

A response to the
Northern Ireland
Executive's consultation
on the physical
punishment of children

Locking up Parents?



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January 2002



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Introduction

The Northern Ireland Executive is consulting on proposals to make all parental smacking illegal.¹ Under plans drawn up by the Office of Law Reform (OLR) ordinary parents who smack their own children will become criminals. The public's views on less drastic alternatives are also being sought, but the Executive is committed to changing the law.

The consultation paper suggests that the “simplest option” is to make the physical punishment of children a criminal offence.² **The Executive has said that it will decide what to do as a direct result of the consultation.**

The measures being proposed in Northern Ireland will seriously infringe the ability of parents and other carers to apply sensible discipline and teach children right from wrong.

Parents have always known that there are times when reasoning with a child is not enough. On those occasions, a smack will show the child the seriousness of his misbehaviour. It is the ultimate sanction and children know it. Often, the mere knowledge that a misdeed could lead to a smack will help a child behave.

But this common sense view is in danger of being set aside. This is why it is vital for ordinary parents to respond now to the consultation being undertaken by the Executive's officials in the Office of Law Reform. The consultation **ends on 31 January 2002.**

This booklet

- discusses the issues around the campaign to make smacking a criminal offence
- summarises the proposals for changing the law

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2 January 2002

Smacking: Used by loving parents

Most parents smack their children. They are not child abusers. They do it because they see discipline as part of love. Parents who want the best for their children and who want them to learn right from wrong, normally use physical punishment.

A study by the Office for National Statistics found that 88% of people in the UK say it is “sometimes necessary to smack a naughty child”.³ The UK Government has no proposals to change the law for England and Wales.⁴

Babies below the age of 15 months have little or no sense of what their parents are telling them to do. But around the age of 15 to 18 months children have a growing sense of right and wrong. They can gently be held accountable for their actions. For example, an 18-month-old boy could be tapped on the hand when he defies a warning and reaches out to a hot radiator.

Children, particularly those aged between 2 and 6, do not tend to assent rationally to what their parents say is good for them. Smacking does have a role in teaching them to obey their parents. It is not the only way of teaching discipline to children, but it is one important way. 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.

By the age of 6 parental use of smacking typically diminishes. By the age of 10 it has often stopped altogether for many parents. But in those years it is one of a range of sanctions which most loving parents use to teach their children good behaviour.

The existing law in Northern Ireland gives parents the common sense right to discipline children using physical punishment. It gives a defence of “reasonable chastisement” against a charge of assault. Technically, even the slightest tap on another person is an assault if they do not consent to it. Hence the need for a defence. This defence is available to other relatives such as grandparents and also to close family friends.

Smacking: The research

The Office of Law Reform (OLR) quotes research by the Northern Ireland Statistics and Research Agency which found in a survey that only 34% of parents viewed “physical punishment” as acceptable.⁵ This leads to the paper’s conclusion that approval for physical punishment “is not a clear cut issue”.⁶

But research by the UK Government’s Office for National Statistics tells a completely different story. It found that 88% of respondents view smacking as necessary with only 8% disagreeing.⁷

The reason for the discrepancy is the actual question asked. In the UK study the question asked whether it was “sometimes necessary to smack a naughty child”.⁸ In Northern Ireland the question was about “physical punishment such as smacking or hitting”.⁹ To most people “hitting” is much more violent than smacking. It is extraordinary that hitting was lumped together with smacking.

Penelope Leach is probably the leading campaigner for the criminalisation of parental smacking. She argues that physical punishment leads to children growing up to be violent, but that: “Social policy cannot always await rigorous research evidence”. The late H J Eysenck, former Professor of Psychology at London University, responded that Penelope Leach’s approach: “...is not acceptable scientifically...” and that: “Leach’s account is too one-sided to form the basis of responsible recommendations to law-giving bodies”.¹⁰ *Yet the OLR’s consultation paper relies heavily on her work.*¹¹

Dr D Baumrind has written a review of the research evidence for the American journal *Pediatrics*. She concludes that a blanket injunction against physical punishment by parents “is not scientifically supportable.”¹² She goes on to state that “there is no expert consensus” that it “is a generative cause of negative outcomes in children and adults.”¹³

Another review by Dr Larzelere also published in *Pediatrics*¹⁴ found that of eleven studies of parental discipline, the majority (six) were found to have had *beneficial* outcomes for children and only one had detrimental outcomes. The remaining four studies had neutral outcomes.

