

The Physical Punishment of Children in Scotland: A Consultation

Response from:

Community Practitioners & Health Visitors Association, Professional Officer for Scotland (Anna Daley),
CPHVA Scottish Area Office, 69 Countesswells Road, Aberdeen, AB15 7YH. Tel/fax 01224 314047

The Professional Officer from Scotland gratefully acknowledges the work of Chris Petford and the Alliance in her preparation of this submission

In responding to this document there has been:

- Discussion widely with members of the parenting and family support interest group and other health visiting and school nursing colleagues.
- Requested feedback on the consultation document.
- Attendance at EPOCH alliance meeting to discuss responses to consultation document.
- Requested feedback from the CPHVA membership via the Journal, article is due to be published.

We feel the Executive has not gone far enough as it appears to condone 'reasonable' physical punishment against one of the most vulnerable groups within our society. There is also broad scope in an individual definition of what may be considered 'reasonable'. Surely any physical attack against anyone within society cannot be deemed 'reasonable'.

The way the consultation is framed also causes great debate. Many feel that the consultation document was deeply unsatisfactory, allowing for only limited response because the options for discussion were themselves limited. Simply answering 'yes' or 'no' would not fully reflect our view or position.

Therefore, the consensus is that, in order to minimise confusion over the options and to make the position of the CPHVA clear each answer will begin with the agreed preface.

'In registering our detailed response to this question, we want it recorded that:

- We do not support any approach which condones physical punishment.
- We believe that children deserve the same protection under the law on assaults as adult.'

All of those consulted were in agreement with this stance, with the exception of one health visitor who believed in the parents' right to smack their child. It was interesting that several health visitors had recently changed their minds after discussion. All were aware that parents smack their children and that criminalising it would be impossible to enforce. However, the alliance states that the way the law works with adults, small misdemeanours are not prosecuted. A prohibition of smacking would encourage parents to seek other ways of managing children and parenting education and support would fill the void.

The Executive must take a courageous stand with the long-term view in sight, and not merely be seeking a vote-catching bias. The Executive must embrace a view of zero tolerance to violence and demonstrate a determination to turn the tide within society. This will demand that parents will need to consider alternatives in disciplining their children and will need acknowledgement that education may be beneficial and support required. In view of the E.U. legislation and U.N. Convention, if the Scottish Executive does not uphold a 'no physical punishment' policy it will potentially be held to ridicule.

The consultation states that it is following public opinion with its proposals. However, the Scottish Executive has the potential to be an exemplar to others and should **lead** public opinion as it has in other areas of family support policies.

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Question 1: Do you agree with the Scottish executive that parents should continue to be allowed to use reasonable physical punishment?

In registering our detailed response to this question, we want it recorded that:

- We do not support any approach which condones physical punishment.
- We believe that children deserve the same protection under the law on assaults as adult.

The primary responsibility for a health visitor is for the child, and being an advocate, for a voice that is not often heard. If it is not lawful to hit an adult why should it be lawful for a child to be hit? If the Executive can give a reasonable response to that question we would be pleased to hear it. Corporal punishment of children breaches fundamental human rights principles; the right of everyone to respect for their human dignity and their physical integrity and to equal protection under the law. The CPHVA cannot understand why allowance should be made for parents to hit their children. the more this was discussed, the harder it was to make sense of and the stronger our conviction that it is an illogical option.

This approach does not support parents or help protect children as it does not provide any guidance to parents and thus does not contribute to protection, promotion, prevention.

It is the view of the CPHVA, that no form of physical punishment of children should be capable of being defended as reasonable. Hitting people does not become reasonable because the people concerned are smaller or younger.

More than a century ago similar legal defences were used to justify physical punishment of wives and servants. This is unthinkable today and the Executive is continuing to tackle this throughout the work of the Partnership on Domestic Violence and other cross-cutting policies. In removing these disreputable 'rights' of husbands and masters, there was no attempt to define 'acceptable' or 'reasonable' hitting. Why then should it be more acceptable or reasonable to have a legal defence of violence to children?

