



FAMILIES FIRST

e-mail: info@families-first.org.uk Web: www.families-first.org.uk

22 November 2002

CRIMINAL JUSTICE (SCOTLAND) BILL - STAGE 2 SECTION 43 - THE PHYSICAL PUNISHMENT OF CHILDREN

Families First welcomes the view of the Committee expressed in its Stage 1 Report with regard to the proposal that the defence of reasonable chastisement should not be removed from parents who physically correct a child under the age of three. There are thousands of loving and responsible parents in Scotland who occasionally use physical correction with their young children believing it sometimes to be the kindest way of disciplining them, and finding it to be a most effective way of dealing with unacceptable behaviour.

The Committee is undoubtedly correct in stating that it is unrealistic to remove the available defence while at the same time reassuring Parliament that the number of prosecutions will not increase as a result. There is no doubt that the original proposal to effectively outlaw the physical correction of children under the age of three would have created a climate of fear among ordinary loving parents and would also have led to case conferences, care proceedings and court cases causing considerable unnecessary distress to ordinary children and families.

Like the Committee, we fully support any action that would prevent injury or harm to children, whether physical or psychological. However, we are not persuaded that there is any convincing evidence to justify singling out the actions referred to in Section 43(3)(b) of the Bill and imposing a blanket ban on them alone. We are particularly concerned about the proposal to remove the defence of reasonable chastisement where a parent chooses to use a safe object rather than his/her hand to physically correct his/her child. This would raise precisely the same problems that the Committee has accepted would have arisen from an effective ban on the physical correction of any child under the age of three.

There is no doubt that stable and secure families would be exposed to harm from the prosecution of cases of moderate physical correction with a safe object, which would not currently be treated as criminal assaults. In its written evidence to the Committee, the Faculty of Advocates expressed concern that *'the absolute nature of the exclusion of the use of any implement raises the risk...of bringing into the criminal justice system persons who would otherwise not be so.'*

We are attaching as an appendix to this submission extracts from correspondence received from some of our supporters, in which they explain their reasons for using a safe object to physically correct their children and express their own fears and concerns about the Bill as it stands. We are also appending a note regarding a family in England who have experienced harassment and intimidating treatment from their local authority, not for any discipline that they have actually given to their children, but simply for expressing their views on the subject. If a family in England can be treated in this way despite the fact that the government decided not to impose a ban on the use of implements there, families in Scotland have cause to fear similar treatment and worse if the law were to be amended as proposed in the current Bill.

We note that the Committee proposes to remove defence of reasonable chastisement for shaking, but wishes to consider further the proposal to remove the defence for striking a child on the head and using an implement. As they stand, we believe that the proposals contained in Section 43(3)(b) are illogical, unnecessary, discriminatory, ambiguous, and are not supported by research evidence.

1. The proposals are illogical

Since there are many ways of abusing a child and it is not possible to produce an exhaustive list, it is difficult to appreciate why these three actions are being singled out. In the event of a parent being prosecuted for kicking, punching, or inflicting cigarette burns on the child, the defence of 'reasonable chastisement' would remain available. The defence may not always be successful, but it could still be employed.

It does not make sense to remove the defence for actions which may or may not be abusive (e.g. the use of an implement), while allowing it to remain available for actions which are invariably abusive (e.g. kicking, punching and cigarette burns). An implement may be used in an abusive way, or in a moderate and reasonable manner. It all depends on *what* is used, *how* it is used, and the *context* in which it is used - factors which would all need to be taken into account under Section 43(1) of the Bill. In paragraph 123 of its Report, Justice 2 Committee acknowledges that, '*Blows to the head, shaking and use of implements...could at present be considered either reasonable punishment or assault depending on the circumstances.*' Why should this not continue to be the case?

2. The proposals are unnecessary

The existing law is adequate. The Executive has failed to produce any evidence that the provisions of Section 43(3) would provide children with any further protection against genuine abuse than is already afforded under the present legislation. Paragraph 121 of the Committee's Stage 1 Report states: '*The Executive did not convince the Committee that there was any great uncertainty about the existing law and was only able to point the Committee towards one or two specific cases where there appeared to be inconsistency or inappropriate application of the existing law. No information could be supplied about prosecutions which might have failed because the existing law is insufficiently clear.*'

3. The proposals are discriminatory

With regard to removing the defence of reasonable chastisement from a parent who uses a safe implement to physically correct his/her child in a careful and responsible way, the Bill is discriminating against those parents who use a safe implement out of religious conviction. The Bible consistently speaks of a safe implement when referring to physical correction, and for this reason some parents are uncomfortable about 'laying a hand' on their children. Such parents may be considered 'old-fashioned' by many, but that is no crime. There is certainly no basis for characterising them as violent and child abusers.

