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LCCSA RESPONSE TO CONSULTATION ON TERRORISM OFFENCES

The London Criminal Courts Solicitors' Association (LCCSA) represents the interests of specialist criminal lawyers in the London area. Founded in 1948, it now has around 620 members including lawyers in private practice, Crown prosecutors, freelance advocates and many honorary members who are circuit and district judges.

The objectives of the LCCSA are to encourage and maintain the highest standards of advocacy and practice in the criminal courts in and around London, to participate in discussions on developments in the criminal process, to represent and further the interest of the members on any matters which may affect solicitors who practice in the criminal courts and to improve, develop and maintain the education and knowledge of those actively concerned with the criminal courts including those who are in the course of their training.

This response to the consultation on terrorism offences has been prepared by 4 members of the LCCSA. If you have any queries about it, or would like to engage in follow-up discussion, please contact:

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Question 1 – While we support there being 4 categories, we are concerned by the gap between 'preparations are well advanced but not complete or almost complete' and 'very limited preparation of terrorist activity'. It is our view that there is another level of culpability which can be defined as 'preparation of terrorist activity is not well advanced'. We anticipate sentencing tribunals rejecting any argument that there has been very limited preparation of the activity and potentially placing the offender in the second most serious sentencing bracket.

Our other issue with culpability is the term used to define a person who is a 'significant participant'. We would prefer the substitution of the word significant with leading this being a term more familiar to criminal practitioners and in particular sentencers. It is the term used in the sentencing guidelines for drugs offences.

Question 2 – We agree with the proposed harm factors.

Question 3 – The sentences are high but in light of the recent spate of attacks, we cannot say unjustifiably so.

Question 4 – We are unsure as to why 'many lives endangered' is an aggravating factor. By their very nature terrorist offences are likely to place lives in the plural at risk. Endangerment of life is already addressed under 'Harm' so we do not feel it is necessary to have 'many lives endangered' as an aggravating factor. If this remains as an aggravating factor it is most likely that all those falling to be sentenced will have their sentences uplifted.

We take issue with use of encrypted communications as a factor. Encrypted is not necessarily the same as sophisticated. For instance, Blackberry and What's App use encrypted technology yet these are common and widespread social media platforms.

Our other concern is with the taking equipment abroad factor. We submit this has been drafted in terms which are too vague and too wide. Perhaps this factor should specify weapons?

Turning to mitigating factors we suggest that the words 'or some other vulnerability' is added to the final factor. We believe the references to mental disorder or learning difficulty are too narrow a definition.

Question 5 – While we understand how the court reaches this sentence using the proposed guidelines, it does appear harsh when no one has actually died or been harmed. The sentence envisaged is disproportionately longer than would be imposed on someone who has used a knife to murder more than one person.

Question 6 – This case study is a further example of the tariffs being set too high. The offence is as stated incomplete and no one has died or been physically harmed. He has not yet acquired any explosive device and may not have ever come into possession of one. The defendant might have withdrawn and in our view, he also appears vulnerable. The proposed guidelines point to a determinate sentence of 40 years or if as it transpires he is considered to be dangerous a life term with a tariff of 24 years is imposed. In our submission this appears to be harsh bordering on the manifestly excessive. Part of the difficulty facing the court from this sentencing exercise is the over simplification of the culpability table. Had it been argued this was a C and not a B then the sentence would have been more tailored to the offending portrayed in this case study.

Question 7 – We struggled with this case study not least because it was silent on the offender's plea. If this was a contested matter then the sentence imposed is not too excessive. We note the offence was aggravated by repeated possession of extremist material but what does this mean? Is it related to quantity or is it small quantities of materials acquired at different points in time?

Question 8 – On culpability we make the same points as before in response to question 1. These are the use of the word significant instead of leading and the gap between well advanced preparations and limited steps taken.

Question 9 – We agree with these harm factors.

Question 10 – In our view as stated with the previous guideline, the starting points and ranges are too high.

Question 11 – We make the same points re aggravating and mitigating factors as in our answer to question 4. All the factors are identical to the previous guideline.

Question 12 – Again life this time with 36 years seems too long having regard to the fact this was a conspiracy offence as opposed to a choate offence of murder. On the other hand, we concede this was a more sophisticated conspiracy than the example given in the previous section where a van and knives were to be used.

