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# The Power of Apology

## – helping Public Services say ‘Sorry’

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**7 May 2008**

Professor Alice Brown

Scottish Public Services Ombudsman

**SPSO** Scottish  
Public  
Services  
Ombudsman

**RSA**

The Royal Society for the encouragement of  
Arts, Manufactures & Commerce Founded 1754

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# The power of apology

‘An apology is the superglue of life. It can repair just about anything.’

*Quote by Lyn Johnston, creator of the Comic Strip “For Better or For Worse”, from lecture delivered at ‘Apologising for Medical Misadventure’ Seminar by Chris Wheeler, Deputy NSW Ombudsman, in Hobart, Tasmania, 6 Dec 2007*

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# Superglue

- Repairing relationships
- Re-building trust and confidence
- Benefits individuals, organisations and society as a whole
- Implies different approach to accountability

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# Outline

- Role and remit of the Ombudsman
- What do complainants want in an apology?
- SPSO Guidance
- Benefits of Apology
- Barriers to Apology
- Examples from overseas
- What now for Scotland?

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# What is an Ombudsman?

“An official who is appointed to investigate complaints”

*Chambers Concise Dictionary*

In the context of UK public services, Ombudsmen are the final, external and independent stage in complaint mechanisms.

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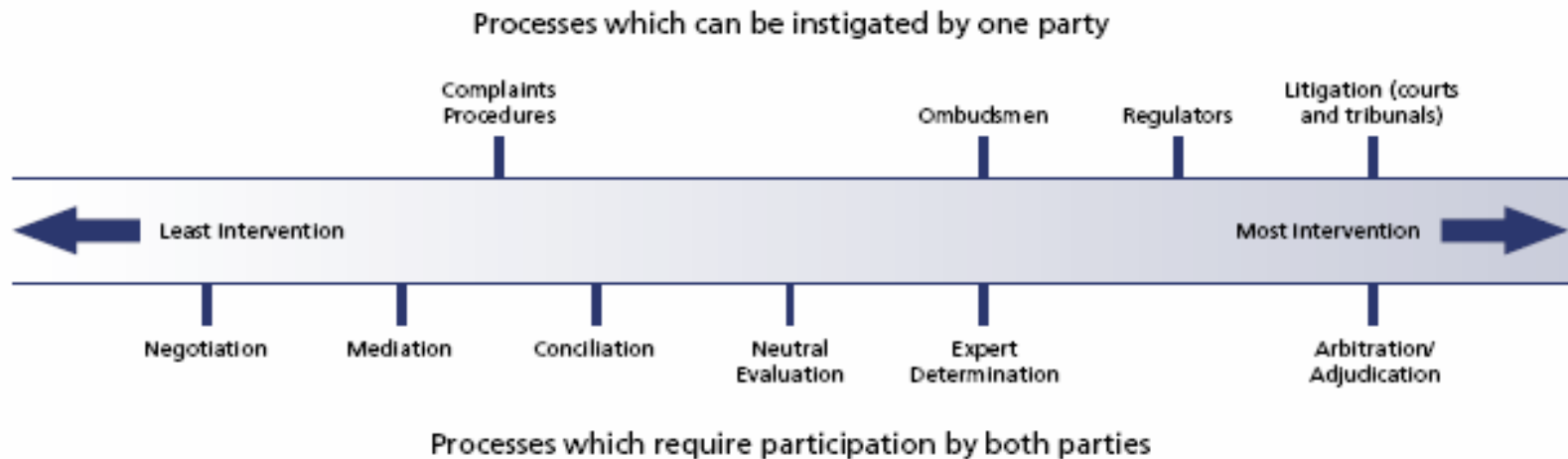
## National Consumer Council view

“Ombudsmen surely rank as one of the Britain’s most successful consumer imports”.

*Ombudsmania, NCC, Feb 2008*

# Part of the administrative justice landscape

## The Spectrum of Dispute Resolution Processes



Taken from *the civil justice system in Scotland – a case for review?*  
The final report of the civil justice advisory group chaired by Lord Coulsfield.  
*Scottish Consumer Council. November 2005*

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# Scottish Public Services Ombudsman

SPSO started operating 23 October 2002

‘One-stop-shop’ bringing together previously separate Ombudsmen for:

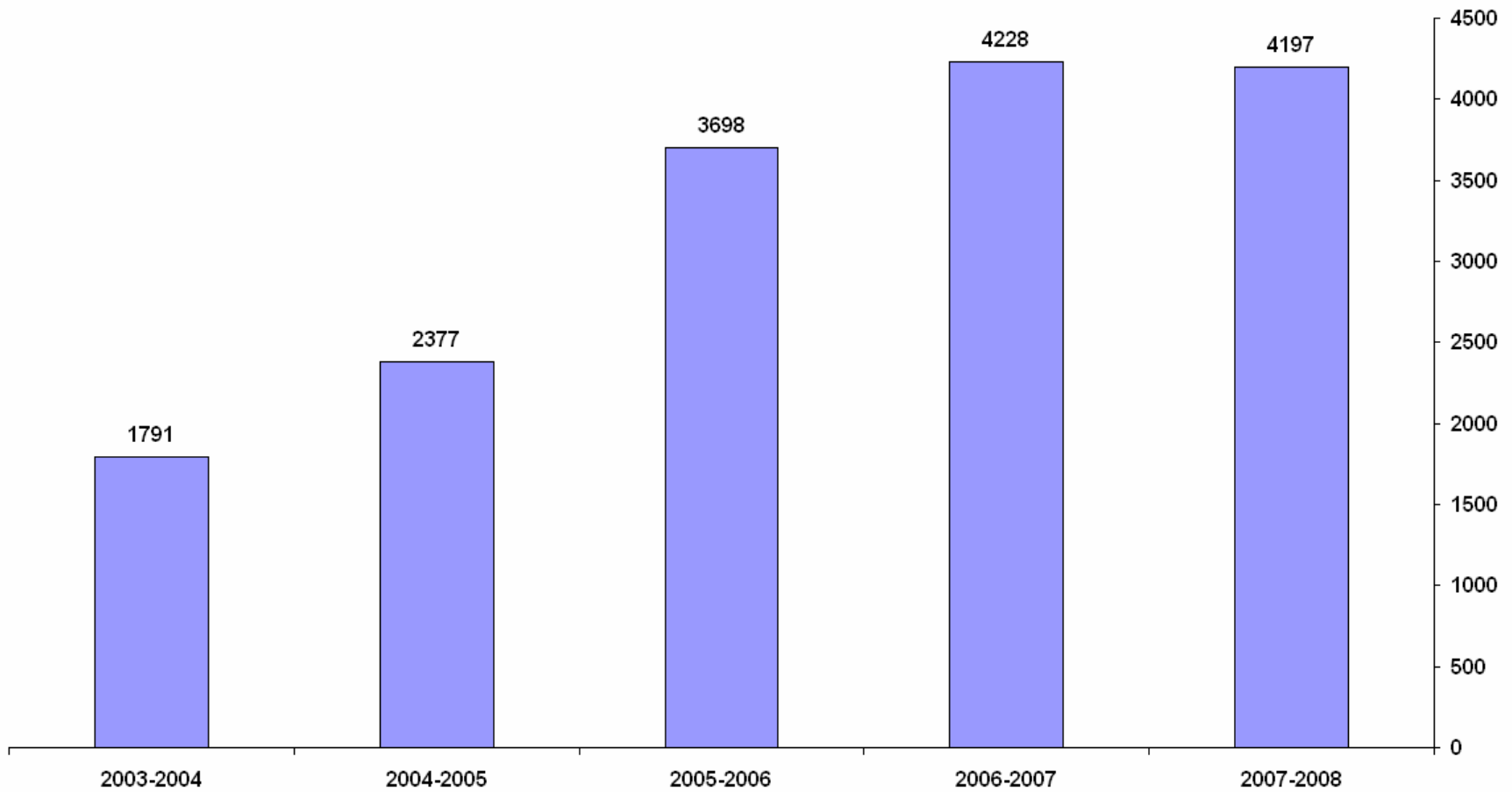
- National Health Service (including complaints about clinical judgement)
- Scottish Government Agencies and NDPBs
- Local Government
- Housing Associations
- Plus new areas (Mental Health, Enterprise bodies, Higher & Further Education from October 05)

