

Physical punishment: improving consistency and protection

An independent Report by
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Chief Adviser on the Safety of Children
March 2010

Foreword

I want to thank the people and organisations who contributed to this review. Responses were invariably thoughtful and considered. Opinions were wide ranging with some respondents wanting to see a total ban on all physical punishment and others who thought that no change was required. But notwithstanding the ultimate aims of some respondents there was a broad measure of agreement that the present ban on physical punishment in full-time schools and other children's settings should be extended to include supplementary schools and all other organisations and arrangements which provide care, education and instruction for children outside the family. My recommendations seek to give effect to that.

I am particularly grateful for the extensive help I have received from Marcus Starling and his colleagues in Child Safeguarding Division, and from the Legal Adviser's Office at the Department for Children, Schools and Families. Collectively they have enabled me to seek out views, analyse responses and test out options. However, as an independent adviser to the Government on the safety of children I take responsibility for the proposals.

Executive Summary

- Physical punishment is prohibited in all maintained and full-time independent schools, in children's homes, in local authority foster homes and early years provision; the prohibitions have different enforcement mechanisms.
- The defence of reasonable punishment may be available to adults in circumstances where they are charged with common assault having smacked a child whilst being in loco parentis. Although teachers and other staff in schools cannot argue this defence, it may be available to adults in settings such as supplementary schools, private tutoring and leisure facilities for children as well as by other adults to whom parents may entrust their children e.g. close relatives, step parents and partners.
- Concern has been expressed following allegations of physical punishment and abuse to children attending supplementary and part-time faith schools.
- The opinions of parties consulted were diverse ranging from those seeking a prohibition on all forms of physical punishment to those who wanted to maintain the present position. Whilst many wanted to go further, there was a significant view, including from Muslim leaders and within African Christian churches, that the protection against physical punishment should be extended to all forms of care, education and instruction outside the family. That is my first and main recommendation.
- In so far as the availability of the reasonable punishment defence applies in and around the direct family I have concluded that any attempt to define those family categories or circumstances to which the availability of the defence ought or ought not to apply would be cumbersome, bureaucratic, largely impractical and very difficult to communicate. I am therefore not proposing changes to the availability of the defence in so far as it relates directly to the family context.
- I conclude in my final recommendations 2 and 3 by stressing the value of promoting positive parenting strategies including the importance of parents who do not approve of their children being smacked making that clear to those who have close care of their children.

Background

1. Physical punishment of children is the use of force to discipline them. The most common type of physical punishment is smacking although the term can include slapping, pinching and using an implement such as a belt, slipper or cane to hit a child.
2. Any use of force can be charged as a criminal offence. However, in cases where the punishment is mild and where the person administering it is a parent or acting in place of a parent (in loco parentis) they are able to argue that they administered a “reasonable punishment”. This is the reasonable punishment defence.
3. In 2004 the law changed to restrict the circumstances in which the reasonable punishment defence can be argued. It is now only possible to use this defence in relation to a charge of common assault. The Crown Prosecution Service (CPS) Charging Standard states that the first consideration in determining whether to prosecute behaviour as common assault or the more serious charge of actual bodily harm is the degree of injury caused. But the vulnerability of the victim is an aggravating factor. So, if an adult assaults a child and causes an injury such as a graze, scratch, abrasion or bruising, the charge will normally be one of actual bodily harm (for which the reasonable punishment defence is not available) if the injury was more than transient or trifling. The use of a weapon or implement to punish a child is another aggravating factor which is likely to lead to a more serious charge.
4. There are other legal constraints on the use of physical punishment. Since 1986 Parliament has increasingly restricted the use of corporal punishment. It was prohibited in all maintained schools in 1987 and in full time independent schools in 1999. Its use was ended in children’s homes in 2001, local authority foster care in 2002 and early years provision in 2007. The Education and Skills Act 2008 amended the Education Act 1996 so that the ban on corporal punishment is extended to independent educational institutions i.e. part-time providers which are not schools. However, this latter provision has not yet been implemented.

