

# The only safe foundation for child protection is to end legalised violence against children

*Our experience is that some parents who abuse use the need to discipline as justification and do not recognise the impact of their behaviour. There is nothing to indicate that there has been a shift in culture away from hitting children, which might impact on parents who move along the continuum into 'unacceptable' levels of physical punishment... Section 58 can be seen as acting as a licence to hit rather than promoting more constructive and positive alternatives.*

Leicester, Leicestershire and Rutland  
Safeguarding Children Board<sup>1</sup>

*Section 58 has added confusion in this area, for families and for those working with them. The only clear message it has provided is that 'smacking' is still lawful...We feel Ministers are underestimating the huge value of clear law as an educational tool and a foundation for child protection and for the promotion of positive non-violent child-rearing.*

Unite/Community Practitioners'  
and Health Visitors' Association<sup>1</sup>

*There are hundreds of thousands of children who are growing up in families where they are smacked regularly and heavily, and the culture of violence in these families needs to be tackled as a priority.*

NSPCC<sup>1</sup>

*The lack of clear leadership by the government that any form of physical punishment of a child is unacceptable makes the task of those working with parents to change opinions much harder.*

Family Links<sup>1</sup>

## Child deaths and physical punishment

### Lester Chapman

(died 1978)

Eight year-old who died trapped in sewerage sludge, having run away from home because of frequent physical punishment. He had run away previously, and the police officer who found him noted the injuries on his body would have amounted to ABH or even GBH "if they had not been in the course of chastisement by a mother of her son," but the police, doctor and social worker agreed that a place of safety order was not justified and Lester was sent home, against his wishes.

### Kimberley Carlile

(died 1986)

Four year-old imprisoned and beaten by her stepfather for "being naughty" and refusing to accept him as her new father.

### Liam Johnson

(died 1987)

Three year old beaten to death by his father, Robert Johnson. Johnson's girlfriend later said, "He was so powerful that when he smacked his sons he sometimes knocked them off their feet."

### Sukina

(died 1988)

Five year old beaten to death by her father because she was unable to spell her name. She was initially hit with a ruler, then plastic tubing and finally with a kettle flex. As she was dying she told her father she was sorry.

### Daniel Vergauwen

(died 1989)

Five year old killed by his mother's boyfriend. Both adults had a history of hitting Daniel; he first came to attention because his mother was reported punching him in the street when he was two. The social worker suspected that the mother had learnt ways of hitting Daniel which did not show – "a view that was later confirmed by the mother's diary."

# Doing what it

**D**uring the outcry over the tragic death of Baby P Ed Balls, Secretary of State for Children, Schools and Families, stated: "I will do what it takes so that, while we can't take away the pain and suffering of this poor little boy or the anger we feel, we can take the action to ensure, not just accountability, but also that we prevent this happening in the future."<sup>2</sup>

Outlawing the hitting of children is part of "what it takes" to have an effective child protection system. Such a measure would ease the task of child protection professionals, encourage better, more confident parenting

and enable abused children to identify themselves as victims rather than culprits who deserve to be hit, as well as saving many from unnecessary suffering. Research evidence suggests that "ordinary" physical punishment is not just unnecessary and often harmful but that it is also a central feature in much serious child abuse. We also know that hundreds of thousands of children experience severe physical assaults that do not come to the attention of the child protection agencies.

In caring for the elderly confused, or people with disabilities, or in fighting domestic violence against women, we don't tolerate

## Banning physical punishment will help prevent serious abuse

**W**hile it is wrong to say that those who batter and beat children and those who occasionally smack their children are "the same", it is equally wrong to say the two behaviours have nothing to do with each other. More accurately, they should be seen as being on a continuum of punitive violence perpetrated against children. Physical punishment is a distressingly visible element in the short life stories of many of the children who have died at the hands of their parents (see cases examples on the left and far right).

