



# FAMILIES FIRST

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## ***Protecting Children, Supporting Parents*** **A Consultation Document on the Physical Punishment of Children**

### **1. What, if any, factors over and above those factors set out in para. 5.3 should the law require a Court to consider when determining whether the physical punishment of a child constitutes “reasonable chastisement”?**

We do not believe it is either necessary or appropriate to require a Court to consider any other factors over and above those factors set out in paragraph 5.3 when determining whether the physical correction of a child constitutes “reasonable chastisement”.

It is easy to lose sight of the fact that, on the whole, the existing law has served children and families well for several generations. This current review has been prompted by an unusual, extreme and politically-motivated case. We would urge the Government not to over-react and enact legislation which would place children and families at risk of unnecessary and heavy-handed intrusion on the part of the courts, the police and the social authorities.

We welcome the Government’s commitment to the autonomy of the family, reflected in the consultation document by its commitment to avoiding “heavy-handed intrusion into family life” (para 2.4) and its respect for the authority and responsibility of parents expressed in statements made by Education Ministers during 1998 when they said:

*“It is the personal responsibility of parents to decide for themselves what disciplinary arrangements are appropriate for their child. It would not be appropriate for the State to impose its own view.”*

We would therefore counsel against adding to the factors set out by the European Court of Human Rights (ECHR). Indeed, there is a fine line between adding to the factors set out in paragraph 5.3 and failing to respect the individual’s “private and family life, his home and his correspondence” as guaranteed by Article 8 of the European Convention on Human Rights.

Of the factors mentioned by the ECHR, we consider the most important one to be taken into account is that of the “physical and mental effects”. The Children Act 1989 introduced the concept of “significant harm” as the threshold at which intervention into family life becomes justified. Since there are no absolute criteria to assess what constitutes “significant harm”, there is always the risk that a family could be judged by subjective standards and unjustly victimised. In order to give children and families better protection we would suggest that the harm should be clear, observable and objectively assessed.

Family relationships are very personal and individual matters. The Government should be very wary of laying down in law precisely how a parent may or may not discipline a child by introducing additional factors such as “reasons given for the punishment” and “how soon after the event it was given”. Each family is shaped and influenced by certain social, cultural, religious and philosophical factors which are not common to every other family. Values and standards will therefore differ from family to family and this will be reflected in the way children are disciplined.

For example, in some families the use of blasphemy or other forms of bad language may be accepted, whereas in other homes, children would be disciplined if they used such language. The one family might judge such discipline unnecessary and unreasonable while the other would consider it both necessary and reasonable. We would suggest that it is not the role of the State or the Courts to judge between such families. Parents must be left free to decide for themselves the standards of behaviour which shall prevail within their own homes. If Courts were required to take into account the "reasons given for the punishment", there is a danger that those from minority groups could suffer discrimination through a lack of respect for their religious and philosophical convictions.

**2. Are there any forms of physical punishment which should never be capable of being defended as “reasonable”? Specifically, should the law state that any of the following can never be defended as reasonable:**

- **Physical punishment which causes, or is likely to cause, injury to the head (including injuries to the brain, eyes and ears)?**
- **Physical punishment using implements (e.g. canes, slippers, belts)?**

We would agree that any form of physical punishment which causes, or is likely to cause, injury to the head cannot be defended as “reasonable”. Indeed, provided that red marks and bruises of temporary duration are not counted as “injuries”, we would go further and say that any form of physical punishment which causes, or is likely to cause, injury to any other part of the body cannot be defended as “reasonable”. Whether the injury is inflicted by an implement or by a hand is irrelevant.

It is, however, important to stress that minor temporary marks should not be considered as “injuries” in this context. Some children mark and bruise very easily, and there have been cases where parents have been falsely accused of abusing their children through severe physical punishment when, in reality, the marks have been caused by a very mild physical sanction or have even resulted from accidents or play.

With regard to the question of implements, a distinction must be drawn between a safe implement on the one hand, and an implement which is calculated to cause injury on the other. For example, the use of a sharp object which runs the risk of piercing the child’s skin, or a heavy object (such as a metal bar) which runs the risk of breaking a child’s bones, could not be defended as “reasonable”. However, the use of a safe, light object (such as a wooden spoon, a slipper or the flat surface of a wooden ruler) could certainly be defended as “reasonable”. Such an implement, like the hand itself, may be used in a careful and responsible way or in a dangerous and irresponsible way. Discipline is by no means necessarily “harsh”, “severe” or “unreasonable” just because an implement is used. It all depends *what* is used, *where* it is used, and *how* it is used. The law should therefore not be framed in a prescriptive way. It should be left to the Court to determine whether the defence of “reasonable chastisement” is justified given all the circumstances of the case.

