

Consultation on the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

Tystiolaeth i'r Pwyllgor Plant, Pobl Ifanc ac Addysg ar gyfer craffu Cyfnod 1 (Saesneg yn unig)	Evidence submitted to the Children, Young People and Education Committee for Stage 1 scrutiny
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Organisation: British Association of Social Workers (BASW) Cymru

1 The Bill's general principles

1.1 Do you support the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill?

- Yes

1.2 Please outline your reasons for your answer to question 1.1

(we would be grateful if you could keep your answer to around 1000 words)

BASW Cymru welcomes the opportunity to respond to this consultation on the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill. As the Professional Association for Social Work in Wales, BASW Cymru exists to promote the best possible social work services for all who may need them, often societies most vulnerable. This of course, includes children.

Article 19 of the United Convention on the Rights of the Child (UNCRC) states:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

BASW Cymru believes that the proposal for giving children equal protection from assault will allow for the removal of a legal defence that is out-dated and runs counter to the UNCRC and progressive policies of the Welsh Government. The current law relating to physical punishment sits at odds with many progressive policies relating to children's rights in Wales. In 2011 Wales was the first country in the UK to make the UNCRC part of domestic law, the Rights of Children and Young Persons (Wales) Measure 2011 requires Welsh Government to have due regard to the United Nations Convention on the Rights of the Child (UNCRC) in the exercising of all of its functions. The Welsh Government has consistently reiterated the importance of early intervention and prevention and this is enshrined in the Social Services and Wellbeing (Wales) Act 2014. Legislation in this area will provide Wales with an opportunity to further its progressive agenda in relation to the human rights of children and young people. It will ensure that children's right to live free from violence is made real, prevent children and young people from being given mixed messages about violence and ensure that there is no risk that physical punishment will escalate into physical abuse.

A total ban on all physical punishment of children is clear and unambiguous, whereas the current defence of 'reasonable chastisement' is open to interpretation and can create confusion, uncertainty and gives a clear message that children – the most vulnerable members of our society, do not enjoy equal rights to adults.

As Article 19 of the UNCRC states children, like adults, 'have the right to be protected from being hurt and mistreated, physically or mentally'. There is clear evidence to suggest that physical chastisement is not in the best interests of the child and there are other, more appropriate ways of chastising children who have misbehaved. Physical punishment is a human rights issue, law reform to abolish all physical punishment of children is an obligation under international law. Article 19 of the United UNCRC sets out the States obligation to protect children from violence. A defence to assault of children justified under current Welsh legislation, are a breach of the right to respect for physical and psychological integrity protected by Article 8 of the European Convention on Human Rights (ECHR).

The UK has come under repeated criticism from the Council of Europe and the European Union for not honouring its international human rights commitments to provide children with protection from assault. Bruce Adamson, the Children and Young People's Commissioner for Scotland argues that, 'as consensus builds internationally, the position in Scotland is becoming increasingly untenable'. The same can also be said of Wales with Sally Holland, the Welsh Children's Commissioner stating that "Hitting or smacking a child is never loving or caring..."

BASW Cymru believes there are key advantages to giving children equal protection from assault. These are drawn from the report 'Equally Protected? A review of the evidence on the physical punishment of children' (Report commissioned by the NSPCC Scotland, Children 1st, Barnardo's Scotland and the Children and Young People's Commissioner Scotland).

1.No long-term ill effects.

According to Professor Michael Marmot referenced in the above report "The international evidence could not be any clearer – physical punishment has the potential to damage children and carries the risk of escalation into physical abuse." There is strong and consistent evidence that physical punishment is harmful and damages children's wellbeing. According to academic research on the issue of physical chastisement, undertaken by Dr Anja Heilman of the London School of Economics, multiple meta-analyses show evidence which highlights a correlation between physical punishment and increased aggression, anti-social behaviour and depression and anxiety in children, likely to carry on into adulthood. Similarly, there is evidence to suggest that individuals who experience physical punishment as a child, are more likely to engage in physical and verbal aggression with their spouses as adults. This evidence was presented at the June 2017 seminar in Edinburgh 'Can Scotland still be the best place to grow up if we hit our children? Although not all children who are physically punished as children will display these tendencies, a change in the law would encourage parents to use alternative methods of discipline and would send a clear signal that physical punishment is ineffective, whilst also helping to mitigate any concerns of long-term ill effects in children.

2.Children will be given consistent messages about violence not being tolerated.

BASW Cymru believes that giving parents the legal defence of 'reasonable punishment' could send a contradictory and confusing message to children – "if it's okay for my mum and dad to hit me, why is not okay for my mum and dad to hit each other, or for me to hit my friends?" Children may model this behaviour and could then find themselves being punished for doing so. Removing this defence will send a clear message that violence is unacceptable, in any form, with a zero-tolerance approach to all types of violence in Wales, beginning as a child and continuing throughout adult life. It also helps mitigate the risk of the cycle continuing, as children will not be given an opportunity to absorb this as learned behaviour and go on to physically punish their own children physically.

