

**THE BAD CHARACTER PROVISIONS OF THE CRIMINAL  
JUSTICE ACT 2003**

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**INTRODUCTION**

1.1 Part 11 of the Criminal Justice Act 2003 has fundamentally altered the law relating to the admissibility of evidence of bad character; most notably in the following three respects:

- (i) The common law rules governing "the admissibility of evidence of bad character in criminal proceedings" are abolished (section 99(1)); as are the rules contained in the Criminal Evidence Act 1898 about cross-examining defendants as to character (Schedule 37, Part 5).
- (ii) Evidence of the bad character of a person other than the defendant is now admissible only with judicial leave; to be granted only on certain stated grounds (section 100).
- (iii) Evidence of the defendant's bad character is henceforth much more widely admissible (section 101(1)).

**COMMENCEMENT PROVISIONS**

2.0 The commencement date is 15 December 2004.<sup>1</sup> Section 141 states that none of the evidential provisions in the Act shall apply "in relation to criminal proceedings begun before the commencement of that provision", and section 140 defines "criminal proceedings" as "proceedings to which the strict rules of evidence apply". The changes therefore apply to any

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<sup>1</sup> The Criminal Justice Act 2003 (Commencement No 6 and Transitional Provisions) Order 2004, S.I. No. 3033 (C.126).

trial taking place after the commencement date, irrespective of when the offence was committed<sup>2</sup>.

#### **PROCEDURAL REQUIREMENTS**

3.0 When issues arise as to the admissibility of bad character evidence the court is likely to adopt the following approach:

- (i) The court will first have to determine whether the proposed evidence or questioning reveal "bad character", as defined in section 98.
- (ii) If it relates to a non-defendant's "bad character", the evidence or questioning is admissible only with leave, and only if the requirements of section 100 are satisfied.
- (iii) If it relates to a defendant it is admissible if any of the "gateways" listed in section 101(1) (a) to (g) apply.
- (iv) On the application of the defendant the court has a discretionary power to exclude evidence of bad character, otherwise admissible under section 100(1) (d) and (g), (Section 101(3)).
- (v) In the case of an adult offender, evidence relating to criminal convictions imposed on him when he was under 14, is only admissible if both offences are triable only on indictment and the court is satisfied that the interests of justice require the evidence to be admissible.

#### **DEFINITION OF "BAD CHARACTER"**

4.0 "Bad character" is defined by section 98:

*References in this Chapter to evidence of a person's "bad character" are to evidence of, or of a disposition towards, misconduct on his part, other than evidence which-*

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<sup>2</sup> R. v. Bradley [2005] EWCA Crim 20

*(a) has to do with the alleged facts of the offence with which the defendant is charged, or*

*(b) is evidence of misconduct in connection with the investigation or prosecution of that offence.*

4.1 The term "misconduct" is defined in section, 112 (1):

*"misconduct" means the commission of an offence or other reprehensible behaviour.*

4.2 Evidence of "bad character" therefore includes not only evidence that the person in question has actually committed criminal offences, but also that he has engaged in other reprehensible acts, and evidence of his "disposition towards" doing them.

4.3 Thus evidence of offences of which an individual has been convicted,<sup>3</sup> evidence of previous offences for which he has not yet been tried, and evidence that he has committed an offence of which he has been acquitted<sup>4</sup>, all come squarely within the definition set out in section 98.

4.4 The definition of bad character also encompasses evidence of "other reprehensible behaviour". The Oxford English Dictionary defines "reprehensible" as deserving of "censure, or rebuke" or as "blameworthy".

4.5 Section 98 expressly excludes from the definition of "bad character evidence" (and hence from the statutory limits on its admission) any evidence of conduct or disposition, no matter

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<sup>3</sup> Section 74 of PACE 1984.

<sup>4</sup> R v Z [2000] 2 AC 483.

how criminal or reprehensible, which "has to do with the alleged facts of the offence with which the defendant is charged" or which "is evidence of misconduct in connection with the investigation or prosecution of that offence" whether the author of the misconduct is the defendant, or anyone else. It follows that allegations that the police have behaved improperly in the conduct of the investigation will fall outside the provisions. Leave will not be required but any such allegations, if made by a defendant or his counsel, would amount to an attack on another person's character - and expose his own bad character by virtue of section 100(1)(g)).

