**Critical analysis of the s41 YJCEA 1999 restriction on calling witnesses and questioning a complainant under cross-examination**

s41 YJCEA 1999 offers important protection for complainants in sex offence by limiting the ability of the defence side to introduce evidence or questions relating to the complainant’s sexual history[[1]](#footnote-1). In cross-examination, witnesses who may want to offer testimonies about the complaint's sexual history as a way of trying to shield the accused are subject to the restrictions of s41 YCEA. The same applies to cross-examination of the complainant[[2]](#footnote-2).

s41 (3) and s41 (5) creates a closed list of four relevant evidential targets, gateways, under which the witnesses or evidence by the defence side can be properly be adduced in the court of law without breaching the law. These gateways are as follows:

1. 41(3) (a) the evidence is applicable to an issue that is not an issue of consent, such as the defendant’s belief in consent.
2. 242(1)(b));41(3)(b)it is an issue of consent, and the sexual behaviour of the complainant is alleged to have taken place at or about the same time as the event which is the subject matter of the charge of section 41 agreements or orders.
3. 41(3)(c) it is an issue of consent, and the sexual behaviour of the complainant is in any respect so similar to(i)any sexual behaviour of the complainant which took place as part of the event charged, or(ii)to any other sexual behaviour of the complainant taking place at or about the same time as the event that it cannot reasonably be explained as coincidence.
4. 41(5) specifically rebuts or explains any evidence adduced by the prosecution about any sexual behaviour of the complainant.

The above gateways might give Gorgios a chance to call in his witnesses - if they merit - and be allowed to ask the complainant some questions during cross-examination.

1. s41 YJCEA 1999 [↑](#footnote-ref-1)
2. R v Martin [2017] EWCA Crim 1359. [↑](#footnote-ref-2)