The European Court of Human Rights (ECHR) has never ruled that the use of an implement in the physical correction of children is decisive in determining inhuman and degrading treatment or punishment. In the case of *A v UK*, the significant factor was not that an implement had been used, but rather that a garden cane had been “*applied with considerable force on more than one occasion*”. The Court made its judgment on the basis of the force, the frequency and the injuries sustained. In other words, it adhered to its own criteria, which the Government is proposing to set out in law in para 5.3 of the consultation document: “the nature and context of the treatment, its duration; and its physical and mental effects.”

Indeed, in *Costello-Roberts v UK*, the ECHR upheld the use of an implement (in that case, a slipper) in the punishment of a boarding school pupil. The judges who dissented from the majority vote issued a dissenting opinion in which they expressed reservations about various aspects surrounding the punishment, but no mention was made of the use of an implement as an aggravating factor. The ECHR has held that “a particular level of severity” must be reached for punishment to breach the European Convention on Human Rights. There is no way that the careful and responsible use of a safe implement can be said to reach that level of severity or even approach it.

Corporal discipline in schools commonly involved the use of an implement (typically a slipper or a cane) in maintained schools until the provisions of the Education (No 2) Act 1986 came into force in August 1987. Physical correction of a similar nature continued to be used by a number of independent schools until September 1999 when the law governing physical chastisement in state

schools was extended to the independent sector under the School Standards & Framework Act 1998. During the passage of the School Standards & Framework Bill in 1998, Government Ministers repeatedly stressed that:

*“we have no intention of using the new clause or any other provision to extend the prohibition on corporal punishment into the family setting. It is the personal responsibility of parents to decide for themselves what disciplinary arrangements are appropriate for their child. It would not be appropriate for the State to impose its own view.”*

In view of this clear statement, it is somewhat surprising that the Government is even considering as an option the criminalisation of the use of a safe implement for the reasonable discipline of children in the home.

If the focus is kept on protecting children from injury and harm, then it becomes unnecessary to outlaw the use of implements. It would make no sense at all if a parent were able to severely punish a child with an open hand or with a fist to the point where the child suffered significant harm and still claim the defence of “reasonable chastisement”, whereas that same defence were removed from a parent who corrected a child in a careful and moderate way with a safe implement. Many loving parents smack a child with no greater force when using a safe object than others do when using a hand.

To legislate in such a way that the careful and responsible use of a safe implement could never be defended as “reasonable”, is not only unnecessary, but it would also be a grave injustice to the many thousands of loving parents who choose to use some form of safe object out of religious or philosophical conviction. Such parents do not select the nearest object in the heat of the moment according to the common caricature, but rather they choose to use a known safe implement for one or more sincerely-held reasons:

- Some parents use a safe object as a safeguard for themselves against “casual smacking”. They have made a deliberate decision not to smack with the hand so that they do not smack on impulse, but take a few seconds to weigh up whether the child’s behaviour warrants a physical sanction as they go to the drawer or cupboard to fetch the slipper or wooden spoon. If there were a blanket ban on the use of implements, many such parents would find themselves smacking their children more rather than less, and they might do so more in the heat of the moment.
- Some parents do not like to use an open hand to discipline their children and prefer to use a safe, neutral object. They prefer to reserve their hands for expressing care and affection, and to use an implement to express displeasure.
- Some parents believe that the use of an appropriate implement is safer for the child than the use of the hand. Some fathers, in particular, have large and heavy hands and feel it is safer for the child for them to use a smaller and lighter object which does not risk causing the child any harm.
- Some parents find the presence of a known implement in the home is in itself an effective deterrent against bad behaviour.
- Some parents within the Judaeo-Christian tradition use an implement out of religious conviction. They note that the biblical texts in the Book of Proverbs on the physical correction of children refer to a “rod” rather than to the hand. For example, “The rod and reproof give wisdom, but a child left to himself brings shame to his mother” (Proverbs 29:15).

We are concerned that a blanket ban on any kind of implement in the moderate and reasonable discipline of children would be counter-productive and would leave many responsible and otherwise law-abiding parents on the wrong side of the law. There is no question that thousands of parents who have clear religious and philosophical convictions for using a safe object to discipline their children in a careful and responsible way would continue to act according to their consciences. Provided that they are not correcting their children in such a way as to cause or to risk causing injury, to prosecute such parents would be unjust, a poor use of public resources and, most importantly, damaging to the children and families concerned. It might also leave the Government open to challenge in view of Article 2 of Protocol No 1 of the European Convention on Human Rights, which requires states to “respect the right of parents to ensure such education and

teaching in conformity with their own religious and philosophical convictions.” In *Campbell and Cosans v UK*, the ECHR established that corporal discipline falls within the ambit of this Article.

