



FAMILIES FIRST

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SUBMISSION TO THE JOINT COMMITTEE ON HUMAN RIGHTS

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Families First is a family advocacy organisation, committed to supporting parents and children in the family unit. 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.

We understand that the Joint Committee on Human Rights is currently preparing its response to the report of the United Nations Committee on the Rights of the Child and will be reviewing the reasonable chastisement defence in this context. We are also advised that the Joint Committee on Human Rights is in the course of considering the case for a children's commissioner for England. We shall comment on each of these in turn.

1. The UN Committee's concluding observations on the United Kingdom

It is important to bear in mind that, contrary to the impression given in some sections of the media, the United Kingdom was not being singled out for criticism by the United Nations Committee on the Rights of the Child in its concluding observations released at its thirty-first session in October 2002. The committee's recommendations were entirely predictable, following the same pattern as reports addressed to other countries.

In responding to the committee's charge that the United Kingdom is failing to comply with the requirements of the Convention in a number of areas, we would observe that the committee is imposing some extreme interpretations on the Convention as a means of promoting a somewhat radical social agenda. Certainly the committee has consistently pursued a course which goes way beyond what was in the minds of the original framers of the Convention, and far beyond what most states would have understood the Convention to mean when it was originally ratified.

The Convention itself is framed in very broad terms. For example, the committee argues that an absolute ban on all physical correction of children is required by Article 19 of the Convention. But in reality, the Convention states that children should be protected from '*all forms of physical or mental violence, injury or abuse*'. It does not say anything about parental discipline at all. Similarly, in its insistence that homosexual and transsexual young people should receive information, support and protection to enable them to 'live their sexual orientation', in its recommendation that contraception should be made available to schoolchildren free of charge, and in its call for the repeal of Section 28 of the Local Government Act 1986, the committee is going beyond the requirements of the Convention.

We would also note that the committee is not consistent in its view of children. There is a strange anomaly in the report in that at the same time as calling for an absolute ban on all physical correction of children, the committee is also pressing for a considerable rise in the minimum age

for criminal responsibility. On the one hand the committee wants children to be treated exactly the same as adults, while on the other, it wants them to be treated differently. The message being conveyed is that children should have adult rights but not adult responsibilities.

We have three main concerns about the committee's approach:

- It is seeking to impose an unproven philosophy of childhood on every country in the world in a way that fails to respect the social, cultural, religious and philosophical factors which shape each family.
- It is undermining parents and the autonomy of the family. It is striking that in its 17-page report, the Committee focuses exclusively on the responsibility of the state for children, without giving any recognition to the role and responsibilities of their parents or of the family unit.
- It does not promote harmony within the home to think, speak and act in terms of the 'rights' of one family member over against another, whether the family members are adults or children.

2. Physical correction of children

The United Nations Committee on the Rights of the Child considers that the 'reasonable chastisement' defence represents 'a serious violation of the dignity of the child'. No supporting evidence is supplied to substantiate this view which appears to reflect a predetermined ideological commitment. The committee goes on to call for blanket legislation against all forms of physical punishment as a matter of 'urgency' and suggests that corporal punishment is a negative and violent form of discipline.

On the basis of the experience of generations of parents and recent academic research findings, Families First rejects the notion that all forms of corporal discipline are negative and violent, and constitute a violation of a child's human dignity and physical integrity. We are enclosing along with this submission a copy of our paper *Not Without Reason: The place of physical correction in the discipline of children*, which we submitted to the United Nations Committee on the Rights of the Child in advance of its day of general discussion on 'Violence against children within the family and in schools' in June 2001. This paper addresses the emotive language frequently employed by campaigners who wish to impose their own unproven philosophy on all other parents by force of law and draws on research findings which demonstrate the positive benefits of appropriate physical correction used in conjunction with reason and in the context of a warm relationship where the child is valued and cherished.

The committee's call for 'public education programmes on the negative consequences of corporal punishment' is once again based on assumptions arising from its own ideology and its failure to draw any distinction between physical correction administered with care and in a controlled way on the one hand, and severe, uncontrolled, erratic and violent actions on the other. Mr Denham, the Minister for Young People, appeared to be under a similar misapprehension when in his evidence to the Committee, he suggested that 'good parenting' avoided 'the need for physical punishment'.