Question 13- This is another example of a long sentence being imposed as a consequence of the tariff being set too high. We also have regard to the offender's age.

Question 14 – We are unsure what offending would fall under Category C. It appears to us that just two categories are required but with the sentencing guidelines for the lower category pitched as per C and not B.

Our other concerns are the type of activity which might be encompassed by the lower category of culpability. Also, the range of publications which could be construed as encouraging an offence of terrorism. Potentially a book such as the Satanic Verses could be argued as encouraging someone to commit an act of terrorism.

Question 15 – We take no issue with these harm factors.

Question 16 – The sentencing starting points and ranges appear reasonable.

Question 17 – Please see our earlier comments in relation to vulnerability featuring among the mitigating factors.

Question 18 – We agree with the application of the guideline in this case example.

Question 19 – 22 – It is noted that in a period of 5 years just one person has been convicted of an offence under this section of the Terrorism Act. Hence we question the need for a sentencing guideline.

Question 23 – Looking at this example we are of the view the sentence imposed appears too high. The offender is not a prominent member of the organisation albeit she is active.

Question 24 – The culpability factors are agreed save for the same comment as earlier re the use of the word significant as opposed to leading in category B.

Question 25 – The harm factors appear appropriate.

Question 26 – Again we note the lack of convictions for this offence. Having said this the sentencing start points and ranges appear appropriate.

Question 27 – In relation to the mitigating factors we again make the same comments as we made in our response to questions 4, 11 and 17. We also take issue with the inclusion of 'vulnerable/impressionable audience' among the factors increasing seriousness which in our view is likely to be used as a catch-all for all offenders.

Question 28 – As with other case studies in this consultation the likely sentence is too high. **Note – when we met we thought this was a 2b. I think it's a 2a. Rak ?**

Question 29 – We agree with the proposed culpability factors.

Question 30 – Our first point is the inclusion of the use or provision of false or fraudulent identification as a factor for category 1 harm. We believe this should be included within the factors increasing seriousness. We are surprised that quantum does not figure as a basis for calculating harm when clearly the more money which is raised the more the likely harm. In this respect we would ask the SC to make reference to quantum in the same manner as guidelines for fraud, drugs and money laundering do.

Question 31 – Overall the starting points are in our submission pitched too high.

Question 32 – We again refer to our point re the inclusion of the offender being in some other way vulnerable.

Question 33 – The application of the guideline is in principle agreed.

Question 34 – This case study demonstrates why we believe quantum should be a harm factor. While fundraising for terrorism must inevitably be considered as more serious than straightforward fraud or money laundering, the outcome is far too harsh and disproportionate. Indeed, the sentence reached is more than double than might be expected for a non-terrorism fraud of a similar amount.

Question 35 – We agree.

Question 36 – We agree.

Question 37 – No, we agree that these are appropriate starting points and ranges.

Question 38 – No, they seem appropriate.

Question 39 – We agree that the sentence should be close to the maximum, although suggest that it should fall slightly shy of that as it is not the worst example of the offence imaginable (e.g. knowing about a 9/11 type incident).

Question 40 – Category C ought to be 'limited' rather than '*very* limited'. It seems more consistent and fairer. We repeat the same comment as earlier re the use of the word significant as opposed to leading in category B.

Question 41 – Agree

Question 42 – Agree. We note the comment that only one person has ever been sentenced for this offence and we think that it is undesirable to clutter up the repertoire of guidelines for such rare offences where consistency between sentencers (the raison d'etre of the Guidelines) is just not an issue.

Question 43 – No – they seem reasonable.

Question 44 – We think that 10 years is an appropriate sentence but it is not necessary to add on an extra year for a 10-year-old offence.

Question 45 – Agree

Question 46 – Agree

Question 47 – No

Question 48 – If Parliament legislates for an increased maximum sentence, the will of Parliament is not *necessarily* that sentences should be increased across the board – it could be that high sentences are available for the most serious offences. We do not think that the inflationary approach in the second table necessarily reflects the will of Parliament.

Question 49 – No

Question 50 – No

Question 51 – No, see our response to Question 48 above.