

# **Graham Allen Independent Review on Early Intervention Delivery**

## **Submission of evidence by Children Are Unbeatable!**

The Children Are Unbeatable! Alliance is an alliance of organisations and individuals campaigning for legal reform to give children the same protection from assault as adults by prohibiting all forms of physical punishment. The Alliance also seeks the active promotion of positive, non-violent forms of discipline and argues that legal reform must be accompanied by such a promotion, led by Government.

The aims of Children Are Unbeatable! are supported by more than 600 organisations and projects, including all the major early years, child protection and parent-support national organisations as well as local early years groups, Local Safeguarding Children Boards and Sure Start centres.<sup>1</sup>

Before answering the first three questions raised by the review team below it is important to state that, although this submission focuses on the evidence supporting a ban on the physical punishment of children, our campaign is not founded on this evidence.

This is because, first and foremost, UK children have a human right to equal protection from assault to that enjoyed by adults. This right is recognised and has been pursued in recommendations to successive UK Governments by many international human rights treaty bodies including the Committee on the Rights of the Child (in 1995, 2002 and in 2008), the Committee on Economic, Social and Cultural Rights (2002 and 2009), the Committee to Eliminate Discrimination against Women (2008) and the European Committee of Social Rights (2005), as well as by the Council of Europe's Commissioner for Human Rights (2008). Research evidence in support of this right is ultimately irrelevant – just as evidence showing that torture did or did not work or marriages were or were not improved by wife-beating would be irrelevant, since protection from torture and wife-beating are inalienable human rights.

In addition it must be recognised no research can ever conclusively prove that all physical punishment is bad for children's development. Research into child-rearing can never be rigorous because child development is dependent on multiple, complex and interrelated factors which are not susceptible to the scientific proofs of randomised blind control trials. One consequence of this is that the very small minority who actively support the use of physical punishment because of political or fundamentalist beliefs will always find some tiny island of research on which to stand amid the ocean of evidence contradicting it, or failing that will simply claim that we have not proved that banning smacking improves children's outcomes.

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<sup>1</sup> See full list at <http://www.childrenareunbeatable.org.uk/pages/supporters.php>

## **Question 1. What are the likely causes of impairments to children’s social and emotional capability? and how common are they across the population?**

We submit that physical punishment is a likely and well-recognised cause of impairment to children’s capabilities.

### **The difficult issue**

First, we urge this review not to duck this issue, not least because physical punishment is such a common feature of young children’s lives that a failure to address the topic would seriously weaken the credibility of the final report.

The 2008 report *Early Intervention: good parents, great kids, better citizens* by Graham Allen and Iain Duncan Smith (which the Department of Education made available when announcing this review) highlights the new physiological evidence showing the massive sensitivity of young children’s developing brains to blighting influences and repeatedly identifies violence as both a primary cause of dysfunctionality and its most alarming expression. However the report contains no discussion of physical punishment. The need for age-appropriate and empathy-encouraging forms of discipline is stressed but non-violent discipline is not mentioned apart from a reference in one box to the danger of “harsh discipline” (otherwise undefined). Given young children’s primary experience of violence is physical punishment this omission is curious, to say the least. It is hard not to speculate that the subject was avoided because of its controversial nature.

Avoidance of the subject is not new to us. For example, *Working Together to Safeguard Children*, the official government guidance on child protection reforms from the 2004 Children Act onwards completely fails to mention the topic, even though the 2004 Act changed the law on physical punishment and the triggering tragedies of the first and second editions – the deaths of Victoria Climbié and Peter Connolly – both involved their excessive physical punishment. We also know that a number of organisations made representations highlighting the importance of the issue. Silence on the subject in the 300-plus pages of *Working Together* (and all other government guidance in this area) is so striking it seems that a deliberate decision must have been made not to address it.

