

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

Lord Advocate written submission, 15 January 2025

I refer to your letter dated 16 December 2024 seeking an update on the review of diversion from prosecution for sexual offences.

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.

The review, on the use of diversion from prosecution and referral to the Scottish Children's Reporter Administration (SCRA) in cases of serious sexual offences, is in recognition of the profound impact of such crimes upon victims and my determination to improve their experience of the criminal justice system.

The review has made good progress and is near conclusion.

To date, there has been a review of the existing Crown Office and Procurator Fiscal Service (COPFS) prosecution policies and roundtable discussion events have been held with key stakeholders, who provided comments from the perspective of victims and witnesses of rape and other serious sexual offences, including views from those with lived experience, and stakeholders who represent children in conflict with the law, to hear their views on how prosecutors should deal with diversion from prosecution and referral to the SCRA in rape cases.

In addition, I appointed a Senior Advocate Depute to conduct an examination of all cases of rape which were diverted or referred to the SCRA in the last five years to identify the factors which will be relevant to decisions to divert or prosecute accused persons in these cases and any other issues considered to be important to the operation of diversion and referral to SCRA. The review of these cases has been completed and the Advocate Depute has reported on her findings.

Policy Officials within COPFS have developed a new statement of prosecution policy on the use of diversion and referral to SCRA in solemn level sexual offences cases involving children, which has been informed by the feedback obtained from the consultations with key stakeholders and the outcome of the Advocate Deputes review of past cases.

I will take time to carefully consider the outcome and recommendations of the review and approve the revised prosecution policies prior to their publication. I expect that the revised prosecution policies will be published by Spring.

I note that I will receive an invitation to give evidence to the Committee in due course and look forward to receiving same.

Yours sincerely,

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