The consultation document states:

*“The Government’s view is that it would be quite unacceptable to outlaw all physical punishment of a child by a parent. Nor, we believe, would the majority of parents support such a measure. It would be intrusive and incompatible with our aim of helping and encouraging parents in their role. There could clearly be no guarantee that there would not be charges of assault brought in relation to minor cases. This could victimise parents unfairly and compromise public confidence in the legal system”* (para 2.14).

These very same points could be made with regard to legislating against the careful and responsible use of a safe object in the physical correction of children.

There is no question that legislation against the moderate and reasonable use of a safe implement would constitute “undue interference” and lead to the kind of “heavy-handed intrusion into family life” that the Government is anxious to avoid (para 2.4). We would also argue that such a measure is not compatible with the approach of the Government towards child protection as outlined in the document, *Working Together to Safeguard Children* (WTSC).

In the opening chapter, the document states:

*“Only in exceptional cases should there be compulsory intervention in family life: for example, where this is necessary to safeguard a child from significant harm”* (WTSC 1.5).

There is no sound reason for regarding the use of a safe implement as “an exceptional case” which requires such intervention. The vast majority of parents who use an object in the discipline of their children, do so in a responsible and careful manner that causes no harm to the child whatsoever, still less “significant harm” which warrants state intervention.

A little later, the document notes:

*“The Children Act 1989 introduced the concept of significant harm as the threshold which justifies compulsory intervention in family life in the best interests of children. The local authority is under a duty to make enquiries, or cause enquiries to be made, where it has reasonable cause to suspect that a child is suffering, or likely to suffer significant harm”* (WTSC 2.16).

The removal of the defence of reasonable chastisement from parents who used an implement to discipline their child, would significantly lower the threshold at which the local authority could intervene in a family. It would no longer be a question of whether the child was suffering “significant harm”. If an implement was being used, that would be a sufficient justification. Questions of the manner in which it was being used, the reasons for which it was being used and the relationship between the parents and the child would be of no relevance. If there were no question of any harm being suffered by the child, the ensuing intervention would manifestly not be in the best interests of the children. The law would thus contribute to considerable unnecessary suffering on the part of the entire family and everyone associated with it. As the *Working Together to Safeguard Children* document itself recognises, “enquiries into suspicions of child abuse can have traumatic effects on families” (2.25).

## **Appendix to response to Question 2**

### **The 1998 Office for National Statistics Survey**

The consultation document refers to the ONS survey of public opinion as a basis for suggesting that the law might exclude as reasonable the use of implements. We do not accept that surveys and opinion polls provide a sure basis for legislating for relationships between parents and their children, and we believe that there are further reasons for not using this particular survey to justify criminalising parents who use a safe implement in the reasonable discipline of their children.

The findings of this survey throw up some strange anomalies:

- a higher percentage of those surveyed believed that “it is sometimes necessary to smack a naughty child” (88%) than believed that “Parents should be allowed, by law, to smack a naughty child who is over five years old” (85%).
- a higher percentage of those surveyed believed “It is sometimes necessary to use things like canes, sticks, belts or slippers to punish a naughty child” (9%) than believed that “Parents should be allowed, by law, to use things like canes, sticks, belts or slippers to punish a naughty child who is over seven years old” (7%).

In both of these examples, one would expect the percentage of those who believe something should be “allowed by law” to be greater than those who believe it to be “necessary”. The fact that the reverse is true suggests that perhaps the questions were not correctly understood. That this was undoubtedly the case is reinforced by comparing the responses on the use of implements with the responses to the question on alternative punishments:

- only 16% believed that parents should be allowed, by law, to punish their child by “not allowing the child a meal or part of a meal”. This presents the unlikely prospect that the remaining 84% believed that parents should be reported to the police or social services if a neighbour overhears them sending their disobedient child to bed without his pudding.
- with the exception of ‘grounding’, which 91% believed should be lawful, the other methods of discipline referred to with approval earlier in the consultation document (paragraph 2.6) and which it is envisaged will be promoted by the national parent helpline and the National Family and Parenting Institute, should be outlawed - if we are to believe the findings of this survey! Only 35% believed that parents should be allowed, by law, to use other forms of punishment, such as “sending the child to his/her room or stopping the child from doing something he or she likes to do”. On the basis of this survey we might conclude that apart from grounding and smacking, every other form of punishment should be legislated against!