### **“There’s nothing wrong with the occasional smack”**

We anticipate the following argument may be raised: “We know evidence shows that severe physical punishment is bad for children’s development but that kind of punishment was explicitly made unlawful by section 58 of the 2004 Act. Parents are now only entitled to the defence of ‘reasonable punishment’ for mild smacks that don’t harm children and certainly don’t lead to their impaired development.”

There are a number of responses to this argument:

#### 1. Research shows multiple negative effects of physical punishment

In 2002 Elizabeth Gershoff conducted a meta-analysis of 88 studies on the effect of “ordinary” corporal punishment, specifically excluding studies on “abuse” (i.e. assaults

requiring state intervention).<sup>2</sup> The meta-analysis showed a strong consensus on physical punishment's many negative outcomes, including eroded parent-child relationships, weak internalisation of moral standards, increased child aggression, violence in later life and poor mental health. Twelve of the studies examined the relation of physical punishment to mental health problems of children, such as anxiety and depression, and eight examined its relationship to mental health problems in later life; without exception, these 20 studies revealed that physical punishment was associated with an increased probability of mental health problems. Thirteen studies investigated antisocial behaviour: in 12 of the 13 studies physical punishment was found to be associated with a higher probability of delinquent and anti-social behaviour. The same near unanimity (four out of five) was found for studies of the relation between experiencing physical punishment as a child and later adult criminal behaviour.

Since the meta-analysis in 2002 a number of other studies have been published on physical punishment confirming these undesirable outcomes or associations. For example, a US longitudinal study of the disciplinary practices of over 2,573 low-income parents found that "spanking" one-year-olds led to more aggressive behaviour and less sophisticated cognitive development in the next two years, even after factors such as family income and structure, mothers' race and ethnicity, age, and education and the children's gender were taken into consideration.<sup>3</sup> (It should also perhaps be noted that the study found verbal punishment without smacking had no effect on children's aggression or their cognitive development, and when verbal punishment was accompanied by emotional support from the mother, the children did better on the tests of cognitive ability – a pleasant confirmation of the *Early Intervention* report's comments on empathetic discipline.)

In short, there is such a mountain of evidence against physical punishment that its supporters do not now seek to disprove its harm, but rather they argue that it is the wrong sort of physical punishment that creates these negative outcomes and there is no evidence that "non-abusive smacks" are in any way harmful<sup>4</sup>.

## 2. Even "light" physical punishment carries risks

Those who support "mild smacks" often tell themselves that these are painless taps that do not really constitute violence. But all smacks are a form of violence specifically intended to cause the child physical pain. (What happens to smacked children who say "that didn't hurt"? They get smacked again.)

While it is true that the occasional light smack does not necessarily cause lasting harm, there is no such thing as a safe smack.

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<sup>2</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>3</sup> Lisa J. Berlin, Jean M. Ispa, Mark A. Fine, Patrick S. Malone, Jeanne Brooks-Gunn, Christy Brady-Smith, Catherine Ayoub, Yu Bai (2009) *Correlates and Consequences of Spanking and Verbal Punishment for Low-Income White, African American, and Mexican American Toddlers*, Child Development Volume 80, Issue 5, pages 1403–1420, September/October 2009

<sup>4</sup> The non-abusive smack or spank has been defined as an open-handed slap to limbs or bottom of a child aged between two and seven which has not been delivered as an expression of anger or frustration.

For a start, all smacks carry a small (but avoidable) risk of causing unintended physical injury, for example because an unsteady toddler gets knocked over or a blow misses an intended target of a struggling child's leg or arm and hits their head or stomach instead.

Smacking children may also impact on their sexual development. There are an unknown number of adults who seek to spank or be spanked for sexual gratification – inspection of prostitutes' posted cards or an Internet search of "smacking and sex" will tell you as much, though there have been few academic studies in this area.<sup>5</sup> It is clear that people are not born with a sexual interest in smacking, but rather it derives from childhood experiences, which is hardly surprising when one considers that smacking involves loved parents hitting their children's erogenous zones in an atmosphere of heightened passions. The sexual behaviour of consenting adults is, of course, their own business but this particular form of sexuality is one few people would choose of their own volition and could have been entirely avoided if their parents or carers (who could not possibly have foreseen this unfortunate outcome) had not smacked them.