#### **BAD CHARACTER OF NON-DEFENDANTS**

5.0 The principle changes are:

- (i) Questions to a witness, suggesting that he is not credible, because he is of bad character, are now only permissible if they pass the section 100 test.
- (ii) Where questions are to be asked about a non defendant's bad character the leave of the court is always required unless all parties agree (section 100(4)).
- (iii) In appropriate cases leave will be required both under section 100 and under section 41 YJCEA 1999.
- (iv) Section 100 applies to both prosecution and defence.

5.1 A witness may still be asked in cross-examination whether he has a bad character or a criminal conviction - but only with leave and only where section 100 CJA 2003 applies. Hitherto (other than in trials relating to sexual offences) counsel have had pretty much free rein to cross examine witnesses about their character, and to impugn the character of third parties.

This is no longer the case. Other than where there is agreement between the parties, an advocate must obtain leave, even to impugn the character of persons who are neither witnesses nor parties to the trial (section 100(4)).

5.2 Section 100 of the CJA 2003 is as follows:

*Non-defendant's bad character*

*(1) In criminal proceedings evidence of the bad character of a person other than the defendant is admissible if and only if-*

*(a) it is important explanatory evidence,*

*(b) it has substantial probative value in relation to a matter which-*

*(i) is a matter in issue in the proceedings, and*

*(ii) is of substantial importance in the context of the case as a whole,*

*or*

*(c) all parties to the proceedings agree to the evidence being admissible.*

*(2) For the purposes of subsection (1)(a) evidence is important explanatory evidence if-*

*(a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case, and*

*(b) its value for understanding the case as a whole is substantial.*

*(3) In assessing the probative value of evidence for the purposes of subsection (1)(b) the court must have regard to the following factors (and to any others it considers relevant)-*

*(a) the nature and number of the events, or other things, to which the evidence relates;*

*(b) when those events or things are alleged to have happened or existed;*

*(c) where-*

- (i) the evidence is evidence of a person's misconduct, and*
- (ii) it is suggested that the evidence has probative value by reason of similarity between that misconduct and other alleged misconduct,*

*the nature and extent of the similarities and the dissimilarities between each of the alleged instances of misconduct;*

*(d) where-*

- (i) the evidence is evidence of a person's misconduct,*
- (ii) it is suggested that that person is also responsible for the misconduct charged, and*
- (iii) the identity of the person responsible for the misconduct charged is disputed,*

*the extent to which the evidence shows or tends to show that the same person was responsible each time.*

*(4) Except where subsection (1)(c) applies, evidence of the bad character of a person other than the defendant must not be given without leave of the court.*

5.3 In order to be admissible the evidence must either be important explanatory evidence (as defined in section 100(2))(note that this is the same definition as in section 102), or must be of substantial probative value (as defined in section 100(3)).

5.4 Evidence is of probative value to a matter in issue where it helps to prove that issue one way or the other. In respect of non-defendants, evidence of bad character is most likely to be probative where a question is raised about the credibility of a

witness (as this is likely to affect the court's assessment of the issue on which the witness is giving evidence). The evidence might, however be probative in other ways. One example would be to support a suggestion by the defendant that another person was responsible for the offence.<sup>5</sup>

- 5.5 The evidence must meet an enhanced relevance test; i.e. it must be of substantial probative value and the matter in issue to which it relates must be of substantial importance in the context of the case. Evidence which has no real significance to an issue or is only marginally relevant would not be admissible, nor would evidence that goes only to a trivial or minor issue in the case.<sup>6</sup>

#### **EVIDENCE OF THE DEFENDANT'S BAD CHARACTER**

- 6.0 The principal changes are:
- (i) Evidence of a propensity to commit similar offences or to be untruthful is now admissible.
  - (ii) If a defendant attacks another person's character (irrespective of whether that person is a witness) evidence can be given about his own bad character.
  - (iii) If a defendant gives a false impression about himself in evidence, or in his police interviews or even by his appearance, evidence can be given about his bad character.
  - (iv) The prosecution can now lead evidence of a defendant's bad character as part of its case.

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<sup>5</sup> Explanatory notes, paragraph 362

<sup>6</sup> Explanatory notes, paragraph 363

6.1 The act provides that evidence of bad character is admissible if it fulfils the requirements of one of seven heads. These heads of admissibility have been labelled "gateways"<sup>7</sup>, and it is likely that judges will use this categorisation in the course of argument and in their rulings.