These observations certainly put the responses to the questions on implements in some kind of perspective. If the questions had been asked differently, there is little doubt that they would have received quite different responses.

For example, if, instead of asking, whether parents “should be allowed, by law, to use things like canes, sticks, belts or slippers...?” the question had been asked, “Do you think the state should intervene and initiate care proceedings or bring charges against parents if a known safe implement is used in a moderate and careful way by a loving parent in response to a child’s wilful and persistent disobedience?” we believe the response would have been considerably different.

Likewise, if the subsequent question had been phrased: “Do you think the state should intervene and initiate care proceedings or bring charges against parents if they send a child to bed without their pudding when they have been rude and deliberately dropped their dinner on the floor?”, again we suggest that there would have been a markedly different response.

We are not suggesting that there would be any merit in asking these questions because we strongly reject the view that the majority should be able to dictate to the minority how they bring up their children. But we make these points to illustrate that the respondents were evidently not clearly thinking through the consequences of the questions they were being asked. About all we can gather

is that of the 1,798 surveyed, a majority felt uncomfortable about the thought of the use of an implement and a slightly smaller majority felt uncomfortable about the thought of depriving a child of part of a meal.

We would suggest a further four factors which might account for the response to the questions on implements:

**(a) the preamble to the questions**

Prior to asking the questions about the use of implements, the interviewer said:

*"I am going to read out some statements describing people's views on punishing a child with a cane, stick or something else and I would like you to tell me how strongly you agree or disagree."*

The way the subject is introduced is calculated to predispose the interviewee to feel that something quite harsh and severe is being referred to. While those old enough to remember corporal discipline in schools might have felt they knew what a cane was, no indication was given as to what kind of "stick" the questions had in mind (was it a light sick or a heavy one? was it smooth or was it rough and sharp in places?), and "something else" is so vague that it could cover just about anything and might suggest the image of a parent randomly picking up any object within easy reach. The specific questions add "belts and slippers" to "canes and sticks", but with no reference to which end of the belt is being used, nor to the part of the child's body to which any of the objects is being applied.

Many parents who use a known safe implement in a careful and responsible way would object to the suggestion that they are "punishing a child with a cane, stick or something else," in the same way that many other parents would object to the suggestion that they were "punishing a child with their hands". (It is interesting that the survey does not use the term "punishment" in connection with smacking with the hand). Physical discipline, given in love with the good of the child at heart, in response to a child's disobedience, and combined with a verbal rebuke and explanation, is a much more positive thing than the word "punishment" suggests. Many parents therefore prefer to use the word "correction" or "discipline" which better expresses the spirit and the positive purpose for which it is given.

Contrast the following preamble with the one that was read to interviewees in the ONS survey:

*"I am going to read out some statements describing people's views on correcting a disobedient child in a careful and responsible way with a safe object such as a wooden spoon or a slipper..."*

We have little doubt that a preamble of this nature would have resulted in a considerably different outcome.

**(b) the use of the word "naughty" in the questions**

To many people, the word "naughty" conjures up the picture of a sweet child who is being a little bit cheeky, and it is therefore not surprising to find that the majority of respondents objected to the thought of such a child being "punished with a cane, stick or something else". If an alternative word had been used, such as "disobedient", "rebellious", "insolent" or "uncontrollable", again the responses would undoubtedly have been quite different.

**(c) the questions were divorced from any real-life context**

It is impossible to know what kinds of scenario were going through the minds of respondents when giving their answers. Perhaps many had in mind violent images from television screens where parents were depicted as abusing children with implements. In a survey of this kind, there is no room for giving qualified answers. If we had been asked the questions in the ONS survey, we would have been reluctant to give an unqualified answer. On the question of the lawful use of implements, we would want to say, "It all depends on *what* is used (is it a safe object?), *where* on the child's body it is used (it is likely to cause the child any injury?), and *how* it is used (is it being used in a careful and responsible way?). Incidentally, we would want to add those same qualifications to smacking with the hand.

***(d) the fact that the interviews took place in the homes of respondents***

We believe that the location of the interviews may have been a significant factor in some of the answers given. Some respondents might have concealed their true thoughts on discipline out of fear that they might be reported for child abuse if the interviewer considered them “severe” in their approach. Even though the interviewer introduced the set of questions on physical punishment by saying, “I won’t be asking you what you do to your own children...” some parents may have felt vulnerable in their own homes, given the climate of fear that exists due to reports of over-zealous social workers.

