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**CLSA Response to the Consultation on the Offences of Arson and Criminal  
Damage Offences Guideline.**

**Response date due by 26 June 2018**

This response has been prepared by the CLSA. The CLSA is a representative body, which is comprised of practising solicitors who primarily specialise in defence criminal litigation. The responses are by no means designed to reflect all of the views of those who are represented by the CLSA, but they are the views of those with expertise in this area of law, and hope that the Sentencing Council find the comments both constructive and useful.

## Section 2 – Arson (criminal damage by fire)

Q1. Do you agree with the proposed factors within culpability? If not, please tell us why.

In general, the manner in which the factors within culpability are not contentious. However, what does appear to be missing is the specific targeting of groups dealing with race, religion, and minority groups.

Q.2 Do you agree with the proposed harm factors for this offence? If not, please tell us why.

The proposed harm factors are in many ways subjective, however, there is a need to reflect upon the impact socially of any act.

Q3. Do you agree with the proposed sentence table? If not, please tell us why.

The sentence table does reflect quite properly, the seriousness of and diversity of the range of offences.

Q4. Do you agree with the inclusion of this text within the guidelines?

It is the view of the CLSA that whenever the offence of arson is committed, psychiatric reports should be obtained. This type of offence is well known to have deeper connotations in highlighting mental health issues, as well as dangerousness. Yes.

Q.5 Do you agree that the proposed aggravating and mitigating factors cover the most likely factors that would apply to these offences? If not, please tell us why.

There is nothing in these factors which the CLSA would seek to amend.

## Section 3 – Criminal Damage/arson with intent to endanger life or reckless as to whether life endangered

Q. 6 Do you agree with the proposed approach to culpability for this offence?

There is nothing controversial, or indeed contentious as regarding the proposed approach.

Q.7 Do you agree with the proposed harm factors for this offence? If not, please tell us why.

It is the view of the CLSA that insufficient regard is taken of the possible social, and racial impact of these offences. Whilst there is nothing contentious in the proposals, the term “Social” is too widely drafted, which could lead to either unintended consequences, or poor and subjective interpretation. This needs to be more specific in order to reflect precisely as to what is meant, and the intentions of such a term is made clear at end of social

Q. 8 Do you agree with the proposed sentence table? If not, please tell us why.

The sentences as proposed are reflective of the current social and political approach.

Q.9 Do you agree with the inclusion of this text within the guideline, and the detailed information on mental health disposals at section 3?

It is the view of the CLSA that all cases involving arson should include a psychiatric assessment. However, one area of concern is as to who should organise the preparation of the report. The inefficiencies, and indeed the burdens which are placed upon criminal practitioners in obtaining 2 quotes from practitioners, applying for prior authority from the L.A.A. and then providing a report are burdensome to criminal practitioners who have already suffered heavily in having fees reduced over the past 20 years. It cannot be appropriate to front load further responsibilities and costs on defence lawyers, particularly when this may become part of the sentencing function, and it is therefore something that the court should both order and arrange.

Q. 10 Do you agree that the proposed aggravating and mitigating factors cover the most likely factors which would apply to these offences? If not, please tell us why.

The CLSA have nothing to add.

Q.11 Do you agree with the proposed culpability factors? If not, please tell us why.

The CLSA believes that there should be some reference to potential racial and social motivation as an aggravating feature.

Q.12 Do you agree with the proposed harm factors for this offence? If not, please tell us why.

Yes

Q. 13 Do you agree with the proposed sentence table/ If not, please tell us why.

Yes, this is a reflective approach to the current sentencing climate.

Q. 14 Do you agree with the proposed approach to sentencing racially and religiously aggravated criminal damage offences? If not, please tell us why and suggest any alternative approaches which you think should be considered.

Yes, the current political and social climate reflects the need for this approach.

Q15. Do you agree with the proposed culpability factors? If not, please tell us why.

Yes

Q.16 Do you agree with the proposed harm factors for this offence? If not, please tell us why.

Yes

Q. 17 Do you agree with the proposed sentence table? If not, please tell us why.

Yes, the proposed sentences are reflective of the current climate

Q. 18 Do you agree that there should be 2 separate guidelines, one for offences where the value exceeds £5000.00, and one for offences where the value is under £5000.00? If you do not agree, please tell us why, and suggest any alternative approaches.

The financial valuation is too arbitrary and inflexible. If the damage is set at £5005.00, why should this fall into a higher category? The CLSA respectfully suggest that a more holistic approach, dealing with the social and cultural impact, together with the true impact of the arson as opposed to reducing the seriousness of the offence to mere monetary terms. It has to be right that the higher the volume of financial damage, the greater the penalty to be considered, but this should not be the only issue.

Section 6 Threats to destroy or damage property

Q. 19 Do you agree with the proposed culpability factors for this offence? If not, please tell us why.

Yes, but also see the point raised in the answer to Q.11

Q. 20 Do you agree with the proposed harm factors for this offence? If not, please tell us why.

Yes, they are reflective of the current climate.

Q. 21 Do you agree with the proposed sentence table? If not, please tell us why.

Yes

Q.22 Do you agree with the inclusion of this text in the guideline?

Yes, but please see the response to Q.9

Q. 23 Do you agree that the proposed aggravating and mitigating factors cover the most likely factors that would apply to these offences? If not, please tell us why.

Yes

Q.24 Are there any equality or diversity matters that the Council should consider for the guidelines discussed?

Please provide evidence of any issues where possible.

No

Q. 25 No

Q. 26 No