The unusually severe violence that killed these children (and around one child a week in England and Wales) was *of course* already unlawful. But had those working with these families been able to deliver the clear message that hitting and hurting children is unlawful, it is not unreasonable to suggest that in some cases the violence would not have started, let alone escalated. In other cases those witnessing or suspicious of the violence would have felt more confidence to intervene.

Although the issue is seldom addressed in official guidance and reports on child protection, research shows that serious physical

assaults on children generally develop out of disciplinary actions.<sup>4</sup> Escalation from "mild" smacking to serious abuse is a predictable feature of physical punishment (though not, of course, inevitable). Smacking may initially stop a child misbehaving, but research has shown it doesn't make them behave better in the longer term, so the child is smacked again, and harder.<sup>5</sup> A proportion of parents who smack today will go on to beat tomorrow.

Public health research shows that preventive interventions targeting highly prevalent risk factors "will generate a greater impact on the problem at the population level than those targeting factors that are less prevalent, even when their association with the problem is stronger."<sup>6</sup> In other words, the best chance of significantly reducing serious and fatal assaults on children will come from tackling widespread low-level violence to children and social tolerance of it, by a clear ban linked to widespread public education. Physical punishment may be declining, but – like driving without seatbelts – it will remain a widespread practice so long as the law upholds it.

<sup>1</sup> Responses to the Government's 2007 review of section 58 of the Children Act 2004.

<sup>2</sup> *Daily Mirror*, November 15 2008

<sup>3</sup> Willow C and Hyder T (1998), *It hurts you inside: children talk about smacking*, National Children's Bureau; Horgan G, (2002), *It's a HIT, not a 'smack': a booklet about what children think about being hit or smacked by adults*, Save the Children; Cutting C, (2001) *It doesn't sort anything: a report on the views of children and young people about the use of physical punishment*, Save the Children Scotland.

<sup>4</sup> See, for example, Ateah C A and Durrant J E (2005), *Maternal use of physical punishment in response to child misbehavior: implications for child abuse prevention*, *Child Abuse & Neglect* 29, 169–185; Gil D G (1979), *Unraveling child abuse*. In D G Gil (Ed.), *Child abuse and violence* (3–17), New York:

# takes

“reasonable smacking”. So why children? Yes, children are different, but their differences – their smallness and extra vulnerability, the difficulties they face in seeking help – justify more, not less, protection. This simple logic is resisted mainly because smacking remains a part of our culture, and moving on demands that all of us reject the physical punishment we experienced as children or meted out as parents.

Some, including some Ministers, state that smacking which can at present be legally justified as “reasonable punishment” is not violence. This is playing with words at the expense of children. Smacking hurts. It is meant to hurt – the smacked child who says, “that didn’t hurt,” is smacked again, only

harder. Smacking may be called “mild” or “trivial,” but young children are eloquent about how much it hurts:

*“It feels like someone banged you with a hammer”*  
(five year old girl)

*“Like someone’s punched you or kicked you or something”* (six year old boy)

*“It’s sore, very sore”* (four year old girl)

*“It burns your bottom”* (five year old boy)

*“It feels like you’re going to cry ‘cause it hurts you that much”* (seven year old boy)<sup>3</sup>

## Those working in child protection want a clear ban – now

In 2007 the government reviewed Section 58 of the Children Act 2004 (allowing parents charged with common assault the legal defence of “reasonable punishment” of their child). Of the 1,405 responses, including from many actively engaged in child protection, a large majority felt that section 58 had no useful effect; only 1% felt that children’s legal protection had been improved by the new law.<sup>7</sup>

*“Physical punishment tends to escalate: almost all physical abuse of children is administered in a context of punishment or control... As a Local Safeguarding Children Board we have no evidence that s.58 has improved the protection of children in any way. We believe that the reform has caused general confusion. Further, our experience shows that it is virtually impossible to persuade/convince parents not to use physical chastisement.”*

