

# Effect of bad character evidence on juries



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Does Bad Character evidence have an effect on Juries?Introduction :

The Criminal Justice Act 2003 (CJA) was introduced to allow more defendants' bad character evidence to be introduced to juries, in contrast to what was allowed before, under previous law. Defendants or witnesses in a criminal case will often have previous convictions, the CJA allows these previous convictions to be admitted at trial through one of the seven gateways, prior to the CJA evidence that a defendant had previous convictions was not admissible at trial, except in very limited circumstances.

In this essay, I will aim to discuss the seven gateways and the effect/s that they could have upon a defendant, establishing exactly what bad character is, discussing 'misconduct', 'reprehensible behaviour' and propensity. In turn I will consider the jury alongside the biases that may be created by bad character evidence and how it can affect their opinions. I will ascertain the role of the judiciary, while considering the safeguards that are currently present to protect a defendant and aim to conclude whether the gateways of the CJA are in fact fair in every case.

Previous law:

Before the CJA was introduced, the law on bad character evidence was a disorganised mixture of statute and common law rules,[1] where the defendant possessed a shelter against bad character evidence if the defendant, while giving evidence at trial, did not attack another persons' character. Before the CJA was enacted, the CPS could raise as part of their case evidence that a defendant had a previous conviction but merely if that

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conviction amounted to 'similar fact' evidence. Which was evidence that the defendant had previously committed offences that were so similar to the current offence in the manner in which they were carried out that is to be emphatically probative of the defendant's guilt. The only other means in which a defendant's previous convictions could be raised in evidence was if the defendant entered the witness box to give evidence as part of his defence. The general rule was that if the defendant entered the witness box to give such evidence as part of his defence, he then had a shield against being cross-examined by the prosecution in regards to his previous convictions. With regard to this, it is notable that the conditions for loss of the shield by the defendant under the first limb of section 1(f)(ii) have been preserved by the Criminal Justice Act 2003 under section 101(b). So, the defendant is still as liable to cross-examination under the new rules as he was under the Criminal Evidence Act 1898. Although section 101 preserves the conditions for loss of the shield by the defendant, it also now allows the defence, not only upon cross examination, to introduce bad character evidence but also during the giving of evidence in principal. So long as such evidence meets the admissibility requirements contained in section 101. This differs to section 1(f)(ii) of the Criminal Evidence Act 1898, where the defendant had to put his character in issue in order to be cross examined on it.

In *R v Campbell*[2] Lord Philips CJ stated, 'Prior to the Criminal Justice Act 2003 it was rare for a jury to be given details of a defendant's previous criminal record. Since the Act has come into force it has become much more

common.’ The CJA specifies seven gateways through which a defendant’s bad character may be admissible in court.

The law regarding the admissibility into evidence a defendant’s previous convictions and his misconduct has been transformed by the CJA, along with it extensively broadening the circumstances in which the prosecution can introduce such matters.[3]

Despite warnings of how challenging to understand the bad character provisions of the CJA were deemed to be and warnings of the storm of wrongful convictions that would come along with it too,[4]the CJA did in fact come into force in December 2004.

Bad character is defined as evidence of ‘misconduct, other than that which ‘has to do with’ the alleged facts of the offence with which the defendant is charged, or is evidence of previous misconduct in connection with the investigation or prosecution of that offence’ (s98 CJA 2003). The distinction between evidence of bad character as defined in s98 and evidence concerning the facts of the alleged offence also applies to persons other than the defendant, in a criminal trial. While s98 does not outline what ‘disposition’ means, it is apparent that the provision enlarges the range of admissible bad character evidence due to it not being restricted to evidence of general reputation, as was previously authoritatively stated in the case of *R v Rowton*. [5]The provisions also depart from the earlier strict common law approach whereby the evidence of a defendant’s bad character and previous convictions was admissible only in exceptional circumstances, as

stated above. Lord Alexander voiced his opinion that the CJA undermined presumptions of innocence.

