

The role of character-based personal mitigation in sentencing judgments

Ian K. Belton¹ | Mandeep K. Dhimi²

¹University of Strathclyde, Glasgow, UK

²Middlesex University, London, UK

Correspondence

Ian K. Belton, Department of Management Science, Strathclyde Business School, University of Strathclyde, 199 Cathedral Street, Glasgow G4 0QU, UK.

Email: iankbelton@yahoo.co.uk

Abstract

Personal mitigating factors (PMFs) such as good character, remorse and addressing addiction help sentencers evaluate an offender's past, present and future behavior. We analyzed data from the 2011–2014 Crown Court Sentencing Surveys in England and Wales to examine the relationship between these PMFs and custodial sentences passed on assault and burglary offenses, controlling for other sentencing relevant factors. Beyond revealing the distribution and co-occurrence of the three PMFs, it was found that good character, remorse and addressing addiction all had a significant mitigating effect. The effects of addressing addiction were the strongest of the three across both offense types, while good character had a stronger effect on burglary than assault. In addition, some mitigating factors appear to be underweighted when they occur together. We consider the implications of these findings for sentencing policy and practice.

KEYWORDS

courts, custody, judicial decision-making, personal mitigation, remorse, sentencing

INTRODUCTION

When meting out sanctions for criminal offending, sentencers assess the offender's past behavior, current attitude to being brought to justice, and his or her future prospects. In doing so, sentencers may consider the offender's character. Indeed, sentencing has sometimes been described as “a kind of moral assessment”

This is an open access article under the terms of the [Creative Commons Attribution-NonCommercial-NoDerivs](https://creativecommons.org/licenses/by-nc-nd/4.0/) License, which permits use and distribution in any medium, provided the original work is properly cited, the use is non-commercial and no modifications or adaptations are made.

© 2024 The Authors. *Journal of Empirical Legal Studies* published by Cornell Law School and Wiley Periodicals LLC.

(Ashworth, 2015); a question of what one person (the sentencer) thinks about another (the offender). Mitigating factors personal to the offender (rather than specific to the offense) may contribute to this character assessment. In particular, specific personal mitigating factors (PMFs) such as *good character*, *remorse*, and *addressing addiction* are likely to play a central role in this assessment as they provide an indication of the offender's past (good character), present (remorse) and future (addressing addiction) behavior. This information may influence a sentencer's causal attributions about the offender's reasons for offending, response to being brought to justice, and the likelihood of reoffending or reacting positively to specific sanctions (see e.g., Albonetti, 1987, 1991; Steffensmeier et al., 1998).

Good character is a long-established PMF in several jurisdictions including in the United States, Australia and the United Kingdom (Crackanthorpe, 1902; Freckelton, 2001; Jacobson & Hough, 2007; Mizzi et al., 2010; Roberts et al., 2016; Sentencing Council, 2013a). Similarly, the expression of remorse is a widely recognized PMF (Byrne Hessick & Berman, 2016; Jacobson & Hough, 2007; Maslen, 2015; Rachlinski et al., 2013; Sentencing Council, 2013a; Weisman, 2004). Addressing addiction has also been identified as an important PMF, especially when crime is committed to fund substance dependency (Jacobson & Hough, 2007; Maguire, 2010; Padfield, 2011; Sentencing Advisory Panel, 2010; Shapland, 2011).

In England and Wales, for instance, an early study by Shapland (1981) found that good character and apology or remorse (defined as realizing one's actions were wrong, accepting responsibility for the offense, and appreciating the impact on the victim) were mentioned in around half of the 126 pleas in mitigation studied. In their sample of 132 Crown Court cases, Jacobson and Hough (2007) observed that good character and addressing drug/alcohol addiction were two of the most frequently mentioned PMFs by sentencers. Finally, the Sentencing Council for England and Wales reported that in 2012, remorse applied in 31% of Crown Court¹ cases, good character in 20% of cases, and addressing addiction in 12% of cases (Sentencing Council, 2013a).

Personal mitigation appears to be particularly critical when cases are on the cusp of custody. For instance, Jacobson and Hough (2007) observed that judges often stated in court that personal mitigation had reduced the sentence from immediate custody to another sentence or a shorter custodial sentence. An offender perceived as basically a good person who had a "moment of madness" may be given a community sentence (Hough et al., 2003, p. 41), while someone perceived to be a "ne'er-do-well" may have a greater chance of being sent to prison (Belton, 2018, p. 150—see also Millie et al., 2007; Tombs & Jagger, 2006). The potential impact of character-based PMFs highlights the need for sentencers to apply these factors in a consistent, principled, and unbiased way.

¹The Crown Court deals with relatively serious offenses. "Indictable" offenses, such as murder, rape and robbery, must be tried at the Crown Court. "Either way" offenses, which include most types of burglary and assault, can be tried in either a magistrates' court (a lower tier court) or the Crown Court.

Many jurisdictions have introduced sentencing guidelines as a way of ensuring consistency and fairness in sentencing (see Dhami et al., 2015). In England and Wales, the guidelines set out a step-by-step process for determining the final sentence (e.g., Sentencing Council, 2011a). At Step 1, offense seriousness is determined based on a short list of factors related to culpability and harm. The seriousness level provides the sentence starting point and range. Step 2 provides a longer list of additional aggravating factors and mitigating factors that increase or reduce severity respectively (e.g., Sentencing Council, 2011a). Based on these, the starting point may be adjusted up or down. The remaining steps allow for other adjustments including for a guilty plea and where multiple offenses are involved.

However, the guidelines in England and Wales afford sentencers considerable discretion, since they do not specify the weight that should be given to each sentencing factor nor how factors should be integrated (Dhami, 2013a, 2013b).² In addition, the aggravating and mitigating factors are listed in the guidelines with only limited explanation and are therefore open to subjective interpretation. Research points to variation in how sentencers construe and apply PMFs (e.g., Brunton-Smith et al., 2020; Davies & Tyrer, 2003; Jacobson & Hough, 2007; Rachlinski et al., 2013). The main goal of the present research is to examine the effect that three character-based PMFs (i.e., remorse, good character, and addressing addiction) have on sentencing outcomes. Before we describe the research, we review the small body of past research on PMFs in sentencing in England and Wales, where the present study is focused.

PAST RESEARCH ON CHARACTER-BASED PERSONAL MITIGATION

Early studies examining personal mitigation in sentencing in England and Wales have used a variety of methods such as courtroom observations, analyses of court records, interview and/or questionnaire surveys of sentencers (Flood-Page & Mackie, 1998; Gelsthorpe & Loucks, 1997; Hough et al., 2003; Jacobson & Hough, 2007; Millie et al., 2007; Speed & Burrows, 2006). These studies suggest that good character, remorse and addressing addiction are considered to be important mitigating factors in sentencing. More recent work has involved statistical analyses of sentencing data collected by the Sentencing Council for England and Wales from large samples of Crown Courts using the

²Some limited guidance does exist. The sentencing guideline for sexual offenses in England and Wales states, in relation to good character, that “[t]he more serious the offense, the less the weight which should normally be attributed to this factor” (Sentencing Council, 2013c, p. 11). For certain serious sexual offenses including rape, the guideline also specifies that “previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction” (Sentencing Council, 2013c, p. 11). The burglary guideline (Sentencing Council, 2011b, p. 8) includes a comment that for addicts with “sufficient prospect of success, a community order with a drug rehabilitation requirement may be a proper alternative to a short or moderate custodial sentence.”

Crown Court Sentencing Survey (CCSS; Irwin-Rogers & Perry, 2015; Maslen, 2015; Pina-Sánchez & Linacre, 2013; Sentencing Council, 2015).³ The different approaches have their strengths and limitations when studying sentencing (see Dhimi & Belton, 2015, 2016, 2017). Here, we review the latter group of studies in detail because they were conducted in the so-called “guidelines era” and because their data source is the same as that used in the present study.

In an analysis of the CCSS 2014 data, the Sentencing Council (2015, see also Sentencing Council [2014] for an analysis of the 2013 dataset) reported that the custody rate for domestic burglary dropped to from 77% to 47% for cases involving addressing addiction, and there was also a reduction in the average length of time in custody from 3 years and 1 month to 2 years and 10 months. Reductions in custody rate and average custodial sentence length were also observed for cases involving remorse (i.e., custody rate of 59%, and average custodial sentence length of 3 years) and cases involving good character (i.e., custody rate of 27% and average custodial sentence length of 2 years). Many cases involved the co-occurrence of more than one PMF (e.g., 55% involved two or more PMFs). However, the Sentencing Council statistics do not control for the effects of other factors on sentencing outcomes; the inter-correlations among PMFs (as well as other sentencing relevant factors) were not reported, and neither were the effects of interactions among factors.

Three recent studies have performed more sophisticated statistical analyses on CCSS datasets (Irwin-Rogers & Perry, 2015; Maslen, 2015; Pina-Sánchez & Linacre, 2013). Pina-Sánchez and Linacre (2013) computed regression models on data from 5527 cases of actual bodily harm (ABH), grievous bodily harm (GBH) and GBH with intent taken from the 2011 dataset. Remorse was found to be a significant predictor of reduced custodial sentence length. However, the models included only three PMFs (out of 11 in the relevant guidelines) and four aggravating factors (out of 20) and did not include good character or addressing addiction. Common assault cases were also omitted from the analysis.

Maslen (2015) conducted a binary logistic regression analysis on 5405 cases of assault taken from the 2011 CCSS dataset to explore the effects of remorse and number of previous convictions on sentence, controlling for offense seriousness and the number of other mitigating and aggravating factors present (but not the factors themselves). Remorse was a significant predictor of sentence such that remorseful offenders were half as likely to go to prison as those who did not express remorse. Remorse did not interact with previous convictions, but it did with offense seriousness such that as offense seriousness increased, the effect of remorse on likelihood of custodial sentence gradually decreased to zero.

