



FAMILIES FIRST

A Response to the Sure Start Review of Childcare Standards and Regulations

July 2003

Families First is a national family advocacy group, 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.

Question 2 Changes to the childminding criteria outlined in paragraphs 3.4-3.7

We wish to particularly respond to the proposal to remove from parents their discretion to authorise a trusted professional childminder to administer a moderate smack in the same manner and to the same extent that parents may use physical correction in the discipline of their children.

Section 3.7 of the consultation paper states the intention:

to change the criteria to make it clear that it is not acceptable in any circumstances for childminders to use corporal punishment or the threat of corporal punishment, in recognition that most childminders want to be seen as professionals on an equal footing as childcare workers in other day care settings.

Before addressing the proposal in detail, we would make two initial observations.

(a) The terms employed

The language employed in this section suggests that the department does not have an accurate understanding of the way a disciplinary smack is regarded and administered by many loving parents and by responsible childminders with parental consent. The term 'corporal punishment' is a strong term, more readily associated with judicial punishments rather than discipline in a home environment. To many, the term 'punishment' suggests the desire to 'get even' and take revenge. In a letter we received from Lady Ashton dated 10 July, she referred to 'corporal punishment *against* a child' as if a parent or childminder who smacks a child for disobedience or defiance is setting herself against the child. All this is far removed from the reality of the situation where a disciplinary smack is given as a teaching tool for the child's benefit and welfare.

By insisting on the use of the word 'punishment' in section 3.7 and in the revised wording of Standard 11.5 of the childminding standards, the department appears to have lost sight of the spirit and manner with which responsible parents and childminders use an occasional disciplinary smack. To think in terms of 'correcting', 'teaching' and 'training' would more accurately reflect what is in view.

(b) The reasons given in support of the proposal

The consultation paper states that most childminders want to be subject to the same standards as childcare workers in other daycare settings. However, we have little doubt that 'most childminders' are well able to recognise the considerable difference that exists in the character and standard of care they are able to give in comparison with workers in group daycare settings, in terms of its quality and flexibility.

Many parents choose to employ a childminder in preference to placing their children in a group daycare setting precisely because in the childminding setting the provision of care can be more readily tailored to meet the needs of the individual child and to the requirements of the individual parent. Such parents are keen to ensure childcare as close as possible to the high quality care that they provide for their children at home, and childminding provides greater flexibility in this respect. This is not to say that childminders are either more or less professional than other childcare workers. The question of status does not enter into it at all. It is simply to recognise the fact that there is a fundamental difference in the type of service provided.

Under the present standards, if a childminder is unwilling to comply with a parent's request to smack a child in her care, she is under no obligation to do so. The same applies equally to any other request that a parent may make of a childminder with which she is not in agreement. Childminding allows for a degree of flexibility that is simply not possible in a group daycare setting. Within the existing framework, childminders who do not agree with smacking a minded child do not have to do so, and parents who would not wish their children to be smacked by a childminder may make their position clear and need not give their consent. No childminder is being forced to smack against her will.

While it may be the opinion of some that smacking 'is not acceptable in any circumstances for childminders', it is not the opinion of all parents or of all childminders, and there is no reason why the opinion of some should be imposed on all. Most childminders will not be vegetarians, for example, or use cloth nappies, but that should not exclude those who have different preferences or those parents who wish their children to have a vegetarian diet or be put in cloth nappies. The department has not provided any reason why smacking should be singled out for condemnation and a blanket approach imposed.

Other reasons suggested in the course of correspondence with Lady Ashton and the department are that it is important to ensure consistency between childminding and group daycare, and that the current Standard 11.5 has had a negative impact on the image and recruitment of childminders. However, neither of these stands up to examination.

(i) Consistency

The department's news release of 6 May 2003, stated:

It makes sense that all professionals looking after children are subject to the same rules and that parents have access to the same consistent standards whether their child is looked after by a childminder or at a nursery.

In reality, however, such 'consistency' does not make sense at all. When parents entrust their children into the care of a childminder, they are far more concerned to ensure a standard of care which is consistent with their own parenting than they are with whether the childminder's standards conform to those of the nursery down the road.

Childminders, like parents, are not peas in a pod and will have differing personalities, parenting styles and resources etc, and parents will be keen to ensure childcare as close as possible to the high quality care that they provide for their children at home. For some parents at least, it will be important to ensure that the childminder adopts the same approach to discipline, including the use of moderate and reasonable physical correction in appropriate circumstances.

