

# The child protection argument for a ban on smacking

## Children are Unbeatable! Cymru

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NSPCC is a founding member of 'Sdim Curo Plant! Children are Unbeatable! (SCP!/CAU!)', an alliance of many organisations campaigning for children to have equal protection under the law on assault in Wales. Many parents argue that they have the right to discipline their children the way they see fit and their smacks do not harm their children. The NSPCC would argue that there is no 'safe smack'; all smacks carry a risk of unintended injury such as a slap causing to toddler to fall over and hit their head. NSPCC's mission is to end child cruelty and our position is clear on this issue- children should never be hit.

### The Law

The introduction of Section 58 in the Children Act 2004 limited the use of the defence of 'reasonable punishment' so that it could no longer be used when people are charged with causing actual bodily harm or cruelty to a child, but only when charged with common assault. The decision about whether the charge is common assault or not, hinges on whether there is more than a temporary reddening of the skin or whether the injury is more than transient and trifling. Consequently the law is unclear and still allows potentially dangerous punishments such as shaking or blows to the head. The Children's Legal Centre<sup>1</sup> described the introduction of Section 58 as 'another failed attempt to protect children,' and stated that 'the current 'sitting on the fence' position

does not afford children the necessary protection from assault.'

The NSPCC has campaigned for many years for a ban on the physical punishment of children because it is a clear breach of their rights. We believe that the Section 58 defence is ambiguous and should be removed because:

- It permits parents and carers to apply an arbitrary level of violence on their children that can escalate into physical abuse or could lead to serious injury
- professionals who work with children are unable to deliver a clear message that hitting and hurting children is against the law
- children understand that hurting them is allowed and so do not complain
- the public who see children being smacked know that smacking is permissible and are less likely to report it.

### Children's rights

There are many compelling arguments for providing children with equal protection, but the children's rights argument is unequivocal. Article 19 of the UNCRC<sup>2</sup> says that the state 'shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence.' In addition Article 37 states: 'No child shall be subjected to torture or other cruel, inhuman or degrading treatment or

punishment.' The UK is now one of only four EU countries which have neither banned the physical punishment of children, nor committed to a complete ban. The UN Committee on the Rights of the Child is clear that UK law breaches children's rights in this respect, and on three occasions (1995, 2002 and 2008), has recommended equal protection to the UK. The Committee's 2008<sup>3</sup> report on the UK said: 'The Committee is concerned at the failure of the State party to explicitly prohibit all corporal punishment in the home and emphasises its view that the existence of any defence in cases of corporal punishment of children does not comply with the principles and provisions of the Convention.' The 2008 report<sup>4</sup> went on to recommend that the UK should 'prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences.' The

Welsh Government's support for legislation to achieve equal protection for children under the law on assault is a matter of public record since 2002. Wales became the first UK Nation, through the Rights of Children and Young Persons Measure (2011), to impose a legal duty on Welsh Ministers, whenever they exercise their functions, to have due regard to the UNCRC. SCP!/CAU! believes there is now an implicit obligation on the Welsh Government to legislate to remove Section 58.

### Evidence

In addition to the immediate obligation to extend to children the fundamental right to respect for their physical integrity and human dignity and equal protection under the law, there are strong evidence-based supportive arguments. The evidence clearly demonstrates that there are harmful long term side effects of corporal

### Parent's quotes taken from NSPCC (2008) 'From a parent's point of view- families talk about smacking'

*"My five year old once said: 'Why are you allowed to hit me when I'm not allowed to hit my friends?'" Ali, dad of Freya*

*"As a parent I did smack on occasion, but I came to see that it was not an effective or acceptable way to discipline. I am glad to say that my own children have found other more positive, non-demeaning discipline strategies as parents."* Margaret, mother and grandmother

**Between 1st April 2010 and 31st March 2011, ChildLine carried out a total of 265,458 counselling interactions (excluding Third Party Contacts) out of which, 16,844 counselling interactions had a primary concern of physical abuse. This represents 7% of the total counselling interactions that took place during that period.**

punishment. A meta-analysis of research into corporal punishment of children carried out by Elizabeth Gershoff<sup>5</sup> in 2002 identified that it was associated with eleven negative behaviours, including defiance, anger and increased aggression.

