

NSPCC policy summary
Equal protection for children under the law on assault
– Hitting children is wrong and the law should say so

Objective

The NSPCC is campaigning for a change in the law to give children the same protection from assault as is currently available for adults by making all forms of physical punishment illegal.

Case Study

“It was his second birthday and I can’t remember what he was doing, but I was tired and stressed and just smacked him once on the bottom – he was wearing a nappy so it shouldn’t have hurt, but the shock of me hitting him made him scream.

I was so upset I didn’t know what to do apart from hug him and say sorry over and over again. I was horrified to think that his first memory of being two might be: ‘Mummy smacked me’”

Liz, mum of Charlie (3)

Extract from NSPCC booklet *‘From a parent’s point of view – families talk about smacking.*

Children’s Rights

UK laws on physical punishment breach European and international human rights instruments. Article 17 of the European Social Charter is interpreted by the European Committee of Social Rights as requiring “the effective prohibition of all corporal punishment and any form of degrading punishment of children.” The United Nations Convention on the Rights of the Child (UNCRC) requires that:

- Article 19 States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse... while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
- Article 37 No child shall be subjected to torture or other cruel, inhumane or degrading treatment or punishment.

International human rights bodies are calling for the prohibition of all forms of corporal punishment in all settings; by not giving children this protection the UK Government is ignoring its obligation to uphold the rights of children, fails to set a good example to its own citizens and arguably damages its reputation and position of influence as a progressive nation within the international community.

UK legal position on physical punishment

In 1998 the European Court of Human Rights ruled that UK laws failed to protect a young boy who was beaten by his stepfather with a garden cane

from inhumane and degrading treatment. The law at the time allowed the stepfather to justify the beating as reasonable chastisement. Section 58 (s.58) of the Children Act 2004 removed the defence of 'reasonable chastisement' for the charge of wounding, actual bodily harm and cruelty, but allows parents charged with common assault to claim they administered 'reasonable punishment'.

In February 2008 the Sentencing Guidelines Council issued new prosecution guidance stating that where courts find that a parent who is prosecuted for assault occasioning actual bodily harm intended to administer reasonable punishment and did not intend or foresee the injuries to the child, this could be considered substantial mitigation. Such a finding could result in a substantially reduced sentence or discharge. The new guidance in effect means that the operation of UK laws are now similar to the situation before the Children Act 2004 because the principle, if not the legal defence, of 'reasonable punishment' will now be considered when a parent is prosecuted for assault occasioning actual bodily harm.

All forms of physical punishment against children placed in local authority foster care has been prohibited in accordance with the regulations that followed the Children Act 1989, thus children placed in local authority or voluntary sector foster care have the same protection from assault as adults. The Children's Home Regulations 1991 (amended in 2001) states that physical punishment should not be used as a disciplinary measure on children accommodated in a children's home. In contrast, carers can continue to use physical punishment in private fostering arrangements, as can parents who legally adopt children, as they are subject to the same laws as other parents and can thus use the reasonable punishment defence.

Corporal punishment has been prohibited in state schools since 1987 and the Schools Standards and Framework Act 1998 brought all independent schools into line with others, meaning corporal punishment is now prohibited in all UK schools. However there have been confirmed reports by the BBC that the Tyndale Academy in East London continues to use corporal punishment by exploiting a loophole in the law which allows the institution to claim that it is not a private school because it provides part-time tuition and the law applies to full-time education providers.

As set out above, there are a number of anomalies in the current law, which mean that children are protected in some settings, including some domestic spaces, but not in others. This is discriminatory and needs to change. What is needed is one clear law that applies to all children in all settings which provides children with equal protection from assault.

Recommendations

- The Government should abolish the defence of 'reasonable punishment' in section 58 of the children Act 2004 to make all physical punishment against children illegal and to give children the same protection from assault as adults.

- Positive forms of parenting should replace physical punishment in the home. These should be promoted by the Government and widespread education and support provided to parents.
- Specifically, the NSPCC is calling on government to provide universally-available parenting education programmes, via the NHS, to encourage positive parenting skills and develop parents' knowledge of why their children behave the way they do and effective ways of responding to these challenges. The Government should also invest in public education to promote the concept of positive parenting.

Reasons for law reform

The NSPCC believes that the law needs to be changed for the following reasons:

Human rights obligations: The UN Committee on the Rights of the Child has twice recommended law reform; (the Committee on the Rights of the Child General Comment No. 8 provides detailed guidance on eliminating corporal punishment.¹ The European Social Charter requires abolition of all corporal punishment, and the European Court of Human Rights has ruled that UK law does not provide adequate protection (Council of Europe 2008).