Irwin-Rogers and Perry (2015) computed an ordinal logistic regression model on 4645 cases of domestic burglary taken from the 2012 CCSS dataset, after

³The CCSS commenced in October 2010 and ceased in March 2015. It was designed to obtain data on the factors “used” by the court when deciding a sentence. It represents brief forms collecting “tick-box” information from sentencers on factors specified in sentencing guidelines (although not all offenses had guidelines) in addition to offender age and gender.

carrying out bivariate analyses on the 41 factors specified in the sentencing guidelines. Remorse, good character and addressing addiction were all significant predictors of sentence. However, the outcome variable, which was custodial sentence length (split into five categories), also included a non-custodial sentence category. This is a questionable approach because the decision to imprison is quite distinct from the decision about custody length; and their levels do not lie on the same scale.

Although the aforementioned studies have provided some insight into the relationships between PMFs and sentencing, none of those that focused on or substantially explored mitigation dealt with all three character-based PMFs of interest to us (i.e., remorse, good character and addressing addiction). Pina-Sánchez and Linacre (2013) and Maslen (2015) studied a small number of PMFs, while Irwin-Rogers and Perry (2015) did not discuss findings for any PMFs other than remorse. Maslen (2015) only examined the interactions between remorse and (a) previous convictions and (b) offense seriousness, while the other two studies did not examine any. In addition, each of these CCSS-based studies suffered from one or more limitations. First, there was a lack of control of other sentencing relevant factors. Neither Irwin-Rogers and Perry (2015) or Pina-Sánchez and Linacre (2013) controlled for offense seriousness, and Pina-Sánchez and Linacre (2013) did not control for many other mitigating and aggravating factors present in a case; and although Maslen (2015) controlled for the number of aggravating and mitigating factors, she did not control for any specific factor. Second, none of the studies looked for possible interactions between PMFs. It is important to understand whether PMFs are treated differently when they co-occur than when they occur in isolation, since two or more PMFs are often present in a case. In addition, all three studies were limited to a single category of offense (or single offense i.e., Irwin-Rogers & Perry, 2015), thus preventing any comparison between offense categories. Comparisons between different offense categories such as violent and property crime can provide insights into how and why certain character-based PMFs may play a role in sentencing. Finally, all three studies used data from a single year. Using data from multiple years provides a fuller and more stable overall picture of sentencing practice, which may vary from year to year.

Some additional recent work, although not focused on mitigating factors per se, nevertheless included PMFs in regression analyses of CCSS data (e.g., Brunton-Smith et al., 2020; Lightowlers & Pina-Sánchez, 2018; Pina-Sánchez & Harris, 2020). The PMFs were primarily included to control for their effects, and as a result there was little or no discussion of their impact. As an exception, Lightowlers and Pina-Sánchez's (2018) exploration of the 2011 assault data revealed that the aggravating factor "under the influence" did not significantly interact with good character and addressing addiction. Brunton-Smith et al., (2020) and Lightowlers and Pina-Sánchez (2018) used 2011 assault data only; Pina-Sánchez and Harris (2020) modeled both assault and burglary but although they used multiple years' data for burglary, they did not do so for not assault.

THE PRESENT STUDY

The main aim of the present study was to examine the effect of character-based PMFs (i.e., remorse, good character, and addressing addiction) on sentencing in England and Wales. The specific objectives were to explore the distribution and co-occurrence of the three PMFs in Crown Court sentenced cases, and to examine the association between these PMFs and sentencing, controlling for other sentencing relevant factors. We conducted these analyses in the context of two contrasting categories of offense (i.e., assault and burglary), and so a final objective was to compare the role of PMFs between these two different offense categories.

As mentioned earlier, the present study used data from the CCSS. In doing so, we aimed to overcome the limitations of past research in several ways. First, we included data from more than 1 year (i.e., 2011, 2012, 2013 and 2014). Second, we compared two offense categories: assault and burglary. Third, we controlled for as many other available and relevant factors as possible in our analysis. Fourth, we examined two-way interactions among the three PMFs of interest.

Like other research using CCSS data, our findings reflect the limitations of that source. First, the CCSS is a self-report measure that records whether or not a given PMF was taken into account in each case but does not provide details of how that PMF was interpreted or applied. Second, the CCSS data may be affected by “false negatives” in that judges may have failed to check relevant factors on the form in some cases, leading to an underestimation of PMF prevalence. Third, the CCSS response rate was approximately 60% and varied between courts, which may affect the representativeness of the data. Fourth, because the CCSS does not collect offender ethnicity, we were unable to test or control for possible racial or ethnic bias in sentencing or in the CCSS survey responses. Lastly, the England and Wales Sentencing Guidelines, and therefore the CCSS data, only deal with adult cases, and so this paper does not consider how personal mitigation may apply when sentencing young people.

METHOD

Crown court sentencing survey dataset

Assault cases

“New” form 2011 assault and public order data were combined with the 2012, 2013 and 2014 assault and public order data.⁴ This produced an initial set of 41,363 cases. Offenses for which no new sentencing guidelines exist were

⁴New forms for assault offenses were introduced in June 2011 in order to reflect the introduction of new guidelines.

removed from the dataset (affray, cruelty/neglect of a child, harassment, s. 4 of the Public Order Act 1986 [POA], s. 4a of the POA, s. 5 of the POA, violent disorder, and offenses classed as “other assault and public order”).⁵ Cases of assault on a police officer and assault with intent to resist arrest were also removed, as there were too few cases for reliable statistical analysis.⁶ The remaining dataset comprised 29,461 cases across the four most frequently occurring assault offenses as follows: 14,016 cases of ABH (s. 47 of the Offenses Against the Person Act 1861 [OAPA]); 7979 cases of inflicting GBH (s. 20 OAPA); 4095 cases of common assault; and 3371 cases of GBH with intent (s. 18 OAPA). The assault data contained 90.8% male and 9.2% female offenders.

Burglary cases

The 2012 CCSS burglary offenses data were amalgamated with the 2013 and 2014 burglary data.⁷ This process produced an initial dataset of 19,190 cases. Cases classified as “other burglary” were removed from the dataset because these cases were not covered by the guidelines.⁸ Aggravated burglary cases were also removed due to the small sample size.⁹ The remaining dataset comprised 18,224 cases across two offenses: 14,386 cases of domestic burglary and 3838 cases of non-domestic burglary. The burglary dataset contained 95.6% male and 4.4% female offenders.

Variables

The CCSS datasets include data on the following variables: offense type, offense seriousness, guilty plea, and a host of non-exhaustive mitigating factors (including PMFs) and aggravating factors. In addition, the datasets include two variables (i.e., offender age and gender) that are “extra-legal” or legally irrelevant to the sentencing process. Data on offender ethnicity was not collected in the CCSS. Finally, the datasets include information on the sentence passed, namely immediate custody, suspended sentence order, community order, fine, discharge and miscellaneous other orders.

⁵These offenses together comprised 11,646 cases. Non-guideline offense cases cannot be directly compared with guideline cases as the sentencing process followed may have differed. Future research could explore how PMF use may vary depending on whether there is a guideline to follow, for example, by comparing guideline- and non-guideline offenses or pre- and post-guideline data.

⁶There were 197 cases of assault on a police officer and 59 cases of assault with intent to resist arrest.

⁷The 2011 data were from before the new guidelines for burglary were introduced in January 2012 and so are incompatible with the 2012, 2013, and 2014 data.

⁸459 cases were removed.

⁹507 cases were removed.

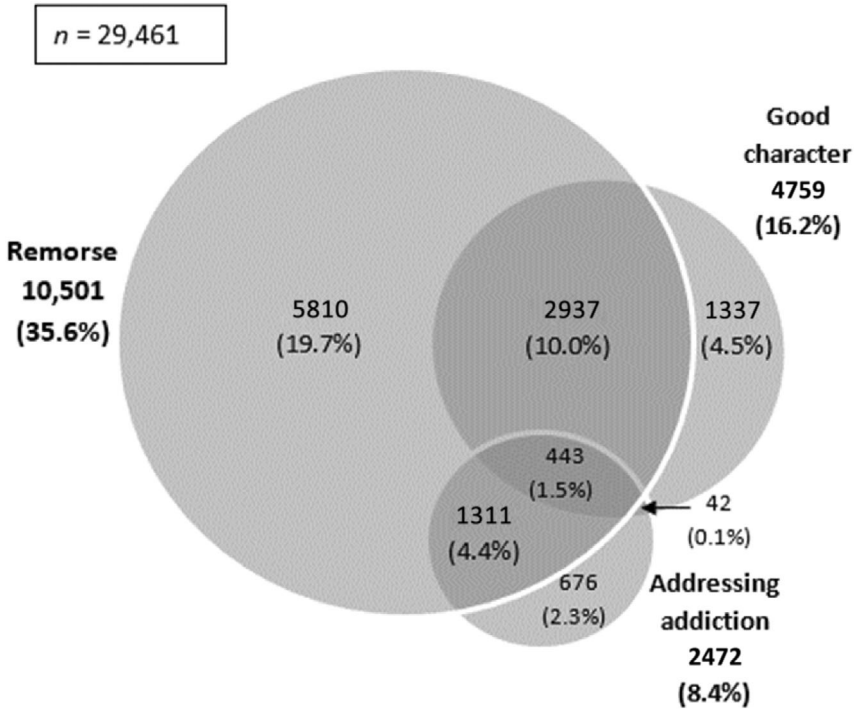


FIGURE 1 Venn diagram of frequency of PMFs in Crown Court sentenced assault cases (circle sizes and positions are approximate only).

Analysis and findings

Distribution of PMFs

Figures 1 and 2 show the distribution of the three PMFs for the assault and burglary cases. For both categories of offense, the most frequently occurring PMF was remorse. Remorse was more likely to be present in assault (35.6% of cases, $n = 10,501$) than burglary cases (20.5%, $n = 3,741$), as was good character (assault—16.2%, $n = 4,759$; burglary—3.6%, $n = 635$). Conversely, addressing addiction was more likely to be present in burglary cases (9.3%, $n = 1,687$) than in assault cases (8.4%, $n = 2,472$).¹⁰ Figures 1 and 2 also show that there is substantial co-occurrence among the three PMFs in the assault and burglary cases,

¹⁰Chi square tests were performed to test for the significance of the differences between offense types in the prevalence of these PMFs. Remorse: $\chi^2(1) = 1221.60, p < 0.001$. Good character: $\chi^2(1) = 1801.39, p < 0.001$. Addressing addiction: $\chi^2(1) = 10.61, p = 0.001$.