(ii) Image and recruitment

Neither are we persuaded by the suggestion that the image and recruitment of childminders is adversely affected by the fact that childminders may smack with parental consent. We know a number of childminders who take varying positions on this issue: some are prepared to smack a minded child; some would not smack a minded child, although they do smack their own children; while others are completely opposed to smacking altogether. Within the existing framework, all three groups are able to offer their services as a childminder without compromising their convictions. And this does not make any of them any more or less professional than the others, or than any group daycare worker.

Childminders take different views on any number of childcare issues - just as parents do. After all, many of them have brought up children of their own before becoming childminders. But the fact that childminders do not all conform to a one-size-fits-all approach to child-rearing does not give the profession a negative image. It is simply a reflection of the range of parenting styles that exist. And it certainly doesn't adversely affect recruitment. Indeed, if anything is likely to discourage prospective childminders, it is over-regulation and the suggestion that the state knows better than parents how children should be brought up.

The reasons given for the imposition of a blanket ban on smacking by childminders with parental consent are inadequate and lacking in substance. There is no basis or justification for incorporating a ban in regulations so that even the mildest of smacks by a childminder with parental consent would be a criminal offence. Such a draconian measure would not command public support, would bring the law into contempt and would cause unwarranted suffering to parent, childminder and child alike.

We should also like to make the following observations:

1. There is no sound basis in academic research for a negative attitude towards the physical correction of children

We have already submitted to the department a copy of our summary of the academic research, entitled *Not Without Reason: The place of physical correction in the discipline of children*. We should like this report to be considered in conjunction with this submission.

It is often not appreciated that some of the so-called 'positive alternatives' to physical correction are damaging to children. For example, some literature from groups such as the NSPCC encourage parents and carers to *ignore* children's bad behaviour. Such an approach can expose children to physical danger and can lead to serious behavioural problems later on. It is important to address children's bad behaviour, to correct it, and to teach children how they should behave. Some other methods espoused by childcare organisations involve manipulation or strategies that can cause emotional damage and place a strain on the relationship between the child and the parent or carer. For example, to withdraw or threaten to withdraw a treat or privilege can breed bitterness and resentment in the child. Smacking, on the other hand, when used consistently, in the context of a warm, nurturing and affirming relationship, is often a more kind and merciful response.

Opponents of smacking often attempt to divorce physical correction from its context. It is assumed that parents and carers who smack do nothing but smack, and that they only do so when they have lost control. This, however, is a misrepresentation of the manner in which physical correction is used by many parents and childminders. We are concerned that the department seems to have made up its mind that smacking is the worst thing a childminder can do to a child, when all the research evidence demonstrates that physical correction used consistently and with care in the context of a stable and secure relationship is an effective

form of discipline, and is often more kind and beneficial to the child than other approaches which do not receive a mention in the standards or draft regulations.

In her letter of 10 July, Lady Ashton suggests that in the event of a childminder smacking a child after the regulations come into force, Ofsted might, as a first step, require the offender to undertake 'behaviour management training'. The assumption is made that a childminder would only smack if she were ignorant of other methods, and that there is therefore a need for education and training. There appears to be a to be an unwillingness to accept that physical correction might have a place within a positive approach to childcare or that a childminder might have valid reasons, based on research evidence and personal experience for rejecting the blanket condemnation of smacking which would no doubt be a feature of the behaviour management training. Such a lack of respect for a legitimate conviction regarding just one of many aspects of childcare could lead to the prosecution of an excellent childminder who is providing an environment in which children are able to thrive.

There is certainly no basis in research for the assumption that is frequently made that smacking is harmful to children, and incompatible with quality care and professional standards. Emotive language is often employed to suggest that physical correction is harsh, violent and abusive. Used in moderation, however, it is frequently more kind to the child than other responses which may be more drawn-out and cause emotional pain that stays with the child for a long period of time. It is therefore difficult to see any basis for singling it out for a blanket ban.

2. Public opinion is in favour of parental choice and flexibility

In December 2000, the Department for Education & Employment published the results of its own opinion poll which showed that 84 per cent of parents believed that they and not the state should have the right to decide whether a childminder should be permitted to smack their child. Only 10 per cent thought the state should impose its own view on the matter.

At that time, Margaret Hodge, stated:

We need to strike the right balance between the freedom of parents to determine how their childminders care for children in private homes and the views of some childcare groups who want childminders treated the same as other providers...