The Biblical view

When it comes to the discipline of children there are profound differences between the Christian and the secular viewpoint. The secularist believes that man is corrupted by his environment. Christians hold to Jesus' teaching that "...*out of the heart* come evil thoughts, murder, adultery, sexual immorality, theft, false testimony, slander" [emphasis added].¹⁵

The human heart has a tendency to do what is wrong by nature. That is why we all need constraints: of the law, of social rules and mores and of our parents through their care and nurture.

The duty of a child to "honour your father and your mother" is one of the Ten Commandments.¹⁶ The role of parents and the duty of children to obey them is thereby enshrined in the central moral teaching of the Bible.

The Judaeo-Christian tradition has always endorsed the parental right to use corporal punishment to teach children to behave well. The Bible says in the book of Proverbs "He who spares the rod hates his son, but he who loves him is careful to discipline him."¹⁷ The use of implements by parents is regarded as legitimate by the Bible.

The New Testament teaches us that: "...the Lord disciplines those he loves"¹⁸. Discipline is therefore seen as a good thing, motivated by love and done for our benefit. The writer to the Hebrews says: "No discipline seems pleasant at the time, but painful. Later on, however, it produces a harvest of righteousness and peace for those who have been trained by it".¹⁹ Discipline is the responsibility of the parent who loves his child.²⁰

At the same time as clearly mandating corporal punishment, the Bible warns against harsh and unreasonable discipline: "Fathers do not exasperate your children..."²¹

Summary of the proposals

Under the present law, parents are entitled to use reasonable and moderate physical punishment to discipline their children.

A parent who physically punishes his child and is then prosecuted for it, can rely on the common law defence of ‘reasonable chastisement’.²² This defence can also be relied upon by someone acting in the parent’s place, such as a relative who has been asked to look after the child.

Any punishment of a child that is *unreasonable* or *immoderate* can therefore be successfully prosecuted. The physical abuse of children is already a criminal offence.

But Mark Durkan, the Executive Minister with responsibility for this area, believes that the existing law on physical punishment in the home does not offer children enough protection and needs to change, “...*No change is not an option*”²³. The proposals given in the consultation reflect this view. There are various options which, in the Executive’s opinion, will ensure tighter legal protection of children from abuse.

Whilst claiming to present this issue in an even-handed way, the consultation paper states:

*“It is clear that the most obvious ways to mitigate the adverse impacts identified and to better promote equality of opportunity would be to remove the defence of reasonable chastisement from our law and to encourage development of support for parents”*²⁴.

This would turn ordinary loving parents who smack their children into criminals overnight. Yet this is seen as the “most obvious” thing to do in the third of the four proposals given in the consultation paper.

Listed below are the Office of Law Reform’s four proposals.

Proposal 1: Leave the matter to the courts:

This would allow parents to continue using physical punishment, with courts determining if ‘reasonable chastisement’ was used, as is the law at present. Following the incorporation of the Human Rights Act 1998 into UK law, courts now also have to consider the nature and context of the punishment, as well as the duration, the physical and mental consequences for the child, and the age and personal characteristics of the child.

This option is discussed, but ultimately discarded by the OLR and the Executive because they believe that the law must change.

Proposal 2: Limit the reasonable chastisement defence:

This would involve setting out in law the factors which courts should consider when determining what is reasonable chastisement. One example could be to consider what the parents intended through their actions.

Another way would be to limit the use of the defence to those with parental responsibility and to those who they have expressly allowed to use physical punishment on their child.