6.2 The "gateways" are listed in section 101 of the CJA 2003:

*(1) In criminal proceedings evidence of the defendant's bad character is admissible if, but only if-*

*(a) all parties to the proceedings agree to the evidence being admissible,*

*(b) 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,*

*(c) it is important explanatory evidence,*

*(d) it is relevant to an important matter in issue between the defendant and the prosecution,*

*(e) it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant,*

*(f) it is evidence to correct a false impression given by the defendant, or*

*(g) the defendant has made an attack on another person's character.*

**EVIDENCE GIVEN BY AGREEMENT OR ADDUCED BY THE DEFENCE (SECTION 101(1)(a) and 101(1)(b))**

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<sup>7</sup> See the JSB paper on Part 11, Chapter 1, of the Criminal Justice Act 2003: Evidence of bad character by Professor J.R.Spencer, QC,

7.0 By 101(1)(a), evidence of the defendant's bad character is admissible when "all parties to the proceedings agree", and by 101(1)(b) it is automatically admissible in the event that the evidence comes from the defendant himself or is adduced on his behalf.

**IMPORTANT EXPLANATORY EVIDENCE (SECTION 101(1)(c))**

8.0 By section 101(1)(c) bad character evidence is admissible where it is "important explanatory evidence". The scope of this is explained in section 102, which makes it plain that to be admissible under this subsection the evidence must be both important and explanatory. Section 102 reads as follows:

*For the purposes of section 101(1)(c) evidence is important explanatory evidence if-*

*(a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case, and*

*(b) its value for understanding the case as a whole is substantial.*

8.1 This "gateway" adds nothing to the pre existing common law position. It merely restates the principle, set out in *Pettman*,<sup>8</sup> to the effect that "where it is necessary to place before the jury evidence of part of a continual background of history relevant to the offence charged in the indictment and without the totality of which the account placed before the jury would be incomplete or incomprehensible, then the fact that the whole account involves including evidence establishing the commission of an offence with which the accused is not charged is not of itself a ground for excluding the evidence." (per Purchas LJ).

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<sup>8</sup> Court of Appeal, 5 May 1985. CA No 5048/C/82.

**IMPORTANT MATTERS IN ISSUE BETWEEN DEFENDANT AND PROSECUTION;**

**EVIDENCE OF PROPENSITY (SECTION 101(1)(d))**

9.0 Section 101(1)(d) is the core "gateway". It is designed to replace the major part of both the similar fact rule and the Criminal Evidence Act 1898, so far as issues between the prosecution and the defence are concerned.

9.1 Section 103 elaborates this "gateway" as follows:

*(1) For the purposes of section 101(1)(d) the matters in issue between the defendant and the prosecution include-*

*(a) the question whether the defendant has a propensity to commit offences of the kind with which he is charged, except where his having such a propensity makes it no more likely that he is guilty of the offence;*

*(b) the question whether the defendant has a propensity to be untruthful, except where it is not suggested that the defendant's case is untruthful in any respect.*

*(2) Where subsection (1)(a) applies, a defendant's propensity to commit offences of the kind with which he is charged may (without prejudice to any other way of doing so) be established by evidence that he has been convicted of -*

*(a) an offence of the same description as the one with which he is charged, or*

*(b) an offence of the same category as the one with which he is charged.*

*(3) Subsection (2) does not apply in the case of a particular defendant if the court is satisfied, by reason of the length of time since the conviction or for any other reason, that it would be unjust for it to apply in his case.*

*(4) For the purposes of subsection (2)-*

- (a) two offences are 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;*
- (b) two offences are of the same category as each other if they belong to the same category of offences prescribed for the purposes of this section by an order made by the Secretary of State.*
- (5) A category prescribed by an order under subsection (4)(b) must consist of offences of the same type.*
- (6) Only prosecution evidence is admissible under section 101(1)(d).*

9.2 The ambit of section 103(1)(a) appears to be very wide. It goes without saying that similar fact evidence is admissible under this heading, but the section goes much further than similar fact. Section 103(1)(a) renders admissible "bad character" evidence to show that the defendant has a disposition to commit crimes of the kind with which he is charged. Section 103 (3) says that (without prejudice to any other way of doing so) two of the ways in which this may be proved are by leading evidence that he has been convicted of an offence of "the same description as that with which he is charged", or has been convicted of an offence "of the same category as the one with which he is charged." By section 103(4), "two offences are 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", and "two offences are of the same category as each other if they belong to the same category of

offences prescribed for the purposes of this section by an order made by the Secretary of State.”<sup>9</sup>

