

## GOOD (AND NEARLY GOOD) CHARACTER DIRECTIONS

The Court of Appeal (“CA”) has recently considered the question of the directions to be given to a jury in the myriad of situations which fall within the broad umbrella of a Defendant of “good character”.

In *R v Hunter and others* [2015] EWCA Crim 631, the CA has confirmed the principles set out in *R v Vye and others* [1993] 1 W.L.R 471.

### **These principles are :-**

- i) Defendant has good character and gives evidence – both limbs of the good character direction required.**
- ii) Defendant has good character, doesn’t give evidence but relies upon out of court exculpatory statements – both limbs of good character direction required.**
- iii) Defendant has good character, doesn’t give evidence and doesn’t rely upon out of court exculpatory statements – propensity limb of good character direction required.**
- iv) the Judge may modify or qualify the propensity limb depending on the particular circumstances of a case.**

Following *Vye* and other cases which came before the courts, such as *R v Aziz and others* [1996] A.C 41, confusion still arose over what exactly “good character” meant and what should be said to juries in cases of Defendants of almost good character. See also *R v Aneela Ahmed* [2015] 1 Cr.App.R 275 (21).

**The CA has set out 5 different categories into which a Defendant may fall and the directions which should be given in relation to each :-**

### **1. Absolute Good Character.**

*This Defendant has no previous convictions or cautions and “no other reprehensible conduct alleged, admitted or proven” (per Hallett LJ at para 77).*

*Both limbs of the good character direction are mandatory.*

### **2. Effective Good Character.**

*This Defendant has previous convictions or cautions but they are old, minor or irrelevant.*

*The Court must exercise a judgement as to whether to give both limbs of the good character direction (this is not a discretion). Only those Defendants who merit an “effective good character direction” will get one.*

*Just because the convictions are old, minor or irrelevant does not automatically mean that the “effective good character” direction has to be given.*

*If the Judge makes a judgement that the Defendant is of “effective good character”, both limbs are mandatory – modified if necessary so that the jury is not misled.*

### **3. Defendant whose character is adduced by the Defence.**

*Where section 101 (1) (b) of the Criminal Justice Act 2003, for example, is used to adduce convictions to show that the current offence is different to the old offences.*

*Neither limb is mandatory. The Judge has a discretionary power to give a modified good character direction. The discretion is limited only by what fairness dictates.*

**4. Defendant of no previous convictions / cautions but of whom there is evidence of other misconduct relied on by the Prosecution.**

*The Judge has to give a bad character direction. The Judge has a discretionary power, out of fairness, to weave a modified good character direction into the remarks, but not to the extent that it makes the direction absurd.*

**5. Defendant of no previous convictions / cautions but of whom there is evidence of other misconduct but that misconduct is not relied upon by the Prosecution.**

*This was the situation in which Lord Steyn said in Aziz and others [1996] A.C 41 that a Judge should give a good character direction unless it would defy common sense to do so. In Hunter, the CA now says that the discretion is “of the open textured kind” (per Hallett LJ at para 86) because, amongst other reasons, the CA envisages a situation in which the evidence of misconduct may be probative of guilt even though the Prosecution have not sought to make an application under section 101 of the 2003 Act.*

*Jason Beal*

## **Upcoming Events**

**Chambers will be holding criminal law seminars on the following dates :-**

**Tuesday 21st July 2015 from 6.00pm at the New Continental Hotel, Plymouth**

**Thursday 23rd July 2015 from 6.00pm at St.Olave’s Hotel, Exeter**

**Free admission to each event - refreshments provided - 2 hours CPD**

## THE CRIMINAL TEAM

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Jason Beal  
Nigel Lickley QC  
Paul Rowsell  
Garth Richardson  
Nicholas Bradley  
Rupert Taylor  
Edward Bailey  
Ramsay Quaife  
Joanna Martin  
Piers Norsworthy  
Kelly Scrivener  
Emily Cook  
Julia Cox  
Sally Daulton  
Sarah Vince  
Scott Horner



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