It would be unreasonable and unjust to criminalise such parents for the use of an implement when the child is not suffering any degree of harm. The current proposals could give rise to an anomalous situation whereby a parent who smacks his/her child with an open hand is not prosecuted, while a parent who smacks his/her child with a safe object such as a slipper or wooden spoon, is prosecuted and criminalised, even though a lesser degree of force was used by the parent using the implement. Such an action would not

serve the best interests of the child concerned, but would rather cause serious damage to the child and to the entire family.

4. The proposals are ambiguous

It is unclear whether the legislation would apply only to 'punishment' or whether it would apply also to physical actions where the primary purpose is to teach or to correct. Section 107 of the Committee's Stage 1 Report states:

'The Committee also understands that the section only applies to situations in which the parent's intent is to punish. So, for example, this section would not apply to the act of grabbing or restraining a child to stop them from running into traffic as this would be an act of protection rather than punishment; but it would apply to hitting a two year old subsequent to restraining them in this way. While the distinction between punishment and protection will generally be clear, we consider that there will almost inevitably be a grey area between the two, particularly in relation to actions in the heat of the moment.'

The Committee appears to be alluding at this point to evidence given by the Justice Minister, Jim Wallace, where he said that the Bill referred only to actions where the intention was to punish, and not to actions designed to warn, train or protect. (Justice 2 Committee, Official Report, 18 June 2002, cols 1617-18).

While the above comments were made with specific reference to the proposal to outlaw the physical correction of children under the age of three, which has subsequently been dropped, they are equally applicable to the careful and responsible use of a safe object. It is clear that the proposals as they currently stand would remove the defence of reasonable chastisement from a parent who uses an implement to *punish* his/her child, but there remains a degree of ambiguity with regard to whether a parent may continue to use a safe object to *discipline* or to *correct* his/her child.

There are many parents, particularly those guided by religious principles, for whom this is relevant. Many such parents use physical discipline (with a safe implement such as a slipper or a wooden spoon), not to punish their children, but to train and correct. They use it as a teaching tool - in a calm and controlled way and not in the heat of the moment when they have lost control. There is no element of retribution in their action, but rather a desire to protect their children from a moral or physical danger. From the wording of the Bill and the remarks of the Minister in Committee, it is unclear whether such parents would receive any protection under the proposed new measures.

5. The proposals are not supported by research evidence

In presenting oral evidence to the Committee, Helen Stirling of the British Psychological Society, was asked whether there was *'any research show that there is a difference in the effect of using an implement to chastise the child, rather than a hand or some other part of the human body, where the physical impact is equivalent?'*

In reply, she stated that she was not aware of any such study. She then added that: *'When researchers have tried to categorise the level of physical chastisement according to severity, it has been found that the most severe chastisement has tended to involve the use of implements. The evidence shows clearly that the groups of children who are treated in that way are adversely affected over a longer-term period.'* However, Ms Stirling recognised that this was a separate issue and did not address the question that had been asked. She therefore returned to the specific issue which had been raised and

concluded, *'I am not aware of a study that compares a hand smack with a blow from a belt of equal force. I do not know that such a study exists.'* (Justice 2 Committee, Official Report, 22 May 2002, cols 1377-78).

We would concur with Ms Stirling's evidence on this point. We, too, are not aware of any study which demonstrates that the careful and responsible use of a safe object in the loving physical correction of a child has any negative impact. There is no basis in the research to support a legislative change which would allow parents to defend their actions in the physical correction of children only if they have used their hands. The case therefore remains to be made to justify intervening within the privacy of the family or to interfere in the exercise of a genuine religious conviction within the historic Judaeo-Christian tradition.

APPENDIX 1

How good families would be affected by a ban on the use of implements

A large number of our supporters in Scotland have expressed concern about the proposal to effectively impose a blanket ban on the use of any implement in the physical correction of their children. Many have referred to the climate of fear which has been heightened as a result of the Executive's proposals and are concerned that they would be vulnerable to completely unnecessary social services intervention if their views were known. Others have written to us expressing their fears for their families should the proposals pass into law and have given permission to be quoted as part of our submission:

1. 'My husband is a secondary school teacher, and I am a full time mother and also a childminder. We have three young children, and are expecting our fourth. We use physical correction to discipline our children, not because we are angry with them, but because we wish them to learn what is acceptable and responsible behaviour. We use verbal instruction to correct misbehaviour, and this almost always brings about the desired response. However, we use a single, mild smack to deal with continued disobedience, after which we discuss with the child the reason for the smack, and give them a hug. We prefer to use an implement so that they associate that implement with correction, rather than our hands, which we wish to use to express warmth and love. If convicted, in addition to the distress which it would cause to our children, who are very secure, we would both lose our employment, as we both work with children.'

