

**Application by the Prosecutor for an Order
that the Defendant or Appellant
be prohibited from cross-examining particular
witnesses in person.**

Section 36 of the Youth Justice and Criminal Evidence Act 1999
Part 23 Criminal Procedure Rules 2015



The Queen v. _____

Or

In the Appeal of: _____

This is a notice to the court and to¹: _____

Address of defendant/appellant: _____

Telephone number²: _____

Email: _____

**This notice is about the court case at
the:** _____

Due for hearing on: _____

Court case number: _____

Court address: _____

The defendant/appellant is accused of³: _____

To the defendant/appellant:

Why have you been sent this notice?

You have been sent this notice because the prosecutor believes that you do not have lawyers to represent you and you will be representing yourself in the case. This is called acting "in person";

What you need to know:

1. The prosecutor is asking the court to order that you should be prohibited from asking particular witnesses questions yourself. The questions you may want to ask are called "cross-examination".
2. The prosecutor explains in Part 1 who those witnesses are and why they are making this application;
3. If the court makes the order then:
 - a. you will be prohibited from asking those witnesses questions yourself; and

¹ Name of defendant or appellant. Then notice must be served on the court, the defendant/appellant and any other defendant unless the prosecutor obtains a court order otherwise.

² Provide telephone and email contact details if known.

³ List charges by type – no details are required.

- b. any questions you want those witnesses to be asked in cross-examination can only be asked through a lawyer who is qualified to appear in the court.

What to do next.

1. If you do have lawyers representing you in this case then send this form to them straightaway and they can deal with it for you.
2. If you do not yet have lawyers representing you then you must fill out Part 2 of this form and send it to the court AND to the prosecutor within 14 days.
3. This is your opportunity to tell the court what you say about this application and what you want to happen.
4. If the application is contested there will be a hearing to decide it.
5. If you do not fill out Part 2 and send it in the court will assume that the application is not contested and make decisions without knowing what you think.

What are your choices if the court makes the order?

You have three choices if the court makes the order but you still want the witnesses to be asked questions in cross-examination:

1. You can appoint a lawyer to represent you for the whole of the case; OR
2. You can arrange a lawyer only to cross-examine the particular witnesses on your behalf. If you do this you must inform the court within 14 days of a prohibitory order of the name and contact details of that lawyer: OR
3. If you do not want to appoint your own lawyer, or you do not inform the court within 14 days of a prohibitory order being made that you have arranged a lawyer then, if the court considers it to be in the interests of justice, the court may choose to appoint a lawyer to cross-examine the particular witnesses in your interests. If that happens the court will choose the lawyer; that lawyer will not be responsible to you and that lawyer will not play any other part in the case.

PART 1 – To be completed by the prosecutor

This notice is given by the prosecutor⁴:

Address:

Telephone:

Email:

Person to contact about this application:

The prosecutor applies under section 36 to prohibit the defendant/appellant from cross-examining the witness(es) listed below unless it is done through a lawyer.

Name of witness:

- 1.
- 2.
- 3.
- 4.
- 5.

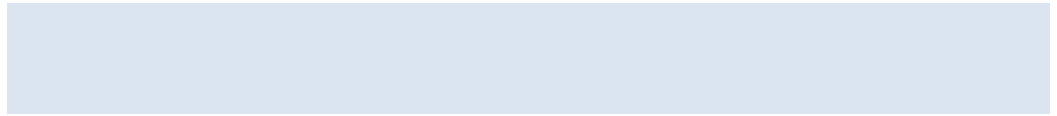
Age if under 18:

- 1.
- 2.
- 3.
- 4.
- 5.

