

Consultation or Campaign?

**Why the Office of Law Reform's consultation
paper on the physical punishment of children in
Northern Ireland should be withdrawn**



FAMILIES FIRST

November 2001

Families First is a family advocacy group, committed to supporting parents and children in the family unit throughout the United Kingdom. It supports the rights and responsibilities of parents to protect and guide their children and to bring them up in a reasonable manner, according to their religious and philosophical convictions.

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Introduction and Summary

Families First is deeply concerned by the content and tone of the consultation paper for Northern Ireland on *Physical punishment in the home - thinking about the issues, looking at the evidence*. Our concerns do not relate to one or two minor details, or to isolated sections within the document. They go much deeper than that.

- **There is ambiguity in the definition of fundamental terms**
 - (a) It is not clear whether physical correction without 'the intention of punishing' falls within the scope of the document.
 - (b) When respondents are asked to comment on the acceptability of 'physical punishment', it is unclear whether social, legal, personal or professional acceptability is being referred to.

- **The document contains a considerable number of factual inaccuracies, many of them of a crucial nature**
 - (a) In the case of *A v UK*, the European Court of Human Rights did not make any general comments about UK law on physical correction.
 - (b) The European Court of Human Rights has never declared the use of physical correction in schools to be contrary to the European Convention on Human Rights. The application of the Christian Fellowship School did not receive a full hearing in the European Court

because, in the view of the Court, UK law did not explicitly rule out the use of physical correction by a teacher with the consent of the child's parents.

- (c) There is no basis for stating that 'physical punishment no longer takes place in foster homes'.
 - (d) Recommendation R (93) 2 of the Committee of Ministers in the Council of Europe makes no reference to 'physical punishment'.
 - (e) The United Nations Convention on the Rights of the Child does not refer to 'physical punishment'. Only a radical interpretation of the Convention could see a condemnation of moderate physical correction in Articles 19, 28 or 37.
 - (f) The International Covenant on Civil and Political Rights makes no explicit reference to parental 'physical punishment'. The Human Rights Committee has taken the view that Article 7 of the Covenant prohibits 'excessive chastisement', but makes no reference to moderate physical correction.
 - (g) The document exaggerates the number of European countries which have 'ended physical punishment'.
 - (h) Evidence in support of the claim that the American state of Minnesota does not permit the defence of 'reasonable chastisement' is in short supply.
 - (i) An objective appraisal of the (limited) available data on the effects of Sweden's ban on the physical punishment of children reaches conclusions quite different from those suggested by the consultation paper.
 - (j) The case of the Swedish parents alluded to in the document was heard by the European *Commission* of Human Rights and not by the European *Court* of Human Rights. One of the main reasons why the application was declared inadmissible was because none of the applicants had personally suffered as a victim of the 1979 legal provision.
- **There is a clear ideological bias against physical correction that runs through the entire document**
 - (a) The document presents a stereotypical view of physical punishment which it compares unfavourably with 'modern thinking about effective discipline'.
 - (b) Physical punishment is portrayed as incompatible with a parent-child relationship characterised by trust and good communication.
 - (c) Loaded language is employed to suggest that the use of any form of physical punishment goes against medical, educational and psychological thinking, as if there were no debate among professionals in these fields.
 - (d) There is a strong implication that physical punishment is a violent form of discipline which teaches children to resort to violence when resolving disputes.

- **The document relies entirely on opinion-driven research**
 - (a) The section on research findings is based on two slim papers prepared by writers committed to legislating against all physical punishment of children.
 - (b) The bibliography cites articles and books written and published to discourage the use of physical punishment and in support of the campaign to have it criminalised. No attention appears to have been given to the more objective and impartial studies which draw different conclusions from the evidence.
 - (c) Hypotheses are presented as if they were incontrovertible facts.
 - (d) Physical punishment is isolated from all other forms of discipline to the extent that it is presented as incompatible with them.
 - (e) Many respondents will be intimidated by the bald claims that are made in the name of 'research'. They are not furnished with any real 'evidence' on which to respond to the consultation question regarding the effectiveness of physical punishment.

- **The document employs negative and emotive language about physical punishment**
 - (a) In referring to surveys suggesting that 90% of parents use physical punishment, the document presents this finding as a shocking statistic.
 - (b) When mentioning the use of objects in the discipline of children, the document refers to 'sticks and belts' which arouse more passion than slippers or wooden spoons.
 - (c) The claim that physical punishment is not effective rests on a misrepresentation and inconsistent interpretation of the evidence.
 - (d) The document equates the use of physical punishment with 'hitting' and maintains that parents are more likely to use this form of discipline when under stress.

The consultation paper was intended to be an impartial document, designed 'to facilitate informed discussion about physical punishment'. However, in view of its ambiguity, the high number of factual inaccuracies and the clear ideological bias reflected in the bibliography and the negative language used, this present document is ill-fitted to serve its stated purpose. It should therefore be withdrawn.

