

Scottish Government submission of 12 January

PE1994/A: Review the trial process for sexual offence cases

Thank you for your email of 16 December, in which you requested a written response from the Scottish Government to the issues raised in petition PE1994.

The Petitioner, Margaret Fagan has called on the Scottish Parliament to urge the Scottish Government to undertake a review of the trial process and handling of witness evidence in sexual offence cases. In particular, the petition raises concerns about an increase in conviction rates for cases involving serious sexual offences arising from what the petitioner claims to be unfair restrictions on the type of evidence that an accused can lead in court.

We understand that the restrictions referred to in the petition may relate to the reforms introduced through the [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002](#) which amended the restrictions on evidence relating to sexual offences as set out at [Section 274 of the Criminal Procedure \(Scotland\) Act 1995](#). [These reforms were considered necessary to strengthen the protections for complainers](#) in sexual offence cases against irrelevant evidence being led which related to a complainer's character or sexual history. It was recognised that such evidence represented an invasion of a complainer's privacy and dignity and caused additional and unnecessary distress to complainers as a result.

In broad terms, these provisions prohibit the leading of irrelevant evidence in cases involving sexual offences about complainers' past sexual behaviour or other behaviours which seek to cast doubt on their reliability and credibility as a witness. They were introduced specifically to prevent the leading of evidence which is of limited relevance to the particulars of the case or which unduly undermines the credibility of the complainer.

Under [Section 275](#) of the Criminal Procedure (Scotland) Act 1995, an accused can apply to the court to lead evidence at trial that is prohibited

by Section 274 provided that they can demonstrate that it is pertinent to the specifics of the case. This acts as a safeguard to ensure that evidence which relates to a complainer's character or sexual history which is relevant may, in some circumstances, be admissible. The decision on whether such evidence is considered admissible is made by a judge and may be appealed, providing a further safeguard to ensure that the proper balancing of interests occurs in individual cases.

The provisions introduced through the 2002 Act were not intended to increase conviction rates for serious sexual offences nor do they infringe on the accused's right to a fair trial but rather focus on achieving a reasonable balance between the rights of the accused and the rights of complainers.

Conviction rates for serious sexual assaults including rape and attempted rape remain lower than for other crimes. [Data published by the Scottish Government](#) demonstrates that conviction rates for rape and attempted rape have been the lowest of all offences in each of the past ten years that comparable figures are available. This trend in conviction rates for serious sexual offences is not unique to Scotland and is also seen across other jurisdictions including England & Wales.

In line with the values and ambition set out in the Vision for Justice in Scotland, the Scottish Government is committed to ensuring Scotland's criminal justice system secures the confidence of the people it serves, particularly in its treatment of serious sexual offences. We are currently giving careful consideration to the recommendations of the Lady Dorrian Review, *Improving the Management of Sexual Offence Cases*, and have recently published the responses to a [public consultation](#) which sought broader views on some of the key proposals.

Our Criminal Justice Reform Bill, announced in the Programme for Government 2023-24 will bring forward proposals for legislative reform arising from that consideration, and will provide an important opportunity for parliamentary scrutiny and a national conversation on these critical matters.

I hope that the information set out in this letter is helpful to the Committee.