Children are being legally hit right now: Research commissioned by the DCSF (IPSOS MORI 2008, Sherbert Research 2007) shows that a significant number of children continue to be hit. Focus group research commissioned by the government with children and young people highlights the extent to which physical punishment can be routinely used; children recounted experiences of being smacked for forgetting to tidy their bedroom, talking back or for accidentally knocking something over (Sherbert Research, 2007). Most children taking part in an earlier NCB and Save the Children research study described a smack as a 'hard hit' or a 'very hard hit' (NCB, Save the Children 1998).

Support for child protection professionals: All those involved in protecting children from abuse, from the NSPCC to the Association of Directors of Children's Services, want the law changed to provide a clear basis for child protection. The Children are Unbeatable Alliance is made up of more than 500 organisations.

Promote positive parenting: The law as it stands undermines the work of health visitors, midwives, early years carers and many others who try to promote positive, non-violent discipline.

Cultural change: The law sets standards in every sphere of society, including family relationships. How can we expect parents to stop hitting their children if the law says it is acceptable?

¹ For full text see:

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.GC.8.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.GC.8.En?OpenDocument)

Reform works: Children are afforded equal protection from assault in Germany, Sweden, Denmark, Austria and many other countries, changing attitudes and behaviour for the better. There are now 23 countries worldwide where corporal punishment is illegal in all settings.

The law is archaic: Although it has been revised recently, the law allowing children to be legally hit originates in the 19th century and is out of step with what we now know about its effects on children and also out of step with the values of a modern society. The Swedish government described a ban on smacking as a natural historical development that builds on all laws which had “already done away with the right to beat one’s wife and servants” (Council of Europe, 2007). This was once deemed acceptable in the same way that some people continue to argue that is acceptable to hit children.

The majority of parents do not oppose change: When asked in a non-sensationalist way, 71% of people support a change in the law to give children equal protection from being hit in the family home (MORI Social Affairs Institute, 2004).

Governments should lead public opinion: The majority of countries who have changed their laws have done so without having public opinion firmly on their side. This is a matter on which governments have led public opinion as a matter of principle, because it is the right thing to do for children, children’s rights and child protection, and public attitudes have changed as a result.

Supporting families

Parents

Law reform would be positive both for children and parents. In 2007 the Government commissioned an IPSOS MORI survey of a representative sample of 1822 parents to ascertain parents’ views on ‘smacking’. 78 per cent of parents thought that smacking was wrong or said they dislike the idea of smacking. Law reform should be matched with widespread public education and provision of parenting and family support services so that parents can access information, advice and support about positive discipline.

There is now compelling neuroscientific evidence that explains and supports the old maxim “you don’t know your own strength”. Researchers from the Institute of Psychiatry and University College London, funded by the Wellcome Trust, proved in 2003 that “physical force escalates dramatically in a tit-for-tat situation”. This is explained by one of the researchers as follows: “Just before you make a movement you send a signal to a specific brain region to warn it what to expect ... The altered activity in this particular sensory area means that you tend to apply more force than you think. This mechanism also explains why you cannot tickle yourself - the brain already knows what sensation to expect and alters the brain activity responsible for the sensation accordingly. But when someone else tickles you there is no chance to adjust your brain perception, and you feel the full effects.” The researchers pointed out that this lack of accuracy in assessing the strength of

directly applied force may have implications for contact sports like boxing, where the force you are applying will actually be greater than you think. Similarly, "it may not be possible for parents to accurately judge the force they apply when they smack their children, and this experiment would suggest that they will smack harder than they think or intend"

Law reform would give parents clarity; piecemeal legislative changes have resulted in widespread confusion among both parents and professionals about the degree to which parents are able to hit children. By giving parents clarity we can move forward to a situation where smacking is a thing of the past, and where parents are supported to find other, more effective ways to discipline children.

Children

Positive discipline encourages better behaviour. There is evidence that for a minority of young people, smacking has been proven to have a hugely negative impact on their behaviour and development. A meta-analysis of studies on the impact of physical punishment on children (Gershoff 2002) identified an association between parental use of physical punishment and eleven negative behaviours including defiance, anger and increased aggression. A more recent report from the Institute for Public Policy Research (IPPR 2008) found that parenting styles which include using physical violence such as smacking are negatively associated with children's social and emotional development. The author, Julia Margo, concluded that "a wealth of research proves the causal link between hitting or smacking and the increased aggressive behaviour." In 2007 the Government commissioned Sherbet Research to conduct a small-scale qualitative research study with children and young people to gain a better understanding of young people's experiences and opinions on physical punishment. This study found that for a minority of the children in the sample, smacking and aggression became learned behaviour and part of the child's identity.

