

How would a ban on smacking in Wales work in practice?

The day-to-day experience of a change in the law

Because we are campaigning for a change in the law, there are naturally anxieties about how this will affect parents and other carers raising children in Wales. Some worry that parents will find a 'smacking ban' an additional stress when families are already under pressure or fear that they will be 'criminalised'. The experience of parents at a day-to-day level in other countries doesn't support this concern and the leading organisations supporting parents and families – who are signed-up to the Children are Unbeatable! campaign – as well as child protection agencies, consider such a change to be helpful to parents as well as to their work of protecting the most vulnerable children. The positive parenting message is already being promoted, but without a change in the law it cannot be fully effective.

For virtually all families the direct experience of a change will be very positive, with a clear message that smacking is not part of managing children's behaviour. Parents don't enjoy smacking and tend only to use it when they are stressed and angry. When parents give up smacking they invariably find family life and children's behaviour gets better and they are happy to have taken this step. A ban is as much of an incentive to stick to your principles or to do things differently, as it is a deterrent.

Public education materials, antenatal information and advice from health visitors and others will be unequivocal. Early intervention from those who can help will be easier and parents who are at risk of 'losing it' will know that hitting out is not acceptable. Any professional concerned about parenting style would initially offer support, including with other challenges the family is facing. Changing the law is necessary in order to change culture and behaviour and reduce the incidence of smacking, thereby making family life less stressful. The threshold for a child protection intervention would not change.

Views of organisations and professionals supporting parents and families

In 2008, when a smacking ban was under debate in Westminster, a joint statement was agreed by the Association of Directors of Children's Services; British Association for the Study and Prevention of Child Abuse and Neglect; British Association of Social Workers; Community Practitioners' and Health Visitors' Association; NSPCC; Parenting UK; Royal College of Nursing; Royal College of Paediatrics and Child Health. This states:

"We believe that complete removal of the 'reasonable punishment' defence will:

- fulfil children's human rights
- reduce violence against children
- improve the effectiveness of child protection
- provide a foundation for promotion of positive discipline that works

If it is accompanied by appropriate guidance prepared following full consultation with ourselves and other parties, we are confident that:

- its implementation in children's best interests can be assured
- there will be no change to the 'significant harm' threshold for formal investigation
- parents will not be prosecuted for 'minor assaults', as this would not be in children's best interests."¹

While this statement has convinced many people that prohibiting physical punishment would not create unintended problems, others still express worries about what a no-smacking law might mean in practice.

Below are the most frequently asked questions on this issue, which we have attempted to answer as accurately as we can.

Won't banning smacking turn thousands of parents into criminals?

Removing parents' defence of "reasonable punishment" for smacking will criminalise any assault of a child in exactly the same way as hitting, poking, pushing or threatening an adult is criminalised at the moment. No new offence will be created; children will just get the same legal protection the rest of us already enjoy.

However to most people "criminalised" means being charged, prosecuted or convicted, not the theoretical commission of a criminal offence. The chances of the first kind of criminalisation happening to parents for "trivial" smacks are remote.

Police and prosecution services operate under the legal principle that they should not pursue trivial matters (the *de minimis* principle). Moreover, no prosecution of child assault goes ahead unless it is considered both to be in the public interest and the best interest of the child concerned – and prosecuting parents for a trivial smack would not normally be either of these. Police will always treat such cases as a child protection matter and only act in consultation with social services.² The Director of Public Prosecutions stated in evidence to the Joint Committee on Human Rights on the effect of a ban: "The reality is that, just as most minor assaults against adults are not prosecuted, I suspect most minor assaults against children would not be either."³

None of the 34 countries that have banned smacking has experienced a rise in criminal prosecutions of parents. For example, every six months for five years following New Zealand's ban in 2007 the police reported to the government on the effect on their work. The final report in 2012 showed there had been only eight prosecutions for "smacking" over the whole period, though police activity in this area had risen slightly, "consistent with reduced tolerance and increased reporting of violence."⁴ The overall conclusion was that the new law

¹ *Implementing equal protection for children – practical implications of law reform removing the "reasonable punishment" defence*, 2008, Children Are Unbeatable!; the relevant professional organisations in Wales are currently developing a similar statement.

² See *All Wales Child Protection Procedures*.

³ Evidence to the Joint Parliamentary Committee on Human Rights, May 25 2004.

