

## Definitions

**"Bad character"** in criminal proceedings means "evidence of, or of a disposition towards, misconduct". (Art 82C PPCE)

**"Misconduct"** means the commission of an offence or other 'reprehensible behaviour'. (Art 82A)

**"Reprehensible behaviour"** should be looked at objectively, taking into account whether the public would ordinarily regard such conduct as reprehensible.

An application for evidence of bad character to be adduced on the basis of "reprehensible behaviour" generally need not require evidence of that behaviour to be proven to the criminal standard. This may circumvent the need for arguments about whether the alleged conduct amounted to an offence where it has not resulted in a charge or conviction.

Evidence of bad character expressly **excludes**:

- 1) evidence which has to do with the alleged facts of the offence with which the defendant is charged (Art 82C(a)); or
- 2) evidence of misconduct in connection with the investigation or prosecution of that offence. (Art 82C(b))

## Assumption of truth (Art 82B)

Art 82B places on a statutory basis the general practice of the courts to assume the truth of evidence put before it for the purpose of ascertaining that it is relevant and/or of probative value.

However, the court need not assume that the evidence is true if it appears to the court, on the basis of the material before it, or of any evidence it hears, that no court or jury could reasonably find it to be true. (Art 82B(2))

## Non-defendant's Bad Character (Art 82J)

Evidence of the bad character of a person other than D is admissible **if, and only if**, one of the **three gateways** is made out. (Art 82J(1)(a)(b)&(c))

**Gateway one - It is important explanatory evidence** (Art 82J(1)(a))

Evidence is important explanatory evidence if:

- 1) without it, the court/jury would find it impossible or difficult to understand other evidence in the case; and
- 2) its value for understanding the case as a whole is substantial.

**Leave of the court is required**

**Gateway two - It has substantial probative value in relation to a matter which is 1) a matter in issue in the proceedings; and 2) is of substantial importance in the context of the case as a whole.** (Art 82J(1)(b))

In assessing the probative value of the evidence the court must have regard to the following four factors (and to any others it considers relevant)

- 1) the nature and number of the events, or other things, to which the evidence relates;
- 2) when those events or things are alleged to have happened or existed;
- 3) where
  - a) the evidence is evidence of a person's misconduct; and
  - b) 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;
- 4) where
  - a) the evidence is evidence of a person's misconduct;
  - b) it is suggested that that person is also responsible for the misconduct charged; and
  - c) 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.

**Leave of the court is required**

**Gateway three - All parties agree to the evidence being admissible.** (Art 82J(1)(c))

**Leave of the court is not required**



## Attorney General's Guidance

### Bad Character Provisions of the Criminal Procedure (Jersey) Law 2018

The admissibility of bad character evidence in criminal proceedings is set out in Articles 82A - 82J of the Police Procedures and Criminal Evidence (Jersey) Law 2003 (as amended by the Criminal Procedure (Jersey) Law 2018) and applies in all criminal proceedings from 31 October 2019.

*This can only be a guide - reference should be made to the legislation for its full effect.  
Issued November 2019*

## Defendant's Bad Character (Art 82E - I)

Evidence of the **defendant's** bad character is admissible **if, but only if**, one of 7 gateways is made out in Art 82E(1). If the gateway is made out leave is NOT required **but** notice is required.

**All parties agree** to the evidence being admissible. (Art 82E(1)(a))

**The evidence is adduced by D himself or** given in answer to a question asked by D in XX and intended to elicit it. (Art 82E(1)(b))

It is **important explanatory evidence**. It is important explanatory evidence **IF**  
1) without it the court/jury would find it impossible or difficult properly to understand other evidence in the case; and  
2) its value for understanding the case as a whole is substantial. (Art 82E(1)(c))

In proceedings for an offence alleged to have been committed by a defendant over the age of 21, evidence of a conviction for an offence when under the age of 15 is not admissible unless the court is satisfied that the interests of justice require the evidence to be admitted. (Art 82E(4))

It is **relevant to an important matter in issue** between D & P (Art 82F) BUT only prosecution evidence is admissible. (Art 82F(2))

Matters in issue between the D & P include the question whether D 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. Such propensity **MAY** be established by evidence that he has been convicted of an offence of the same description (ie if the statement of offence in a summons or indictment would be in the same terms) **OR** of a similar nature or type with which D is charged (provision as to what constitutes similar nature or type may be specified in Regulations). This does not apply if the court is satisfied, by reason of the length of time since the conviction **OR** any other reason that it would be **unjust for it to apply** in the case.

The court must not admit evidence under Art 82F if, on the application by D 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. (Art82E(2)) See Art 82E(3) - particular regard to length of time between matters and offence charged.

The matters in issue between D & P also include the question whether D has a **propensity to be untruthful** except where it is not suggested that D's case is untruthful in any respect. (Art 82F(1)(b))

It has **substantial probative value** in relation to an **important matter in issue between the D & a Co-D** (Art 82H(1)) **AND** it is evidence  
1) which is to be (or has been) adduced by the Co-D; or  
2) which a witness is to be invited to give (or has given) in cross-examination by the Co-D. **BUT** evidence which is relevant to the question whether D has a propensity to be untruthful is admissible only if the nature or conduct of D's defence is such as to undermine his Co-D's defence.

**OR** D gives a false impression where it appears to the court that D, by means of his **conduct in the proceedings** (other than in evidence but including appearance or dress), is seeking to give a false/misleading impression then, the court may, if just to do so, treat D as responsible for an assertion.

It is prosecution evidence having a probative value to correct a **false impression given by D** (Art 82I) **AND** goes no further than is necessary to correct the false impression (Art82I(3)). Does not apply if D withdraws or dissociates himself from the false impression. (Art 82I(6))

D gives a false impression by an **express or implied assertion** which is apt to give the court/jury a false or misleading impression about D. (Art 82I(2))  
  
D is **responsible** for making an assertion if it was:  
1) made by D in the proceedings;  
2) made under caution by D;  
3) made by D's witness;  
4) made under XX by D;  
5) made out of court and D adduces evidence of this. (Art 82I(5))

D made an **attack on another person's character**. (Art 82G) ie that the person has committed an offence (including the one charged) **OR** has behaved in a reprehensible way. Only prosecution evidence is admissible. (Art 82G(2))

The attack can be made by adducing evidence **OR** by intentionally eliciting it in XX **OR** by evidence given of what D said when questioned or charged.

The court must not admit evidence under Art 82G if, on application by D 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. (Art82E(2)) See Art 82E(3) - particular regard to length of time between matters and offence charged.