

Justice Committee

Civil actions for rape and other serious crimes

Written submission from Rape Crisis Scotland

Rape Crisis Scotland welcomes the opportunity to provide evidence on issues relating to civil damages actions in respect of rape.

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 very unusual. Denise Clair's successful action against David Goodwillie and David Robertson last year represented the first such action since 1926. Since this action, however, Rape Crisis Scotland has been in touch with a number of women who wish to discuss this as an option to seek justice following a rape.

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.

No comment.

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).

In 2015-16 (the most recent year these figures are available for) there were:

- 1,809 rape and attempted rapes reported to police
- 216 prosecutions
- 104 convictions

From these figures, it is not difficult to see that there are likely to be many people who feel that they have not received justice after reporting a rape or attempted rape.

In our experience, what rape survivors considering civil action are seeking is validation and a sense of justice. Reflecting on the successful outcome in her case, Denise Clair was very clear that it was not about the money but about establishing the truth about what happened. She was also clear that the civil route would never have been her first option; she would have much preferred for the case to be heard in a criminal court. Similar themes have come up in discussions we have had with other survivors considering civil action - it is only after feeling let down by the criminal justice process that someone tends to consider civil action, and often they are driven by a desperate search for justice and the need to feel that they are believed.

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.

One of the biggest barriers is how any civil action will be funded. For the vast majority of survivors, civil action is not an option unless legal aid is made available.

Further barriers relate to protections which are in place within the criminal justice system for rape complainers but are not available within the civil system. The most obvious of these is protection from direct cross examination by defender/s. This arose in the Goodwillie and Robertson case. While it was resolved in that case, there is nothing to stop it happening in any future case.

A further significant issue relates to anonymity. There is no legislation which provides for rape complainers not to be named; it happens by convention. This means that the position of anonymity for rape complainers in civil cases is unclear. Denise Clair waived her anonymity for this reason, so that she could have some level of control over how she was named. This is not an option for many other rape survivors. Without a guarantee of anonymity, civil action is not a realistic option for some rape survivors. There are wider issues in relation to anonymity of rape complainers, not restricted to civil actions, which would benefit from further consideration – it is our view that there is a case to be made for anonymity to be put onto a legislative basis, rather than relying on convention.

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).

It is our view, having read the judgment in the Goodwillie and Robertson case, that the deciding factor in this case was not necessarily the different burden of proof. It seems to us that the crucial factor was that the evidence was considered by a judge, rather than a jury. There is significant evidence that members of the public who sit on rape juries can be diverted from the relevant facts in a case by preconceived notions or ideas about what constitutes rape, and particularly about women's behaviour before, during and after a rape¹. The recent introduction of judicial directions is a positive step in this regard, but it is our view that more needs to be done to ensure that jury decision making is based on evidence, rather than attitudes and assumptions of jury members.

One of the most common reasons survivors we are in contact with are given for their case not proceeding is the requirement for corroboration. This undoubtedly acts as a barrier to sexual offence cases proceeding to court. It seems to us, however, that there is an open question about whether it was indeed the case that there was insufficient corroboration to prosecute Goodwillie & Robertson within the criminal justice system.

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

¹See for example
http://www.parliament.scot/S4_JusticeCommittee/Inquiries/ABSH2._Ellison_and_Munro.pdf

Rape crisis services across Scotland provide support to survivors of sexual crime, irrespective of whether they have reported or their case results in a prosecution. Services are extremely stretched, however, with many rape crisis centres operating significant waiting lists.

Rape Crisis Scotland's National Advocacy Project was established in February 2016 and provides support to anyone engaged, or considering engaging, with the criminal justice system following a sexual offence. In the first 18 months of the project operating, we provided support and advocacy to 991 survivors of sexual crime across Scotland. This includes cases where no proceedings are taken. The feedback we receive from complainers when they find out that their case is not proceeding is that this can be devastating. Coming to terms with not getting justice can be extremely difficult.

As long as such a small proportion of reported rapes reach court, rape survivors will continue to feel let down by the criminal justice process and potentially turn to the civil justice system in increasing numbers. In this context, it is welcome that the Justice Committee is proactively considering the issues that this raises, and it is right that these issues are considered and responded to. It is our view, however, that civil action in these circumstances can present significant challenges, and will not be a positive option for all survivors. We must also focus our efforts on addressing why so many rape survivors feel so let down by the criminal justice system.

Sandy Brindley
Chief Executive
Rape Crisis Scotland
9 February 2018