3.There will be no risk of physical punishment escalating to physical abuse

BASW Cymru believes that there is a risk of physical punishment escalating into physical abuse and changing the law could help to prevent this from happening. As Bruce Adamson, the Children and Young People's Commissioner for Scotland argues: "There is no such thing as a reasonable level of violence. Legalised violence against children in one context risks tolerance of violence against children generally."

1.3 Do you think there is a need for legislation to deliver what this Bill is trying to achieve?

(we would be grateful if you could keep your answer to around 500 words)

BASW Cymru believes that there is a need for legislation to deliver what this Bill is trying to achieve. Although changing legislation will not immediately solve problems, it will help to facilitate a cultural change, examples of this are the smoking ban and wearing seat belts in cars, which are now accepted as societal norms. A national campaign needs to be implemented for awareness raising purposes, ensuring this will be more universal and less stigmatising for parents who currently use physical punishment as a form of chastisement. It would also provide families with accurate and up to date information about the parenting choices they make.

Studies which have shown that public support for, and prevalence of, physical punishment declined before the introduction of legal bans in other parts of world and continued to decline afterwards. A 2010 review of countries that have reformed the law in this area found that public acceptance of equal protection follows on from legal change, alongside a decline in severe physical abuse. As an example, prior to legal change in Sweden in 1979, polling indicated that over 50% of the public were supportive of physical punishment. Following legal change public support for physical punishment steadily decreased and in 2000 data suggested that just a "few per cent" of parents used physical punishment. The Swedish Government reported 30 years on that the "abolition of corporal punishment, along with the debate that preceded it and the publicity campaigns that followed, has had a major impact on children's lives." A report on the study into preventing child abuse and neglect undertaken by the American National Centre for Injury Prevention and Control, links smacking children with long-lasting negative effects. The report found that legislative approaches to reduce physical punishment "can help establish norms around safe, more effective discipline strategies to reduce the harms of harsh physical punishment, particularly if paired with engagement and education campaigns".

BASW Cymru believes that there is a risk of physical punishment escalating into physical abuse and changing the law could help to prevent this from happening. The Children's Commissioners in Wales and Scotland are unequivocal in their approach to smacking children. Sally Holland the Wales Commissioner is clear that, "As a society we would be appalled if a vulnerable adult would be hit if they were misbehaving or in harm's way. Why on earth would we defend a position that would allow children be punished in the same way?" Bruce Adamson, the Children and Young People's Commissioner for Scotland argues: "There is no such thing as a reasonable level of violence. Legalised violence against children in one context risks tolerance of violence against children generally." Children 1st in Scotland highlighted several Serious and Significant Case Reviews in the UK, where physical punishment was referenced including:

- Heidi Kosedá (1984) Four-year old beaten and starved to death by mother's boyfriend, who was punishing her for "being greedy".
- Kimberley Carlile (1986) Four-year-old imprisoned and beaten by her stepfather for "being naughty" and refusing to accept him as her new father.
- Liam Johnson (1987) Three-year old beaten to death by his father, Robert Johnson. Johnson's girlfriend later said, "He was so powerful that when he smacked his son's he sometimes knocked them off their feet."
- Leanne White (1992) Three-year-old beaten to death by her mother and her boyfriend. A neighbour reported Leanne's screams and the boyfriend saying, "If you do that again, I'll thrash you."
- Lauren Wright (2000) Six-year-old beaten to death by her stepmother. People in her village had seen her being hit but felt powerless to intervene.
- Carla Nicole Bone (2002) 13 -month-old murdered by her mother's boyfriend who was "disciplining" her for refusing to walk. He told the police it started with "not-excessive smacks... It was the way I was brought up. It never did me any harm."
- Kieran Edwards (2007) 21-month year-old who died after being shaken and struck by his step-father because he was "messaging about and struggling".

In speaking about their own legal reform 30 years on the Swedish Government has stated: "Violence that was once a family secret is more likely to be reported today because we are less likely to excuse or minimise instances of physical abuse of children by parents or others close to them."

Families often resort to physical punishment due to a momentary loss of control, or because this is all they know. Many parents have grown up in a household where this was how they were disciplined and as a result it becomes a learned parenting behaviour/model/cycle). BASW Cymru believes that it's an imperative that legislative change be accompanied by support services and information for parents that conveys messages about positive parenting and alternatives to physical punishment instead of introducing a 'blame' culture, where they risk being criminalised instead of supported and educated about appropriate and less harmful parenting strategies. Children's Social Workers can find themselves in the situation of trying to define and communicate to parents what "reasonable chastisement" means in the eyes of the law as it currently stands, and at what point these cross a threshold and become a child protection issue. By prohibiting all physical chastisement of children, there will be no further scope for ambiguity and there will be a real opportunity to 'bust' many of the myths surrounding the current legislation. Social Workers often work in highly charged and contested environments - this probably applies more to social work with children and

families, so Social workers (and parents) will be able to operate within a much clearer legal framework.

