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**CLSA response to Sentencing Council Assault offences
consultation**

The Criminal Law Solicitors' Association is the only national association entirely committed to professionals working in the field of criminal law. The CLSA represents criminal practitioners throughout England and Wales and membership of the Association is open to any solicitor - prosecution or defence - and to legal advisers, qualified or trainee - involved with, or interested in, the practice of criminal law. The CLSA is responding to the consultation on behalf of its members.

Consultation Questions General observations

Common assault

Question 1: Do you have any comments on the proposed culpability factors?

We are not convinced that premeditation should be removed from high culpability. We are not convinced that it "rarely" applies in common assault cases. Just because the injury is minor doesn't prevent there being pre meditation.

We are not sure what is meant by "substantial force". Almost by definition there will not be "substantial force" in a Common Assault case as if there were then ABH injurie would be used. We feel that the intention behind this element is dealt with in the Harm part of the guideline.

Excessive self-defence should be retained as lessening culpability.

Provocation should lessen culpability rather than being a mitigating factor..

Question 2: Do you agree with the revised approach to assessing harm, and with the factors included?

We don't agree that psychological harm/distress should ever take this into Category 1. If there is serious psychological harm/distress evidenced by medical evidence then the case can be charged as ABH. Our concern is that the current draft will put too many cases with no physical injuries into Category 1 – based solely on victim statement. Our suspicion is that victims are prone to overstate distress in Victim Impact Statements and this amended guideline will lead to an increased number of cases attracting custody.

Question 3: Do you have any comments on the proposed sentence levels?

No.

Question 4: Do you have any comments on the proposed aggravating and mitigating factors?

No.

Question 5: Do you have any other comments on the Common assault guideline?

No.

Assault on emergency workers

Question 6: Do you agree with the approach to assessing culpability and harm, and with the factors included?

We are not sure what is meant by "substantial force". Almost by definition there will not be "substantial force" in a Common Assault case as if there were then ABH injurie would be used. We feel that the intention behind this element is dealt with in the Harm part of the guideline.

We don't agree that psychological harm/distress should ever take this into Category 1. If there is serious psychological harm/distress evidenced by medical evidence then the case can be charged as ABH.

Question 7: Do you have any comments on proposed sentence levels?

No

Question 8: Do you agree with the proposed aggravating and mitigating factors?

Yes

Question 9: Do you have any other comments on the Assault on emergency workers guideline?

No

Assault with intent to resist arrest

Question 10: Do you agree with the approach to assessing culpability and harm, and with the factors included?

We are not sure what is meant by "substantial force". Almost by definition there will not be "substantial force" in a Common Assault case as if there were then ABH injurie would be used. We feel that the intention behind this element is dealt with in the Harm part of the guideline.

We don't agree that psychological harm/distress should ever take this into Category 1. If there is serious psychological harm/distress evidenced by medical evidence then the case can be charged as ABH.

Question 11: Do you have any comments on the proposed sentence levels?

No

Question 12: Do you agree with the proposed aggravating and mitigating factors?

Yes

Question 13: Do you have any other comments on the Assault with intent to resist arrest guideline?

No

Assault occasioning Actual Bodily Harm

Question 14: Do you agree with the approach to assessing culpability and with the factors included?

Lack of premeditation/harm should be retained as lessening culpability.

Impulsive/spontaneous and short lived assault should lessen culpability.

If Medium culpability includes a balancing of A and C then there should be counterpoints to A in C to avoid an escalation in prison sentences.

Question 15: Do you agree with the approach to assessing harm?

Yes

Question 16: Do you have any comments on the proposed sentence levels?

We consider that the starting point of Category 1 A is too high. The previous highest guideline for ABY was a starting point of 1 year 6 months. Upping it to 2

years 6 months will lead to a significant increase in custodial sentences and lengths.

Question 17: Do you agree with the proposed aggravating and mitigating factors?

No observation.

Question 18: Do you have any other comments on the ABH guideline?

It should be made clear that a Psychological harm must be evidenced by medical evidence if it is to be included. It should not be found merely on Victim assertion. There is a general concern that Victim Impact Statements can overstate psychological impacts.

GBH s18 and s20

Question 19: Do you agree with the approach to assessing culpability for s20 offences and with the factors included?

Lack of premeditation/harm should be retained as lessening culpability.

Impulsive/spontaneous and short lived assault should lessen culpability.

If Medium culpability includes a balancing of A and C then there should be counterpoints to A in C to avoid an escalation in prison sentences.

Question 20: Do you agree with the approach to assessing culpability for s18 offences and with the factors included?

Lack of premeditation/harm should be retained as lessening culpability.

Impulsive/spontaneous and short lived assault should lessen culpability.

If Medium culpability includes a balancing of A and C then there should be counterpoints to A in C to avoid an escalation in prison sentences.

Question 21: Do you agree with the approach to assessing harm for GBH offences and with the factors included?

It should be made clear that a Psychological harm must be evidenced by medical evidence if it is to be included. It should not be found merely on Victim assertion. There is a general concern that Victim Impact Statements can overstate psychological impacts.

Question 22: Do you have any comments on the proposed sentence levels for GBH s20?

We observe that having a higher starting point for the highest category of 4 years instead of 3 is likely to lead to an increase in the average length of custodial sentences.

Question 23: Do you have any comments on the proposed sentence levels for GBH s18?

No observations

Question 24: Do you agree with the proposed aggravating and mitigating factors?

No observations

Question 25: Do you have any other comments on the s20 GBH guideline?

No

Question 26: Do you have any other comments on the s18 GBH guideline?

No

Attempted murder

Question 27: Do you agree with the approach to assessing culpability for Attempted murder and with the factors included?

We are a little concerned at including "fire" in the highest culpability level. Access to fire and arson are quite common. Whilst the seriousness of any attempt to murder cannot be downplayed, it is our submission that this could include a "hapless" attempt and is distinguishable from firearms and explosives. We would put this in B – High culpability.

Question 28: Do you agree with the approach to assessing harm for attempted murder offences and with the factors included?

It should be made clear that a Psychological harm must be evidenced by medical evidence if it is to be included. It should not be found merely on Victim assertion.

There is a general concern that Victim Impact Statements can overstate psychological impacts.

Question 29: Do you have any comments on the proposed sentence levels?

Again, we fear that the ramping up of the top starting point will lead, on average, to an overall increase in sentence lengths.

Question 30: Do you agree with the proposed aggravating and mitigating factors?

No observations.

Question 31: Do you have any other comments on the Attempted murder guideline?

No

Equality and diversity

Question 32: Do you consider that any of the factors in the draft guidelines, or the ways in which they are expressed could risk being interpreted in ways which could lead to discrimination against particular groups?

No observations.

Question 33: Are there any other equality and diversity issues the guidelines should consider?

No observations.