9.3 Section 103(1)(b) concerns the admission of evidence to establish a defendant’s propensity to be untruthful. Unlike section 103(1)(a) there is no definition, within section 103, of the type of evidence which will substantiate this propensity. However (according to the Explanatory Notes to the Act) “this is intended to enable the admission of a limited range of evidence such as convictions for perjury or other offences involving deception (for example, obtaining property by deception), as opposed to the wider range of evidence that will be admissible where the defendant puts his character in issue by for example, attacking the character of another person.”<sup>10</sup>

9.4 There appear to be three exceptions to automatic admissibility under section 103:

(i) Evidence of propensity to commit offences of the kind with which a defendant is charged is not admissible if it “makes it no more likely that he is guilty of the offence” (section 103(1)(a)) The Explanatory Notes to the Act suggest that phrase was simply meant to prevent bad character evidence being admitted “where there is no dispute about the facts of the case and the question is whether those facts constitute the offence (for example, in a homicide case, whether the defendant’s actions caused death)”.<sup>11</sup>

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<sup>9</sup> See CJA 2003 (Categories of Offences) Order 2004 No. 3346

<sup>10</sup> Explanatory notes, paragraph 374.

<sup>11</sup> Explanatory notes, paragraph 371.

- (ii) Evidence of a propensity to be untruthful is not admissible if it is not suggested that the defendant's case is untruthful in any respect (section 103(1)(b)).
- (iii) Section 103(3), says that the subsection 2 provisions (relating to establishing a propensity to commit offences of the kind with which he is charged) do not apply "if the court is satisfied, by reason of the length of time since the conviction or for any other reason, that it would be unjust for it to apply in his case."

**MATTER IN ISSUE BETWEEN A DEFENDANT AND CO-DEFENDANT (SECTION 101(1)(e)).**

- 10.0 By section 101(1)(e), evidence of the defendant's bad character is admissible where "it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant".
- 10.1 "Important matter" is defined in section 112 as a matter of "substantial importance in the context of the case as a whole".
- 10.2 This largely preserves and restates the position under the common law whereby a defendant could adduce evidence of a co-defendant's bad character, in an attempt to persuade the court that it was the co-defendant who really committed the offence<sup>12</sup>.
- 10.3 Section 101(1)(e) is supplemented by section 104. Evidence which is relevant to the question whether the defendant has a propensity to be untruthful is admissible through this section, but only if the nature or conduct of his defence is such as to undermine the co-defendant's defence.

10.4 This gateway to admissibility is only to be used by co-defendants (not the prosecution): see section 104(2).

**EVIDENCE TO CORRECT A FALSE IMPRESSION (SECTION 101(1)(f))**

11.0 Section 101(1)(f) of the Act provides that evidence of bad character is admissible "if it is evidence to correct a false impression given by the defendant", and this "gateway" is further explained in section 105:

*(1) For the purposes of section 101(1)(f)-*

*(a) the defendant gives 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;*

*(b) evidence to correct such an impression is evidence which has probative value in correcting it.*

*(2) A defendant is treated as being responsible for the making of an assertion if-*

*(a) the assertion is made by the defendant in the proceedings (whether or not in evidence given by him),*

*(b) the assertion was made by the defendant -*

*(i) on being questioned under caution, before charge, about the offence with which he is charged, or*

*(ii) on being charged with the offence or officially informed that he might be prosecuted for it,*

*and evidence of the assertion is given in the proceedings,*

*(c) the assertion is made by a witness called by the defendant,*

*(d) the assertion is made by any witness in cross-examination in response to a question asked by the defendant that is intended to elicit it, or is likely to do so, or*

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<sup>12</sup> See *R. v. Randall* [2004] 1 WLR 56

*(e) the assertion was made by any person out of court, and the defendant adduces evidence of it in the proceedings.*

*(3) A defendant who would otherwise be treated as responsible for the making of an assertion shall not be so treated if, or to the extent that, he withdraws it or disassociates himself from it.*

*(4) Where it appears to the court that a defendant, by means of his conduct (other than the giving of evidence) in the proceedings, is seeking to give the court or jury an impression about himself that is false or misleading, the court may if it appears just to do so treat the defendant as being responsible for the making of an assertion which is apt to give that impression.*

*(5) In subsection (4) "conduct" includes appearance or dress.*

*(6) Evidence is admissible under section 101(1)(f) only if it goes no further than is necessary to correct the false impression.*

*(7) Only prosecution evidence is admissible under section 101(1)(f).*

11.1 Proof that there has been an "assertion" is not reliant on the defendant having given evidence of the fact himself. Assertions can be made by the defendant, by a witness on his behalf, as a result of questioning, or in an out of court statement. It can also be made by conduct; for example by his appearance or dress.

