Justice Committee

Stage 1 Report on the Apologies (Scotland) Bill
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Justice Committee

To consider and report on a) the administration of criminal and civil justice, community safety and other matters falling within the responsibility of the Cabinet Secretary for Justice and b) the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.

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Note: The membership of the Committee changed during the period covered by this report, as follows:
Margaret McDougall joined the Committee on 3 September 2015, replacing Jayne Baxter
Introduction

Overview of scrutiny

1. The Apologies (Scotland) Bill\(^1\) was introduced in the Scottish Parliament by Margaret Mitchell MSP on 3 March 2015. The Justice Committee was designated as lead committee for Stage 1 consideration of the Bill on 17 March.

2. The Committee issued a call for views on the Bill on 31 March which received 17 written submissions\(^2\) and a memorandum setting out the Scottish Government’s position on the Bill\(^3\). The Committee took evidence on the Bill over three meetings in June, hearing from a range of legal and human rights bodies, health professionals, insurance lawyers, a local authority, an ombudsman, a medical and dental union and an expert in mediation (on 9 June). The Committee later heard from Paul Wheelhouse, Minister for Community Safety and Legal Affairs (on 16 June) and the member-in-charge of the Bill, Ms Mitchell (on 23 June). A supplementary written submission\(^4\) was provided by the Minister between these two sessions (on 17 June).

3. The Finance Committee’s call for evidence\(^5\) on the Financial Memorandum (FM)\(^6\) received seven responses. That Committee agreed not to take any further evidence or to formally report on the FM. The Delegated Powers and Law Reform Committee published its report\(^7\) on the Bill’s Delegated Powers Memorandum on 28 April, in which it approved the only delegated power in the Bill (under section 2(3)\(^8\)) without further comment.

Background to the Bill

Proposal for a members’ bill

4. On 29 June 2012, Ms Mitchell lodged a draft proposal for a members’ bill to provide that an expression of apology would not amount to an admission of liability and would be inadmissible as evidence, for the purposes of certain legal proceedings. A consultation\(^9\) on the draft proposal ran from 29 June to 28 September 2012 and received 62 responses. The consultation document noted that “an apology, in addition to acknowledging that something has gone wrong and undertaking to address it, can be cathartic and give closure to the recipient”. It went on to suggest that the purpose of an apologies bill would be to provide legal certainty that an apology cannot be used as evidence in civil proceedings, thereby removing one of the barriers to making an apology.\(^10\)

5. The summary of consultation responses noted that, of the 22 respondents who answered the question on the general aims of the proposed members’ bill, 86% said they supported the aims and 14% were undecided. The summary also noted that a further 17 respondents expressed indirect support for the general aims, for example, in a covering letter.\(^11\)
6. Ms Mitchell gained cross-party support from 24 MSPs\textsuperscript{12} and therefore secured the right to introduce a members’ bill to give effect to her proposal. She went on to introduce the Apologies (Scotland) Bill on 3 March 2015.

Other jurisdictions

7. In recent years, a number of jurisdictions have enacted legislation preventing apologies from being used as evidence of liability in civil proceedings. The US state of Massachusetts was, according to comparative research,\textsuperscript{13} the first jurisdiction to enact such laws (in 1986), and was followed by other common law jurisdictions in the USA, Canada, Australia, and England and Wales.

8. There is considerable variation in the scope of apologies legislation worldwide, with some covering ‘full apologies’ – i.e. both expressions of regret and an admission of fault, and others applying only to ‘partial apologies’ – i.e. only expressions of regret.\textsuperscript{14} In some jurisdictions, apologies legislation applies to all civil matters, while, in others, the scope is limited to a medical setting.\textsuperscript{15}

The Compensation Act 2006

9. Section 2 of the Compensation Act 2006\textsuperscript{16} in England and Wales provides that “an apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty”. The scope of this provision is narrower than the proposal in Ms Mitchell’s Bill as it does not expressly cover admissions of fault, is limited to negligence or breaches of statutory duty, and does not prevent apologies from being admissible in evidence.\textsuperscript{17}

10. Section 2 was added to the Compensation Bill by way of an amendment moved by Lord Hunt, a Conservative peer. During the debate on his amendment on 7 March 2006, Lord Hunt noted that “time and time again, we hear the litany from those who have been on the receiving end that an apology would have been nice and it took far too long for the all-important process of rehabilitation to commence”. Explaining that his amendment would place in statute something that was already covered in common law, he said: “I certainly do not want to change the law, but I would like to change the perception that you cannot say sorry”.\textsuperscript{18}

11. The effect of the change, if any, has not been quantified. Indeed, the Ministry of Justice, in a Memorandum to the House of Commons Justice Select Committee on its Post-Legislative Assessment of the 2006 Act, stated that it had not carried out a detailed examination of the impact of this provision as it considered that this could be seen to undermine the independence of the judiciary and to cast doubt on the way they interpret the law.\textsuperscript{19}

Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill

12. The Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill\textsuperscript{20} (“the Health Bill”) was introduced in the Scottish Parliament on 4 June 2015 and, at the time of writing, is being considered by the Health and Sport Committee at Stage 1. Part 2 of that Bill introduces a duty of candour in health and social care settings. More
specifically, it creates a legal requirement for health and social care organisations to inform people (and their families) when they have been harmed (either physically or psychologically) as a result of the care or treatment they have received.

13. Section 23 of that Bill defines an apology which may be given under the duty of candour procedure as a “statement of sorrow or regret in respect of the unintended or unexpected incident” and specifies that an apology (or other step) taken in accordance with the duty of candour procedure does not of itself amount to an admission of negligence or a breach of a statutory duty. The wording in relation to negligence and breach of statutory duty reflects that used in section 2 of the Compensation Act 2006.

14. The Policy Memorandum on the Health Bill states that “the overarching purpose of the duty of candour provisions in the Bill are to support the implementation of consistent responses across health and social care providers when there has been an unexpected event or incident that has resulted in death or harm, that is not related to the course of the condition for which the person is receiving care”.22 It continues: “the Scottish Government believes that openness and transparency in relation to adverse events is increasingly recognised as an important element to establish a culture of continuous improvement in health and social care settings.”

15. The Policy Memorandum on that Bill indicates that health and care professionals already have a professional duty of candour which relies on professional duties and guidance, but suggests that there is currently variation in implementing this guidance.24

16. This report makes reference to the possible interaction between the duty of candour provided for in Part 2 of the Health Bill and the provisions in Ms Mitchell’s Bill, where considered relevant. It does not, however, give detailed consideration to the aims or merits of introducing a duty of candour for the health sector, which is rightly the role of the Health and Sport Committee as part of its scrutiny of the Health Bill.