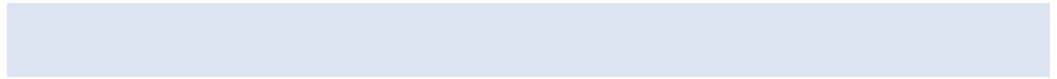
⁴ Insert organisation – eg. CPS. It is not necessary to name an individual but contact information must be given below.
Application by prosecutor to prohibit cross-examination in person – Page 2 of 9

The Prosecutor says that the quality of evidence given by this witness on cross-examination is likely to be diminished if the cross-examination is conducted in person and would be likely to be improved if the defendant/appellant is prohibited from cross-examining in person and asks the court to consider the following matters:

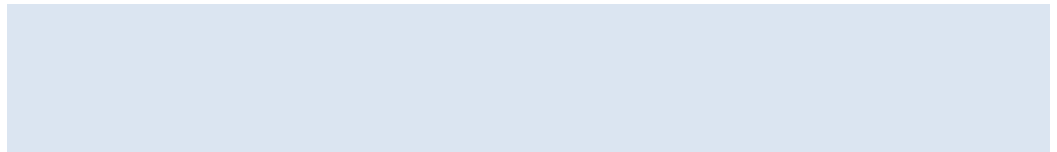
Brief details of the charge(s) and the nature of the allegations:

A light blue rectangular redaction box covering the response to the first question.

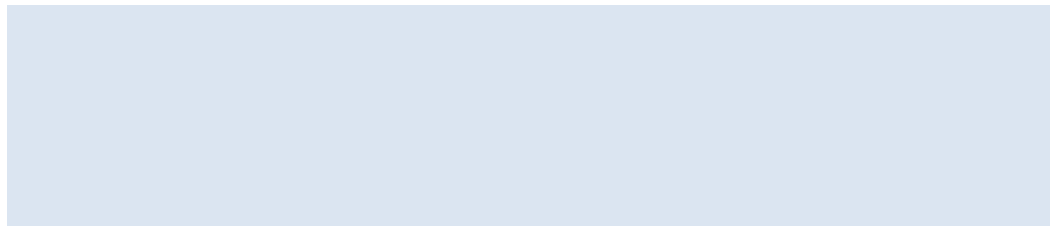
Matters about which the witness is to give evidence:

A light blue rectangular redaction box covering the response to the second question.

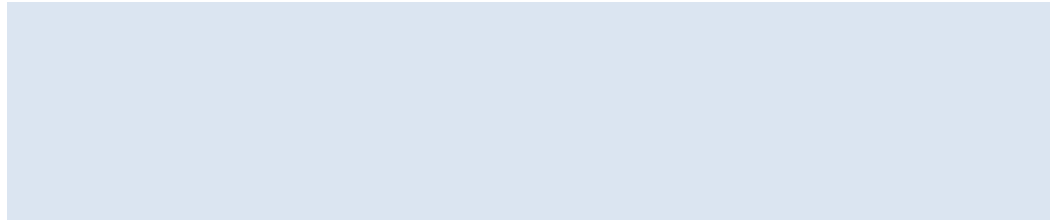
Views expressed by the witness as to whether or not s/he is content to be cross-examined in person:

A light blue rectangular redaction box covering the response to the third question.

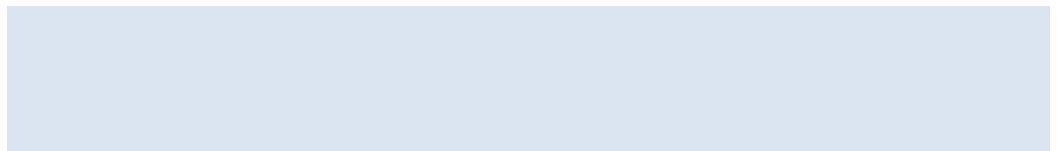
Nature of questions likely to be asked having regard to the issues in the proceedings and the defence advanced so far (if any):

A light blue rectangular redaction box covering the response to the fourth question.