1. There is an ambiguity about the definition of 'physical punishment' and the meaning of its 'acceptability'

The consultation document states:

In this paper, we will use the term physical punishment to describe any action which is intended to cause a child physical pain or discomfort, with the intention of punishing him or her. We do not include in the definition things which may cause a child pain or discomfort but are not done with the intention of punishing him or her – like pulling a toddler away from an open fire or grabbing a child to stop him or her running into a busy street (p6).

While it is clear that physical *restraint* is not under consideration, it is less clear as to whether or not the paper recognises any distinction between physical correction and physical punishment. There are many parents who use a smack, not as a punishment, but as a teaching or training tool. It is unclear whether this falls within the scope of the consultation document.

For example, a toddler may be wriggling around and rolling over on his changing mat while his mother is attempting to change his nappy. In order to get him to lie still, she might gently tap his leg, not to cause him pain and certainly not to punish him, but simply to help him lie still. Would this still be considered as 'physical punishment'?

Or, a child may have spoken some unkind words to his younger sister. The mother may have spoken to him and explained that such behaviour is unacceptable, but, knowing her son as she does, she feels that her words need to be backed up with a smack in order to impress upon him the seriousness of what he has done and to prevent its reoccurrence. After she has smacked him, she picks him up again, sits him on her knee and talks gently to him, before he gets down and runs off happily to play. Would this count as 'physical punishment'? While the mother did 'intend to cause [her] child physical pain or discomfort', but it was not 'with the intention of punishing him'. Her motivation was one of teaching and training, not one of punishment.

Indeed, for many parents, even where there is an element of 'punishment' involved in the use of corporal discipline, the teaching or training aspect is uppermost in their minds. They are not taking out their own frustrations on the child or 'lashing out' with an attitude that says, 'I'll make him pay for this!' The motivation is not one of retribution. Rather, they use physical correction because they believe that, in this given set of circumstances, it is the most appropriate tool to promote the child's moral training and development. They may also believe that it is the kindest approach and preferable to many 'alternatives' which would prolong the child's pain and risk causing emotional damage.

We are not convinced that this view of physical correction has been adequately taken account of in the preparation of the document and believe that there is a consequent ambiguity in the definition of 'physical punishment'.

The problem of definition also arises in connection with the Omnibus survey (pp13-15). As already explained, some parents would draw a distinction between 'physical punishment' and 'physical correction'. While they may correct their children physically when appropriate, they may reject the thought that they are thereby punishing them. The issue is further clouded by the definition of 'physical punishment' employed in the survey. The definition of 'smacking or hitting' is unhelpful because the two words have entirely different connotations. A 'hit' suggests a random, violent act, whereas a 'smack' is a controlled and measured response to a child's disobedience or defiance.

One further point of ambiguity in the ONS survey concerns the meaning of 'acceptable' when respondents were asked 'which forms of discipline were acceptable' (p14). The question arises, 'acceptable to whom'? What kind of acceptability is in view? Personal acceptability? Social acceptability? Professional acceptability? Or legal acceptability? Given that different people will have interpreted the question in widely different ways, there is little to be drawn from the resulting statistics. Certainly, it provides no basis for measuring public 'approval' of physical correction as suggested on page 15. Neither does it provide any warrant for the document's claim that 'physical punishment is used more than it is accepted' or that it 'indicate[s] a margin of people who feel uneasy about physical punishment but who use it when under pressure' (p50).

One observation that may be made from the findings of the ONS survey is that respondents found 'time out', 'shouting' and 'walking away/ignoring' to be equally or less 'acceptable' than 'physical punishment'. That raises questions as to why the particular focus of this consultation is on physical correction when there are other responses employed by parents which are viewed as more unacceptable, yet no one is proposing legislating against them.

We are therefore concerned that a similarly ambiguous question is put to consultees in the consultation document:

In the light of the evidence and your experience, do you think that physical punishment by parents is an acceptable form of discipline? Please give reasons for your view (p17, emphasis in original).

This question is capable of being interpreted in a number of different ways. It should be rephrased in such a way as to ensure that respondents are in no doubt as to which sort of acceptability is being referred to.

2. There are a number of significant factual inaccuracies

(a) *A v UK*

The consultation document claims that in the case of *A v UK*, the European Court of Human Rights (ECHR) held the standard of what constitutes 'reasonable chastisement' to be 'too uncertain to protect children' (p20). A similar point is made later, when the ECHR is said to have 'criticised' the 'uncertainty' of the defence of 'reasonable chastisement' (p24). Again, on page 38 it is asserted:

We must change our law in some way. The defence of reasonable chastisement did not meet the standards of the European Convention on Human Rights...as was pointed out by the European Court of Human Rights in *A v UK*.

