



FAMILIES FIRST

‘Physical Punishment in the home – thinking about the issues, looking at the evidence: A consultation paper for Northern Ireland’

Families First is a family advocacy group, committed to supporting parents and children in the family unit. We support 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.

The organisation was originally founded in 1993 amid concern at the growing influence of an unrepresentative lobby seeking to impose an unproven philosophy of child-rearing on all families by force of law.

We are convinced that the family is by far the best environment in which to bring up children and that parents are best qualified and equipped to undertake this demanding task. Since bringing up children is an art rather than a science, we believe that the law should respect a variety of parenting styles and not demand a ‘one-size-fits-all’ approach. The liberty of parents to raise children according to their religious and philosophical convictions and to transmit their values from one generation to the next is fundamental to the maintenance of a free and democratic society.

Background to the consultation

The current consultation has been prompted by an extreme and unusual case which was referred to the European Court of Human Rights (ECHR).

A 9 year-old boy who had been found stealing and threatening his 2 year-old brother with a six-inch kitchen knife, was physically punished by his stepfather-to-be with a garden cane ‘applied with considerable force on more than one occasion’. A jury at Lincoln Crown Court in 1994 heard all the evidence and considered that the punishment was ‘moderate and reasonable’ taking all the circumstances into account.

However, the boy and his natural father, assisted by the lobby group EPOCH (End Physical Punishment of Children), took a case to the ECHR, which ruled that the boy had suffered ‘inhuman and degrading treatment’, in contravention of Article 3 of the European Convention on Human Rights. Since the boy’s stepfather-to-be had been acquitted of charges of assault, the ECHR judged that, in this particular case, UK law had failed to protect the boy.

It is very important to emphasise that the judgment of the ECHR was limited to the facts of this one particular, and unusual, case. The ruling did not say that the existing UK legislation is in breach of the Convention. Rather:

The Court's decision was based on the facts of the case before it. The ruling applied to that case only. No general statement was made about the physical punishment of children, although the boy's legal representative had invited the Court to make such a statement.¹

The fact that the ECHR was invited to make a general statement about the physical punishment of children confirms the politically-motivated aspect of this case which has been completely overlooked. The boy was represented by EPOCH sponsor Allan Levy QC, and the official advisor to the legal team was EPOCH's co-ordinator, Peter Newell.

It is therefore clear that the Northern Ireland Executive is not required by this ruling of the ECHR to change the law regarding the moderate and reasonable physical correction of children. Indeed, the government at Westminster announced last November that it was not proposing to change the law, even though it had previously consulted on several options. Health Minister, Jacqui Smith MP, stated that the introduction of the Human Rights Act 1998 in October 2000, had answered some of the key concerns that led to the consultation exercise in the first place.

The Courts now have to consider the following factors when deciding whether the punishment amounts to 'reasonable chastisement':

- 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

The law already provides children in Northern Ireland with adequate protection and there is therefore no need for any further legislation.

The Northern Ireland consultation document

The consultation paper for Northern Ireland, prepared by the Office of Law Reform, is of a totally different character from the documents published in 2000 for the other parts of United Kingdom.

The whole tone of the document is distinctly anti-smacking. The content could be summarised as follows: Physical correction is on its way out. Fewer parents use it now. Fewer still approve of it. Research proves its adverse consequences. There is a worldwide movement to legislate against it. The experience of countries which have already banned it has been positive. We need to promote more positive and effective ways of disciplining children.

The assumption throughout is that physical correction is a bad thing and has to go; it's all a question of how to go about it. While this may be the kind of approach one would expect from a lobby group, it is not what one would expect from a government agency embarking on a public consultation with far-reaching implications for every family in Northern Ireland.

In his Foreword, the Minister for Finance and Personnel states that: 'This paper does not take sides.' Unfortunately, that is precisely what it does do. It may not overtly say that 'parents who use physical

¹ *Protecting Children, Supporting Parents, A Consultation Document on the Physical Punishment of Children*, London: Department of Health 2000, para 4.5

punishment are bad parents', but it certainly more than implies that 'physical punishment' is a bad method of discipline.

The document is fundamentally flawed:

- It is ambiguous in its definition of fundamental terms
- It contains a significant number of factual inaccuracies
- It is characterised by a clear ideological bias
- It relies exclusively on opinion-driven research
- It uses emotive and negative language

In view of the nature of the consultation document, in November 2001, Families First issued a paper entitled, *Consultation or Campaign?* calling on the Northern Ireland Executive to withdraw the document and to replace it with an accurate, fair, unbiased, objective presentation of the facts, raising straightforward, unambiguous questions. It remains our view that the current consultation paper will not facilitate the 'informed discussion about physical punishment' which the Minister seeks.

