

Former Boys and Girls Abused in Quarriers Homes

By email

12 May 2017

Dear FBGA,

I was recently made aware of your submission to the Justice Committee in relation to the Apologies (Scotland) Act 2016 (Excepted Proceedings) Regulations 2017 ('the regulations') and I would like to take the opportunity to respond to the points you raise in your submission directly.

The Scottish Government is very committed to the implementation of the Scottish Human Rights Commission's InterAction Action Plan and I see the Apologies (Scotland) Act 2016 as an essential part of that implementation. You may recall that one of the key conclusions from the InterAction process was that organisations would like to apologise, but concerns about an apology being used as a basis for civil liability was considered an obstacle. The Apologies (Sc) Act 2016 is crucial in addressing these concerns. The Act means that apologies can be offered on behalf of organisations such as schools, local authorities, and former care providers without fear that these could be used as evidence of liability in civil courts. This is an important step, in particular for survivors of childhood abuse, for whom, as you explain, receiving a meaningful apology can be a powerful way of acknowledging the harm and damage done.

The introduction of an exception for certain professional regulatory proceedings does not change that position. This exception does not impact upon civil court proceedings determining liability and compensation. Section 1 of the Apologies (Sc) Act 2016 will apply to civil court proceedings with the effect that an apology made (outside the proceedings) will be inadmissible as evidence of anything relevant to the determination of liability. Rather, the regulations except the fitness to practice proceedings of ten professional regulators. Professional regulators are organisations which ensure that people who practice a profession, such as doctors, teachers, or social workers, are appropriately qualified to do so and meet the standards for practising their profession. For instance, should a teacher or social worker behave inappropriately, these regulators conduct investigations and if satisfied that there is sufficient evidence of a failure to meet the standards expected, determine whether the teacher or social worker should continue to practice their profession, having regard amongst other things to whether the individual poses a risk to the public.

The ten professional regulators whose proceedings are included in the exception are: the General Chiropractic Council, the General Dental Council, the General Medical Council, the General Optical Council, the General Osteopathic Council, the General Pharmaceutical

Council, the Health and Care Professions Council, the Nursing and Midwifery Council, the Scottish Social Services Council, and the General Teaching Council for Scotland.

I believe the protection of children and vulnerable adults is paramount. For the safety of children, or vulnerable adults, we need to ensure that assessments of whether someone is suitable to continue teaching or working as a social worker are carried out with all the relevant evidence available. The ten regulators have made clear to us that the Apologies (Scotland) Act 2016 could compromise their ability to protect the public. Apologies can be used as evidence in determining facts and assessing the risk that a professional poses to the public. It is not just the terms of the apology that could be important but also the context in which the apology was made and any undertaking given at the time. An apology could be used as evidence of insight into the professional's own behaviour and wrongdoing and this could be a key factor in a risk assessment. Without an exception from the Apologies (Sc) Act 2016, the ten professional regulatory bodies listed in the regulations would be unable to use apologies in this way in their fitness to practice proceedings.

It was two health regulators who first alerted us to this issue and at the time of Stage 3 of the Apologies Bill we were only aware that this problem arose among the eight health professionals' regulators. This is why Mr Wheelhouse made the commitment in relation to the health regulators. Since then, two other regulators (the Scottish Social Services Council, and the General Teaching Council for Scotland) have come forward and expressed the same concerns. They have similar proceedings to the health regulators and just like the health regulators, their ability to protect the public would be compromised without the exception.

I would like to reiterate that the fitness to practice proceedings included in the exception are not civil court proceedings for compensation and the exception for professional regulatory proceedings has no impact whatsoever on such civil court proceedings.

Excepting these regulators' fitness to practice proceedings from the scope of the Apologies (Sc) Act 2016 will in no way cut across the ability of institutions such as schools or local authorities to make apologies to survivors of childhood abuse. This exception does not in any way prevent, for example, a headteacher of a school apologising on behalf of the school to survivors for past abuse or a chief executive of a council apologising to survivors on behalf of a local authority. Fitness to practice proceedings are about assessing an individual's behaviour at the time something went wrong, ultimately to determine the risk they may pose to the public in the future. They are not about determining liability in the civil courts.

The regulations do not put the Scottish Social Services Council or the General Teaching Council for Scotland in any different position to any other institution which wishes to make an apology. An apology made (outside the proceedings) by either organisation will not be admissible as evidence of anything relevant to the determination of liability under section 1 of the Apologies (Sc) Act 2016. What the exception in the regulations does is to allow for these organisations to take apologies into account when considering the evidence surrounding an individual teacher's and social worker's performance.

I hope you have found this information helpful and I would like to thank you for your continued engagement with the InterAction review process and Scottish Government.

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