

Justice Committee

Civil actions for rape and other serious crimes

Written submission from the Faculty of Advocates

How common it is for a rape victim in Scotland to raise a civil action for damages (against the alleged perpetrator) where there has not been a successful criminal prosecution. Information relating to other parts of the UK would also be helpful.

It is unusual for a complainer after an unsuccessful prosecution for rape to raise a civil action for damages. There may be a number of different reasons for this. An individual who has been through the criminal process may be reluctant to subject herself or himself to civil litigation. Funding may be a problem. The defender may not be able to satisfy any decree including any award of expenses. A defender may not enter appearance to defend the action removing any practical value to proceedings. The availability of criminal injuries compensation (which is repayable to the extent that there is recovery in civil proceedings) may also have an impact.

How common it is for a victim in Scotland, of another serious crime, to raise a civil action for damages in such circumstances. Again, information relating to other parts of the UK would also be helpful.

It is uncommon in our experience for the reasons suggested above. We are unaware of any statistical information.

The main reasons why a victim of rape or other serious crime might wish to raise a civil action for damages in such circumstances (eg to establish the facts and/or obtain financial compensation).

“To see justice done” – especially if there has been no prosecution, or the prosecution has resulted in an acquittal. Giving evidence is undoubtedly traumatic for the victim – we doubt whether a desire for financial compensation is the main driver in such cases.

Current barriers to a victim bringing a civil action for damages (including financial and evidential considerations) and whether those seeking to bring civil actions should have more help to do so.

The need to finance the litigation – and to meet the defender’s expenses in the event that the litigation is unsuccessful; whether the defender will have the means to meet any decree; whether the evidence, on balance of probabilities, is sufficient to prove the case; lack of knowledge of available legal remedies; lack of practical and emotional support.

Any lessons criminal justice bodies should take from instances where there has been a successful civil case but no criminal prosecution. The Committee is, of course, aware that there are important differences between the two systems (eg in relation to the standard of proof).

If a civil court has held that a criminal allegation has been established to its satisfaction then that may cause the criminal authorities to revisit a decision not to prosecute. Although the standard of proof is different it is still necessary for the civil court to be satisfied on the basis of evidence that is cogent, compelling and persuasive. Any lessons to be learned would have to be considered under reference to the circumstances of the decision in the particular case.

The support available to victims of rape and other serious crimes where there is no criminal prosecution.

Agencies such as Rape Crisis and Victim Support provide support and assistance irrespective of whether or not there is a prosecution successful or otherwise.

Faculty of Advocates
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