However, this is not the case at all. In *A v UK*, the ECHR specifically stated that its judgment was limited to the one case before it. Even though the Court was invited to make a general observation about the physical correction of children, it declined to do so. Neither did the Court make any comments on UK law as such. All the Court said was that UK law had not protected one particular boy in one particular case. This point was acknowledged by the Department of Health in its consultation paper, *Protecting Children, Supporting Parents*, when it stated:

The Court's decision was based on the facts of the case before it. The ruling applied to that case only. No general statement was made about the physical punishment of children, although the boy's legal representative had invited the Court to make such a statement.¹

(b) Physical correction in schools

The consultation document states:

The various jurisdictions of the United Kingdom ended physical punishment in public schools ('grant aided schools') in the mid-1980s, as a result of the European Court of Human Rights judgments discussed earlier (p21).

However, the only ECHR case referred to up until this point is the case of *A v UK*, which was not heard by the Court until 1998. There is no discussion of any earlier ECHR judgments. We presume the authors of the paper have in mind the case of *Campbell & Cosans v UK*, which strengthened the impetus for a ban, but it would be inaccurate to imply that a blanket prohibition of physical correction in schools was required by this, or indeed any other, ECHR case. The judgment simply established that the religious and philosophical convictions of parents must be respected in all aspects of their children's education, including

¹ 'Protecting Children, Supporting Parents: A Consultation Document on the Physical Punishment of Children', London: Department of Health, 2000 para 4.5

methods of discipline, in line with Article 2 of Protocol 1 of the European Convention on Human Rights, which requires that states:

Respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

This principle is no less applicable to those parents who *do* believe in physical correction in school than it is to those who do not.

On page 22, the consultation document claims that:

[T]he European Court has said that continued use of physical punishment in independent schools was found to be potentially in breach of Article 3 [of the European Convention on Human Rights].

A claim of this nature should be clearly referenced. We would very much question whether the ECHR has ever made a statement to this effect. Certainly, no such comments were made to the Christian Fellowship School (CFS) following their application to the Court in September 1999. If they had been, we doubt that CFS would have been granted leave to apply to the High Court for judicial review.

The consultation document claims that the ECHR ruled CFS's application inadmissible and adds:

The Court said that to have ruled otherwise could have led to a number of potential breaches of the rights of others – children – under the Convention (p27).

This, too, is inaccurate. The case did not receive a full hearing in the ECHR on the basis that while the relevant section of the School Standards & Framework Act 1998 did outlaw the independent right of a teacher to use physical correction, it did not rule out its use where the children's parents had given consent. The school certainly received no notification from the Court to the effect that the use physical correction in independent schools constitutes a breach of children's rights under the European Convention on Human Rights.

(c) Physical correction in foster homes

The consultation document states that 'physical punishment no longer takes place in residential care or in foster homes' (p28). This cannot be stated with such certainty, however. The document has earlier noted that:

There is no legal prohibition on the use of physical punishment in public or private foster homes (p23).

The section goes on to note that guidance had been issued in 1999 stating that physical punishment 'should not be used on foster children'. However, guidance does not carry the force of law, so there is no basis for the categorical statement

that 'physical punishment no longer takes place in...foster homes'. The most that can be said is that guidance discourages its use.

(d) Recommendation R93/2 of the Council of Europe Committee of Ministers

The consultation document claims that this Recommendation, along with two others, has dealt with the issue of physical punishment (p28). However, the subject of Recommendation R (93) 2 is 'the medico-social aspects of child abuse' and it makes no reference to 'physical punishment' at all. The fact that this Recommendation is mentioned at all suggests that the author of the document equates physical correction with violence and abuse and has prejudged the issue.

(e) The United Nations Convention on the Rights of the Child

The consultation document claims that 'Article 19 is the clearest statement of the UN's position on physical punishment' (p29). However, Article 19 is concerned with the protection of children from violence, injury, neglect and all forms of abuse. It does not refer to 'physical punishment' at all and there is no evidence to suggest that moderate physical correction of children was in the minds of the original framers of the Convention. Article 19 reads:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has care of the child... (p29).

Reference is made to the UN Committee on the Rights of the Child which has taken the view that 'physical punishment' falls within the scope of Article 19. However, it should be borne in mind that the UN Committee consists of just ten individuals who do not have the authority to give a definitive interpretation of the Convention. The Committee has recently been criticised for adopting radical interpretations of the UN Convention on the Rights of the Child in its pursuit of an agenda contrary to traditional moral and social norms regarding the family, marriage, motherhood and religion.²

The consultation document also confidently asserts that:

The Convention provides that physical punishment should not be used in schools (Art 28(2)) and that children should not be subjected to torture, inhuman or degrading treatment (Art 37) (p29).