Probably the most fundamental danger of the parental smack is that it tells the child that hitting and violence is a legitimate response to unacceptable behaviour. Surely this is the last message we want to send children? When small children are smacked a miserable form of internalisation usually takes place whereby, confronted by a choice between thinking their parent has done something wrong or thinking their parent is right and they deserve to be hit, they choose the latter. The consequences of programming children to accept the legitimacy of violent punishment can be catastrophic. For example, official reports on domestic violence cite alarmingly high levels in the general population of the acceptability of hitting partners for perceived misbehaviour.<sup>6</sup> It is no coincidence that men often call partner-beating 'a smacking' or 'a slap' and talk about the woman having been 'out of order' or 'deserving' their violent treatment. Where have they got the idea that it is acceptable to hit someone as punishment? From their own upbringing. As your *Early Intervention* report says, more generally, "Violent crime in the western world is more deeply rooted in early years experience and less amenable than other types of crime to better policing... Better child-rearing rather than better policing is the key to tackling these offences."

### 3. The particular danger of escalation

From the point of view of this review, the risk of smacks escalating to something worse is the most urgent because it is precisely the most dysfunctional parents who are also the most likely to escalate from "mild" physical punishment to severe and frequent physical punishment.

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<sup>5</sup> See for example Ian Gibson, 1978, *The English Vice: Beating, Sex and Shame in Victorian Britain and After* Duckworth. We note that Murray Straus has produced some alarming recent evidence suggesting that corporal punishment in childhood is closely associated with coercive sex in later life – see <http://pubpages.unh.edu/~mas2/CP-Empirical.htm>

<sup>6</sup> See, for example, the 2003 White Paper *Safety and justice* which refers to a survey by Mandy Burton et al, 1998, *Young People's Attitudes to Violence, Sex and Relationships* Edinburgh: Zero Tolerance Charitable Trust, showing that one in five young men and one in ten young women think that violence towards a partner is acceptable in some situations (for instance, if the woman has slept with someone else).

Escalation is a predictable feature of physical punishment for some parents (though not, of course, for all parents) because of the one apparently “positive” aspect of physical punishment that was identified in the Gershoff meta-analysis. This is that physical punishment could be effective in gaining the child’s immediate compliance (though it should be noted it was not the only sanction which secured this). But, though it may stop children misbehaving in the short term, smacking has been found not to make them behave well in the long term: so it is liable to escalate to serious abuse since children must be smacked again, harder, when they repeat the misbehaviour. Advising parents to “avoid smacking unless it’s absolutely necessary” or “only use it as a last resort” may have the perverse result of encouraging its use: young children have a limited ability to control their own behaviour and will inevitably fail to do things that they have been frequently told about. After repeated exhortations parents are liable to conclude that smacking can’t be avoided and the last resort has been reached.

Parents who are not dysfunctional – who do not suffer from mental illness, substance abuse, deprivation and so forth – can (and often do) deliberately step backwards from the escalation trap. It is thus the parents who are the focus of this review who are the most prone to go from smacks to more serious forms of violence.

#### 4. The failure of Section 58

Section 58 of the Children Act 2004 allows the defence of “reasonable punishment” for common assaults on children. Where the victim of an assault is a child, the Crown Prosecution Charging Standard advises prosecutors to consider lowering the threshold for defining actual bodily harm to include anything more than a transient and trifling injury – so that bruises, grazes or black eyes are deemed actual bodily harm of a child and only reddening of the skin is common assault.<sup>7</sup>

