

Justice Committee
Apologies (Scotland) Bill

Written submission from the Scottish Legal Complaints Commission

1. The Scottish Legal Complaints Commission is the single gateway for complaints against legal practitioners (such as solicitors and advocates) in Scotland. We investigate and resolve complaints about inadequate professional services and oversee the way the Law Society of Scotland and Faculty of Advocates investigate complaints about the conduct of their members.
2. Having previously responded to Margaret Mitchell MSP's consultation on the (then) proposed bill, we are glad to have the opportunity to contribute as the Bill is considered by the Justice Committee. Our response mainly addresses the merit of and potential cultural changes arising from a legal protection for expressions of apology.
3. As part of our complaint form we give complainers an opportunity to tell us what they are looking to be done to put their complaint right. Our data suggests that in 25% of complaints made to us an apology (written or verbal) is part of what the complainer is looking for.
4. Where possible, we encourage settlement of complaints at the first opportunity, i.e. directly between the complainer and the practitioner or firm complained about, without our involvement. In order to support this, we provide advice, guidance and training to legal practitioners to help them do this more effectively. We also provide guidance to consumers to assist them in making complaints, including what to reasonably expect.
5. Research carried out for us in 2012¹ indicated that just over half of law firms surveyed said that they used apologies as a method of resolving complaints. In fact, an apology was used in resolving 27% of the complaints covered in the study.
6. In our guides *Best practice in complaint handling – solicitors*² and *Best practice in complaint handling – advocates*³ we mention the 27% figure (above) and suggest that “an early simple apology may often resolve matters”. However, because concerns were raised that this might have implications for professional indemnity insurance our guidance adds “Before issuing any apology you should, however, confirm with your professional indemnity insurers that they are content”. It's unclear how well this works in practice in direct discussions with an aggrieved party.

¹ <http://www.scottishlegalcomplaints.org.uk/resources/oversight-research/2013-research-into-complaint-numbers.aspx>

² http://www.scottishlegalcomplaints.org.uk/media/46748/best_practice_in_complaint_handling_-_guide_for_solicitors.pdf

³ http://www.scottishlegalcomplaints.org.uk/media/57139/slcc_best_practice_in_complaint_handling_-_for_advocates.pdf

7. As has been pointed out by the Faculty of Advocates in its response to the first Bill consultation⁴, insurance is a reserved matter and the Bill would not have any direct effect on insurance terms regarding admission of fault. However, if the Bill gives reassurance that an apology cannot be used as an admission of fault in civil proceedings in Scotland⁵, then practitioners would be more candid about offering an apology without fear of future consequences.

8. The SLCC believes that the changes proposed by the Bill would encourage an honest and open working relationship between practitioners and their clients. This in turn would assist legal practitioners in resolving complaints brought to them, improving the experience for their clients. The practitioners themselves would also benefit from improved client retention, savings in time (and therefore cost) and maintaining a positive reputation.

SLCC
7 May 2015

⁴ <http://www.advocates.org.uk/downloads/news/responses/finalfacultyresponse26sept12.pdf>

⁵ As defined in the Bill.