² Fagan Patrick F, 'How UN Conventions on Women's and Children's Rights Undermine Family, Religion and Sovereignty'. Washington: The Heritage Foundation, February 2001

Both of these claims are invalid. The Convention makes no reference to physical correction in the school context any more than it does within the home. Article 28(2) simply states:

States parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

In other words, whatever form discipline may take in a school, whether physical or otherwise, it must be exercised in a way that respects the dignity of the child.

Neither does Article 37 have moderate and reasonable physical correction in view. It is rather concerned with the treatment of child offenders, and the terms and conditions under which a child may be held in custody. Article 37(a) reads:

No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

The consultation document is clearly reading into the Convention thoughts which are not there. It is doubtful whether such stretched interpretations would have been shared by many of the states parties when they ratified the Convention.

(f) The International Covenant on Civil and Political Rights

The consultation document states that:

Article 26 of the United Nations Covenant on Civil and Political Rights also prohibits torture, inhuman and degrading treatment, and the treaty implementation body for the Covenant, the Human Rights Committee, has also expressed disquiet at the UK's current law on physical punishment (p30).

In fact, Article 26 of the Covenant on Civil and Political Rights is concerned with equality before the law and non-discrimination. It is rather Article 7 which addresses the issue of torture. Article 7 states:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Furthermore, we are not aware of any occasion on which the Human Rights Committee has made any specific comment on UK law on the physical correction of children. This is another occasion where it would have been helpful if the document had been more thoroughly referenced. Indeed, it would be most surprising if any such comment had been made in view of a general comment on Article 7 made by the Committee in 1992, when it referred to the prohibition of 'excessive chastisement'. No comment was made on the use of *moderate* physical correction as a means of discipline:

In the Committee's view...the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions. (emphasis added)³

The Human Rights Committee appears to recognise a distinction between 'excessive' chastisement, which it describes as 'corporal punishment' and more moderate forms of discipline, but this distinction does not appear to be recognised by the authors of the consultation document.

In view of the discussion under paragraphs (a), (e) and (f) above, we would conclude that there is no basis for the view expressed on page 41 of the consultation document that the '*R v H* reforms' do not bring Northern Ireland 'into compliance with the full range of our international obligations in international law'.

(g) Statutes in other European countries

On page 31, a list of countries is given which have 'ended physical punishment'. While it is true that Sweden, Finland and Denmark have passed laws explicitly outlawing physical correction, there is much less certainty about the other countries listed. For example, the relevant legislation in Norway states:

[t]he child shall not be exposed to physical violence or to treatment which can threaten his physical or mental health.⁴

While EPOCH (End Physical Punishment of Children) have long claimed that this constitutes a ban on physical correction, that is far from clear in the wording of the Norwegian law, referring as it does to 'physical violence' and treatment that poses a threat to physical or mental health. The language used implies actions that go far beyond moderate and reasonable physical correction. Indeed, under existing UK law physical violence and treatment threatening the child's physical or mental health is not permitted.

Similarly, Austria's law makes no explicit reference to physical correction:

[t]he minor child must follow the parents' orders. In their orders and in the implementation thereof, parents must consider the age, development and personality of the child; the use of force and infliction of physical or psychological harm are not permitted.⁵

³ CCPR General Comment 20, concerning prohibition of torture and cruel treatment or punishment (Forty-fourth session, 1992)

⁴ Cited by Bitensky S, 'Spare the Rod, Embrace Our Humanity: Toward a New Legal Regime Prohibiting Corporal Punishment of Children', *University of Michigan Journal of Law Reform* 31.2, p373

⁵ *ibid*, p375

The Austrian law refers the 'infliction of physical or psychological *harm*', not to a mild physical rebuke that causes no harm.

Information on the legislation in Croatia and Latvia is sparse, but we have not seen any clear evidence that physical correction has been outlawed in either country.

It is certainly inaccurate to state that 'physical punishment' has been ended in Italy and in Israel. The claim in both cases is based on court cases, rather than on legislation (p33). In Italy, the Supreme Court convicted a man for subjecting his daughter to heavy beatings (including kicking) and stated that: 'the use of violence for educational purposes can no longer be considered lawful'.⁶ It is difficult to see, however, how this comment made in the context of an extreme case and referring to 'violence' can be used to support the claim that all forms of physical correction are now unlawful in Italy. The same comments are applicable to the case in Israel.