5. Nevertheless, there remain a wide set of circumstances ranging from part-time educational and learning settings to evening and weekend faith schools to family homes where there is no statutory prohibition on the use of physical punishment and where adults may be entitled to rely on the defence of reasonable punishment if they were charged with common assault for smacking a child in their care.
 6. This issue of the reasonable punishment defence was raised recently in Parliament.
 7. In January 2010 David Laws MP and Annette Brooke MP proposed a new clause for inclusion in the Children, Schools and Families Bill. The effect would have been to change the law so that only parents and people with parental responsibility¹ could rely on the reasonable punishment defence if charged with common assault for smacking a child.
 8. When the amendment was debated on 23 February 2010 attention was drawn to the fact that whilst teachers were prohibited under the civil law from using corporal punishment, that prohibition did not apply to other persons who might have temporary care of a child in broadly comparable circumstances, such teachers in part-time schools, sports coaches, Sunday school teachers, madrassah teachers, youth workers, private foster carers, baby sitters and nannies. It was argued that there was no justification for failing to protect children from physical punishment in these settings.
 9. The Secretary of State reported during the debate that he had discussed the matter with Ms Brooke and with Ann Cryer MP for Keighley who had, from time to time, raised concerns about the physical punishment of children in some madrassahs and Sunday schools. The Secretary of State also said he had discussed the issue with me. The Secretary of State had written to me on 18 January 2010 asking for my initial view on how the law concerning the defence of reasonable punishment was operating, to help him decide the best way forward. I replied on 27 January setting out my initial thoughts and suggesting that I carry out further work in the light of the complexity of the subject and because of the need to consult with interested parties. The Secretary of State replied on 28 January accepting my offer to carry out
- 1 The Children Act 1989 defines the term ‘parental responsibility’ as meaning “all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property”. You have parental responsibility if you give birth to a child, or are the father of the child and were married to the mother at the time of the child’s birth. An unmarried father can acquire parental responsibility by applying to the court, by making a parental responsibility agreement with the child’s mother, or by being registered as the father of the child on the birth certificate. If you have adopted a child, if you are appointed a Guardian, or if you apply to the court, you may also acquire parental responsibility. The Act also clarifies that more than one person may have parental responsibility for a child.

further work with a view to considering whether further limitations should be imposed on the use of the defence of reasonable punishment in criminal proceedings for common assault on a child, and whether there needed to be an extension of the ban on smacking. I agreed to conclude that work by the end of March 2010

10. In the course of those exchanges the Secretary of State reminded me that the Government does not condone smacking and that it wants to progress to the point where smacking is seen as unacceptable by the vast majority of parents. However, the Government does not agree that a full ban on smacking is the right way to achieve this and it does not intend to criminalise parents who administer a mild smack.
11. The Secretary of State was also mindful of the position of carers to whom parents entrust their children – grandparents, step-parents, au pairs, friends and babysitters to whom the defence of reasonable punishment may currently be available, as it is to parents.

Approach

12. I invited a wide range of stakeholders (listed at Annex A) to submit their views to me on the issues. I drew their attention to three possible scenarios: to maintain the current position; to remove the reasonable punishment defence from adults in organisations which care for or educate children and where parents are unable to exercise their judgement about which particular individuals look after their children; and to remove the reasonable punishment defence from everyone except parents and people with parental responsibility.
13. I also met the representatives of a number of organisations including: the NSPCC; Children Are Unbeatable! – an alliance of organisations and individuals promoting children’s rights to be protected from all corporal punishment; Children England; and, Africans Unite Against Child Abuse (AFRUCA). As part of this I particularly sought perspectives on the faith related issues involved.
14. The Department for Children, Schools and Families (DCSF) also commissioned at my request a telephone survey of public opinion on who, other than parents, should be allowed to smack their children.
15. I am also grateful to Ann Cryer MP for facilitating a visit to her Keighley constituency for me to explore further some of the faith related issues and to Councillor Khadim Hussain for arranging a meeting with local mosque leaders.

