



Youth Justice and Criminal Evidence Act 1999

1999 CHAPTER 23

PART II

GIVING OF EVIDENCE OR INFORMATION FOR PURPOSES OF CRIMINAL PROCEEDINGS

CHAPTER II

PROTECTION OF WITNESSES FROM CROSS-EXAMINATION BY ACCUSED IN PERSON

Prohibition imposed by court

36 Direction prohibiting accused from cross-examining particular witness

- (1) This section applies where, in a case where neither of sections 34 and 35 operates to prevent an accused in any criminal proceedings from cross-examining a witness in person—
 - (a) the prosecutor makes an application for the court to give a direction under this section in relation to the witness, or
 - (b) the court of its own motion raises the issue whether such a direction should be given.
- (2) If it appears to the court—
 - (a) that the quality of evidence given by the witness on cross-examination—
 - (i) is likely to be diminished if the cross-examination (or further cross-examination) is conducted by the accused in person, and
 - (ii) would be likely to be improved if a direction were given under this section, and
 - (b) that it would not be contrary to the interests of justice to give such a direction,

the court may give a direction prohibiting the accused from cross-examining (or further cross-examining) the witness in person.

- (3) In determining whether subsection (2)(a) applies in the case of a witness the court must have regard, in particular, to—
- (a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the accused in person;
 - (b) the nature of the questions likely to be asked, having regard to the issues in the proceedings and the defence case advanced so far (if any);
 - (c) any behaviour on the part of the accused at any stage of the proceedings, both generally and in relation to the witness;
 - (d) any relationship (of whatever nature) between the witness and the accused;
 - (e) whether any person (other than the accused) is or has at any time been charged in the proceedings with a sexual offence or an offence to which section 35 applies, and (if so) whether section 34 or 35 operates or would have operated to prevent that person from cross-examining the witness in person;
 - (f) any direction under section 19 which the court has given, or proposes to give, in relation to the witness.
- (4) For the purposes of this section—
- (a) “witness”, in relation to an accused, does not include any other person who is charged with an offence in the proceedings; and
 - (b) any reference to the quality of a witness’s evidence shall be construed in accordance with section 16(5).