(h) Status of the law in the American state of Minnesota

The consultation document also claims that the American State of Minnesota no longer permits the defence of reasonable chastisement (p31). Once again, the evidence is lacking. Susan Bitensky, a lawyer who is personally opposed to physical correction, concedes that:

Minnesota does not have a single statute that explicitly prohibits parental corporal punishment of children. Rather, the state's ban on such punishment must be teased out of four statutory provisions read together.⁷

In fact, as Bitensky notes, the law in Minnesota explicitly authorises the use of physical correction by parents and others acting *in loco parentis*:

Except as otherwise provided in subdivision 2, reasonable force may be used upon or toward the person of another without the other's consent when the following circumstances exist or the actor reasonably believes them to exist:

(6) when used by a parent, guardian, teacher or other lawful custodian of a child or pupil, in the exercise of lawful authority, to restrain or correct such child or pupil.⁸

However, Bitensky argues that *since*, in other legal provisions, 'reasonable force' is not listed among the defences to charges of assault, and *since* 'assault' is defined as an act committed 'with intent to cause fear in another of immediate bodily harm or death' or the actual infliction of bodily harm, and *since* 'bodily harm' is defined as 'physical pain or injury, illness or any impairment of physical condition', *therefore* if physical correction causes pain, then it causes 'bodily

⁶ *ibid*, p380

⁷ *ibid*, p386

⁸ Minnesota Statutes 609.06

harm', which constitutes an assault, which in turn is indefensible as 'reasonable force'.

We might be justified in thinking that Bitensky is merely playing a game of legal pedantry in an attempt to provide some support for her personal ideology. Certainly, she herself is prepared to admit that very few lawyers in Minnesota, still less the general public, are aware of any such legislation. She writes:

Minnesota's law on corporal punishment of children is not widely known either by commentators, practitioners, or the general public. This is probably due to the relative complexity and obtuseness of the prohibition's provisions.⁹

Families First referred the claim of the Northern Ireland Office for Law Reform to a team of lawyers in the United States. They responded that in their view Minnesota law on abuse did not include 'reasonable and moderate physical correction of a child administered by a parent or legal guardian which does not result in an injury. Minn Stat. 626.556(2)(d). This provision has been "on the books" for some time.'

This interpretation would also appear to be held by Jordan Riak, an activist opposed to physical correction. On his website, he laments the current state of the law in Minnesota and quotes at some length from the State of Minnesota's *Maltreatment of Minors Act, Requirements for Mandated Reporters*. The provision begins:

'Physical abuse' means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive and deprivation procedures that have not been authorized under Minnesota Statutes, section 245.825. Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury (emphasis in original).¹⁰

While there may be scope for debate in legal journals with regard to the precise meaning of the law in Minnesota, there is certainly no justification for the claim that Minnesota does not accept the defence of 'reasonable chastisement'. Yet the consultation document presents it as a simple cut-and-dried matter of fact.

It has long been a tactic of campaigners against physical correction to give the impression that support for their cause is far more widespread than it really is, and that legal reform is going their way throughout the world. It is concerning to see a government agency perpetuating that myth in a public consultation document.

⁹ Bitensky, *op cit*, p388

¹⁰ Riak J 'Weasel Words Don't Protect Children: An analysis of Minnesota's pseudo-definition of child abuse' <http://nospank.org/mnsota2.htm>

(i) Effects of the ban on smacking in Sweden

On page 33 the consultation document refers to the manner in which Sweden's ban on physical correction has affected public attitudes. It is later claimed that:

Experience in other jurisdictions, particularly Sweden, where substantial statistical evidence is available, indicates that it is unlikely to lead to an increased number of prosecutions, nor to an increase in the number of children being taken into care or social services investigations (p55).

These sections appear to be based on an unquestioning acceptance of the work of Joan Durrant, a Canadian academic who has a personal commitment to ending all physical correction of children, and whose Save the Children paper is cited in the bibliography. However, Dr Robert Larzelere of the University of Nebraska Medical Center has recently written a critique of Durrant's work, in which he suggests that very little has been done by way of evaluating the impact of Sweden's ban on physical correction and that Durrant's conclusions reflect her own ideology more than they represent an objective appraisal of the data. We attach a copy of Dr Larzelere's article as an appendix to this paper.

(j) The application to the European Commission on Human Rights by a group of Swedish parents

The consultation document states:

It has been argued before the European Court that Article 8 [of the European Convention on Human Rights], guaranteeing the individual's right to respect for his or her private and family life, and prohibiting unjustified State interference with these areas, prohibits a ban on physical punishment. However, this argument has always been unsuccessful (p27).

However, it is an over-exaggeration to claim that 'this argument has *always* been unsuccessful' because, to our knowledge, it has only been used on one occasion - in the application of seven Swedish parents. It should also be noted that this case never reached the European *Court* of Human Rights as suggested by the consultation document, since it was declared inadmissible by the European *Commission* on Human Rights. One of the main reasons why the Commission rejected the Swedish parents' application was because none of the applicants had actually suffered as victims of the 1979 law against physical correction. The Commission stated:

The applicants have not been directly subjected to any enforcement or other procedure arising from their disagreement with the Code which might constitute an interference with their rights.¹¹

¹¹ European Commission of Human Rights, Application No 8811/79

The Swedish law prohibiting all physical punishment of children has never been tested against Article 8 of the European Convention on Human Rights in a case taken to the ECHR by families who have personally been involved in proceedings under the 1979 provision.