We make these observations to point out the shortcomings of the ONS survey and the folly of using its findings as a basis for legal reform. In the same way that we doubt that the majority of the public want to see parents in court for sending a child to his room or depriving a child of part of a meal, we also doubt that many would support the prosecution of a parent for smacking a child simply because a safe object such as a slipper, wooden spoon, or cane were used - provided it were used in a responsible and appropriate way without causing any injury.

### **3. Should we restrict the defence of reasonable chastisement so that it may be used only by those charged with common assault, and not by those charged with causing actual bodily harm, or more serious assaults?**

We believe that the defence of “reasonable chastisement” should remain available irrespective of the charge being made, in order to preserve the protection offered to children and families under the existing legislation.

We certainly agree that reasonable chastisement would not result in the kinds of injury listed in paragraph 3.5 of *Protecting Children, Supporting Parents*:

*“These include: loss or breaking of a tooth, temporary loss of sensory functions including loss of consciousness; extensive or multiple bruising; displaced broken nose; minor fractures; minor cuts requiring medical treatment (e.g. stitches); and psychiatric injury which is more than fear, distress or panic.”*

Technically, however, we understand that a charge for actual bodily harm may be brought in the event of any pain or discomfort being caused, no matter how slight or temporary, and irrespective of what the Charging Standards may state. It sometimes happens that common assaults are incorrectly (by a strict application of the Offences Against the Person Charging Standards) charged as actual bodily harm, and vice versa. There have therefore been cases where an incident resulting in severe injuries has been charged as common assault, and cases where an incident resulting in lesser injuries, or even no injury at all, has been charged as actual bodily harm. As paragraph 3.7 of the consultation document notes:

*“The Standard states that where the injuries amount to no more than those outlined [for charges of common assault], any decision to charge an offence contrary to Section 47 ‘may be justified in exceptional circumstances or where the maximum sentence available in the Magistrates’ Court would be inadequate.’”*

The actual standards applied in practice vary across the country.

In view of these factors, we are opposed to restricting the defence of reasonable chastisement to those charged with common assault. We fear that it might result in more cases being adjudged “exceptional circumstances” with more parents being charged with causing actual bodily harm, when the injuries caused (if any) fall far short of the examples given in paragraph 3.5. Such parents would thus be deprived of a defence which they would be entitled to under a charge of common assault. Similarly, those who were wrongly charged with common assault when they had caused actual bodily harm, would have a defence open to them that they did not merit.

In the interests of justice for all, we support the maintenance of the existing law whereby the defence of reasonable chastisement remains available irrespective of the charges being brought. The Court will then be in a position to decide whether that defence is valid, taking into account all the circumstances of the case.

**4. Who should be able to claim the defence of “reasonable chastisement”? Should it be:**

- **As now, all those acting on behalf of parents in looking after children (except in settings where physical punishment has been outlawed)?**
- **Parents only (defined as those with parental responsibility under the Children Act 1989)?**
- **All those acting on behalf of parents, but only if parents have given their express permission that those acting on their behalf may physically punish their child?**

We support the existing law which grants the defence of “reasonable chastisement” to all those acting on behalf of parents in looking after children.

While we recognise that ultimate responsibility for the care and discipline of children rests with parents, situations may arise where parents give express permission to someone acting on their behalf to physically correct their child. One example might be where parents are unable to discipline their child due to their own ill-health and wish to ensure a consistent approach. To legislate against this would constitute undue interference from Government.

When parents ask someone else to look after their child on their behalf, they do so on the basis of trust. That trust covers a wide range of areas including health and safety, diet, the influences the child will be subjected to, and discipline. The law does not require parents to give express permission concerning other aspects of their care when they are being looked after by someone else. It is difficult to see any justification for singling out physical correction for special treatment.

If parents are unhappy about the manner in which someone acting *in loco parentis* has treated their child - whether it be in the area of diet, the administration of medicine, or in the area of discipline (whether physical or not) - that is a matter for them to discuss among themselves. It is not an area to be addressed by legislation.

There is often a close understanding and bond between the parents and those they ask to look after their child. It would be ridiculous to insist that a formal agreement is made to cover every eventuality. If there are specific areas of care which are of particular importance to the parents, these can, of course, be agreed beforehand. But in the absence of any specific instructions, those acting *in loco parentis* should remain free to use their judgment to act in the best interests of the child and according to the understanding they have established with the child’s parents. For these reasons we support the retention of the defence of “reasonable chastisement” for all those acting on behalf of parents in looking after children.