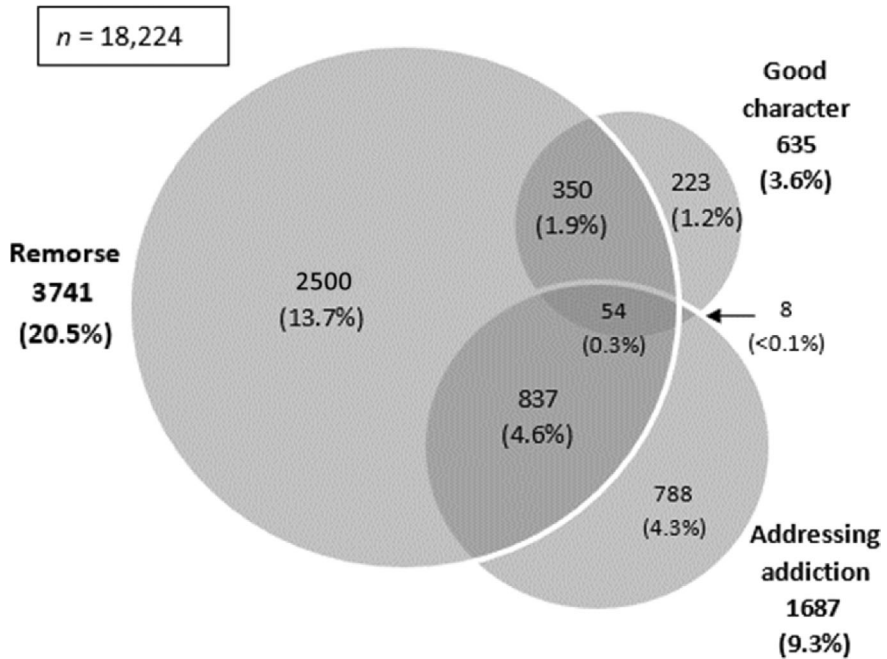


FIGURE 2 Venn diagram of frequency of PMFs in Crown Court sentenced burglary cases (circle sizes and positions are approximate only).

respectively. For assault, 71.0% of good character cases and 71.0% of addressing addiction cases also included remorse. In addition, 44.7% of remorse cases also included one or both of the other two PMFs. For burglary, 63.6% of good character cases and 52.8% of addressing addiction cases also included remorse, and 33.2% of remorse cases also included one or both of the other two PMFs.

Association between PMFs and sentencing

The available sentencing options for assault and burglary include custody (immediate or suspended), a community penalty such as unpaid work and/or drug/alcohol rehabilitation, a fine, or a discharge. In assault cases, 52.7% of offenders received immediate custody, 31.1% received a suspended sentence, 12.8% received a community order, 0.9% received a fine, and 1.5% received a discharge.¹¹ In burglary cases, 74.3% of offenders received immediate custody,

¹¹1.0% of offenders received a sentence that did not fall into any of these categories.

17.1% received a suspended sentence, 8.1% received a community order, fewer than 0.1% received a fine, and 0.2% received a discharge.¹²

We used binary logistic regression models to examine how the presence or absence of each of the three PMFs affected whether or not an offender received an immediate custodial sentence. Regression models have been widely used in sentencing research to examine relationships between legal and extra-legal factors and sentencing outcomes. The present models can only take account of factors recorded in the CCSS datasets and while these factors are contained in the sentencing guidelines, there may be other (unrecorded) factors that are not in the guidelines, but which nevertheless influenced sentencing in particular cases. However, as detailed below, the models predicted a high percentage of case outcomes correctly: in other words, they represented the data relatively well. Crosstabs confirmed that all Step 2 guideline aggravating and mitigating factors were statistically significantly correlated with the outcome variable, for both offenses, and so all of these were included as predictors in the models. In addition, the models included offense seriousness (a three-level categorical variable, with the least serious category [3] being the reference category). Offense seriousness was included to capture the cumulative effect on sentence of Step 1 guideline aggravating and mitigating factors. Also included were guilty plea (yes/no, with no being the reference category) and year (with 2011 being the reference category for assault, and 2012 for burglary). The factors were entered simultaneously into the models. Tables A1 and A2 in Appendix A report descriptive statistics for the predictor variables in the assault and burglary samples, respectively.

Assault

The model testing the main effects (Model 1) predicted 81.9% of immediate custody sentences and 78.9% of other sentences correctly, giving an overall prediction success rate of 80.5%.¹³ Residual statistics were examined (including Cook's distance, leverage, DFBetas and standardized residuals) and did not raise any concerns. A review of correlations between predictors and VIF values indicated that levels of multicollinearity were acceptably low.¹⁴ Table 1 presents the results for mitigating factors from Model 1 (the main effects model) and Model 2 (the model including interactions). The full logistic regression model is shown in Appendix B (Table B1).

Figure 3 shows the estimated probabilities of an offender receiving an immediate custodial sentence if each Step 2 mitigating factor were the sole factor present in a reference case (a case where all other predictors were at their reference level), namely a 2011 common assault of level 3 seriousness where the offender

¹²0.3% of offenders received a sentence that did not fall into any of these categories.

¹³The main effects model was significantly different from a constant-only model ($\chi^2[40] = 12444.978, p < 0.001$).

¹⁴VIF (variance inflation factor) values were: Remorse = 1.29, good character = 1.47, addressing addiction = 1.08.

did not plead guilty and no other aggravating or mitigating factors were present. Figure 3 illustrates the impact that each mitigating factor can have on the chance of an individual offender receiving a custodial sentence.

We also tested for interaction effects among the three PMFs of interest. The interactions were added simultaneously as an extension to the main effects model described above (see Table 1). A significant interaction indicates that the effect of one variable differs depending on whether the other variable is present or absent (and vice versa). The interaction model predicted 81.9% of immediate custody sentences and 79.0% of other sentences correctly, with an overall prediction success rate of 80.6%.¹⁵

There was no significant interaction found between remorse and good character. Table 2 shows that when remorse and good character were present together in a reference case as described above, the probability of an offender receiving immediate custody was substantially lower than when either PMF was present alone, indicating an additive effect of the two PMFs (0.19 probability of custody with both PMFs present vs. 0.29 for remorse only and 0.31 for good character only). Similarly, there was no significant interaction between remorse and addressing addiction (custody probabilities: both PMFs = 0.11, remorse only = 0.29, addressing addiction only = 0.15). However, significant two-way interactions were found between addressing addiction and both remorse and good character. The probability of immediate custody for a reference case involving addressing addiction was 0.15 and was only marginally reduced (to 0.13) by adding good character to the case. In other words, good character had a weaker mitigating effect in cases involving addressing addiction than in cases without that PMF.

Burglary

The model testing the main effects (Model 1) predicted 92.8% of immediate custody sentences and 52.8% of other sentences correctly, giving an overall prediction success rate of 82.4%.¹⁶ Neither residual statistics nor VIFs raised any concerns.¹⁷ Table 3 presents the results for mitigating factors from Model 1 (the main effects model) and Model 2 (the model including interactions). The full logistic regression model is shown in the Appendix B (Table B2).

Figure 4 shows the estimated probabilities of an offender receiving an immediate custodial sentence, if each Step 2 guideline mitigating factor were the sole factor present in a reference case, namely a 2012 non-domestic burglary of level 3 seriousness where the offender did not plead guilty and no other aggravating or mitigating factors were present.

¹⁵The interaction model was significantly different from the main effects model i.e., without interactions, $\chi^2[3] = 8.03, p = 0.045$.

¹⁶The main effects model was significantly different from a constant-only model ($\chi^2[32] = 5192.58, p < 0.001$).

¹⁷VIF (variance inflation factor) values were: Remorse = 1.22, good character = 1.21, addressing addiction = 1.10.

TABLE 1 Extract from logistic regression model of character-based PMFs (in bold) controlling for other factors predicting immediate custody in assault cases ($n = 48,448$).

Predictor	Model 1—Main effects			Model 2—With interactions		
	β	SE	Exp (β)	β	SE	Exp (β)
Mitigating factors						
No previous convictions	-0.30***	0.05	0.74	-0.29***	0.05	0.75
Single blow	-0.42***	0.05	0.66	-0.42***	0.05	0.66
Remorse	-0.62***	0.04	0.54	-0.65***	0.05	0.52
Good character	-0.54***	0.06	0.59	-0.57***	0.09	0.56
Addressing addiction	-1.30***	0.07	0.27	-1.49***	0.11	0.23
Serious medical conditions	-1.32***	0.13	0.27	-1.32***	0.13	0.27
Isolated incident	-0.65***	0.06	0.52	-0.65***	0.06	0.52
Age or lack of maturity	-0.36***	0.07	0.70	-0.37***	0.07	0.69
Lapse of time	-1.03***	0.12	0.36	-1.02***	0.12	0.36
Mental disorder	-1.05***	0.11	0.35	-1.05***	0.11	0.35
Sole or primary carer	-1.26***	0.10	0.28	-1.26***	0.10	0.28
Interactions						
Remorse \times Good character				0.03	0.11	1.03
Remorse \times Addressing addiction				0.24	0.14	1.27
Addressing addiction \times Good character				0.43*	0.22	1.54

Note: Model 1: $R^2 = 0.42$ (Cox & Snell), 0.56 (Nagelkerke). Model 2: $R^2 = 0.42$ (Cox & Snell), 0.56 (Nagelkerke). * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$.

As with the assault data, we tested for interaction effects among the three PMFs of interest.¹⁸ The model predicted 92.6% of immediate custody sentences and 53.0% of other sentences correctly, with an overall prediction success rate of 82.3%.

There was no significant interaction found between remorse and good character. Table 4 shows that when remorse and good character were present together in a reference case as described above, the chance of an offender receiving immediate custody was substantially lower than when either PMF was present alone: 0.15 probability of custody with both PMFs present versus 0.25 for remorse only and 0.24 for good character only. However, significant two-way interactions were found between addressing addiction and both remorse and good character. The probability of immediate custody for a reference case

¹⁸The interaction model was significantly different from the model without interactions, $\chi^2[3] = 28.97, p < 0.001$.

