



SWRC Inform: Civil Damages

Promoting
justice for
women

[Gender-based violence](#) reported to the police will not always result in a criminal conviction. In Scotland, there needs to be at least two sources of evidence to [corroborate](#) what has happened before an [accused](#) person can be prosecuted. The [judge \(or jury\)](#) needs to be persuaded “beyond a reasonable doubt” that the accused committed the offence he has been charged with. If the judge (or jury) is not sure that the accused committed the offence he has been charged with they will not be able to convict him.

Women often feel let down when it has not been possible to prosecute, the accused is found not guilty or a [not proven verdict](#) is reached.

People of any gender can be affected by abuse and violence (including sexual violence). However, statistics show that that these crimes are more often committed by men against women. Also, as the SWRC specifically supports women aged 16 and over, when we talk about victims in this guide, we will generally refer to women and the perpetrator will generally be referred to as a man. Despite this, we are aware – and do acknowledge – any person can be a victim of these crimes.

In some countries, it is possible to bring a private prosecution against an accused person. In Scotland, it is very difficult to do this and therefore private prosecutions are extremely rare. Unless there are exceptional circumstances, a private prosecution is unlikely to succeed.

It may, however, be possible to seek financial compensation from the perpetrator. This is called **pursuing a claim for civil damages**. This would be done through a civil court which is completely separate from the criminal court, and is a different legal process to the criminal prosecution.

This is a guide that explains:

- **What can be compensated for through a claim for civil damages**
- **Factors to consider when deciding whether or not to pursue a claim for civil damages**
- **The risks and benefits of a claim for civil damages**

What can be compensated for through a claim for civil damages?

“Damages” is the term used to refer to a payment of money to compensate for loss you have suffered as a result of a “wrong” committed against you. Gender-based violence such as assault, rape, sexual assault and harassment are illegal and they are also “civil wrongs”.

If you have experienced gender-based violence, you could potentially take the perpetrator to court to ask for a sum of money to compensate you for the loss you have suffered as a result of the violence. The loss includes any physical or psychological injury you have suffered as well as any financial loss you have suffered. For example, if you are unable to work because of the injury you have suffered, you may be able to claim for your loss of earnings during the period you are unable to work. The civil court can also award compensation for future loss. For example, if your injury prevents you being able to return to work, you can claim for future loss of earnings and pension loss.

No sum of money can truly make up for any injury suffered as a result of gender-based violence. The purpose of a claim for civil damages is to try to put you back in the position you would have been in if the violence had never occurred and you had never been injured. However, it is important to be aware that this process will not result in any criminal conviction or additional sanction or penalty against the perpetrator.

There are certain important factors to take into account when considering pursuing a claim for civil damages. These factors are set out below.

Factors to Consider

Time Limits

There is a time limit of **3 years** in which to raise a court action for civil damages if the incident or abuse occurred when you were an adult. A recent change in the law has meant that the time limit to raise a court action in relation to an incident or abuse that occurred before the age of 18 has been removed (however in some circumstances it may not be possible to proceed with an action for civil damages for abuse that occurred in childhood). **You should therefore seek advice as soon as possible if you wish to take a case for civil damages.**

Assets

As this is a claim for financial compensation from the perpetrator, another factor to consider is whether the perpetrator has the ability to pay any award of damages to you if you are successful. A solicitor can advise you on whether it is possible to pursue a case even if the perpetrator does not have assets.

Wellbeing

The process can be long and stressful. Every claim is different and depending on the circumstances, the time it takes to investigate, raise a court action and conclude a claim can vary from 6 months to a number of years. You will have to talk in detail about what has happened to your solicitor and probably to more than one expert psychologist or psychiatrist. This can be re-traumatising.

If the case gets to a court hearing, you will likely have to give evidence and be [cross examined](#). Unlike in a criminal trial for these types of offences, the perpetrator is allowed to represent himself. A judge can step in to prevent a perpetrator questioning a victim directly but there is no guarantee of this. There is also no automatic right to “special measures” in court for victims (i.e. giving evidence behind a screen or by video link), although you can still ask the court for these.

You also do not have automatic anonymity but you can ask the court for this which, if granted, would prevent the media reporting your name.