A further method of limiting the defence would be to criminalise the use of instruments, e.g. a wooden spoon or the physical punishment of very young children.

Proposal 3: Remove the defence of reasonable chastisement:

This would make it a criminal offence for anyone to use physical punishment on a child.

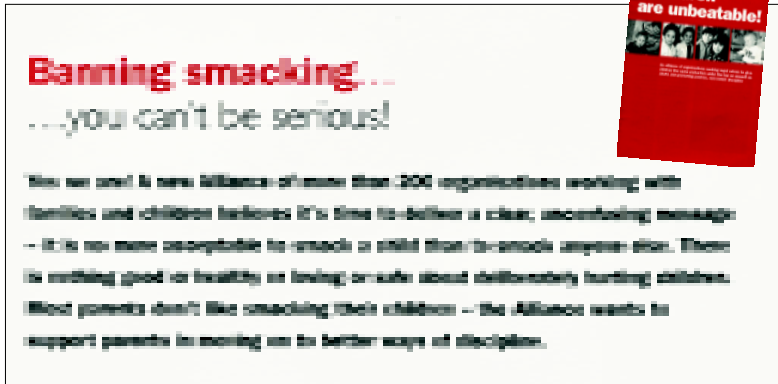
Proposal 4: Introduce a statement of rights and responsibilities:

It is important to note that this reform would be in addition to any reform of the defence of reasonable chastisement. Its purpose would be to state clearly the rights and duties of both parents and children. There could be different statements according to the child's age. Such a statement could be free-standing, but could also be incorporated into the legal definition of parental responsibility about which consultation is ongoing. This would be part of civil law, not criminal law. The statement could say that parents should aim not to use physical punishment.

The OLR seems to have no clear idea what the final statement might look like, or what its impact might be. It also proposes a public campaign to promote parenting programmes. Such a campaign would accompany any change in the law.

The campaign to criminalise smacking

Whilst 88% of the public believe it is right to smack children the same cannot be said of some leading children's charities and the social work establishment.



The NSPCC, Save the Children and Barnardo's all want to make parental smacking a criminal offence (see the above extract from a joint publication). This is not the only area where such charities are out of step with the public. As well as wanting to ban smacking the three charities supported the lowering of the age of homosexual consent and Barnardo's want homosexual couples to be allowed to adopt children.

EPOCH (End Physical Punishment of Children) has teamed up with these organisations to launch a campaign called '*Children are unbeatable*'. This alliance believes that smacking children teaches them to be violent. The campaign seeks to make parental smacking a criminal offence.²⁵ Child Care Northern Ireland appears to be the main contact for the alliance in the province.²⁶ Other organisations include: NIPPA - the Early Years Association (NI), the Northern Ireland Childminding Association, First Key (NI) and the Northern Ireland Foster Care Association.²⁷

The British Association of Social Workers and the National Institute for Social Work have joined the alliance along with a host of other professional organisations who work with children.

A hard case makes bad law

The present law has served us well. There appears to be only one recent case of a parent getting away with *unreasonable* punishment under the reasonable chastisement defence - the “A” case.²⁸

The OLR and the Executive say that the law needs changing following this unusual case in the European Court of Human Rights.

It seems that this one case is being used to justify changing the law. If there had been other cases, we would no doubt have heard about them. Is there any other instance where this has happened? With the law of murder, for example, there have been injustices under the existing law. But whilst such cases have led to changes in the rules of evidence, they have not led to any change in the law of murder. Murder is still murder. Parliament has not felt it necessary to redefine it. Freak cases do not warrant changing the law.

The “A” case - concerned a boy who was, according to his stepfather, punished for stealing at school having on a previous occasion threatened his younger brother with a knife.²⁹ The medical evidence to the court found that the stepfather beat him more than once with a garden cane, leaving marks, some of which may have lasted up to a week.³⁰ Surprisingly, a British jury found the step-father not guilty of assault causing actual bodily harm. He relied on the long-standing defence of “reasonable chastisement”. This is intended to protect the right of parents (and those in the place of parents) to administer ordinary, loving discipline.

