No

Question 39. No.

The CLSA is concerned as to the subjectivity of the term "possession of items... for terrorist purposes" there needs to be specific clarification, and a list, (none exhaustive) as to what such items may be. The quality of the items for the purposes of terrorism need to be graded more thoroughly.

Question 40. Nothing to add

Question 41. See above

Question 42. See above

Question 43. See above

Question 44. See above

The CLSA is concerned regarding the lack of clarity regarding the collection of terrorist information, and how it is to be defined. What is to be considered as extremist will of course depend on an individual case scenario. Each of the scenarios presented are dealt with properly in accordance with the principles outlined, however, not enough consideration has been given for example to what may be a collection, for example, could limited reading via google, WhatsApp, or Twitter be capable of being a collection

What is intended to be defined as extremist? Is this intended to change in accordance with the political wind, and if it is, then why publish these guidelines which may prove to be otiose due to the change of political climate. There is insufficient certainty. Thought needs to be given to potential mitigation where coercion is an issue which falls short of duress.

Question 45. Yes

Question 46. Yes

Question 47. No

Question 48. No

Question 49. No

Question 50. No

Question 51. This is dealt with in the comment above.

Question 52. No

As has been commented upon above, there is a level of standardisation in the guidelines provided, and it was felt that there was no need to respond more fully.

However, the issue of coercion, falling short of duress is missing and should be used as a mitigating factor in every case, in acts of terrorism, fear is relied upon to impact upon the community. Fear can also easily be relied upon in order to ensure silence in reporting or disclosing information. Such fear is real, and should not be ignored.