Kate Morris

2. 'I am married and have three children. My wife and I believe in using an implement such as the wooden spoon because the Bible teaches us to use an implement to correct our children. In Proverbs chapter 13 verse 24, it says "He who spares the rod hates his son, but he who loves him disciplines him promptly", showing that children should be disciplined in love and with the use of an implement.

'Every child needs clear boundaries and consistent discipline in order to feel happy and secure. I do not believe that smacking your children with your hand every time they drive your patience too far is an effective means of discipline. The way in which we have disciplined our children has not in any way damaged the close relationship that we have with them. All three of our children show us the love and respect that all parents should receive from their children.'

Iain Brown

3. 'My husband is a leading welder in a local boat building company and I have stayed at home to look after our five children. We have at times used an implement to smack each of our children. I have never smacked my children in anger and have never smacked them anywhere else but their bottom. I believe that a smack on the bottom with a wooden spoon, administered calmly, which the child understands, is far more effective than a slap with the hand done in anger. My children know that when my husband and myself lift our hands to them it is to cuddle them or express love. They are never afraid that we might be going to strike them. We have a happy

and loving home. My children are happy and well adjusted, and my two eldest are at university.'

Helen Muirhead

4. 'My two lads are now 18 and 21 but when they were small I did use a wooden spoon to smack them sometimes. This was really because in a loving family I felt the need to discipline them for something they had done wrong.

'All children are different. My older son was one who rarely needed a smack. I could count on the fingers of one hand the number of times he had to be smacked ever throughout his childhood. The younger one was quite different, often not responding to a telling off or to reason, and so it took a smack for him to be obedient and to behave in an acceptable way. After all, that is why we discipline our children, so that they will grow up to behave well, to show consideration for others, and to be able to have a measure of self-discipline.

'As a teacher of 30 years standing, I see only too often the harmful results of children who have never been disciplined at home and who have therefore no discipline or control themselves over their own behaviour... I did sometimes use a wooden spoon...[because] if I just used my hand on my child's bottom, it was so well protected with pants, heavy jogging bottoms, T-shirt, jumper [etc], the only result was that I hurt my hand; my child felt nothing.

'The alternative was either to use a wooden spoon which at least went some way to penetrating the layers, or to strip him to his bare bottom and use my hand. This I would not do for I felt that would be degrading for him. This is why I used the wooden spoon. I disciplined my children because I loved them, because I wanted them to grow up to be people who would behave in a socially acceptable way, respecting themselves and others, and able to control themselves and their own behaviour. For me, not to discipline a child is not to love him or her.'

Alma Edwards

5. 'We are parents of three children, aged 10, 8 and 4. We use a number of methods of discipline: instruction, verbal rebuke, withdrawal of privileges, etc. On the comparatively rare occasions where there is deliberate disobedience and defiance, we use physical correction, applying a wooden spoon to the child's bottom. This inflicts transient pain but does not cause any damage. This physical discipline is accompanied by verbal reproof to make sure that the child understands why the discipline is being applied. It is followed by reassurance of our love.

'Because a particular room and implement is used for this purpose, there is time to calm down before administering correction (rather than lashing out in anger), and the child is not humiliated by being smacked in front of other people. It also clearly separates the means of correction from the use of arm and hand for hugs and other expressions of affection.

'We have found that this approach is generally effective. The fact that the children know that the wooden spoon will be used if necessary in itself reduces the need to use it. The proposal to remove the defence of "reasonable chastisement" if an implement is used would require us either to disobey the law or to use some less effective means of discipline.

‘It seems to us that the crucial issue is not the means of correction, but its effects. There is no reason to suppose that the controlled use of a safe implement will be any more damaging than the use of a hand. The fact that an implement has been used, therefore, should not of itself render the chastisement unreasonable in the eyes of the law.’

Andrew and Janet Shrimpton

6. ‘I can say on behalf of my wife and me that there were a very few occasions when we used a safe object to discipline our children. This would have been where we considered the incidents were sufficiently serious to warrant such use - for example, gross disobedience, or some dangerous activity affecting the child himself or some other person.

‘Thank you for all your are doing through Families First to draw attention to the proposals by the Executive to ban the use of an implement by parents in the natural and proper exercise of their responsibilities. Such a ban would be clearly in defiance of Biblical teaching.’