The Bill: overview of provisions and evidence received

Policy objectives

Overview

17. The Policy Memorandum on the Apologies (Scotland) Bill suggests that “there appears to be an entrenched culture in Scotland and elsewhere that offering an apology when something has gone wrong is perceived as a sign of weakness” and that “there is also a fear that an acknowledgement of fault can, in some circumstances, lead to litigation”. It notes however that, “in many cases, what a
complainant most wants is an apology, recognition of the situation, and an assurance that the circumstances leading to the situation will be reviewed and improved”. 25

18. The policy objectives of the Bill are therefore to “encourage the use of apologies by providing that an apology (as defined in the terms of the Bill) is inadmissible in certain civil proceedings as evidence of anything relevant to the determination of liability, and cannot otherwise be used to the prejudice of the person making the apology (or on whose behalf it is made)”.26 The Bill also has the broader purpose of encouraging a cultural and social change in attitudes towards apologising.27 The Policy Memorandum notes that the member “believes that primary legislation which deals specifically with the effect of apologies on certain civil liability will reduce the current climate of fear about liability and the blame culture which currently inhibits the making of apologies”. It goes on to state that “the Bill aims to promote the early and effective resolution of disputes by removing concerns about the legal impact of an apology and clarify for the courts how evidence of apologies in the relevant matters should be interpreted”.28

19. The Policy Memorandum further suggests that “a change in approach of this nature, over time, should create a less adversarial climate and promote co-operation and openness, adding that it would also “lead to a reduction in the number of potential pursuers inclined to litigate, where an effective/sufficient apology has been provided”.29

20. There was broad support amongst witnesses for the general policy objectives of the Bill in encouraging the use of apologies. For example, Paul McFadden, the Scottish Public Services Ombudsman, told the Committee that he was “broadly supportive of the Bill from an early stage because [I] think that it is important to make a clear statement and give a clear signal to those public sector staff and to people who deliver our public services that saying sorry is okay when things go wrong”.30 Dr Gordon McDavid said that the Medical Protection Society also “very much support the Bill”, suggesting that it “is a good step in the right direction to allow an open discussion to take place and an appropriate apology to be offered when things go wrong”.31

Role of legislation

21. There was a range of views on whether legislation was the best way to facilitate the cultural and social change in attitudes towards apologising, while some disputed the need for the legislation at all.

22. A number of witnesses told the Committee that they support the need for legislation, including Graeme Watson of the Forum of Insurance Lawyers (FOIL), who said that “legislation of some form has a definite role to play”. He went on to suggest that this role “might be an educative one, but it is also a practical one with a legislative effect in making it clear to those on the receiving end of claims that there is a proper role for an apology that does not bind them to an admission of liability”.32 Dr McDavid agreed that “the Bill is a step in the right direction, but
legislation is a blunt instrument and it is just one tool”, adding “if it can help to bring about change, that is great”. 33

23. However, Laura Ceresa from the Law Society of Scotland suggested that the legislation “does not necessarily add anything to what already exists”. 34 In its written submission, the Law Society went further; stating that it “remains a little unclear how the outlined proposal will actually achieve its aims”. 35

24. A number of other witnesses disputed the need for the legislation on the basis that there was no compensation or blame culture in Scotland that needed to be addressed. In its written submission, the Association of Personal Injury Lawyers highlighted that “the Policy Memorandum … states that the Bill should reduce the ‘blame culture’ which allegedly exists in Scotland”, but argued that “there has been a declining level of litigation in Scotland’s civil courts, and the Apologies (Scotland) Bill should not be used as a solution to a problem which does not exist’. 36 Mr Watson of FOIL agreed with this position, noting that “there is no crisis or floodgate of litigation, regardless of what the perception might be”. 37

25. Responding to these views, Ms Mitchell said “the fact that there was apology legislation at all would go a long way towards giving people confidence [and] it would be helpful for staff who were worried about the issue … to know that the law, legal certainty and the various ways in which evidence plays are covered in the legislation”. 38 She also addressed the witnesses’ comments regarding the aims of the Bill: “the Bill is not intended, as some people mistakenly thought, to tackle any perceived increase in litigation, but rather to address the very real problem of a reluctance and failure to offer an apology for fear of litigation”. 39

Cultural change

26. There was doubt amongst some witnesses as to whether the Bill would bring about the cultural and social change in attitudes towards apologies intended by the member in charge. In its written submission, the British Medical Association, invited the Committee “to consider whether this legislation alone would drive cultural change” 40 and the Forum of Insurance Lawyers said “it is a moot point as to whether social and cultural change (as envisioned in the Policy Memorandum) will be engendered”. 41 The Medical and Dental Defence Union of Scotland also said it was “not convinced that the Bill will facilitate wider cultural and social change”, highlighting that currently, in any case, “an apology is not generally considered an admission of liability and carries little weight in civil litigation proceedings”. 42

27. The Faculty of Advocates also expressed doubts, stating that “the Faculty would like to believe that such a simple change in the law would have the dramatic effect suggested, but remains sceptical that the Bill will achieve its desired end”. It went further in arguing that “indeed, it might promote the view (in the recipient) that an apology is not worthwhile because it has only been made with a view to avoiding (or lessening) consequences, and is, therefore not a ‘real’ apology”. 43
28. However, other witnesses were more positive about the role that the Bill may have in encouraging cultural change. Bruce Adamson of the Scottish Human Rights Commission told the Committee that “the Commission is certainly not suggesting that the Bill is a panacea, but it will play an important role in helping to change the culture.” Mr McFadden, the Scottish Public Services Ombudsman also acknowledged that “the Bill is not going to change the culture on its own”, and suggested that “in addition to a clear statement in the Bill that an apology is okay, we need further guidance and clarity about what makes a good apology.”

29. The Minister told the Committee during evidence on 16 June that the Scottish Government was “very sympathetic to the aim that Margaret Mitchell is trying to achieve of effecting a cultural change.” However, he acknowledged in a letter to the Committee of 17 June that, “as others have noted in their evidence, legislative provision may send a signal but it does not in of itself provide the solution to ensuring cultural change which will result in more apologies being given”. The Minister went on to say that “I accept and support the principle of what Margaret Mitchell is trying to achieve; it is the detail on which we have to find agreement”, adding that “a number of things could be done to the bill that would mean that we could support it, but we would have difficulty with it as it is drafted.”

Fear of litigation

30. Witnesses generally agreed with the statements in the Policy Memorandum that a fear of litigation can inhibit individuals and organisations apologising when something goes wrong. The Ombudsman, in his written submission, suggested that “civil liability is a significant concern amongst those who are wary of apologising and, while legally it is not strictly the case that an apology is an admission of liability, this perception remains a significant issue”. He went on to highlight that “frontline staff still tell us at training sessions that they are scared to apologise because of this risk [of litigation] or even, that they have been advised not to apologise by more senior staff” and argued that the legislation would help to allay these fears.