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# The Ombudsman's role

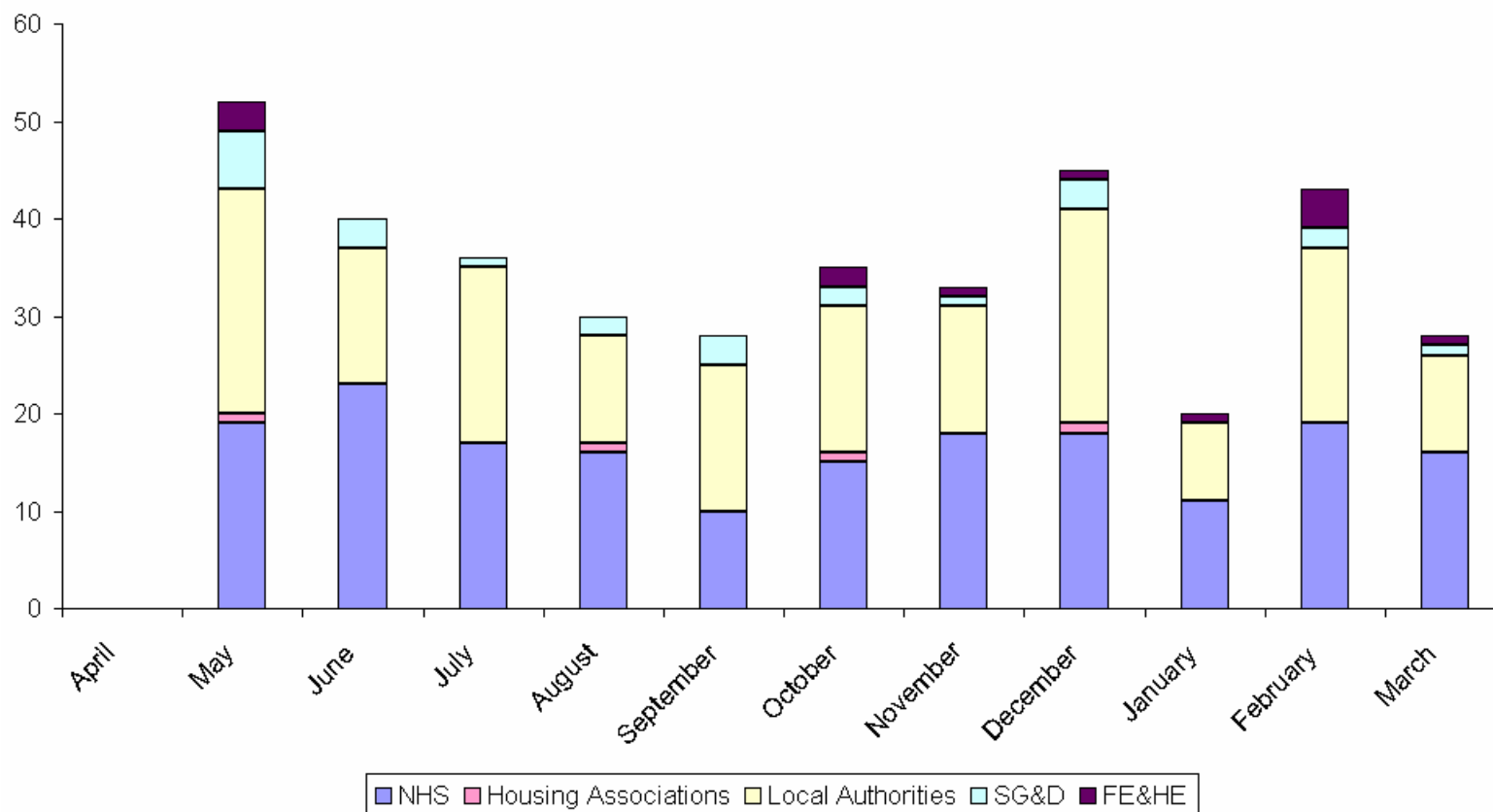
- Handle unresolved complaints
  - when a complainant claims to have suffered injustice or hardship as a result of maladministration or service failure (and clinical judgement)
- Promote good administrative practice
  - good complaint handling
- Part of the governance of Scotland
  - improvement in the delivery of public services

# Casework - Case Numbers (2003 – 2008)



# Casework - Investigation Reports 2007-08

Total reports: 390



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# What do people want when things go wrong?

- 34% want an apology or explanation
- 23% want an enquiry into the causes
- 16% want support in coping with the consequences
- 11% want financial compensation

*MORI Survey commissioned by the Department of Health in England, 2001*

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# What do complainants want in an apology?

- An acknowledgement of the wrong done
- Confirmation that they were right
- An understanding of why things went wrong
- An acceptance of responsibility
- An assurance that the problem has been addressed and will not happen again
- The reconciliation of a relationship
- The restoration of their reputation

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## Quote from complainant

“I am very unhappy with your letter which you seem to be classing as an apology. The terms of the insulting letter are not acceptable to me partly due to the cold and uncaring language. I am at a loss to understand why you would need to query if any distress may have resulted from your actions”.

# How not to do it

Dear Ms

Further to my receipt of the report of the Scottish Public Services Ombudsman I am writing to comment.

