

Crown Office and Procurator Fiscal Service submission of 12 May 2023

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

I refer to your letter dated 14 April 2023 seeking information on the use of section 275 of the Criminal Procedure (Scotland) Act 1995, under which an accused person can apply to the court to lead evidence at trial that would otherwise be prohibited by Section 274 of that Act. You have also requested information on how many applications have been made under this provision, and what proportion of them have been granted.

The Petition raises a concern that the application of the provisions of section 275 of the Act prevents accused persons from leading evidence at trial.

For evidence to be admissible in a criminal trial in Scotland, it must be relevant to the facts in issue. The common law provides that evidence which is irrelevant, or which is collateral to the facts in issue, is inadmissible. Section 274 of the Criminal Procedure (Scotland) Act 1995 further restricts the admissibility of evidence in relation to sexual offence cases.

The common law rules on admissibility of evidence, and the provisions of sections 274 and 275, apply equally to the Crown and the defence. Should the Crown seek to introduce evidence, which is prohibited by the terms of section 274, the Crown requires to lodge a s275 application, in the same way as the defence would, if the accused sought to lead evidence which was prohibited in terms of section 274 of the Act.

In relation to the request of the Committee regarding the numbers of applications made and granted, I can advise that HM Inspectorate of Prosecution in Scotland (HMIPS) carried out a review of “Criminal Procedure (Scotland) Act 1995 – sections 274 and 275: inspection of COPFS practice” in 2022. A copy of the Inspectorate report is available at: Criminal Procedure (Scotland) Act 1995 - sections 274 and 275: inspection of COPFS practice - gov.scot (www.gov.scot). COPFS has accepted HMIPS recommendations and is in the process of implementing them.

The Committee's attention is drawn to the HMIPS report, which sets out that of the 123 High Court cases randomly selected by the Inspectorate for review 238 applications in terms of section 275 were identified (38% of which were Crown applications). Of the 238 applications, 85% of Crown applications were granted in full or in part and 74% of defence applications were granted in full or in part.

To assist the Committee regarding the number of applications made, I can confirm that in relation to High Court cases, COPFS recorded that between 24th May 2022 and 31st March 2023 312 applications were lodged by the Crown seeking the Court's permission to lead evidence in terms of section 275. The process for recording defence applications became operational in March 2023 and accordingly no meaningful data is yet available.

The responsibility for the recording of data in relation to court proceedings is primarily that of the Scottish Courts and Tribunals Service (SCTS). The Committee may therefore wish to direct its request for statistical data in relation to the numbers of applications made and granted to SCTS.