31. Dr McDavid from the Medical Protection Society told the Committee that in recent survey of 500 MPS members, 67% said that there was a culture of fear in the healthcare sector which, he argued “is really stifling the ability of staff to interact appropriately with patients”. He explained that “one of the main concerns is that they may be scared of reprisals against themselves—that they are fearful that a claim might follow if they say sorry”. He went on to suggest that “it would be much better if we could use this sort of legislation to pass on to the profession that staff are safe and will be able to take appropriate steps—either to give the facts, if they have them at the time, or an assurance that they will look into the matter—without fear of recrimination or leaving themselves liable.”

Empirical evidence on which the Bill is based

32. The Financial Memorandum on the Bill states that “there is evidence to illustrate the effectiveness of the success of the use of apologies measures along with the
significant costs of litigation and compensation which will be reduced with the Bill’s implementation”. In particular, it cites the University of Michigan Health Service’s ‘Michigan Model’ as “the most notable example of these”, which has been introduced in a number of hospitals in the US since 2001 and is founded on three key principles:

- to compensate patients quickly and fairly when inappropriate care causes injury,
- to support clinical staff when the care was reasonable, and
- to reduce patient injuries (and claims) by learning from patients’ experiences.

33. However, the Faculty of Advocates raised concerns that there was little evidence of the effect of the apologies legislation that exists in other jurisdictions. It argued that “despite the numerous jurisdictions (including 36 US states) that have adopted apologies legislation, the Memorandum does not cite evidence of a clear and obvious general effect”, adding that “the only evidence relied upon is from the US and is either of doubtful relevance or is specific to private US healthcare provision”. Mr Stephenson QC of the Faculty went on to argue in evidence that the US legislation was not comparable to the Bill as “one has to recognise that they use a specific American model of costs. He explained that, “in most US states plaintiffs pay their own costs whether they win or lose, so it may be better for a plaintiff to settle for less money in damages now than to wait two or three years and get a bit more but have spent more than the difference”.

34. The Minister for Community Safety and Legal Affairs reiterated that the Scottish Government would welcome a change in culture that supports the effective giving of apologies “but, due to the lack of relevant empirical evidence, we remain unconvinced that legislation of the kind that Margaret Mitchell proposes would deliver that outcome without creating inadvertent injustice”.

35. In evidence, Ms Mitchell acknowledged that “it is difficult to establish hard facts about how the Bill would work”. Indeed, the Financial Memorandum acknowledged this point, stating “in view of the conceptual nature of the provisions of the Bill, it is not possible to quantify with any degree of certainty the exact extent of costs or savings”. During evidence Ms Mitchell said that “there are various apology laws, and in the US, Australia and Canada, such laws have now been in place for 10 to 12 years and they have not been altered or found to be causing problems”. She added: “I suppose that I am turning your point round and saying that there might not be hard and fast empirical evidence, but such laws have been in place for many years and seem to be unproblematic.”
36. The Committee is sympathetic to the aim of the Bill in encouraging the use of apologies to those affected when something has gone wrong, and we consider that legislation may have a role to play in effecting this type of cultural change. While we received little evidence to convince us that there is a serious compensation or blame culture in Scotland that needs to be addressed, it appears from the evidence that there is a fear of litigation in certain sectors which may hinder the use of apologies.

37. We note the apparent lack of empirical evidence on the success of comparable apologies legislation in other jurisdictions, which has made it challenging for us as a Committee to assess the potential impact of this Bill.

Definition of ‘apology’

Overview of provisions

38. The Policy Memorandum states that the Bill applies to all forms of apology, “whether written or oral, formal or informal, whether made by individuals or organisations, and whether made immediately and spontaneously, or only after careful deliberation”.

39. Section 3 of the Bill defines an apology as—

“any statement made by or on behalf of a person which indicates that the person is sorry about, or regrets, an act, omission or outcome and includes any part of the statement which contains—

(a) an express or implied admission of fault in relation to the act, omission or outcome,

(b) a statement of fact in relation to the act, omission or outcome, or

(c) an undertaking to look at the circumstances giving rise to the act, omission or outcome with a view to preventing a recurrence.

40. The Policy Memorandum states that—

“In terms of the Bill, an apology is a statement that someone is sorry about or regrets something (whether than is an act, omission or outcome). Where the statement includes an admission of fault, statements of fact or an undertaking to look at the circumstances with a view to preventing a recurrence, any or all of these three elements qualify as part of the apology itself. The most effective apologies are likely to include at least some of these additional elements, but the Bill will apply to simpler apologies that do not include any of them.”

41. This is a change in scope from the draft proposal for a members’ bill which proposed that apologies which included admissions of legal fault, culpability, or liability would not be protected. According to the Policy Memorandum, Ms Mitchell
decided to revise the definition during the consultation on her proposal after assessing apologies legislation in other jurisdictions, in particular, the New South Wales Civil Liability Act 2002, which covers admissions of fault.\footnote{61}

42. As indicated earlier in this report, section 2 of the Compensation Act 2006 in England and Wales is much narrower in scope than section 3 of this Bill as it does not cover admissions of fault, is limited to negligence or breaches of statutory duty, and does not necessarily prevent apologies from being admissible in evidence. Section 2 of the 2006 Act provides the basis for the duty of candour provision in the Scottish Government’s Health Bill currently being considered at Stage 1 by the Scottish Parliament’s Health and Sport Committee.

General views on the definition

43. The Committee heard from some witnesses about the need for a clear definition of apology in the Bill. For example, Dr Sally Winning of the BMA Scotland, argued that, if a situation arose, she would “want to step in very quickly, preserve my relationship with the patient and fix the problem”, adding that “if the definition is not there, that will trigger a cascade of thoughts that might jeopardise my immediate response to a patient’s needs at the time.” \footnote{62}

44. A number of witnesses said they support the broad definition of apology contained within the Bill. Mr Adamson, for example, told the Committee that “the Scottish Human Rights Commission’s strong view is that the more limited definition is not deficient in human rights terms but there would be value in having a broader, more robust definition”. \footnote{63}

45. However, others argued that the definition of apology in the Bill was too wide and said that they preferred the approach in the Compensation Act 2006. For example, Ronnie Conway of the Association of Personal Injury Lawyers told the Committee “if we had followed something like the Compensation Act 2006, that would have been absolutely fine … however, we have gone far beyond that now with the Bill”. \footnote{64} Mr Watson of the Forum of Insurance Lawyers agreed that “it would be better to follow the model in the Compensation Act 2006, which simply makes it explicit that an apology is not of itself an admissible of liability”. \footnote{65} In written evidence, FOIL suggested that the lack of definition in the 2006 Act had not appeared to cause any difficulty or confusion.