#### Circumstances of the gateways:

The seven gateways are defined in s. 101 of the CJA as bad character evidence being admissible in any of the following cases. Firstly, gateway (a) whereby all parties to the proceedings agree to the evidence being admissible, if the CPS and defence are happy for such evidence to be admissible then it may be admitted under this gateway. Secondly, gateway (b) where the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross-examination and intended to elicit it. This gateway allows a defendant to introduce evidence of his own bad character, a defendant may well do this if he has only minor previous convictions and he feels that if he fails to adduce such evidence the jury/magistrates will assume he has extensive/major previous convictions. Thirdly, gateway (c) if the evidence is important explanatory evidence, only the prosecution can adduce evidence under this gateway, and is likely to only be used in limited circumstances. Evidence is considered to be important explanatory evidence if (a) without it, the magistrates or jury would find it impossible or difficult to properly understand the case and (b) the value of the evidence for understanding the case as a whole is substantial.[6] Substantial in this context is likely to mean more than merely trivial or marginal, the word substantial is not specifically defined in the act but in the explanatory notes it states that 'substantial' should be taken to mean something that is more than merely trivial or marginal. Fourth, gateway (d) where the evidence is relevant to an important matter in issue

between the defendant and the prosecution, an 'important matter' is defined as a 'matter of substantial importance in the context of the case as a whole',<sup>[7]</sup> substantial here should be considered as explained above.

Important matters in issue between the defendant and prosecution include, (a) the question whether the defendant has a propensity to commit offences of the kind with which he is charged, not where his having such propensity makes it no more likely that he's guilty of the offence, and (b) the question whether the defendant has a propensity to be untruthful, not where it is not suggested that the defendant's case is untruthful in any respect.<sup>[8]</sup> Again,

only the prosecution can adduce evidence under this gateway. To place evidence to suggest the defendant has the propensity to commit offences of the kind he is charged, the CPS must first satisfy the court that establishing such propensity makes it more likely that the defendant committed the offence.<sup>[9]</sup> Two offences will be of the same description as each other if the statement of the offence in a written charge or indictment would in each case be in the same terms,<sup>[10]</sup> it is not necessary for it to have been described in the same exact words but what matters is that the facts of the earlier conviction would be sufficient to support an offence charged in the same terms. Two offences will be considered to be of the same category if they belong to the same category as prescribed by the Secretary of State,<sup>[11]</sup> the two categories prescribed so far are defined as the sexual offences category and the theft category. All this being said, the court can exclude evidence under this gateway if 'on an application by the defendant to exclude it, it appears to the court that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it'.<sup>[12]</sup> Fifth, gateway (e) if the evidence has substantive

probative value in relation to an important matter in issue between the defendant and a co-defendant, however this gateway cannot be used by one defendant to admit evidence of another defendant's bad character, and cannot be used by the CPS. Sixth, gateway (f) if it is evidence to correct a false impression given by the defendant, only the prosecution can use this gateway. A defendant will be deemed to have given a false impression ' if he is responsible for the making of an express or implied assertion which is apt to give the court or jury a false or misleading impression about the defendant'.[13]If the CPS can prove that test for admitting evidence under this gateway is satisfied, the court has no power under the Act to prevent admission of such evidence. Lastly, seventh, gateway (g) where the defendant has made an attack on another person's character, under the previous law the defendant was given some leeway in what he was and was not permitted to say about prosecution witnesses before he lost this shield against cross examination as to his bad character. If this gateway is satisfied, the prosecution will be allowed to admit evidence of all of the defendant's previous convictions.

The above gateways of admissibility are further clarified by the provisions of sections 102-106 of the CJA which increase the occurrences of admissibility as detailed above. It is evident that these gateways of admissibility are not exclusionary of each other and that it is possible for evidence of bad character to be adduced under one or more of the given gateways. It's important to note that in the case of *R v Highton and Others* [14]it was held that evidence adduced under one gateway can then be used for any purpose for which bad character evidence is relevant in the particular case.