It is clear that the overwhelming majority think that these matters should be decided through private, written agreements between the parent and childminder... This is a powerful message from parents that they want to be free to make their own arrangements with childminders. This is putting the decision where it should be – with the parents. (DFEE Press Notice, 9 December 2000).

However, in her letter of 10 July, Lady Ashton states:

It is important that we monitor and respond to changing attitudes to the treatment of children and that we reflect these in the standards and regulations.

Yet there is no evidence that public attitudes on parental choice have changed at all over the past two years.

3. The current proposal is an insult to parents

A ban on smacking by childminders with parental consent stigmatises parents who use physical correction in the discipline of their own children and suggests that their care is substandard and unprofessional.

This was recognised by government ministers in several public statements made little more than two years ago. At the end of 2000, while Secretary of State for Education, David Blunkett stated:

I do believe that the right to smack in exceptional circumstances is one which should remain with parents and with childcarers who are carrying out the explicit wishes of parents... This is one issue where the role of government and the state should not be extended into people's homes. It should be for parents to decide for themselves. (Sunday Telegraph, 10 December 2000)

In January 2001, in response to an oral question, Mrs Hodge resolutely upheld the principle of parental responsibility and choice when making arrangements with childminders:

On smacking..., the issue is not whether a parent or child minder should be permitted to smack...; it is whether the matter should be determined by the state or by parents in the privacy of their own home in negotiation with the child minder. Parents' rights take precedence over those of other people - including Members of Parliament:

The hon. Gentleman should think about how we would implement a law forbidding smacking... in the privacy of the home. If he were to think about the implications of that in a court, he would realise that it would be wholly unenforceable and impracticable; it would be a denial of parents' rights. The right of parents to influence children is uppermost in our mind. (HC Deb (2000-01) 360, cols 1232-3).

Later in the year, she spoke to the Education Sub-Committee in similar vein:

I think this is an issue for parents. I think the idea that we as professional politicians have a better understanding of the welfare of the child than parents is insulting to parents, and I have to say that I actually think a negotiation between a childminder and a family about how your child is going to be cared for is very important; to talk about how you are going to have a code of practice to deal with a child when the child is naughty... is crucial. (HC 438-ii of Session 2000-01, Q. 155).

When the National Standards were originally drafted, Families First received a letter from the Department for Education and Employment in February 2001 which stated:

The government believes strongly that neither the government nor childcare professionals should assume that they care more about children's welfare than parents... It is the government's view that, having listened carefully to the opinions both of those working in the day care sector and of parents, the approach we have taken is the correct one and that the welfare of children will not be compromised.

The government's position could hardly have been clearer and the current proposal represents a serious change of attitude towards parents. It remains the case, as the department stated two years ago, that the welfare of children is not in any way compromised by allowing parents to authorise a trusted childminder to use reasonable physical correction and there is therefore no need for state intervention in an area where strong views are held on either side.

We are persuaded that Mrs Hodge was correct to view it as an insult to parents to take from them the decision as to how their children are disciplined when in the care of a childminder. To remove from parents the right to authorise a trusted childminder to discipline a child in the same manner in which he or she is responsibly and reasonably disciplined at home undermines parental responsibility.

We are concerned that to make smacking by childminders a criminal offence does not only undermine parents, but is an insult to childminders themselves, many of whom have successfully brought up children of their own with the use of judicious physical correction.

Neither the consultation document nor correspondence with the Minister has offered a credible explanation as to why the department has gone back on Margaret Hodge's view that it is insulting to parents to suggest that professional politicians have a better understanding of the welfare of children than their own parents. We are still none the wiser as to why this should have changed in relation to the physical correction of children.

4. The proposal runs contrary to the principles of the Children Act 1989

The proposal to impose a blanket ban on smacking by childminders is also inconsistent with the provisions of the Children Act 1989. The Act states:

A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf. (Children Act 1989, S2(9))

Since parents are responsible for the discipline of their children and are free to use moderate and reasonable physical correction as a disciplinary tool, it follows that they should be free to make arrangements for that responsibility to be met by a childminder acting on their behalf.

5. The proposal imposes uniformity and denies parents choice

We understand from officials in the Sure Start Unit that Ofsted have found that less than one per cent of childminders are currently operating with parental agreements to smack a minded child. In view of the climate of fear which has been created in connection with this issue, we are not surprised by this finding. Childminders are well aware that smacking is officially frowned on by many childcare groups, tutors on training courses, social service departments and by many inspectors. It is therefore at least possible that many more childminders have agreed to smack a minded child with parental consent than Ofsted is aware of.