46. There were also concerns regarding an inconsistency between the definition of apology in this Bill and the duty of candour provision in the Scottish Government’s Health Bill, which adopts the approach in the 2006 Act. On this issue, Mr Watson of the Forum noted that the Health Bill “will certainly sit ill with the Apologies (Scotland) Bill as it is drafted” and argued that “at a minimum, the law of unintended consequences would apply …; the courts would have to marry the two”. \footnote{66} Mr Stephenson QC of the Faculty of Advocates also suggested that “there is a risk that the Apologies (Scotland) Bill would substantially undermine the duty of candour procedure that is proposed in the Health Bill”. He said: “I assume that people will think that is not a good idea, because duty of candour provisions are
potentially important for individual citizens who have suffered from adverse events as a consequence of healthcare”, adding “it would be bad result if the Apologies (Scotland) Bill had a deleterious impact on duty of candour provisions”.

47. Mr Stephenson also questioned the inclusion of a statement of fact in the definition (section 3(b))—

“Why include a statement of fact? A husband writes a letter to his wife: “Dear Senga, I’m sorry I broke your nose last night and beat the kids on the way out. Genghis”. Does anybody seriously believe that because that letter starts with the words “I’m sorry” it should be inadmissible in legal proceedings relating to the matrimonial situation, the care of the children, and the protection of that woman from her husband?”

48. Dr Winning of the BMA Scotland also had concerns regarding section 3(b). She highlighted that “usually, complaints do not even arise because matters have been dealt with swiftly and appropriately” but “if statements of fact are required at the stage of an apology, that could be to the detriment of the patient never mind the process and remedying the problem”. However, Mr McFadden, the Scottish Public Services Ombudsman, said in his written submission that, although he was originally concerned about the appropriateness of protecting factual statements, on reflection, he concluded that it was “difficult to extract facts from other parts of the statement”. He added that “facts can also be separately established so including them in this protected conversation does not mean they will not be available in other areas”.

49. Geraldine McCann, Head of Administrative and Legal Services at South Lanarkshire Council suggested that sections 3(a) on admissions of fault and 3(c) on preventing a recurrence were “more appropriate because, particularly at an earlier stage, if someone had got something wrong, the person who was complaining would want to know what steps they would put in place to ensure that it did not happen again”. She added that “they would want to see that the other person had not ignored their complaint, had looked at the facts and circumstances and had tried to do something so that someone else would not have to undergo the same trouble that they had had to undergo”.

50. In a letter to the Committee of 17 June, the Minister clarified the Scottish Government’s position on the definition of apology as proposed in the Bill. He stated that “if apologies legislation is desirable, in our view, it would be preferable not to attempt to provide a definition for apology, which could lead to unintended consequences” for individual pursuers if they were unable to lead otherwise admissible evidence in court. The Minister went on to say that “instead there would appear to be merit in putting the common law on a statutory footing in a similar manner to that which has occurred in England and Wales under section 2 of the Compensation Act 2006”. The Minister also clarified that the approach taken to an apology under the duty of candour provisions in the Health Bill is more aligned to section 2 of the 2006 Act. He therefore indicated that, “if the definition of
apology remains as currently detailed in the Bill, we are of the view that apologies in the context of duty of candour should be excluded from the Apologies (Scotland) Bill”. 73

51. However, Ms Mitchell told the Committee that she saw “huge added value in going beyond the 2006 Act”. In particular “by ensuring that the apology is inadmissible—it has no legal effect and is not taken into evidence” and “to bring closure, the indication expressed in section 3(c) of the Bill that the circumstances can be considered with a view to seeing whether any lessons can be learned is also of huge importance”. 74 She suggested that interaction with the duty of candour could be considered at Stage 2 and that “the Government could choose to make an exception” for this. 75 She went on to clarify that “if, having considered the matter of fault again, along with the consequences, the Government still feels the balance is more against the pursuer, I will be happy to accept that and therefore to exclude fault [from the definition]”. 76

52. Ms Mitchell also advised the Committee that she was “persuaded that the wording of section 3(b) on statements of fact could be omitted from the Bill”. 77

Effect of apology in legal proceedings

Overview of provisions

53. Section 1 of the Bill restricts the use of apologies in legal proceedings (defined by the Bill) by:

   a. making apologies inadmissible as evidence “of anything relevant to the determination of liability” – in essence, stopping them from being used in evidence when establishing liability (section 1(a)), and

   b. prohibiting them more generally from being used in any other way in legal proceedings “to the prejudice of the person by or on behalf of whom the apology was made” (section 1(b)).

54. This section of the Bill would not apply to an apology which is made during the course of the legal proceedings themselves (for example, during a court case). An apology would therefore only be covered if it was made “prior to (or separately from)” proceedings. 78 The Policy Memorandum explains that this reflects the policy of encouraging apologies at an early stage before proceedings have begun and that, where an apology is made in the course of legal proceedings, it would be for the court or tribunal to determine what inference should be taken from the apology. It goes on to state that a recipient of an apology should not be precluded from taking any further course of action, such as pursuing compensation or legal redress by alternative means, by relying on information provided from other sources. 79
Access to justice

55. There was some concern amongst witnesses that preventing apologies being used in evidence when establishing liability could restrict access to justice by individuals. Mr Stephenson QC, for example, argued that “the purpose of the Bill if enacted would be to take away from people rights that they currently have”, explaining that “people who wanted to rely on admissions of fault or fact or simple apologies would no longer be able to put them before courts, and courts would no longer be able to take into account evidential matters that they currently take into account”. Ms Ceresa of the Law Society agreed with this position, highlighting that “if factual evidence … is not available to be utilised to support a civil claim for damages, that might tend to prevent access to justice for claimants and people who are aggrieved”.

56. In its written submission, the Association of Personal Injury Lawyers agreed with this position, referring to the current position that “while an apology is often an important piece of evidence to show that something has gone wrong, the courts will decide if the apology is the most relevant piece of information”. In evidence, Mr Conway from the Association gave an example of where, at the time of a car accident, an individual apologised and admitted “it’s my fault, I was day-dreaming”. He argued that “to remove “it’s my fault” and, secondly “I was day-dreaming”, is to remove an extremely powerful and persuasive piece of evidence.”

57. Responding to a question on whether there was a danger that organisations might use the legislation cynically to reduce individuals’ rights, Mr McFadden, the Scottish Public Services Ombudsman argued that there was a need for supporting guidance and training to avoid such situations. He said that “the Bill provides a balance—it recognises the fact that members of staff often feel bad about things that have gone wrong and allows them the freedom to express that feeling and make it clear to the complainant”.