(Sunderland Safeguarding Children Board)<sup>8</sup>

These views were also reflected in a 2007 survey of over a hundred Sure Start projects and children’s centres: 82% of the respondents said section 58 had actively impeded their work.<sup>9</sup>

Drawing lines and defining acceptable levels of violence against children breaches their human rights and places them at risk of serious violence. Section 58, barring punishment which causes visible bruising, is particularly dangerous. The Commission for Racial Equality commented on the potential discrimination of section 58 in the protection of black children who do not show bruising.<sup>10</sup> Children may suffer assaults that carry a risk of serious injury but leave no visible mark, like blows to the head, shaking or slapping top-heavy toddlers on the legs so that they fall over. Frequency of hitting is not addressed by section 58, although research suggests that frequent smacking is a key indicator of the seriously abusive parent – as well as being, of course, extremely distressing and damaging to the child.

*“Are we teaching perpetrators to become more skilled in physical abuse, perfecting the art of not leaving bruises? ... Section 58 compromises good practice and conversely, in some cases, encourages adults to be more clandestine making physical abuse harder to detect and prove.”*

(British Association of Social Workers)<sup>11</sup>

AMS Press; Kadushin A and Martin J A (1981), *Child abuse: An interactional event*, New York: Columbia University Press, 249; Trocme N and Durrant J (2003), *Physical punishment and the response of the Canadian child welfare system: Implications for legislative reform*, *Journal of Social Welfare and Family Law*, 25, 39–56; Peltoniemi T (1983), *Child abuse and physical punishment of children in Finland*, *Child Abuse & Neglect*, 7(1), 33–36; Samuda G M (1988), *Child discipline and abuse in Hong Kong*, *Child Abuse & Neglect*, 12, 283–287

<sup>3</sup> 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

<sup>6</sup> Klevens J and Whitaker D J (2007), *Primary prevention of Child Physical Abuse and Neglect: Gaps and Promising Directions*, *Child Maltreatment*, 12 (4), 364–377

<sup>7</sup> DCSF (2007) *Section 58 of the Children Act 2004 Review (Consultation) Analysis of responses to the consultation document, Annex A*

<sup>8</sup> Response to the Government’s review of section 58 of the Children Act 2004

# Parents will not be prosecuted for “trivial” smacks

Removing the “reasonable punishment” defence criminalises smacking children in exactly the same way as smacking adults is criminalised – no more, no less. Only in the most exceptional circumstances would a parent who mildly smacks their child be charged or prosecuted, any more than an adult who mildly smacks another adult is. It is a basic legal principle that the law does not

involve itself in trivial matters. No prosecution goes ahead unless it is considered to be in the public interest and the best interest of the child concerned - and prosecuting parents for minor smacking would not normally be seen to be in either the public's or the child's interests. But the law would be doing all it could to prevent violence by sending into the family home the clear message that it is as illegal and

unacceptable to hit a child as anyone else.

The major organisations representing key elements of the child protection system have signed up to a statement on “Implementing equal protection.” They confirm that the existing legal threshold for social services intervention in families would remain the same, namely the perpetration (or risk) of “significant harm.” Physical punishment judged not to reach this threshold might be reported and followed up, as is already the case, but would not lead to formal interventions in the family.

## Extract from a joint statement on implementation of equal protection

*Association of Directors of Children's Services; British Association for the Study and Prevention of Child Abuse and Neglect; British Association of Social Workers; Unite – Community Practitioners' and Health Visitors' Association; National Society for the Prevention of Cruelty to Children; Parenting UK; Royal College of Nursing Safeguarding Children & Young People Forum; Royal College of Paediatrics and Child Health (2008):*

“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.”<sup>12</sup>

The then Director of Public Prosecutions confirmed in evidence to the Parliamentary Joint Committee on Human Rights: “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.” Periodic reviews of police activity in New Zealand, following its ban on smacking in June 2007, showed universal police satisfaction with the operation of the new law. In the third review (December 2008) the Deputy Commissioner reported “a decline in the total number of child assault events” as well as “a corresponding decrease in the number of child assault events involving smacking and minor acts of physical discipline”.<sup>13</sup>

## Jessica

*(died 1996)*

Five year-old killed by her stepfather. When she was younger Jessica had complained that he “smacks my bottom loads of times. Then I'm sick.” When her leg was broken, she insisted that her many bruises were because she fell easily. The hospital nurses were concerned at how Jessica was “extremely apologetic” when the pain made her cry.