Physical punishment laws are unfair both in principle and in operation. It is unfair that children are the only group in society who do not have equal protection from assault and that some children are less protected than others. In practice the law places a strong emphasis on visible injury to the skin. This is problematic because children mark differently due to differences in skin tone and type. In evidence submitted as part of the government's review of section 58 of the Children Act 2004 a paediatrician told the government that "[section 58] discriminates against black children because hitting a black child does not leave a visible mark in the same way as seen on a white child's skin. As a paediatrician working in child protection, I have found it more difficult to diagnose injuries in black children who are alleged to have been abused (DCSF 2007)."

The experience of other countries

Progress on giving children equal protection under the law on assault

Law reform to give children equal protection under the law on assault is accelerating fast, changing attitudes for the better and generally without great

controversy. A third of the member states of the Council of Europe now give children equal protection and many more plan to act soon.² Twenty-three countries world wide have abolished all corporal punishment: Austria (1989), Bulgaria (2000), Croatia (1999), Cyprus (1994), Denmark (1997), Finland (1983), Germany (2000), Hungary (2004), Iceland (2003), Latvia (1998), Norway (1987), Romania (2004), Sweden (1979) and Ukraine (2004), Greece (2006), Portugal (2007), (Chile) Netherlands (2007), Uruguay (2007), Spain (2007), New Zealand (2007), Venezuela (2007).

In addition, Supreme Courts in Italy and Nepal have ruled that corporal punishment in child rearing is unlawful. These decisions have not been confirmed explicitly in legislation, but in 2005 the European Committee of Social Rights decided that the Italian Supreme Court decision did meet the requirements of the European Social Charter (Children Are Unbeatable! Alliance).

Public opinion

Public opinion can change *following* law reform.

In 1979 Sweden became the first country to make all forms of physical punishment against children illegal. The Swedish experience is a useful model for how law reform can be implemented effectively and sensitively. The Swedish government produced a 16-page colour booklet entitled '*Can you bring up children successfully without smacking and spanking?*', to support parents after law reform. Six hundred thousand copies of the booklet were distributed to households with children, and made available in ten minority languages. The leaflet explained clearly the legal changes and their background, advice on non-violent ways to set limits on children's behaviour, and provided a guide to expectations of children's behaviour at different ages and the conflicts that parents may encounter. The campaign was very successful: by 1981, 99 per cent of the population was aware of the law, a level of awareness never even approached for any other legislative change in any country (Boyson and Thorpe 2002).

A large survey of public opinion was commissioned by Sweden's Department of Social Welfare and undertaken by Statistics Sweden in 1994.

They surveyed a large national sample of adults and middle-school students (aged 13-15) on their opinions, knowledge and experience of physical punishment. Only a small minority of the population claimed to be 'positively inclined' to milder forms of physical punishment: 10 per cent of all adults and six per cent of younger people aged 18-34 and 13-15.

A third of adult respondents thought that smacking was 'sometimes necessary' if employed as a carefully considered aspect of child-rearing, not out of anger.

² This is based on the best evidence available at date of revision.

However, only four per cent of the middle-school students reported being physically punished 'now and then' in their earlier childhood, suggesting that adult' views may be influenced by sympathy for those who end up employing physical punishment, rather than a reflection of their own use of it (Boyson and Thorpe 2002).

Evidence from Germany, where corporal punishment was outlawed in 2000, strongly suggests that when the law is stated explicitly and with comprehensive advertising, societal attitudes towards corporal punishment change and become less supportive. Bussmann et al (2004) found that the law had:

- Increased the level of legal sensibility and consciousness of corporal punishment
- Sensitised perception and definition of physical punishment as violence.
- Stimulated family discussions on sanctioning styles and on the legal limits of physical punishment.

A total of 23 countries worldwide have now legislated to make all forms of physical punishment against children illegal in all settings. The UK is now one of only five EU countries that have not yet legislated, or committed to legislating, to give children equal protection from assault.

Related policy summaries

Positive parenting

Useful websites

[End All Corporal Punishment of Children](http://www.endcorporalpunishment.org/)

(<http://www.endcorporalpunishment.org/>)

Supporting documents/ research

[BBC NEWS | Education | 'Smacking loophole' to be closed](http://news.bbc.co.uk/1/hi/education/7353245.stm)

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