Findings

16. Views expressed ranged widely from those who were satisfied with the present arrangements and wanted no change; to those who wished to see the present ban on physical punishment in schools extended to part-time and more informal settings but no further; to those who preferred the defence of reasonable punishment to be limited to adults with parental responsibility; to those who wanted to see it removed altogether and all forms of corporal punishment, irrespective of who administered it, prohibited. Particular concern was expressed about reports of physical punishment in supplementary schools and in a range of other informal settings engaged in religious teaching. There are an estimated 3,000 ‘supplementary’, ‘complementary’, ‘community’ or ‘Saturday’ schools in Britain. They come in a variety of shapes and forms and in general, they offer out-of-school-hours religious, cultural and linguistic (mother-tongue) opportunities for children and young people, many of whom come from minority ethnic communities.
17. Supplementary and mother-tongue schools are managed and run by local groups, including newly arrived communities. They take place in a variety of venues including mosques, churches, temples, gurdwaras, community centres and schools. Most supplementary and mother-tongue schools operate in the evenings and at weekends.
18. Whilst it was difficult to “weight” the responses - some coming from individuals and others from large agencies – there was a consistency of view expressed by many of the children’s organisations urging an end to all corporal punishment and the removal of the legal defence of reasonable punishment as the simplest and right way forward. Most respondents favoured a move to restrict the use of corporal punishment particularly in part-time education and learning settings and supplementary schools. Among those in favour of a total prohibition on all corporal punishment most would support such a ban as a ‘step in the right direction’. Some organisations said that no professional or voluntary worker should be allowed to smack children. They reported that their organisations already had policies prohibiting physical punishment and that if it did occur it would be treated as a disciplinary matter. There were some whose preference was a ban on everyone

except parents but who clearly felt that parents should continue to be able to use mild physical punishment. There were a small number who felt that a ban should extend to organisations in the children's sector but not to individuals whom parents choose to look after their children such as private music teachers or nannies. A similarly small number felt there should be no change to the current position on the grounds that there was no evidence that the current system was not working. One argument made was that there was no evidence of harm to children as a result of mild smacking.

19. The views of a representative sample of 1006 general public respondents (aged 18 years and over) were surveyed by an omnibus agency on behalf of the independent review for DCSF. Of those surveyed, 66% disagree that a person other than a child's parent or guardian should be allowed to smack a child, whilst 28% agree. However, when asked this question in relation to specific groups of people it was apparent that views were more nuanced. 58% agree that a grandparent should be allowed to smack a child, 43% agree a step parent should be allowed. Support for smacking decreased the more distant the relationship of a person to a child. For example, 7% favoured allowing smacking by family friends and 3% agreed that a person giving religious instruction outside of school in evenings or weekends should be allowed to smack a child. 54% of respondents agree that someone other than a parent or guardian should be legally banned from smacking a child in their care whilst 31% disagree with a legal ban, and 14% neither agree nor disagree.
20. I am grateful to the Children's Rights Director, Dr Roger Morgan, for seeking the views of children on this issue. These views suggested that most children were either against the use of smacking by anyone other than parents, or against its use at all.
21. Some of the concerns about the use of physical punishment have arisen because of allegations about the treatment of children in part-time religious and supplementary schools. Ann Cryer MP argued in the House of Commons that 'teachers in madrassahs or in other religious schools' should not be exempt from the ban on corporal punishment. It was put to me that whilst some parents may not object to such physical punishment there are others who do not approve but are reluctant to stand up to the power and authority of religious leaders. This applies also in some Christian churches including "New" and independent churches and those which are popular in African and other ethnic minority communities. I was told of pastors who advocated the literal interpretation of biblical references to chastising children and at times this led to physical punishments.

