



Social Services and Wellbeing (Wales) Bill

Consultation by the National Assembly for Wales

A response by Victim Support

March 2013

Victim Support is the national charity for people affected by crime. Staff and volunteers offer free and confidential information and support for victims of any crime, whether or not it has been reported and regardless of when it happened. Victim Support works to increase awareness of the effects of crime and to achieve greater recognition of victims' and witnesses' rights. The organisation also operates the Witness Service and the Victim Supportline (0845 30 30 900).

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Victim Support's response to Stage 1 of the Social Services and Wellbeing Bill

Victim Support, the national charity for victims and witnesses of crime, welcomes the opportunity to respond to the consultation on Stage 1 of the Social Services and Wellbeing Bill.

Although the bulk of its provisions are beyond our area of expertise, we would like to highlight our support for a relevant policy change that has not as yet been included within legislation, which is the removal of the “reasonable punishment” defence set out in s.58 of the Children Act 2004. In common with other voluntary and community organisations, Victim Support believes that, for the protection of children and the general prevention of violent crime, it is necessary that the law should be changed.

We therefore ask that the Health and Social Care Committee include in its Stage 1 report a recommendation to add to the Bill a clause removing the defence of “reasonable punishment” from the criminal law as applicable in Wales.

We confine our responses below to this issue.

- 1. Is there a need for a Bill to provide for a single Act for Wales that brings together local authorities' and partners' duties and functions in relation to improving the well-being of people who need care and support and carers who need support? Please explain your answer.**

Victim Support is a nationwide charity with a commitment to both devolution and localism. We believe that successive Welsh governments have shown the will to lead the rest of the UK in challenging the practice of physical punishment of children, and that a new Act explicitly concerned with wellbeing should not pass up the opportunity to put this commitment into action.

- 2. Do you think the Bill, as drafted, delivers the stated objectives as set out in Chapter 3 of the Explanatory Memorandum? Please explain your answer.**

Victim Support understands that the original purpose of the Bill was to provide unified legislation behind the provision of social services and social care in Wales. As its scope has subsequently developed to emphasise the promotion of wellbeing, however, it must now address the broader considerations that follow from this, including the criminal law. The Bill has been written using the accepted definition of wellbeing as including physical health and protection from abuse; significant research from organisations such as the NSPCC points to the link between cultural acceptance of physical punishment and incidence of clear abuse¹. In this context, it seems appropriate that a straightforward, overdue and

¹ Laing, Vivienne (2012), *The child protection argument for a ban on smacking*, NSPCC:
http://www.nspcc.org.uk/Inform/policyandpublicaffairs/wales/briefings/cp-smacking_wdf93341.pdf

evidence-based reform of the law allowing physical punishment of children should be included.

This is particularly relevant given the explicit reference in Paragraph 188 to a “rights-based approach”, since, under the UN Convention on the Rights of the Child (as recognised in the Rights of Children and Young People Measure 2011) children have an existing right to be protected from violence and abuse. A Bill that explicitly aims to promote the wellbeing and rights of children surely therefore represents an important opportunity to enshrine this protection in law.

Furthermore, Paragraph 15 makes specific reference to preventative services, an area significantly explored within the Bill itself. In our view, a change to the law on physical punishment of children would be a major step towards the prevention of child abuse and wider violence, by providing a clearer legal position in specific cases and by indicating a social consensus on the unacceptability of violence as a means of controlling others.

For these reasons, we believe that the stated objectives of the Bill would be better reflected if a provision were included to remove the “reasonable punishment” defence.

3. The Bill aims to enable local authorities, together with partners, to meet the challenges that face social services and to begin the process of change through a shared responsibility to promote the well-being of people. Do you feel that the Bill will enable the delivery of social services that are sustainable? Please explain your answer.

Victim Support believes that a change to the law on child punishment could alleviate the challenge faced by social services in preventing child abuse. This early intervention before cases escalate stands to reduce the number of more serious cases encountered, thus helping to make social services both more sustainable and more effective.

As the law currently stands, parents and those acting in a parental capacity may invoke the “reasonable punishment” defence against any act that would currently constitute common assault under s.39 of the Criminal Justice Act 1988. This position means that not only children, guardians and concerned witnesses, but also those charged with child protection, must be sufficiently well-versed in the law to appreciate the difference between common assault and assault occasioning actual bodily harm – a distinction not always clear even to practising lawyers. This makes reporting of illegal punishment, and consequent interventions by social services, far less likely to occur until after a case escalates into clearer-cut, more serious forms of abuse.

In addition, there is no current provision in law as to what is meant by “reasonable”, for example in relation to the severity of the behaviour for which the child is punished, the regularity with which physical punishment is used, or the existence of additional factors intended to hurt and humiliate the child, such as being punished in public. A law that defines acceptable violence merely by the

degree of injury sustained is manifestly too blunt to protect children adequately: it does not, for example, rule out the use of kicking, elbowing or even the extremely painful twisting of the skin on the wrist known as a Chinese burn, though many would consider such acts both cruel and unnecessary. In this context, the removal of the “reasonable punishment” defence would provide far greater clarity over the legal position, as well as providing social services with a more concrete platform from which to advocate alternatives to physical discipline.

4. How will the Bill change existing social services provision and what impact will such changes have, if any?

We have no more detailed comment to make on this point than the point made in Question 3, that removing the “reasonable punishment” defence would allow earlier intervention by social services before cases escalate, hence reducing the number of more serious cases encountered.

5. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

If the Bill were to go forward with a new clause removing the “reasonable punishment” defence, a potential barrier would be the perception that many parents would stand to be criminalised, impacting not only on the stability and security of families but also on the capacity of the criminal justice system.

Victim Support believes that this is not a serious risk given the existence of the public interest test for all criminal prosecutions. For example, it is surely right that one-off, spontaneous, regretted incidents motivated by parental concern should be less likely to pass the test than deliberate acts that form part of a pattern, or are disproportionate to the child’s behaviour, or which are designed to humiliate. Alongside our recommendation that a clause should be added to the Bill removing the defence, we suggest that the Assembly should enter into dialogue with the CPS about how charges of common assault would be considered in such circumstances.

6. In your view does the Bill contain a reasonable balance between the powers on the face of the Bill and the powers conferred by Regulations? Please explain your answer.

Victim Support has no comment to make on this aspect of the Bill. We would point out that the removal of the “reasonable punishment” defence would of course have to be enacted on the face of the Bill.

7. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?

Victim Support has no comment to make on this aspect of the Bill.

8. What are your views on the financial implications of the Bill?

Victim Support has no comment to make on this aspect of the Bill.