58. In its written submission, the Scottish Human Rights Commission argued that “the present Bill should be one of a number of measures to ensure [an] effective remedy for survivors of historic child abuse in Scotland”. In oral evidence, Mr Adamson of the SHRC noted however that “one of the big questions that the Committee and the Parliament will have to wrestle with is whether the value of the cultural change that the Bill seeks to promote, given the clear view that we have heard from survivors that they need that change, outweighs the specific circumstance of the unintended consequences [of the inadmissibility of using an apology in evidence]”. Referring to Mr Adamson’s comments on this matter, the Minister, in his letter to the Committee of 17 June, stated that “the Scottish Government is concerned that the proposed Bill fails to strike that balance”. The Minister explained to the Committee that the Scottish Government had particular concerns that “survivors of historical abuse, who already face significant evidential hurdles when seeking to progress a court action, could inadvertently be prevented from taking forward a civil action”.

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59. In evidence, Ms Mitchell told the Committee that “I am aware that there is a balance to be struck to ensure that there are no unintended consequences of injustice to pursuers”. She reiterated the importance of survivors of historical child abuse receiving a meaningful apology and said “with that in mind, I sought to provide the opportunity for the widest possible disclosure, so that victims of historical abuse and others would receive both an acknowledgement of the wrong done or the bad outcome and the full explanation they sought”.

Pre-action protocols

60. A number of witnesses had concerns regarding the interaction between the proposals in the Bill and pre-action protocols, particularly in relation to personal injury cases. The intention behind pre-action protocols for such cases is to put parties in a position where they may be able to settle cases fairly and early without litigation, encouraging early sharing of reliable information and meaningful discussions, and enabling appropriate offers to be made either before or after litigation begins. Pre-action protocols in personal injury cases are currently voluntary, but the Scottish Civil Justice Council’s Personal Injury Committee agreed in December 2014 that they should become compulsory and should apply to all sheriff courts as well as the specialist personal injury court. This work is ongoing, with the expectation that a recommended protocol (or protocols) will be considered and agreed in November 2015.

61. In its written submission, the Association of Personal Injury Lawyers highlighted that “under the current voluntary protocol, any admission of liability is binding, but the Bill would override this provision if an apology is inadmissible as evidence”. It went on to argue that, “if the Bill were to override the provisions on admission of liability in the protocol, this would provide a loophole to defenders which would seriously undermine the effectiveness of a supposedly compulsory process”.

62. The Faculty of Advocates shared the Association’s concerns, highlighting in written evidence “the potential conflict between the Bill and existing measures seeking to simplify and expedite proceedings”. It also explained that pre-action protocols covering personal injury claims and industrial disease claims provide for admissions of liability to be binding but, “where an unequivocal admission of fault has been made, the Bill … would seem to prevent a party from founding upon the admission”. It went on to suggest that “the result might be individual injustice [and] more generally attempts to encourage the adoption of pre-action protocols might be undermined”. The Faculty therefore argued that “the Bill should provide, specifically, that it does not apply to pre-litigation protocols where those protocols provide for the making of binding admissions of fault, although such protocols are not ‘proceedings’.

63. When asked how the Bill would interact with pre-action protocols, Ms Mitchell noted that, if this is not currently clear, “there is an opportunity to make it so as the Bill progresses”.

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64. The Committee notes the views of witnesses, including the Minister, that, rather than including a definition of apology in the Bill, the common law should be placed on a statutory footing along the lines of section 2 of the Compensation Act 2006 in England and Wales. We also note the view of the member in charge that there is added value in going beyond that Act, particularly in ensuring that lessons can be learned. We further acknowledge that the member in charge would be willing to remove section 3(b) on a statement of fact from the definition of apology and would also accept the exclusion of 3(a) on admission of fault if the Scottish Government concludes that this is required to avoid any detriment to the pursuer.

65. We further note that the Minister’s preference, if the definition were to remain, is that apologies in the context of the duty of candour in the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill should be excluded from this Bill. The Committee finds it difficult to see how this Bill and the duty of candour provision in the Scottish Government’s Health Bill could co-exist without some form of exception for health matters. We encourage the member in charge to discuss with the Minister how the Bill might be amended at Stage 2 with a view to resolving the concerns raised in evidence regarding the definition.

66. The Committee notes the view of witnesses that individuals’ rights to pursue civil action could be compromised if, under the Bill, they are unable to draw on the evidence of an apology, whether that be simple apology, a statement of fact or admission of fault. While we understand that the member’s intention was to allow for the widest possible disclosure, particularly for victims of historical child abuse, we have strong concerns that these particular victims could face further evidential challenges in pursuing civil action. We therefore urge the member to consider how best a balance can be struck to ensure that there are no unintended consequences for victims, whilst ensuring that the legislation remains meaningful.

Legal proceedings covered

Overview of provisions

67. Under Section 2(1), the Bill applies to all civil legal proceedings, including inquiries, arbitrations and tribunals) in both the public and private sector, except Fatal Accident Inquiries (FAIs) under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, and defamation proceedings.\(^95\)

68. According to the Policy Memorandum, the reason for the exclusion of FAIs from the scope of the Bill is to take account of the public interest in ensuring that all relevant evidence is led at such inquiries and that the sheriff’s determination\(^96\) is able to set out in full the circumstances of the death. It goes on to state that “the member recognises the importance and sensitivity of the FAI system, and has
been persuaded by consultees that the Bill should not interfere with the way that system currently operates”.97

69. The Policy Memorandum explains that defamation proceedings are not covered in the Bill to protect the ‘offer to make amends procedure’ in the Defamation Act 1986, which allows a person who has published a defamatory statement to make a suitable correction of this statement and a sufficient apology to the aggrieved party. It goes on to state that the making of an offer of amends can be relevant to court proceedings as it can be used as a defence to an accusation of defamation and can be taken into account when awarding damages.98

70. The Bill allows the Scottish Ministers to modify the list of exceptions in section 2(1) by regulations, subject to affirmative procedure.

71. Under section 2(2), the Bill does not apply to criminal proceedings.

72. There was broad support amongst witnesses for the exceptions provided for in the Bill. However, the Committee heard from a number of witnesses that consideration should be given to adding other types of proceedings to the list of exceptions. These issues are explored in turn below.