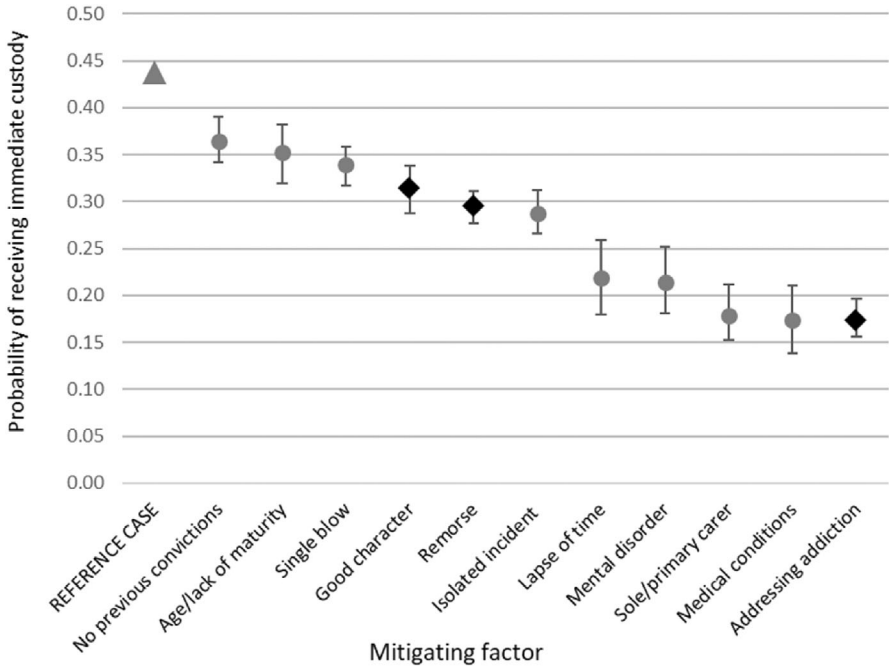


FIGURE 3 Probability of an offender receiving immediate custody where a single mitigating factor is present in a reference assault case (i.e., a 2011 common assault of level 3/least seriousness where the offender did not plead guilty and no other aggravating or mitigating factors were present). Character-based PMFs are indicated with black diamonds; error bars are 95% CIs.

TABLE 2 Estimated probability of receiving an immediate custodial sentence with none, one or two personal mitigating factors (PMFs) present for a reference assault case (i.e., 2011 common assault of level 3/least seriousness where the offender did not plead guilty and no other aggravating or mitigating factors were present).

	+ No other PMF	+ remorse	+ good character	+ addressing addiction
No PMF	0.44	0.29	0.31	0.15
Remorse	0.29		0.19	0.11
Good character	0.31	0.19		0.13
Addressing addiction	0.15	0.11	0.13	

involving addressing addiction was 0.08 and that probability remained the same when adding remorse to the case, while the probability actually increased to 0.13 with the addition of good character. In other words, remorse had no

TABLE 3 Extract from logistic regression model of character-based PMFs (in bold) controlling for other factors predicting immediate custody in burglary cases ($n = 18,224$).

Predictor	Model 1—Main effects			Model 2—With interactions		
	β	SE	Exp (β)	β	SE	Exp (β)
Mitigating factors						
Subordinate role	-0.93***	0.10	0.39	-0.93***	0.10	0.40
Reckless	-1.53*	0.65	0.22	-1.50*	0.65	0.22
Nothing taken	-0.53***	0.08	0.59	-0.53***	0.08	0.59
Voluntary reparation	-0.97***	0.24	0.38	-0.98***	0.23	0.38
No previous convictions	-0.74***	0.09	0.48	-0.73***	0.09	0.48
Remorse	-0.48***	0.06	0.62	-0.61***	0.07	0.55
Good character	-0.57***	0.13	0.57	-0.67***	0.18	0.51
Addressing addiction	-1.66***	0.07	0.19	-1.97***	0.10	0.14
Serious medical conditions	-1.21***	0.19	0.30	-1.22***	0.19	0.30
Age or lack of maturity	-0.66***	0.09	0.52	-0.65***	0.10	0.52
Lapse of time	-0.83***	0.22	0.44	-0.83***	0.22	0.44
Mental disorder	-1.09***	0.15	0.34	-1.09***	0.15	0.34
Sole or primary carer	-1.27***	0.17	0.28	-1.25***	0.17	0.29
Interactions						
Remorse \times Good character				0.08	0.11	1.08
Remorse \times Addressing addiction**				0.63***	0.15	1.87
Addressing addiction \times Good character**				1.22**	0.42	3.39

Note: Model 1: $R^2 = 0.30$ (Cox & Snell), 0.45 (Nagelkerke). Model 2: $R^2 = 0.31$ (Cox & Snell), 0.45 (Nagelkerke). * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$.

additional mitigating effect in cases involving addressing addiction, and good character appeared to have a small aggravating effect.

Comparison between offense types

Figure 5 shows that whereas remorse and good character both had a similar impact on the probability of immediate custody across assault and burglary offenses, addressing addiction had a greater impact for burglary than for assault offenses. It is also noteworthy that for assault cases, the only interaction among PMFs was between addressing addiction and good character, while for burglary cases, addressing addiction interacted with both good character and remorse.

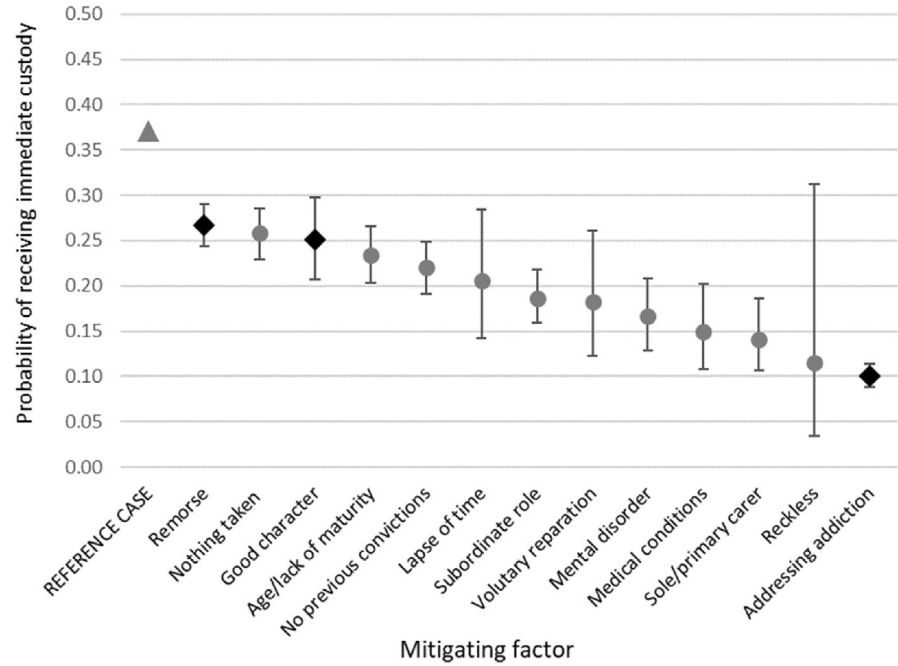


FIGURE 4 Probability of an offender receiving immediate custody where a single mitigating factor is present in a reference burglary case (i.e., a 2012 non-domestic burglary of level 3/least seriousness where the offender did not plead guilty and no other aggravating or mitigating factors were present). Character-based PMFs are indicated with black diamonds; error bars are 95% CIs.

TABLE 4 Estimated probability of receiving an immediate custodial sentence with none, one or two personal mitigating factors (PMFs) present for a reference burglary case (i.e., a 2012 non-domestic burglary of level 3/least seriousness where the offender did not plead guilty and no other aggravating or mitigating factors were present).

	+ No other PMF (%)	+ remorse (%)	+ good character (%)	+ addressing addiction (%)
No PMF	0.38	0.25	0.24	0.08
Remorse	0.25		0.15	0.08
Good character	0.24	0.15		0.13
Addressing addiction	0.08	0.08	0.13	

DISCUSSION

Good character, remorse, and addressing addiction are useful in assessing an offender's character, and they provide an indication of the offender's past,

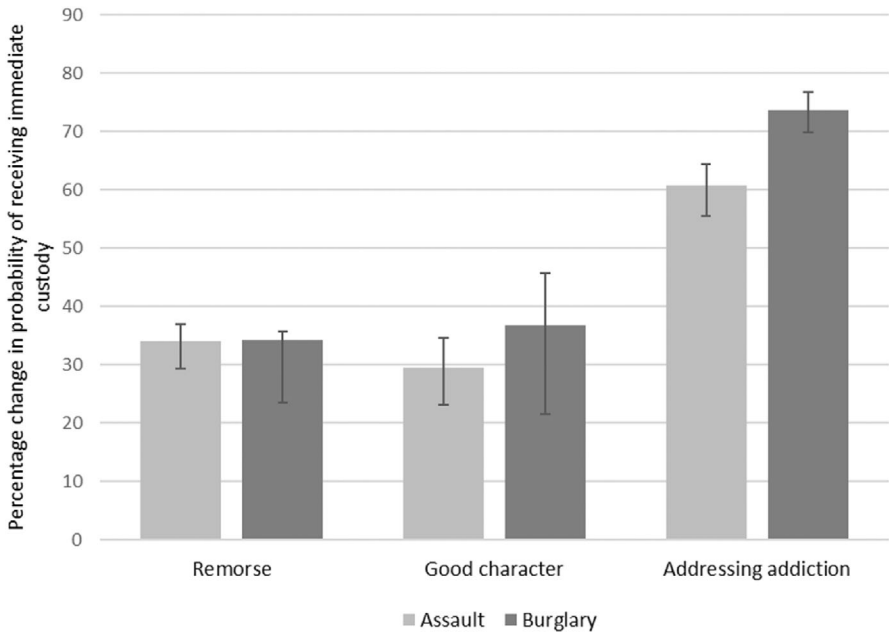


FIGURE 5 Percentage change in probability of an offender receiving immediate custody when character-based PMFs are present by offense category. Error bars are 95% confidence intervals.

present and future behavior, respectively. Despite this, the effects of these character-based PMFs on sentencing decisions have received relatively little research attention. The present study examined the impact that these three PMFs have on whether an offender receives immediate custody or not. By examining sentencing data over several years and for two different offense types, the findings provide a stable and generalizable picture of the role of character-based PMFs in sentencing. Below, we discuss the main findings in the context of past research and consider their potential implications.

