

Summary

The Children Bill is intended to address the inadequate procedures of child protection bodies which failed to stop the death of Victoria Climbié. However, a vocal minority wanting to ban smacking have hijacked the Bill, promising to add an amendment banning smacking. This is wrong because:

- Smacking is not child abuse. Most reasonable people see there is a world of difference between abuse and a loving smack.
- The current law works, is clear and is widely understood. Both the Government and the European Court of Human Rights accept the law adequately protects children.
- Changing the law will turn the majority of ordinary parents into criminals overnight. Though opponents argue 'trivial' smacks would not be prosecuted, any such ban will inevitably catch ordinary parents and be unworkable.
- The public is overwhelmingly opposed to banning smacking. 88% of people in the UK say it is 'sometimes necessary to smack a naughty child'.

Smacking ban: unworkable, unnecessary and unpopular

Most people support the right of parents to smack their children – 88% according to an ONS study.¹

The motive for smacking is the child's own good. It is to train children to know how to behave and to equip them for adult life. Children need clear boundaries. A smack is an effective way of helping children to recognise when they have crossed a boundary. Smacking is not the only method of teaching discipline to children, but for most parents it is an important one, which should not be taken away.

Parental smacking is not child abuse. The law already protects children from physical abuse. But it does allow reasonable and moderate physical punishment and rightly so. Parents who use *unreasonable* or *immoderate* physical punishment can and should be prosecuted.

The Children Bill was brought forward to give children greater protection from abuse. That is a worthy aim which no one would question. People might differ on what are the best systems to combat child abuse, but no one would argue against the principle.

Whatever arguments are advanced in favour of a ban on smacking, two facts are inescapable. First, it will turn loving parents into criminals overnight. Second, most people are against a ban. A ban would open



Locking up parents in the name of children's rights

the door to massive state interference in family life and it would be hugely resented by the overwhelming majority of the public.

A law that has a proven track record and considerable public support is in danger of being overturned by a small number of politically correct campaigners.

Lord Laming, whose report on the death of Victoria Climbié led to the Bill, has raised the problems of removing the reasonable chastisement defence. At Second Reading he said: "We must be very wary of criminalising otherwise good and caring parents."²

¹ Reproduced in Annex A of 'Protecting Children, Supporting Parents', Consultation Document, Department of Health, January 2000

² Second Reading debate, House of Lords, Hansard, 30 March 2004, col. 1225

Turning mothers into criminals

Given that 90% of children are smacked, banning smacking will turn the vast majority of parents into criminals overnight.¹ The anti-smacking alliance, *Children are Unbeatable*, stresses a ban would not result in mass prosecutions, arguing parents would "...never be prosecuted for minor offences, just as adults are not prosecuted for minor assaults..."² But why create a criminal offence if it is never going to be enforced? The reality is that once the defence of 'reasonable chastisement' is removed any smack, however minor, will break the law and risk prosecution.

Last year the Scottish Executive withdrew its proposed ban on smacking following evidence that many loving parents would be turned into criminals. The Faculty of Advocates, representing the Scottish Bar, stated: "If the law changes, it is inevitable that good, loving parents who otherwise would not go near a criminal court could be prosecuted and convicted."³ The Association of Chief Police Officers (Scotland) stated a ban "...could lead to the most minor of incidents being reported to the police, which could have significant resource implications for Scottish Forces."⁴ Indeed, evidence from Sweden shows its smacking ban "...resulted in hundreds

of normal parents being harassed by the police and social authorities, prosecuted, sentenced and criminalised..."⁵

Furthermore, any ban would be unworkable given most smacking occurs within the home. And in public, would mothers be reported to the police for smacking a naughty child in a supermarket? The current law works perfectly well. Changing it is unnecessary and would cause massive uncertainty, plunging parents into fear and confusion.