The previous Government argued that this law together with the new charging standard effectively outlaws everything beyond a light slap. Aside from it being a breach of children’s rights, we do not believe that it is possible for the law to draw a line between acceptable and unacceptable forms of physical punishment. For example there are many harmful forms of physical punishment which nonetheless fall within the current definition of common assault and for which the section 58 defence could be raised, such as smacking which is excessively frequent; severe blows that don’t cause bruising (e.g. because of the child’s skin colour); physical punishment that risks but does not cause injury (e.g. to the head or kidney); physical punishment that causes pain but no injury (e.g. being made to stand or sit in painful position or carry heavy weights, being made to eat mustard, soap, chilli etc; hair pulling, pinching, finger-twisting, pressure on nerve points or sensitive parts of the body); physical punishment which degrades but does not cause injury (e.g. example a child smacked on naked bottom, or being kicked, or being physically punished in public).

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<sup>7</sup> Crown Prosecution Service guidance *Offences against the Person, incorporating the Charging Standard*, as updated October 2009, paras 9-17. It should be noted this is guidance only: a prosecutor has reasonable discretion to ignore it.

Even the Government's own publication "*Being a Parent in the Real World*" acknowledges that a common assault may rise to an unacceptable level of severity. The box explaining the law on smacking tells parents that any punishment causing "injuries" is unlawful, but then states: "It is also important to be aware that even if a parent causes no actual injury to a child, some acts such as shaking a child, dragging a child by their hair, using a belt, cane, slipper or other implement may not be accepted by the courts as 'reasonable punishment.'" It thus confirms that the "reasonable punishment" defence may be available for such unacceptable punishments and might, indeed, also be accepted by a court or jury

It could perhaps be argued that this sort of mistreatment would be prosecuted under section 1 of the Children and Young Persons Act 1933. The section provides that anyone over the age of sixteen responsible for a child under that age is guilty of an offence if he "wilfully assaults, ill-treats, neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement)." However it should be noted that section 1 does not create an offence of strict liability so the prosecution has to prove a deliberate or reckless act or failure and that the Crown Prosecution Service has also noted that the "reasonable punishment" defence, though not available for section 1 offences can nonetheless be put forward as explanation for the action.<sup>8</sup> .

In any event, since implementation of section 58, the CPS has reported a handful of cases where the defence was raised and the defendant acquitted or discharged, but there has not been a single case (to our knowledge) where a common assault of a child has been successfully challenged as "unreasonable" punishment.<sup>9</sup> This is hardly surprising given a perpetrator does not have to prove the case; rather the onus is on the prosecution to prove that a punishment was not reasonable or did not constitute common assault. Moreover, as regards assaults which do reach the level of actual bodily harm, their effective prosecution has been significantly undermined by the publication in 2008 of new sentencing guidelines on assaults on children. These state that when a child receives an injury but the parent intended "nothing more than lawful chastisement," they should get a light sentence, and if it can be shown that the injury was also not reasonably foreseeable, an absolute discharge should be considered.<sup>10</sup>

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<sup>8</sup> For example *Stone's Justices' Manual* 2009 5-80, footnote 6 comments that "a genuine lack of appreciation through stupidity or personal inadequacy will be a good defence" – a defence that could undoubtedly be deployed by many parents in such cases. *Reasonable chastisement research report*, Crown Prosecution Service, July 2007.

<sup>9</sup> CPS 2007 report and A. against the United Kingdom Judgment of 23 September 1998, Revised Memorandum of August 28 2008 ("Memorandum") prepared by the Department for the Execution of Judgments of the European Court of Human Rights in the light of the developments since the adoption by the Committee of Ministers of Interim Resolution ResDH(2004)39 on 2 June 2004; CM/Inf/DH(2008)34. 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."

<sup>10</sup> *Overarching principles: Assaults on Children and Cruelty to a child, Definitive Guidelines*, Sentencing Guidelines Council, February 2008, paragraphs 13 and 14

In short, as an attempt to draw a line between acceptable and unacceptable forms of physical punishment, section 58 plainly fails. The Scottish attempt, introducing the concept of “justifiable assault” is equally inadequate – for example it does not outlaw punishment that causes bruising or other injuries causing actual bodily harm.<sup>11</sup>

Aside from the matter of effective prosecution, there is the more important question: has section 58 in any way improved the lives of children?