3. There is an evident ideological bias that runs throughout the document

While the Foreword states: 'This paper does not take sides. It does not say that parents who use physical punishment are bad parents', we are concerned that the document has a strong ideological bias against physical correction from beginning to end.

In chapter 3, for example, there is a stereotypical picture presented of days gone by when 'adults' meted out 'unpleasant consequences for children's bad behaviour', days when children were 'punished – beaten or sent to bed without supper, for example'. The implication is that these were dark days when there was no love or tenderness between parents and their children, but in these more enlightened times, 'effective discipline is seen as including everything that teaches children to behave appropriately and how to relate to the world around them'.

This is presented as if it were a new concept, when in reality loving parents have always viewed discipline in this way. There is a clear implication in the section headed 'What do we mean by discipline?' (p9), that physical correction is viewed as 'negative' and incompatible with a view of discipline 'built on a foundation of trust and good communication between children and those who care for them.' This, however, is by no means the case. The two are not mutually exclusive at all. Physical correction may be used in a positive manner, alongside verbal explanations and advice, in the context of a warm relationship where the child is valued and cherished and where good behaviour is rewarded. The very possibility of this appears to be ruled out by the consultation document.

Bias is also apparent in the words used in relation to physical correction by childminders:

The Northern Ireland Child Minders' (sic) Association also takes the view that a skilled child minder should never have to resort to physical punishment (p24).

The use of the word 'skilled' implies that there is something sub-standard and second-rate about the use of physical correction, and the use of the word 'resort' similarly suggests that it is not ideal.

On page 31, the document refers to the defence of 'reasonable chastisement' that exists in a number of countries, which it then contrasts with:

Other States, [which] in the light of medical, educational and psychological thinking, and bearing in mind modern human rights instruments, have taken the step of banning physical punishment altogether.

It is hard to imagine more loaded language. There is a clear implication that the opposition to physical correction in medical, educational and psychological circles is unanimous and that such legislation is required by human rights instruments. None of this is the case. It also implies that countries which have retained the defence are out of step with academic thought and human rights declarations.

The word 'violence' appears in the document on a few occasions in connection with physical correction. For example:

Circumscribing the occasions on which the defence [of reasonable chastisement] can be used would go further to protect children than our present law. However, it is not particularly clear or simple, and does not send out a clear message about what behaviour is unacceptable in families, or what we, as a society, feel about *violence* (p42, emphasis added. Similar sentiments are expressed on p47).

Similarly, legal reform on physical correction is viewed as having among its objectives:

to assist in bringing up our children in a society free from *violence* and in teaching them *non-violent* ways of settling their disputes (p39, emphasis added).

There is an unstated assumption in the document that physical correction is violent and that it teaches children to settle disputes in a violent way. However, there is a clear distinction to be drawn between violence and loving physical correction. 'Violence' may be defined as 'the exertion of physical force so as to injure or abuse'. When used by adults in dealing with children, it is generally impulsive, aggressive, and motivated by negative feelings. Loving physical correction does not correspond to this description in any way.

4. The document relies entirely on opinion-driven research

There is further evidence of ideological bias in the brief review of research on pages 10-11. The footnote states that:

This section uses the synopses of recent research findings in P Leach, *The Physical Punishment of Children – some input from recent research* (NSPCC, 1999) and C Lyon, *Loving Smack or Lawful Assault*, chapter 5. These reports set out the evidence for the statements made in this summary, and extensively cite the studies on which the assertions are based.

The very selection of these two studies suggests that the compilers of the consultation paper were far from neutral in their approach to this issue. Neither of these publications attempts to present an objective discussion of physical correction; both are very much opinion-driven and conclude that there should be legislation against the physical correction of children. Penelope Leach as parent education co-ordinator of EPOCH (End Physical Punishment of Children) is well known for her anti-smacking stance, as are the publishers of her report, the NSPCC. Although Professor Lyon was commissioned by the Institute for Public Policy Research, 'to take a dispassionate look at the research evidence', her study is similarly one-sided with no serious account taken of the studies which reach a different conclusion from her own. Perhaps this is not surprising given that two of the three funders of the project (Calouste Gulbenkian Foundation and Save the Children) have a clear, longstanding commitment to ending all physical punishment of children by law. The Preface reveals that this is a commitment shared by the publisher.

It is therefore disturbing that a consultation paper that purports not to take sides should draw on the writings of avowedly partisan authors for comment on research findings. The bibliography would also suggest that little or no effort was made to take account of studies which adopt a more scientific approach and reach considerably different conclusions from Leach and Lyons.¹² Apart from the standard legal texts referred to, most of the other books and many of the articles cited are written very much from an anti-smacking perspective. The writings of Durrant, Leach, Lyon, Miller, Newell, and the five other books published by Save the Children all come into this category. We should be very interested to know how and why these particular sources were selected and why other research papers were omitted.

