

22 May 2017

Dear Mr Evans,

Clarifying the “apology clause” in the 2006 Compensation Act

We are writing to ask for the support of the ABI in seeking to clarify the “apology clause” in the 2006 Compensation Act. Doing so will enable lawyers, insurers and other professional advisors to feel more confident recommending that their clients make use of it.

Our combined experience in assisting businesses of all kinds to manage their reputations leads us to believe this would provide an important public service. It would also make a substantial improvement in the public perception of the corporate world, including insurers.

The Act clearly states that *“an apology, an offer of treatment or other redress, shall not itself amount to an admission of negligence or breach of statutory duty”*. Legal experts on this area say it is the only such Act that does not define apology and that a definition section could be added to that act to make clear what is covered.

One of the key areas that may need more clarity, based on such clauses in other markets, would be whether an apology under the Act would render insurance contracts void. It is easy to see that while the intent of the clause is very clear, it could be seriously undermined if it meant insurance claims were refused as a result.

As we understand the purpose of the clause, it was to make it easier for businesses and organisations to do the right thing. To help those who had suffered when things have gone wrong without necessarily being seen to be admitting liability for those events. That way, acknowledging the concerns of the public and taking care of people that have been harmed can be prioritised over the question of blame.

Evidence shows that a clear apology can help victims get the closure they need to be able to move on from trauma. A common side-effect of trauma is that victims blame themselves, and it is more likely to occur if others shun responsibility. Those companies which have taken ownership of issues promptly and empathised with public concern have reported enhanced reputations and customer loyalty.

This clause is not sufficiently well known or tested in case law for most lawyers to feel confident advising their clients to do the right thing. In our experience, the usual recommendation to client organisations is to say as little as possible until full facts can be established. The lack of an apology often makes it harder for the victims to move on from the trauma, particularly when human tragedy is involved.

While this causes problems for business, it is often the victims who suffer.

In addition to clarifying the insurance implications, we believe other steps should also be taken quickly. After the election, we believe the incoming Government should use secondary legislation to:

- define what is meant by an apology
- spell out the scope of matters which it relates to
- set out whether an apology is deemed in legal terms to constitute an admission, or if it is simply not admissible as an admission of liability

To avoid the danger of "hollow" or meaningless apologies there should also be a requirement for an apology to include a commitment to look at the circumstances behind the event, with a view to preventing it from happening again. The recent Scottish Apology Act does this well.

Once the clause is clarified it will be easier to make it better known in the legal, insurance, business, and communications worlds, better fulfilling its purpose.

Our concern for this reform is informed by many years working in the communication and crisis management fields. We have spent too much time helping companies and clients do the right thing, only for them to be told by their legal advisors or insurers that the law prevents them from doing so.

We have already had an initial discussion about this campaign with your head of public affairs, Seth Williams, who is familiar with our plans. We very much hope we can count on your support in clarifying this important issue?

Your sincerely,

Guy Corbet

Corbet Communications
guy@corbet.co
07771 903 549

Nick Wright

Nick Wright Consulting
nick@nickwrightconsulting.com
07989 418 848

Mr Huw Evans
Director General
Association of British Insurers
One America Square
17 Crosswall
London
EC3N 2LB