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Dear Convenor

APOLOGIES (SCOTLAND) BILL

I am writing to you in order to set out SCRA's position on the Apologies (Scotland) Bill and its application to the children's hearings system.

As you know, SCRA's evidence to the Committee at Stage 1 called for our proceedings to be excluded from the scope of the Bill due to concerns that the inadmissibility of apologies would inhibit Reporters from establishing grounds for referral.

The Committee's Stage 1 report recognised the validity of these concerns and stated:

"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."

In the period since that report was published, both Ms Mitchell and the Scottish Government have been in touch with us in order to keep us abreast of their thinking on this issue and canvass our views on possible amendments. Those discussions have been constructive and we are extremely grateful to them both for their openness and consideration.

In particular, Ms Mitchell asked us to consider whether removing explicit reference to fault and statements of fact would satisfy our concerns. The revised definition of an apology therefore would read as follows:

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

Having given the matter a great deal of thought, we believe that this revised definition would still potentially cause us some difficulty. No one is suggesting that an apology alone would suffice to establish grounds for referral, but it might well still be an important part of the overall evidential picture. We think admissibility of that kind of evidence should remain a matter for the court to consider rather than being subject to a blanket exclusion.

I would like to make clear that we continue to support the overall policy intent of the Bill, which is defined in the Policy Memorandum as:

“...to encourage the use of apologies by providing that an apology (as defined in 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). The Bill is intended to encourage a change in social and cultural attitudes towards apologising.”

As our Stage 1 evidence noted, we recognise the power that an apology can have for someone who feels that an institution or organisation has in some way let them down or failed to meet the required standards of service. That aspect of the Bill I think has considerable value in relation to organisational culture.

However, the application of those provisions to our system of child protection and youth justice is a different matter. I am unaware of any evidence that individuals are, or have been, inhibited from apologising in the context of children's hearings proceedings. Indeed, to my knowledge no such suggestion was made in any of the evidence the Committee received. If there is no issue with the status quo then there seems to be no obvious benefit to making those proceedings subject to the Bill's provisions and, as noted above, significant risk of doing so.

I hope the Committee will take on board these concerns and ensure that children's hearings proceedings are excluded from the scope of the Bill.

Yours sincerely

Malcolm Schaffer
Head of Practice and Policy