¹² For example, Larzelere R E, 'Child Outcomes of Nonabusive and Customary Physical Punishment by Parents: An Updated Literature Review', *Clinical Child & Family Psychology Review*, Vol 3 No 4, 2000; Baumrind D, 'A Blanket Injunction Against Disciplinary Use of Spanking Is Not Warranted by the Data', *Pediatrics* 98(4) 1996.

To say 'Not all the research agrees exactly' (p10) is something of an understatement and the document fails to mention that the summary of 'main findings' draws on papers representing only one side of the argument.

On page 16, the consultation document confidently asserts:

The research shows that although physical punishment may stop unacceptable behaviour in the short term, it does not help with any of the other aims of effective discipline.

While some have *argued* along these lines, the research 'shows' nothing of the kind. This is a case of a mere hypothesis being presented as an incontrovertible fact. The paper goes on to list 'some forms of discipline which experts suggest are more effective'. The implication is that these are 'alternatives', when in reality, not one of them is necessarily incompatible with the occasional use of physical correction, and most of them are responses that any loving parents will use in interacting with their children, particularly setting 'clear ground rules' which are 'consistently enforced', 'distracting a baby or young child', 'building a warm, open relationship and communicating clearly and authoritatively (but not aggressively)'. As an aside, we would, however, express some reservations about 'putting the child in a boring but safe place' and 'grounding or temporarily withdrawing treats or things the child enjoys'. These are clearly negative responses, are often harsh and cruel, and are more likely to foster resentment in the child and prolong the 'disciplinary incident'.

Only as an afterthought does the document acknowledge that:

[S]ome researchers argue that parents who have established a warm, engaged, rational relationship with their children may nonetheless use moderate physical punishment without any ill effects (p11).

However, the impression is given that this is very much a minority view, when in reality it is the consensus position among the best studies, methodologically speaking.¹³ Also, unlike earlier paragraphs in the section on research, this is presented only as an 'argument' rather than asserted as a fact. The bias could not be more palpable.

Many members of the general public may be intimidated by the bald claims that are made on the basis of 'research' and not feel competent or qualified to challenge them. Indeed, many representatives of organisations and voluntary groups will not appreciate that what they are being presented with in the document is based on opinion-driven studies, and not the definitive findings that they are portrayed as.

In view of the one-sided presentation of 'research evidence', it is unfair to pose the following question:

¹³ See Larzelere, *op cit*

In the light of the evidence and your experience, do you think physical punishment by parents is an effective form of discipline? Please give reasons for your view (p17).

While respondents may be able to draw on their own experience and observations in answering this question, they have not been given any 'evidence' on which to base their answer. What is presented as 'evidence' is little more than politically-driven opinion.

5. The document is marked by negative and emotive language about the 'physical punishment' of children

The consultation document states:

Surveys in England and the United States suggest that *as many as* 90% of parents have smacked their children. Younger children are most likely to be physically punished, but frequency of physical punishment declines with age (p10-11, emphasis added).

In the context of a document displaying a clearly negative attitude towards physical correction, the opening sentence reads as if it is revealing a shocking statistic. The same facts could have been stated in a much more impartial way. For example, 'Surveys in England and the United States suggest that 90% of parents have smacked their children at some point. Research indicates that parents find it more necessary to physically correct their children while they are young and find that it becomes less necessary as they grow older.'

The same paragraph adds:

In one recent English study, 20% of children had been physically punished with sticks or belts (p11).

This is unlikely to be strictly accurate. Although the English study referred to is not named, all surveys of this nature with which we are familiar have asked respondents about the use of 'implements' in the physical correction of their children. This would include 'sticks and belts', but would also cover the use of other objects such as wooden spoons and slippers. It would appear that 'sticks and belts' are singled out because they are more emotive and arouse more passion. Quite apart from this, it is difficult to see why this statistic is considered relevant at all because it reveals nothing about *how* or *why* some parents use an object to physically correct their children.

The summary of findings then goes on to state:

Physical punishment is less effective than other discipline strategies. It does not help children to take responsibility for their own behaviour or encourage them to internalise moral values. It may lead to immediate compliance, but does not improve their long term behaviour (p11).

This is an extremely bald series of claims to make, but once again it is opinion-driven rather than based on solid evidence. The argument that physical correction is not effective is one that is being used increasingly by those who favour a legal ban, but they are frequently guilty of misrepresenting the data in order to advance their point of view. For example, the National Family & Parenting Institute (NFPI) claims that four-fifths of parents consider that smacking is not an effective way of teaching children the difference between right and

wrong. It may well be that the authors of the consultation paper had the NFPI survey in mind.