## Jason

*(died 1998)*

Three year-old boy killed by his father's girlfriend. The inquiry notes that “smacking of children is a constant theme” in the girlfriend's parenting. She admitted to the social services that she hit and shook her eldest daughter when she was a baby, and that she “smacked her round the head” when she was older. Jason suffered many cuts and bruises, explained away as accidents. An anonymous call reporting his father for hitting Jason hard “was not taken as seriously as it should have been”.

## Lauren Wright

*(died 2000)*

Six year-old beaten to death by her stepmother. People in her village had seen her being hit, but felt powerless to intervene.

## Victoria Climbié *(died 2000)*

*The aunt's boyfriend's assaults on Victoria began as slaps, escalating to sadistic beatings. He commented: “You could beat her and she would not cry. She could take beatings like anything.” Her aunt told the Laming Inquiry that there was nothing wrong with smacking.*

## Carla Nicole Bone

*(died 2002)*

13 month-old murdered by her mother's boyfriend, who was “disciplining” her for refusing to walk. He told the police it started with “not-excessive smacks... It was the way I was brought up. It never did me any harm.”

<sup>9</sup> Children Are Unbeatable! survey 2007

<sup>10</sup> See press release February 2 2006

<sup>11</sup> Response to the Government's review of section 58 of the Children Act 2004

<sup>12</sup> *Implementing equal protection for children*, Children are Unbeatable! Alliance 2008

<sup>13</sup> *Third review of police activity following the enactment of the crimes (substituted section 59) Amendment Act 2007*, Released by: Rob Pope, Deputy Commissioner, Operations, December 18 2008

# The human rights imperative

Children have a right to the same legal protection from being hit or smacked that we as adults take for granted. The UK is under intense and embarrassing human rights pressure to remove the “reasonable punishment” defence completely. It has been told repeatedly that its obligations under international law require this:

- by the Committee on the Rights of the Child (in 1995, 2002 and again in 2008). In 2006 the Committee reminded all ratifying countries that they had an “an immediate and unqualified obligation” to remove all legal provisions allowing any degree of violence to children, including “reasonable” or “moderate” chastisement.<sup>14</sup> The Committee’s 2008 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, since it would suggest that some forms of corporal punishment are acceptable.”
- by the Committee on Economic, Social and Cultural Rights (2002)
- by the Committee on the Elimination of Discrimination against Women (2008)
- by the European Committee of Social Rights (2005)
- by the Council of Europe’s Commissioner for Human Rights (2008)

*“How can we expect children to take human rights seriously and to help build a culture of human rights, while adults not only persist in slapping, spanking, smacking and beating them, but actually defend doing so as being ‘for their own good’? Smacking children is not just a lesson in bad behaviour: it is a potent demonstration of contempt for the human rights of smaller, weaker people.”*

Thomas Hammarberg, Council of Europe Commissioner for Human Rights.<sup>16</sup>

*“The Committee defines “corporal” or “physical” punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light... The Committee emphasizes that eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of States parties.”*

The Committee on the Rights of the Child<sup>15</sup>

## Reform across Europe

Eighteen European states have banned all smacking – most recently Spain, Portugal and the Netherlands. In fact, of the 27 EU states, the UK is one of only four now which have not either achieved this change or committed to doing so soon. Progress is also being made globally, and in 2007 New Zealand became the first English-speaking country to give children equal protection.

