

DIR/MM/PN/KSC/Corr07/28

24<sup>th</sup> May 2007

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**With reference to: Supervision of execution of “A v UK” judgment of the European Court of Human Rights, June 2007**

The NSPCC is the UK's leading child protection charity and the only non-governmental organisation with statutory child protection powers. I hope the Committee of Ministers will take these representations into account in the supervision process. In particular, the data summarised below illustrates the shocking scale of violence against children in their homes and families, which breaches their article 3 rights and underlines the huge importance of the outcome of the Court's judgment in “A v UK”.

I would be grateful if you could distribute this letter to all the members of the Committee for their attention.

**Background**

Following the release of the judgment of the European Court of Human Rights in “A v UK”, in 1998, we called a meeting of child protection, professional and other organisations to discuss how best to work for effective legal protection for children in the light of the judgment. As a result, an Alliance was formed (the Children Are Unbeatable! Alliance), now with over 400 professional and other organisations advocating for the complete removal of the “reasonable punishment” defence (Section 58 of the Children Act 2004) to give children equal protection under the law on assault. The Alliance includes organisations representing all the elements of the UK multi-disciplinary child protection system.

## “A v UK”

We have followed closely, and with growing concern, the process of supervision of the execution by the UK Government of this landmark judgment. Our understanding is that the judgment requires adequate protection for children, including effective deterrence, from assaults that the European Court would find in breach of article 3. It is our informed professional view that the changes in the law applying in England and Wales, which leave the “reasonable punishment” defence available to parents and others charged with common assault on children, cannot provide the required adequate protection including deterrence. Revisions made in the relevant Charging Standard by the Crown Prosecution Service cannot remedy this situation. The Charging Standard is non-statutory advice, not law, and the listed range of injuries appropriate for a charge of common assault plainly include assaults which the Court would find to be degrading and in breach of article 3.

The Government argument is that they have executed the judgment by removing parents’ ability to use the defence in relation to charges of “actual bodily harm”, with which A’s stepfather was charged. However, this ignores the fact that there is no clear distinction between common assault and actual bodily harm and that common assault undoubtedly includes assaults that the Court would find in breach of article 3.

The Court acknowledges that children are particularly vulnerable individuals. Our organisation encounters this truth on a daily basis. All over the UK, many children are being routinely assaulted by their parents, who act in the confident belief that society and the law have endorsed their right to do so. We are painfully aware that cases come to the attention of the prosecution services often only by accident; our telephone helplines show that many thousands of children continue to suffer pain and injury within their families. Prosecution after an assault does not provide children with sufficient protection, nor is this adequate deterrence. As our name suggests, our organisation is concerned with the *prevention* of cruelty. What is needed is a clear law against all assaults on children by their parents and other adults; anything short of this will only create confusion and the continuance of preventable violence in breach of article 3.

The provision introduced in section 58 of the Children Act 2004 and now replicated in Northern Ireland through the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006, article 2, as well as perpetuating a fundamental breach of children’s rights, arguably undermines effective child protection and the promotion of positive, non-violent parenting.

We understand that member states are allowed a margin of discretion as to how they execute judgments of the Court. I am confident that, in supervising the execution of this judgment, the Committee of Ministers will recognise that this margin must not allow states to offer children a weaker degree of protection under the criminal law than adults. This would be a travesty of human rights and justice.

### **Prevalence of degrading punishment of children**

The most recent information comes from an analysis of calls to our national child helpline ChildLine, between 1 April 2006 and 31 March 2007.<sup>i</sup> Physical abuse is the third most common reason that children call ChildLine, after bullying and family tensions. In 2006-7, ChildLine counselled 14,561 children about physical abuse. Eighty-eight per cent of these children had been assaulted by a family member (33% by mothers, 29% by fathers and 11% by both parents). Sufficient data was supplied by 5,262 of the children to record that of these callers, 52% mentioned being hit with an object, 24% experienced “wounding” and 45% being bruised.

The Government has commissioned no research into the prevalence of physical violence against children in the family since the mid-1990s, when the Department of Health commissioned a large-scale “Community Study of Physical Violence to Children in the Home and Associated Variables” in the 1990s<sup>ii</sup> (Nobes et al 1997) . This study found very high frequency of physical punishments, including severe punishment. The large majority (91%) of children had been hit. Frequency of hitting declined with age. Only 25% of the babies aged up to one year in the study had never been “smacked” by their parents; 14% of these one-year-olds had been “smacked” with “moderate” severity, 38% more than once a week. The study included in-depth interviews with both parents in 99 two-parent families: these found that one fifth of the children had been hit with an implement and over one third (35%) had at some time experienced a punishment that was rated as “severe” (defined as punishments “that were intended to, had the potential to, or actually did cause physical and/or psychological injury or harm to the child”).

A retrospective study, interviewing young people aged 18 to 24 about their childhood (a large random probability sample)<sup>iii</sup>, assessed seven per cent of the sample as having experienced serious physical abuse by parents or carers, 14% as experiencing intermediate abuse, and three per cent as having “cause for concern”. A fifth of the whole sample reported that they had experienced injury on at least one occasion as a result of the treatment they received. This was most often bruising, but small proportions reported other injuries including head injuries, broken bones and burns. Inevitably, retrospective studies of this kind do not record assaults in early childhood.

A nationally representative survey of parents, children and discipline across Britain, for the Economic and Social Research Council<sup>iv</sup>, reported in 2003 that nine per cent of parents reported using “severe” physical punishment.

### **Conclusion**

The effective execution of this almost nine-year-old judgment is of profound and immediate importance to the UK’s children. The information above demonstrates that many are suffering breaches of their rights under the European Convention because of the lack of an effective legal framework to deter degrading punishment.

The process of supervision does appear to be largely one-sided, reviewing the Government’s own account of its actions, with no obligation to take

account of representations made, as it were, on behalf of the applicant “A”, who in a sense reflects the interests of the UK’s 13 million children. We very much hope that the Ministers’ Deputies will consider these representations carefully. If you require any clarification of the above, or copies of our ChildLine data reports, I would be most happy to assist.

Dame Mary Marsh  
**Director and Chief Executive**

Cc:  
Maud de Boer-Buquicchio, Deputy Secretary General  
Thomas Hammarberg, Commissioner for Human Rights

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<sup>i</sup> *Analysis of calls to ChildLine, 2006 –7; also see ChildLine casenotes: What children and young people tell ChildLine about physical abuse*

<sup>ii</sup> *Nobes, G. et al., 1997. “Community Study of Physical Violence to Children in the Home and Associated Variables”, and “Physical punishment of children in two-parent families”, Clinical Child Psychology and Psychiatry, vol. 2, no. 2, pp.271-281; also summary presented as a poster by Dr Marjorie Smith at the Fifth European Conference on Child Abuse and Neglect, International Society for the Prevention of Child Abuse and Neglect, Oslo, May 1995)*

<sup>iii</sup> *Cawson, P. et al (2000) Child Maltreatment in the United Kingdom: a Study of the Prevalence of Abuse and Neglect, London: NSPCC..*

<sup>iv</sup> *Ghate, Hazel and Creighton (2003) National Study of Parents, Children and Discipline in Britain,, ESRC.*