

Children Are Unbeatable! Newsletter England

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Parliament and Government

Wales

There is real hope for a ban on physical punishment in Wales following the National Assembly elections on May 5. In the run up to the elections, Welsh Labour included in the detail of its manifesto: “Seek cross party support for legislation to end the defence of ‘reasonable punishment’”. And Plaid Cymru’s manifesto has included a commitment to “introduce legislation to remove the defence of reasonable punishment”. CAU! Cymru will be campaigning for introduction of the necessary legislation early in the new session.

What you can do:

This newsletter only goes to CAU! supporters in England, [CAU!-Cymru](#) is separately coordinated. If any readers have supportive contacts in Wales, please send details to Sara Reid, Coordinator of CAU! Cymru, sara.reid.cymru@gmail.com.

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Across the world

Three more countries have outlawed all physical punishment of children – Ireland (as predicted in our last newsletter), Peru and Mongolia. This brings the number of countries with a full ban to 49. Our sister organization, the Global Initiative to End All Corporal Punishment, has launched an interactive [map](#) showing country-by-country progress towards universal prohibition.

The Irish ban came into force on 11 December 2015. Speaking in Seanad Éireann (the upper house), Senator Jillian van Turnhout, who tabled the original amendment, said:

“Through its colonial past, England has been responsible for rooting this legal defence in over 70 countries and territories throughout the world.... [This amendment] will hopefully give confidence to the Government at Westminster, the devolved UK Administrations and other countries across the globe to discard these archaic and disreputable defences and give full respect to the dignity of children.... There must never be a defence for violence against children.”

In addition Greenland, the self-governing territory of Denmark, has also prohibited corporal punishment of children.

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Child protection

It appears that parents who cut or bruise children are now able to use the defence of “reasonable punishment” under section 58 of the Children Act 2004.

Children Are Unbeatable! was shocked to discover that in 2011 the Crown Prosecution Service (CPS) quietly changed its charging standards on common assault, removing “reddening of the skin” as the upper threshold for a charge of common assault on a child.

These changes place the UK unarguably in breach of the Human Rights Act/European Convention on Human Rights (as well as other human rights obligations). It also adds weight to a long-standing suspicion that few cases of corporal punishment are challenged by police or CPS and that parents continue to inflict painful, violent, humiliating and injurious discipline with impunity.

Section 58 was introduced to remedy *A v UK*, the 1998 European Court case which found the UK in breach of the European Convention on Human Rights after a man was acquitted for caning his stepson, causing bruising and weals. The reformed law provided that parents and others acting *in loco parentis* could only raise the defence of “reasonable punishment” in cases of common assaults on children. But because common assault includes injuries like black eyes, bruises or cuts the previous CPS

charging standards specifically advised that where the victim was a child or a vulnerable adult the threshold for defining common assault would be changed, so that:

“other than reddening of the skin, the charge will normally be assault occasioning actual bodily harm [ABH].”

These provisions have allowed successive Governments to claim UK law only permits “mild smacks”, most recently in the UK Government’s report to the UN Committee on the Rights of the Child. The Government will be examined by the Committee on May 23.

Now, the [new charging standards](#) advise that an ABH charge may only be laid if the injuries are “serious” and that:

“In determining whether or not the injuries are serious, relevant factors may include, for example, the fact that there has been significant medical intervention and/or permanent effects have resulted. Examples may include cases where there is the need for a number of stitches (but not the superficial application of steri-strips) or a hospital procedure under anaesthetic.”

The new standards also say that, in exceptional cases, a common assault may be changed to ABH if there are aggravating factors as set out in the Sentencing Council’s [definitive guidance on assault](#). These factors no longer include child victims. The victims “vulnerability” is an aggravating factor but vulnerability is, of course, a imprecise concept. But even if a child victim is deemed vulnerable the new standards stress that aggravating factors may *only* be considered insofar as they might affect the likely sentence and that before an ABH charge can be laid for a common assault injury such as bruises or cuts there must be a likely sentence of over six months’ imprisonment.