The responsibility to prove that one of the seven circumstances of the gateways applies lies with the prosecution. If they choose to adduce the evidence of bad character they must give the court notice of such, so that the Crown can carry out any necessary checks and so, the judge will have the maximum information available to rule upon. For a bad character evidence application to be accepted it must satisfy the test set out in s. 100 (1) which states ‘ it must be important explanatory evidence or have substantial probative value in relation to a matter which is in issue and is of substantial importance in the context of the case as a whole’. There is the danger of a defendant representing himself in court and not fully understanding the importance of applying to exclude his bad character, [15]the complications of admissibility as imposed by the gateways, or even the time frames, which have been criticised for being unrealistic by the Law Society.

It was stated by the Court of Appeal, in the case of *R v Hunter and Others*[16]that ‘ the difficulties that have arisen most commonly because inadequate discussion has taken place between the advocates and the judge before the evidence has been adduced, before speeches, and before summing up’. Gateway (c) allows evidence the court or jury would find it difficult or impossible to understand other evidence in the absence of it, to be admitted. In the case of *Chohan*, [17]the defendants’ bad character was disclosed by a prosecution witness who falsely identified him as a heroine dealer. In theory, gateway (c) should have a fairly high threshold but in practice it appears to be much lower.

“ Reprehensible behaviour”:

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s98 of the CJA defines bad character as ‘misconduct’ in connection with the investigation or prosecution of that offence, and ‘misconduct’ is defined in s112 as the ‘commission of an offence or other reprehensible behaviour’.

[18]Reprehensible behaviour has been criticised[19]because it can be interpreted widely due to its lack of definition within the CJA. In addition, there is a possibility that prosecutors and judges could ‘create’ bad character evidence beyond its limits and in a society that is progressively permissive, to whose standards should we consider the behaviour to be ‘reprehensible’?[20]If the court concluded that the behaviour is reprehensible then it could be ruled to be evidence of bad character, and therefore admissible via gateway (d), which is very broad. If the court is uncertain that the behaviour is in fact reprehensible, the court may allow it in any case as it could be considered relevant. In *Manister*[21]it was found that a sexual relationship with a sixteen- year old girl did not amount to reprehensible behaviour and neither did a previous sexual attraction to a fifteen-year old girl. The evidential information in this trial was therefore deemed inadmissible via the gateways, and in this case, was unfair upon the victim.

#### D’s Criminal Record:

Through gateways (g), (e) and (d), a defendant’s criminal record can still be adduced by the prosecution. Gateway (g) to deny his credibility if he makes an attack upon another’s character or a co-defendant. Gateway (e) if he uses his defence to undermine that of a co-defendant. Or gateway (d) to show that the defendant has a propensity to be untruthful. A person whose character has been attacked need not be a witness, or a person whose hearsay statement is admitted in evidence, or even a named person. If the

court determines that an attack has taken place, bad character evidence routinely becomes admissible, but only by the prosecution,[22] paying no regard as to whether or not the defendant even gives evidence. In the case of *R v Clarke*[23] the defendant was prosecuted for a sexual offence on a minor. The defendant attacked the victim's character by stating, his defence, that the minor had lied due to hostility between them, this attack by the defendant enabled the prosecution to admit his previous convictions via gateway (g) notwithstanding them being for very dissimilar offences as robbery and motor vehicle offences. I understand that this may be important in a murder case, where for example previous convictions for offences involving aggression or violence could be admitted to show the defendant has the propensity to be violent or aggressive. However, merely because it has been committed on one occasion surely does not show evidence of habitual behaviour. Saying that, in *R v Brown*[24] a lone conviction for robbery was deemed sufficient for propensity and again in *R v Kamara*[25] with a conviction for possession of drugs. In the past, the Court of Appeal have quashed rape convictions because the jury was informed of the defendant's sole previous rape conviction despite this showing that the defendant had a 'tendency towards unusual behaviour'[26] or propensity for non-consensual sexual intercourse or similar behaviour to the offence alleged at present.

However, it can be contended that even having such a propensity makes it no more probable that the defendant is actually guilty of the offence alleged now.