Both remorse and good character were found to be recorded by sentencers as having been relied on in mitigation much more frequently in assault cases than in burglary cases (see also Sentencing Council, 2013a). This may be explained by the different profiles of the two offense types, with assaults more likely to be one-off, “moments of madness” and burglaries potentially being more commonly committed by repeat offenders. Good character and remorse may be seen as less valid and reliable indicators of behavior for repeat offenders. A post hoc analysis supports this proposition: 45.9% of offenders in assault cases had no previous convictions compared to only 26.9% of offenders in burglary cases. In addition, the proportion of offenders with four or more previous

convictions was greater for burglary cases than assault cases (i.e., 44.9% vs. 16.4%, respectively).

The pattern of previous convictions for burglary cases may also reflect the often-reported association between addiction and property crime (e.g., Bennett et al., 2008; Pierce et al., 2017). The present study found a higher frequency of addressing addiction in burglary cases than assault cases, although the difference was small (i.e., 0.8%).

Remorse, good character and addressing addiction were found to co-occur frequently. In particular, it was relatively uncommon to find a case involving either good character or addressing addiction that did not also involve remorse. This finding, although novel, is perhaps unsurprising since the factors are conceptually compatible: on the one hand, remorse may often be a necessary precursor to an addict deciding to address their addiction, while on the other hand it might be expected that a person claiming to have a good character would show remorse for their crimes.

The three character-based PMFs were all found to have a significant mitigating effect in both assault and burglary cases. These findings are consistent with past studies showing that these two PMFs have an impact on the sentencing of violent (e.g., Brunton-Smith et al., 2020; Flood-Page & Mackie, 1998; Jacobson & Hough, 2007; Maslen, 2015; Pina-Sánchez & Linacre, 2013) and property offenses (e.g., Irwin-Rogers & Perry, 2015; Pina-Sánchez and Harris (2020); Sentencing Council, 2015).

Further extending past work, we found that the mitigating effects of addressing addiction were much stronger than those of remorse and good character for both assault and burglary cases. Past research on the relative strength of mitigating factors has generally not included addressing addiction as a factor. The Sentencing Council (2013a) reported that for cases of domestic burglary, the custody rate for cases involving addressing addiction (47%) was lower than for cases involving remorse (60%) but higher than for cases involving good character (32%). This appears to be at odds with our results but the Sentencing Council only reported descriptive statistics and did not control for the effects of other mitigating and aggravating factors. As the present study has shown, the three character-based PMFs often occur together and so it is important to examine their effect while controlling for the effects of other sentencing factors.

The present study also extends past work by revealing that while remorse and good character have a similar size of effect on the probability of immediate custody across assault and burglary offenses, addressing addiction has a greater effect on burglary than assault cases. There is some evidence that judges may perceive addressing addiction as indicating that an offender is dealing with the causes of their offending behavior (Belton, 2018). There is also long-standing evidence of a link between drug addiction and burglary (e.g., Clare & Ferrante, 2007; Kuhns et al., 2017; Parker & Newcomb, 1987). It may be that the perceived causal link between addiction and crime (and the consequent

importance of addressing addiction as a mitigator) is greater for burglary than for assault.

Finally, we found evidence of sentencers underweighting character-based PMFs when they occur together. The term “underweighting” is used here in a purely descriptive sense: PMFs occurring together are each weighted less than when they occur alone. This novel finding runs contrary to some previous conventional wisdom on the effect of multiple PMFs. For example, Thomas (1979) argued that “the weight of a combination of mitigating factors will usually be greater than the sum of their individual values” (p. 194). In addition, past empirical research has found no interactions between mitigating factors (Jacobson & Hough, 2007; Lightowlers & Pina-Sánchez, 2018), as was also the case in the present study for many of the combinations tested. By identifying underweighting, we do not take a normative position on whether PMFs should interact and, if so, in what way. However, while the weight given to individual PMFs can and should vary depending on all the circumstances of a case, it does not follow that their weight should necessarily depend on the presence or absence of other PMFs (or other sentencing factors, for that matter). If this is, in fact, the approach taken by sentencers in some contexts—as we have found in this study—then the reasons for such an approach ought to be examined more carefully. For example, as a matter of principle, it is unclear why a burglar who is taking steps to deal with their addiction should get less (or indeed more) credit for their previous good character than one who is not doing so.

Potential explanations for the underweighting of multiple PMFs may be psychological, policy-based and/or legal (penological). Psychologically, sentencers could be taking a holistic rather than additive approach to sentencing whereby judgments of an overall mitigation amount composed of multiple individual factors become sub-additive in a similar way as probabilistic judgments do (Kahneman & Tversky, 1979; Kruger & Evans, 2004; Tversky & Koehler, 1994). Sentencers may also be biased by the order in which information is presented, and in particular, they may give disproportionate importance to the first PMF mentioned (in the list of Step 2 factors in the relevant sentencing guideline and/or in court) compared to subsequent items, that is, the primacy effect (Hogarth & Einhorn, 1992).

Alternatively, different combinations of PMFs may generate different causal attributions about the offender (Alicke, 2000; Heider, 1958; Shaver, 1985; see also Albonetti, 1987). For example, sentencers may be more likely to view remorse and addressing addiction as elements of a single pattern of behavior, since both demonstrate an offender’s response to their offense, and present behavior (expression of remorse) leads naturally into future behavior (likelihood of successfully addressing their addiction). Conversely, an offender’s past good character and present remorse, while related, are more clearly two separate entities. The underweighting between good character and addressing addiction

could reflect greater cynicism on the part of sentencers regarding a plea of previous good character among offenders with ongoing drug or alcohol dependency.

A legal/penological explanation for the underweighting of multiple PMFs is that sentencers may in some cases consider that applying reductions for multiple PMFs in an additive fashion would produce a sentence that would not reflect the overall seriousness of the offense, thus undermining the principle of proportionality. Alternatively, an argument made by sentencers (see Belton, 2018) is that the underweighting of multiple PMFs may relate to sentencers' need to cap the amount of mitigation given in a case in order to sentence within the relevant guideline range. However, the present research is focused on sentencers' choice between custodial and non-custodial sentences. For the majority of cases in the present datasets, the guideline range includes both custodial and non-custodial penalties. In such cases, the choice of sentence type—and any effect of PMFs on that choice—therefore cannot have been influenced by the need to stay within the guidelines.

Future work should test the various possible explanations for sentencers' underweighting of multiple PMFs and explore whether the relationship between PMFs and sentencing is different for other offenses, particularly those perceived by sentencers and/or the public as less receptive to personal mitigation such as sex and drug offenses (Belton, 2018; Clarke et al., 2002; McNaughton Nicholls et al., 2012; Sentencing Council, 2013c).

PMFS IN SENTENCING: A PAUSE FOR THOUGHT

The present findings can be placed in the context of debates about the relevance of PMFs to sentencing, as well as the goals of sentencing. Officially, sentencing is geared toward simultaneously achieving multiple, and sometimes competing, goals that is, punishing offenders, reducing crime, rehabilitating offenders, protecting the public, and making reparations (Criminal Justice Act, 2003, s. 142). In order to achieve each goal, the sentencer's attention must shift between the offender's past, present and future. For instance, an offender is punished for what he/she has done in the past. A focus on the offender's future behavior—such as their ability to deal with drug or alcohol addiction—is needed to reduce crime and protect the public. By contrast, a focus on the offender's current response to being brought to justice—for example through expressions of genuine remorse—may be useful in considering the likelihood of rehabilitation and may provide evidence of reparation. Different PMFs may tap into one or more, compatible or competing goals. The justification for good character as a PMF is currently unclear: many scholars have argued that it undermines the fundamental principle of proportionality, viewing discounts for good character as illegitimate “social accounting” that weigh a person's lifetime behavior in the balance rather than punishing them for the crime committed

(e.g., Ashworth, 2015; Maslen & Roberts, 2013; Murphy, 2006; Von Hirsch, 2011 but see Byrne Hessick, 2008; Henning, 2008).

Researchers have repeatedly proposed that the principles underlying the use of each specific PMF should be identified, and guidance provided on the use of these factors in practice (Ashworth, 2010, 2011, Ashworth, 2015; Dhami, 2013a, 2013b; Jacobson & Hough, 2007; Roberts, 2008). The present findings confirm the important place that personal mitigation has in England and Wales—especially for offenders on the cusp of custody—and re-emphasize the need to ensure that PMFs are applied in a principled and consistent manner.

FUTURE RESEARCH ON THE PRACTICALITIES OF PMFS

Beyond discussion of the impact of PMFs on sentencing outcomes, there is also an issue around the type and quality of evidence that is available to the courts to determine whether an offender is addressing addiction or that should be required to justify a plea of remorse or good character. Future research should explore the evidence for each PMF that is presented to the court. In addition, research should examine how sentencers interpret that evidence when deciding whether or not a given PMF should influence their choice of sentence, and, if so, the weight it should be given.

Past research points to a number of factors that may influence perceptions of remorse, including when it is demonstrated by actions such as an apology letter, reparations or guilty plea rather than just words (Belton, 2018; Jacobson & Hough, 2007; Sentencing Advisory Panel, 2010) and/or the offender's demeanor in court or eye-to-eye contact (see e.g., Gelsthorpe & Loucks, 1997; Jacobson & Hough, 2007), which may not be appropriate given the extensive empirical evidence that humans are unreliable lie detectors (e.g., Bond & DePaulo, 2006). Similarly, addressing addiction may require an offender to participate in a rehabilitation program (Jacobson & Hough, 2007; Padfield, 2011; Sentencing Advisory Panel, 2010; Shapland, 2011), although the duration of commitment required and relevance of any previous failed attempts at rehabilitation can be problematic issues. By contrast to remorse and addressing addiction, good character is an “elusive and psychologically problematic” concept (Freckelton, 2001, p. 208) which can include charitable work, and selfless acts of bravery unrelated to the case (Banks & Harris, 2012; Sentencing Advisory Panel, 2010) and is sometimes confounded with no previous convictions (Belton, 2018; Sentencing Council, 2013b). The “enhanced explanations” recently added to sentencing guidelines in England and Wales (Sentencing Council, 2019) have resolved some ambiguities, notably clarifying that good character can still be relied on where an offender has previous convictions, although a great deal of uncertainty remains.