The concept of reasonable chastisement has no place in a society or within a Scottish Executive ethos which claims to view children as independent individuals, holders of human rights alongside other individuals.

It beggars the imagination, and contradicts humanity, that children, who are smaller and more vulnerable than the rest of us, should have less protection from being hit than adults

Lousie Sylwander, Swedish Children's Ombudsperson, states that this is the exact position of the Swedish government 5 years before they made smacking unlawful 20 years ago. So perhaps this consultation could in some small way be seen as a positive step towards change.

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Question 2: Do you agree with the Scottish Executive proposals set out below?

Proposal 1: The law should make it clear that physical punishment which constitutes 'inhuman and degrading treatment' can never be justified as 'reasonable chastisement'.

Proposal 2: The law should explicitly set out that, in considering whether or not physical punishment of a child constitutes 'reasonable chastisement' a Court should have regard to:

- a. The nature and context of the treatment;**
- b. The duration;**
- c. Its physical and mental effects; and in some instances;**
- d. The sex, age and state of health of the victim.**

In registering our detailed response to this question, we want it recorded that:

- We do not support any approach which condones physical punishment.
- We believe that children deserve the same protection under the law on assaults as adult.

We believe that ALL instances, ALL these factors should be taken into consideration, in addition to, the vulnerability of the child. Other approaches taken by the parent should also be considered, as well as the child's understanding of what they had done wrong and why they were being punished. The seriousness of the child's misdemeanour should also be considered in relation to the severity of the punishment. There should also be a full psychological assessment carried out on the child, to ascertain the mental effects of punishment.

What about physical punishment which causes or risks causing injury to mouth, nose, teeth, genitals and other erogenous zones, fingers, toes, central nervous system, heart, lungs, kidneys and so on? What about punishment which causes or risks causing injury, discomfort or pain lasting more that a short time? What about punishment that causes psychological harm - bedwetting, loss of confidence and self-esteem, anxiety attacks, etc.

Is the Executive actually asking for society to sanction or condone any action, chastisement/ punishment which may potentially cause injury of a child as 'reasonable'?

This approach does not support parents or help protect children as it does not provide any guidance to parents and thus does not contribute to protection, promotion, prevention.

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Question 3: What, if any factors should the law require a Court to consider when determining whether the physical punishment of a child constitutes 'reasonable chastisement', over and above those factors set out in para 5.4?

In registering our detailed response to this question, we want it recorded that:

- We do not support any approach which condones physical punishment.
- We believe that children deserve the same protection under the law on assaults as adult.

Multiple factors should be taken into consideration, including the vulnerability of the child. Other approaches taken by the parent should be considered, as well as the child's understanding of what they had done wrong and why they were being punished. The seriousness of the child's misdemeanour should also be considered in relation to the severity of the punishment. There should also be a full psychological assessment carried out on the child, to ascertain the mental effects of punishment.

We do not believe that requiring Courts to consider any checklist of 'factors' - no matter how long- will help protect children or to support parents. This approach is short sighted, provides no guidance to parents and thus does not contribute to prevention.

If the Executive proceeds with an assumption of 'reasonable' chastisement, it is possible that by drawing the line in the law as to what physical punishment of children is acceptable, that it will be less likely that cases for assault (e.g. As noted below) will go unchallenged, because social and health services and police will hesitate to interfere with anything that is not clearly above the line. Surely the Scottish Executive does not wish to grant adults in such cases a feeling of greater immunity from legal challenge as a result of this proposed reform.

- Father who repeatedly smacked his 8 year old daughters naked bottom in a dentists waiting room for refusing to go to the dentists (all papers, summer 1999)
- Man who slapped a 2 year old boy, accidentally catching his head, knocking him over and causing a leg fracture (Western Gazette 27/5/99)
- Mothers boyfriend who slapped a 4 year old twice in the face, causing bruising. (Rhyll & Prestatyn Visitor, 26/2/99)
- Man who smacked a 19 day old baby (Glamorgan Gazette, 29/8/99)
- Repeated slapping of a 7 year old (Glasgow Herald, 5/8/99)
- Smacking a 3 year olds bottom, leaving bottom (Fenland Citizen. 15/9/99)

This list could go on.....