¹ Leach, P, *The Physical Punishment of Children*, NSPCC, 1999, page 6

² *The Guardian*, 10 March 2004

³ The Scottish Parliament, Justice 2 Committee 8th Report, Vol. 1, 2002, page 27

⁴ The Scottish Parliament, Justice 2 Committee 8th Report, Vol. 2, 2002, Submission by ACPOS

⁵ Harrold-Claesson, R, Response to The Physical Punishment of Children in Scotland: A Consultation, The Scottish Executive Justice Department, February 2000, response 67

Banning smacking will turn mothers into criminals overnight



Smacking: used by loving parents

Most parents use a range of approaches to discipline – including smacking. Such parents are not child abusers. They are loving parents. A government study by ONS found that 88% of people in the UK say it is “sometimes necessary to smack a naughty child”.¹ Penelope Leach, the leading anti-smacking campaigner, readily accepts research showing 90% of children are smacked by their parents.²

Smacking is not the only way of teaching discipline to children, but it is one important way. It is used when verbal warnings and other low-key disciplinary tactics have been ignored. Children, particularly those aged between 2 and 6, do not tend to assent rationally to what their parents say is good for them. (Typically after the age of 6, the use of smacking diminishes). If a five-year-old runs out onto a busy road, his father may smack him to show the seriousness of what he did. Most people regard this as necessary and reasonable.

¹ Reproduced in Annex A of ‘Protecting Children, Supporting Parents’, Consultation Document, Department of Health, January 2000

² Leach, P, *The Physical Punishment of Children*, NSPCC, 1999, page 6

Government quotes on smacking ban:

“The reasonable chastisement defence ‘is being used properly’”

“The Government has asked the Attorney General to keep the use of the reasonable chastisement defence under review in order to assess the impact of A v UK. His findings to date suggest that this defence is being used properly. The Government’s position is that these measures fulfil our obligations arising from the A v UK ruling and we will be responding to the Council of Europe accordingly.”

Margaret Hodge MP, Minister for Children
House of Commons, Hansard, 6 October 2003, col. 1132-1133 wa

“Most parents understood the difference between discipline and abuse”

“Our position on smacking had not changed. We continued to believe that it was a matter of individual choice for parents. In the Government’s view, most parents accepted and understood that there was a clear and fundamental difference between discipline and abuse and knew where to draw the line...the Government did not believe that criminalising parents was the right way to deal with the issue.”

Prime Minister’s Official Spokesman,
Press Briefing, 24 June 2003

“Changing the law would not have public support”

“...we do not believe that any further change to the law at this time would be appropriate – it would neither command widespread public support nor be capable of consistent enforcement.”

Jacqui Smith MP, then a Health Minister
Department of Health Press Release, 8 November 2001

“Don’t confuse smacking with what happened to Victoria Climbié”

“...I am cautious about confusing what happened to Victoria Climbié with issues around smacking and the reasonable chastisement of children. What happened to Victoria was of a quite different order.”

Alan Milburn MP, then Health Secretary
House of Commons, Hansard, 28 January 2003, col. 748

“The present law reflects the right balance”

“My Lords, the Government have no plans at present to remove the reasonable chastisement defence, as we believe that the law as it stands on physical punishment of children reflects the right balance between protecting children and allowing parents to make their own choices about discipline in the home.”

Baroness Ashton of Upholland, Under-Secretary of State, DfES
House of Lords, Hansard, 1 March 2004, col. 438

Evidence does not support a ban

Opponents of smacking claim it is counterproductive, harmful and should be banned. Yet this is not supported by evidence. In 2002 a review of 88 studies on physical punishment and child behaviour concluded that “a blanket injunction” against smacking “is not

justified by the evidence presented...”¹ Far from smacking being counterproductive, a review published in the journal *Pediatrics* found that of eleven studies of parental discipline, the majority (6) were found to have had *beneficial* outcomes for children and only one had detrimental outcomes.²

Furthermore, evidence shows that Sweden’s ban on smacking (introduced in 1979) failed to reduce child abuse. In fact since then there has been a sharp increase in child abuse and child-on-child violence.³

Penelope Leach is probably the leading campaigner for criminalising smacking. She has argued in the past that “...social policy cannot always await rigorous research evidence”.⁴ But legislation must be based on evidence, not unsubstantiated emotive arguments.

¹ Baumrind D, Cowan A P, Larzelere, R E, ‘Ordinary Physical Punishment: Is It Harmful? Comment on Gershoff (2002)’, *Psychological Bulletin*, 2002, 128 (4), pages 580-589

² Larzelere, R E, ‘A Review of the Outcomes of Parental Use of Nonabusive or Customary Physical Punishment’, *Pediatrics*, 1996, 98 (4) pages 824-828

³ See article in this briefing: ‘Sweden’s ban did more harm than good’

⁴ Leach, P, ‘Should Parents Hit Their Children?’, *The Psychologist*, May 1993, pages 216-220

◀ Pro-ban reports are often emotive and opinion-driven.

