

## **Terms of Reference**

### **Out of Court Disposals and Diversion Scheme**

#### **Task & Finish Group**

### **Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020**

These terms of reference were first drawn up while the Bill was in the Senedd; they have now been updated following Royal Assent to refer to the Act and timescale for commencement.

#### **Background**

The Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020 was introduced to the Senedd on 25 March 2019 and received Royal Assent on 20 March 2020. The overarching objective of the Act is to help protect children's rights by prohibiting physical punishment by parents and those acting in loco parentis. The United Nations Committee on the Rights of the Child (UNCRC) recognises that any physical punishment of children, however minor, is incompatible with the human rights of children under Article 19, and has called for it to be abolished.

When the Act comes into force 21 March 2022 the defence of reasonable punishment will no longer be available within Wales to parents or those acting in loco parentis, as a defence to a charge of common assault or battery.

The intended effect of the Act, together with raising awareness and support for parents, is to bring about a further reduction in the use and tolerance of the physical punishment of children in Wales.

Welsh Government have set up a strategic implementation group to consider how best to implement the Act. There will be a number of work streams, including on diversion schemes and out of court disposals.

#### **Purpose of the Group**

The purpose of the group is to provide advice and recommendations on options for using out of court disposals and the development of a diversion scheme, for those individuals who may be charged with the offence of common assault or battery against a child, in circumstances where the defence of reasonable punishment would have applied prior to commencement of the Act. The Group will offer strategic advice to Welsh Government on procurement, funding and resourcing in relation to any potential diversion scheme.

The intention would be to ensure that there is a process in place which allows for a proportionate response in the best interests of the child, taking account of the individual circumstances of the case. In terms of a possible diversion scheme, the

aim would be to consider the out of court disposal mechanism through which a diversion scheme could be accessed, and provide a scheme which would support parents and those acting in loco parentis to adopt positive approaches to discipline and avoid the risk of re-offending. Any diversion scheme would need to be consistent with existing operational and strategic principles/guidance followed by the police (e.g. as issued by the Home Office; Ministry of Justice and National Police Chief's Council).

## Governance Arrangements

The Task and Finish group will report to the Strategic Implementation Group and be co-chaired by a member of the group and a Welsh Government official. The Welsh Government co-chair will provide updates to the Strategic Implementation Group after each Task and Finish group meeting and at appropriate points throughout the project.

## Timings & Key Dates

The first meeting of the Group took place on 11 July 2019. It is envisaged the group will meet on a quarterly basis but additional meetings may take place to allow for discussion and planning for key tasks. The work of the Group should be concluded in time to ensure that guidance, training and any diversion scheme is in place before the law comes into force.

This timetable is likely to evolve as the work around implementation progresses and may be impacted by the COVID-19 pandemic.

<b>Key tasks &amp; dates for the group</b>	
Map existing infrastructure for Out of Court Disposals & Diversion Schemes in Wales	End of September 2019
Development of options for out of court disposals and diversion schemes including any appropriate support provided as part of the diversion scheme	End of January 2020
Decide on option to be taken forward and develop specifics of the scheme and associated process	End June/July 2020
Start Procurement Process	September 2020
Conclude Procurement process	May 2021
Development of Guidance & Training	End of November 2021
Guidance & training in place	End of January 2022
Diversion scheme operational	March 2022
Evaluation of the scheme	To be agreed

## Specific roles of Members and Welsh Government

Membership is from a range of organisations with an understanding of and a key interest in out of court disposals and development of the diversion scheme and the implications of a diversion from prosecution.

Members will be asked to monitor delivery against key programme milestones and provide expertise in the following areas:

- how a diversion scheme could work and function;
- make recommendations in respect of decisions around funding and resourcing arrangements;
- mechanisms by which a diversion scheme will be approved; most appropriate models of delivery and related actions such as updating guidance and training; management of the scheme;
- how various out of court disposals may impact on an individual's criminal record;
- guidance on a quality assurance process that will promote consistency of decision making and delivery in relation to the diversion scheme; and
- advice on technical expertise to co-opt to the group to support the work programme, when required

The Welsh Government will provide:

- Policy support and expertise;
- Secretariat, admin support and arrangements for meetings and the work of the group;
- Updates at each meeting from the Strategic Implementation Group and other task and finish groups; and
- Papers for each meeting 5 working days before each meeting.

## Membership

The Out of Court Disposals group membership will include:

Organisation	
Crown Prosecution Service Cymru	Disclosure and Barring Service
Her Majesty's Courts and Tribunal Service	Law Society for Wales
Police Wales	Police and Crime Commissioners
Association of Directors of Social Services Cymru	Welsh Government

