



A Reasonable Approach to Discipline

Issues to be considered in the context of the debate on parental smacking

There are few issues surrounding contemporary parenting more hotly debated than smacking. In recent years, a method of discipline used by the majority of parents across all cultures for generations has been stigmatised like no other. It is an issue calculated to arouse such strong emotions that the facts can easily get lost in the heat of the debate. This factsheet aims to take a calm dispassionate look at:

- The current law in England and Wales
- The likely effects of a change in the law on parental smacking
- The extent and impact of smacking bans in other parts of Europe
- The findings of academic research
- Public opinion polls
- The implications of the evidence for public policy

The current law in England & Wales

The law recognises the unique role and responsibilities that parents have towards their children. 'Parental responsibility' entails 'all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.'¹ Parents are, for example, responsible for feeding, clothing and housing their children and are liable to prosecution for neglect if they fail to provide adequate standards of care. They are also legally responsible for ensuring that their children of compulsory school age receive 'full-time efficient education, suitable to [their] age, ability and aptitude and to any special needs [they] may have'.²

In order to fulfil this unique role, the law recognises that parents have unique powers to control and direct their children's behaviour – powers that are not reciprocal and that those without parental responsibility do not share in relation to a child. In this context the law recognises that parents may use physical chastisement on the condition that it is 'moderate and reasonable'.³

The Children & Young Persons Act 1933 placed this common law right on a statutory footing. It made it an offence for anyone with the charge or care of a child or young person to 'wilfully assault, ill-treat, neglect, abandon or expose the child in a manner likely to cause unnecessary suffering or injury to health'.⁴ As amended, it goes on to specify that:

'Nothing in this section shall be construed as affecting the right of any parent, or (subject to section 548 of the Education Act 1996) any other person having the lawful control or charge of a child or young person to administer punishment to him'.⁵

Under the current law, if a parent is charged with assault for physically rebuking a child, he or she may plead the defence of 'reasonable chastisement'. It is then for the court to determine whether or not the punishment was 'moderate and reasonable' taking into account all the relevant facts of the case. Unreasonable and excessive punishment is thus already against the law.

The impact of a change in the law

(a) A greater degree of social service intervention

A change in the law to limit or remove the defence of reasonable chastisement would significantly lower the threshold for intervention in family life. Government guidance currently states that:

'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'.⁶

'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'.⁷

However, if the defence of reasonable chastisement were to be removed, parental smacking would provide sufficient justification for social service intervention; there would be no prior need to assess whether the child was suffering 'significant harm'.

The government's guidance recognises that 'enquiries into suspicions of child abuse can have traumatic effects

The law and our international obligations

Since the European Convention on Human Rights was incorporated into UK law under the Human Rights Act 1998, the courts have been under an obligation to take into account factors such as 'the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health' of the child.^a An Appeal Court Judge giving judgment in the case of *R v H* held that in addition to these factors, juries should consider the reasons given by the defendant for administering the punishment.^b

The European Court of Human Rights (ECHR) has never issued a blanket condemnation of all forms of physical correction. In 1993, it dismissed an application from a schoolboy who claimed that his physical punishment with a slipper by the headmaster of his boarding school constituted 'inhuman and degrading treatment' in contravention of his human rights. The Court ruled that the punishment did not meet the 'minimum level of severity' required to constitute a breach of the European Convention on Human Rights.^c

The judgments of the ECHR are always limited to the facts of the single case under consideration. In ruling that the UK had failed to protect a boy from 'inhuman and degrading treatment', the Court declined to make any general observations on the physical chastisement of children even though it was invited to do so.^d

The current law in England and Wales is fully compliant with the European Convention on Human Rights. Between November 2001 and August 2004, the reasonable chastisement defence was used in only eleven cases, resulting in just five acquittals, including one case which was dismissed because of discrepancies in witness accounts. Having asked the Attorney-General to keep the defence under review in order to assess the impact of *A v UK*, the government has confirmed that it is satisfied that the defence is being used properly and that the existing legal framework fulfils the requirements of the ECHR ruling.^e

The present legislation is also in harmony with the United Nations Convention on the Rights of the Child (UNCRC) which requires states to protect children 'from all forms of physical or mental violence, injury or abuse' (Article 19). All such treatment is already prohibited by law. As far as mild physical correction is concerned, the UNCRC is silent.

