Reply 2: YJCEA incompatibility with ECHR

Thank you for the post.

Indeed, the YJCEA ought to be in agreement with the provisions of the European Convention of Human Rights (ECHR) as employed in the Human Rights Act 1998. The protection of the victims of sexual abuse does not disarm the complainant the right to a fair trial[[1]](#footnote-1). As captured in Gjoni v REGINA [2014], where there are reasonable grounds to believe that there is a lack of fairness in the trial, in this case, application of YJCEA to exclude some evidence that the defendant believes are relevant to securing a fair trial; one can file an appeal. However, even when doing so, the appellant must ensure that he or she has a watertight case. The requirement for compatibility of YJCEA with ECHR does not mean that all possible evidence the defendant has will be approved[[2]](#footnote-2).

The court must be satisfied that there would be a lack of fairness if s41 of the YJCEA is not exploited to allow the defendant to introduce evidence about the complainant's history to reinforce the defense against the accusations[[3]](#footnote-3). As noted in Bahador, Regina v CACD 15-Feb-2005 [2005], even in the event where the defendant can satisfy the relevance requirement, the court or judge should also determine whether, under section 41(2)(b), a decision to exclude evidence of sexual behaviour would negatively impact the conclusion of the court on that issue. If it might not, leave may not be granted.

**Food for thought**: Is there a clear dichotomy between incompatibility and compatibility of YJCEA with ECHR?

1. article 6 of Human Rights Act 1998. [↑](#footnote-ref-1)
2. Gjoni v REGINA | [2014] EWCA Crim 691 [↑](#footnote-ref-2)
3. Bahador, Regina v CACD 15-Feb-2005 [2005] EWCA [↑](#footnote-ref-3)