Children’s hearings

73. In its written submission, the Scottish Children’s Reporter Administration (SCRA) strongly urged the Committee to exclude court proceedings under the Children’s Hearings (Scotland) Act 2011 from the scope of the Bill.99 It suggested that the Bill, as currently drafted, would inhibit the children’s reporter from being able to establish grounds for referral to bring a child to a children’s hearing in order to consider what compulsory measures should be put in place either to protect them or to address their behaviour. It also provided examples of where, under the Bill, apologies made by an adult for assaulting a child or by a child for committing an offence would both be inadmissible as evidence for the reporter to establish grounds of referral to bring the child to a children’s hearing.100

74. In correspondence to the Committee on 17 June, the Minister noted the SCRA’s view that the Bill could have a direct impact on the children’s hearing system in Scotland and said that, “if the definition of apology in the Bill was to remain as currently drafted, consideration should be given to excluding court proceedings under the 2011 Act from the scope of the Bill”.101

75. Ms Mitchell told the Committee that she had met with the SCRA to discuss its position on this matter and it had confirmed that an exception for court proceedings under the 2011 Act would not be necessary if ‘fault’ was removed from the definition of apology in the Bill, as some witnesses propose. Ms Mitchell indicated, however, that, if ‘fault’ did remain within the definition in the Bill, she would be sympathetic to adding these proceedings to the list of exceptions.102
Public inquiries, tribunals and arbitration proceedings

76. The Scottish Government’s memorandum to the Committee on the Bill argued that, if the Bill is to be progressed in its current form, consideration should be given to adding public inquiries under the Inquiries (Scotland) Act 2005, arbitration proceedings and tribunal proceedings to the list of exceptions for the following reasons—

- the policy reasons for excluding FAIs would equally apply to public inquiries under the 2005 Act,
- in arbitration proceedings, which can generally admit any evidence and take a case by case approach to whether to do so, restricting that freedom could lessen the effectiveness of arbitration,
- in tribunal proceedings (which are designed to avoid points of law and focus on points of fact), “if a party to a tribunal cannot describe what someone said, this could limit the tribunal’s power to consider all the relevant facts”.  

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77. When asked for her view on the Scottish Government’s proposal that these proceedings should be excluded from the Bill, Ms Mitchell said “in general, I am happy to look at the Minister’s suggestions for exceptions as the Bill progresses”. However, she highlighted that such exceptions may not be necessary depending on the final wording of the definition of apology in the Bill. She added that “the detail will be a policy decision, but the wider principles of the Bill and the provisions to deliver those are worthy of going ahead regardless of any exceptions that might be incorporated”.  

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Pre-action protocols

78. Pre-action protocols, which are explored in an earlier section of this report, were also raised in the context of possible exceptions to the Bill. In correspondence to the Committee on 17 June, the Minister said that he “would urge consideration of exclusion of pre-action protocols from the scope of the Bill”.  

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79. The Committee accepts the arguments for not including fatal accident inquiries and defamation proceedings within the scope of the Bill. However, we consider that there are strong arguments for a number of other proceedings to be added to the list of exceptions in section 2(1), in particular, court proceedings under the Children’s Hearings (Scotland) Act 2011. The Committee does however note that, if the definition of apology in the Bill was to be amended during the passage of the Bill, as suggested by a number of witnesses and the Minister for Community Safety and Legal Affairs, some of these suggested exceptions would not be required.
80. The Committee notes that the Bill would allow the Scottish Ministers to modify the list of exceptions by regulations and considers that this provides adequate assurance that exceptions can be introduced when required.

Guidance

81. While not specified in the Bill itself, the Policy Memorandum suggests that Scottish Ministers may wish to issue guidance on how to use and respond to the legislation, given that the Bill is “drafted in very general terms and so has potentially significant implications in a wide range of circumstances”. This guidance, it argues could “explain the benefits of apologising early and in full when mistakes are made and could include examples of satisfactory and unsatisfactory apologies”. It further argues that the six-month period between Royal Assent and the time the Act would come into force provided for in the Bill should allow sufficient time for Scottish Ministers to prepare and issue a first version of the guidance.106

82. The Committee received very little evidence regarding the suggestion that the Scottish Ministers may wish to issue guidance on the benefits of apologising early and in full when mistakes are made. Mr McFadden, of the SPSO, did however argue that “a lot of training and guidance is needed to support the Bill that tells people that a human, empathetic response is needed, and that it should be genuine—the sort of apology that is made outside professional life—and aimed at trying to rebuild the relationship”.107

83. Ms Mitchell also commented on the issue during oral evidence, indicating that she envisages “guidelines, a campaign to explain and highlight [the legislation] more, and other measures that will help to promote the Bill, raise awareness of it and lead to better practice and better outcomes”.108

84. The Committee asks the member in charge to pursue with the Minister whether the Scottish Government would be willing to issue guidance as proposed in the Policy Memorandum to the Bill on how to use and respond to the legislation.

The UK context

Medical professional standards

85. While those health professionals who gave a view on the Bill broadly supported its aims, they questioned how the Bill would interact with their UK-wide professional standards in practice. The BMA Scotland, for example, suggested that “there is a real risk, irrespective of the status of an apology in Scots law, that the GMC might consider one as an admission of fault or evidence of poor performance in the course of their pursuance of individual cases”. It went on to state that “professional
regulation is a reserved matter and, as such, the Scottish Government has no
direct authority over the GMC … therefore, it is unclear at this stage how this
legislation could prevent such an apology made by a doctor being inadmissible or
immune to investigation in the professional regulatory situation”. 109

86. Dr Martin of the Medical and Dental Defence Union Scotland raised similar
concerns. He suggested that the Bill would “not allow doctors in Scotland the
freedom to apologise without fearing the fact of that apology being used by their
regulator to pursue or adjudicate on an investigation”. 110 Dr Winning from the BMA
Scotland told the Committee that her concern was “how we could protect doctors
and fulfil the Bill’s intentions on legal certainty and admissibility on a UK basis with
the GMC”. 111 Dr Anthea Martin agreed that “the statement of fact could still be
founded on by a UK-wide regulator” and argued that, “if you are looking for full
disclosure, openness and learning from organisations, the duty of candour should
be your tool—not the bill.” 112 However, Dr McDavid told the Committee that “the
Apologies (Scotland) Bill, which the Medical Protection Society supports will
protect doctors from subsequent litigation, unlike the duty of candour, which is
merely a prod in the back to make the doctor give an apology under duress”. 113

87. In correspondence to the Committee of 2 July, the GMC advised that it would
support an apology being inadmissible as evidence of legal liability in civil
proceedings, but not inadmissible for other circumstances, “for example, our
Fitness to Practise and tribunal proceedings, where an apology is a relevant factor
in determining doctors’ insight and the risk they may pose to the public in
future”. 114

88. Professor Craig White, a Scottish Government official, confirmed in evidence that
“there are issues that would need to be considered in the context of the legislation
on the regulation of health professions, which, as you know, is a UK matter, but I
understand that the GMC would be content to discuss addressing such issues
through guidance for its members and its processes”. 115

89. In evidence, Ms Mitchell reiterated that “the Bill as drafted would not require
professionals to apologise and would not place them in any greater peril from
regulatory sanction than they already face”. 116 She restated the GMC’s support for
an apology being inadmissible as evidence in civil proceedings and suggested
that “the detail of how the provisions play out could be considered at Stage 2”.
When asked again whether the healthcare sector should be excluded from the
scope of the Bill so as not to undermine the proposed duty of candour in the
Health Bill, Ms Mitchell suggested that “it will be up to the Government to decide
its policy on the matter” as it “will have the power to vary the list of exceptions and
to include others in section 2(3) of the Bill. However, she added that “my fear is
that if the apology was admissible, that would deter medical professionals and
doctors from giving an apology in the first place”. 117
90. The Committee notes the concerns of health professionals regarding the interaction between the Bill and their UK-wide professional standards. We further note the member’s view that this issue can be considered at Stage 2.