## Support within the UK

Within the UK, there is a strong professional consensus in support of equal protection for children. More than 400 organisations are now part of the “Children Are Unbeatable!” Alliance campaigning for full law reform, including all major children’s charities and all major professional associations concerned with safeguarding children. The four UK Children’s Commissioners have stated that “there is no room for compromise” on this issue. Other bodies calling for equal protection include the National Assembly for Wales, the UK Parliamentary Joint Committee on Human Rights and the House of Commons Health Select Committee.

<sup>14</sup> General Comment No. 8 (2006) *The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment*, CRC/C/GC/8

<sup>15</sup> General Comment No. 8, para 11

<sup>16</sup> Commissioner for Human Rights Issues Paper, revised January 2008

# Clearing the way for positive parenting



There is a great deal of passionate debate these days about children's behaviour and the need for effective discipline. None of the key organisations working with families or in supporting parents believes smacking is helpful or justifiable, but they do believe - and said so to the section 58 inquiry - that the legality of smacking is getting in the way of promoting effective parenting. We need to remove this obstacle, take a deep breath and, as a nation, agree what is meant by positive discipline - setting boundaries, age-appropriate responses, positive reinforcement, role modelling and so forth.

*"Many of our members advised that parents do not know how to discipline their child and so they continue to draw on their own experience and perpetuate the learned behaviour from their childhood. Some know that they should not smack but don't know what else to do and either resort to smacking or 'giving in' to the child. With education and information on behaviour management this cycle can be broken... This, however, needs to be backed by a clear and consistent message to remove confusion currently in existence."*

(Royal College of Nursing)<sup>17</sup>

## Children need protecting now

The Government has said that it does not condone smacking and welcomes the evidence that it is becoming less acceptable - but if it is hoping smacking will wither away of its own accord, it will wait forever. This did not happen with school corporal punishment, nor with other harmful but common practices, like drink-driving or smoking in public places. While the law continues to uphold the right of parents to hit children, parents will continue to exercise this right and generation after generation of children will continue to suffer unnecessary pain and humiliation.

Research shows that there are no good outcomes from smacking and many negative or damaging ones.<sup>18</sup> And where child protection is concerned, a well-publicised ban would enable children experiencing serious abuse to speak out, rather than suffer it in silence believing that they somehow deserved it. As The Children's Society put it:

*"Physical punishment is often used as a means to silence children... The law does not have eyes and ears into the homes of every child but it can send out a very clear message that hitting children is wrong: a message that children need to hear, so they can speak up about being abused and hurt."*<sup>19</sup>

A study in 2000 looked retrospectively at the childhood experiences of almost 3,000 young adults aged 18-24<sup>20</sup>. 7% reported abuse by their parents/carers which amounted to serious physical violence, with a further 14% experiencing intermediate assault and 3% receiving physical mistreatment causing concern: these figures will inevitably be underestimates.

Physical abuse is the third most common reason that children call ChildLine, with an average of more than two calls each hour about physical assaults, every hour of the year. Some children report being hit because of a specific disciplinary incident, sometimes being repeatedly punished for a single incident. More than one in three of the children (36%) said that they had been hit with an implement, bruised, or wounded. In many cases, there was a low level of violence for some time, which escalated due to an event in the adult's life. Some children spoke of very severe abuse and commented that they "deserved it".<sup>21</sup>

<sup>17</sup> Response to the Government's review of section 58 of the Children Act 2004

<sup>18</sup> See Gershoff's meta analysis of 88 studies of 'ordinary' physical punishment, note 5 above

<sup>19</sup> Response to the Government's review of section 58 of the Children Act 2004

<sup>20</sup> Cawson P, Wattam C, Brooker S and Kelly G (2000), *Child maltreatment in the United Kingdom: a study of the prevalence of child abuse and neglect*, NSPCC

<sup>21</sup> NSPCC (2006), *Childline Casenotes: What children and young people tell Childline about physical abuse*