I note that your complaint about your treatment was not upheld and that your complaint that your complaint was not properly handled was partially upheld to the extent that my letter of 30<sup>th</sup> June 2005 (copy enclosed) may have caused you some confusion.

In relation to this I am required to apologise for any confusion my letter of 30<sup>th</sup> June may have caused. Since you have taken up a huge amount of the time of many of my staff as well as myself and caused the SPSO to spend a great deal of time on this matter when no doubt other matters could usefully addressed I will do so in order to bring the matter to a close.

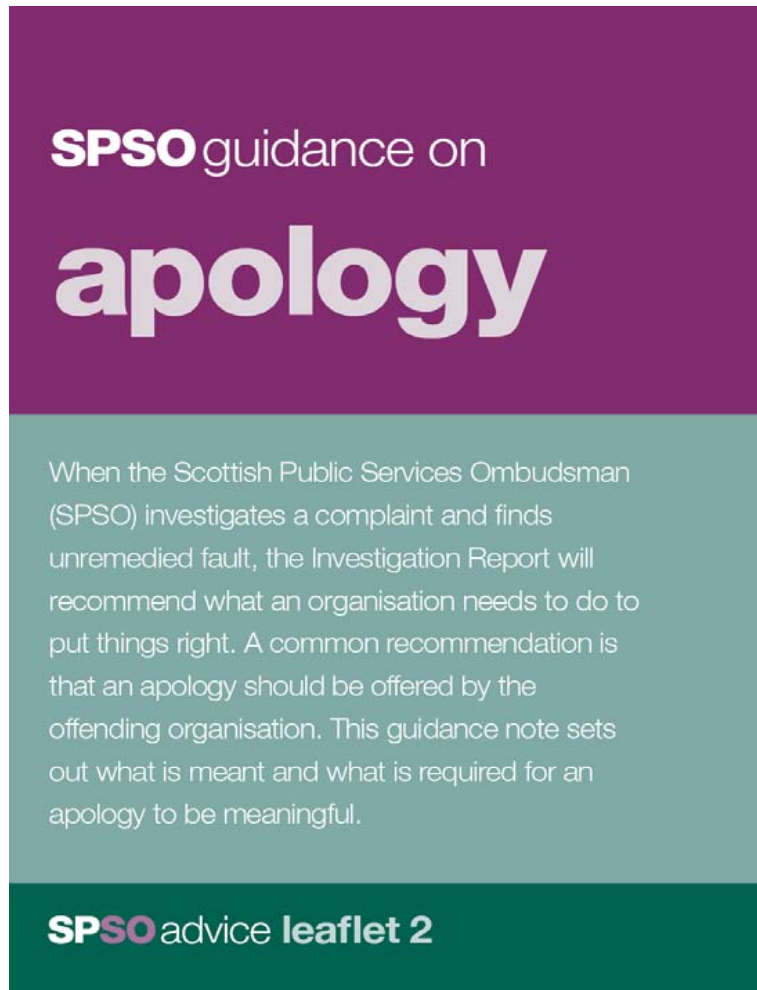
I apologise for any confusion my letter of 30<sup>th</sup> June may have caused.

As you have not been back to the practice for some time the NHS has automatically removed you from our lists.

Yours faithfully

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# SPSO guidance on apology

The image shows the cover of an SPSO advice leaflet. It has a purple top section with the title 'SPSO guidance on apology' in white. Below this is a teal section with a paragraph of text. At the bottom is a dark green section with the text 'SPSO advice leaflet 2' in white.

**SPSO** guidance on  
**apology**

When the Scottish Public Services Ombudsman (SPSO) investigates a complaint and finds unremedied fault, the Investigation Report will recommend what an organisation needs to do to put things right. A common recommendation is that an apology should be offered by the offending organisation. This guidance note sets out what is meant and what is required for an apology to be meaningful.

**SPSO** advice leaflet 2

‘To apologise is good practice and a vital part of any effective complaints management culture.’

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# Why apologise...?