Insurance

91. A number of witnesses questioned whether the provisions in the Bill would change the advice and cover provided by insurers. For example, Ms McCann of South Lanarkshire Council, told the Committee she was “concerned about council insurers, who, if there is any potential for litigation, will stand back and advise us not to apologise, because an apology might raise expectations of compensation to follow when that might not necessarily be the case”. Mr Adamson of the SHRC also highlighted evidence that, in cases of historical abuse, care providers often wanted to give an apology but were given legal advice or told by insurers that they could not do so.

92. In a letter to the Committee of 17 June, the Minister said that “it remains unclear how the insurance industry would interpret this legislation in their contracts, and the implications for insurance cover” and questioned whether “a person giving an apology under this legislation invalidate their insurance contract if their terms and conditions expressly stated that they were not able to give such an apology”. He went on to state “in our view, even with apologies legislation of the kind proposed by Ms Mitchell, there would be nothing to stop insurers from preventing those insured from making such apologies.”

93. The Minister, in oral evidence, said that he would welcome the engagement of the insurance industry to clarify this issue, arguing that “a firm commitment that the Bill will not damage the interests of the people who are insured would be helpful to our deliberations when coming to a formal position on the Bill”. He also indicated that he was still to discuss the matter in detail with Ms Mitchell.

94. Ms Mitchell told the Committee that “I have spoken to and I am very encouraged that the Association of British Insurers (ABI) has chosen not to comment on the Bill”. She said that “more than that, we know that, if ‘fault’ and ‘fact’ are taken out, the ABI will be perfectly happy with what remains, which it seems will be the essence of section 2 of the Compensation Act 2006”. She added that “it is clear that that would not void any contracts [and] I am therefore encouraged that the position that we are in just now would not cause any problems with the insurance companies”.

95. As referred to earlier in this report, Ms Mitchell told the Committee that she was “persuaded that the wording of section 3(b) on statement of fact could be omitted from the Bill”. She also confirmed that she would be happy to exclude ‘fault’ from the definition in the Bill “if, having considered the matter of fault again, along with the consequences, the Government still feels the balance is more against the pursuer”.

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96. The Committee notes the concerns of some witnesses regarding a lack of clarity as to how the Bill might be interpreted by the insurance industry. We also note the member’s view that the Association of British Insurers would be content if the definition of apology was more in line with section 2 of the Compensation Act 2006. However, the Committee is still unclear as to the potential impact of the Bill on insurance contracts and considers that further clarity is needed on how insurers will interpret this legislation in their contracts and what the practical implications for insurance cover will be.

Policy and Financial Memorandums

97. The lead committee is required under Rule 9.6.3 of Standing Orders to report on the Policy Memorandum which accompanies the Bill. The Committee considers that the level of detail provided in the Policy Memorandum on the policy intention behind the provisions in the Bill and on alternative approaches considered was useful in assisting the Committee in its scrutiny of the Bill.

98. The same rule requires the lead committee to report on the Financial Memorandum. The FM explains that the “it is not possible to forecast with any certainty what the cost implications of the Bill might be [as] although the Bill should lead to fewer people taking legal action against those who they believe owe them an apology, it does not prevent anyone from pursuing such claims in the future”. It goes on to state that “overall, it is anticipated that any detrimental financial impact arising from the provisions in the Bill will be minimal, and likely to be more than balanced out by potential savings in the longer term”. It adds that these potential savings could come from reduced costs of pursuing and defending claims and savings in staff time and processes in public and other bodies through a reduction in the number of complaints received.

99. The FM cites the savings achieved through the University of Michigan Health Service’s ‘Michigan Model’ which has been introduced in a number of hospitals in the USA since 2001, and suggests that, if this model is indicative of the scale of reductions to be achieved, the Bill could lead to a 50% reduction in personal injury cases in eight years. It further assumes that the costs of issuing the guidance on how to use and respond to the legislation which is proposed in the Policy Memorandum (but not provided for in the Bill) could be absorbed within existing Scottish Government departmental budgets and that, although there could be savings for the Scottish Court Service resulting from fewer personal injury cases, these may be balanced out by a reduction in fee income. The Committee heard evidence regarding a lack of clarity as to how the insurance industry would interpret this legislation in their contracts and the implications for insurance cover. However, insurance is not covered in either the Policy or Financial Memorandums.
100. The Finance Committee received seven responses\(^{130}\) to its call for evidence on the FM and agreed, on the basis of the evidence received, not to take any further evidence or to report formally on the FM. Other than comments from the Faculty of Advocates, this Committee received little evidence on the financial implications of the Bill. The Faculty argued in its written submission that “despite the numerous jurisdictions (including 36 US states) that have adopted apologies legislation the FM does not cite evidence of a clear and obvious general effect”, adding “the only evidence relied upon is from the US and is either of doubtful relevance or is specific to private US healthcare provision”.\(^{131}\)

101. The Committee notes the acknowledgement by the member in charge in the Financial Memorandum that it is not possible to forecast cost implications of the Bill with any certainty, along with the Faculty of Advocates’ concerns that evidence from the US provided in the FM is not relevant. The Committee also notes that the Finance Committee received a number of written submissions on the Bill but decided that there was no need to report formally to this Committee.

102. We therefore consider that, if the Bill is enacted, the cost implications of the legislation should be monitored closely.

### General principles

103. Under Rule 9.6.1 of Standing Orders, the lead committee is required to report to the Parliament on the general principles of the Bill.

104. The Committee broadly supports the general principles of this Bill, in encouraging the use of apologies in circumstances where something has gone wrong. While we acknowledge that there is a lack of empirical evidence on the success of apologies legislation in other jurisdictions, on balance, we believe that such legislation may have a role to play in changing the culture in attitudes towards apologising, along with other measures such as detailed guidance and training.

