**Critical analysis of the s41 YJCEA 1999 the way the courts have interpreted the provision in case law**

The interpretation of s41 YJCE is important in determining how witnesses and evidence relating to sexual offences can be adduced in a court of law by the defence team. In *Harrison [2006]*, the trial judge upheld the decision to deny the defence side a chance to question the complainant having sex with a third party a few hours to the rape incidence[[1]](#footnote-1). The decision was deemed properly made as per the provision of Section 41 YJCEA. The court’s interpretation is largely guided by the strong wording and clarity of the law, which expressly protects the complainant while at the same time offering explicit gateways that the defence side can explore to adduce evidence that s41 YJCEA would have otherwise blocked.

In interpreting s41 YJCEA, the trial judge does not enjoy general discretion to limit or exclude the evidence of sexual behaviour that is linked to a relevant issue in the case. Such evidence ought to be permitted to pass through the applicable gateway without any hindrance[[2]](#footnote-2). It is only subsection 41(4) that offers a filter that can allow for considering the evidence as irrelevant if the key objective is to call into question the plaintiff’s credibility as a witness[[3]](#footnote-3). The court must interpret what is 'credibility' to determine the application of s41 YJCEA. However, the court’s interpretation of the s41 YJCEA is generally limited to the wording of the law, and there is little room for the application of discretional powers.

1. Harrison [2006] EWCA Crim 1543. [↑](#footnote-ref-1)
2. R v VA [2016] EWCA Crim 1434. [↑](#footnote-ref-2)
3. Ibid. [↑](#footnote-ref-3)