

# Briefing for the Public Petitions Committee on petition [PE2265](#): Review Scotland's response to the UK Supreme Court judgment on fair trial rights in Scotland, lodged by Marzena Paszkowska

## Introduction

The [petition](#) was lodged on behalf of [Justice for Innocent Men Scotland](#) (JIMS). It calls on the Scottish Parliament to urge the Scottish Government to undertake a review of Scotland's response to the UK Supreme Court judgment in the cases of [Daly v HM Advocate](#) and [Keir v HM Advocate](#) (issued 12 November 2025).

In its judgment, the UK Supreme Court concluded that the law of Scotland in relation to the admission of evidence in sexual offence trials was liable to result in violations of the rights of the accused under article 6 (right to a fair trial) of the [European Convention on Human Rights](#).

In seeking a review of the response to the judgment, the petition states that JIMS has found uncertainty regarding its implications, making it difficult for people to obtain clear and consistent advice. It asks that a review includes consideration of the:

- implications of the judgment
- guidance available to affected individuals and those advising them
- number of cases potentially affected
- adequacy of existing review mechanisms
- resources required to respond effectively.

## Supreme Court judgment

In the cases of *Daly v HM Advocate* and *Keir v HM Advocate*, the UK Supreme Court considered whether the approach of the Scottish courts to the admission of evidence relating to complainers in sexual offence cases had infringed the right of the accused to a fair trial.

A [press summary](#) issued by the UK Supreme Court noted that:

“The appellants, Mr Daly and Mr Keir, were convicted of rape and other sexual offences. In this appeal, they ask the Supreme Court to decide whether they received a fair trial, as required by article 6(1) read with article 6(3)(d) of the European Convention on Human Rights (‘the Convention’). Article 6(1) guarantees a fair and public hearing by an independent and impartial tribunal,

while article 6(3)(d) provides that anyone charged with a criminal offence is entitled to examine witnesses against them.

The appellants contend that their right to a fair trial was infringed because, at their trials, they were unable to lead evidence or to question the complainers or other witnesses about the complainers' credibility or previous sexual behaviour. In Scotland, evidence of this kind can be led at trials for sexual offences only if it is relevant at common law and admissible under sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995. Section 274 prohibits the introduction of evidence or questioning which concern the character, behaviour or sexual history of the complainer. Section 275 provides an exception to this general rule, which is available if the defendant makes a written application before the trial and the court is satisfied that the criteria specified in the legislation are met. Sections 274 and 275 are sometimes called 'rape shield' provisions. They exist to protect the complainer from unfair and intrusive questioning, and to prevent the jury from being improperly influenced by evidence that is irrelevant to the charge against the defendant."

So, both common law and legislative provisions have an impact on what evidence can be presented:

- common law determining whether evidence is relevant
- sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995 determining whether evidence relating to the sexual history or character of a complainer (which passes the common law relevance test) is admissible.

Whilst noting that the two appeals were dismissed, the press summary also stated that the UK Supreme Court:

"finds that the Scottish courts should modify their current approach to the admission of evidence in trials for sexual offences because it is liable to infringe defendants' rights under article 6 of the Convention".

It went on to explain that:

"the High Court of Justiciary in its capacity as an appeal court has developed the common law concepts of relevant and collateral evidence so that evidence concerning the complainer's credibility or previous or subsequent sexual behaviour is almost always excluded from trials for sexual offences. The Supreme Court holds that this approach is liable to result in violations of defendants' rights to a fair trial under article 6 of the Convention."

## **Scottish Parliament consideration**

### **First Minister's questions**

On 13 November 2025, [Murdo Fraser MSP asked the First Minister about the judgment](#), leading to the following exchange:

### Murdo Fraser (Mid Scotland and Fife) (Con)

Yesterday, the United Kingdom Supreme Court issued a judgment in the cases of David Daly and Andrew Keir, which, while upholding their convictions, raises serious issues about the conduct of trials involving sexual offences. Legal experts say that the judgment could trigger multiple appeals by those who are convicted of sexual offences.

