

Citizen Participation and Public Petitions Committee

4th Meeting, 2023 (Session 6), 8 March 2023

PE1994: Review the trial process for sexual offence cases

Lodged on	15 December 2022
Petitioner	Margaret Fagan
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to undertake a review of the trial process and handling of witness evidence in sexual offences cases.
Webpage	https://petitions.parliament.scot/petitions/PE1994

Introduction

1. This is a new petition that was lodged on 15 December 2022.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. While not a formal requirement, petitioners have the option to collect signatures on their petition. On this occasion, the petitioner elected not to collect this information.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.

Action

The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

Annexe A

PE1994: Review the trial process for sexual offence cases

Petitioner

Margaret Fagan

Date lodged

15 December 2022

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to undertake a review of the trial process and handling of witness evidence in sexual offences cases.

Previous action

I contacted David Torrance MSP.

Background information

The laws this government have brought in to protect the victim are long overdue but it has swung way over the other way, which is leading to more convictions. This has ruined a lot of innocent people's lives as the accused lawyers have been told their evidence is irrelevant and cannot be used.

There are lots of stories of medical reports being classed as not admissible to witness statements being taken but not used. People are told again that it's not relevant and it is only the accused evidence this is happening to.

The law should be seen to be fair for all but it is not. The Scottish Government's new laws are being blamed for it by the legal aid court lawyers.

Annexe B

The logo for SPICe (The Information Centre) is a purple rounded rectangle. The text 'SPICe' is in white, with 'SPIC' in a larger font and 'e' in a smaller font. To the right of 'SPICe', the text 'The Information Centre' is in white, and 'An t-Ionad Fiosrachaidh' is in a smaller white font below it.

The Information Centre
An t-Ionad Fiosrachaidh

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1994](#): Review the trial process for sexual offence cases, lodged by Margaret Fagan

Background

The [petition](#) seeks a review of the trial process and handling of witness evidence in sexual offences cases.

It raises concerns that some of the reforms aimed at protecting complainers have unduly disadvantaged the defence in such cases. In particular, it refers to defence evidence being held as irrelevant and not admissible.

The Scottish Government's [written response](#) (2023) to the petition interprets it as referring to legal provisions regulating the use of evidence about the sexual history or character of complainers in sexual offence trials. The matter is covered by sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995.

Restrictions on evidence relating to sexual offences

The provisions in sections 274 and 275 of the [Criminal Procedure \(Scotland\) Act 1995](#) set out some restrictions on evidence. They are intended to protect complainers in sexual offence trials from inappropriate questioning about their sexual history and character.

The current provisions are the result of reforms made by the [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002](#).

Reports on the use of the provisions include:

- HM Inspectorate of Prosecution in Scotland (2022) – [Inspection of COPFS practice in relation to sections 274 and 275 of the Criminal Procedure \(Scotland\) Act 1995](#)
- Equality and Human Rights Commission (2020) – [The use of sexual history and bad character evidence in Scottish sexual offences trials](#).

The provisions were also considered as part of a [review on improving the management of sexual offences cases](#) chaired by the Lord Justice Clerk (Lady Dorrian). Recommendations of its final report (2021) include the provision of independent legal representation for complainers to help ensure they receive the protection provided for in the legislation.

The Scottish Government has sought views on the above recommendation as part of its consultation on [Improving victims' experiences of the justice system](#) (2022).

Criminal Justice Reform Bill

The Scottish Government's [Programme for Government 2022-23](#) (2022) includes plans for a Criminal Justice Reform Bill. It is, amongst other things, intended to make reforms building on the recommendations of the above-mentioned review of the management of sexual offence cases.

It is anticipated that the Bill will be introduced in spring/summer 2023.

The Scottish Government's written response to the petition notes that consideration of the Bill will provide an opportunity for scrutiny of how sexual offence cases are dealt with.

Frazer McCallum
Senior Researcher
03/02/2023

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 briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

Annexe C

Scottish Government submission of 12

January

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

Thank you for your email of 16 December, in which you requested a written response from the Scottish Government to the issues raised in petition PE1994.

The Petitioner, Margaret Fagan has called on the Scottish Parliament to urge the Scottish Government to undertake a review of the trial process and handling of witness evidence in sexual offence cases. In particular, the petition raises concerns about an increase in conviction rates for cases involving serious sexual offences arising from what the petitioner claims to be unfair restrictions on the type of evidence that an accused can lead in court.

We understand that the restrictions referred to in the petition may relate to the reforms introduced through the [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002](#) which amended the restrictions on evidence relating to sexual offences as set out at [Section 274 of the Criminal Procedure \(Scotland\) Act 1995](#). [These reforms were considered necessary to strengthen the protections for complainers](#) in sexual offence cases against irrelevant evidence being led which related to a complainer's character or sexual history. It was recognised that such evidence represented an invasion of a complainer's privacy and dignity and caused additional and unnecessary distress to complainers as a result.

In broad terms, these provisions prohibit the leading of irrelevant evidence in cases involving sexual offences about complainers' past sexual behaviour or other behaviours which seek to cast doubt on their reliability and credibility as a witness. They were introduced specifically to prevent the leading of evidence which is of limited relevance to the particulars of the case or which unduly undermines the credibility of the complainer.

Under [Section 275](#) of the Criminal Procedure (Scotland) Act 1995, an accused can apply to the court to lead evidence at trial that is prohibited by Section 274 provided that they can demonstrate that it is pertinent to the specifics of the case. This acts as a safeguard to ensure that evidence which relates to a complainer's character or sexual history which is relevant may, in some circumstances, be admissible. The decision on whether such evidence is considered admissible is made by a judge and may be appealed, providing a further safeguard to ensure that the proper balancing of interests occurs in individual cases.

The provisions introduced through the 2002 Act were not intended to increase conviction rates for serious sexual offences nor do they infringe on the accused's right to a fair trial but rather focus on achieving a reasonable balance between the rights of the accused and the rights of complainers.

Conviction rates for serious sexual assaults including rape and attempted rape remain lower than for other crimes. [Data published by the Scottish Government](#) demonstrates that conviction rates for rape and attempted rape have been the lowest of all offences in each of the past ten years that comparable figures are available. This trend in conviction rates for serious sexual offences is not unique to Scotland and is also seen across other jurisdictions including England & Wales.

In line with the values and ambition set out in the Vision for Justice in Scotland, the Scottish Government is committed to ensuring Scotland's criminal justice system secures the confidence of the people it serves, particularly in its treatment of serious sexual offences. We are currently giving careful consideration to the recommendations of the Lady Dorrian Review, *Improving the Management of Sexual Offence Cases*, and have recently published the responses to a [public consultation](#) which sought broader views on some of the key proposals.

Our Criminal Justice Reform Bill, announced in the Programme for Government 2023-24 will bring forward proposals for legislative reform arising from that consideration, and will provide an important opportunity for parliamentary scrutiny and a national conversation on these critical matters.

I hope that the information set out in this letter is helpful to the Committee.