



FAMILIES FIRST

A briefing paper on the Children Bill in connection with proposals to outlaw the use of smacking by parents in the discipline of their children
October 2004

Why a ban on smacking would place children at risk

During the passage of the Children Bill through the House of Lords earlier in the summer, an attempt was made to abolish the defence of reasonable chastisement. This would have had the effect of making a single parental smack an unlawful assault, punishable by the criminal law. Peers opposed removing the defence of reasonable chastisement by 250 votes to 75, but supported an amendment limiting the defence to charges of common assault. Considerable uncertainty and confusion surrounds the effect of this amendment. Legal authorities warned the government in 2000 that such a measure was unnecessary because the reasonable chastisement defence would not succeed in cases of real abuse and that it would lead to parents being charged with the greater offence in order to avoid the defence.¹ The amendment will be subject to further scrutiny in the House of Commons this autumn, when further attempts are made to ban parental smacking altogether.

The current law in England and Wales permits parents to physically correct their children, provided they do so in a moderate and reasonable manner. In the event of parents being charged with assault for disciplining their children, they may plead the defence of reasonable chastisement. It is then for the court to consider all the details of the case, taking 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, to determine whether or not the punishment was reasonable. The existing law already protects children against unreasonable punishment and all forms of child abuse. To remove or limit the defence of reasonable chastisement would go against the spirit of the current Children Bill which is intended to provide greater protection for children. There are at least three ways in which a legal ban on smacking would place children at increased risk of harm.

1. It would lead to unnecessary intrusion into family life

Any report that a parent had smacked a child would have to be investigated, irrespective of whether the child had suffered any harm. Children from loving homes could be placed on the child protection register and forced to testify against their parents in court. The Director of Public Prosecutions has stated that if the defence of reasonable chastisement were to be abolished, it would not be possible to devise a policy to ensure that minor smacks were never prosecuted.²

If the parent's employment involved work with children as a childminder, youth worker, or member of school staff, s/he could lose his/her job.

Government guidance recognises that 'enquiries into suspicions of child abuse can have traumatic effects on families', and insists 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'.³

However, a ban on parental smacking would lead to social service intervention in families where the children were at no risk of harm at all and potentially draw conscientious and caring parents into the criminal justice system.

2. Abused children would be overlooked

There would be a very real danger that genuinely abused children would not receive the help they need because the authorities would be spending time with families where the children were not suffering significant harm. The misappropriation of child protection resources would expose abused children to increased risk of harm.

3. Some parents would use more harmful methods

If smacking were to be outlawed, some parents may resort to shouting at their children, verbally abusing them, shutting them in their room, refusing to speak to them, or in other ways withdrawing tokens of their love and affection.

Compared with other responses - which would remain legal - a moderate and controlled smack in the context of a warm and positive parent-child relationship is a much more kind and merciful way of dealing with a child's misbehaviour. A well-timed smack can nip the problem in the bud, and addresses the issue there and then so that it is over and done with and family life can move on.

Many other responses can be more emotionally and psychologically damaging. There is also the very real danger that parents would refrain from smacking while they are in control only to lash out when they reach the end of their tether. It is at that point that serious harm can be done.

RESPONDING TO ANTI-SMACKING ARGUMENTS

1. Equality

'If you smack another adult, you are committing an offence. Why should it be any different if your victim is a child?'

This argument fails to recognise the uniqueness of the relationship that exists between a parent and a child and the responsibility that parents have for the care, nurture, and discipline of their children.

There are many things that parents do to and for their children every day that would be quite inappropriate, if not illegal, to do to another adult. Parents may undress their young children and give them a bath; they may tell them when it is time to go to bed and insist that they stay there; they are responsible for ensuring their children receive an education.

If you grant the principle of 'equality' as espoused by the anti-smacking lobby, not only do you rule out smacking, but just about every other form of non-physical correction as well. To remove a possession from another adult would be considered theft; to send another adult to their room would be forced imprisonment.

According to the anti-smacking lobby, there is no difference between loving physical correction by a parent in the home and a violent assault perpetrated by a stranger in the street. But there is a difference because parents are authority figures in their children's lives and as authority figures they possess powers that are not shared by everyone equally.