Like cars, computers, knives and needles, physical punishment may be misused, but not all use is misuse. While there may be a place for public education to discourage the improper use of physical sanctions and encouraging their proper use, there is no basis for stigmatising it and rejecting its use wholesale. Indeed, in many situations it is arguably a more kind and merciful response than other approaches which may be more drawn-out or risk causing emotional damage.

We fully endorse a statement issued by the Children & Young People's Unit:

'The Government is absolutely opposed to violence and abuse against children. The law only allows what is reasonable in terms of the physical punishment of children - it does not permit child abuse. We recognise that parenting can be difficult, but we must avoid heavy-handed intrusion into family life. The Convention refers to

the protection of children from physical violence and maltreatment. The Government is satisfied that UK law is in line with these provisions.

'We believe our policy reflects common sense views of the vast majority of people. It is not only wrong but dangerous to link smacking and child abuse deaths. It diverts attention from those children most at risk.'

By putting this issue high on its agenda, the children's rights lobby is misrepresenting the concerns of children. As Mr Denham commented in his evidence before the Joint Human Rights Committee in November 2002, children are far more concerned about other issues such as their experience of being victims of crime in the streets. Certainly children do not enjoy being corrected, whether physically or otherwise, but where physical correction is used in response to the child's misbehaviour in a moderate, careful and consistent manner, it is accepted as a consequence of wrongdoing, does not cause resentment and, indeed, is often preferable to the child than more protracted disciplinary strategies.

It is not the case that the United Kingdom is 'very much out of step on corporal punishment vis-à-vis the rest...of western Europe' and 'out of step with most other advanced democracies' (Joint Committee on Human Rights, 18 November 2002, para 96). The fact is that only a small minority of advanced democracies in Europe and beyond have legislated against the physical correction of children. The Children are Unbeatable alliance claims that corporal punishment has been outlawed in nine European states. In reality, this appears to be an exaggerated claim, as Swedish lawyer Ruby Harrold-Claesson shows in her article, *Smacking and the Law – a European Perspective*, which we enclose as an appendix to this submission. However, even if the claims of the Children are Unbeatable alliance could be substantiated, it would still leave the United Kingdom very much *in step* with the majority of our European partners and with most other advanced democracies.

Sweden is frequently held up as an example of a country which has successfully introduced legislation against the use of parental physical correction. However, a paper by Dr Robert Larzelere, of the University of Nebraska Medical Center shows that there has been a major increase in the rate of child abuse in Sweden since the law was changed in 1979. Dr Larzelere also notes that while the number of assaults on children under the age of seven has remained low and relatively stable, 'perpetration of criminal assaults against 7-14 year-olds is increasing most rapidly among those who were brought up after the law against smacking was passed.' A copy of Dr Larzelere's paper, *Sweden: Data does not support success claims*, is attached to this submission.

During the course of the meeting with Mr Denham on 18 November 2002, reference was made to a MORI poll in 1999 which found that 73% of respondents 'said that they would back a change in the law to abolish physical punishment if they could be sure that parents would not be prosecuted for trivial smacks.' The poll in question was commissioned by the Children are Unbeatable alliance and press-released by Barnardo's under the heading, 'Poll shows strong parental support for anti-smacking law'. From the media coverage the following day, one might have gained the impression that there had been a radical overnight change in public opinion against smacking. But what Barnardo's omitted to tell the press and media was that there had been a preamble to the questions asked which stated:

'We would like to ask you some questions about corporal punishment of children. The Government has agreed that the law should be changed to give children better protection. In eight European countries children have the same protection under the law on assault as adults and more countries are now following suit. This means that hitting children is against the law in these countries, just as it is against the law to hit an adult. However, parents are not prosecuted for trivial smacks, nor are they prevented from restraining their children for safety reasons.'

Few of those surveyed would have realised that the organisation behind the questions equated a moderate and reasonable smack with 'hitting' and 'assault'. Mention of the word 'assault' conjures up images of the bully down the street gratuitously lashing out. To most people it does not relate to a loving mother correcting a child for telling lies or for willful disobedience. Immediately after listening to such a disarming preamble, the 1,035 respondents were asked the following question:

'If you could be sure parents would not be prosecuted for trivial smacks, would you support or oppose children having the same legal protection against assault as adults?'

