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**(By email only)**

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**APOLOGIES (SCOTLAND) ACT 2016: EXEMPTION FOR PROFESSIONAL HEALTHCARE REGULATORS**

Thank you for our helpful telephone conversation on 23 March. I am writing to set out on behalf of the General Dental Council (GDC) the position we discussed.

The GDC is embarked on a programme of regulatory reform. A major component of that reform involves, over time, placing less emphasis on often costly and stressful enforcement – “fitness to practise” investigations – and more emphasis on promoting the delivery of dental professional obligations through, among other things, better engagement, education and support. Key to this is the encouragement of a more open and candid relationship between patients and dental professionals, one in which feedback is valued and not seen as a threat.

In relation to this last point, we can quite see, and indeed support, the intentions of the Act. An early apology can often be all that is required to put something right, and very often is all a patient seeks. Conversely, we see too many cases that escalate to formal regulatory action because of a failure to engage properly with a patient at the earliest opportunity. In fact our own guidance to the dental profession on the “duty of candour” – *Being open and honest with patients when something goes wrong* – was constructed with this principle very firmly in mind. The guidance states, in terms, that “apologising to the patient is not the same as admitting legal liability for what happened”.

At the GDC we recognise that many in the profession perceive there to be a “climate of fear” around dentistry, driven by a range of factors including regulation and what is seen as an increasingly litigious society. We also recognise that many in the profession are concerned that this in turn is leading to the practise of “defensive dentistry”, which is likely to be to the wider disadvantage of patients (in that it may reduce the range of treatment options potentially available to them, for example).

We are also very conscious of the low levels of trust that, rightly or wrongly, currently exist between the regulator and the dental profession (although we are investing significantly in improving this). We have no desire to exacerbate this position by pursuing measures that might give the profession reason to believe that we are seeking powers to take action against individual professionals simply because they happen to have made an apology.

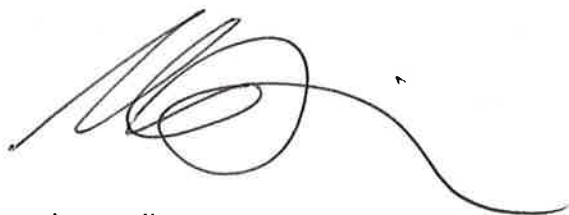
I set these reasons out to explain the deep reluctance that accompanies our view that an exemption from the Act is nevertheless required. Let me explain why.

The way the Act is drafted means that a professional healthcare regulator could never *in any circumstances* admit an apology as evidence in proceedings to the detriment of the person making the apology. While for the GDC such circumstances are likely to be rare, they may nevertheless arise from time to time. The effect of the Act is to close off the option in its entirety, even in cases where it may be *necessary* in order to protect the public. As I hope will be immediately obvious, we view such a restriction as unacceptable.

In an ideal world, the Act might have been drafted in a way that created a strong presumption against the use of an apology in proceedings, a position we are likely to have been able to support. However, the inclusion of a blanket provision appears to leave little option but to seek a corresponding blanket exemption.

I hope this sets out the position clearly. We would be very happy to discuss it further. You can find out more about our programme of regulatory reform in *Shifting the balance: a better, fairer system of dental regulation*, available from our website, [www.gdc-uk.org](http://www.gdc-uk.org).

Yours sincerely

A handwritten signature in black ink, consisting of several loops and a long tail, positioned above the typed name and title.

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