



FAMILIES FIRST

e-mail: info@families-first.org.uk Web: www.families-first.org.uk

25 June 2002

Dear Sir,

Criminal Justice (Scotland) Bill Section 43: Physical Punishment of Children

Having read the Official Report for the committee's meeting with the Justice Minister on 18 June, I should like to make observations on the following three points:

1. The Executive has still not presented any hard evidence in support of its proposals

In response to Mr Barrie's question, the Minister was unable to offer any information on cases in which a sheriff inappropriately allowed the current defence of reasonable chastisement, with the exception of one possible instance. Mr Wallace was also unable to provide details of cases which had not been pursued because of any lack of clarity in the existing law. There would appear to be no compelling evidence to suggest that the existing law in Scotland is inadequate to protect children from violence and abuse.

There is also a lack of research evidence in support of the Executive's proposals to impose a blanket ban on any physical correction of children under the age of three, and the use of any implement. The Committee received oral evidence from the British Psychological Society (BPS) to the effect that there was no basis in research to legislate against smacking children under the age of three. The BPS witness also testified that there was no research to show any difference in the effect of using an implement to smack a child rather than the hand where the physical impact is equivalent.

During the meeting on 18 June, the Justice Minister suggested that there was a consensus that 'there is an age at which it is wrong to smack a child...similar to the consensus that hitting someone with an implement is wrong'. He went on to say that he was prepared to consider setting an earlier age than three 'if there is a greater consensus on that'. We would agree that 'hitting someone with an implement is wrong', but we believe the Minister is doing an injustice to thousands of loving parents in Scotland who use a safe implement in a careful and responsible manner to correct their children by suggesting that they are 'hitting' their children. The whole context needs to be taken into account, as Mr Wallace himself acknowledged when he said, 'there are circumstances in which action which might otherwise be an assault is not an assault precisely because of the circumstances.'

While several opinion polls have suggested general support for a ban on the use of implements, it is necessary to bear in mind that the manner in which questions are phrased can often determine the answer given, and there is also a common perception that the use of an implement is more severe, which is not necessarily the case. Notwithstanding this, we are not persuaded that there would be any consensus about case conferences, care proceedings, prosecutions, court cases and penalties, simply because a mother chose to use a slipper to discipline her child in a moderate way rather than her hand. In fact, we are uncomfortable about the whole idea of issuing legislative proposals on the basis of public consensus.

In many areas it may be appropriate to legislate on the basis of consensus, but we would question whether such an approach is either necessary or desirable when it comes to the private sphere of the family. Parenting is an art, not a science and families are shaped by different religious, philosophical and cultural factors, which will affect how children are fed, clothed, educated and disciplined etc. It is not the role of the state to impose a one-size-fits-all style of parenting on every family by force of law. If the Executive were to legislate for family life on the basis of consensus, many parents from ethnic and religious minorities would find themselves discriminated against and on the wrong side of the law. Quite apart from being extremely difficult to measure, it is a hazardous exercise to attempt to legislate on the basis of consensus. With regard to the issue of discipline, we believe the Executive should be guided by evidence, rather than by any perception it may have of where the consensus lies among the Scottish public.

2. The Executive does not appear to be showing sufficient respect for the religious convictions of many parents

Asked whether the Executive's proposals would be able to withstand challenges that may be made under the European Convention on Human Rights on the basis that they represented an infringement of religious liberties, the Minister responded:

'Yes, I believe that our proposals meet the convention requirements. A fundamental tenet of many religions is that the civil powers should be obeyed - I am thinking of Romans chapter 13 for example. For that reason, religious believers should obey the law, particularly when the purpose of the law is to protect vulnerable members of our society. The committee has also heard evidence from the Churches Network for Non-violence, which took a contrary view of the religious position.'

We would respectfully point out that it is also a fundamental tenet of many religions that the authority of the civil powers is not absolute, but delegated and limited. Indeed, this is reflected in Romans 13 to which Mr Wallace refers, where it states that the authorities are appointed by God and serve as 'God's ministers'. Therefore, while the Justice Minister is quite correct in his observation that Christians are urged to honour and obey the lawfully appointed authorities, if the state commands them to do something God forbids, or forbids them to do something God commands or commends, they are obliged to submit to a higher authority and 'obey God rather than men'. The author of Romans 13 was himself placed in that position on a number of occasions and suffered imprisonment as a result.

As noted above, the Executive has produced no evidence to demonstrate that its proposals will provide additional protection to vulnerable members of our society. Many religious believers will therefore view the proposed measures as purely ideological and continue to act according to their consciences. We recognise that there are some individuals within the professing church who take a different view on this issue, but we are not convinced that the Churches Network for Non-Violence is at all representative of the majority of Scottish Christians. Indeed, many of us had never heard of this group before it submitted evidence to the committee. This is not to deny them their own freedom of conscience, but it should be recognised that their view represents a departure from the historic teaching and practice of the Christian church.

3. We remain concerned that the Executive's proposals will lead to the prosecution of good parents

The Minister's recent remarks to the committee have offered us little reassurance that good parents will not be prosecuted under the proposed legislation. In fact, we are concerned that his comments on 18 June create further confusion rather than offering any clarification. In response to a question from the Convener, Mr Wallace stated that he wanted to ban moderate smacking of under-threes 'if it is done as punishment'.

But what if it is not done ‘as punishment’, but by way of teaching and correction? On the face of it, the Minister’s comments leave open the possibility that the smacking of under-threes would still be permitted provided that it was not done by way of ‘punishment’.

On 22 May, the committee received oral evidence from Mrs. K, a mother of four children who said:

‘I do not see my use of physical chastisement as corporal punishment; rather I see it as training and correction. That is particularly true in relation to young toddlers. We are not punishing them but trying to teach them at an age when they do not understand verbal reasoning.’

In view of Mr Wallace’s recent comments, where would the law leave parents like Mrs. K?

We are also unable to derive any comfort from the Minister’s assurances that the procurator fiscal would have discretion not to bring charges in the event of a technical breach of legislation if it were not in the public interest or in the best interests of the child to do so. We share the concerns of the Faculty of Advocates, as expressed in their written submission to the committee:

‘To exclude *any* physical punishment of children under the age of three years carries the risk of bringing into the criminal justice system persons who would not otherwise come to the attention of the police or social services. The consequences of conviction, leading to the possible loss of employment and severe strains on family life may have adverse implications for the wellbeing of the child, which could well outweigh the damage caused by the punishment...

‘In addition, the Faculty notes that no definition of “implement” is offered. Once again the absolute nature of the exclusion of the use of any implement raises the risk already identified of bringing into the criminal justice system persons who would otherwise not be so.’

I should be grateful if these observations could be considered by the committee as it prepares its report.

With all good wishes

Yours sincerely