

Image-based abuse: routes to justice

How can the civil law help victims of image-based sexual abuse? Zahra Awaiz-Bilal reports on a landmark decision of the High Court



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IN BRIEF

► The High Court's decision in the recent case of *FGX v Gaunt*, where a victim of image-based sexual abuse is awarded nearly £100,000 in compensation, highlights how the civil law can help victims.

► With offences of image-based sexual abuse on the rise, it also acts as a timely reminder for perpetrators that they will face justice for their actions in both the criminal and civil courts.

On 27 February 2023, the High Court handed down judgment in the case of *FGX v Gaunt* [2023] EWHC 419 (KB), which focused on image-based sexual abuse—known colloquially as ‘revenge porn’—and the impact this can have on a victim's life, and in particular on their mental health.

The facts

FGX commenced a relationship with Gaunt in March 2016, and shortly thereafter moved in with him. In October 2017, she found a camera concealed in their bathroom. A search of the hard drives revealed that Gaunt had filmed her naked while she was showering, while she was in the bathroom, and while she slept topless.

FGX also discovered that he had uploaded the images onto a pornographic website, alongside a photograph of her from Facebook showing her face so she could be recognised. Screenshots of payment platform websites indicated that Gaunt had made money from uploading the images.

Criminal offence

Under s 33(1) of the Criminal Justice and Courts Act 2015:

- (a) without the consent of an individual who appears in the photograph or film, and
- (b) with the intention of causing that individual distress.’

An amendment was introduced in 2021, making it also an offence to threaten to release private sexual images and videos.

First and foremost, therefore, it should be reported to the police, so that perpetrators are brought to justice. The maximum sentence for image-based sexual abuse is two years' imprisonment.

In this case, Gaunt was convicted of voyeurism and other sexual offences in September 2020. He received a two-year suspended sentence and was ordered to sign the Sex Offenders Register for ten years.

Civil claim

Where a perpetrator is convicted, their victim may be able to pursue a civil claim for compensation. Such a claim falls under the law of ‘personal injury’ and can be brought directly against the perpetrator of the abuse, provided there are sufficient assets to satisfy the claim.

Following Gaunt's conviction, FGX initiated a civil claim against him for:

- intentionally exposing her to a foreseeable risk of injury or severe distress which resulted in injury;
- infringement of her privacy; and
- breach of her confidence by misusing private information.

Judgment on liability was given in FGX's favour, when Gaunt failed to provide a defence to the claim, and the court was asked to assess damages.

all, victims of image-based sexual abuse is the fact that nude images/videos of them are in the public domain. Having these removed from the internet is therefore, understandably, at the forefront of their minds. But few will know what steps need to be taken to do this.

In FGX's case, expert evidence was sought to address this issue. Simon Wadsworth, the managing partner at Igniye Ltd, a company providing online content removal services including the removal of ‘adult content’, set out three options that are available to remove the images from the internet:

- (1) removal of the content directly from the host site;
- (2) deindexing, whereby links are removed from a search engine's results; and
- (3) keyword removal, whereby specific search terms are removed from a search engine's results.

The cost of this process depends on the quantity of the images. Wadsworth explained that a monthly payment plan, running over a period of six months, at an estimated cost of £3,000 plus VAT per month, is recommended where there are over 20 image links/videos, and £1,000 plus VAT per link removal where there are fewer than 20 image links/videos. Irrespective of which option is exercised, the overall costs would clearly be extensive.

Impact on mental health

Image-based sexual abuse is a surreptitious act, undertaken without consent, which shows complete disregard for the victim. It can have a devastating impact on victims' mental health given the profound breach of their trust, which unsurprisingly impacts their ability to form and maintain interpersonal relationships.

‘It is an offence for a person to disclose a private sexual photograph or film if the disclosure is made:

Removal of images from the internet

The most distressing aspect for many, if not

This case highlights just that.