It is extremely unlikely a six month sentence would be passed on parents of dependent children for “non-serious” injuries caused by physical punishment. Certainly this is the view of the Sentencing Council which goes out of its way to urge leniency for what it calls “lawful chastisement”:

“There will be circumstances where the defendant has been charged with an assault occasioning actual bodily harm and the court finds as fact that the defendant only intended to administer lawful chastisement to the child, and the injury that was inflicted was neither intended nor foreseen by the defendant.

Although the defendant would have intended nothing more than lawful chastisement (as currently allowed by the law), he or she would have no defence to such a charge because an assault occasioning actual bodily harm does not require the offender to intend or even foresee that his act will result in any physical harm; it is sufficient that it did. Such a finding of fact should result in a substantial reduction in sentence and should not normally result in a custodial sentence. Where not only was the injury neither intended nor foreseen, but was not even reasonably foreseeable, then a discharge might be appropriate.”

([Definitive Guideline: Overarching Principles: assaults on children and cruelty to a child: Sentencing Guidelines](#))

We do not yet know why these changes to the charging standards were made or who was involved. The CPS told us: “The CPS sought views from interested parties on the charging standards when in draft and the DPP chaired a roundtable that included the magistracy and ACPO (NPCC) [the Association of Chief Police Officers/National Police Chiefs Council] to discuss them. There was general support for the new charging standards.”

It does not appear that any health, social work or voluntary bodies working in child protection were either consulted or informed of the changes. Certainly there has been no change in advice to professionals: even the Authorised Professional Practice Guidance for the Police on the College of Policing website still refers to the “reddening of the skin” threshold for the defence of “reasonable punishment”.

Children Are Unbeatable! will continue to investigate why and how the changes occurred and what this means for children. It will also inform the Committee on the Rights of the Child of the new situation under the revised standards.

What you can do

- Please give us any information about any cases you know of that have involved the defence of “reasonable punishment” under section 58 of the Children Act 2004 since 2011.
- If you come into contact with an LSCB which has not yet decided to support CAU! (see the [full list](#) of supporting LSCBs under “Local Safeguarding Children Boards”) please encourage them to consider (or revisit) this decision.
- If you sit on an LSCB, please ask the chair to place CAU!’s renewed invitation to support its aims on the board meeting agenda. Contact Rachel Hodgkin (0208 889 9034 or rachel@childrenareunbeatable.org.uk) if you would like any information or materials to present to the chair and board.
- Tell us about any local or national possibilities for the Alliance to discuss changing the law on physical punishment with child protection professionals, and to encourage their support for the Alliance. Opportunities might include conferences, training sessions or informal meetings.

Physical punishment in madrassas

At the end of 2015 the Government unexpectedly published [proposals](#) for the registration and inspection of “out-of-school education settings” in England. The prime motivation was to tackle extremist teaching in madrassas but the proposals also included prohibiting corporal punishment.

Out-of-school settings are institutions which provide instructions to under-19 year-olds that are not schools, colleges or nurseries. The Government proposes that any institution providing fewer than six to eight hours education a week per child, or settings catering exclusively for children referred by schools or local authorities, need not be registered or inspected. But where corporal punishment is concerned: “We propose to ensure that corporal punishment is not a practice adopted in out-of-school settings, regardless of the number of hours which children attend the setting.”

This means, effectively, that corporal punishment will be banned in madrassas and other religious schools, like Orthodox Jewish schools and Sunday schools. This is obviously welcome. Also welcome is the proposal's identification of corporal punishment as a "harmful practice."

However the proposal does not state how the Government will ensure children in unregistered settings are fully protected from corporal punishment. This should be done through legislation rather than through voluntary measures like standards or codes of practice.

Moreover the prohibition on corporal punishment does not cover all out-of-school education, only education which occurs in institutions. For example, music teachers may teach in the family home or sports coaches may use sports grounds or parks (for violence in sport, see [research](#) below). It is completely illogical to exclude this group of teachers from regulation since their pupils' isolation makes them particularly vulnerable to abuse.

The proposed ban on corporal punishment also does not cover people who have temporary responsibility for children, such as baby-sitters, private foster parents or parents' partners. The Government could not conceivably wish this group to have recourse to the "reasonable punishment" defence under section 58 of the Children Act 2004 (regardless of parents' expressed wishes) since a disproportionate number of child deaths and serious injuries have been perpetrated by such individuals under the justification of "discipline", but nothing is being done to stop them.

