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The Criminal Law Solicitors' Association (CLSA)

**Response to Overarching Principles Sentencing offenders with mental health
conditions and disorders guideline –**

Response Due by 9th July 2019

The CLSA is an association comprised of criminal solicitors who are spread geographically throughout England and Wales. The views are believed to be representative of those who practise within the Criminal Justice System, but do not necessarily form the views of all of the members of the CLSA.

The CLSA believes that as a civilised Society, the personal circumstances of each and every person who appears before the Criminal Courts to be sentenced, and more particularly those with mental health vulnerabilities, should form a part of all sentencing considerations.

Q.1

It is not accepted that the draft guidelines should only apply to offenders aged 18 or older. It is accepted that there are different considerations which are taken into account with young offenders. However, mental health conditions do not apply solely to Adult defendants. Many young offenders suffer from recognised mental health problems and vulnerabilities. It is not uncommon for Juvenile Offenders with Attention Deficit Hyperactivity Disorder (A.D.H.D), or those who are on the autistic spectrum who are at risk of Youth Detention or other sentences which may be wholly inappropriate in light of their individual personal circumstances.

Q.2

It is important that the title of any guidelines specify in precise terms, what the guidelines refer to without ambiguity or confusing language. Sadly, sometimes, only a direct reference will be appropriate. It has to be right that those who are to be sentenced are not belittled, or made to feel that they are stigmatised, but clarity is essential. May we suggest a title, "Overarching Principles; Sentencing Vulnerable Offenders".

Q.3

The CLSA are uncomfortable in categorising defendants in accordance with their ethnicity and cultural expectations. There must surely be a tendency to "Pigeonhole" offenders, and also create a list which may not be socially relevant or desirable. By way of example, the concern may be, in light of the recent crime wave involving knife attacks in and around London that the majority of victims, and indeed offenders, are of Afro Caribbean origin, or Asian Origin. It stigmatises offenders in a naive and unhelpful manner. It is time that Society, and therefore the criminal justice system dealt, by the use of appropriate principles, sentencing in accordance with the vulnerabilities of the defendant, and not ethnicity. It is both offensive, unhelpful, stigmatising, and socially divisive.

Q4.

All information should be made available from all sources which have information to offer on each defendant. The National Health Service are not the only providers of healthcare treatment, and other agencies have a great deal to contribute, not just the hard pressed NHS.

The Court should consider proportionality in all cases when making ancillary orders. If a defendant is vulnerable, it is vital that the Court makes a clear order which can be understood, but more importantly, the Order must be workable. Often, with vulnerable defendants, an Order made with the best intent may set the defendant a task which is frankly unachievable.

Paragraphs 8 and 9 are accepted.

Q.5

The Guidance as a principle is helpful. The concerns that the CLSA has is that the Courts may well try to second guess the medical profession. Any list of questions is unlikely to elicit the personal response which each defendant would need to be addressed, and whilst it is necessary to have tailored questions, they should not be set in tablets of stone, and they should not be prescriptive.

It is the duty of the Legal profession, and those who are involved in it, and not the medical profession, who are not legally qualified, to deal with factual issues such as culpability, and any attempt to impose that duty on an unqualified professional who may have neither the expertise, experience, or indeed time in which to consider legal issues, should be resisted.

Q. 6.

The CLSA disagrees with the use of the questions as proposed. There is too high a degree of subjectivity and interpretation which may well throw a greater burden upon the author of the report. It would, it is submitted, require a great deal of time and input from professionals who are already stretched to breaking point, and adds a layer of unfair responsibility upon the author. It is also submitted that such an approach may require a greater degree of legal knowledge than can reasonable be expected of such a professional.

Q. 7

The CLSA agrees with this

Q. 8

The CLSA agrees with this

Q. 9

The CLSA is of the view that this is a question which even highly skilled advocates are unable to respond to. Second guessing, and placing the Defence advocate in the role of a psychiatrist is not the way forward. A report should always be obtained where the defendant is suffering from a recognised illness, and those issues should be fully addressed in the report.

Q.10

This seems to be a comprehensive approach, and the CLSA have little to add.

Q.11

This approach will be helpful to the Courts, and the CLSA have little to add.

Q. 12

The CLSA believe that this is comprehensive, and that there is nothing to be addressed.

Q.13

The CLSA believes this to be a comprehensive approach and have nothing to add.

Q.14

The CLSA view is No

Q. 15

The CLSA believe that this would be inappropriate as it is a speculative approach.

Q. 16

No

The CLSA have reviewed the guidelines fully, and are grateful for the opportunity to respond to this consultation.