For example, in a joint enterprise case, if two defendants are on trial for murder. Let's say there is one exclusive of previous convictions (A) and one with an account of violent offences (Z). If (A) actually committed the offence but he decides to testify that it was (Z) who committed the offence, the jury may then decide that (Z) in fact has the propensity to commit the offence, therefore resulting in the unfair conviction of (Z).[27] Establishing propensity is only one element in the determination of guilt, it is crucially imperative that it is deliberated with all other evidence, incorporating what the defendant explains about the previous conviction, whether the conviction is stale, and of course, the seriousness and relevancy of the offence.

The court must also pay regards to the interval of time between the previous crime and the crime under consideration.[28] If the defence can prove that there was a sufficient lapse of time between occurrence of the facts and the current allegations, then such evidence may not be admissible even if relevant to the proceedings. As it would be unjust to admit bad character evidence under such circumstances, therefore it is vital that caution is implemented to make sure that such evidence of criminal history presented to the jury is in fact accurate and reliable, as the mere existence of a previous conviction is not conclusive of guilt. There is also the danger of it being incorrect and the defendant denying the history, however the jury may conclude that the history is correct and the defendant is in fact dishonest, [29] I think it's important to understand we cannot expect 'too much' of a jury as I stated above they are after all, just ordinary people, what I mean by this statement is that jurors cannot be assumed to understand or draw complex inferences in regards to a defendant's conviction and/or behaviour.

The court of course can disaffirm unfairness by discharging the jury[30]but it has been said by the Court of Appeal that ‘ a very high degree of necessity is required before a jury is discharged’.[31]

Cautiousness must also be exerted by police, in order to not gather suspects in cases in which the suspect is unidentified by simply arresting those with a criminal history comprising of offences similar to the one committed.

If the court is satisfied that the defendant is liable for making an express or implied assertion to give the court a false impression about himself, then under gateway (f) evidence of his bad character can be admitted. It’s important to understand that a false impression can be given by the conduct of a defendant other than the giving of evidence,[32]e. g. if a defendant who is in fact homeless and usually doesn’t dress ‘ well’ attends trial wearing a suit this can be construed to comprise the giving of a false impression that he actually is a man of ‘ good character’, thus allowing his bad character to be revealed to the jury. This seems very unjust since the defendant may have only worn a suit to court on the day or even behaved differently merely out of respect for the formality of the courts, which is surely routine behaviour.

### Effect on juries

To begin this section, I quote “ bad character evidence should be excluded if it is unfairly prejudicial.”[33]What I understand from this is that the courts should be hesitant to admit bad character evidence as the jury may be prejudiced by its introduction and as a result of it they may convict notwithstanding all other evidence against the defendant actually being

weak. This can appear to be unfair and disadvantageous to defendants, but Laudan actually argues against defendant friendly rules, asserting that the presumption of innocence and the burden of proof being ‘beyond reasonable doubt’ favours defendants’.[34]

The truth is that a majority of jurors find it hard to not be influenced by the admission of previous convictions, which is understandable as jurors are nothing but ordinary people and we are all imperfect humans and of course previous convictions can paint a pretty certain picture about a person, but this results in the fact that the defendant ends up being on trial not in fact for their alleged crime, but for their previously committed crimes which is unfair, as the trial at hand should not be a continuation/remake of previous trials or allegations. Coincidentally, this has been considered ‘guaranteed to lead to miscarriages of justice’.[35]It was found out in an experimental study that mock jurors informed of a defendant’s previous convictions were significantly more likely to find the defendant guilty than those unaware of the defendant’s antecedents which further justifies and confirms my above point.[36]However to the contrary, Nunez[37]found that the effect was strengthened by juror deliberations and Laudan recommended that jurors may well be able to separate past from current guilt and that we may be doing them a disservice.[38]Bad character evidence can’t be used only to support a weak case. Neither can it be simply used to prejudice the minds of a jury against a defendant, as a defendant’s previous convictions truly tells us very little of their character, because they could have been wrongly convicted, they could have pleaded guilty because they were offered an appealing plea bargain or they may have given a guilty plea instead of