Mervyn Barter

7. **An example of unnecessary social services intervention in England**

A father participated in a television programme on the subject of child discipline. In the course of the discussion he expressed his personal view that it was acceptable to use a safe object in the physical correction of children. A few days later, he and his wife received a letter from the social services department of their local authority stating: ‘We have been informed by the NSPCC that you feel it is acceptable to use a wooden spoon to chastise your children. We feel it is important to discuss this with you and would like to come and visit you...’

During the ensuing meeting, the social worker issued an ultimatum to the couple: either they agreed that it was unacceptable to use an implement, or the department would have to consider taking further action. The possibility of a case conference and child protection proceedings was raised. At no point was it even suggested that the parents were abusing or ill-treating their children, or that they had administered physical correction in an immoderate and unreasonable manner. The local health visitor also attended the meeting and said she had known the family over some period of time and had always found the children to be well-adjusted. The whole discussion was based purely on the matter of principle.

In an attempt to clarify matters, the mother asked whether it was simply the use of an implement that the social worker was uncomfortable about. Would it be considered more acceptable to smack with the hand? The social worker replied that the authority did not condone any form of physical correction no matter how it was administered. When the couple asked whether there was any law against the use of a safe object in the discipline of children, they were told, ‘We are not here to discuss whether or not it is legal, but whether it is appropriate.’

The couple did not feel that social services had been able to give them any reason to change their views on discipline. They therefore declined to give the social worker the undertaking she requested and were told that the matter would be reported to a supervisor.

Later in the week, the couple received a letter from the social worker, stating:

‘I would like to reiterate the Department's concerns over your use of the wooden spoon, although we understand your reasonings. Your care and love for children in other respects, appear to be beyond question. We shall, therefore, not be proceeding any further but I would like to come and see you again to discuss the situation...’

It is a matter of some concern that even though the government at Westminster decided not to criminalise the careful and responsible use of a safe implement in the discipline of children, a local authority should harass a family in this manner. Also of concern is the way in which the NSPCC acted in response to a personal view expressed on television, without any suggestion that the father who made the comment was abusing his children. It is difficult to see in this anything other than a desire to intimidate and to suppress public debate on this issue.

In this particular instance, the local authority has said it will not be proceeding further. However, if the current proposals in Section 43(3)(b) of the Criminal Justice (Scotland) Bill pass into law, it is likely that local authorities would feel obliged to proceed further against any parent who publicly expressed support for the use of a safe object in the discipline of children. Also, if any of the ordinary Scottish families in sections 1-6 above were to come to the attention of the authorities, they would be liable to become the subjects of case conferences and court hearings, irrespective of how loving their homes are and how happy and well-adjusted their children are. The unnecessary damage and distress that would be caused to such families would be incalculable, and in some cases, it may also lead to a loss of employment, none of which would be in the best interests of the children.

APPENDIX 2

The physical correction of children, international instruments, and monitoring committees

In a recent submission to the Justice 2 Committee, the Global Initiative to End All Corporal Punishment refers to criticisms of the UK made by the European Committee on Social Rights and the United Nations Committees on the Rights of the Child, and on Economic, Social and Cultural Rights.

It is important to maintain a sense of proportion when assessing such reports from international monitoring bodies. Each of these committees has gone way beyond what was in the minds of the original framers of the respective treaties, and far beyond what most states would have understood them to mean when they originally ratified them. We are concerned at the way in which international instruments are being subjected to radical reinterpretations that threaten the liberty of the individual conscience, religious liberties, the autonomy of the family, the sovereignty of nation-states, and our parliamentary democracy.

For example, Article 19 of the United Nations Convention on the Rights of the Child, states that children should be protected from '*all forms of physical or mental violence, injury or abuse*'. It does not say anything about parental discipline at all. Yet, in pursuance of a radical social agenda, the Committee on the Rights of the Child has chosen to equate the mildest form of physical correction with violence and abuse - a view which the Children & Young People's Unit regards as 'not only wrong but dangerous' because it diverts attention from those children most at risk.

There was a strange anomaly in the report of the Committee on the Rights of the Child in that at the same time as calling for an absolute ban on all physical correction of children, it also called for a considerable rise in the minimum age for criminal responsibility. In one paragraph the Committee wanted children to be treated in exactly the same way as adults, while in another paragraph in the same report, they want them to be treated differently. The Committee has rightly been criticised for its inconsistency in wanting to give children adult rights but not adult responsibilities.

