



Is there any power in an apology today?

The latest furore over reality TV and the content of the Jeremy Kyle show begs a question. To what extent is a public apology meaningful and helpful or is it simply a necessary yet tokenist gesture?

I've witnessed the power of a meaningful apology in both my professional and my personal life. Given in the right way at the right time an apology can truly change the atmosphere and nature of an exchange. In my role as a mediator I've often seen a sincere apology break a log-jam in negotiations. However, when ill-timed or poorly expressed, an 'apology' can feed negative perceptions and sour relations even more.

Where apologies fit within the law

Law-making bodies have pursued a number of ways to address apologies. In England and Wales there is a little-known provision in the Compensation Act 2006 (section 2). It states: "[A]n apology, offer of treatment or other redress shall not of itself amount to an admission of negligence or breach of statutory duty".

More significantly, in the medical context there is the "duty of candour" under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. This states that, as soon as reasonably practicable after becoming aware that a notifiable safety incident has occurred, a registered person must (a) notify the relevant person that the incident has occurred and (b) provide reasonable support to the relevant person in relation to the incident, including when giving such notification. It can be enforced by regulatory action and ultimately criminal sanction. However, a defence to all related offences is available where the registered persons took all reasonable steps and acted with all due diligence.

Since February 2016, the Apologies (Scotland) Act 2016 makes it possible to apologise without fear of prejudicing the person making the apology or the apology being used to attribute blame in litigation. It applies to all civil proceedings bar four types of specified actions. It does not apply to criminal proceedings. The Act 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 an undertaking to look at the circumstances giving rise to the act, omission or outcome with a view to preventing the recurrence".

Is there any power in an apology today?- Page 1



Hong Kong was the first jurisdiction in the Asia-Pacific to enact apology legislation. Its Apology Ordinance 2017 has a broad definition of apology. This includes a so-called 'partial' apology that says sorry or expresses regret and a 'full' apology that also admits fault. It also includes apologies made by way of conduct. This could be, for example, an offer to pay the other party's medical expenses, sending flowers or making bows of apology.

The Hong Kong legislature felt it was vital for the definition to be broad and to include full and burden-free admissions of fault to encourage amicable settlement. This is why an apology will not start the countdown to begin proceedings before the relevant statutory limitation period expires. However, it does not make an apology made in a confidential mediation communication admissible. It also does not apply to one made in criminal proceedings.

How do apologies work in a time of heightened cynicism?

We are living in a new, more cynical age, where we often doubt each other's motives. So, if you were involved in a dispute would you know how best to handle an apology?

We do. All of us here at Moot Hill have years of experience working to resolve disputes. We understand the importance of how you express an apology as well as the value of when and in what context you make it.

An apology as a tactical one-shot needs to be wisely and carefully deployed. It also needs to be sincere.

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