

Analysis

The strategies Prince Andrew could use when Virginia Giuffre takes him to court on sex allegations next month

ANALYSIS

Ms Giuffre alleges she was forced to have sex with the Duke of York when she was 17



By **Serina Sandhu**, Senior Reporter
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With three weeks to go before reaching court, Prince Andrew's strategy to [deal with the sexual abuse lawsuit he is facing in the US](#) remains uncertain.

The legal team around him are keeping their cards close to their chests on how they plan to approach the [civil suit](#) filed in the US by [Virginia Giuffre](#), who alleges she was forced to have sex with Prince Andrew when she was 17.

He has always denied claims that he slept with Ms Giuffre, and says that he has no recollection of ever meeting her.

The Duke of York's civil case reaches court for a preliminary hearing on 13 September, though it has the potential to go on for years – this is how it could play out:

Case struck out

An initial ploy by Prince Andrew's lawyers is likely to be an argument that there is insufficient evidence to justify the case being taken any further.

They would have to satisfy the court that Ms Giuffre's claims and her demands for damages were backed by so little evidence that they had no realistic chance of success.

Equally, a technical mistake in the paperwork on behalf of Ms Giuffre's lawyers could mean the case meets a dead end. Given the level of scrutiny and the profile of the case, however, this seems an unlikely outcome.

It may also seem unlikely at this stage but there is also the possibility that Ms Giuffre herself decides to put a stop to the case.

David Greenwood, a UK-based lawyer at Switalskis Solicitors with expertise in child abuse compensation, said: "I sometimes have clients, who have suffered child abuse, who feel the pressure and the memories and all the hassle of going through this is too much. And they decide not to pursue them."

Engaging in the case

How the lawsuit progresses largely depends on Prince Andrew's level of engagement with it.

A judgment of a US court can be handed down in default because the defendant has not participated in the proceedings by filing a defence.

Richard Marshall, of the law firm Penningtons Manches Cooper, says there is no international convention to recognise and enforce US civil judgments in England unless a defendant voluntarily submits to the jurisdiction of the US court.

He said: "A judgment of a US court therefore can only be recognized and enforced in England as a matter of English common law.

"One of the options therefore that may be considered for those advising the Duke of York would be for him not to participate and accordingly not submit to the jurisdiction of the US court.

"In such an eventuality a default judgment in itself would not be enforceable in England and Wales. This is more likely to be considered as a favourable option where a defendant in the foreign proceedings has no assets in that foreign jurisdiction against which the default judgment can be enforced."

Under this strategy, a defendant should only participate to contest jurisdiction.

If the defendant chooses to participate in the proceedings, "any award of damages made against that defendant would then be enforceable in England and Wales due to the defendant having, in those circumstances, submitted to the jurisdiction of the US court", adds Mr Marshall.

However, barrister Ben Keith, a specialist in extradition and international crime at Five St Andrew's Hill chambers, says it is rather simple for US judgments to be enforced in England at the High Court.

He also points out that it is unclear whether Prince Andrew is covered by diplomatic immunity from the suit due to his time as the UK's trade envoy.

"It's a particularly unattractive argument if you are trying to disprove that you are a sexual predator. It's a legitimate legal argument," Mr Keith adds.

Case goes to trial

Since [Prince Andrew's disastrous interview on BBC Newsnight in November 2019 about his relationship with the convicted sex offender Jeffrey Epstein](#), he has remained silent on the lawsuit. But if the case goes to trial, before a federal court jury, he might decide on the nuclear option and instruct his lawyers to fight.

Mr Greenwood says: "He would essentially have to pick holes in her story and attack her credibility, which would be a very, very high-risk strategy... Sometimes it works, but if it doesn't work, his case in particular, given the sensitivities of what's alleged, he's [scored] a huge own goal by doing that if he loses.

"The other possibility is that... she has some evidence that he doesn't know about yet... and that seals it for her and she wins the case."

Mr Greenwood adds: "I've represented people against organisations with good reputations to protect. They seem to get blinded by the need to protect their reputation. They send in high-powered lawyers to really have a go at claimants' credibility. And it's really horrible to watch."

If the Duke of York continues to say silent, there could be the [ruling in his absence](#).

"If Prince Andrew thinks by saying nothing it'll go away, that is a strategy that may work in the UK – it is not a strategy to deploy in the United States," says US business and marketing expert Allyson Stewart-Allen.

Providing her analysis of the situation, she adds: "As the author of a book called *Working With Americans*, if I were advising him, I would tell him that, 'We're very persistent. We seek transparency. We use the rule of law, as the first resort, not the last resort.' And because of who he is, America is going to be very interested."

Losing the case means Prince Andrew will owe damages to Ms Giuffre – [although the Queen is likely to step in and foot the bill for legal costs and compensation](#).

However, that will not be the end of the matter. "Definitely the prosecutors will be keeping a very close eye on this case," says Mr Greenwood.

Criminal cases have the highest possible burden of proof – beyond a reasonable doubt – whereas the burden of proof in civil cases – on the balance of probability – is lower. Nonetheless, a victory in a civil court for Ms Giuffre would be nothing but encouragement for her team, especially as they and investigators may learn more of the strengths and weaknesses of the Prince's defence.

Regardless of any criminal repercussions, Prince Andrew's reputation would appear have no chance of recovering given public attitudes to child sex abuse.

Without solid reasons to doubt the fairness of any court finding against him, the prince – [who has already stepped back from public duties](#) – would most likely be obliged to step back from

the public eye permanently.

A deal

For Mr Greenwood, the most likely scenario in the Ms Giuffre and Prince Andrew saga is a deal. Each side has an awful lot to lose if the case goes against them so it could make sense to opt for a partial victory rather than risk a total defeat.

“When you get to the stage of closing evidence and witness statements, at that point, but still quite a long time before the trial takes place, the lawyers will know all about the case, and will be advising the parties, ‘Look there [are] risks of losing’.

“So they will probably suggest reaching a settlement, perhaps a meeting behind closed doors to work out what’s acceptable to the parties.”

A settlement, though, will not establish guilt or innocence.

“This is a civil claim for damages not criminal proceedings,” says Mr Marshall.

“Legally this is not about guilt or innocence, it concerns one party seeking monetary compensation against another party in respect of alleged tortious claims.

“An admission of guilt or liability is unlikely, but at any stage of these civil proceedings the parties can reach an out-of-court settlement. If so, it is likely to be confidential and without admission of any liability or culpability.”

But Mr Keith believes a deal is very unlikely “given the reputational damage Prince Andrew has suffered”.

The future

PR agent Mark Borkowski, who has experience in crisis management, says of Prince Andrew’s predicament: “It’s a classic story of power and hubris. I don’t know what options are open for him other than how is he going to deal with retirement.

“What you see sometimes with these types of stories it just sort of disappears into a footnote of history. But this one isn’t going away because it’s unlikely to be resolved.

“It still remains a bit of a cat-and-mouse game with the truth or the untruths.”

Asked if there is any possibility that Prince Andrew could return to public duties in the future, Mr Borkowski says: “In my estimation, in the 21st century, not in a million years.”

A representative for Prince Andrew gave “no comment” on the lawsuit.