It is also unclear whether there is—or should be—a limit to how often an offender can rely on any of these three PMFs. For instance, how many times before an offender who has expressed remorse is considered to be “playing the system”? And, how many times before an offender who was of previous good character is no longer so? This question is particularly difficult for addressing addiction, since recovery trajectories can be slow and complicated, and assessing an offender’s progress may be challenging even with expert input from relevant professionals. We have shown that offenders with four or more previous convictions (such as those in burglary cases) are less likely to be given credit for remorse or good character, and although there is a greater frequency of addressing addiction in burglary cases than assault cases, it is unclear when this factor loses its mitigating value.

Overall, the ambiguities around the interpretation and use of the three character-based PMFs studied here, in sentencing and the multiple and conflicting goals of sentencing, can result in unintended disparities in sentencing. Dhami (2013a, 2013b), Roberts (2008, 2011) and Young and King (2011) have all proposed moving beyond unweighted lists of aggravating and mitigating factors toward guidance on the typical weight that each aggravating and mitigating factor might be given across different offenses.¹⁹ Any proposal to increase the structure of a sentencing system must be supported by both descriptive and normative research. Policy-makers first need to understand how the system currently operates; this means using empirical research to find out how PMFs are applied in current sentencing practice, both individually and in combination. Separately, researchers need to re-examine the legal and policy-based principles behind those factors that are currently treated as PMFs. These two lines of research can then be integrated to reach evidence-based conclusions about whether the current approach to personal mitigation is acceptable or improvements need to be made, for example by adding or removing certain PMFs and/or specifying the weight that they should be given in different contexts.

ACKNOWLEDGMENTS

The authors thank the anonymous reviewers of this article for their helpful comments and guidance. This research is based on work contained in the first author’s PhD thesis, which was funded by Middlesex University, London.

DATA AVAILABILITY STATEMENT

Data necessary to replicate the results of this article are available upon request from the corresponding author.

¹⁹One example of such an approach can be seen in the 2014 Chinese sentencing guidelines (Roberts & Pei, 2016). Similarly, the England and Wales guideline dealing with reduction in sentence for a guilty plea specifies a sliding scale from one-third to one-tenth of the sentence, depending on when the plea is entered (Sentencing Council, 2017).

REFERENCES

- Albonetti, C. (1987). Prosecutorial discretion: The effects of uncertainty. *Law and Society Review*, 21(2), 291–314. <https://doi.org/10.2307/3053523>
- Albonetti, C. A. (1991). An integration of theories to explain judicial discretion. *Social Problems*, 38(2), 247–266. <https://doi.org/10.2307/800532>
- Alicke, M. D. (2000). Culpable control and the psychology of blame. *Psychological Bulletin*, 126(4), 556–574. <https://doi.org/10.1037/0033-2909.126.4.556>
- Ashworth, A. (2010). *Sentencing and criminal justice* (5th ed.). Cambridge University Press.
- Ashworth, A. (2011). Re-evaluating the justifications for aggravation and mitigation at sentencing. In J. V. Roberts (Ed.), *Mitigation and aggravation at sentencing* (pp. 21–49). Cambridge University Press.
- Ashworth, A. (2015). *Sentencing and criminal justice* (6th ed.). Cambridge University Press.
- Banks, R., & Harris, L. (Eds.). (2012). *Banks on sentence* (7th ed.). Robert Banks.
- Belton, I. K. (2018). *The role of personal mitigating factors in criminal sentencing judgments: An empirical investigation* [PhD thesis, Middlesex University, London]. <https://eprints.mdx.ac.uk/id/eprint/24094>
- Bennett, T., Holloway, K., & Farrington, D. (2008). The statistical association between drug misuse and crime: A meta-analysis. *Aggression and Violent Behaviour*, 13(2), 107–118. <https://doi.org/10.1016/j.avb.2008.02.001>
- Bond, C. F., & DePaulo, B. M. (2006). Accuracy of deception judgments. *Personality and Social Psychology Review*, 10(3), 214–234. https://doi.org/10.1207/s15327957pspr1003_2
- Brunton-Smith, I., Pina-Sánchez, J., & Li, G. (2020). Re-assessing the consistency of sentencing decisions in cases of assault: Allowing for within-court inconsistencies. *The British Journal of Criminology*, 60(6), 1438–1459. <https://doi.org/10.1093/bjc/azaa030>
- Byrne Hessick, C. (2008). Why are only bad acts good sentencing factors? *Boston University Law Review*, 88, 1109–1164. <http://www.bu.edu/bulawreview/>
- Byrne Hessick, C., & Berman, D. A. (2016). Towards a theory of mitigation. *Boston University Law Review*, 96, 161–217. <http://www.bu.edu/bulawreview/>
- Clare, J., & Ferrante, A. (2007). *Money, drugs and burglary in WA: University of Western Australia Crime Research Centre* [Special burglary series; No. 6 of 7]. https://www.ias.uwa.edu.au/_data/assets/pdf_file/0004/118408/I_on_Crime-Special_Burglary_Series_No6-Money_Drugs_And_Burglary_In_WA-2007.pdf
- Clarke, A., Moran-Ellis, J., & Slaney, J. (2002). *Attitudes to date rape and relationship rape: A qualitative study*. Sentencing Advisory Panel.
- Crackanthorpe, M. (1902). The criminal sentence commission up to date. In *The nineteenth century and after* (Vol. 52, pp. 847–863). Sampson Low, Marston & Co.
- Criminal Justice Act. (2003). *Criminal Justice Act 2003 (UK)*. <https://www.legislation.gov.uk/ukpga/2003/44/contents>
- Davies, M., & Tyrer, J. (2003). Filling in the gaps: A study of judicial culture. *Criminal Law Review*, 4, 243–265. <http://www.sweetandmaxwell.co.uk/Catalogue/ProductDetails.aspx?recordid=478>
- Dhami, M. K. (2013a). A ‘decision science’ perspective on the old and new sentencing guidelines in England and Wales. In A. Ashworth & J. V. Roberts (Eds.), *Structured sentencing in England and Wales: From guidance to guidelines* (pp. 165–181). Oxford University Press.
- Dhami, M. K. (2013b). Sentencing guidelines in England and Wales: Missed opportunities? *Law and Contemporary Problems*, 76, 289–305. <http://lcp.law.duke.edu/>
- Dhami, M. K., & Belton, I. K. (2015). Using court records for sentencing research: Pitfalls and possibilities. In J. V. Roberts (Ed.), *Exploring sentencing practice in England and Wales* (pp. 18–35). Palgrave Macmillan.
- Dhami, M. K., & Belton, I. K. (2016). Statistical analyses of court decisions: The example of multi-level models of sentencing. *Law and Method*. <https://doi.org/10.5553/REM/000019>

- Dhami, M. K., & Belton, I. K. (2017). On getting inside the judge's mind. *Translational Issues in Psychological Science*, 3(2), 214–226. <https://doi.org/10.1037/tps0000115>
- Dhami, M. K., Belton, I. K., & Goodman-Delahunty, J. (2015). Quasirational models of sentencing. *Journal of Applied Research in Memory and Cognition*, 4(3), 239–247. <https://doi.org/10.1016/j.jarmac.2014.07.009>
- Flood-Page, C., & Mackie, A. (1998). *Sentencing practice: An examination of decisions in magistrates' courts and the Crown Court in the mid-1990's*. HORS No. 180. <https://webarchive.nationalarchives.gov.uk/+http://www.nationalarchives.gov.uk/ero/records/ho/421/2/p2/rds/pdfs/hors180.pdf>
- Freckelton, I. (2001). Good character, paedophilia and the purposes of sentencing: *Ryan v the Queen* [2001] HCA 21 (2000) 118 A Crim 438. *Psychiatry, Psychology and Law*, 8(2), 202–212. <https://doi.org/10.1080/13218710109525021>
- Gelsthorpe, L., & Loucks, N. (1997). Magistrates' explanations of sentencing decisions. In C. Hedderman & L. Gelsthorpe (Eds.), *Understanding the sentencing of women*. HORS No. 170 (pp. 25–54). Home Office Research and Statistics Directorate. <http://webarchive.nationalarchives.gov.uk/20110220105210/rds.homeoffice.gov.uk/rds/pdfs/hors170.pdf>
- Heider, F. (1958). *The psychology of interpersonal relations*. Wiley.
- Henning, P. J. (2008). Prior good works in the age of reasonableness. *Federal Sentencing Reporter*, 20, 187–193. <https://fsr.ucpress.edu/>
- Hogarth, R. M., & Einhorn, H. J. (1992). Order effect in belief updating: The belief-adjustment model. *Cognitive Psychology*, 24(1), 1–55. [https://doi.org/10.1016/0010-0285\(92\)90002-J](https://doi.org/10.1016/0010-0285(92)90002-J)
- Hough, M., Jacobson, J., & Millie, A. (2003). *The decision to imprison: Sentencing and the prison population*. <http://www.prisonreformtrust.org.uk/uploads/documents/decisiontoimprison.pdf>
- Irwin-Rogers, K., & Perry, T. W. (2015). Exploring the impact of sentencing factors on sentencing domestic burglary. In J. V. Roberts (Ed.), *Exploring sentencing practice in England and Wales* (pp. 194–220). Palgrave MacMillan.
- Jacobson, J., & Hough, M. (2007). *Mitigation: The role of personal factors in sentencing*. <http://www.prisonreformtrust.org.uk/Portals/0/Documents/mitigation%20-%20the%20role%20of%20personal%20factors%20in%20sentencing.pdf>
- Kahneman, D., & Tversky, A. (1979). Intuitive prediction: Biases and corrective procedures. In S. Makridakis & S. C. Wheelright (Eds.), *Forecasting: TIMS studies in the management sciences* (Vol. 12, pp. 313–327). North-Holland.
- Kruger, J., & Evans, M. (2004). If you don't want to be late, enumerate: Unpacking reduces the planning fallacy. *Journal of Experimental Social Psychology*, 40(5), 586–598. <https://doi.org/10.1016/j.jesp.2003.11.001>
- Kuhns, J. B., Blevins, K. R., Bolin, R. M., & Cambareri, J. F. (2017). Drug use and abuse as primary motivators for involvement in burglary: A comparison of self-reported differences among a random sample of male and female burglars. *Journal of Drug Issues*, 47(1), 116–131. <https://doi.org/10.1177/0022042616678613>
- Lightowlers, C., & Pina-Sánchez, J. (2018). Intoxication and assault: An analysis of Crown Court sentencing practices in England and Wales. *The British Journal of Criminology*, 58(1), 132–154. <https://doi.org/10.1093/bjc/azx008>
- Maguire, N. (2010). Consistency in sentencing. *Judicial Studies Institute Journal*, 10, 14–54. <https://www.ijsj.ie/>
- Maslen, H. (2015). Penitence and persistence: How should sentencing factors interact? In J. V. Roberts (Ed.), *Exploring sentencing practice in England and Wales* (pp. 173–193). Palgrave MacMillan.
- Maslen, H., & Roberts, J. V. (2013). Remorse and sentencing: An analysis of sentencing guidelines and sentencing practice. In A. Ashworth & J. V. Roberts (Eds.), *Sentencing guidelines: Exploring the English model*. Oxford University Press.

