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## How far do good character directions extend?

24/04/2015

**Corporate Crime analysis: The Court of Appeal's recent clarification of the scope of good character directions is explained by Geraldine Wycherley, of Kingsley Napley.**

### Original news

*R v Hunter and others* [2015] EWCA Crim 631

*In five conjoined appeals, the appellants, who each had previous convictions, complained that the trial judges had given inadequate directions on their good character. At trial they had adduced evidence of their own bad character to enable their counsel to address the jury on the likelihood of their having committed the offence charged and to persuade the judge to give a modified good character direction. The Court of Appeal set out the principles to be derived from *R v Vye* [1993] 3 All ER 241 and *R v Aziz* [1995] 3 All ER 149 but warned that those principles had been extended too far to the point where defendants with bad criminal records, as in the instant appeals, were now claiming an entitlement to a good character direction. The court went on to dismiss the appeals, having found that the appellants had not been entitled to good character directions.*

### What were the main points of appeal?

The issue under consideration for the Court of Appeal was the extent and nature of the good character direction. The judgment seeks to bring clarity and certainty to an area which the court described as having become a significant problem for the Crown Court and the Court of Appeal Criminal Division.

Each of the appeals under consideration raised specific issues about the extent of good character directions given at trial for defendants with previous convictions or other admitted bad behaviour.

The appellants argued that the law in relation to good character was settled and did not require refinement. The second submission was that a good starting point in any discussion about whether a good character direction was required should be the provisions of the Criminal Justice Act 2003, s 101 (CJA 2003).

The Crown argued that the court should put the law back on an even keel. It maintained that the law had been extended too far in respect of a defendant with previous convictions.

The Court of Appeal agreed with the Crown. Following a thorough review of the case law in the area, the court held that the leading authorities of *Vye* and *Aziz* had been misunderstood and that the law had subsequently taken a wrong turn. The court stated that the good character principles had been extended too far with the result that convictions had been quashed in surprising circumstances.

### When did the Court of Appeal conclude that good character directions should be given to juries?

The general rule is that a direction as to relevance of good character to a defendant's propensity to have committed the offence is to be given where he is of good character, while a direction of its relevance to his credibility is to be given where he is of good character and has testified or made pre-trial statements.

Where a defendant is of bad character, a judge has a discretion whether to give a good character direction. The court examined the various applicable categories and gave the following guidance:

### **Absolute good character**

Absolute good character means a defendant has no previous convictions or cautions and no other reprehensible conduct alleged, admitted or proven. This category of defendant is entitled to both the credibility and propensity limbs of the direction.

### **Effective good character**

Where a defendant has previous convictions or cautions recorded which are old, minor and have no relevance to the charge, the judge must decide whether or not to treat the defendant as a person of effective good character. The court stated that it did not follow that the judge, in such circumstances, was obliged to treat the defendant as a person of good character. It is for the judge to decide by assessing all the circumstances of the offence(s) and the offender, to the extent known. If a judge decides a person is of effective good character, the judge must give both limbs of the direction, modified as necessary to reflect the other matters and thereby ensure the jury is not misled.

### **Previous convictions/cautions adduced under CJA 2003, s 101 by the defence**

A defendant with previous convictions or cautions to his name has no entitlement to either limb of the good character direction. It is a matter for the judge's discretion. The discretion is a broad one of the 'open-textured variety' whether to give any part of the direction and, if so, on what terms. The judge will decide what fairness dictates.

### **Bad character evidence adduced under CJA 2003, s 101 and relied on by the prosecution**

Where the defendant has no previous convictions or cautions, but evidence of other misconduct is admitted and relied upon by the prosecution, judges are obliged to give a bad character direction. They may consider that as a matter of fairness they should weave into their remarks a modified good character direction. However, the court stated it would be difficult to envisage a good character direction in these circumstances that would not offend the principle that a judge should never be compelled to give meaningless or absurd directions.

### **Bad character evidence adduced by the defence under CJA 2003, s 101 and not relied on by the prosecution**

Where a defendant has no previous convictions but has admitted reprehensible conduct that is not relied on by the prosecution as probative of guilt, a judge has an open-textured discretion to give a direction. The court stated that it is preferable to leave the decision as to what directions to give in this situation to the good sense of the trial judge. The court went on to explain that the judge would be far better placed to assess what fairness demanded and the court would, therefore, allow the judge the usual generous ambit of discretion.

### **How does the decision in this case help practitioners in dealing with cases involving character evidence?**

The decision helps to clear up some uncertainty in the case law in this area as it gives firm guidance on when a good character direction may be relevant. However, this guidance is only helpful to a limited extent as many of the more complicated scenarios involving previous bad character fall within the very broad discretion of the trial judge and will be decided on a case-by-case basis.

This case makes it clear that neither a failure to give a good character direction nor a misdirection will inevitably lead to a conviction being quashed. It is clear that the sole statutory test for the Court of Appeal is the safety of the conviction, which will depend entirely on the facts of individual cases.

**What are the key factors of which practitioners should be aware when dealing with cases involving character evidence?**

It is important to give careful consideration to character issues at the outset of a case. This includes having a discussion with the prosecution to establish what approach it intends to take in the trial. Practitioners should not assume that a failure by the prosecution to adduce evidence under CJA 2003, s 101 entitles a defendant to a good character direction, as this is not the position.

The court has made it clear that if the defence adduces evidence of previous bad character in an attempt to distinguish that behaviour from the offending charged, the judge is under no obligation to give a good character direction.

Practitioners will also need to carefully evaluate whether an appeal based on the direction given by the trial judge, or the lack of a direction, is such that the Court of Appeal would say that it rendered the conviction unsafe. This judgment indicates that the Court of Appeal will be reluctant to interfere with the discretion of trial judges, even if they clearly erred in their directions, as it will not necessarily affect the safety of the conviction.

*Interviewed by Robert Matthews.*

*The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.*