Ban would breach human rights

A ban on parental smacking would breach the European Convention on Human Rights (ECHR) according to a leading criminal lawyer. A legal opinion¹ in 2002 on the proposed smacking ban in Scotland concluded it would be disproportionate, arbitrary and in breach of Article 8 of the ECHR (the right to family life). The European Court of Human Rights has recognised physical punishment as lawful.

Banning smacking represents a radical, fundamental shift in the legal relationship between parents and children, and the way courts approach parental discipline. At present, courts must have regard to the relationship between a parent and child and assess whether the punishment was reasonable. Removing the defence of reasonable chastisement will mean that in law smacking can never be ‘reasonable’. Parents who smack their children will be convicted for assault as if they were strangers attacking a child in the street.

¹ Joint Opinion of Council, Herbert A Kerrigan Q.C., Paul Diamond, December 2002 (available from The Christian Institute see <http://www.christianscotland.org/smacking/>)



The current law works

The existing law of 'reasonable chastisement' has a long history and it works. This is attested by the fact that anti-smacking campaigners can only cite one case in the UK (A v UK)¹ where a parent was acquitted of assault when the punishment did appear to be unreasonable. In fact the European Court of Human Rights (ECHR) subsequently ruled that the punishment was *unreasonable* and UK courts must now take this judgment into account. To have only one such case is a good record for any law.

The Government believes that the reasonable chastisement defence "is being used properly" and that the law fulfils the obligations arising from the A v UK ruling.² It says the law "...reflects the right balance between protecting children and allowing parents to make their own choices about discipline..."³ The ECHR also accepts the general criminal law of assault provides sufficient protection for children.⁴

The present law is clear and widely understood. This was apparent in the recent debates on a smacking ban in Scotland. The Scottish Parliament's scrutinising committee, having cross-examined those supporting a ban, concluded: "No information could be supplied about prosecutions which might have failed because the existing law is insufficiently clear."⁵

¹ A. v The United Kingdom (100/1997/884/1096), Judgment, Strasbourg, September 1998, para. 9

² House of Commons, Hansard, 6 October 2003, col. 1132 wa

³ House of Lords, Hansard, 1 March 2004, col. 439

⁴ Joint Opinion of Council, Herbert A Kerrigan Q.C., Paul Diamond, December 2002, para. 82

⁵ *The Scottish Parliament*, Justice 2 Committee 8th Report; 2002, Vol. 1, SP Paper 645, para.121



Are children's rights groups always right?

Everyone accepts that the State must intervene to protect children who are in danger of abuse. But so-called children's rights groups go much further: they want the State to outlaw smacking.

But smacking is not child abuse. The idea that it is pervades the social work establishment. The obvious problem for this theory is that most adults were smacked as children and readily accept that it was necessary.

Most parents have a natural if not overwhelming desire to love and protect their children. They have a natural authority over them. For their own safety, well-being

and future growth children need to obey their parents. The Judaeo-Christian tradition teaches children to "Honour your father and mother".¹ This is simply common sense. Smacking is one means of disciplining children. Unlike sarcasm, the effects are only temporary and the sanction directly relates to the behaviour. Christians believe that discipline is part of love and the benefits last a lifetime.²

¹ Exodus 20:12

² Hebrews 12:7-11; Ephesians 6:1-3



Subtle amendments may be far-reaching

Anti-smacking campaigners are threatening to hijack the Children Bill by amending it to ban smacking. An amendment may attempt something more subtle than an outright ban. But even a subtle change to the law could be far-reaching and intimidate loving parents. The Government has said it will give "careful consideration to any amendment" which falls short of an outright ban and that it may allow a free vote.¹

Supporters of a ban say "It is important to make it clear that the public interest will not be served by prosecuting caring parents for an occasional quick smack..."² However, as anything other than ordinary smacking is already illegal, any change in the law could only ever ban some or all ordinary smacking. In fact there is no case for changing the law. The present law on 'reasonable chastisement' is clear and has stood the test of time – it works.

One amendment mooted would aim to ban smacking but include an exemption if the smack was necessary to avoid immediate danger or injury to the child. The Scottish Executive attempted to ban smacking in 2003. Its proposed new law did not require any evidence that the child was harmed or that the parent had

used unreasonable force. The proposal, which was ultimately withdrawn, was to totally ban the smacking of children under 3, though no convincing case could be made for choosing 3 as the age limit.

