

## Good Character Sentencing Reform Discussion Paper

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### Discussion Questions

This approach is informed by international human rights frameworks, including the UN Convention on the Rights of the Child (CRC), restorative justice models, and principles of proportionality and rehabilitation.

#### 1. Should good character be abolished as a mitigating factor in sentencing?

- For adult offenders, particularly in cases involving child sexual abuse, abolishing good character as a mitigating factor aligns with child protection principles. Good character often enables perpetrators to gain access to victims and avoid detection. The focus should be on harm to the child, not the offender's prior reputation.

- For children and young people, maintaining good character as a mitigating factor is essential. The CRC (Article 40) emphasizes rehabilitation and reintegration, not punitive measures. Young offenders, particularly first-time offenders, should benefit from leniency if their history demonstrates positive community contributions and rehabilitation potential.

#### 2. Should a lack of previous convictions be abolished as a mitigating factor?

- For adults, a lack of prior convictions should not justify leniency in serious offences against children, as grooming and exploitation often occur over years before detection.

- For children, it is crucial to retain this mitigating factor. Many young people offenders commit crimes due to social disadvantage, peer influence, or developmental immaturity. The CRC (Article 37) mandates that detention be a last resort, and consideration of a clean record helps avoid criminalising children unnecessarily.

- Additionally, first-time young people offenders should receive diversionary measures not punitive sentences, when appropriate.

#### 3. Should good character be unavailable for offenders who plead not guilty?

-Presumption of innocence (CRC Article 40) must be upheld. Penalising offenders for pleading not guilty contradicts the right to a fair trial.

- For children, restricting good character based on a guilty plea could lead to coerced pleas to receive leniency, undermining procedural fairness. Young people may not fully comprehend legal proceedings and may require enhanced protections in making plea decisions.

#### 4. Should good character be considered an aggravating factor?

-For adult offenders, good character could be considered an aggravating factor in cases of breach of trust (e.g., teachers, clergy, community leaders). Offenders who used their positive reputation to gain access to victims should not receive leniency.

- For young offenders, making good character an aggravating factor could be counterproductive. Many young in the justice system come from a history or background of trauma or unstable environments, meaning they may lack opportunities to develop good

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character. Penalising them for this would reinforce systemic inequities already present in the young people justice system.

### **5. Should the special rule be extended to all child sexual offences?**

- Yes. Extending the rule would strengthen child protection and prevent offenders from benefiting from their carefully curated reputations. The CRC (Article 34) mandates that governments protect children from sexual exploitation and abuse.
- This reform would ensure justice for survivors and remove legal loopholes that allow offenders to claim leniency.

### **6. Should the special rule be extended to sexual offences against other vulnerable groups (e.g., people with disabilities, elderly victims)?**

- Yes. The CRC and other human rights treaties emphasize protecting vulnerable individuals from abuse.
- For example, children with disabilities face higher risks of sexual exploitation, and extending this rule would reinforce equal protection under the law.

### **7. Should the special rule apply to all sexual offences, including those against adults?**

- Yes, with some caveats. While extending it to all sexual offences would support victim-centred justice, any reform must consider offenders differently on a case by case basis. Sentencing discretion should remain for young people cases.

### **8. Should the special rule apply to domestic violence cases?**

- Yes, for adults. Many proponents of repeat domestic violence offenders have good public standing, allowing them to evade harsh sentences.
- For young people, case-by-case assessments are needed. Many young offenders exposed to domestic violence may themselves be victims of intergenerational trauma. Instead of harsh punishment, therapeutic interventions should be prioritised.

### **9. Should the special rule apply to other serious offences (e.g., white-collar crimes, fraud)?**

- For adult offenders, possibly. White-collar crime causes significant harm to individuals, families and communities, and good character should not be a default mitigating factor.
- For young offenders, rehabilitation is key. Young people financial crimes (e.g., fraud, cyber offences) are often driven by peer pressure, financial hardship, or immaturity rather than deep-rooted criminal intent. In these instances education-focused sentencing may be preferable.

### **10. Should the special rule apply to offences involving breach of trust (e.g., teachers, religious leaders)?**

- Yes. Individuals in positions of power who betray society's trust, especially in harming children, should not benefit from good character mitigation.

### **11. Should all offences be covered by the special rule?**

- Not for young people offences. Applying a blanket rule would disproportionately affect young people who have not established "good character" due to age or life circumstances.
- Young people sentencing should retain flexibility to allow rehabilitation.

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**12. Should under-18s be exempt from the special rule?**

- Yes. Children and young people should be exempt because:
  - The CRC (Article 37) requires that children be treated differently from adults.
  - Many young people offenders have experienced trauma, abuse, or neglect.
  - Courts should focus on diversion, rehabilitation, and restorative justice rather than harsh penalties.

**13. Should procedural reforms be introduced for submitting character evidence?**

- Yes. Character evidence should be standardised and regulated, especially to prevent biased or misleading submissions in sexual offence cases.
- For young offenders, a more holistic approach should be taken, considering:
  - Developmental maturity
  - Social circumstances
  - Potential for rehabilitation.

**14. Should offenders bear the burden of proving how their good character is relevant?**

- Yes, for adults. This would prevent offenders from relying on generic references that do not genuinely reflect rehabilitation potential.
- For children, no. Many young offenders lack the resources to provide extensive character evidence, and placing this burden on them could deepen inequalities.

**Conclusion**

From a child rights and young people justice perspective:

- Good character should not mitigate serious offences against children, but young offenders should retain access to it to support early intervention, diversion and rehabilitation.
- Sentencing should reflect developmental maturity, trauma history, and rehabilitation potential for young offenders.
- The special rule should expand for adults but not automatically apply to all young offences.
- Procedural safeguards are necessary to ensure fair and just sentencing outcomes.