Not surprisingly, 73% were in favour of such legal protection, rising to 78% among parents with dependent children. However, that is quite a different matter from saying that three-quarters of the general public think children should be protected by law from being physically disciplined by their parents! The fact that respondents did not really mean anything of the sort is confirmed by their responses to another question, when only 37% either 'strongly disagreed' (12%) or 'tended to disagree' (25%) with the proposition that 'smacking children is a good way of improving their behaviour'. However, Barnardo's chose not to highlight these statistics in their press release.

Similar caution needs to be taken with surveys undertaken by the NSPCC. Following an opinion poll conducted in February 2002, the NSPCC is also claiming that the majority of parents now support legal reform against smacking. But the truth is that they did not ask what people thought about smacking; they asked how people felt about 'hitting' children - which is an altogether different question. It is rather like asking whether doctors should be allowed to stab their patients. Everyone would say 'no' to that, but it would be dishonest to draw the conclusion that there was overwhelming public support for a legal ban on inoculations!

The use of a disciplinary smack by a loving parent in response to a child's unacceptable behaviour is no more a violent assault than the use of a needle and syringe in a hospital or a doctor's surgery. In both cases any pain is accompanied by an explanation and is done with a positive end in view. The context is crucial. Yet, increasingly groups such as Barnardo's and the NSPCC are resorting to emotive language and refusing to take into account the context or the relationship between a parent and a child. They fail to recognise any difference between discipline within the home from a loved and trusted parent and a violent assault perpetrated by a stranger in the street.

3. The case for a children's commissioner

The written and oral evidence presented to the Joint Committee on Human Rights by supporters of a children's commissioner gives the impression that the appointment of a commissioner will be the panacea of every childhood and adolescent ill. The most extravagant claims are made as to what the postholder may be expected to achieve. But with the best will in the world, no commissioner will be able to wave a magic wand and solve all children's complaints, whether they relate to transport, education, the environment, or the family home, not even with an annual budget well in excess of the £15 million which the Children's Rights Alliance for England estimates will be required to fund the office

We would therefore agree with the Minister when he commented that there are so many 'contesting expectations of what a children's commissioner will do that it would not be possible to fulfil all in one office' (Joint Committee on Human Rights, 18 November para 112).

We are not persuaded that the various children's organisations who have made submissions to the Committee in favour of a children's commissioner are at all representative of parents, who serve as their children's advocates on a daily basis. We would also question whether a group of young people assembled by the Children's Rights Alliance for England is likely to be representative of children and young people nationwide. Children's rights groups, such as Article 12 and Right Here, Right Now, ostensibly run for children, by children, invariably use the services of an adult 'facilitator' with a very clearly-defined agenda. There is clearly scope in such groups for adults to manipulate and use the young people who take part in them for their own ends.

The fact that children and young people are not a homogenous group who share common interests and concerns, raises questions about which children and young people the commissioner would be

representing. We would suggest that it is far better that parents should be left to represent the best interests of their own children, rather than create an unnecessary layer of bureaucracy.

Quite apart from the unrepresentative character of the group of children and young people who appeared before the committee, their expectations of a children's commissioner were as unrealistic as those found in the evidence of their adult counterparts. Several of the witnesses seemed to envisage being able to enjoy a one-to-one relationship with a member of the commissioner's team, who would always be available and accessible to them as individuals.

One witness expressed the hope:

'By introducing a Children's Rights Commissioner, he or she would set up offices all over the country. Children and young people would be able to drop into these offices and say if there were problems and things that needed to happen. These offices would report back to the Commissioner and the Commissioner would have the power to tell the government that this or that needed doing... Children and young people would also be able to drop into the offices to have their say.'

Another commented:

'A colourful, child-friendly, relaxed environment will encourage young people to give their advice to the Commissioner and nice, friendly staff will boost the trust of children and young people. Young people will feel confident because they will actually get the chance to be taken seriously.'