Our response to the specific questions raised in the consultation document which follow should be read in conjunction with our earlier submission, *Consultation or Campaign?*

Laws have consequences

While each of the documents asks how the law should be changed, none of them addresses the question of the consequences for children and families in the event of a parent breaking any new law.

For example, children are asked whether smacking should be banned altogether. For many children, that might be an attractive proposition! However, if they appreciated what might follow if such a law were in place and their mother or father were to smack them, they might well hastily revise their opinion! Faced with the choice of a disciplinary smack for an act of disobedience or a round of case conferences, court hearings, and care proceedings with all the disruption they would cause to a loving, well-ordered home, they might decide that the momentary pain from a smack was not so terrible after all! (They might also decide that moderate physical correction is preferable to many of the alternatives their parents might employ, which could prolong the pain and prove more emotionally damaging).

It is important to appreciate that there are penalties attached to all laws. There is no point making a law if it is not going to be enforced.

Responding to the consultation questions

Chapter 3 - Parents, children and discipline - the wider context

1. What is the goal of effective discipline of children?

To bring up children to be kind, honest, thoughtful, productive and self-disciplined members of families and communities, and to provide a model of how they should bring up their own children.

2. What are the ways in which this goal is achieved?

By providing a warm, secure upbringing, where children are valued and cherished, setting clear boundaries and by being clear and consistent in expectations and in the enforcement of standards.

3. In the light of the evidence and your experience, do you think that physical punishment by parents is an effective form of discipline? Please give reasons for your view.

Our response to this question should be read in conjunction with our comments on pages 4-5 of our paper, *Consultation or Campaign?* We are concerned that there is an ambiguity about the definition of ‘physical punishment’ in the consultation document.

We would also refer you to our observations on pages 15-17 of *Consultation or Campaign?* We are concerned that respondents have not been given any firm evidence on which to base their answer to this question. What is presented as ‘evidence’ in the consultation document is little more than politically-driven opinion.

If the Office of Law Reform includes within its definition of ‘physical punishment’ the use of physical correction as a teaching tool to promote the child’s moral training and development, within the context of a caring and secure relationship, we would answer that it is very effective as a form of discipline.

The consultation document presents a very biased perspective, based on opinion-driven studies by Penelope Leach and Christina Lyon, both of whom are well-known for their ideological opposition to the physical correction of children.

However, recent reviews of the relevant research have shown that the best studies, methodologically speaking, demonstrate the beneficial effects of moderate physical correction.² In August 2001, Diana Baumrind of the University of California stated that ‘a blanket injunction against disciplinary spanking is not warranted by causally relevant scientific evidence’.³ Dr Baumrind explained that her study spanning three decades had led her to the conclusion that: ‘What really matters is the child rearing context. When parents

² Larzelere R E, A Review of The Outcomes of Parental Use of Nonabusive or Customary Physical Punishment, *Pediatrics* 98(4), 1996; Larzelere R E, Child Outcomes of Nonabusive and Customary Physical Punishment by Parents: An Updated Literature Review, *Clinical Child and Family Psychology Review*, vol 3, no 4, 2000

³ Baumrind D, *Does Causally Relevant Research Support a Blanket Injunction Against Disciplinary Spanking by Parents?* An invited address delivered at the 109th Annual Convention of the American Psychological Association, 24 August 2001.

are loving and firm and communicate well with the child, the children are exceptionally competent and well-adjusted, whether or not their parents spanked them as pre-schoolers.’⁴

Used with care, in the context of a warm and secure parent-child relationship, and in association with a verbal explanation, physical correction is highly effective in preventing a recurrence of misbehaviour and leads to a reduction in the necessity of a physical sanction as children grow older.

We are enclosing as part of our submission a copy of *Not Without Reason*, a summary of impartial research evidence pointing to the effectiveness of physical correction in the context of a positive parent-child relationship.

4. In the light of the evidence and your experience, do you think that physical punishment by parents is an acceptable form of discipline? Please give reasons for your view.

Our response to this question should also be read in conjunction with our comments on pages 4-5 of our paper, *Consultation or Campaign?* We are concerned that there is an ambiguity about the definition of ‘physical punishment’ in the consultation document and the meaning of its ‘acceptability’.

If by ‘acceptability’, the Office of Law Reform means that loving physical correction is morally acceptable and should remain legally acceptable, we would answer that it most certainly is an acceptable form of discipline.

Research demonstrates that parents who use appropriate moderate physical correction in the overall discipline of their children use ridicule, and verbal put-downs less than other parents.⁵

A well-timed smack can prevent a little disobedience from growing into a fully-fledged tantrum or a little spitefulness developing into a major battle zone. Wisely used, physical correction may often be a kinder and more merciful way of correcting certain types of misbehaviour rather than resorting to other methods which may be more drawn-out and risk causing emotional damage.