Notes

- a. ECHR (1998) *A v The United Kingdom*.
- b. The Incorporated Council of Law Reporting, *R v H*, 25 April 2001, <http://www.lawreports.co.uk/civapr1.3.htm>
- c. ECHR (1993) *Costello-Roberts v The United Kingdom*.
- d. ECHR (1998) *A v The United Kingdom*.
- e. HC Deb (2002-03), 6 October 2003, vol 410, cols 1132-1133W.

on families'.⁸ Any legislation which had the effect of lowering the threshold for compulsory intervention would inevitably cause unnecessary trauma to families where the children were at no risk of harm.

(b) Prosecution of parents

The Director of Public Prosecutions has stated that the removal of the reasonable chastisement defence would render any smack a criminal offence and that he could not give any guarantee that cases would not be brought to court.⁹

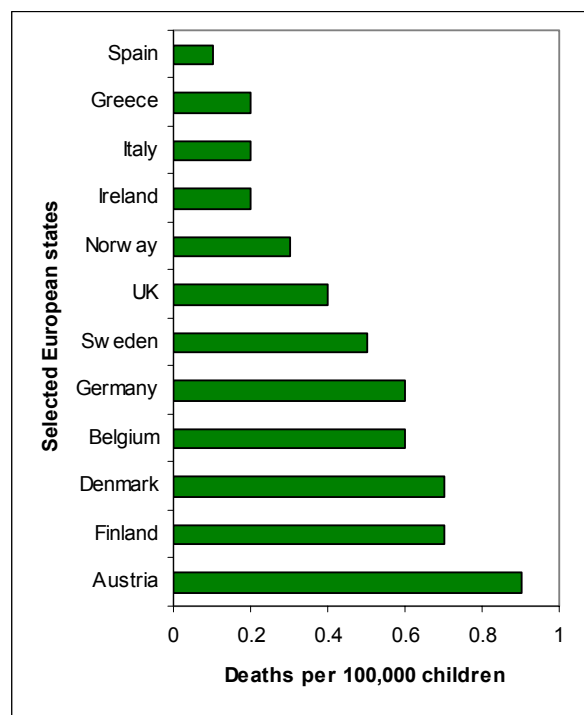
The Attorney-General, Lord Goldsmith, is also on public record as saying that if the defence of reasonable

chastisement were to be removed, the use of moderate and reasonable physical punishment as a means of correction, 'including a single smack to a child – would be an unlawful assault and punishable by the criminal law'. The effect of this would be 'to bring in the existing sanction, at least for common assault, which is six months' imprisonment maximum'.¹⁰

The law elsewhere in Europe

The majority of other European states permit the moderate physical correction of children. Only a minority of countries have explicitly prohibited it by law. Campaigners against smacking in the UK claim that as many as ten European states have legislated against all forms of physical correction,¹¹ but others suggest the figure is as low as four.¹²

Figure 1: Child maltreatment deaths of children (aged under 15) averaged over a five year period in selected European states



Source: Unicef

While it is generally recognised that Sweden (1979), Finland (1983), Norway (1987) and Denmark (1997) have explicitly outlawed all physical punishment, the legislation in each of these countries is by no means uniform. In Norway, for example, a distinction is drawn between forms of 'pronounced punishment' and 'a spontaneous slap and some more trifling forms of physical punishment'.¹³

Whether other European states have legislated against all parental smacking is the subject of some debate. In some cases this is due to an ambiguity in the law itself, which has not been tested in the courts. In other cases confusion has arisen as a result of those with an ideological opposition to all forms of physical correction interpreting any new legislation against 'violence' or 'maltreatment' as a total prohibition of corporal discipline.

Given the differences that exist between legal systems in the various European states, it is by no means the case that the laws have equal impact in each country, and information is sparse regarding precisely how the prosecuting authorities and the courts are interpreting and enforcing the legislation.

As the first country in the world to legislate against smacking, Sweden has inevitably attracted the most attention, though even there surprisingly few studies have been undertaken to evaluate the impact of the law.¹⁴

However, it is well-documented that Sweden saw a 489 per cent increase in physical child abuse cases classified as criminal assaults from 1981-1994, and a fivefold increase in child-on-child criminal assaults between 1984 and 1994.¹⁵

Unicef figures show that there is no basis for the claim that there are lower rates of child maltreatment deaths in countries where such legislation has been introduced compared with countries where moderate physical correction is permitted under the law.