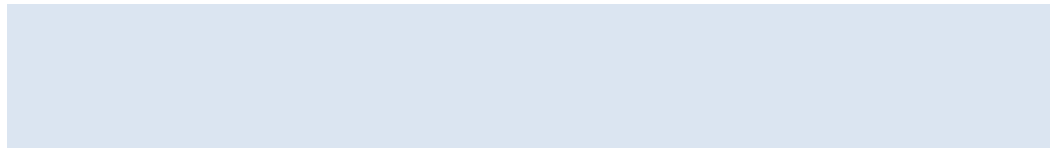
Any behaviour on the part of the defendant/appellant at any stage of the proceedings, both generally and in relation to this witness:

A light blue rectangular redaction box covering the response to the fifth question.

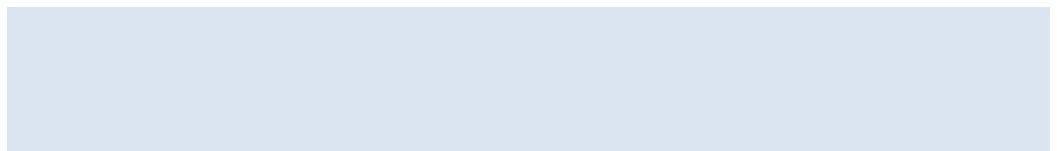
Any relationship (of whatever nature) between the witness and the defendant/appellant:

A light blue rectangular redaction box covering the response to the sixth question.

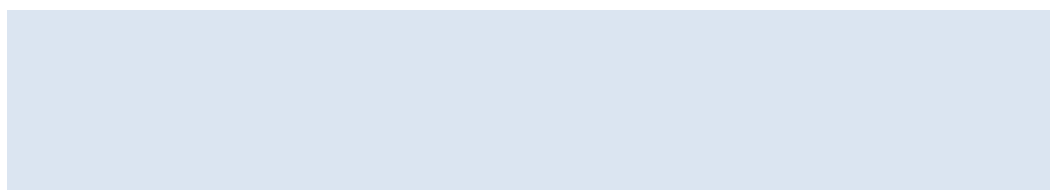
Any other defendant in the case who is subject to a prohibition under s.34; 35 or 36:

A light blue rectangular redaction box covering the response to the seventh question.

Any special measures directions made or for which application has or is to be made:

A light blue rectangular redaction box covering the response to the eighth question.

Why is it thought that the quality of evidence is likely to be diminished without the prohibition and improved if it is imposed?

A light blue rectangular redaction box covering the response to the ninth question.

Why it would not be contrary to the interests of justice to impose the prohibition AND any other reasons?

You may attach relevant witness statements. If you have done so mark this box:

Sign and date the form:

Signed for the prosecutor:

Dated:

FOR ADDITIONAL WITNESSES REPEAT AS ABOVE OR USE SEPARATE SHEET

The prosecutor must serve copies of this form on the court AND the defendant/appellant AND any other defendant/appellant (unless the court has directed otherwise).

PART 2 – To be completed by the defendant/appellant (or by his lawyers).

If you have already appointed lawyers to represent you for the case they should provide their contact information:

Name of firm:

Address:

Telephone:

Email:

Person to contact about this case or Case Progression Officer:

We confirm that the defendant/appellant has instructed us to represent him in the case.

Details of funding – Mark a box :

- Privately funded;
- Legal Representation Order applied for;
- Legal Representation Order granted.

If you have NOT already appointed lawyers to represent you then you must fill out the rest of this form and send copies to the court AND the prosecutor within 14 days. If the form has not been received in that time the court will assume that the application is not contested and may make orders without knowing what you think.

Please confirm your contact details:

Your address: _____

Your telephone number: _____

Your email: _____

Please answer these questions – You may use a separate sheet of paper if you need to:

If you want the court to refuse the prosecutor’s application then give your reasons here why the conditions for the grant of the order are not met. Explain why you think you should be allowed to cross-examine the witness(es) in person and not be required to use a lawyer. You can use a separate sheet if you need to.

