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Dear Convener,

Thank you for your letter of 17 November 2025 to the Cabinet Secretary for Justice and Home Affairs, which has been copied to me. I appreciate the Committee's continued engagement on matters of significant importance to the justice system.

### **Supreme Court judgement and its effect**

The recent judgment of the UK Supreme Court concerning sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995 has immediate effect and raises issues of considerable complexity and sensitivity. The court held that the common law approach to the admission of evidence in sexual offence trials, as developed by the High Court of Justiciary since 2013, is liable to result in violations of the rights of the accused to a fair trial under Article 6 of the European Convention on Human Rights. Scottish courts are now under a duty to take a more flexible and nuanced approach to applications under section 275, including those relating to sexual-history evidence, bad-character evidence, and any other evidence bearing on the complainer's credibility and reliability.

While the statutory scheme in sections 274 and 275 remains in force and was not criticised, the judgment clarifies that fairness may sometimes require the admission of intrusive evidence. This does not mean that all such evidence is now admissible; applications will continue to be assessed rigorously against the statutory tests, and irrelevant or collateral material will be opposed.



## **Impact on existing and future cases**

The Supreme Court acknowledged that its decision will cause some disruption to ongoing and upcoming sexual offence cases. COPFS is taking steps to minimise this disruption, including prioritising applications and updating guidance and training for prosecutors and victim support staff.

A significant increase in defence s275 applications is anticipated, including revisions of previously refused applications, to lead evidence which would previously have been excluded, occasioning delay at all stages of the pre-trial and trial process. This will likely affect case preparation and trial timetables. Prosecutors will continuously assess the impact of this judgment upon our work and will provide updates to those involved in ongoing cases as necessary.

Prosecutors will continue to balance fairness and the protection of victims in accordance with the law and the public interest. The statutory safeguards protecting the dignity, privacy and wellbeing of complainers remain firmly in place. Nothing in the judgment alters the Crown's duty to object to evidence or questioning for which there is no defence section 275 application, or to questioning that is unduly rude, aggressive or invasive. The Crown will review and consider all new defence applications in light of the judgment and take a legal decision on whether the application is to be opposed.

The Crown remains under a duty to obtain a complainer's views on a section 275 application and to convey those views to the court. Advice to a complainer on whether the application is likely to be granted or refused will now be given on the basis of the Supreme Court's judgment. Prosecutors will continue to engage with complainers in a trauma-informed way and, where necessary, adjournments will be sought to avoid placing undue pressure on complainers and to ensure their needs are respected.

Provisions under sections 275A and 275C continue to apply. Under section 275A, where a defence application is granted, the accused's relevant previous convictions must be placed before the judge and, subject to the interests of justice, before the jury. Renewed consideration will also be given, where appropriate and proportionate, to leading expert evidence under section 275C to rebut defence evidence and explain post-incident behaviour.



## **Scope for further appeals**

The court found that there was no breach of the appellants Article 6 rights in the two cases under appeal. It is anticipated, however, that further appeals will now be lodged with the High Court of Justiciary, sitting as a court of appeal. These are expected to arise from both recent and older convictions.

The Scottish Criminal Case Review Commission may refer relevant convictions dating from 2013 onwards, when the Scottish court developed the recent common law rules on admissibility, to the appeal court. It is not possible to assess the number of convictions that may be referred to the appeal court at this time, but the ruling does not automatically render existing convictions unsafe. Each appeal will be considered individually on its own merits.

## **Impact on complainers**

As noted above, the requirement for Scottish courts to modify their current approach, to ensure that decisions on the admissibility of evidence comply with the Convention and secure the accused's right to a fair trial, will inevitably mean that complainers may be asked intrusive questions about their private lives. In some cases, evidence relating to intimate aspects of their lives may need to be placed before the jury – evidence that was less likely to have been admissible under the previous regime.

Complainers will also require to be precognosced or re-precognosced in connection with defence section 275 applications. It is reasonable to expect that this will cause alarm and distress, as will the impact of the delays in proceedings that are envisaged.

In addition, complainers will face significant uncertainty about what questions they may be asked in court. However, it is important to note that the Supreme Court emphasised that the law must ensure that such intrusions into their privacy are *no more than is necessary* to ensure that the accused receives a fair trial. These safeguards still exist through application of the statutory regime set out in sections 274 and 275.

The judgment is expected to lead to a rise in appeals, including challenges to older convictions. For complainers, this may mean being contacted about cases they believed were concluded, and in some instances, being asked to provide further information or participate in appeal hearings. This prospect can cause renewed



anxiety and distress, particularly for survivors who have already endured the trauma of giving evidence.

COPFS remains firmly committed to ensuring that every case is handled fairly, in accordance with the law, while supporting victims throughout the criminal justice process, and upholding statutory protections for dignity, privacy, and wellbeing. Prosecutors will continue to apply these safeguards robustly so that victims feel able to give their best evidence.

All engagement with complainers will be handled with sensitivity and care. COPFS will provide clear, timely communication and reassurance about what to expect in court, together with access to specialist support services to help complainers feel informed and supported at every stage.

I would also draw attention to my recent public statement, "[Lord Advocate Dorothy Bain KC's message to victims of sexual abuse](#)", published on the COPFS website. In that message, I reaffirmed my commitment to trauma-informed practice, clear communication and sensitive handling of cases, while maintaining fairness and public confidence in the justice system. These principles will guide our approach to implementing any changes arising from the Supreme Court's decision.

Thank you again for raising these important concerns. Please do not hesitate to contact my office if further clarification is required.

Yours sincerely,

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