A (meaningful) apology:

- Diffuses emotion
- Allows parties to move forward to a new phase where resolution is possible
- Is the first step to repairing a damaged relationship
- Can help to restore dignity and trust

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# Benefits of apologising

- For the complainant
- For the staff affected
- For the public purse
  - Cost of compensation from NHS in Scotland in 2007 was £13 million
  - Previous record was £8.3 million in 2005
  - Between 2001 and 2004, NHS in Scotland spent a total of £40 million

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# Barriers to apology

- Admitting fault is difficult especially in blame culture
- Lack of support
- Natural reluctance to admit we have made a mistake
- May not appreciate the value of apology
- ‘Easy’ way out – could become meaningless
- Reputational risks/future career
- Fear of litigation

# It is about people

- 1 "We're entitled to the truth": a complainant's story
- 2 Dramatisation of complaint  
*Written by Rishi Trikha, 2006*  
*Performed, Produced and Directed by Foxtrot Theatre Company Limited, 2006*
- 3 Kevin Woods, Chief Executive of NHS Scotland about how complaints inform clinical governance
- 4 Panel discussion  
*Learning from complaints*  
*Media spotlight*  
*Record keeping*  
*Confidentiality and apology*

Learning from complaints



This man's teenage son died in hospital. Dissatisfied with the answers he received when he complained to the NHS, he brought his case to the Ombudsman.

What is the problem? What is the problem that everybody thinks that everybody is going to take legal action against them? All we want is the truth. "I made a mistake, this is what I did, I am sorry."

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# Perception vs Evidence

- Perception – lead to litigation
- Does the evidence support this?

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# Australia's experience

- Pressure on insurance premiums prompted review of the law on negligence
- In 2002 New South Wales first legislated to protect apology
- Since then, most Australian states have introduced legislation to limit the scope of civil liability (including explicit provision that an apology is not an admission of liability)

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# Impact

- In 2004 Chief Justice of NSW noted that:  

‘Filings in the District Court have fallen from about 20,000 in calendar year 2001, to 13,000 in 2002 and to 8,000 in 2003. The reduced rate of filings is continuing this year. It is reasonably clear that something dramatic has happened to civil litigation in New South Wales. Similar effects are seen in other states.’
- Creating a climate of openness in admitting mistakes, and learning from them.

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# British Columbia example

## British Columbia Apology Act 2006

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

### Definitions

1 In this Act:

"**apology**" means an expression of sympathy or regret, a statement that one is sorry or any other words or actions indicating contrition or commiseration, whether or not the words or actions admit or imply an admission of fault in connection with the matter to which the words or actions relate;

"**court**" includes a tribunal, an arbitrator and any other person who is acting in a judicial or quasi-judicial capacity.

### Effect of apology on liability

2 (1) An apology made by or on behalf of a person in connection with any matter

(a) does not constitute an express or implied admission of fault or liability by the person in connection with that

(b) matter,

(b) does not constitute a confirmation of a cause of action in relation to that matter for the purposes of section 5 of the *Limitation Act*,

(c) does not, despite any wording to the contrary in any contract of insurance and despite any other enactment, void, impair or otherwise affect any insurance coverage that is available, or that would, but for the apology, be available, to the person in connection with that matter, and

(d) must not be taken into account in any determination of fault or liability in connection with that matter.

(2) Despite any other enactment, evidence of an apology made by or on behalf of a person in connection with any matter is not admissible in any proceeding and must not be referred to or disclosed to a court in any proceeding as evidence of the fault or liability of the person in connection with that matter.

### Commencement

3 This Act comes into force on the date of Royal Assent.

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# UK experience

- Survey evidence
- Complainants want an apology/change in working practices.....and for someone to be held accountable
- Few started out to seek financial recompense
- But the **process itself** makes them more likely to ask for financial redress

*Source: Ipsos MORI, 2008*

# Compensation Act 2006



## Compensation Act 2006

### Part 1 Standard of care

1. Deterrent effect of potential liability
2. Apologies, offers of treatment or other redress
3. Mesothelioma: damages

### 2 Apologies, offers of treatment or other redress

An apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty.

### 17 Extent

(1) This Act shall extend to England and Wales only.

(2) But section 3 (and section 16(3) to (6)) shall extend to—

- (a) England and Wales,
- (b) Scotland, and
- (c) Northern Ireland.

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# Where does this leave Scotland?

- Cross-party support from MSPs
- Backing from others, eg MDDUS and GMC
- Discussions with Chief Executives in NHS and Local Government
- .....Legislation for Scotland?

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# Re-building trust and confidence

- Legislation not a panacea  
but
- Key foundation to help change the culture

'A meaningful apology can be a powerful tool in rebuilding trust'

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# Changing context

- Rising public expectations
- New Human Rights agenda
  - European
  - UK
  - Scotland
- Moving beyond 'legality' to a 'culture of service'

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# Towards a 'Culture of Service' in Scotland

- Shift from 'them and us' to 'us and us' relationship (Matthew Taylor)
- New form of Accountability?
- Move from adversarial, blame and defensive culture of Accountability to one that is based on mutual respect, trust and proportionality
- Start by saying 'Sorry'?

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