In addition to these side effects, there is also a great deal of evidence to show that corporal punishment is ineffective in the long term as a method of disciplining children. Murray Strauss<sup>6</sup> concluded in 2005 that corporal punishment is 'no more effective than other methods of correction and control.' When he reviewed the evidence he found there is a high failure rate of all methods of correcting and controlling the behaviour of toddlers and that when toddlers are corrected for a misbehaviour, the 'recidivism' rate is about 50% in 2 hours and 80% within the same day. Strauss therefore argues that in any given day, a parent is almost certain to find that alternative disciplinary strategies such as time out or reasoning do not work, and 'because our culture tells us that spanking works when other things have failed, parents turn to spanking.'

For most parents the occasional smack does not escalate into serious violence. However on the basis of NSPCC's experience, most physical abuse is done in the name of discipline or punishment. At worst, many child abuse deaths are from physical assaults. The deaths of both Victoria Climbié and Peter Connelly involved harsh

physical punishment. Victoria Climbié's 'carers' initially punished her with slaps and smacks which escalated into horrific torture that led to her death. Lauren Wright (2000) was a six year old beaten to death by her stepmother; people in her village had seen her being hit but felt powerless to intervene. Carla Nicole Bone (2002) was a 13 month old murdered by her mother's boyfriend who was disciplining her for refusing to walk. He told the police his punishment of the child started with 'not-excessive smacks...It was the way I was brought up. It never did me any harm.' This is why the NSPCC believes that all children would be better protected if social workers could give a simple and unequivocal message to parents that it is as unlawful and unacceptable to hit a child as to hit anyone else.

### Conclusion

Parenting is a difficult job and clear and consistent boundaries are essential for children to have a secure and happy childhood. Most parents don't want to hit their children but they are confused by the law. What some parents view as acceptable physical punishment will be considered abusive by others. Section 58 attempts to draw a line between what is a reasonable and unreasonable punishment, but in doing so, in addition to breaching the child's right, is ambiguous and confusing for parents and professionals and dangerous for children. Many organisations support a ban on the physical punishment

of children and the removal of Section 58, but a clear message is needed at a national level. The only safe way of protecting all children is to remove Section 58 and to simultaneously educate parents about how to use effective non-violent methods to discipline children.

SCP!/ CAU! calls on the Welsh Government to legislate to remove Section 58 and be the first government in the UK to ban the physical punishment of children.

**References**

1. Clarridge, J. (2008) Law on Smacking: another failed attempt to protect children *Childright* Issue 251
2. UNCRC: <http://www2.ohchr.org/english/law/crc.htm>
3. UN Committee Report <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>
4. Ibid
5. Gershoff, E.T. (2002) Corporal punishment by parents and associated child behaviours and experiences: a meta-analytical and theoretical review *Psychological Bulletin*, Vol. 128, Issue 4
6. Strauss, M.A. (2005) Children should never, never be spanked no matter what the circumstances *Current Controversies on Family Violence* United States: Sage

### Parenting Organisations Joint Statement

The Family and Parenting Institute, Parenting UK and the International Federation for Parenting Education are among many organisations involved in supporting families and children which believe that removal of the "reasonable punishment" defence to give children equal protection under the law on assault is long overdue. We see it as a necessary and urgent reform not just for children's well-being and safety, but for the benefit of families and society at large.



Children in Wales currently host the Children are Unbeatable S'dim Curo Plant! Campaign. If you would like to become a supporter or have further information, please e-mail: [cau@childreninwales.org.uk](mailto:cau@childreninwales.org.uk) or contact Children in Wales, 25 Windosr Place, Cardiff, CF10 3BZ, Tel: 029 2034 2434