During a five-year period in the 1990s, deaths from maltreatment occurred at an annual rate of 0.5 or 0.6 children per 100,000 aged under 15 in Sweden, compared with 0.4 or 0.9 in the United Kingdom, depending on whether or not unconfirmed cases were included. None of the four countries with the lowest child maltreatment death rates (Spain, Greece, Italy and Ireland) has a ban on smacking (see Figure 1 opposite). The Unicef report also showed an adult maltreatment death rate in Sweden over 40 per cent higher than that of the UK (7.6 per 100,000 in Sweden, compared with 5.3 per 100,000 in the UK).¹⁶

Research evidence on smacking

A systematic literature review of the effects of parental physical correction concluded that smacking had consistently beneficial outcomes when it was non-abusive and used primarily to back up milder disciplinary tactics with 2-6 year-olds by loving parents.¹⁷

Studies which purport to demonstrate negative consequences for all parental smacking invariably fail to differentiate between harsh and abusive treatment on the one hand and mild physical correction, accompanied by reason in the context of a warm and supportive parent-child relationship on the other.¹⁸

In view of the sparse and inconsistent empirical evidence for negative side effects of non-abusive physical punishment,¹⁹ a blanket injunction against disciplinary smacking by parents is not scientifically supportable.²⁰

A meta-analysis comparing physical correction with alternative disciplinary tactics found that:

- When used in a controlled way to discipline younger children, smacking was associated with significantly better outcomes for dealing with defiance or antisocial behaviour than most alternative tactics.
- Compared with smacking, four common alternative methods of discipline resulted in higher levels of antisocial behaviour, significantly so in the case of grounding, to a lesser extent with the withdrawal of privileges and pocket-money, and non-significantly for sending children to their room.
- Whether physical punishment compared favourably or unfavourably with other tactics depended on how

it was used. All types of physical correction were associated with lower rates of antisocial behaviour than were alternative disciplinary tactics, with normal parental smacking more effective than alternative disciplinary tactics overall.

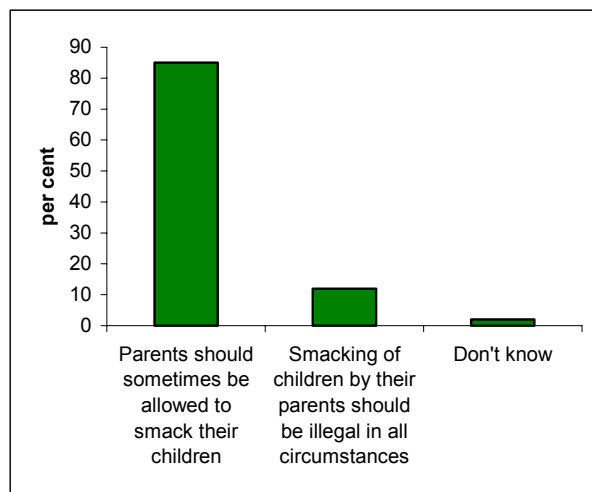
- Detrimental outcomes previously associated with physical punishment were not unique to physical punishment. Using the same research methods, alternative disciplinary tactics were at least as strongly associated with apparently detrimental outcomes as corporal discipline except where the latter was used too severely or predominantly.
- There was no evidence that physical aggression was more strongly associated with physical punishment than with alternative disciplinary tactics.

The meta-analysis also noted that most mothers varied their tactics according to the nature of their children's misbehaviour and suggested that mothers may make specific discriminations that most current research methods cannot detect.²¹

Public opinion

A survey of a representative sample of 1,007 adults conducted in July 2004 by the market research agency, BMRB, found that 85 per cent agreed that 'parents should sometimes be allowed to smack their children'. Only 12 per cent agreed that, 'smacking of children by their parents should be illegal in all circumstances' (see Figure 2).²²

Figure 2: Public attitudes towards smacking



Source: BMRB, July 2004

These findings are broadly similar to a survey of 2,000 adults conducted by ONS for the Department of Health in 1998. In that poll, 88 per cent registered their agreement that 'it is sometimes necessary to smack naughty children', with only 8 per cent disagreeing.²³

These surveys stand in marked contrast to the results of polls conducted on behalf of the NSPCC and the Children are Unbeatable alliance, which suggest that the majority of the general public supports a change in the law on smacking. The explanation for this discrepancy is to be found in the questions asked and the language used.

For example, in a MORI poll commissioned by the Children are Unbeatable alliance in early 2004, the questions were prefaced by the statement: 'We would now like to ask you about family violence in Britain today. By violence we mean anything that could be considered a physical assault'. The preamble added that this could include 'a slap' or 'a smack', but the questions which followed consistently referred to 'hitting family members' without allowing respondents to draw any distinction between moderate physical correction and violent attacks.²⁴

Similarly, discrepancies between surveys on the question of the effectiveness of parental smacking as a form of discipline can be explained in terms of how the questions are worded and interpreted. For example, the National Family & Parenting Institute claims that its MORI poll showed that: 'Only one in five respondents thought smacking an effective way to teach children the difference between right and wrong'.²⁵