The courts have a difficult task in balancing the need to protect complainants—usually women—from intrusive questioning about their behaviour, while also guaranteeing the accused a fair trial. How will the Scottish Government respond to the judgment?

### The First Minister (John Swinney)

The Supreme Court judgment gives detailed consideration to the complex issues that are involved in the admissibility of evidence in sexual offences trials. It is clear from the judgment that there is no requirement for a change in the provisions in the law that specifically regulates those matters, which are sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995.

The Supreme Court said that it is for all judges in sexual offences cases to reflect the ruling as they would any other Supreme Court ruling that was relevant to them in the handling of such cases. It is therefore a matter for the courts, which, as Mr Fraser will know, operate independently of the Government. I know that the judiciary will consider the issues that arise as a consequence of the Supreme Court judgment, but there is no requirement for us to change the law.

### Claire Baker (Mid Scotland and Fife) (Lab)

In addition to the issues raised in Murdo Fraser's question, Parliament recently passed the Victims, Witnesses, and Justice Reform (Scotland) Act 2025, which looks to make the experiences of victims and witnesses easier. What assurances can the First Minister give to women who are now concerned about the risk of having to go through an appeal process? What does the Supreme Court decision mean for evidence in future rape and sexual assault cases?

### The First Minister (John Swinney)

My substantive point was that there is, in my view, no requirement for legislative change because the decision is about court procedure. Claire Baker's question highlights important issues relating to the conduct of court cases, which can have a bearing on the type of questions that are asked and on the type of evidence that is given and can cause enormous distress to the victims in those cases, who are invariably women.

The Government will carefully consider the implications of the ruling in the course of time and the courts will have to reflect on those issues. It would be deeply regrettable if there was any return to some of the court practices that

were deeply distressing to the victims of sexual crime and I set out today my desire to ensure that that is not the outcome of the Supreme Court judgment.”

## **Criminal Justice Committee**

The Scottish Parliament’s Session 6 Criminal Justice Committee sought responses to the UK Supreme Court judgment from both the Lord Advocate and the then Cabinet Secretary for Justice and Home Affairs.

The [response from the Lord Advocate](#) (2 December 2025) included the following:

“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.”

And the [response from the Cabinet Secretary](#) (15 December 2025) commented that:

“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 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.”

It was acknowledged that the UK Supreme Court ruling may lead to more people seeking to challenge convictions on the basis that they did not receive a fair trial. For example, the response from the Lord Advocate said:

“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 Cases 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.”

## Scottish Criminal Cases Review Commission

The [Scottish Criminal Cases Review Commission](#) is responsible for investigating potential miscarriages of justice. It can send a case to the High Court for a fresh appeal (after the conclusion of the normal court processes) if it considers that there may have been a miscarriage of justice.

In relation to the UK Supreme Court judgment, its [website](#) notes that:

“On 12 November 2025, the Supreme Court issued its decisions in the linked appeals in the cases of Daly & Keir v HMA. The Supreme Court held in these cases that the approach that the High Court of Justiciary had adopted to the common law of relevancy and the ‘rape shield’ legislation (sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995) risked breaching the human rights of people accused of sexual offences. The decision suggests that the Scottish courts may have wrongly excluded evidence from this type of trial. This decision opens the door to the reconsideration of sexual offence convictions in the period from 2013 to 2025.”

“People who believe that the exclusion of evidence from their trial led to a miscarriage of justice may have a basis to apply to the Commission. The Commission expects the number of those potentially affected by this decision to be large.”

It also says that it has established a dedicated review team to manage these cases.

## Key organisations

- Crown Office and Procurator Fiscal Service
- Faculty of Advocates
- Justice for Innocent Men Scotland
- Law Society of Scotland
- Rape Crisis Scotland
- Scottish Criminal Cases Review Commission

**Frazer McCallum**  
**Senior Researcher**  
12 October 2026

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| The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition |
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