2 The Bill's implementation

2.1 Do you have any comments about any potential barriers to implementing the Bill? If no, go to question 3.1

(we would be grateful if you could keep your answer to around 500 words)

None

2.2 Do you think the Bill takes account of these potential barriers?

(we would be grateful if you could keep your answer to around 500 words)

None

3 Unintended consequences

3.1 Do you think there are there any unintended consequences arising from the Bill? If no, go to question 4.1

(we would be grateful if you could keep your answer to around 500 words)

The legal competency of Social Workers needs to be analysed and supported throughout their careers. Attrition rates for post qualifying education and learning is significant in Wales and the CPEL framework is into its 4th iteration, so there are clearly barriers to Social Workers being able to complete post-qualifying education and learning which impacts on their competency and judgement. Although a complete ban on the defence of 'reasonable chastisement' is fully supported by BASW Cymru and will help provide clarity, the legal competency of Social Workers impacts on their skills, knowledge and confidence when making crucial decisions about safeguarding thresholds. Robust decision making about thresholds by Social Workers, will need to be evidenced following a ban, to allay any fears about 'criminalisation' of parents and the misbelief that an outright ban on the 'reasonable defence' is causally attributable to increased safeguarding referrals.

The Social Work workforce is also under real pressure. Research undertaken by Bath Spa University on behalf of the British Association of Social Workers and Social Work Union reveals that:

- Working conditions for social workers in Wales are as bad as – if not worse than – the rest of the UK. Note that various studies have demonstrated that should working conditions remain in a poor state (as they are here) for an extended period of time it will lead to higher levels of

sickness absence, turnover, and more mistakes/poorer performance at work. This seems to be the case in social work – levels of sickness absence due to stress and mental illness are among *the highest of all employment sectors in the UK, and there is a chronic under-recruitment problem.*

•Therefore, the following four working conditions scored the same as the rest of the country. That is, they scored in the 5th percentile. This means that scoring is worse than 95% of the rest of the UK population, according to benchmark figures. These benchmarks were drawn from a variety of public and private sector employees, employers, and a variety of work sectors.

- o Demands: the amount of work that individual employees have on.
- o Relationships: suggests that relationships between staff can at times be strained.
- o Role: social workers do not have a good idea of their specific role in the organisation.
- o Change: social workers felt that organisational change is poorly communicated.
- The remaining three working conditions are poorer on average for Wales' social workers than they are for the rest of the UK.
 - o Control: social workers in Wales have a distinct lack of control in the way that they do their work.
 - o Managerial Support: this suggests that social workers have a lack of support from management in their organisations.
 - o Peer Support: although this scored better than the six other conditions (25th percentile), it was still worse than the UK average and worse than 75% of the UK benchmark scoring.

These research findings present real challenges to a profession that will play a significant role in affecting cultural change and undertaking a direct work role in families, following an outright ban of the 'reasonable chastisement' defence.

4 Financial implications

4.1 Do you have any comments on the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum)? If no, go to question 5.1

(we would be grateful if you could keep your answer to around 500 words)

It is important that parents are not criminalised, and resources need to be put in place for families to prevent this from happening. Extra support - both emotional and financial - needs to be provided for those families who have children with learning disabilities and complex needs as this behaviour may at times, be particularly challenging.

It is imperative that resources are put in place to provide the necessary support and education for parents bringing up children. Many parenting support services in Wales have already been withdrawn as a result of deeply entrenched austerity measures and welfare reform that families are stretched well beyond their means, and that some parents are struggling more than ever to provide safe, nurturing care. Difficulties in families have become more complex and are often inter-generational. The resilience of the wider family and communities to support struggling nuclear families, is compromised. There must be a commitment from government to provide the necessary supports to change the culture around smacking and to provide more parenting support in general. In the long term, this will be more cost effective than prosecuting and criminalising struggling parents, without factoring in the future financial and personal costs, associated with adverse childhood experiences (ACE's), of which being physically abused, is a risk factor.

Welsh Government must consider the impact on the social care sector of supporting a culture shift away from physical chastisement towards more a positive parenting models at a time when children's services are under extreme pressure. Geraint Hopkins, Deputy spokesperson for children at the WLGA believes that "The system is very near at crisis point...Unless we significantly look at the resources available to children's services in Wales...we're going to be in serious trouble...it's getting to the point now where we're really at crisis level."

There are resource issues with regards to the people responsible for assessing circumstances and supporting parents (e.g. social workers, social care workers and health workers) - the ones who will play the most significant part in supporting families through this change. These issues of resourcing and support need to be taken into consideration if pushing forward the reform, to ensure the transition is as smooth as possible and can progress in a fair way.

A national campaign to help facilitate change will be costly. As will providing education programmes for workers and parents and investing in systemic and early support for families. This-being-said, an initial cost in terms of investment in positive parenting and awareness raising should not be a barrier to doing the right thing for children. In the long term BASW Cymru is confident that the removal of the legal defence, alongside a public awareness-raising campaign and sustained investment in early intervention and systemic family support, will ease the burden on public services. Ultimately, it should lead to a reduction in cost, as the balance shifts from demand for expensive crisis management and intervention.

5 Other considerations

5.1 Do you have any other points you wish to raise about this Bill?

(we would be grateful if you could keep your answer to around 1000 words)

None