However, the truth is that the NFPI poll did not ask parents whether or not they considered smacking to be effective. Rather, it asked which actions would most enable parents to ‘teach a child the difference between “right” and “wrong”’. The options suggested were: (a) reasoning; (b) creating a diversion; (c) ‘grounding’; (d) smacking; (e) rewarding good behaviour; (f) parental example; (g) making children feel happy and loved; (h) spending time with children. The fact that only 21% of respondents included smacking among the options that would most enable parents to provide moral training for their children does not mean that 79% felt it was not effective. No one would argue that physical correction has a more important place in the nurture and protection of children than good parental example, spending time with children, and making them feel happy and loved. It is therefore no surprise to find that these options scored highest in the survey. But that does not provide any basis for saying that it has no value at all within the context of a warm family home, where parents also reason with their children and reward good behaviour.

It is worth noting that only 17% felt that ‘creating a diversion’ would most enable parents to teach a child the difference between right and wrong – a lower percentage than those who included smacking in their response. Yet, neither the NFPI nor the Office of Law Reform claim that ‘creating a diversion’ is the most ineffective strategy of all, nor do they propose that consideration should be given to outlawing it.

The fourth paragraph in the section on research uses the emotive word ‘hit’ of physical correction when it states that ‘girls are more likely never to have been *hit* at all’ (p11), and this is followed by an unfair stereotype that suggests that ‘parents are more likely to use physical punishment if they are under stress or are irritated or angry’. This serves an injustice to parents who do not take out their own frustrations on their children, but physically correct them in a consistent and controlled manner and to a reasonable extent.

The section headed ‘effects of physical punishment’ makes a series of unacceptable generalisations and assertions which cannot be supported by firm evidence. For example:

Physical punishment carries an inbuilt risk of escalation, particularly when parents are under stress (p11).

While this may be the experience of a minority of parents, where physical correction is used in a controlled and responsible way, and the parent does not allow a situation to get out of control, there is no such escalation. At the very least, this statement should be qualified.

The whole tone of the document implies that physical correction is a bad and inherently risky practice:

The extent to which someone was physically punished as a child has an effect on the severity with which they are likely to physically punish their own children. People who have been severely physically punished are less likely to label the punishments given to them as abusive as compared to other people asked about the same behaviour (p11).

This is phrased very negatively. The same point could be made in a much more positive way. For example, 'The manner in which someone was disciplined as a child will have an influence on the way they are likely to discipline their own children. People who have received loving physical correction within the context of a warm parent-child relationship are more likely to provide a positive, stable and secure upbringing for their own children.'

The following paragraph also has negative implications:

Studies of cases of physical abuse of children have noted that abusive parents often justify their behaviour as reasonable punishment (p11).

In that regard, child abusers are no different from any other category of criminals, who will always attempt to deny or justify their actions. In any case this point applies only to a small minority of parents and is not at all relevant to moderate and reasonable physical correction.

The following two paragraphs attempt to link 'physical punishment' with the development of violent attitudes and actions by children and even 'later criminal behaviour'. 'Harsh physical punishment is also associated with substance abuse, violence to other family members and mental health problems' (p11).

It would have been helpful to have had a definition of 'harsh physical punishment' at this point, so as to clearly differentiate it from moderate physical correction. Certainly, no one would deny that abusive treatment is damaging to children but this is, of course, covered by existing legislation. Moderate physical correction is an altogether different matter and there is not a shred of evidence to suggest that it has any negative effects whatsoever.

Conclusion

The whole tone of the document is distinctly anti-smacking. The content could be summarised as follows: Physical correction is on its way out. Fewer parents use it now. Fewer still approve of it. Research proves its adverse consequences. There is a worldwide movement to legislate against it. The experience of countries which have already banned it has been positive. We need to promote more positive and effective ways of disciplining children.

The assumption throughout is that physical correction is a bad thing and has to go; it's all a question of how to go about it. While this may be the kind of approach one would expect from a lobby group, it is not what one would expect from a government agency embarking on a public consultation with far-reaching implications for every family in Northern Ireland. We are persuaded that the people of Northern Ireland deserve better than this. They are entitled to an accurate, fair, unbiased, objective presentation of the facts, and to straightforward, unambiguous questions.

In his Foreword, the Minister for Finance and Personnel states that: 'This paper does not take sides.' Unfortunately, that is precisely what it does do. It may not overtly say that 'parents who use physical punishment are bad parents', but it certainly more than implies that 'physical punishment' is a bad method of discipline. The document is fundamentally flawed:

- It is ambiguous in its definition of fundamental terms
- It contains a significant number of factual inaccuracies
- It is characterised by a clear ideological bias
- It relies exclusively on opinion-driven research
- It uses emotive and negative language

The Office of Law Reform's consultation paper will not facilitate the 'informed discussion about physical punishment' which the Minister seeks. It should therefore be withdrawn.