5. If you are a parent, please tell us about the people or organisations who have been most helpful to you in helping you to deal with any discipline problems you have faced.

As a family support group, we have regular contact with parents who are facing discipline problems. We believe that the guidance and advice we are able to offer on a personal basis and by means of our parenting publications has been of help and encouragement to many parents. We are enclosing two of our own leaflets which set discipline within the context of a positive, warm relationship with an emphasis on good communication. These have proved very popular with parents of young children.

However, we would want to add that it is easy to overlook the practical support that is frequently available from other family members, or through friends in churches or other community groups. So while there is undoubtedly a place for family and parenting support groups, they should not be relied upon as a source of advice and support at the expense of the extended family and more informal local networks.

⁴ University of California, Berkeley Campus Press Release 24 August 2001, ‘UC Berkeley Study finds no lasting harm among adolescents from moderate spanking earlier in childhood’.

⁵ Larzelere, A Review of the Outcomes, *op. cit.*

In many cases, parents can recall the positive example of their own parents in their own upbringing, and many will be able to draw inspiration and encouragement from the example of friends who have raised well-disciplined children.

6. In your view, what services (whether provided by the private, public or voluntary sectors) are or would be most useful in helping parents to deal effectively with discipline issues?

In order to help parents deal effectively with discipline issues, it is necessary to understand how and why children think and behave as they do. It is important to take a realistic approach rather than the somewhat romantic and sentimentalised view of children which has become more common in recent years. Due respect must be paid to the authority and responsibility of parents to guide, direct, and, where necessary, to correct their children. The most helpful services will also be those which recognise that physical correction is sometimes the kindest and most effective way of dealing with a child's wilfulness and disobedience.

Any service which proceeds to offer advice on the assumption that physical correction is ineffective and unacceptable is unlikely to help parents to deal effectively with discipline issues. In particular, those who propose to criminalise parents for the use of loving physical correction would be a hindrance rather than a help in this area.

7. What more needs to be done to ensure that all parents have access to these services?

It would be helpful if health professionals, social workers and others working with families and providing support to parents were made more aware of the positive value of moderate and loving physical correction, so that they become less inclined to impose a false sense of guilt upon parents who use it as a method of discipline.

At present, many professionals in the child care field are under the same misapprehension as the consultation document in assuming that all physical correction is bad for children and has negative effects.

Chapter 5 - The international human rights context

1. Consultees are invited to comment on this analysis of the requirements of human rights law.

The analysis presented in chapter 5 of the consultation document is inaccurate and shows evidence of bias at a number of points. Our response to this question should be read in conjunction with pages 5-13 of *Consultation or Campaign?* in which we highlight a number of factual inaccuracies which are made in the consultation document in connection with human rights law.

The government at Westminster took into account the European Court of Human Rights ruling in *A v UK*, together with its obligations under the various human rights conventions and concluded that there was no need to change the law on the physical correction of children.

International human rights law does not place the Northern Ireland Executive under any obligation to change the law.

Chapter 9 - Reforming the law - the options for Northern Ireland

1. Does this chapter contain the full range of law reform options open to us?

No. The consultation document does not consider keeping the law as it is. This option would best serve to grant protection to children and their families.

The government at Westminster concluded that there was no need to change the law.

Another option would be to follow the model of the American state of Arkansas (see Appendix 1).

2. Do you agree with the assessment of the Office of Law Reform that further reform in addition to the limited amendment of the defence of reasonable chastisement in the criminal law in R v H is needed to bring us in Northern Ireland into line with our human rights and equality obligations?

No. This was considered by the government in Westminster, but it concluded that no further reform was required.

3. Which option for reform of the defence of reasonable chastisement (removing or limiting the defence) do you think represents the best way forward? Please give reasons for your choice.

There is no need to either remove or limit the defence of reasonable chastisement. To do either would be neither necessary nor desirable. A preferable option would be to enshrine it in statute that parents may use moderate and reasonable physical correction as a form of discipline - in order to protect families from the intrusion of over-zealous social workers and other health professionals.

4. If you think that limiting the defence represents the best way forward, please state which of the elements outlined you would wish to see included in any reform.

The current defence of reasonable chastisement should not be limited in any way.

5. In your view, is there merit in including a statement of rights and responsibilities of the type outlined in this chapter in our family law?

No. Talk of 'rights' in the context of the family will tend to engender a spirit of conflict between parents and children. It would be seriously damaging to families if parents and children could call each other to account for claimed breaches of duty.

6. If so, is the place for that statement in the definition of parental responsibility in the Children (NI) Order 1995, whether as it now stands or as amended?

