



Criminal Justice Act 2003

2003 CHAPTER 44

PART 11

EVIDENCE

CHAPTER 2

HEARSAY EVIDENCE

Supplementary

123 Capability to make statement

- (1) Nothing in section 116, 119 or 120 makes a statement admissible as evidence if it was made by a person who did not have the required capability at the time when he made the statement.
- (2) Nothing in section 117 makes a statement admissible as evidence if any person who, in order for the requirements of section 117(2) to be satisfied, must at any time have supplied or received the information concerned or created or received the document or part concerned—
 - (a) did not have the required capability at that time, or
 - (b) cannot be identified but cannot reasonably be assumed to have had the required capability at that time.
- (3) For the purposes of this section a person has the required capability if he is capable of—
 - (a) understanding questions put to him about the matters stated, and
 - (b) giving answers to such questions which can be understood.
- (4) Where by reason of this section there is an issue as to whether a person had the required capability when he made a statement—

Status: This is the original version (as it was originally enacted).

- (a) proceedings held for the determination of the issue must take place in the absence of the jury (if there is one);
- (b) in determining the issue the court may receive expert evidence and evidence from any person to whom the statement in question was made;
- (c) the burden of proof on the issue lies on the party seeking to adduce the statement, and the standard of proof is the balance of probabilities.