105. The Committee does however consider that further work is required at Stage 2 to ensure that the measures in the Bill can work effectively with professional medical standards and with the Scottish Government’s proposed duty of candour. The definition of apology must therefore be reconsidered and we note that the member in charge has already indicated that she would be willing to amend this section of the Bill on the basis of evidence received by the Committee and to ensure it can co-exist with other legislation and standards.
106. Most importantly, we must be reassured that individuals wishing to pursue fair claims are not going to be disadvantaged by the measures in the Bill.

107. The Committee has made a number of recommendations aimed at improving these and other aspects of the Bill which are set out in the main body of this report.
Forum of Insurance Lawyers. Written submission.
Medical and Dental Defence Union Scotland. Written submission.
Faculty of Advocates. Written submission.
Correspondence from the Minister for Community Safety and Legal Affairs to the Committee on Apologies (Scotland) Bill (17 June 2015)
Scottish Public Services Ombudsman. Written submission
Financial Memorandum, paragraph 7.
Financial Memorandum, paragraph 7.
Faculty of Advocates. Written submission.
Policy Memorandum, paragraph 6.
Policy Memorandum, paragraph 6.
Policy Memorandum, paragraph 15.
Scottish Public Services Ombudsman. Written submission.
Correspondence from the Minister for Community Safety and Legal Affairs to the Committee on Apologies (Scotland) Bill (17 June 2015).
Correspondence from the Minister for Community Safety and Legal Affairs to the Committee on Apologies (Scotland) Bill (17 June 2015).
Policy Memorandum, paragraph 7.
Policy Memorandum, paragraph 8.
Association of Personal Injury Lawyers. Written submission.
Scottish Human Rights Commission. Written submission.
Association of Personal Injury Lawyers. Written submission.
Faculty of Advocates. Written submission.
In simple terms, defamation occurs when a person communicates something which contains a damaging and untrue imputation against the reputation of another person.

Section 6 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 requires the sheriff to produce a determination. In doing so, the sheriff is required to consider five areas: a) time and place of the death; b) the cause of death; c) any precautions which may have avoided the death; d) any defects in the system of working which may have avoided the death, and; e) any other relevant considerations.

Policy Memorandum, paragraph 11.

Policy Memorandum, paragraph 11.

All children’s hearings court proceedings are civil in nature (even where the grounds relate to an offence committed by a child) and therefore fall within the scope of the Bill.

Scottish Children’s Reporter Administration. Written submission.

Correspondence from the Minister for Community Safety and Legal Affairs to the Committee on the Apologies (Scotland) Bill (17 June).


Scottish Government Memorandum on the Apologies (Scotland) Bill, pages 2-3.


Correspondence from the Minister for Community Safety and Legal Affairs to the Committee on the Apologies (Scotland) Bill (17 June), page 6.

SPICe briefing, page 7.


British Medical Association. Written submission.


General Medical Council. Supplementary written submission.


Correspondence from the Minister for Community Safety and Legal Affairs to the Committee on the Apologies (Scotland) Bill (17 June 2015).


Financial Memorandum, paragraph 4.

Financial Memorandum, paragraph 4.

Financial Memorandum, paragraph 12.

Financial Memorandum, paragraph 13.

Financial Memorandum, paragraph 14.

Written submissions received by the Finance Committee on the Apologies (Scotland) Bill.

Faculty of Advocates. Written submission.
Annexe A

Extracts from the minutes of the Justice Committee and associated written evidence

16th Meeting, 2015 (Session 4) Tuesday 19 May 2015

Apologies (Scotland) Bill (in private): The Committee agreed (a) the timetable for its consideration of the Bill at Stage 1; (b) witnesses; and (c) to delegate to the Convener authority to approve the final composition of witness panels.

Margaret Mitchell did not participate in this item by virtue of Rule 9.13A.2(b). Gil Paterson declared an interest as a member of the Federation of Small Businesses.

20th Meeting, 2015 (Session 4) Tuesday 9 June 2015

Apologies (Scotland) Bill: The Committee took evidence, in round-table format, on the Bill at Stage 1 from—
Ronnie Conway, Co-ordinator in Scotland, Association of Personal Injury Lawyers;
David Stephenson QC, Faculty of Advocates;
Graeme Watson, Scottish representative, Clinical Negligence Sector Focus Team, Forum of Insurance Lawyers;
Laura Ceresa, Solicitor and member of the Society Health and Medical Law Committee, Law Society of Scotland;
Paul McFadden, Head of Complaints Standards, Scottish Public Services Ombudsman;
Charlie Irvine, Senior Teaching Fellow, University of Strathclyde;
Dr Sally Winning, Deputy Chair, British Medical Association Scotland;
Dr Anthea Martin, Joint Head of Medical Division, Medical and Dental Defence Union of Scotland;
Dr Gordon McDavid, Medicolegal Adviser, Medical Protection Society;
Bruce Adamson, Legal Officer, Scottish Human Rights Commission;
Geraldine McCann, Head of Administration and Legal Services, South Lanarkshire Council.

Roderick Campbell declared an interest as a member of the Faculty of Advocates.
Written evidence

- Association of Personal Injury Lawyers
- British Medical Association Scotland
- Faculty of Advocates
- Forum of Insurance Lawyers
- Law Society of Scotland
- Medical and Dental Defence Union of Scotland
- Scottish Human Rights Commission
- Scottish Public Services Ombudsman
- Charlie Irvine, University of Strathclyde

21st Meeting, 2015 (Session 4) Tuesday 16 June 2015

Apologies (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Paul Wheelhouse, Minister for Community Safety and Legal Affairs, and
Professor Craig White, Divisional Clinical Lead, Healthcare Quality and Strategy
Directorate, Scottish Government.

22nd Meeting, 2015 (Session 4) Tuesday 23 June 2015

Apologies (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Margaret Mitchell, Member in Charge of the Bill, Scottish Parliament.

Roderick Campbell declared an interest as a member of the Faculty of Advocates.

24th Meeting, 2015 (Session 4) Tuesday 8 September 2015

Apologies (Scotland) Bill (in private): The Committee considered a draft
Stage 1 report. Various changes were agreed to and the Committee agreed its
report to the Parliament.

Margaret Mitchell did not participate in this item by virtue of Rule 9.13A.2(b).
Annexe B

List of other written evidence

- Core Solutions
- Federation of Small Businesses
- General Medical Council
- General Medical Council (supplementary submission)
- Medical Protection Society
- Nursing and Midwifery Council
- Professor Prue Vines, University of New South Wales
- Scottish Children's Reporter Administration
- Scottish Independent Advocacy Alliance
- Scottish Legal Complaints Commission
- Simpson and Marwick
- Society of Local Authority Chief Executives (Scotland)