

# Bad character evidence case study



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The objective of this paper is to demonstrate what a bad character evidence (BCE) is and whether Liam Parrish's (LP) BCE of previous convictions should be admitted at trial.

The definition and admissibility of BC is governed by the Criminal Justice Act 2003 (CJA). [1] BC is determined as “evidence of, or of a disposition towards misconduct” or evidence of a tendency towards misconduct. [2] Misconduct is defined as the commission of the offence or other reprehensible behaviour. [3]

LP is a non-defendant, this is vital as the admissibility of the BCE of non-defendant's is governed by s. 100. [4]

When considering what is admissible the Court needs to be aware of the danger of breaching the right to a fair trial. [5] Also, the Court is required to consider a non-exhaustive list of factors in assessing whether the character is of substantial importance. [6]

### Drug Possession

The first issue is whether the offence of drug possession will be regarded as BCE and whether it should be admitted at trial. It is a vital element to the case as a whole since Adam Harris (AH) stated that LP was a drug dealer. This assertion was reinforced by Rose Matthews's who confirmed it in her statement as well.

On the one hand, it can be argued that his conviction can be regarded as old since it was committed in 2008. As set out in s. 100(3)(c)(ii) his drug conviction showed that LP was a drug dealer and this confirmed his alleged

misconduct. Per *Yaxley-Lennon* [7] drug possession can be regarded as having substantial probative value in relation to his credibility, which is an important issue in the case. Also, the Court when assessing the probative value of evidence should take into consideration some relevant factors.

[8] The older the incident, the less likely it is to show a propensity and therefore it will be inadmissible.

On the contrary, the age of the conviction can illustrate how long LP has been dealing with drugs. Therefore, his conviction can be regarded of substantial importance to the context of the case as a whole. As drug dealers often find themselves surrounded by dangerous people. LP alleged that did not see who his attacker was, so it's a possibility that he may be attacked by someone else rather than AH.

Therefore, LP previous conviction of drug possession is more likely to be admissible as it has a substantial probative value in relation to something which is both “ a matter in issue in the proceedings and is of substantial importance in the context of the case as a whole”. [9]

### Assault

The second issue is whether LP's previous conviction for assault could be admitted. This is potentially formed part of the chain of past misconduct which might establish a propensity to commit similar offences. Therefore, propensity to commit this type of offence may be a matter in issue between prosecution and defence. [10]

It could be admitted under s. 100(1)(b) as it is a matter in issue and his propensity to be violent has a probative value. In *Braithwaite* [11] the Court held that “ BCE in relation to the witnesses was relevant both to their propensity to act aggressively and to their credibility”. [12] So, in this case, LP’s assault conviction may show a propensity to act aggressively as well. Thus, it would be a matter in issue to establish whether AH’s statements were true. There are similarities between AH’s statements (when he stated in the police interview that LP tried to hurt Rose) and the conviction itself.

This could be regarded as very important as to a matter in issue with substantial probative value that LP has a propensity to be violent. Moreover, the fact that the conviction is recent makes it more likely to be admissible. [13]

### Credibility

The propensity to untruthfulness may be a matter in issue between the prosecution and the defendant. [14] Credibility will always be an issue to some extent in any prosecution. [15] In the case of *Goddard* [16] was established that only convictions of probative value and of substantial importance could be admitted.

As shown by the facts, LP had pleaded not guilty unsuccessfully to be acting in self-defence to an unprovoked attack. However, his argument was dismissed by the Court and it was found that LP had started the fight.

Furthermore, he lied under oath for an alibi in his third conviction. Therefore, LP previous convictions can be admitted as evidence to show his propensity for untruthfulness and thus his credibility.[17]

Credibility is an issue of substantial importance and what sort of convictions are capable of affecting credibility can be found under s. 100. In *Andrew* [18]the Court held that under s. 100(1)(b)(i) creditworthiness of a witness is an important matter in issue.[19]

The test of creditworthiness being a matter in issue with substantial importance to the case illustrated in the leading case of *Brewster* . [20]Pitchford LJ set out a two-stage test. Firstly, if it is shown that creditworthiness is an issue of substantial importance. The second question is whether the BC relied upon is of substantial probative value in relation to that issue.[21]The test for whether previous convictions have probative value on the issue of creditworthiness will depend on the number, nature and age of the convictions.[22]

Applying this principle to LP's creditworthiness, the conviction of preventing the course of justice and the fact that he pleaded not guilty should be admitted since is an issue of substantial importance. The convictions were relevant to credibility in the wider sense that they would affect a fair-minded jury's assessment of the standing of the witness.[23]

### Conclusion

Since LP is deceased, to examine his character the jury should be entitled to look at LP's convictions as 'cumulatively' to get a more complete picture of LP's character.[24]

The strongest argument is the intervening of justice conviction for two reasons. It is a recent conviction and it has direct effect on LP's creditworthiness. The weakest point is LP's drug conviction as it is from 2008. However, it was illustrated that it can be argued to show how long LP has been dealing with drugs.

### Bibliography

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[1]Criminal Justice Act 2003.

[2]Ibid, s. 98.

[3]Ibid, s. 112 (1).

[4]Ibid, s. 100.

[5]European Convention on Human Rights 1950, Article 6.

[6]Ibid, s. 100 (3).

[7] *R v Anthony Weir & Others* [2005] EWCA Crim 2886.

[8]Criminal Justice Act 2003, s. 100 (3) (b).

[9]Criminal Justice Act 2003, s. 100 (1) (b).

[10]Criminal Justice Act 2003, s. 103 (1) (a).

[11] *R v Braithwaite* [2010] EWCA Crim 1082.

[12]Ibid, [13] (Lord Justice Hughes).

[13]Criminal Justice Act 2003 s. 100(3).

[14]Ibid, s. 101 (1) (d).

[15] *R v Campbell* [2007] 1 WLR 2798.

[16] *Regina v Leigh Goddard* [2007] EWCA Crim 3134, [13] (Lord Justice Gage).

[17]Gregory Durston, *Evidence* (2<sup>nd</sup> edn, Oxford University Press 2011) 179.

[18] *R v Andrew S* [2006] EWCA Crim 1303.

[19]Ibid, [7] (Lord Justice Laws).

[20] *R v Brewster & Cromwell* [2010] 2 Cr App R 20.

[21]Ibid, [23] (Lord Justice Pitchford).

[22]Criminal Justice Act 2003 s. 100 (3).

[23] *R v Brewster & Cromwell* [2010] 2 Cr App R 20, [24].

[24]Scott Blair, ‘Criminal Procedure’ [2016] SHR] 72, 6.