- McNaughton Nicholls, C., Mitchell, M., Simpson, I., Webster, S., & Hester, M. (2012). *Attitudes to sentencing sexual offences*. https://www.sentencingcouncil.org.uk/wp-content/uploads/Attitudes_to_Sentencing_Sexual_Offences_web1.pdf
- Millie, A., Tombs, J., & Hough, M. (2007). Borderline sentencing: A comparison of sentencers' decision making in England and Wales, and Scotland. *Criminology and Criminal Justice*, 7(3), 243–267. <https://doi.org/10.1177/1748895807078866>
- Mizzi, P., Gotsis, T., & Poletti, P. (2010). *Sentencing offenders convicted of child pornography and child abuse material offences*. <https://www.judcom.nsw.gov.au/wp-content/uploads/2016/07/research-monograph-34.pdf>
- Murphy, J. G. (2006). Well excuse me!: Remorse, apology and criminal sentencing. *Arizona State Law Journal*, 38, 371–386. <http://arizonastatelawjournal.org/>
- Padfield, N. (2011). Intoxication as a sentencing factor: Mitigation or aggravation? In J. V. Roberts (Ed.), *Mitigation and aggravation at sentencing* (pp. 81–101). Cambridge University Press.
- Parker, H., & Newcombe, R. (1987). Heroin use and acquisitive crime in an English community. *The British Journal of Sociology*, 38(2), 331–350. <https://doi.org/10.2307/590692>
- Pierce, M., Hayhurst, K., Bird, S. M., Hickman, M., Seddon, S., Dunn, G., & Millar, T. (2017). Insights into the link between drug use and criminality: Lifetime offending of criminally-active opiate users. *Drug and Alcohol Dependence*, 179, 309–316. <https://doi.org/10.1016/j.drugalcdep.2017.07.024>
- Pina-Sánchez, J., & Harris, L. (2020). Sentencing gender? Investigating the presence of gender disparities in Crown Court sentences. *Criminal Law Review*, 2020(1), 3–28.
- Pina-Sánchez, J., & Linacre, R. (2013). Sentence consistency in England and Wales: Evidence from the crown court sentencing survey. *British Journal of Criminology*, 53(6), 1118–1138. <https://doi.org/10.1093/bjc/azt040>
- Rachlinski, J. J., Guthrie, C., & Wistrich, A. (2013). Contrition in the courtroom: Do apologies affect adjudication? *Cornell Law Review*, 98, 1189–1243. <http://scholarship.law.cornell.edu/clr/>
- Roberts, J. V. (2008). Aggravating and mitigating factors at sentencing: Towards greater consistency of application. *Criminal Law Review*, 4, 264–276. Retrieved from <http://www.sweetandmaxwell.co.uk/Catalogue/ProductDetails.aspx?recordid=478>.
- Roberts, J. V. (2011). Punishing, more or less: Exploring aggravation and mitigation at sentencing. In J. V. Roberts (Ed.), *Mitigation and aggravation at sentencing* (pp. 1–20). Cambridge University Press.
- Roberts, J., Padfield, N., & Harris, L. (Eds.). (2016). *Current sentencing practice*. Sweet and Maxwell.
- Roberts, J. V., & Pei, W. (2016). Structuring judicial discretion in China: Exploring the 2014 sentencing guidelines. *Criminal Law Forum*, 27(1), 3–33. <https://doi.org/10.1007/s10609-015-9270-3>
- Sentencing Advisory Panel. (2010). *Advice to the Sentencing Guidelines Council: Overarching principles of sentencing*. http://www.banksr.co.uk/images/Guidelines/Advisory%20Panel%20Advice%20to%20the%20Council/Overarching_principles_of_sentencing.pdf
- Sentencing Council. (2011a). *Assault definitive guideline*. <https://www.sentencingcouncil.org.uk/wp-content/uploads/Assault-definitive-guideline-Web.pdf>
- Sentencing Council. (2011b). *Burglary offences definitive guideline*. <https://www.sentencingcouncil.org.uk/wp-content/uploads/Burglary-definitive-guideline-Web.pdf>
- Sentencing Council. (2013a). *Crown Court sentencing survey annual publication, 2012*. <https://www.sentencingcouncil.org.uk/publications/item/crown-court-sentencing-survey-annual-publication-2012-full-report/>
- Sentencing Council. (2013b). *Research to support the development of a revised sexual offences sentencing guideline*. <https://www.sentencingcouncil.org.uk/publications/item/sexual-offences-research-report/>
- Sentencing Council. (2013c). *Sexual offences definitive guideline*. <https://www.sentencingcouncil.org.uk/wp-content/uploads/Sexual-Offences-Definitive-Guideline-web3.pdf>

- Sentencing Council. (2014). *Crown Court sentencing survey annual publication, 2013*. <https://www.sentencingcouncil.org.uk/publications/item/crown-court-sentencing-survey-annual-publication-2013-full-report/>
- Sentencing Council. (2015). *Crown Court sentencing survey annual publication, 2014*. <https://www.sentencingcouncil.org.uk/publications/item/crown-court-sentencing-survey-annual-publication-2014-full-report-2/>
- Sentencing Council. (2017). *Reduction in sentence for a guilty plea: Definitive guideline*. <https://www.sentencingcouncil.org.uk/wp-content/uploads/Reduction-in-Sentence-for-Guilty-Plea-definitive-guideline-SC-Web.pdf>
- Sentencing Council. (2019). *General guideline. Overarching principles*. <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/general-guideline-overarching-principles/>
- Shapland, J. (1981). *Between conviction and sentence: The process of mitigation*. Routledge & Kegan Paul.
- Shapland, J. (2011). Personal mitigation and assumptions about offending and desistance. In J. V. Roberts (Ed.), *Mitigation and aggravation at sentencing* (pp. 60–80). Cambridge University Press.
- Shaver, K. (1985). *The attribution of blame: Causality, responsibility, and blameworthiness*. Springer-Verlag.
- Speed, M., & Burrows, J. (2006). *Sentencing in cases of theft from shops*. <https://www.lccsa.org.uk/assets/documents/consultation/researchreport-theft0806.pdf>
- Steffensmeier, D., Ulmer, J., & Kramer, J. (1998). The interaction of race, gender, and age in criminal sentencing: The punishment cost of being young, black, and male. *Criminology*, 36(4), 763–798. <https://doi.org/10.1111/j.1745-9125.1998.tb01265.x>
- Thomas, D. A. (1979). *Constraints on judgement: the search for structured discretion in sentencing 1860-1910. Occasional Series 4*. Cambridge Institute of Criminology.
- Tombs, J., & Jagger, E. (2006). Denying responsibility: Sentencers' accounts of their decisions to imprison. *British Journal of Criminology*, 46(5), 803–821. <https://doi.org/10.1093/bjc/azl002>
- Tversky, A., & Koehler, D. J. (1994). Support theory: A non-extensional representation of subjective probability. *Psychological Review*, 101(4), 547–567. <https://doi.org/10.1037/0033-295X.101.4.547>
- Von Hirsch, A. (2011). Foreword. In J. V. Roberts (Ed.), *Mitigation and aggravation at sentencing* (pp. xiii–xvi). Cambridge University Press.
- Weisman, R. (2004). Showing remorse: Reflections on the gap between expression and attribution in cases of wrongful conviction. *Canadian Journal of Criminology and Criminal Justice*, 46, 121–138. <https://www.utpjournals.press/loi/cjccj>
- Young, W., & King, A. (2011). Addressing problematic sentencing factors in the development of guidelines. In J. V. Roberts (Ed.), *Mitigation and aggravation at sentencing* (pp. 208–227). Cambridge University Press.

How to cite this article: Belton, I. K., & Dhimi, M. K. (2024). The role of character-based personal mitigation in sentencing judgments. *Journal of Empirical Legal Studies*, 21(1), 208–239. <https://doi.org/10.1111/jels.12376>



APPENDIX A

TABLE A1 Assault cases 2011–2014 ($n = 29,461$).

Variable	No. of cases	Percentage
Specific offense		
Common assault	4095	13.9
s. 47 (Actual Bodily Harm)	14,016	47.6
s. 20 (Grievous Bodily Harm)	7979	27.1
s. 18 (GBH with intent)	3371	11.4
Seriousness		
Category 3	3394	25.3
Category 2	14,143	48.0
Category 1	7461	11.5
Year		
2011	3859	13.1
2012	8340	28.3
2013	8287	28.1
2014	8975	30.5
Guilty plea entered	23,027	78.2
Aggravating factors		
Previous convictions	14,240	48.3
On bail	796	2.7
Location	11,224	38.1
Timing	6083	20.6
Ongoing effect on victim	7154	24.3
Against public sector worker	1350	4.6
Others present	5827	19.8
Gratuitous degradation	732	2.5
Victim had to leave home	674	2.3
Current court orders	2161	7.3
On license	774	2.6
Attempt to conceal evidence	272	0.9
Failure to respond to warnings	486	1.6
Under the influence	7969	27.0
Abuse of power	959	3.3
Exploiting contact	57	0.2
Previous violence	1874	6.4

(Continues)

TABLE A1 (Continued)

Variable	No. of cases	Percentage
Community impact	118	0.4
Preventing reporting	186	0.6
Offenses taken into consideration	22	0.1
Mitigating factors		
No previous convictions	7590	25.8
Single blow	5837	19.8
Remorse	10,501	35.6
Good character	4759	16.2
Addressing addiction	2472	8.4
Serious medical conditions	779	2.6
Isolated incident	4894	16.6
Age or lack of maturity	2436	8.3
Lapse of time	808	2.7
Mental disorder	1031	3.5
Sole or primary carer	1170	4.0

TABLE A2 Burglary cases 2012–2014 ($n = 18,224$).