risking a heavier conviction at trial. Therefore, it is unfair for previous convictions to carry too much weight, but it is not only previous convictions that are used as bad character evidence. Furthermore, in the case of *R v Olu & Others*[39] it was claimed that cautions are merely given to defendants that confess their guilt. Consequently, receiving a caution could also be considered a confession, and an admission of guilt. In addition, in previous cases, accusations and acquittals have been allowed as evidence of bad character.[40] However in *R v Hamer*[41], fixed penalty notices were held to be inadmissible because they were different to cautions owing to the lack of admission of an offence. In the case of *R v Weir*[42] it was determined that a caution might be used as evidence of propensity, despite it in fact relating to a minor offence. However, it has been argued that cautions ought not to have a negative impact on the question of a person's good character,[43] but s66 (5) (a) and (b) of the Crime and Disorder Act 1998 states that any youth warning or reprimand 'may be cited in criminal proceedings...in the same circumstances as a conviction'.[44] Cautions, alleged offences and accusations are quite distinct from a conviction, although an admission of guilt may be inferred from such. I conclude that such out of court admissions should actually be regarded as hearsay, and in the interests of fairness and justice, hearsay like this should remain excluded. Ultimately, if there is a lack of a conviction, the route, and in fact the justification for admitting such evidence should be scrutinised with carefulness.[45]

#### Safeguards/Inadmissible:

If it appears that the bad character evidence would have an adverse effect on proceedings, under gateways (d) or (g) the courts must not admit such

evidence, these are the safeguards that are in place. However, only gateways (d) and (g) are the two gateways that have this exclusion of fairness, while gateway (a) states all parties must agree evidence is admissible. Although trial judges have no discretion to refuse to admit admissible evidence they must however exercise their discretion under s78 PACE[46] in order to guard defendants and ensure that bad character evidence is not admitted simply as a matter of routine, which would infringe the defendants' right to a fair trial.[47] Therefore, judges when summing up should alert juries against assigning undue reliance upon previous convictions, and judges can also make a 'vye' direction which in contrast brings the defendants good character to the attention of the jury. Although, that being said, it is of course the jurors' right to ignore the judge's instructions and directions if they believe it conflicts with their own perception of a fair outcome. The quashing of a conviction owing to a bad character direction was described by Lord Philips CJ, in the case of *R v Campbell*, as a 'lamentable state of affairs'. Also in the case of *R v Hanson and Others*[48] it was stated, 'Parliament's purpose in the legislation was to assist in the evidence based conviction of the guilty and not putting those who were not guilty at risk of conviction by prejudice'. In addition, the Criminal Procedure (Amendment) Rules 2016 lately came into force[49] introducing new rules about giving notice where a defendant proposes to refer to his or her own bad character during a trial,[50] the effects of which are yet to be perceived.

Non-defendant bad character evidence:

In addition to the numerous ways in which a defendant's bad character can be admitted in evidence at trial, as explained above, the bad character of persons other than the defendant are now also admissible but on very limited grounds.

Section 100 allows non-defendants' bad character to be admitted in three situations. Firstly, it can be admitted if it is 'important explanatory evidence', this is similar to gateway (c) as explained above. The evidence will only be important explanatory evidence only if (a) without it the court or jury will find it impossible or difficult to properly understand other evidence in the case, and (b) its value for understanding the case as a whole is substantial.<sup>[51]</sup> Secondly, under section 100(1)(b), such evidence can also be adduced if it has 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. Although this may apply to any person other than the defendant, it is most likely to arise when the defendant seeks to adduce evidence of the previous convictions of a witness for the prosecution in order to support an allegation that the witness is either (a) lying or fabricated evidence against the defendant or (b) is himself either guilty of the offence with which the defendant has been charged, or has engaged in misconduct in connection with the alleged offence. Again here, the word substantial would be likely to be construed by the courts as meaning more than merely marginal or trivial. Finally, it will be admitted where both parties agree to the evidence being adduced, if all parties in the case are in agreement about this, then bad character evidence will always



be admitted. In the latter two gateways, bad character evidence may only be adduced with the leave of court.[52]

Therefore, the act does away with the almost free rein approach that was allowed under the old rules. Where the court did not have much power over the admissibility of non-defendants' bad character evidence, the new rules puts the court at the centre of the issues by requiring them to grant leave unless the admission of such evidence has already been agreed.