11.2 A defendant can avoid the admissibility of his bad character under the section if he withdraws the assertion.

**ATTACK ON ANOTHER PERSON'S CHARACTER (Section 101(1)(g))**

12.0 Under the old law, where the nature or conduct of the defence was "such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution, or the deceased victim of the alleged crime", the Criminal Evidence Act 1898 section 1(3)(ii) permitted the prosecution to cross-examine the defendant on his character. It did not permit evidence of the defendant's bad character to be adduced as part of the prosecution case<sup>13</sup>.

12.1 Section 101(1)(g) is more far reaching. It does not limit the right of the prosecution to adduce the evidence as part of its case. It provides that evidence of the defendant's bad character is admissible if "the defendant has made an attack on another person's character"; it is not confined to attacks on witnesses or the deceased victim.

12.2 Section 106 elaborates the phrase "attack on another person's character" as follows:

*(1) For the purposes of section 101(1)(g) a defendant makes an attack on another person's character if-*

*(a) he adduces evidence attacking the other person's character,*

*(b) he (or any legal representative appointed under section 38(4) of the Youth Justice and Criminal Evidence Act 1999 (c. 23) to cross-examine a witness in his interests) asks questions in cross-examination that are intended to elicit such evidence, or are likely to do so, or*

*(c) evidence is given of an imputation about the other person made by the defendant-*

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<sup>13</sup> R. v. Butterwasser[1948] 1 K.B. 4, 32 Cr.App.R. 81, CCA.

*(i) on being questioned under caution, before charge, about the offence with which he is charged, or*

*(ii) on being charged with the offence or officially informed that he might be prosecuted for it.*

*(2) In subsection (1) "evidence attacking the other person's character" means evidence to the effect that the other person-*

*(a) has committed an offence (whether a different offence from the one with which the defendant is charged or the same one), or*

*(b) has behaved, or is disposed to behave, in a reprehensible way;*

*and "imputation about the other person" means an assertion to that effect.*

*(3) Only prosecution evidence is admissible under section 101(1)(g).*

12.3 A defendant would be attacking a prosecution witness if he claimed that they were lying in their version of events or adduced evidence of their previous misconduct to undermine their credibility. But a suggestion that a witness is mistaken is not intended to engage this provision<sup>14</sup>.

12.4 The Explanatory Notes indicate that the purpose is that this evidence will "primarily go to credit".<sup>15</sup> However it is to be noted that the Act contains nothing that limits the "bad character evidence" that the prosecution can adduce, under this head, to evidence that bears on the defendant's credibility.

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<sup>14</sup> Explanatory notes, paragraph 379.

<sup>15</sup> Explanatory notes, paragraph 382.

### DISCRETION TO EXCLUDE

13.0 If the "gateway" through which the evidence of bad character would otherwise be admissible is section 101(1)(d) ("it is relevant to an important matter in issue between the defendant and the prosecution") or section 101(1)(g) ("the defendant has made an attack on another person's character"), there is a discretionary power to exclude the evidence (section 101(3)). The terms of section 101(3), which mirror those of section 78 of the Police and Criminal Evidence Act 1984 (the intention is for the courts to apply the fairness test set in the same way<sup>16</sup>), are supplemented by section 101(4):

*(3) The court must not admit evidence under subsection (1)(d) or (g) 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.*

*(4) On an application to exclude evidence under subsection (3) the court must have regard, in particular, to the length of time between the matters to which that evidence relates and the matters which form the subject of the offence charged.*

13.1 Section 108(2) and (3) also confer a general discretion to exclude such evidence if it relates to criminal convictions imposed on the defendant when he was under 14.

### PROVING BAD CHARACTER

14.0 The fact that the defendant has a previous conviction gives rise to a rebuttable presumption against him that he was guilty of the offence; as against a non-defendant it is generally conclusive proof Section 74 of PACE 1984.

14.1 Section 109 requires the court, when considering the relevance or probative value of bad character evidence, to assume that the evidence is true. In deciding whether to admit evidence of bad character, sections 100 to 106 of the Act require the judge to make decisions about whether such evidence is "relevant" and "important". In making such a decision, section 109 requires the judge to assume that the evidence is true:

**STOPPING THE CASE WHERE EVIDENCE IS CONTAMINATED**

15.0 Section 107 imposes an obligation on the Court to direct a verdict of not guilty or order a retrial if it is satisfied that the evidence of bad character is "contaminated", and that the contaminated evidence would render the conviction unsafe.