The Strasbourg court found that this failure to convict by a British court was a breach of Article 3 of the European Convention on Human Rights. The Article outlaws “inhuman or degrading treatment or punishment”. The court found that, in this particular case, the use of the “reasonable chastisement” defence did not provide adequate protection to the boy.³¹ The Court awarded the boy £10,000 compensation and £20,000 legal costs.³²

The “A” case would never have made it to the Court of Human Rights if it had not been for the backing of the Children’s Rights Lobby. They seized on this highly unusual case to further their agenda to outlaw all smacking. Now the OLR has embraced this same agenda.

No need for new laws

The fact is that the British jury seems to have made a mistake. The punishment of the child in this case does not appear to have been “reasonable” given the injuries that were inflicted. There was a miscarriage of justice. The existing law could and should have been used to convict the step-father.

The Executive and the OLR say that the law must be changed as a result of the ruling.³³ In fact, when the case was being pursued before the court in Strasbourg, the UK Government did not even defend the existing law in court. It capitulated and accepted that there had been a breach of the Convention before the court hearing even took place.³⁴

In reality, *there is no need to amend existing law at all*. The laws on assault should have been enough to result in a conviction in the “A” case. In any event, under the Human Rights Act 1998 which came into force in October 2000, all UK courts must now take into account judgments from Strasbourg including the “A” Case.³⁵ The Office of Law Reform admits that that has already happened in the case of *R v H*. This Court of Appeal case, heard in April 2001, developed the common law for England and Wales to take account of the “A” case.³⁶

Lord Justice Rose, giving the judgment of the court, held that juries must be directed by the judge to consider certain factors in determining whether the chastisement in question is reasonable. The judge listed the four factors from the “A” case and also added a fifth concerning the intent of the defendant.

R v H proves that the “A” case does not require Parliament or the Northern Ireland assembly to re-write the law. Indeed not long after the Northern Ireland consultation paper was published, the UK Government announced that there would be no change to the statute law for England and Wales. This undermines the claim made by the Executive and the OLR that the law must change.

The crunch issue is whether the law should go further than *R v H*. This is what Question 2 of Chapter 4 asks (see page 19 of this booklet).

The intrusion into family life

It is social workers and the police who will have to enforce new laws against the physical punishment of children by parents.

Whether there is an outright ban, or more legal restrictions on smacking the end result will be more state power to intervene into family life.

Here there is an immediate problem. Many of the social workers who are in charge of the child protection system hold the view that all smacking is child abuse and should be illegal. The question is: are such social workers able to separate their own private views (opposed by the vast majority of parents) from the way they carry out their duties?

The judgement of social workers can be coloured by their own views as to how things should be. If social workers abuse their powers and treat loving parents as child abusers, then innocent families will be shattered. When social workers get things wrong many children can be harmed, as a number of high profile cases have shown. Large numbers of children were removed from their families in Cleveland and Orkney only to be returned traumatised when the allegations were accepted as false.

But there are many more cases of social workers acting inappropriately which never make the headlines. The following is a possible scenario of what could happen now, based on existing law, where a complaint about a parent is made to Social Services. It is based on accounts of real cases.

A possible scenario

An anonymous telephone call is made to a social worker alleging that a parent is 'beating' his child. This triggers a duty under Section 66 of the Children (Northern Ireland) Order 1995 requiring the local authority to investigate. The threshold for this duty is very low. The suspicion of significant harm is enough. It is apparently very rare for a court to overrule a social worker's decision to investigate under Section 66.

The social worker pays a visit. The parents deny any beating. They do, however, indicate that they believe in smacking. They add that one of the children was smacked on the bottom the day before, the day of the anonymous complaint.

This particular social worker believes all smacking constitutes child abuse. She tells the parents that they should not smack their children. The parents disagree and indicate they will continue to smack.