22. I was able to meet with some mosque leaders in Yorkshire. They explained that they banned smacking in their madrassahs and that they would take action against any teacher who broke this rule. However they would not regard an occasional “clip round the ear” as a smack. They felt it was necessary to retain the present position ‘as a deterrent’ and they were concerned that discipline would be compromised if children discovered that there was a ban on smacking or other mild physical interventions. They considered there were problems of defining physical punishment as distinct from other physical contact.
23. Notwithstanding the commendable honesty with which the mosque leaders discussed this matter with me I do not think that there should be any scope to conceal reality by dissembling with words. A “clip round the ear” could result in a damaging blow to a child’s head.
24. Other Muslim leaders put a very different view to me. The Mosques and Imans National Advisory Board and the Muslim Parliament strongly support the prohibition of physical punishment in madrassahs. I was told of other physical punishments such as the “hen” position where fingers are laced with a pencil and squeezed.
25. Similar opposition to physical punishment in the context of religious teaching and worship was expressed by Africans Unite Against Child Abuse.

Extending the ban on physical punishment

26. I am wholly satisfied that the safeguarding protection in relation to physical punishment which children enjoy in full-time schools should be extended to all the other settings where they learn, play, worship and are cared for. A straightforward ban on the smacking of all children engaged in activities outside the context of the family will be easy to understand and send an unambiguous message of what is not permitted to those organisations and settings where doubt exists or latitude is sought.

27. My recommendation is:

Recommendation 1

The current ban on physical punishment in schools and other children's settings should be extended to include any form of advice, guidance, teaching, training, instruction, worship, treatment or therapy and to any form of care or supervision which is carried out other than by a parent or member of the child's own family or household.

28. I recognise that the expression "own family or household" will require some amplification and I provide that at paragraphs 29-34 below.

Reasonable punishment defence

29. I have given a great deal of thought as to whether the reasonable punishment defence should be limited to those with formal parental responsibility or constrained in ways which would prevent other adults in loco parentis including step parents and unmarried partners having recourse to it.

30. My attention was drawn to nearly 20 cases stretching over the past 10 years where children have been killed by the partners of their parents. It makes sobering reading. But these were all cases of unlawful violence and it is speculative whether, had the reasonable punishment defence not been available at the time, it would have had any impact on the assailants' behaviour. The question arises whether the argument is sufficiently substantial to justify removing the defence from family members and

adults who act in loco parentis in circumstances where the adult with formal parental responsibility is content for a mild smack to be administered.

31. I have had regard to the fact that the reasonable punishment defence appears to be little used. The CPS is aware of two cases since 2007. They also conducted research into the use of the defence between January 2005 and January 2007 finding 12 cases where the defence was or may have been a factor and where the case resulted in an acquittal or discontinuance (although in four cases the defence was not used).
32. I have also reflected on the diverse nature of family life today. Whilst the notion of parental responsibility (which has a particular meaning in law) will have real significance for some families involved in public and private law proceedings, it has little practical application in many other families, e.g. where grandparents play a major part in children's upbringing. The concept of parental responsibility is unlikely to be a familiar one unless the adults have a particular reason for encountering it.
33. Similarly, I am aware of the wide variety of private family arrangements put in place to provide care for children which do not involve formal regulated provision such as child minders or nurseries. These arrangements may include the use of nannies, au pairs, step parents, grandparents and sitters or include other members of the extended family or friends. Drawing simplistic lines by treating all categories of relative or household member as single homogenous groups would deny the many varied forms of family composition and circumstance and inevitably lead to unintended and probably undesirable consequences.
34. I have concluded therefore that any attempt to define those family categories or circumstances in which the defence of reasonable punishment would not apply would be cumbersome, bureaucratic, largely impractical and very difficult to communicate. In the few instances where the defence is pleaded it would be for the courts to determine whether the adult concerned formed a part of the child's own family or household. Moreover, I expect the Government, if it accepts my main recommendation, will engage in a public consultation. That will provide an opportunity for views to be expressed on whether there should be changes to the position whereby adult members of a child's family or household are able to claim the defence of reasonable punishment.