[NOTE: You have to send copies of this completed form to the court and the prosecutor. However if your reasons include information that you think ought not to be revealed to the prosecutor or to any other party in the case then you can leave that information off this form but, instead, put it on a separate sheet marked with the words “UNLESS THE COURT OTHERWISE DIRECTS THIS SHEET IS ONLY FOR THE COURT”. On that sheet explain why the information has not been revealed to the prosecutor or other parties⁵]

Reasons:

Do you want the court to arrange a hearing in order to make decisions about this Notice? If so provide your reasons. If this application is contested there must be a hearing to decide it.

Reasons:

⁵ See Criminal Procedure Rule 23.6

If the court does decide to prohibit you from cross-examining those particular witnesses then they can only be cross-examined by a lawyer who is qualified to appear in the court. So that the court can make any necessary arrangements please tell the court about your choices. You do not have to provide this information now but if you do not provide it within 14 days of a prohibitory order being made then the court will assume that you are not appointing or arranging your own lawyer.

What is your choice?

Mark the box

I will be arranging a lawyer to represent me for the whole case and provide the lawyer's contact information below:

Or

I will be arranging a lawyer to cross-examine the particular witnesses and provide the lawyer's contact information below:

Or

I will NOT be arranging a lawyer and understand that the court will decide if it is necessary in the interests of justice to appoint a lawyer to cross-examine witnesses in my interests but that lawyer is not responsible to me and will cease to be involved when the questioning of that witness ends:

If you have said that you will be arranging a lawyer to represent you for the whole case OR just for the cross-examination of the particular witnesses you must give the contact information below:

Name of firm:

Address:

Telephone:


Email:

Person to contact about this case:

Please sign and date the form:

Signed:

Dated:

 **You must now send a copy of this form to the court AND to the prosecutor to arrive within 14 days of the date it was served on you.**

PART 3 – To be completed by any other party served with this form who wishes to make representations

Representations made by or on behalf of: _____

Name of firm: _____

Representations:

Signed: _____

Dated: _____

PART 4 – Court Decision

LISTING:

HHJ/DJ/JP _____

Date: _____

This application can be decided without a hearing

Or

List for an oral hearing

Time Estimate _____

Hearing reserved to: HHJ/DJ/JP _____

DECISION:

HHJ/DJ/JP _____

Date: _____

The application is refused for the following witnesses: _____

Or

The application is granted for the following witnesses: _____

Note of Reasons: By CrimPR 23.3 the court must announce at a hearing in public before the witness gives evidence the reasons for a decision to impose or discharge a prohibition, or to refuse to do so. A s.36 Direction is not available to prohibit cross-examination of a co-defendant.

If the application is granted then the remainder of this form should be completed. If the defendant/appellant has not indicated choices then 14 days should elapse from service of the decision and request for information for the defendant/appellant to respond:

The court is satisfied that the defendant/appellant has arranged legal representation for the case as a whole

Or

The court is satisfied that the defendant/appellant has arranged for an advocate to cross-examine the particular witnesses and provided contact details

Or

The defendant/appellant has either stated that s/he does not wish to arrange for an advocate OR has not given notice either way:

If the defendant has not elected to arrange representation the court has considered whether it is necessary in the interests of justice for the witness(es) to be cross-examined by an advocate appointed to represent the defendant/appellant's interests and concluded:

It is not necessary to appoint such an advocate:

Or

It is necessary to appoint such an advocate and it is directed that within [14] days:

1. Within 7 days court to arrange for the appointment of an advocate and notify the defendant/appellant AND the prosecutor;
2. Within 7 days after that the prosecutor to provide to the appointed advocate copies of the served statements in the case and any record of interview of the defendant⁶;
3. The appointment of the advocate will terminate at the conclusion of the cross-examination of the last particular witness.
4. [Other]

PART 5 – Court Action – To be completed by the court

⁶ The court will want to consider what else may need to be served in the particular case, either by the prosecutor or from the court file.

office where the court has directed the appointment of an advocate

Notice of Prohibition sent out: Date: Staff Member:

Notice of Appointment sent out: Date: Staff Member:

Details of advocate appointed if not recorded on a Notice of Appointment:

Advocate appointed:

Date of appointment:

Address:

Telephone:

Email:

Notes:

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END