As Earl Howe told the House of Lords at Committee stage, a ban on smacking:

'would mark a fundamental shift in the legal relationship between parents and children... [W]hen it comes to physical chastisement, being the parent of the child concerned counts for absolutely

*nothing, however reasonably the parent may have acted and however loving that parent may be... [T]hat is just not acceptable.'*⁴

2. Human Rights

'The United Nations Convention on the Rights of the Child requires a ban on all physical discipline, and the European Court of Human Rights has ruled that the UK must change the law to give children greater protection.'

The United Nations Convention on the Rights of the Child says nothing about the physical correction of children. Article 19 of the Convention simply requires that children must be protected from 'all forms of physical or mental violence, injury or abuse' - something which UK law already does.

In calling on each and every nation worldwide to ban smacking, the United Nations Committee on the Rights of the Child has chosen to adopt an interpretation of the Convention that far exceeds what was in the minds of its original framers, and goes way beyond what most states would have understood the Convention to mean when they signed up to it.

The European Court of Human Rights (ECHR) has also never ruled against the use of reasonable physical correction. It has always limited its judgments to the details of the individual cases brought before it. In 1998, the ECHR ruled that the punishment meted out to a nine year-old boy by his step-father constituted 'inhuman and degrading treatment' in contravention of Article 3 of the European Convention on Human Rights.⁵

However, the Court declined to make any general statement on the physical correction of children, even though it was invited to do so, nor has

it ever said that the current defence of reasonable chastisement is in breach of the European Convention on Human Rights.

3. Research

*'Research clearly shows that corporal punishment has all kinds of negative effects on mental health, parent-child relationships, increased anti-social behaviour and child aggression.'*⁶

In reality, however, academic research confirms the experience of generations of families in that:

- parents who use appropriate and moderate physical correction in the overall discipline of their children, use ridicule, fear and withdrawal of love less than other parents;⁷
- parents who are least likely to use physical correction are the most likely to report 'explosive attacks of rage' when they are unable to control their children's behaviour;⁸
- physical correction is most effective and beneficial for the child when it is used in response to disobedience or wilful defiance, in a controlled manner, accompanied by a verbal explanation and with the good of the child at heart.⁹

Studies which have measured for a balanced combination of physical correction and verbal reasoning, have found that it is effective in preventing a recurrence of misbehaviour and also leads to a reduction in the necessity of a physical sanction as children grow older.¹⁰

Research which takes a broad view of the dynamics of the family shows that smacking has a beneficial effect when used consistently and appropriately in the context of a warm, caring and loving parent-child relationship.¹¹

4. Sweden

*'In [Sweden], child mortality from violence is almost nil and children do not run wild. In fact, youth crime has not risen at all there in the past 20 years.'*¹²

Once again, however, the reality is quite different from the rhetoric. Between 1981-1994 there was a 489% increase in physical child abuse cases classified as criminal assaults and the 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.¹³

A 2003 Unicef report showed very little difference between the child maltreatment death rates in the UK and Sweden. Averaged over a five-year period during the 1990s, there were 0.4 or 0.9 per 100,000 child maltreatment deaths in the UK compared with 0.5 or 0.6 per 100,000 in Sweden, depending on whether child deaths of 'undetermined intent' were included in the figures.¹⁴

A convincing case has yet to be made that a smacking ban would result in a less violent society.

5. Violence

*'Light corporal punishment easily and often escalates into injurious violence.'*¹⁵

By the same logic it could be argued that hugging and kissing a child easily and often escalates into sexual abuse, yet no one is calling for a ban on parents giving their children a cuddle.

It is a simple fact that there is a clear difference between smacking and child abuse which the vast majority of parents are well able to recognise. There is a difference in purpose, motivation, context and effect.

Polls have consistently shown that over 90 per cent of parents in the UK smack their children, yet only a tiny proportion of parents are guilty of physical abuse.

6. A bad example

*'What is learned by a child being beaten is surely that it is okay to bully others if they do something that one does not like.'*¹⁶

Not only does this argument run contrary to the experience of generations of parents who have used a moderate smack as a disciplinary tool, but if it were true, it would apply equally to any method of discipline.