Variable	No. of cases	Percentage
Specific offense		
Non-domestic burglary	3838	21.1
Domestic burglary	14,386	78.9
Seriousness		
Category 3	2305	12.6
Category 2	8208	45.0
Category 1	5039	27.7
Year		
2012	5309	29.1
2013	6421	35.2
2014	6494	35.6
Guilty plea entered	15,510	85.1
Aggravating factors		
Previous convictions	13,252	72.7
On bail	1154	6.3
Child at home	873	4.8

TABLE A 2 (Continued)

Variable	No. of cases	Percentage
At night	4795	26.3
Abuse of power	523	2.9
Gratuitous degradation	101	0.6
Preventing reporting	76	0.4
Victim had to leave home	151	0.8
Community impact	76	0.4
Under the influence	2852	15.6
Current court orders	2042	11.2
On license	1976	10.8
Offenses taken into consideration	1289	7.1
Mitigating factors		
Subordinate role	945	5.2
Reckless	19	0.1
Nothing taken	1631	8.9
Voluntary reparation	157	0.9
No previous convictions	1562	8.6
Remorse	3748	20.6
Good character	635	3.5
Addressing addiction	247	1.4
Serious medical conditions		
Age or lack of maturity	1194	6.6
Lapse of time	160	0.9
Mental disorder	401	2.2
Sole or primary carer	278	1.5

APPENDIX B

LOGISTIC REGRESSION MODELS

TABLE B1 Full results of logistic regression model for the relationship between character-based PMFs (in bold) and immediate custody in assault cases, controlling for other relevant factors ($n = 29,461$).

Predictor	Model 1—Main effects			Model 2—With interactions		
	β	SE	Exp(β)	β	SE	Exp(β)
Intercept	-0.25	0.09	0.778	-0.25	0.09	0.78
Specific offense (0 = common assault)						
s. 47 (Actual Bodily Harm)	0.66***	0.06	1.94	0.67***	0.06	1.95
s. 20 (Grievous Bodily Harm)	1.76***	0.07	5.82	1.77***	0.07	5.85
s. 18 (GBH with intent)	5.70***	0.16	300.06	5.70***	0.16	298.26
Seriousness (0 = category 3)						
Category 2	0.91***	0.06	2.50	0.92***	0.06	2.50
Category 1	2.30***	0.07	9.98	2.30***	0.07	9.98
Year (0 = 2011)						
2012	-0.54***	0.06	1.72	-0.55***	0.06	1.73
2013	-0.31***	0.05	1.36	-0.31***	0.05	1.50
2014	-0.11*	0.05	1.11	-0.11***	0.05	1.22
Guilty plea (0 = no)	-0.33***	0.06	0.72	-0.33***	0.06	0.81
Aggravating factors						
Previous convictions	0.81***	0.05	2.24	0.81***	0.05	2.25
On bail	1.30***	0.14	3.65	1.30***	0.14	3.66
Location	0.26***	0.05	1.30	0.26***	0.05	1.30
Timing	0.06	0.05	1.06	0.06	0.05	1.06
Ongoing effect on victim	0.57***	0.05	1.77	0.57***	0.05	1.77
Against public sector worker	0.57***	0.09	1.77	0.57***	0.09	1.77
Others present	0.29***	0.05	1.33	0.29***	0.05	1.33
Gratuitous degradation	0.66***	0.14	1.93	0.65***	0.14	1.92
Victim had to leave home	0.41**	0.13	1.50	0.41**	0.13	1.50
Current court orders	1.16***	0.08	3.18	1.16***	0.08	3.19
On license	2.05***	0.17	7.78	2.05***	0.17	7.80
Attempt to conceal evidence	2.49***	0.41	12.02	2.49***	0.41	12.07
Failure to respond to warnings	0.71***	0.16	2.04	0.70***	0.16	2.02

TABLE B1 (Continued)

Predictor	Model 1—Main effects			Model 2—With interactions		
	β	SE	Exp(β)	β	SE	Exp(β)
Under the influence	0.19***	0.04	1.20	0.19***	0.04	1.21
Abuse of power	0.53***	0.11	1.71	0.54***	0.11	1.71
Exploiting contact	0.34	0.44	1.40	0.36	0.44	1.43
Previous violence	0.48***	0.08	1.62	0.48***	0.08	1.62
Community impact	0.12	0.30	1.12	0.12	0.30	1.13
Preventing reporting	0.71*	0.30	2.03	0.70*	0.30	2.02
Offenses taken into consideration	-0.78	0.85	0.36	-0.79	0.85	0.45
Mitigating factors						
No previous convictions	-0.30***	0.05	0.74	-0.29***	0.05	0.75
Single blow	-0.42***	0.05	0.66	-0.42***	0.05	0.66
Remorse	-0.62***	0.04	0.54	-0.65***	0.05	0.52
Good character	-0.54***	0.06	0.59	-0.57***	0.09	0.56
Addressing addiction	-1.30***	0.07	0.27	-1.49***	0.11	0.23
Serious medical conditions	-1.32***	0.13	0.27	-1.32***	0.13	0.27
Isolated incident	-0.65***	0.06	0.52	-0.65***	0.06	0.52
Age or lack of maturity	-0.36***	0.07	0.70	-0.37***	0.07	0.69
Lapse of time	-1.03***	0.12	0.36	-1.02***	0.12	0.36
Mental disorder	-1.05***	0.11	0.35	-1.05***	0.11	0.35
Sole or primary carer	-1.26***	0.10	0.28	-1.26***	0.10	0.28
Interactions						
Remorse \times Good character				0.03	0.11	1.03
Remorse \times Addressing addiction				0.24	0.14	1.27
Addressing addiction \times Good character				0.43*	0.22	1.54

Note: Model 1: $R^2 = 0.42$ (Cox & Snell), 0.56 (Nagelkerke). Model 2: $R^2 = 0.42$ (Cox & Snell), 0.56 (Nagelkerke). The bolded values in tables belong to the personal mitigating factors that are the subject of the present study.

* $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$.

TABLE B2 Full results of logistic regression model for the relationship between character-based PMFs (in bold) and immediate custody in burglary cases, controlling for other relevant factors ($n = 18,224$).

Predictor	Model 1—Main effects			Model 2—With interactions		
	β	SE	Exp (β)	β	SE	Exp (β)
Intercept	-0.53	0.12	0.59	-0.51	0.13	0.60
Specific offense (0 = non-domestic burglary)						
Domestic burglary	0.96***	0.06	2.60	0.96***	0.06	2.60
Seriousness (0 = category 3)						
Category 2	0.72***	0.06	2.06	0.72***	0.06	2.06
Category 1	2.48***	0.08	11.97	2.48***	0.08	11.97
Year (0 = 2012)						
2013	0.20***	0.06	1.22	0.20***	0.06	1.22
2014	0.09	0.06	1.09	0.09	0.06	1.10
Guilty plea (0 = no)	-0.26*	0.10	0.78	-0.26*	0.11	0.77
Aggravating factors						
Previous convictions	1.07***	0.06	2.93	1.08***	0.06	2.94
On bail	0.72***	0.11	2.06	0.72***	0.11	2.05
Child at home	0.62***	0.15	1.86	0.62***	0.15	1.86
At night	0.36***	0.06	1.44	0.36***	0.06	1.44
Abuse of power	0.29*	0.14	1.34	0.28*	0.14	1.33
Gratuitous degradation	0.78	0.44	2.19	0.78	0.44	2.17
Preventing reporting	1.57*	0.68	4.82	1.44*	0.65	4.22
Victim had to leave home	<0.01	0.28	1.00	0.04	0.28	1.04
Community impact	0.84***	0.21	2.32	0.87***	0.21	2.39
Under the influence	0.15*	0.07	1.16	0.16*	0.07	1.18
Current court orders	0.91***	0.09	2.48	0.92***	0.09	2.52
On license	1.41***	0.12	4.08	1.41***	0.12	4.10
Offenses taken into consideration	1.24***	0.13	3.45	1.21***	0.13	3.36
Mitigating factors						
Subordinate role	-1.53***	0.645	0.22	-0.93***	0.10	0.40
Reckless	-0.53*	0.08	0.59	-1.50*	0.65	0.22
Nothing taken	-0.97***	0.24	0.38	-0.53***	0.08	0.59
Voluntary reparation	-0.74***	0.09	0.48	-0.98***	0.23	0.38
No previous convictions	-0.48***	0.06	0.62	-0.73***	0.09	0.48

TABLE B2 (Continued)

Predictor	Model 1—Main effects			Model 2—With interactions		
	β	SE	Exp (β)	β	SE	Exp (β)
Remorse	-0.57***	0.13	0.57	-0.61***	0.07	0.55
Good character	-1.66***	0.07	0.19	-0.67***	0.18	0.51
Addressing addiction	-1.21***	0.19	0.30	-1.97***	0.10	0.14
Serious medical conditions	-0.66***	0.09	0.52	-1.22***	0.19	0.30
Age or lack of maturity	-0.83***	0.22	0.44	-0.65***	0.10	0.52
Lapse of time	-1.09***	0.15	0.34	-0.83***	0.22	0.44
Mental disorder	-1.27***	0.17	0.28	-1.09***	0.15	0.34
Sole or primary carer	-1.53***	0.65	0.22	-1.25***	0.17	0.29
Interactions						
Remorse \times Good character				0.08	0.11	1.08
Remorse \times Addressing addiction***				0.63***	0.15	1.87
Addressing addiction \times Good character**				1.22**	0.42	3.39

Note: Model 1: $R^2 = 0.30$ (Cox & Snell), 0.45 (Nagelkerke). Model 2: $R^2 = 0.31$ (Cox & Snell), 0.45 (Nagelkerke). * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$.