Good practice guidance

35. In his commissioning letter to me of 18 January 2010 the Secretary of State wrote:
“The Government does not condone smacking children and we want to progress to the point where smacking is seen as unacceptable by the vast majority of parents and is only used as a last resort, if at all.....Our approach, therefore, is to provide parents with support and guidance to help them manage their children’s behaviour more effectively.”
36. The DCSF in conjunction with their Parent Know How partners produced a booklet on ‘Being a Parent in the Real World’ which is one example of advice to parents on smacking to help them to avoid using this form of discipline. A number of respondents to my review thought that continued strong support for this area of parental support was essential.
37. A range of guidance is available, some national, some developed locally through partnerships between local authorities, the voluntary sector and other providers including faith groups which focus on safeguarding. Kirklees Council and the Local Safeguarding Children Boards for Leicester, Leicestershire and Rutland and for the London Borough of Newham have recently produced up to date and comprehensive guidance on safeguarding in supplementary schools and madrassahs. The Churches Child Protection Advisory Service, AFRUCA and The Safe Network (established in January 2009 and hosted by the NSPCC in partnership with Children England to establish an agreed framework of safeguarding standards and support for the third sector), all produce their own guidance and resources on this subject.
38. There are indications that an increasing proportion of parents do not wish other adults to smack their children. I suggest that future advice on parenting which is produced both by the Government and other agencies should encourage such parents to make their wishes clearly known to the adults involved in their children’s care.
39. I understand that the DCSF has provided funding to develop the National Resource Centre for Supplementary Schools based within ContinYou, which provides advice and guidance on child protection policies and approaches to safeguarding children as well as child protection training sessions for the range of informal, out of hours schools which often exist to promote mother tongue language learning, cultural and faith education for ethnic and religious communities. This support, along with the opportunity for such schools to achieve quality marks which include expectations

around child protection policies and an understanding of safeguarding children, is to be welcomed.

40. My concluding recommendations are:

Recommendation 2

The Government should continue to promote positive parenting strategies and effective behaviour management techniques directed towards eliminating the use of smacking. Parents who disapprove of smacking should make this clear to others who care for their children.

Recommendation 3

The development of appropriate safeguarding policies in informal education and learning organisations should continue to be promoted. Legal changes which flow from adoption of these recommendations will need to be communicated effectively.

Annex A – List of those consulted

Department for Children, Schools and Families	Sir Alan Steer
Home Office	11 Million
Department of Health	Ofsted
Ministry of Justice	Association of Directors of Children's Services
Department for Business, Innovation and Skills	Association of Chief Police Officers
Crown Prosecution Service	Play England
Department for Communities and Local Government	London Play
Foreign and Commonwealth Office	Fair Play for Children
Welsh Assembly	4Children
Scottish Executive	National Youth Agency
Northern Irish Executive	UK Youth
Joint Youth Justice Unit (DCSF/HO)	Fostering Network
Kirklees Local Authority	Children's Rights Director
Bradford Local Authority	Mental Health Foundation
Sutton Local Authority	Young Minds
Africans Unite Against Child Abuse	Royal College of Paediatrics and Child Health
National Society for the Prevention of Cruelty to Children	Royal College of Nursing
Children England	Community Practitioners and Health Visitors Association/UNITE
Family Education Trust	British Association of Social Workers
Children are Unbeatable	Parenting UK
Ann Cryer MP	Parenting and Family Institute
	Women's Aid

Refuge

The Children’s Rights Alliance for England

Sports Coach UK

National Association of Music Educators

Muslim Council of Great Britain

Muslim Institute

Jewish Board of Deputies

Churches’ Child Protection Advisory
Service

Church of England

Methodist Church

Catholic Safeguarding Advisory Service

Churches’ Network for Non Violence

Catholic Children’s Society

Council of African Caribbean Churches

Tyndale Academy

The Christian Institute

Mary MacLeod OBE

Metropolitan Police

Action for Children

ContinYou

Mosques and Imams National Advisory
Board

Children’s Commissioner for Wales

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D16(8647)/0310

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