In reality, of course, no statutory office will never be able to satisfy these longings for personal care and intimacy. Such needs can only be met within a loving family environment. A children's commissioner will always be a poor substitute for a father or mother who is always 'there' for his or her child.

It is difficult to see what a children's commissioner could do for children in terms of addressing particular needs that is not being achieved by existing agencies. As one of the young people observed, children and young people already have a number of places to go for help if they do have problems:

'These include charities such as the NSPCC, Barnardo's and the Children's Society. The list goes on. There are also many telephone support lines such as ChildLine.'

In mentioning these organisations which exist to support and counsel children with particular problems, we should not lose sight of the fact that the majority of children find their parents adequate to meet all their requirements and do not feel any need to call on outside agencies.

If some of the hopes that have been entertained about a children's commissioner have been unrealistic, others are undesirable. For example, Peter Newell in his oral evidence to the committee expressed the view that a commissioner would act swiftly to ensure the passage of legislation against all physical correction of children:

'Another issue that is obviously of great importance to the children is the lack of an equal right to protection under the law on assault, the whole smacking issue. Here again I do not think it would take very long for the commissioner to convince Government that children do have the same right as the rest of us to respect for their physical integrity and human dignity and the right to equal protection under the law.'

In this connection, we were concerned to read in the first annual report of the children's commissioner for Wales, the following section on 'physical punishment':

'I strongly support the campaign to remove the defence of reasonable chastisement from UK law... Smacking carries with it an inbuilt tendency towards an escalation of violence. There have been cases of beatings with belts and pieces of wood having been deemed acceptable in the British courts, treatment that would probably have been successfully prosecuted if the victims were animals.'

'I believe that a country that still allows babies to be hit, and that views assault on young people as acceptable, is not one in which we are likely to get very far in partnership with our young. Attempts to assure young people that we do respect them are comprehensively undermined by a law that says they are the only group in our society who can be struck with impunity. In my opinion, physical chastisement should be deemed 'inhumane or degrading treatment' under article 19 of the UN Convention. Research from other countries that have outlawed physical punishment is quite clear, and positive. My office will continue to campaign for the basic right of children not to be assaulted by adults.'

It is a matter of some concern to see the holder of a statutory office using emotive language about 'violence', 'beatings with belts and pieces of wood', 'hitting', 'striking with impunity' and 'assault' in connection with reasonable chastisement. The suggestion that 'smacking carries with it an inbuilt tendency towards and escalation of violence' and that the use of physical correction is incompatible with respect for children is deeply offensive and represents a gross injustice to generations of caring parents who have physically disciplined their children precisely because they loved and respected them too much to neglect their unacceptable behaviour or resort to more emotionally traumatic methods. Also, the research from other countries which have legislated against all physical correction is by no means as clear as the commissioner for Wales suggests, as has been demonstrated by Dr Larzelere in the article referred to above.

We might have hoped for a more objective and dispassionate approach to this issue, although the line taken in Wales conforms to an emerging pattern in other parts of the world, where children's commissioners have fairly consistently undermined the authority of parents and increasingly encroached upon the privacy of the family. We believe there is reason to fear that a children's commissioner for England might, in time, have his powers extended with the same undesirable effect. Such is certainly the hope of Peter Newell, who has long campaigned for a children's commissioner and currently serves as chairman of the Children's Rights Alliance for England.

In his oral evidence before the committee, Mr Newell declared:

'Whether the commissioner should have a right of access to the family home, that seems to me something that within this country we are not ready for and if we advocate it at this point it would probably delay us having a children's commissioner for many more years.'

Mr Newell clearly supports the commissioner's right of access to the family home in principle, though in the interests of political expediency he is prepared to wait for the full realisation of this goal.

We therefore have serious reservations about the appointment of a children's commissioner for England. We are concerned that such an appointment would progressively undermine parents, and could have the effect of setting parents against their children and children against their parents, with disastrous consequences for families. When parents are not valued, they will tend to neglect their responsibilities, and look to others to deliver. This will not serve the best interests of children. One thing that comes across very clearly from the oral evidence of the young people before the committee is that they are longing to be special to someone. They want to be valued and loved. Such a relationship will never be found in any impersonal office, but only in a loving family.