

Apologies legislation passed in Scotland

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It is perhaps rare for a piece of legislation to receive enthusiastic cross-party support in any legislature. However, that is just what has happened in Scotland with the very recently passed Apologies (Scotland) Act 2015.

Over more than two years, Margaret Mitchell MSP has piloted this legislation through the Scottish Parliament with skill and tact. Many of the speeches at the stage 3 debate praised her approach and it was clear that Members of the Scottish Parliament felt that this is how legislation should be made.

As one member noted: "...the actions of the member promoting the bill and the Scottish Government have to be praised in the highest order. They have met regularly, talked through issues and carefully explained the positions that they have taken and why they have taken them. Both sides have been pretty consensual in trying to ensure that we end up with something that the Parliament can be genuinely proud of." That is truly encouraging to read about a modern parliament.

The Scottish Government supported the Bill. The Minister, Paul Wheelhouse said: "...we have always agreed on the value of giving and receiving apologies and the importance of promoting a social and cultural change in attitudes to apologising, particularly in the context of public service provision.

He continued: "It has been made very clear during the bill's passage through the parliamentary process that apologies have the great value of acknowledging that something has gone wrong and demonstrating that lessons have been learned. We all know that mistakes happen—that is a sad fact of life—and that they can often have tragic and long-lasting consequences. However, it is how we deal with those mistakes that makes the difference. An apology can be a way of showing acknowledgement of and respect and empathy for another person. Although it cannot undo past actions, if it is made sincerely and effectively it could provide some form of redress and perhaps give closure to those affected."

Another member commented: "I am sure that we have all had experience of constituents who have suffered some form of misfortune at the hands of public or private sector organisations and have felt aggrieved that they have not received so much as an apology for the distress caused to them. Sometimes an apology is all that the aggrieved person requires; on other occasions, they need to know that action will be taken to prevent the mistake from occurring again so that others will not have to go through what they have experienced. A meaningful apology for harm done can be of great psychological and emotional benefit, and it may sometimes be more helpful than any other action taken."

We also know from experience that such an approach is often more likely than a finding of fault or allocation of blame to bring about constructive change in a timely and cost-effective way.

The Act provides, with a few exceptions:

"In any legal proceedings to which this Act applies, an apology made (outside the proceedings) in connection with any matter — (a) is not admissible as evidence of anything relevant to the determination of liability in connection with that matter, and (b) cannot be used in any other way to the prejudice of the person by or on behalf of whom the apology was made."

By my count, 62 words. Not many. But they have the potential to change our culture if we choose to work hard with the idea and motivation behind the Act. Initially, there were quite a few objectors, many from the legal profession, but that seems to have had more to do with the perceived potential ineffectiveness of the proposal than with serious principle. The question of how effective the Act will be remains to be seen. That, though, is dependent upon the attitude and education which follows its passing. As the Minister said: "It is clear that legislation alone cannot remove social barriers to apologising, but the bill is an important step in changing attitudes to apologies."

One member was clear about what needs to be done: "...we will have to ensure that the right training is provided so that people who are at the front line can do their jobs correctly. We need to publish the right amount of guidance so that we make it easy for people who are at the front line to be aware of the legislation and know how they ought to act. If we do that, when we look back in a couple of years, we will all say that we passed the right legislation, it made a difference and we achieved what we wanted to achieve right at the beginning."

He said: "...although legislation is not a magic formula, it has "a role to play" even if it does not have a dramatic effect. As long as it has some form of effect, it has a role to play. [This Act] is a vital first step that we all hope will have the impact that we desire. What we can say for certain is that, if we did not take this vital first step, we could almost guarantee that we would not see the cultural change that we all want to see."

I have had the privilege of helping to support the Bill on its passage from conception to successful implementation in legislation. In a nice touch, the Act's sponsor referred to an event which I had the honour of organising in the Parliament in 2014 with that very good friend of so many of us in the mediation world, Ken Cloke: "the mediator and internationally acclaimed writer on conflict resolution. Ken's powerful testimonies highlighting the effectiveness of an apology in his own work as a mediator reminded me of and confirmed how important it was to press ahead with the bill secure in the knowledge that aiding a culture of apologising to flourish in Scotland benefits both those who have been harmed and those who are responsible for the harm that has been caused."

This is a really good piece of legislation. Now, it's up to us in Scotland to help to make it work here. Perhaps others elsewhere will be inspired too.