⁴ New Zealand Police, August 2012, *10th review of police activity since enactment of the Crimes (Substituted Section 59) Amendment Act 2007*

had had a “minimal impact” on police work.⁵

The former Chief Constable of Gwent police, Carmel Napier, welcoming the proposed ban on smacking in Wales, said: “I know some people may well be concerned that lots of people will be arrested and criminalised as a result. Can I give them the reassurance that the police service, working with social services, health and education, deal very sensitively and thoughtfully with any allegations of young children as victims. We would look at significant harm, the context of the child, the family and any other persons involved, to sensitively approach and deal with these issues in a way which would support the family and prevent the reoccurrence of that violence in the future.”⁶

Her then deputy and now successor, Chief Constable Jeff Farrar, said: “We do know that changing legislation does change people’s behaviour. And when we change people’s behaviour, attitudes change over a period of time. So take drink driving for example. When I joined the police service in the very early eighties it was still acceptable to many people to drink and drive, where we see now in 2013 people think that was abhorrent. It still happens, but generally people would see that as not acceptable ... If there is legislative change generally people will comply with that and change the way they do things.”

What the Committee on the Rights of the Child says about the prosecutions of parents in General Comment No. 8 (confirming States immediate human rights obligation to prohibit all forms of physical punishment):

“Children’s dependent status and the unique intimacy of family relations demand that decisions to prosecute parents, or to formally intervene in the family in other ways, should be taken with very great care. Prosecuting parents is in most cases unlikely to be in their children’s best interests. It is the Committee’s view that prosecution and other formal interventions (for example, to remove the child or remove the perpetrator) should only proceed when they are regarded both as necessary to protect the child from significant harm and as being in the best interests of the affected child. The affected child’s views should be given due weight, according to his or her age and maturity.”⁷

What about social services? Won’t they have to intervene?

Social services have to investigate all allegations of child abuse but they only intervene if they believe the child is suffering or at risk of significant harm. These duties would remain exactly the same after a ban.

People already report parents for smacking so social workers are accustomed to dealing with the issue. When they do, they aim to support parents and children without resorting to

⁵ Hughes P, Chief Executive Ministry of Social Development (2009) Report to the Minister for Social Development and Employment: pursuant to section 7(2) of the Crimes (substituted section 59) Act, New Zealand Ministry of Social Development.

⁶ CAU!-Cymru 2013 video <http://vimeo.com/61761217>

⁷ Committee on the Rights of the Child, General Comment No. 8 (2006) *The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment* (arts. 19; 28, para. 2; and 37, inter alia), paragraph 41.

heavy-handed interventions. A legal ban on smacking could only help this process. Parents could be straightforwardly informed that any physical punishment was now against the law and offered help if appropriate. Some parents struggle with discipline and need support, others may have lost control in a one-off incident and need no more than a reminder. Social workers do know the difference. All the agencies involved in child protection have formally confirmed that the threshold for intervention will not change after a ban.⁸

Won't the authorities be overwhelmed by reports of children being smacked?

Though reports may increase, the numbers are unlikely to be overwhelming. Most physical punishment occurs behind closed doors, on children too young to complain. Older children are often reluctant to talk because they are frightened of repercussions or that they will not be believed. Adults don't report physical punishment because they don't want to interfere in other people's private lives.

In truth, any rise in reporting should be welcomed because many more children suffer from serious physical abuse than come to the attention of the authorities. The NSPCC recently estimated that over half a million children a year in the UK are subject to parental maltreatment, of which only 58,000 – one in ten – are safeguarded by a child protection plan.⁹ Where physical abuse is concerned the NSPCC figure is probably an underestimate because the available data, such as self-reporting or ChildLine figures, tend not to include small children, who are the most likely to be physically punished.

Almost all cases of serious physical abuse (which are of course already illegal) involve physical punishment. Victoria Climbié's case did. Peter Connolly's case did. The case of Yaseen Ali did. Yaseen was a seven year-old living in Cardiff who was beaten to death by his mother because he was not able to memorise the Koran. The recent serious case review noted:

“A teacher noticed an injury to Yaseen's hand that was a result of physical chastisement at home and although this was brought to the attention of the senior member of staff with designated responsibility for safeguarding it was never reported to children's services or to the police.”¹⁰

If all “physical chastisement” had been illegal, the designated staff member might have felt obliged to report the injury to social service, Yaseen's mother might have received help for her escalating behaviour and Yaseen might have survived.