However, the survey question asked which of a range of actions would 'most' enable parents to 'teach a child the difference between "right" and "wrong"'. The options listed were: reasoning, creating a diversion, 'grounding', smacking, rewarding good behaviour, parental example, making children feel happy and loved, and spending time with children. The fact that only 21 per cent of respondents included smacking among the options that would most enable parents to provide a moral training for their children, by no means implies that the other 79 per cent believed it is ineffective. Indeed, in the more recent BMRB survey, 84 per cent of those who had been smacked as children said that it was 'good for me', with only 9 per cent considering it was 'bad for me'.²⁶

Conclusion

The present law in England and Wales provides children with adequate protection from unreasonable punishment. The defence of reasonable chastisement is rarely used and, since the ruling of the European Court of Human Rights in *A v UK*, and the incorporation of the European Convention on Human Rights into UK law under the Human Rights Act 1998, there has been no evidence of any improper use being made of it by the courts.

To remove or limit the defence of reasonable chastisement would not provide children with any more protection than they have under the existing legislation. Unreasonable punishment is already against the law

In the absence of empirical scientific evidence against the use of moderate physical correction by parents, there is every reason to refrain from passing legislation which would not command widespread public support and for which there may be a high price to pay in terms of increased levels of child abuse and youth crime.

There is no evidence from other European countries that the prohibition of parental smacking has reduced child abuse rates or resulted in a less violent society.

A legal ban on the physical correction of children would inevitably lead to unnecessary police and social service investigations in families where children are at no risk of harm. In addition to the traumatic effect this would have on those families, it would vastly increase the caseload of social workers which could, in turn, lead to insufficient attention being given to children suffering serious abuse.

In an area where family privacy and parental responsibility are at stake and the consequences are so far-reaching, it is vital that public policy should be pursued and legislation enacted only on the basis of rigorous objective evidence and not on the basis of ideological arguments.

Notes

¹ Children Act 1989, s.3(1).

² Education Act 1996, s.7.

³ R v Hopley (1860).

⁴ Children and Young Persons Act 1933, s.1(1).

⁵ Children and Young Persons Act 1933, s.1(7).

⁶ Department of Health, Home Office, Department for Education & Employment (1999), *Working Together to Safeguard Children*, para 1.5.

⁷ *ibid*, para 2.16.

⁸ *ibid*, para 2.25.

⁹ Joint Committee on Human Rights, Minutes of Evidence, 19 May 2004.

¹⁰ HL Deb (2003-04) 5 July 2004, vol 663, col.561.

¹¹ Children are Unbeatable, Briefing 5, March 2004.

¹² Harrold-Claesson R (2001), 'Smacking and the Law – a European Perspective', Nordic Committee for Human Rights, www.nkmr.org

¹³ Correspondence with the Royal Norwegian Embassy, London, 1 March 2000.

¹⁴ Larzelere R E & Johnson B (1999), 'Evaluations of the effects of Sweden's spanking ban on physical child abuse rates: A literature review', *Psychological Reports* 85, 381-392.

¹⁵ Larzelere R E (2004), *Sweden's smacking ban: more harm than good*, Christian Institute and Families First.

¹⁶ Unicef (2003), *A League Table of Child Maltreatment Deaths in Rich Nations*, Innocenti Report Card, Issue No 5.

¹⁷ Larzelere R E (2000), 'Child Outcomes of Nonabusive and Customary Physical Punishment by Parents: An Updated Literature Review', *Clinical Child and Family Psychology Review*, Vol 3, No 4.

¹⁸ Baumrind D, Cowan P A, Larzelere R E (2002), 'Ordinary Physical Punishment: Is It Harmful? Comment on Gershoff (2002)', *Psychological Bulletin*, Vol 128, No 4.

¹⁹ Larzelere R E (2000), *op cit*.

²⁰ Baumrind D (1996), 'A blanket injunction against disciplinary use of spanking is not warranted by the data', *Pediatrics* 98.

²¹ Larzelere R E, Kuhn B R (2003), 'Comparing child outcomes of physical punishment and alternative disciplinary tactics: A meta-analysis', presented at the Society for Research in Child Development.

²² British Market Research Bureau, Survey on smacking, July 2004.

²³ ONS Omnibus Survey 1998, cited in Department of Health (2000), *Protecting Children, Supporting Parents*.

²⁴ MORI, *Attitudes to hitting family members*, Research study conducted for the Children are Unbeatable alliance, February-March 2004.

²⁵ National Family & Parenting Institute (1999), *The Millennial Family*, survey conducted by MORI.

<http://www.nfpi.org/data/research/docs/millennialfamily.doc>

²⁶ BMRB, *op cit*.