

F/T: 0300 244 4000
E: scottish.ministers@gov.scot

Audrey Nicoll MSP
Convener
Criminal Justice Committee
Scottish Parliament
Edinburgh
EH99 1SP

justice.committee@parliament.scot

15 December 2025

Dear Convener

Thank you for your letter of 17 November on the recent judgment of the UK Supreme Court in *Daly v HMA & Keir v HMA* concerning the approach of the Scottish courts to the admission of sexual history and character evidence in cases involving sexual offences.

I note that in response to your letter, the Lord Advocate recently wrote to the Committee outlining the terms of the judgment and its likely impact on existing and future cases. My officials are working with justice partners including COPFS and SCTS to monitor any disruption or delay in sexual offences cases as a result of the judgment, noting that may arise from greater numbers of defence section 275 applications, prolonged procedure, adjourned diets and greater numbers of appeals. Officials will also continue to engage with the Scottish Criminal Cases Review Commission to understand the impact on its work if greater applications for the review of older convictions are received.

It will take time for the justice system to distil and respond to the judgment before we will be able to fully assess its impact and I understand that this uncertainty will have a considerable impact on all involved in sexual offences cases, including victims who we know already face significant barriers in reporting offences and giving evidence. I welcome the action set out by the Lord Advocate on how prosecutors are providing reassurance on their approach, seeking to minimise disruption and prioritise the consideration of relevant issues.

It is important to acknowledge that the judgment itself does not routinely require or allow the admission of sexual history and character evidence but instead requires a different approach from the courts when considering these matters. That approach will be applied on a case by case basis and the judgment itself indicates that relevant questioning must only be permitted to the extent necessary for a fair trial. The robustness of the statutory framework contained

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

in sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995, to regulate how the interests of accused and complainers are balanced, remains unaffected.

This Government has demonstrated that it will drive improvements in the justice system to ensure that victims can have confidence to report sexual offences, that when they do, they will be treated with respect and dignity, and that they will be supported through the justice process to enable them to give their best evidence. We are committed to ensuring that our criminal justice system is as effective as possible at holding perpetrators to account and to keeping women and girls safe.

The latest Criminal Proceedings data (2023-24) published on 9 December shows that more victims of rape are accessing justice than ever before. Driven by both higher prosecutions and a 61% conviction rate, rape and attempted rape convictions increased 19% to 221, a new all-time high (since 1989-90 when comparable records began).

It is imperative that we maintain and build on this progress, and the landmark Victims, Witnesses, and Justice Reform (Scotland) Act 2025 contains essential reforms that will ensure victims continue to be supported and protected through what we know can be a distressing and difficult process.

The introduction of Independent Legal Representation (ILR) will provide automatic, publicly funded ILR for complainers where section 275 applications are made. Implementation planning is underway. The cross sector ILR Implementation Group met for the first time in November and agreed the renewed impetus provided by the Supreme Court judgment, in ensuring ILR can be offered to complainers as soon as possible whilst recognising that this will be a significant change in practice and that all aspects of the system need to be adequately prepared to absorb and respond to that. In addition, it is crucial that the service is properly resourced and previous planning assumptions will need to be revisited in light of the Supreme Court judgment which may well increase the number of section 275 applications triggering the right to ILR.

In addition, non-legislatively, we have committed to a three-year pilot of Independent Legal Advice (ILA) which, through the Emma Ritch Law Clinic, will provide complainers with access to an experienced court practitioner to assist them to better understand the process and their existing rights, including when they are preparing to give evidence. The stakeholder advisory group met last month and there is considerable momentum and focus on launching the pilot and providing advice to complainers as soon as practical in 2026.

The Sexual Offences Court presents an unsurpassed opportunity to establish enduring improvements in culture, practice and consistency in the treatment of these cases and the experiences of victims. The Court will require judges and lawyers to have undergone specialist training in trauma informed practice and strong judicial management will facilitate a consistent approach from the judiciary in addressing potential delay and continuing to refuse irrelevant, intrusive questioning that has no bearing on an accused's right to a fair trial. The Court will take time to be operationalised and we are working to ensure that the approach to implementation reflects the cross-sector nature of the review that led to the recommendation for its creation.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

INVESTORS IN PEOPLE
We invest in people Silver



All these initiatives sit alongside significant ongoing improvements to the criminal justice system being implemented across the board by the dedicated professionals working within it. That work includes: the embedding of trauma informed practice through the implementation of the Trauma Informed Justice: Knowledge and Skills Framework that has been embraced by justice bodies; the expansion of pre-recorded evidence as an option for victims and witnesses to give their evidence in advance of trial in a more trauma informed environment; and actions including the expanded court programme to address the COVID related court backlogs and tackle journey times for all involved in criminal cases.

The Supreme Court judgment, whilst understandably creating a degree of anxiety and uncertainty, applies to a system acutely focused on improving its response to victims of these abhorrent offences. It is absolutely right that we do that without jeopardising the fairness of proceedings. However, in achieving that balance, it is clear that victims will require more support to understand and give their views on section 275 applications as well as being adequately informed and prepared about what that means for their evidence. There is considerable work underway to deliver that support including through the 2025 Act.

More generally, it is imperative that we equip our independent prosecutors and judiciary with the tools they need to ensure that we have the most effective system possible to support complainants to give their best evidence, to deal with these cases efficiently and sensitively, and to hold perpetrators to account. Again, the 2025 Act contains essential reforms to deliver that.

I will continue to work with agencies to understand the impact of the Supreme Court judgment as we implement the key reforms of the 2025 Act to realise our ambition of a trauma informed and person-centred criminal justice system which commands the confidence of those it serves.

Yours sincerely,



ANGELA CONSTANCE

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

INVESTORS IN PEOPLE
We invest in people Silver