The social worker asks if the parents will allow the child to be examined by a doctor to see if there are any marks on the child's bottom. The parents decline, saying it will upset the child too much, assuring the social worker that the smacking resulted in nothing more than a few minutes redness and a bout of tears. The child was hugged and professed to be sorry and went off to play.

The social worker is unhappy with the parents' commitment to smacking. She meets with colleagues who share her views. They decide to seek an Emergency Protection Order from the court in order to have the child examined by a doctor.

Before the court, the social worker describes a distressed call from a neighbour who heard the child crying after being smacked. She also indicates that the parents were completely unrepentant about the incident, and that they were secretive about the nature of the injuries which the smacking caused.

An Emergency Protection Order is granted and the child is taken from the parents home with the assistance of a police officer. The father is furious. He is warned that his conduct constitutes evidence that he is unable to 'manage his anger' and that the social worker's view of his abilities as a parent are thereby further diminished.

No evidence of any bruising or tenderness is found on the child. The child is returned to the parents. A child protection conference is called involving the local police, the child's teacher, the local health visitor and representatives of social services. In the absence of bruising or any evidence that an implement was used, the police officer advises that a prosecution would not succeed.

However, the parents' admission of the smack and their unwillingness to refrain from smacking, combined with evidence of the father's 'poor anger management' result in the child being placed on the local Child Protection Register. The parents are advised that they must attend parenting classes to learn alternative methods of discipline. They are also warned that any further incident of physical punishment will be investigated.

A core group meets regularly to monitor progress and all agencies (such as health visitors, teachers etc) are told that they are required to report any concerns immediately to the allocated social worker. Review conferences take place at regular intervals.

The chain of events from when a referral is made to long term social services involvement is inexorable. We now consider a Scottish case which hit the national news headlines.

A real scenario

In October 2001 a French tourist, Monsieur Boquelet, found himself locked up in a prison cell for two days after he was arrested for smacking his son.³⁷ He was arrested for assault after two passers-by saw him smack his misbehaving eight-year-old son outside an Indian restaurant in Edinburgh.

M. Boquelet was on holiday with his wife and son in Edinburgh when the police arrested him. The child was taken to hospital but doctors could find no injuries at all. It was reported that the police claimed that smacking your child was illegal in Scotland. Not surprisingly M. Boquelet and his wife are very upset: he must return for his trial in February 2002.

This case is very worrying because in Scotland 'reasonable chastisement' is currently a defence for parents who are wrongly prosecuted for assault. This is the same as the law that operates in Northern Ireland. The Scottish Executive wants to bring in severe restrictions on the parental right to smack, including banning the smacking of all children aged under three.³⁸ If the Scottish Executive gets its way, cases like M. Boquelet's may proliferate out of control and lead to thousands of ordinary parents, including English parents who visit Scotland, being locked up.

References:

