

Apologies Bill Consultation Response

1. At the Scottish Independent Advocacy Alliance we recognise the value and importance of an apology and its impact on the resolution of conflict. However we also understand that an apology must be driven by genuine emotion and be delivered at the correct time and manner for any meaningful resolution to take place. There is a danger in legislating on this matter as formalising apologies can diminish their sincerity and believability. We are also concerned that an apology is not a means to avoiding liability altogether and that the focus should be placed on reaching a resolution in a just manner. There are therefore benefits and constraints to legislating in this area.

2. The following case study exemplifies a situation where an apology could have created a more positive environment for things to precede.

3. A mental health service user has had ongoing issues with the landlord, the Local Authority, around repairs and renewals to her home. The service user had severe and enduring mental health problems which had resulted in her refusal to allow access to council repair and renewals teams over a number of years. During that period the property had deteriorated significantly. One issue was the lack of running water which had been the case for 7 years.

4. The LA wished the service user to move to another property while repairs were completed. When the service user refused to move the Local Authority took steps to temporarily evict her. Her belongings were moved from her home into storage without her involvement or full consent. As a result she was very distressed and was supported to make a formal complaint to the Local Authority. The process has taken some time and is still not resolved.

5. The repairs on her property have now been completed and she has moved back into her tenancy but remains unhappy with how things were managed by the Local Authority and has passed on her complaint to the Scottish Public Services Ombudsman.

6. The service user told her advocate that she was very distressed and upset by the way she had been treated and the lack of care and attention she had received. She would have liked to have received an apology and felt that she could then move forward with the Local Authority, but this was not forthcoming.

7. Moreover, it should also be noted that for some, receiving an apology can provide validation of their issue. Therefore, it would be useful to expand the definition of an apology in order to let people know what constitutes an apology and aid them to make a decision whether they genuinely wish to make an apology or not as they will have to cover these basic criteria. The definition of an apology should be extended to

include an admission of fault or responsibility for what has happened and a remedial element. Sometimes claimants may not want to assert blame but just want an acknowledgement of fault with an explanation of how the other party will avoid the situation again or how they will remedy the situation so that they can come to terms with the issue and move forward.

8. The NHS Education for Scotland has issued guidance on apology and we would recommend using the “Three R’s” format¹:

- Regret – Meaningful, real, acknowledge wrongdoing; just say sorry; accept responsibility
- Reason – Be honest – doesn’t mean you will be sued; unintentional and not personal; try hard to do the right thing
- Remedy – Next steps – who will do what; investigate to find out why; provide feedback.

9. This can be illustrated by the following case study provided to us by an independent advocacy organisation.

10. A parent (Advocacy partner) used independent advocacy to support them with a dispute with their son’s local school. The advocacy partner was seeking the assistance of medical practitioners to assess their 8 year old son’s needs as they suspected that he has underlying Additional Support Needs (ASN). The parent tried to engage with the school whilst an ongoing assessment was taking place and with the support of Advocacy requested that an Assessment of needs be carried out by the education Authority and an ASN meeting take place.

11. Despite the request the school stated that they would not be putting any support in place for the child as they did not acknowledge ASN needs without a formal diagnosis. .

12. Following further discussion the Education Authority acknowledged that in terms of the legislation the child was classed as having ASN needs for a number of reasons:

- *Unconfirmed however suspected diagnosis of ASN*
- *The child was being bullied and being racially attacked physically and verbally at school*
- *The child’s home environment was somewhat chaotic due to Mum’s learning disability, and lifestyle choices.*

13. This acknowledgment was followed by a letter of apology which was sent to the parent:

¹ NHS Education for Scotland ‘The Power of Apology’ Focus, Spring 2010

14. *"I understand that prior to this meeting, you have expressed concerns that our ASN meeting processes were not robust and as a result you felt misinformed and at time excluded in the planning for (Childs Name) Additional support needs.*

15. *I apologise that the processes around holding the ASN meeting and formal recording of (Childs Name) needs were not followed in a timely manner. I hope you now feel that we can move forward from this point, in a positive way working in partnership with yourself, to ensure the school offers (child's Name) every opportunity to progress with confidence. "*

16. *After receipt of the letter the parent felt more confident about the situation and believes that the school have become better educated in ASN legislation, that meetings will be scheduled appropriately and conducted with knowledge and participation from all involved including the parent.*

17. Therefore the Scottish Independent Advocacy Alliance agree that if the aim of the Apologies Bill is to remove unnecessary barriers to making an apology then it can be a useful tool in helping to resolve difficulties and can lead to improved confidence for those people who have had issues. However, the risks surrounding apologies should also be taken into consideration and proper guidance and support should be provided to both parties to achieve the best outcome. It is also important to note that an apology may not be sufficient for some people and that evidence of some form of learning that has taken place and measures that have been put in place to avoid the situation occurring again, can be offered alongside an apology to help resolve conflicts, disputes and avoid litigation.

18. Independent advocacy can help to resolve disputes by supporting individuals' to voice their opinions, aiding them to fully understand a situation and helping them to understand their rights. A claimant with access to independent advocacy can get support with their claim. If claimants have a better understanding of the situation and knowledge of their rights this can be very empowering and can provide a positive environment for the resolution of conflict and for apologies to be acknowledged. This is very important in combatting one of the major risks discussed that a genuine apology may be presented but it is rejected. It is therefore imperative that people are given information about independent which can support a positive environment for apologies.