15.1 It is clear from the definition of "contaminated" in section 107(5) that this provision is intended to deal with the problem of collusion (i.e. evidence which has been affected by an agreement with other witnesses or by hearing the views or evidence of other witnesses so that it is false or misleading)<sup>17</sup>

15.2 Section 107 is as follows:

*Stopping the case where evidence contaminated*

*(1) If on a defendant's trial before a judge and jury for an offence-*

*(a) evidence of his bad character has been admitted under any of paragraphs (c) to (g) of section 101(1), and*

*(b) the court is satisfied at any time after the close of the case for the prosecution that-*

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<sup>16</sup> Explanatory notes, paragraph 368.

<sup>17</sup> Explanatory note, paragraph 383

(i) the evidence is contaminated, and  
(ii) the contamination is such that, considering the importance of the evidence to the case against the defendant, his conviction of the offence would be unsafe, the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a retrial, discharge the jury.

(2) Where-

(a) a jury is directed under subsection (1) to acquit a defendant of an offence, and

(b) the circumstances are such that, apart from this subsection, the defendant could if acquitted of that offence be found guilty of another offence,

the defendant may not be found guilty of that other offence if the court is satisfied as mentioned in subsection (1)(b) in respect of it.

(3) If-

(a) a jury is required to determine under section 4A(2) of the Criminal Procedure (Insanity) Act 1964 (c. 84) whether a person charged on an indictment with an offence did the act or made the omission charged,

(b) evidence of the person's bad character has been admitted under any of paragraphs (c) to (g) of section 101(1), and

(c) the court is satisfied at any time after the close of the case for the prosecution that-

(i) the evidence is contaminated, and

(ii) the contamination is such that, considering the importance of the evidence to the case against the person, a finding that he did the act or made the omission would be unsafe,

*the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a rehearing, discharge the jury.*

*(4) This section does not prejudice any other power a court may have to direct a jury to acquit a person of an offence or to discharge a jury.*

*(5) For the purposes of this section a person's evidence is contaminated where-*

*(a) as a result of an agreement or understanding between the person and one or more others, or*

*(b) as a result of the person being aware of anything alleged by one or more others whose evidence may be, or has been, given in the proceedings,*

*the evidence is false or misleading in any respect, or is different from what it would otherwise have been.*

#### **THE NOTICE REQUIREMENTS**

16.0 A party who wants to introduce either a defendant or non-defendant's bad character or who proposes to cross examine a witness with a view to eliciting such evidence must give notice of his intention using prescribed forms within 14 days of committal or transfer, in the crown court, if the evidence relates to a defendant, and within 14 days of primary disclosure if the matter relates to a co defendant or non defendant or if the case is being tried in the magistrates court.<sup>18</sup>

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<sup>18</sup> The Crown Court (Amendment No. 3) Rules 2004 (SI No. 2991 (L. 18) The Magistrates' Courts (Amendment) Rules 2004 (SI No. 2993 (L. 20))

### **ADVICE TO SUSPECTS AT POLICE STATIONS**

17.0 When advising suspects in a police station, those representing them should bear in mind the following:

- A defendant who gives a false impression about himself, in interview, might, by virtue of section 105, later trigger section 101(1)(f).
- Attacks on another person's character, by a defendant when interviewed (including assertions that a witness is lying), might, by virtue of section 106, later trigger section 101(1)(g).
- Proving the underlying facts of a conviction (or a previous acquittal) is likely to prove difficult for prosecutors. The police are likely to try to circumvent this, when they know that a defendant has previous convictions, by asking questions about previous criminal conduct.

### **SOURCE MATERIAL**

18.0 The full text of the Act can be found at <http://www.hms0.gov.uk/acts.htm>.

18.1 The full text of the explanatory notes<sup>19</sup> can be found at <http://www.hms0.gov.uk/legislation/uk-expa.htm>.

18.2 The full text of the Statutory Instruments can be found at [www.hms0.gov.uk/stat.htm](http://www.hms0.gov.uk/stat.htm). The forms are appended to the statutory instruments.

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<sup>19</sup> Explanatory Notes can be used as an aid to statutory interpretation: see *R (Westminster City Council) v National Asylum Support Service* [2002] 1 WLR 2956, and *R (Confederation of Passenger etc) v Humber Bridge Board* [2004] 2 WLR 98.

18.3 The full text of the paper, prepared for the JSB by Professor J.R. Spencer Q.C., can be found at [http://www.jsboard.co.uk/criminal\\_law/index.htm](http://www.jsboard.co.uk/criminal_law/index.htm).