

Lord Advocate submission of 2 April 2024

PE2064/C: Ensure that under 16s charges with rape are treated as adults in the criminal justice system

I refer to your letter dated 11 March 2024 seeking an update on the review of diversion from prosecution for sexual offences and data on how many cases there are for suspected offences of rape and serious sexual offences by under 16's which are jointly reported to the Children's Reporter and the Crown Office and Procurator Fiscal Service (COPFS).

I have previously corresponded with the petitioner, and I am aware of the content of the petition the Committee is considering. I would like to reiterate that sexual offences, including rape, are among the most difficult cases prosecutors deal with. I am acutely aware of the trauma experienced by victims and their loved ones because of these abhorrent crimes. These cases are particularly difficult when the victim and accused person are both children. As public prosecutors, we are trusted to make appropriate decisions considering the rights of all children involved.

For context, Police Scotland jointly report allegations of rape and serious sexual offending involving a child accused to both the Procurator Fiscal and the Children's Reporter for consideration, in line with the **Lord Advocate's guidelines: Offences committed by children**

[<https://www.copfs.gov.uk/publications/lord-advocate-s-guidelines-offences-committed-by-children/>]. Where a child accused is under the age of 16, there is a presumption that the case will be dealt with by the Children's Reporter. The presumption may be overridden in exceptional circumstances. The prosecutor will discuss the case with the Children's Reporter in advance of any decision. The agreement '**Decision making in cases of children jointly reported to the Procurator Fiscal and the Children's Reporter**'

[<https://www.copfs.gov.uk/publications/decision-making-in-cases-of-child-accused/html/>] sets out how prosecutors and the Children's Reporter deal with cases referred to them. The final decision in a jointly reported case rests with prosecutors, taken in line with the **Prosecution Code** [<https://www.copfs.gov.uk/publications/prosecution-code/html/>].

Review of Diversion for sexual offences

Last year I instructed a review of how prosecutors deal with diversion from prosecution in cases of serious sexual offences, including rape. The scope of the review has been extended to include how prosecutors deal with referrals, in these cases, to the Children's Reporter. We recognise the profound impact of such crimes upon victims. I am determined to improve the experience for victims of the criminal justice system. The review includes the development of revised prosecution policies, following consultation with key stakeholders. The revised policy will be published externally.

The review is making good progress and places victims as its heart. To date, there has been a review of the existing COPFS prosecution policies and roundtable discussion events have been held with key stakeholders. Those stakeholders have provided input from the perspective of victims and witnesses of rape and other serious sexual offences, including views from those with lived experience. We have also had input from stakeholders who represent children in conflict with the law and heard their views on how prosecutors should deal with diversion from prosecution and referral to the Reporter in rape cases.

As part of the review, I appointed a Senior Advocate Depute to conduct an examination of all cases of rape which were diverted or referred to the Reporter in the last five years. The review will identify factors relevant to decisions in these cases and any other issues considered to be important to the operation of diversion and referral to the Reporter. The feedback and information gathered will inform the revised prosecution policies.

Due to the sensitivity of the work, and to encourage a full and frank exchange of views, the review is proceeding on a confidential basis.

As independent head of the criminal prosecution system, I will consider the outcome and recommendations of the review and approve the revised prosecution policies prior to their publication. I expect that the review will conclude, and the revised prosecution policies will be published, by mid-summer.

As additional information in December 2021, I commissioned Susanne Tanner KC to carry out a review of how prosecutors in Scotland deal with reports of sexual offences (the Sexual Offences Review). The Sexual Offences Review recognises the profound impact that sexual crimes have on victims and on society and the fact that, in recent years, sexual offences have become about 70 per cent of the casework of Scotland’s High Court prosecutors and the number of cases has further increased in 2022. The outcome of this review will identify best practice, make recommendations for improvement in this important area and inform our approach to sexual offences. We anticipate publication of the review in the coming months.

Data requested from 1 January 2018 to 31 December 2023.

In relation to the data requested on how many cases of suspected rape by a person under 16 have been reported to the Children’s Reporter and the Procurator Fiscal, I can advise the following:

There were 266 cases reported for children aged between 12 and 15 years old (inclusive) which were reported jointly to the Children’s Reporter and Procurator Fiscal for rape (or attempted rape) between 1 January 2018 to 31 December 2023.

The table below shows the number of cases reported for each year.

Cases of Rape or attempted Rape reported for 12–15-year-olds inclusive.							Grand Total
	2018	2019	2020	2021	2022	2023	
Total	45	34	34	49	49	55	266

The Committee also requested data on how many cases of suspected serious sexual assault by a person under 16 had been reported to the Children’s Reporter and the Procurator Fiscal, I can advise the following:

- There were 462 cases reported for children aged between 12 and 15 years old (inclusive) which were reported jointly to the Children’s Reporter and Procurator Fiscal accused of ‘serious sexual assault’ between 1 January 2018 to 31 December 2023. For clarity ‘serious sexual assault’ has been interpreted as cases which would be usually prosecuted on indictment. The cases which have been reported in this time frame relate to contraventions of sections 2, 3, 4, 19, 20, and 21 of the Sexual Offences (Scotland) Act 2009. The table below shows the number of cases reported for each year.

Cases of Sexual Assault reported for 12–15-year-olds inclusive.							Grand total
	2018	2019	2020	2021	2022	2023	
Total	62	67	55	87	99	92	462

All cases reported are reviewed by legal members of staff to confirm there is a sufficiency of evidence before making a prosecutorial decision, in the public interest.

In relation to the third set of data requested, COPFS is not in possession of such data, and I understand you will request this directly from Police Scotland who hold the information.

I trust that this information is of assistance.

Yours sincerely

**THE RIGHT HONOURABLE DOROTHY BAIN KC
LORD ADVOCATE**