

23 June 2017

Dear Secretary of State,

Clarifying the “apology clause” in the 2006 Compensation Act

Having written to your predecessor about this before the election, and not had a response, we hope you will now be able to address this.

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

We have seen most recently in the tragic Grenfell Tower aftermath how important it is to be compassionate in the wake of disaster. That goes for those who have suffered and those in positions of responsibility. Yet, at present, the law deters compassion.

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 make a substantial improvement in the public perception of the corporate world, and make it easier for people who have suffered to move on with their lives.

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.

As we understand this, the purpose of the clause 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. Acknowledging the concerns of members of the public and taking care of people that have been harmed could then be prioritised over questions 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. Indeed, in our experience, the usual recommendation to client organisations is to say as little as possible until full facts can be established. Consequently, 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.

We therefore believe steps should be taken quickly to clarify the clause:

- to define what is meant by an apology
- to spell out the scope of matters which it relates to
- 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 clarify whether an apology would render insurance contracts void

We believe this should be possible with secondary legislation and thus not require valuable Parliamentary time. Were Parliamentary time required, it would be preferable to have a more comprehensive stand-alone Apology Act.

To avoid the danger of "hollow" or meaningless apologies there should 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.

The apology clause needs to be better known in the legal, insurance, business, and communications worlds. It will be easier to achieve that once the clause is clarified to fulfil its original purpose more effectively.

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 would like to meet you to discuss this further, and we look forward to hearing from you.

Your sincerely,

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