Court Process and Legal Representation

You should instruct a solicitor who will give you advice on whether you have a strong case. Your solicitor will be able to investigate and raise a court action for you if you decide to pursue a claim for civil damages. You can raise this type of court action in:

- The Sheriff Court that is local to the place where the incident happened
- The All Scotland Specialist Personal Injury Sheriff Court at Edinburgh Sheriff Court or
- The Court of Session

Your solicitor will be able to advise you which court is best in your situation.

Your solicitor will set out the details of the incident, its impact on you and any loss you have suffered in a document called an “Initial Writ” (or, in the Court of Session, a “Summons”). This document needs to be registered by the court and then “served on” (posted recorded delivery or hand delivered by Sheriff Officers) the perpetrator.

Your solicitor will need to lodge documents in court to support what you are saying, for example:

- A medical report that sets out what impact the incident has had on you
- A police report
- Pay slips if you are claiming loss of earnings and/or evidence that you have not been able to progress your career

After the court papers have been served on the perpetrator, he will have a period of time to tell the court if he wants to defend the court action. If he does intend to defend the court action, he will

then have further time to lodge written defences, setting out his written response to what is written in the “initial writ” (or “summons”).

The court will then issue a timetable of dates by which certain things need to be done, and will set a date for a court hearing. If the perpetrator accepts that he will have to pay compensation to you, he can make an offer to you.

Finally, if the case has not been settled by offer and acceptance of compensation, the case will proceed to a hearing on evidence in front of a sheriff or a judge (called a “Proof”), or a jury trial. You can ask for a jury trial at the All Scotland Personal Injury Court or at the Court of Session. Jury trials are not possible at the local Sheriff Court.

To be successful at the civil court hearing, the judge (or jury) would have to be persuaded “on the balance of probabilities” (i.e. that, based on the evidence, it is more likely than not) that (a) the perpetrator committed the rape or assault against you and (b) that you have suffered a loss because of this. This can still be difficult to prove, and your solicitor will want to gather as much evidence as possible.

If you are successful, you will get a court order called a “decree” that will award a sum of money to you. You can enforce the court order against the perpetrator if he does not pay the compensation due to you voluntarily, for example by freezing a bank account or arresting earnings.

These are all separate legal processes. Your solicitor will be able to advise you on how best to enforce the court order if necessary.

What are the benefits?

If you are successful, a claim for civil damages can:

- help you move forward
- provide recognition from the court that the perpetrator has committed a wrong against you
- result in an award of a sum of money to compensate for the injury and financial loss you suffered

What are the risks?

It is important you are also aware of the risks of this type of action which can include the following:

- an unsuccessful result which could be very difficult for you, particularly if you have been through a criminal trial already.
- if you are unsuccessful, you could be found liable to pay the perpetrator's legal costs. If your case is funded by the Scottish Legal Aid Board, your solicitor may be able to ask the court to reduce this liability (either to nil, meaning you wouldn't have to pay anything, or to the amount of your [legal aid contribution](#) if you have one) – whether to do so is at the discretion of the judge. If your case is not funded by legal aid, you will likely be ordered to pay these costs personally (unless you have the benefit of legal expenses insurance). If you are ordered to pay these expenses, the perpetrator could seek to enforce this order against you in the ways noted above.
- if the perpetrator does not have any money or assets, you are unlikely to ever receive the compensation awarded to you.
- if you have received a criminal injuries compensation award, it is likely you will need to repay this from any award of civil damages (you cannot be compensated twice for the same injury or loss).
- if you received legal aid to pay for your legal costs for investigating and pursuing the claim, you may have to repay these costs to the Scottish Legal Aid Board out of the compensation you receive.

Should I go ahead with a civil damages action?

This is a very personal decision. It is important to think carefully about all of the points set out above. You might want to talk this through with a trusted person who is supporting you and it is important that you take advice from a solicitor.

Remember that this is just a guide and not a replacement for legal advice specific to your situation. Please make sure that you seek legal advice to help you decide what your options are. You can call our [Helpline](#) to discuss your particular circumstances or seek a face to face appointment with an SWRC solicitor at one of our [local surgeries](#).

The [Law Society of Scotland](#) will also be able to suggest solicitors in Scotland who may be able to assist you. You may also find our [Getting Representation Guide](#) helpful.

For further information about the SWRC and
its services please visit our website at:
www.scottishwomensrightscentre.org.uk

HELPLINE:

08088 010 789

Tues: 6 - 9pm / Wed: 1.30 - 4.30pm / Fri: 10am - 1pm

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