There is no need to change the law. Any subtle amendment would cause great confusion. And tampering with the law raises the prospect of massive and unprecedented State interference in family life. Could any such law be workable? The State would be free to turn thousands upon thousands of caring parents into criminals.

¹ House of Lords, Hansard, 30 March 2004, col. 1308

² Baroness Walmsley, House of Lords, Hansard, 30 March 2004, col. 1222



Even a subtle change to the smacking law could be far-reaching and intimidate loving parents

Sweden's ban did more harm than good



Those in favour of a smacking ban often cite Sweden as a role model, which banned smacking in 1979. One of the major motivations behind the ban was to reduce levels of child abuse. Yet evidence suggests the ban not only failed to reduce child abuse, it made the situation dramatically worse. Between 1981 and 1994, records of assaults by relatives against children under seven increased by 489%.¹

Opponents of smacking also argue smacking teaches children the wrong message, that violence is acceptable. Banning smacking, they argue, will thus reduce the level of violence in society. However, Sweden again shows banning smacking had the opposite effect. Child-on-child violence increased by 519% between 1984 and 1994.² The ban on smacking introduced a colossal level of State interference

– at the expense of parental freedom. The ban has had a devastating impact on Swedish families. Of new cases receiving 'support and care measures' almost half resulted in children being removed from the home.³

◀ This publication shows the harm caused by Sweden's ban. Copies are available from The Christian Institute.

¹ Larzelere, R E, *Sweden's smacking ban: more harm than good*, Families First and The Christian Institute, 2004, page 8

² *Ibid*, pages 9-10

³ *Ibid*, page 11

Child abuse is already illegal

Opponents of smacking argue the Children Bill should be amended to protect children from abuse. Yet child abuse is already illegal. The Government has clearly stated this.¹ The Bill was introduced to address the failure of key agencies to save Victoria Climbié from the systematic abuse which led to her death. The Climbié case had nothing to do with parental smacking but everything to do with incompetence and the inadequate systems of child protection bodies. Smacking is not child abuse. The then Health Secretary, Alan Milburn, warned against equating the two: "...I am cautious about confusing what happened to Victoria Climbié with issues around smacking... What happened to Victoria was of a quite different order".²

However, the anti-smacking lobby have done just this. Some even argue the defence of 'reasonable chastisement' allows child killers to go free.³ This is simply hysterical rhetoric and is not supported by the evidence. There is no case of a child killer going free because smacking is legal.

¹ See article in this briefing: 'The current law works'

² House of Commons, Hansard, 28 January 2003, col. 748

³ *The Daily Mail*, 8 March 2004

Nonsense arguments against smacking

■ "Hitting people is wrong – children are people too"

"Hitting" is a deliberately emotive and misleading word. Where smacking is used the intention is to train children how to behave and to equip them for adult life.

■ "Children should have the same protection as adults"

For obvious reasons children are not allowed to drive, marry or own a firearms license. No-one claims 'inequality' on these issues and it is ridiculous to apply this argument to smacking. Smacking is specific to children as they are dependent upon their parents and need to be taught right from wrong.

■ "If smacking works, why do you have to keep doing it?"

This is like saying if school works, why do children have to keep going? The same argument could be used against any parenting technique or any law which is broken on a single occasion.

■ "Smacking escalates to child abuse"

Most parents who smack their children are not child abusers. The overwhelming proportion of parents know what is reasonable. Evidence from Sweden shows banning smacking actually increased child abuse.

■ "Smacking teaches children to be violent"

The majority of people who were smacked themselves as children, and are now law-abiding citizens, not violent abusers.

Most people opposed to smacking ban

The public is overwhelmingly opposed to banning smacking. A study by the Office for National Statistics found 88% of people in the UK agree it is "Sometimes necessary to smack a naughty child".¹ In 2001 the Government rejected a ban citing, among other reasons, public opposition. In 2004 the Government again rejected changing the law, adding: "In this country, there is a reasonably strong view that the position of the Government is correct".² Even a recent poll using a highly emotive and slanted question resulted in 59% opposing a ban.³ Indeed, the child rights groups calling for a ban are out of step with the public and have naïve beliefs about children and family life.

¹ Reproduced in Annex A of 'Protecting Children, Supporting Parents', Consultation Document, Department of Health, January 2000

² House of Lords, Hansard, 1 March 2004, col. 439

³ *The Times*, 12 April 2004