FGX's evidence was that, as a result of Gaunt's conduct, she had ‘real trust issues’;

she found 'relationships very difficult'; she was 'reluctant to ever leave home'; and had 'completely come off social media'. She also had developed a paranoia about cameras being hidden in places such as shops and hotels, which led to her avoiding trying on clothes in shops and staying in hotels. She had become reclusive and managed to continue working only because she was allowed to work from home.

FGX was diagnosed by a consultant psychiatrist as suffering from chronic post-traumatic stress disorder (PTSD), leading to 'an enduring personality change'. The psychiatrist was of the view that the cause of this was FGX's preoccupation with the knowledge that images of her in a state of undress remain on the internet, out of her control and still accessible to the public. Prognosis was poor, with likelihood of relapse in the future.

Specialist therapy can be the catalyst in addressing the impact on victims' mental health, by validating their experience and restoring their self-esteem.

FGX had undergone extensive therapy since the offences had come to light. To account for future relapses, it was recommended that she attend four to

six monthly follow-up sessions by a psychiatrist for the next two to five years, as well as two further courses of cognitive behavioural therapy.

Assessment of damages

Compensation in claims of this nature is often considered in two separate parts. The first is 'general damages' and the second is 'special damages'.

General damages compensate victims, insofar as money can, for the pain and suffering caused by the abuse and the impact this has had on their mental health. In assessing general damages, the courts refer to the *Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases* and relevant caselaw.

In addition, aggravated damages may be sought where there is additional distress arising from aggravating features of the defendant's conduct. In FGX's case, Mrs Justice Thornton considered the following to be aggravating features:

- ▶ the needless uploading of a photograph of FGX's face onto the pornographic website;
- ▶ the fact that Gaunt obtained payment for the images; and
- ▶ Gaunt's failure to participate in the proceedings, depriving FGX of the opportunity to obtain information about the extent of publication, which remained a preoccupation for her and a barrier to her recovery.

Following consideration of all the above, the judge awarded FGX general damages of £60,000, including an amount for aggravated damages.

Special damages compensate victims for actual quantifiable losses which they have incurred or may incur because of the abuse, such as cost of therapy. The evidential burden of proving the special damages claimed falls on the claimant.

FGX's special damages included:

- ▶ the cost of removing the images from the internet;
- ▶ past and future treatment costs;
- ▶ cost of hotel accommodation where FGX stayed after leaving Gaunt's house;
- ▶ cost of furniture FGX had purchased during her relationship with Gaunt but had left behind; and
- ▶ wasted expenditure on a holiday, which FGX had booked with Gaunt.

The judge considered each loss individually, with reference to supporting evidence, and awarded £37,041.61 in respect of special damages.

Overall, FGX was awarded compensation in the sum of £97,041.61.

While no amount of money would be

sufficient to undo the damage suffered by victims of image-based sexual abuse, it is reassuring that the court approached this case as one of significant value.

A landmark decision

This case is thought to be the first of its kind to be brought before the civil courts in England and Wales.

Cases of image-based sexual abuse involving celebrities have previously hit the headlines, but this is a case concerning an individual who had not chosen to put herself in the public eye. It appeals to the wider public interest, drawing attention to the fact that this is not something which only affects famous people, and can be very damaging for those who have chosen to keep their personal lives private.

Further, it is highly unjust to require a victim to bear the emotional and financial burden of having the images removed from the internet when these were distributed without their knowledge or consent. As the expert evidence in this case highlights, the process involved is not only difficult, requiring technical expertise, but also very costly, and unfortunately not all victims will have the means to do this. It is therefore of huge

significance that the judge ordered Gaunt to pay for the removal of FGX's images, as this will set a firm precedent for future cases.

Image-based sexual abuse is an abhorrent, rampant offence and cases like this should be seen as a warning by perpetrators that they will face serious criminal and financial sanctions for their actions. While this case is the first of its kind, it is unlikely to be the last. Where criminal and civil courts continue to align in their support for victims, this will undoubtedly give others the courage to come forward to seek their own justice. **NLI**

Zahra Awaiz-Bilal is a senior associate in the abuse team at Bolt Burdon Kemp LLP (www.boltburdonkemp.co.uk).