But don't parents need supporting?

Yes, parents need our support and our respect. Raising children is never easy, particularly when parents are struggling with difficult circumstances like financial problems or inadequate housing or stressful relationships. While it is clear that physical punishment will not disappear while the law allows it, it is also clear that changing the law is not enough. This is the lesson from the countries that have banned smacking; it is also the lesson from other public health

⁸ See note 1

⁹ Harker L et al (2013) *How safe are our children?* NSPCC

¹⁰ Cardiff Local Safeguarding Board, Serious Case Review Yaseen Ali 2013

attempts to change unwanted behaviour such as drink driving, not using seatbelts or smoking in public places. When Sweden banned smacking over thirty years ago, the new law was printed on milk cartons and all households with children were sent a pamphlet on what the law and positive parenting means.

That is why the professional agencies and family organisations in Wales aim to work with the government to accompany the clear message of the law with as much support and information for parents as possible, including encouraging informal measures like parent-to-parent support. There should also be media campaigns to disseminate information about the law and its purpose.

You say trivial smacks won't be prosecuted, but what is a trivial smack?

Of course no smack is trivial, because each smack carries the harmful message that hitting people is acceptable. We just mean smacks that fall below the significant harm threshold. This does not mean common assault would never be prosecuted. For example if light smacking is used very frequently then it may cause significant harm. Also risky blows, degrading kicks, punishments that cause pain but no injury and other forms of physical maltreatment might be prosecuted. Currently all of these can be defended because they are common assaults.¹¹ They are all examples of why the current defence of “reasonable punishment” is actually indefensible.

Wouldn't children have to give evidence against parents who smack them?

The only cases in which children might have to give evidence against their parents are cases of serious assaults, injuries and cruel treatment. These cases are prosecuted already, with appropriate care taken to protect child witnesses. So nothing would change in this respect following a smacking ban.

If parents aren't prosecuted for trivial smacks, what is the point of the law?

It cannot be repeated too often that the paramount purpose of this law is to prevent children being physically punished in the first place, not to prosecute parents after they've hurt their children. The current defence of “reasonable punishment” has not improved behaviour – for example, when the “reasonable punishment” defence passed into law one of the most frequent headlines was “Carry On Smacking”.¹²

But the fact is, parents don't enjoy smacking and tend only to use it when they are stressed and angry.¹³ When parents give up smacking they invariably find family life and children's behaviour gets better and they are happy to have taken this step.¹⁴ Thus a ban is as much of an incentive – a “nudge” measure – as it is a deterrent.

¹¹ For example, in one civil case, *MA v Swansea* (2009) EWCA Civ 853, the Court of Appeal upheld the lower courts finding that parents kicking their child and slapping her on her face did not constitute significant harm. This led to tabloid headlines such as “Physically punishing a child with a kick is NOT against the law.”

¹² *The Sun* actually printed diagrams to show where and how it was still legal to hit children.

¹³ Gershoff, E. T. (2002), “Corporal punishment by parents and associated child behaviors and experiences: A meta-analytic and theoretical review”, *Psychological Bulletin*, 128(4), 539-579;

¹⁴ See note 11, but also Beauchaine T. P. et al (2005), “Mediators, moderators, and predictors of 1-year outcomes among children treated for early-onset conduct problems: a latent growth curve analysis”, *Journal of Consulting*

Another vital purpose of the law is to aid child protection. Professionals' task would be eased if they could tell parents they may not hit or physically hurt their children in any way and prosecution cases, where necessary to protect a child, would be also be easier if the legal defence was removed. Children would have confidence to seek help rather than believe their parents are justified in hitting them.

Why section 58 undermines child protection

Section 58 of the Children Act 2004 allows parents in England and Wales to justify common assault as "reasonable punishment". It undermines child protection because:

- section 58 permits an arbitrary level of violence which invades children's physical integrity, making it a potential pathway to more serious physical or sexual abuse;
- research shows that some parents escalate from "mild" smacking to serious assaults;
- professionals working with families are unable to deliver clear messages that hitting and hurting children is not allowed;
- children are unlikely to complain about something they are told is permitted and justified;
- those witnessing violence to children have no confidence in either intervening themselves or reporting it to the authorities;
- parents are receiving confusing messages about the legitimacy of hurting their children;
- section 58 fails to protect children from painful, dangerous, humiliating or frequent assaults and sends them the message that hitting people is acceptable.

