

**CYPE(5)-18-19 - Paper to note 2**

**Julie Morgan AC/AM**  
Y Dirprwy Weinidog Iechyd a Gwasanaethau  
Cymdeithasol Deputy Minister for Health and Social  
Services



Llywodraeth Cymru  
Welsh Government

Our ref MA-L/JM/0457/19

Lynne Neagle AM  
Chair  
Children, Young People and Education Committee  
National Assembly for Wales  
Ty Hywel  
Cardiff Bay  
Cardiff  
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4 June 2019

Dear Lynne,

Thank you for your letter of 20 May, which requested Cafcass Cymru's written response on specific points of interest in relation to the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill.

I trust the Committee will find the information provided in the Annex to this letter helpful. I look forward to further discussing with the Committee how the Bill will protect children's rights on 12 June.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Julie'.

**Julie Morgan AC/AM**  
Y Dirprwy Weinidog Iechyd a Gwasanaethau Cymdeithasol  
Deputy Minister for Health and Social Services

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

# Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

ANNEX

## 1. The Bill's development

*Please can you provide details of CAF/CASS Cymru's involvement to date in the Bill's development.*

Cafcass Cymru is a Directorate within the Health and Social Services Group of the Welsh Government. Cafcass Cymru officials have worked with relevant officials from the Children and Families Division in Welsh Government through various stages of the Bill's development. Its views are summarised and reflected through the Bill documentation, particularly the Explanatory Memorandum and the letter dated 25 April I sent to you (Ref MA-L/JM/0382/19), in addition to evidence provided to the Finance Committee.

## 2. Resource and capacity

*Please can you provide CAF/CASS Cymru's views on the following references to CAF/CASS in the Bill's Explanatory Memorandum, to include an indication of whether CAF/CASS is satisfied that it has the resources and capacity to support the Bill's implementation if enacted:*

- *Page 32 – Unquantified costs box*

*“Unknown costs include the potential costs to [...] the Children and Family Court Advisory and Support Service (Cafcass) Cymru, as a result of a potential increase in allegations of common assault against a child or children of parents involved in a family court case.”*

- *Page 78 – Family Courts – paragraph 41*

*“Awareness of the change in the law could lead to an increase in allegations of parental physical punishment in cases where a parent is seeking to further their cause against the other parent in a family related case; the police and social services would have to investigate. Cafcass Cymru would have to report the issue to the court (if involved) and the court would have to potentially adjudicate on an increased number of issues. This could lead to increased workloads and possible delays.”*

- *Page 78 – Cafcass Cymru – paragraphs 43-44*

*“Cafcass Cymru has a statutory role in providing advice to the Family Court as to a child's best interests in public and private law cases. On the private law side i.e. where parents cannot agree child related arrangements following separation, and have made an application to the court, Cafcass Cymru are required to undertake safeguarding checks with the police and social services together with safeguarding interviews with the parents. It is likely the removal of the defence will add to the information being provided to the court. Beyond this stage, if Cafcass Cymru has active involvement with a family and comes across such issues (or if they are alleged) then it will have a duty to report these to social services and the court which could lead to some additional work.”*

Cafcass Cymru agrees and acknowledges it is difficult to quantify at this stage the potential costs and impact as a result of a possible increase in allegations of common assault against a child or children of parents involved in a family court case, but it will monitor the situation. Cafcass Cymru is an active member of the Bill's Stakeholder Implementation Group and through this Group any potential impact issues in relation to Cafcass Cymru will be closely considered and monitored.

It could be suggested that in some cases allegations of physical chastisement of children that would constitute criminal behaviour if the Bill is passed are already made and litigated in the Family Court as part of the 'finding of fact' process. In private law cases that are heavily contested, parents will tend to put forward whatever evidence they think may support their case. Therefore, if there has been potential physical chastisement of the child by one parent, it is likely to be raised in the proceedings and the court asked to rule on whether or not it has taken place. However, Cafcass Cymru acknowledges the change in the law could lead to an increase in allegations of parental physical punishment in cases. Whilst this may be the case, allegations of this kind are likely to be part of wider issues raised within a case in the Family Court. Cafcass Cymru agrees it is difficult to predict at this stage with any certainty the impact or numbers and will monitor the situation.

Cafcass Cymru also agrees it is likely the removal of the defence will add to the information being provided to the court but is content that any additional reporting will be absorbed into the work it already does as part of its reporting to court.

In conclusion, Cafcass Cymru is currently satisfied it has the resources and capacity to support the Bill's implementation if enacted, but will carefully monitor the situation going forward.

### *3. Risk of malicious reporting*

*Please can you provide CAF/CASS Cymru's views on the following reference to malicious reporting in the Explanatory Memorandum. Please could CAF/CASS Cymru indicate what assessment if any has been made of the risk of malicious reporting in private law cases and in what way CAF/CASS Cymru envisages this might affect its work.*

*"There appears to be consistency amongst the four Welsh police forces relating to the recorded crime categories. Approximately 12% of the named recorded crime categories were identified where lawful chastisement was used as a defence; or considered in the decision making process. Cross cutting themes relating to the malicious reporting via ex-partners was prevalent. Issues such as legal access and financial support issues featured prominently." (Page 97, paragraph 12).*

Cafcass Cymru has not made any assessment of the risk of malicious reporting in private law cases but confirms this already happens on both this issue and on a range of other matters within cases. It is content the court has in place arrangements to deal with this, including 'finding of fact' hearings where there are disputed issues that are important in determining the implications on applications for safe contact between a child and the non-resident parent. However, what may change with the introduction of the criminal offence is the court may be required to wait until any criminal prosecution has concluded before considering the issue itself. This could result in delays in family proceedings, which could effectively be put on hold pending the outcome of the criminal trial. However, if there is ultimately a criminal conviction, the family court would not have to spend much time in making its own finding of fact and could probably proceed directly to a welfare determination. Cafcass Cymru will monitor the impact of the Bill's introduction in terms of whether such malicious reporting increases.

In conclusion, Cafcass Cymru considers if the Bill is enacted it will not change the work it does but will add a layer of extra information to be considered as part of the cases in which it is involved. It will carefully monitor the situation and raise any impacts or issues as it sees fit.