**CHAPTER 16**

1.  David is charged with sexual assault on his step-daughter, Florence, aged 14. Florence has learning difficulties. David is pleading not guilty. The prosecution have witness statements from Susie, David’s wife, and their son, Aaron, aged 7.

(a) Susie is a competent witness for the prosecution and in view of the offence with which David is charged is also compellable—see s. 80(3) PACE 1980.

(b) Florence will be presumed competent to give sworn evidence under s. 55(3) YJCEA 1999 as she is aged 14.

(c) We are told that Florence has learning difficulties. If there is reason to doubt her competency to give evidence, the test that needs to be satisfied is laid down in s. 53(3) YJCEA 1999. The court will need to ascertain whether Florence can understand questions put to her and give answers that can be understood. In determining these questions, the court must treat Florence as having the benefit of a special measures direction under s. 19. As Florence is over 14 she will give sworn evidence. If it transpires, however, that she is competent in accordance with s. 53(3) YJCEA 1999 but is unable to satisfy the test for sworn evidence (she does not have sufficient appreciation of the solemnity of the occasion and the added responsibility to tell the truth—s. 55(2) YJCEA 1999—she will be permitted to give unsworn evidence under s. 56 YJCEA.

(d) As Aaron is under 14, s. 53 YJCEA1999 presumes that he is competent to give unsworn evidence under s. 56 YJCEA 1999.

(e) Both witnesses will be eligible to give evidence under a special measures direction under s. 16 YJCEA 1999. Aaron is a witness under 18, as is Florence. In addition, Florence suffers from a mental disorder with the result that her evidence is likely to be diminished as a consequence. Where the court considers that a special measures direction is likely to improve the quality of the evidence given by the witness, the court must make the appropriate order (s. 19(2) YJCEA 1999). Additionally, both fall within the definition of a child witness triggering special protection within the meaning of s. 21 YJCEA 1999. This provision makes video-recorded examination-in-chief and further examination via live link a requirement of the special measures direction.

2.  Generally no—leading questions are not permitted in examination-in-chief except by agreement and most often in relation to introductory matters at the beginning of a witness’s evidence.

3.  Under s. 139 CJA 2003, a witness is entitled to refresh his or her memory from a document while testifying provided the document was made or verified by the witness on an earlier occasion and the witness states in his or her oral evidence that the document records the witness’s recollection of the matter at the earlier time; and the witness’ recollection of the matters about which he or she is testifying is likely to have been significantly better at that time than it is at the time of the oral evidence.

4.  Cross-examination has a number of purposes including obtaining factual evidence from the witness that supports the case of the cross-examiner. It also enables the advocate to test the truthfulness of the evidence the witness has given in examination-in-chief or to cast doubt on the witness’s evidence; and to undermine the witness’s credibility.

5(a)  Unless the prosecution agree to the defence adducing evidence of Ben and Chris’s previous convictions, leave of the court under s. 100 CJA 2003 will need to be sought. Arguably, the evidence does have substantial probative value in relation to a matter of substantial importance having regard to Kyle’s defence.

5(b) Yes. The main protagonists contradict each other. Their respective veracity is therefore a matter of substantial importance. A single conviction for perjury arguably shows a propensity to lie on oath. Account would have to be taken perhaps of the reasons why the offence was committed. Nevertheless, on the facts, the conviction has substantial probative value on a matter of substantial importance in the case.

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The only witness who may be considered eligible for a special measures direction is Lillian Kennedy, the 84-year-old victim of the burglary offence. She might come within the definition of an intimidated witness if the court considers that the quality of her evidence is likely to be diminished by reason of fear or distress in connection with testifying in the proceedings (s. 17 YJCEA 1999). Regard will be had to Mrs Kennedy’s age in determining this. If the court considers a special measures direction is likely to improve the quality of the evidence given by the witness, the court must make the appropriate order (s. 19(2) YJCEA 1999).