- ¹ *Physical Punishment in the home- thinking about the issues, looking at the evidence:* A consultation paper for Northern Ireland, Office of Law Reform, September 2001 (the full consultation paper). The Office of Law Reform (within the Executive's Department of Finance and Personnel) is carrying out this consultation.
- ² *Ibid*, page 44
- ³ 1998 Office for National Statistics Survey, reproduced in Annex A of *Protecting Children, Supporting Parents - A Consultation Document on the Physical Punishment of Children*, Department of Health, January 2000
- ⁴ Analysis of Responses to *The Protecting Children, Supporting Parents Consultation Document*, Department of Health, pages 2, 20 see <http://www.doh.gov.uk/scg/pcspresponse/childproconsresp.pdf>
- ⁵ *Physical Punishment in the home, Op cit*, page 14
- ⁶ *Ibid*, page 15
- ⁷ House of Lords, Hansard, 19 December 2001, col. 239
- ⁸ Analysis of Responses to *The Protecting Children, Supporting Parents Consultation Document*, Department of Health, *Op cit*, page 2
- ⁹ *Physical Punishment in the home, Op cit*, page 13
- ¹⁰ Leach, P, 'Should Parents Hit Their Children?', *The Psychologist*, May 1993 and Eysenck, H J, 'Hitting the Right Cause', *The Psychologist*, September 1993
- ¹¹ The entire section entitled "What does the research tell us?" on pages 10-11 relies on two anti-smacking research papers, one of which is *The Physical Punishment of Children – some input from recent research*, by Penelope Leach, published in 1999 by the NSPCC
- ¹² Baumrind, D, 'A Blanket Injunction Against Disciplinary Use of Spanking Is Not Warranted by the Data', *Pediatrics (Supplement)*, 1996, 98(4), page 828. Spanking is the US equivalent term to smacking.
- ¹³ *Ibid*, page 830
- ¹⁴ Larzelere, R E, 'A Review of the Outcomes of Parental Use of Nonabusive or Customary Physical Punishment', *Pediatrics*, 1996, 98(4), pages 824-828
- ¹⁵ Matthew 15:19 (New International Version)
- ¹⁶ Exodus 20:12
- ¹⁷ Proverbs 13:24
- ¹⁸ Hebrews 12:6
- ¹⁹ Hebrews 12:11
- ²⁰ Hebrews 12:7-8
- ²¹ Ephesians 6:4
- ²² This defence also applies to a prosecution for child cruelty under the Children and Young Persons Act (Northern Ireland) 1968. See *Physical Punishment in the home- thinking about the issues, looking at the evidence:* A consultation paper for Northern Ireland, *Op cit*, page 19
- ²³ News Release, Department of Finance and Personnel, 11 September 2001
- ²⁴ *Physical Punishment in the home, Op cit*, page 52

- ²⁵ “Children are unbeatable” *Leaflet produced by Barnardos on behalf of the alliance*, December 1998
- ²⁶ See <http://www.childrenareunbeatable.org.uk/pages/contact.html> as at 18 December 2001
- ²⁷ “Children are unbeatable” , *Op cit*
- ²⁸ For more detail see below: *Hard Cases Make Bad Law*
- ²⁹ *Daily Mail*, 24 September 1998
- ³⁰ A. v. The United Kingdom (100/1997/884/1096), Judgment, Strasbourg, September 1998, para 9
- ³¹ *Ibid*, p.ii
- ³² *Ibid*, p.9, paras 34 & 37
- ³³ News Release, Department of Finance and Personnel, 11 September 2001
- ³⁴ A. v. The United Kingdom (100/1997/884/1096), Judgment, *Op cit*, para 19
- ³⁵ Human Rights Act 1998, Section 2(1) states “A court or tribunal determining a question which has arisen in connection with a Convention right must take into account any – (a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights....”; Section 3(1) states: “So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.” But even without this change to the law, the Strasbourg court made clear, “the concept of “reasonableness” permits the courts to apply standards prevailing in contemporary society with regard to the physical punishment of children”. A. v. The United Kingdom (100/1997/884/1096), Judgment, *Op cit*, para 14
- ³⁶ See *Physical Punishment in the home*, *Op cit*, page 26. The factors listed in R v H (*The Times Law Reports*, 17 May 2001, page 329) were:
- (i) the nature and context of the defendant’s behaviour;
 - (ii) the duration of that behaviour;
 - (iii) the physical and mental consequences in respect of the child;
 - (iv) the age and personal characteristics of the child;
 - (v) the reasons given by the defendant for administering the punishment.
- ³⁷ *Edinburgh Evening News*, 12 October 2001; *The Daily Telegraph*, 13 October 2001; *The Times*, 13 October 2001
- ³⁸ *Making Scotland Safer- Improving the Criminal Justice System*, The Scottish Executive, 2001, paragraphs 103-131

The Northern Ireland Executive's proposals to re-write the laws on parental discipline will lead to fear and confusion amongst parents.

The current law is adequate to protect children and the rights of parents. Legal changes should not be made simply to placate the vociferous minority who believe that all smacking is child abuse.

Locking up Parents?