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Painful restraint in locked settings

Physical abuse in Medway secure training centre

In November 2015 HM Inspector of Prisons published [Behaviour Management and Restraint in Custody](#) which reviewed "MMPR" the new system for "minimising and managing physical restraint" in young offender institutions (YOIs) and secure training centres (STCs) and found "no evidence to justify the deliberate infliction of pain".

Three forms of painful restraint are currently permitted in these locked institutions, though not in secure children's homes which also imprison child offenders. These are "thumb flexion", "wrist flexion" and "mandibular angle" (pressure on a nerve point in the jaw). The review found a number of unsatisfactory practices, including the use of pain:

"Restraint policy agreed by ministers states that staff should only use pain as a last resort to prevent an immediate risk of serious physical harm, but we found that pain-inducing techniques were used frequently in YOIs, and that in most cases staff were not compliant with this requirement. It is notable that staff in STCs dealing with similar incidents did not use these techniques. We also found underreporting of the use of pain-inducing techniques in YOIs, reducing the effectiveness of local and national safeguards. We found no evidence to justify the deliberate infliction of pain as an approved technique."

Shortly after this publication, an undercover investigation for a BBC Panorama [programme](#) showed members of staff at Medway STC mistreating children – including slapping, using neckholds to restrict breathing and boasting of stabbing one child with a fork and making another cry uncontrollably. Five members of staff were arrested, the director resigned, and G4S (which runs Medway) announced that they would be selling all their children’s services in the UK. The Youth Justice Board initially suspended placements of young offenders at Medway but have now resumed these placements, despite protests.

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Human rights pressure on the UK

A UK Government delegation will be examined orally by the Committee on the Rights of the Child on May 23 and 24 in Geneva and the Committee’s Concluding Observations will be published early in June. The UK’s failure to ban all forms of physical punishment will, as in all previous examinations, be the subject of deep concern to the Committee.

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Research

Scottish review of research on physical punishment

A systematic [review of research](#) literature on physical punishment, jointly commissioned by four Scottish organisations: Barnardo’s Scotland, Children 1st, the Children and Young People’s Commissioner Scotland and NSPCC Scotland, was published in November 2015. The report found strong and consistent evidence from 98 studies that physical punishment damages children’s wellbeing and carries risk of escalation into severe abuse. It highlights evidence that physical punishment increases aggression, antisocial behaviour, depression and anxiety in children and in later life. It found no evidence that a change to the law results in increased criminal proceedings but rather that it facilitates culture change. It concludes:

Research papers commonly conclude that ‘more research is necessary’. However, when the existing evidence is as strong as it is in the case of physical punishment, and given that physical punishment is a clear human rights violation, there seems to be little value in calling for more research on its effects. To borrow Gershoff’s words: ‘We know enough now to stop hitting our children.’

The report was endorsed by key Scottish agencies, and the commissioning organisations hope it will spur the Scottish Government to support legislative reform, particularly following the recent ban in the Republic of Ireland.

New meta-analysis on smacking

Despite a large body of research showing physical punishment is associated with detrimental outcomes for children and families, researchers supporting physical

punishment have criticized these studies for being methodologically weak, and particularly that spanking or smacking (that is, hitting buttocks or extremities with an open hand) is confounded with “physical abuse”. A [new meta-analysis](#) by Elizabeth Gershoff and Andrew Grogan-Kaylor focused specifically on studies addressing spanking, involving a total of 160,927 children. Spanking was found to be associated with increased risk of 13 detrimental outcomes, with no evidence found that spanking has beneficial outcomes.

Parental discipline and bullying in schools

[A study](#) of 2060 Spanish high school students found that parents’ use of physical punishment or psychological aggression correlated with teenagers’ vulnerability to bullying or to being a bully, with physical punishment having a particularly negative effect on girls. The authors recommend anti-bullying programmes include “re-educating family members in the interests of fostering positive parental parenting styles.”

Interpersonal violence against children in sport

Over 4000 Dutch and Belgian adults who participated in organized sport as a child were [surveyed](#) about their experience of violence during these activities. 38% had experienced psychological violence, 11% physical violence (including “forced overtraining”) and 14% sexual violence.

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