#### Good character:

In contrast to all the above, a defendant who finds himself with no previous convictions or who has not engaged in any other 'reprehensible behaviour' is entitled to have this 'good character' taken into account by the magistrates or jury at trial. The method of confirming such evidence at trial is for the defendant's solicitor to ask the police officer who gives evidence verifying the interview record, to also confirm that the defendant is of good character. The defendant may also be permitted to give brief details of his own good character when he proceeds to give evidence in the witness box, he may also even call witnesses in regards to his good character. If a defendant is in fact of good character, this will be important in respect of both his credibility but also to show the absence of propensity to commit the alleged offence at hand.[53]

Evidence of the good character of a witness other than the defendant can be admissible at common law but should not be raised at trial. Such evidence is called 'oath helping' and is only admitted to strengthen the credibility of the evidence given by the witness, which is not allowed.

Procedure of adducing bad character evidence:

Where the prosecution or defence has made an application to admit bad character evidence at trial, and this application is opposed by the opposite party the court will normally determine the admissibility of such evidence at a pre-trial hearing. In the Magistrates Court this will be at the case management hearing or the pre-trial review and at the Crown Court this will be at the plea and case management hearing or at a specific pre-trial hearing as in the Magistrates. The method by which the previous conviction/s of either the defendant or any other witness are proved at trial by the party seeking to admit evidence producing a certificate or memorandum of conviction to the court.[54]If the CPS are trying to admit evidence of previous convictions of the defendant this certificate will normally be produced by the police officer in the case when he principally gives evidence. If either the prosecution or the defence are aiming to admit evidence of previous convictions of a witness, such convictions will normally be put to this witness during cross examination.

Conclusion:

In conclusion, it is clear to see that the gateways of the CJA are complex as they permit judges and juries to resolve the fate of criminal defendants based upon such bad character evidence about their personality, previous convictions, allegations, accusations and cautions. There appears to be confusion within the judiciary in regards to what amounts to bad character exactly and the complications with distinguishing between bad character evidence that has actual value and that evidence which may simply bias the juror against the accused, unfairly. Understandably, judges differ, and in turn

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they differ in their sympathy concerning defendants, their assessment of bad character evidence, the instructions given to jurors regarding probative value and even in their clarification of the explanation given when warning jurors about placing undue reliance upon previous convictions. Of course, juries being ordinary people, also vary in their sympathies and their, albeit limited, capabilities of comprehending the complexities of a criminal trial, including 'innocent until proven guilty'.<sup>[55]</sup> There is also a lack of uniformity with propensity which allows gateways to be expanded, even maybe beyond their limits, due to there being no statutory definition of 'reprehensible behaviour' or 'misconduct'.

Due to our system being an oppositional one it therefore promotes competition between the prosecution and the defence, therefore both parties wish to win, if this is by presenting bad character evidence inadvertently it is difficult or even impossible to erase this from jurors' minds. Therefore, I find it averse to justice to rebalance this process in favour of either party by permitting evidence which may have been previously inadmissible to now be admissible via any one of the seven gateways. This in turn permits extra 'bad character' evidence into court in turn enabling more offenders to be convicted and imprisoned, perhaps unjustly. The CJA is a traumatic vision of interpretation<sup>[56]</sup> as it gives the court too much power to adapt the requirements which in turn permits too much ambiguity to the detriment of defendants. It must consequently be concluded that the gateways, as provided by the CJA, for the admission of defendants' bad character evidence are in fact not fair in every case, partly due to the effect it can have on juries, and further reform is necessary.

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[3]It also imposed statutory restrictions, for the first time, on the ability of  
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[11]s103(4)(b) CJA 2003

[12]s101(3) CJA 2003

[13]s105(1)(a) CJA 2003

[14][2005] EWCA Crim 1985

[15]Under Section 101(3) CJA 2003.

[16][2015] EWCA Crim 631

[17][2005] EWCA Crim 1813.