But when they changed the law on drink-driving and seatbelts and smoking in public, people were told they'd get prosecuted if they didn't obey. Why should people change their behaviour if they know they'll get away with it?

Parents will not be sure they will "get away with smacking." The possibility of formal action against them will always remain available and they will know they have acted illegally.

But it is not true that public health measures are always introduced with threats of prosecution. For example, when using mobile phones when driving was first made a criminal offence, the public were told this was not about enforcement. The Transport Minister said: "For their own safety and that of other road users, I hope motorists will stop using their phones when driving. We don't want to catch people – we want them to drive safely."¹⁵

The New Zealand example suggests parents do change their behaviour even when there are heavy reassurances that mild smacking will not be prosecuted. As we explained above, government commissioned research by the police found that, although reporting of child assaults rose, there were virtually no charges for smacking over a five year period. But other research shows that the use of physical punishment has fallen in New Zealand.¹⁶

and Clinical Psychology 73: 371-88, a study of 500 families trained away from the use of physical punishment which exactly correlated with an improvement in the children's behaviour.

¹⁵ Department for Transport press release, December 1 2003, Road Safety Minister David Jamieson

¹⁶ <http://familyfirst.org.nz/research/anti-smacking-polls/> New Zealand Herald April 2 2012

Won't children use the law to become disrespectful to their parents?

No. Not being allowed to hit children does not mean that parents lose their powers to guide, control and discipline them. Smacking is a very poor form of discipline.¹⁷ Studies have also found that it damages the parent-child relationship and engenders feelings of fear, anxiety and anger in children.¹⁸ And it should perhaps be noted that children appear to be safer and better behaved in countries where smacking is banned.¹⁹ Of course there are plenty of parents who occasionally smack and are loved and respected by their children. But we are confident that the love and respect comes from all the good things the parent does, not from those occasional smacks.

Could the new law be used, for example, to stop parents smacking in supermarkets?

In one sense yes, in that it will be easier for a concerned bystander to say to the parent (and the child) "You do know hitting children is now against the law don't you?"

But of course the dilemmas will remain the same. Might your actions make things worse for the child? Are you interfering in something you don't understand? What ought you to do if the parent is aggressive or violent?

But if you do decide to pursue the matter, for example by passing the parents' car registration number to social services, you can be confident that the authorities will use the new law in a sensitive and appropriate manner. They will not be entering uncharted territory because concerns about smacking are already being reported.

Will the law apply to everyone in Wales or just Welsh families?

It will apply to all people in Wales, regardless of whether they are permanently resident in Wales or just passing through.

Might banning smacking have the unintended consequence that parents turn to more damaging punishments, like isolation or humiliation?

We do not deny that some punishments are as bad, or worse, than physical punishment. Some countries have introduced laws banning humiliating treatment as well as physical punishment. But in the UK ill-treatment, emotional abuse and neglect of children is already unlawful. It is only where common assault is concerned that parents can use their special defence of "reasonable punishment." So the law would not allow parents to use ingeniously cruel punishments instead of physical punishment.

¹⁷ See GI website for research evidence from over 150 studies showing physical punishment is ineffective, provides no benefits to children or parents and is potentially harmful.

¹⁸ See for example, Coyl, D. D. et al (2002), "Stress, Maternal Depression, and Negative Mother-Infant Interactions in Relation to Infant Attachment", *Infant Mental Health Journal* 23(1-2):145-163 or Leary, C. E. et al (2008), "Parental Use of Physical Punishment as Related to Family Environment, Psychological Well-being, and Personality in Undergraduates", *Journal of Family Violence* 23:1-7

¹⁹ UNICEF 2013 *Child well-being in rich countries – A comparative overview*. Innocenti Report Card 11 and *Never Violence – Thirty Years on from Sweden's Abolition of Corporal Punishment* Government Offices of Sweden and Save the Children Sweden 2009,

Having said that, there is no evidence that parents do turn to more damaging forms of punishment. All the organisations engaged in parenting support confirm that changing from negative parenting to positive parenting creates a win/win situation. Parents set clearer boundaries, children start to behave better, family relationships improve and the need to punish diminishes.

November 2013

For further information contact cau@childreninwales.org.uk or dimtarocymru@gmail.com