Children who are smacked in a controlled way, accompanied by a verbal explanation of why they are being disciplined recognise that their parents are exercising unique powers that go hand-in-hand with the unique responsibilities they possess as parents. They are no more inclined to smack other children than adults are inclined to lock other adults up or fine them because that is what they see the courts do. Just as we recognise authority structures in society, so our children are well able to recognise and accept authority in the home.

A note on the Mori poll conducted on behalf of the Children are Unbeatable alliance

The Children are Unbeatable alliance claims that there has been a massive change in public opinion on smacking and that a Mori poll conducted early in 2004 showed that over 70 per cent are now in favour of a ban.

Entitled 'Attitudes to hitting family members', the Mori report explains that 'the objectives of the research were to explore attitudes to hitting family members, and to examine the level of support for a new law to give children and adults the same legal protection from being hit.' Respondents were asked four questions about 'hitting' children and other family members, prefaced by the following 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: a slap, a smack, or being hit on any part of the body with a hand or with an implement. We have used the words hit or hitting in the questions to cover all of these things, but we are not talking about hitting in self-defence or to protect people and property.'

The poll completely failed to recognise any distinction between a disciplinary smack and abusive treatment. The mildest and harshest of treatments were bracketed together and designated 'family violence' and 'hitting'. There was no room in any of the four questions for respondents to make what for most parents is a very clear and obvious distinction.

To ask whether it is 'wrong for someone to hit a child in their family' is like asking whether it is 'wrong for a medical professional to stab a patient', having been told that 'stabbing' includes 'drawing blood, giving injections, or being stabbed on any part of the body with a sharp instrument' in the context of a survey about 'hospital violence in Britain today'. How many people are going to support 'hospital violence' even if they are told it 'includes' normal and necessary medical practices like taking blood and giving injections?

SUMMARY

- The current legal framework provides children with adequate protection from abuse.
- There is no obligation under international law to outlaw the use of moderate and reasonable physical correction.
- A law against smacking would lead to an unprecedented level of intrusion into family life in England and Wales.
- A law against smacking would divert already overstretched child protection resources away from the children who most need them.
- A law against smacking would lead some parents to use far more psychologically damaging methods, and would lead to more violence against children when parents lose control.
- Parents have a unique relationship with their children and in order to fulfil their parental responsibilities they have powers which they do not possess in relation to anyone else.
- Academic research confirms the positive benefit of moderate physical correction when used consistently and appropriately in the context of a warm, caring and loving parent-child relationship.
- Following the introduction of a smacking ban in Sweden, reported cases of child abuse increased almost five-fold, and criminal assaults on 7-14 year-olds have risen dramatically.
- There is no marked difference between the rate of child maltreatment deaths in Sweden and in the UK.
- There is a clear difference between moderate smacking and child abuse and the vast majority of parents are well able to make that distinction.
- Smacking is not a 'lesson in bad behaviour'. Children who are smacked in a moderate and controlled way recognise and respect the authority of their parents and are not violent towards others.
- A ban on smacking would not command public support or respect.
- In the words of government ministers in 1998: *'It is the personal responsibility of parents to decide for themselves what disciplinary arrangements are appropriate for their child. It would not be appropriate for the state to impose its own view.'*

References

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3. *Working Together to Safeguard Children*, The Stationery Office, 1999.
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6. HL Deb (2003-04) 661, col. 892.
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12. HL Deb (2003-04) 663, col.558.
13. Robert Larzelere, *Sweden's smacking ban: more harm than good*, Christian Institute and Families First, 2004.
14. Unicef, 'A League Table of Child Maltreatment Deaths in Rich Nations', None of the four countries with the lowest incidence of child maltreatment deaths (Spain, Greece, Italy and Ireland) has a ban on smacking. Sweden also has a higher rate of deaths from maltreatment among people aged 15 years and over than does the UK (7.6 per 100,000 in Sweden compared with 5.3 per 100,000 in the UK).
15. HL Deb (2003-04) 661, col. 892.
16. HL Deb (2003-04) 661, col. 897.

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Founded in 1993, FAMILIES FIRST is a family advocacy group, committed to supporting parents and children in the family unit. We support the freedom and responsibility of parents to protect and guide their children and to bring them up in a reasonable manner, according to their religious and philosophical convictions.