The CPHVA do not consider that the above cases constitutes trivial smacking. However, arguably many of the above assaults, would not have occurred in the first place if it was well known that smacking was unlawful. None of them would have required the cost of prosecution to prove that the punishment was unlawful. The authorities would thus have been able to persuade the adults the adults to accept help or to support them without recourse to

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prosecution. With total abolition of physical punishment to children, there would not only be fewer prosecutions but also less cruelty to children.

Question 4: Are there any forms of physical punishment which should never be capable of being considered as 'reasonable'? Specifically, should the law state that any of the following can never be considered as reasonable:

- a. Blows to the head (risking injuries to the brain, eyes and ears)?**
- b. Shaking children? (risking injures to the brain)?**
- c. Using implements (e.g. canes, slippers, belts)?**
- d. The physical punishment of very young children (and if so, of what age)?**

In registering our detailed response to this question, we want it recorded that:

- We do not support any approach which condones physical punishment.
- We believe that children deserve the same protection under the law on assaults as adult.

No forms of physical should be capable of being defended as reasonable. We believe that the Executive should be leading the public away from the use of physical punishment, as it is doing with its domestic violence policy.

The governments quoted opinion poll shows that 76% of respondents support banning smacking of under two year olds. Overwhelming public opinion supports that none of the options presented in this proposal would ever be considered 'reasonable', but also of no smacking which leaves bruises or marks lasting more than a short time. The Alliance MORI poll indicates that if parents can be reassured that there will not be prosecutions for 'trivial smacks' they would overwhelmingly support giving children the same protections as adults under the law on assault.

The law should state that, the use of ANY implement in relation to physical punishment should never be capable of being defended as reasonable. Successive opinion polls have shown that the public do not favour the use of implements to punish children. In addition, to slippers, belts and canes the law should also include the use of fists, teeth, forced ingestion and feet as indefensible.

Health visitors are, on a daily basis, acutely aware of the difficulties defining physical child abuse, without clearly defined boundaries from the law. There are too many grey areas about hitting children and abuse of children as in the case of 'Av U.K.'. The law should state clearly that hitting children is unlawful and make it easier to protect vulnerable children.

It is impossible to compile a list that shows where a child will be most damaged if hit. All areas on a child can be potentially damaged when hit. There is no way to determine the force of the blow and the amount of damage that could occur when a much larger adult hits a small child. Hitting a child can also cause mental and emotional injuries, which are similarly damaging to the child. Children are a vulnerable group and deserve to be protected in a modern society by the law.

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Question 5: Who should be able to administer 'reasonable chastisement'? Should it be:

- a. Only those with parental responsibilities and rights under the Children (Scotland) Act 1995.?**
- b. As now, all those acting on behalf of parents in looking after children (except in settings where physical punishment has been outlawed)?**
- c. All those acting on behalf of parents, but only if they have been given explicit permission to physically punish the child?**

In registering our detailed response to this question, we want it recorded that:

- We do not support any approach which condones physical punishment.
- We believe that children deserve the same protection under the law on assaults as adult.

We believe that a defence should only be available to parents with parental responsibility as defined under the Children (Scotland) Act 1995. This is particularly relevant as research shows that perpetrators of abuse are often adults in the child's household without parental responsibility.

The proposal does not take into account the 1995 formal recognition of the United Nations committee on the Rights of the Child (Human Rights Treaty Body for the U.N. Convention on the Rights of the Child), that the UK should prohibit all corporal punishment.

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Question 6: Should there be a ban on corporal punishment in childcare centres, by childminders and in non-publicly funded pre-school centres?

In registering our detailed response to this question, we want it recorded that:

- We do not support any approach which condones physical punishment.
- We believe that children deserve the same protection under the law on assaults as adult.

Yes there should be a ban throughout the childcare system. The proposal must take into account the 1995 formal recognition of the United Nations committee on the Rights of the Child (Human Rights Treaty Body for the U.N. Convention on the Rights of the Child), that the UK should prohibit all corporal punishment.