There should be no such statement of rights and responsibilities. The state should not attempt to legislate for private family relationships.

7. If such a statement were to be included, what should it say?

There should be no such statement.

8. What, in your view, would be the effect of such a statement in law?

It would be disastrous and would be used by children's rights activists in a further attempt to impose an entire philosophy of bringing up children by force of law. It would also have the effect of damaging family relationships and would have the potential of breaking up families.

Chapter 10 - Equality Impact Assessment

1. Do you agree that the main equality impacts of this issue are on children and those with dependants?

2. Do you have any comments on the other equality impacts identified or anticipated?

3. Are there, in your view, any further equality impacts which have not been identified?

4. In relation to what objectives is there a need to promote equality of opportunity in relation to physical punishment?

5. In order to mitigate the equality impacts identified, or to better promote equality of opportunity in relation to the objectives you have identified, which of these options do you think has a role to play?

(a) abolishing the defence of parental reasonable chastisement of children in Northern Ireland;

(b) limiting the defence of parental reasonable chastisement;

(c) including a statement of rights and responsibilities in the legal definition of parental responsibility;

(d) encouraging the development of parenting programmes.

6. Would you consider any other ways of mitigating the equality impacts of physical punishment or better promote equality of opportunity?

The chapter entitled 'Equality Impact Assessment' does not appear to appreciate the fundamental differences that exist between children and their parents. Leaving aside the question of methods of discipline, it is parents who are responsible for the discipline of their children and not the other way around.

If 'equality' means that a parent may not do anything to a child that a child cannot do to his/her parent, there is a sure recipe for serious child neglect, not to mention anarchy in the family which will inevitably spill over into society.

The logical extension of this way of thinking would lead to the imposition of a single view of parenting and family life on all children to give them all an 'equal opportunity' in life. Not only would this be completely unrealistic and unattainable, but it would also represent a serious breach of personal liberties.

One relevant factor not considered in the consultation paper is the fact that many parents use physical correction on the basis of religious conviction. Such parents should not be discriminated against but granted equality of opportunity to bring up their children in accordance with their religious and philosophical convictions.

7. Please indicate any additional sources of data or research on physical punishment which could be used to develop the knowledge base and monitor any reform of the law.

We would encourage the Office of Law Reform and the Northern Ireland Executive to abandon their reliance on opinion-driven research and to make a thorough study of the non-partisan work of academics such as Dr Robert Larzelere and Dr Diana Baumrind.

We are submitting a copy of *Not Without Reason*, a summary of some of the research findings which reveal that physical correction has a positive place in the care, nurture and discipline of children.

Extract from Arkansas Legislation

TITLE 12. LAW ENFORCEMENT, EMERGENCY MANAGEMENT, AND MILITARY AFFAIRS
SUBTITLE 2. LAW ENFORCEMENT AGENCIES AND PROGRAMS
CHAPTER 12. CRIME REPORTING AND INVESTIGATIONS
SUBCHAPTER 5. CHILD ABUSE REPORTING
SUBSECTION 4(A) ABUSE

Ark. Stat. Ann. §12-12-503 (1997)

(4) (A) "Abuse" means any of the following acts or omissions by a parent, guardian, custodian, foster parent, or any person who is entrusted with the juvenile's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, Child care facility, public or private school, or any person legally responsible for the juvenile's welfare:

(i) Extreme and repeated cruelty to a juvenile; or

(ii) Physical, psychological, or sexual abuse of any juvenile which includes, but is not limited to, intentionally, knowingly, or negligently and without justifiable cause:

(a) Engaging in conduct creating a substantial possibility of death, permanent or temporary disfigurement, illness, impairment of any bodily organ, or an observable and substantial impairment in the intellectual or psychological capacity of the juvenile to function within his normal range of performance and behavior with due regard to his culture;

(b) Any nonaccidental physical injury or mental injury; or

(c) Any injury which is at variance with the history given.

(B) (i) "Abuse" shall not include physical discipline of a Child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the Child.

(ii) The following actions are not reasonable or moderate when used to correct or restrain a Child:

(a) Throwing, kicking, burning, biting, or cutting a Child;

(b) Striking a Child with a closed fist;

(c) Shaking a Child under age three (3);

(d) Striking or other actions which result in any nonaccidental injury to a Child under the age of eighteen (18) months;

(e) Interfering with a Child's breathing;

(f) Threatening a Child with a deadly weapon;

(g) Striking a Child on the face; or

(h) Doing any other act that is likely to cause, and which does cause, bodily harm greater than transient pain or minor temporary marks.

(iii) The age, size, and condition of the Child, and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the bodily harm is reasonable or moderate.

(iv) This list is illustrative of unreasonable action and is not intended to be exclusive.