This same inconsistency characterises interpretations being placed on the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. Article 26 of the International Covenant on Civil and Political Rights states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

And Article 7 of the Universal Declaration of Human Rights states:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

To apply these articles to the discipline of children - whether physical or non-physical - requires a fair degree of reinterpretation. The thought would not arise to anyone seeking to understand their natural meaning. In fact, to be consistent, those who want to extend the principle of 'equality before the law' to the relationship between a parent and child within the privacy of the family home, would also have to support a whole raft of legislation aimed at abolishing any and all age-related legislation.

By the same reasoning, children of any age should be able to marry, drive, fly aeroplanes, smoke tobacco, purchase and consume alcohol, consent to sexual intercourse, and choose to opt out of full-time education etc, etc. If pressed to its logical conclusion, this interpretation would lead to the abolition of the family unit and of all parental responsibilities. Yet, international monitoring committees and radical lobby groups tend to be quite selective in the 'rights' they seek to claim on behalf of children in the name of equality. The 'rights' they plead invariably conform to a strict agenda set, not by children, but by men and women who are using children as political pawns in an adult game. The politicisation of children in this manner is a subtle and often unrecognised form of child abuse.

The European Committee on Social Rights has also adopted an extreme interpretation of the European Social Charter in pursuing the imposition of a similar radical social agenda to that favoured by the United Nations. Article 17, on 'The right of mothers and children to social and economic protection', states:

With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services.

Once again, without a predisposition against the physical correction of children and an ideological commitment to its abolition, it is difficult to see how anyone could see it as falling within the ambit of this article. Children do not need 'social protection' from the moderate and loving rebukes of their parents, whether they are physical, verbal, or both.

Rather than claim that the defence of reasonable chastisement is incompatible with human rights instruments, it would be more accurate to say that the defence is not consistent with the interpretations which members of various monitoring bodies have chosen to place on international treaties. The two are not necessarily the same.

It is to be feared that the international monitoring groups favourably referred to by the Global Initiative are seeking to impose an unproven philosophy of childhood on every country in the world in a way that undermines parents and the autonomy of the family and fails to respect the social, cultural, religious and philosophical factors which shape each family.

Turning briefly to the Global Initiative's comments on the judgments of the European Court of Human Rights, it is not true to say that in *A v UK* the Court found the current defence of reasonable chastisement in UK law to be in breach of the European Convention on Human Rights for failing to provide children with adequate protection. The judgment of the Court was limited to the facts of the single case before it. Indeed, the Court declined to make any general statement on the physical correction of children, even though it was invited to do so.

It is also not true to say that judgments in the European Court of Human Rights have required a blanket ban on all physical correction in schools. *Campbell and Cosans v UK* (1982) merely established the principle that schools must respect the religious and philosophical convictions of parents who oppose the use of physical correction in schools in accordance with Article 2 of Protocol No 1 of the European Convention on Human Rights. The Court has never ruled against the use of moderate and reasonable physical correction within a school context with the agreement of the child's parents.

It was on the basis of the respect due to parents' religious and philosophical convictions, safeguarded by the European Convention on Human Rights, that a number of independent Christian schools challenged the School Standards and Framework Act 1998 which, in the view of the Department for Education and Skills, outlaws the use of physical correction in independent schools. However, the European Court of Human Rights declined to hear the schools' case - not because their premise was adjudged to be invalid, but rather because the Court did not consider that the wording of the Act prohibited the physical correction of children with explicit parental consent. The applicants were accordingly advised that the law did not explicitly prohibit physical correction in schools.

After losing their case in the High Court, the schools were subsequently granted leave to appeal. Their appeal hearing was held in May 2002. Then, in an unprecedented move, the judges called for a second hearing in September 2002. At the time of writing, eight weeks later and six months after the original Court of Appeal hearing, the judgment is still awaited. At the very least, it would appear that the schools have presented a strong case and that the legal issues are far more complex than the Global Initiative's submission would suggest.

There is no reason for the Scottish Parliament to be intimidated by the claims of official monitoring bodies that the current law pertaining to physical correction in Scotland is in breach of our international obligations. Neither should the Parliament be intimidated by the emotive language of illiberal lobby groups intent on imposing their own views on raising children on all families by force of law. We would commend to the Committee the response of the Children & Young People's Unit to the recent report from the United Nations Committee on the Rights of the Child:

The Government is absolutely opposed to violence and abuse against children. The law only allows what is *reasonable* in terms of the physical punishment of children – it does not permit child abuse. We recognise that parenting can be difficult, but we must avoid heavy-handed intrusion into family life. The Convention refers to the protection of children from physical violence and maltreatment. The Government is satisfied that UK law is in line with these provisions.