[18]The Explanatory note to the 2003 Act makes it clear that the definition of bad character is broad. In *R v Tirnaveanu* [2007] EWCA Crim 1239 the Court of Appeal observed that s 98 and 112(1) create a far reaching definition of bad character.

[19]See *R v Mc Kenzie* [2008] EWCA Crim 758. The court emphasised that bad character or reprehensible behaviour must not attract undue attention.

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[20]J. R. Spencer, 'Evidence of Bad Character- Where We Are Today' [2014] Archbold Review.

[21][2006] 1 Cr App R 19; [2005] EWCA Crim 2866.

[22]Section 106(3).

[23][2011] EWCA Crim 939.

[24][2011] EWCA Crim 1636.

[25][2011] EWCA Crim 1146.

[26]L. J. Rose in R v Hanson and others [2005] EWCA Crim 82.

[27]See D. W. Elliott, 'Cut Throat Tactics; the Freedom of an Accused to Prejudice a Co-accused'(1991) Crim LR 5.

[28]s101 (4) CJA 2003

[29]See R v M [2012] EWCA Crim 1588.

[30]Where the evidence of bad character is admitted under section 101 paragraphs (c) to (g) and proves to be so contaminated that any resulting conviction would be unsafe, the court may direct an acquittal or discharge the jury at any time after the close of the prosecution case under section 107 (3) (c) (ii) Criminal Justice Act 2003.

[31]R v Mahil [2013] EWCA Crim 673.

[32]Section 105(4).

[33]Colin Tapper, ' Criminal Justice Act 2003: Part 3: Evidence of Bad Character', [2004] Crim LR 533 at 540.

[34]Larry Laudan, ' Is Reasonable Doubt Reasonable?' Legal Theory 9 (4) Dec 2003 p295.

[35]Barry Hugill a spokesman for the human rights group Liberty.  
<http://www.theguardian.com/uk/2004/oct/26/ukcrime.immigrationpolicy>

[36]A. N. Doob and H. M Kirshenbaum , ' Some Empirical Evidence on the Effect of s12 of the Canada Evidence Act upon the Accused' (1972) Criminal Law Quarterly 15, 88-96.

[37]K London and N Nunez, ' The Effect of Jury Deliberation on Jurors Propensity to Disregard Inadmissibility of Evidence' (2000) Journal of Applied Psychology 85(6) 932.

[38]Larry Laudan, Truth, Error, and Criminal Law: An Essay in Legal Epistemology (Cambridge University Press, 2006).

[39][2010] EWCA Crim 2975. Olu claimed to have accepted the caution because he had been told that if he did so he would not have to go into a cell, he would not need a solicitor and he could be on his way.

[40]See Z [2002] 2 AC 483 and R v Nguyen [2008] EWCA Crim 585.

[41][2010] WLR (D) 235. A Fixed Penalty Notice could not be regarded as evidence which impugned the character of the defendant or be admitted as such.

[42][2005] EWCA Crim 2866.

[43]R. May, ' The Legal Effect of a Police Caution' [1997] Crim LR 491.

[44]There is no equivalent provision for adult cautions.

[45]Gareth Branston, ' A Reprehensible Use of Cautions as Bad Character Evidence?' CLR 2015.

[46]Police and Criminal Evidence Act 1984.

[47]Under Article 6 of the European Convention of Human Rights.

[48][2005] EWCA Crim 824.

[49]4<sup>th</sup> April 2016.

[50]Part 21.

[51]s100(2) CJA 2003

[52]s100(4) CJA 2003

[53] *R v Vye, Wise & Stephenson* (1993) 97 Cr App R 134

[54]s73(1) PACE 1984 and *DPP v Parker* [2006] EWHC 1270

[55]Mitchell J Frank and Dawn Borschard, ' The Silent Criminal Defendant and the Presumption of Innocence: In the Hands of Real Jurors, Is Either of Them Safe?' (2006) L Rev 237-265

[56]Roderick Munday, ' What Constitutes " Other Reprehensible behaviour"  
Under the Bad Character Provisions of the Criminal Justice Act 2003?' (2005)  
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