However, at the end of the day, the precise number of such agreements in existence is irrelevant. The principle still stands that parents should be able to decide for themselves how their children are reasonably disciplined by a childminder and not have that decision removed from them. If there were just *one* parent in the whole country who wished to enter into such an agreement with a childminder, she should be permitted to do so. Even if there were *none*, the option should still remain open.

Parents will take different views on discipline just as they do on diet, clothing, nappies, exposure to television and videos etc, and it would be quite wrong in any of these areas for the state to impose the views of the majority on the minority in the name of 'reflecting current practice'. High quality childcare does not require a blanket approach and we would strongly caution against prescribing how children should be

brought up on the basis of surveys and opinion polls. On sensitive and personal matters such as the care and discipline of children, parents must be free to decide for themselves.

6. To make smacking by childminders with parental consent a criminal offence is without warrant and represents an unnecessary intrusion into family life

There is no basis whatever for regulations which would mean that a childminder who has smacked a minded child with parental consent, no matter how mildly, will be guilty of a criminal offence and could be subject to criminal prosecution even though she has done no harm to a child and has, in fact, been an excellent childminder.

We are convinced that this whole proposal has not been properly thought through. Following the announcement of the department's proposals in early May, we were advised by the department that no decision had yet been taken as to whether smacking by childminders was to be the subject of guidance or regulations. A month later, the consultation document stated:

We further propose to incorporate this ban on corporal punishment in regulations so that it has statutory force in the same way as in schools.

When we enquired about how it was proposed to enforce the regulations and what sanctions would be applied, we were advised by the department that the issue had not been thought through and we had to wait almost three weeks while the department's lawyers considered the matter. The following scenario serves to illustrate the need for further serious thought to be given to the proposed regulations.

Picture a childminder who is providing an excellent standard of care for a child, comparable to that of the child's mother. The child is happy and thriving and the child's mother is delighted. But then it comes to the attention of Ofsted that this childminder has smacked the child. It wasn't 'corporal punishment' by any stretch of the imagination, but it was a smack and it was with the parent's agreement. The child had worked out how to undo his car restraint. No amount of persuasion or reasoning from the childminder made any difference. He kept on doing it, exposing himself to danger. The childminder smacked him on the hand gently but firmly. He never tried to undo the restraint again. Under the proposed regulations, Ofsted would be obliged to investigate and would have to insist that the childminder accept that what she had done was wrong and demand from her an undertaking that she would never do it again. But what if the childminder is unrepentant? What if she believes she did the right thing and, with the full support of the mother, she would be prepared to do it again? Should she be deregistered and her valuable service lost? Should she be taken to court and prosecuted for what is, after all, a criminal offence? The very suggestion is ludicrous. Yet, that would be the inevitable outcome if this ill-conceived proposal were to come into force, and it would not serve the best interests of anyone - least of all the child who would be deprived of a much-loved childminder.

Appendix: A few observations on how the consultation has been conducted

Since the DfES is aware of our longstanding interest in preserving freedom of choice for parents when arranging for others to care for their children, we are extremely disappointed that we were not included in the department's preliminary discussions. We are also concerned that section 1.4 of the consultation refers to earlier 'consultation with the sector' and Lady Ashton's letter of 10 July refers to 'feedback from professional childcare providers, including childminders'. Parents do not appear to have featured very prominently in the department's thinking.

We note that this somewhat limited preliminary consultation exercise is cited in the consultation document as a justification for the departure from the government's code of practice on written consultations that requires that:

Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.

In this instance, the standard minimum period has been halved to just six weeks.

The code of practice also requires that:

Documents should be made widely available...

In this instance, the covering letter from the Director of the Sure Start Unit states that only 'a limited number of copies of this consultation' would be available from DfES Publications. We have been concerned to hear from several of our supporters that when they telephoned to request copies they were told that they were out of print.

A combination of factors give rise to concern about the manner in which the consultation has been conducted:

- the apparent exclusion of parents and pro-family groups from preliminary discussions
- an announcement that childminders were to be banned from smacking a month before the consultation was published
- publication of the consultation document without a news release
- a consultation period half the length of the government's standard minimum period
- shortage of printed consultation documents and response forms

The overriding impression is given that the department's mind is fixed and that the consultation is a mere cosmetic exercise.

We do trust that, when analysing responses, the department will comply with point 6 of its code of practice for written consultation:

Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.