When the law was enacted there was a lot of publicity which was almost invariably accompanied by headlines along the lines of “Carry on smacking!” (some literally used this headline). *The Sun*, for example, provided diagrams showing parents where and how they could hit their children, which included confusing and contradictory statements by two experts (for example one expert said caning was illegal and another expert contradicted this; one said hitting on the head was illegal and the other not; as regards “pulling a child by the ear” both experts expressed the hope that this practice was unlawful, though this hope is not correct).<sup>12</sup> The initial message to parents was thus a confusing one, but not one that discouraged the use of physical punishment.

In 2007 the Government undertook a review of the impact of section 58. Of the 1,405 respondents, including many organisations and professionals working with dysfunctional families, only 1% felt that children’s legal protection had been improved by the new law. When asked to what extent the law deterred parents from using “unacceptable” levels of physical punishment, the majority of respondents in all categories (including parents/relatives and police/legal professionals) except faith groups felt that section 58 had no deterrent effect. On helping and supporting parents, 66% felt that the law had not assisted this work at all and only 5% felt the law *had* assisted it.<sup>13</sup>

Responses to the review including the following:

“Physical punishment is not acceptable and should not be tolerated. This message has to be put across to parents as clearly as possible and not fudged as it is under section 58... The parents who continue to use physical punishment without getting ‘caught’ are the ones who need to be targeted by a public education campaign to teach them more effective strategies for disciplining their children... Section 58 undermines our promotion of positive discipline – we have to sit on the fence by not condoning the actions but wanting to maintain our contact with the parents in the hope that our advice will encourage them to change their habits.” (Parentline Plus)

“In this country it is illegal to hit another adult, even to punish them for a crime or misdemeanour. The FPI believes that giving people who are smaller and weaker fewer rights to protection in this regard is unacceptable. The argument that

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<sup>11</sup> Section 51 of the Criminal Justice (Scotland) Act 2003

<sup>12</sup> *The Sun*, July 7 2004

<sup>13</sup> DCSF (2007), *Section 58 of the Children Act 2004 Review (consultation): Analysis of responses to the consultation document*

parents have a 'right' in their own home to discipline their children as they choose, in other words that parents have proprietary rights over children and a consequent right to hit them, recalls arguments that were once used in relation to husband and wives." (Family and Parenting Institute)

"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 are also concerned that some parents may have picked up from the media that while smacking remains lawful, they must be careful not to "mark" their children. This could actually lead to more dangerous forms of physical punishment – shaking, hitting round the head and so on... We feel Ministers are under-estimating 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." (Community Practitioners and Health Visitors Association)

"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)

"Section 58 dangerously encourages parents committed to physical punishment, or those with the intention of harming children, to use forms of it which although highly dangerous, do not leave marks on victims. In addition, the specific vulnerability of black and African Children needs to be highlighted. This is simply because black skin pigmentation and tone does not easily show bruising and marks unless extreme force is applied. Section 58 therefore hampers protection for children of black and African origin." (Afruca - Africans Unite Against Child Abuse)

"The NSPCC's study of the prevalence of child abuse and neglect in the UK found that while the majority of parents used lighter forms of physical punishment, a significant number do not. 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)

"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 (toddler taming) 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)

“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 much harder. Parents who believe ‘smacking has a place in disciplining children’ feel justified in continuing this detrimental aspect of child behaviour and ever more resistant to attending parenting courses.” (Family Links)

“Our experience is that parents in general wish to have alternative strategies to the use of violence in enabling them to parent their children and readily accept using the effective alternatives available once these have been explained and learned... Introduction of a change in the law should be accompanied by a creative public health education campaign in a similar way to the smoking ban... Just as there has been resistance to the smoking ban, there is bound to be resistance to a violence ban. However, freedoms to act which damage others and damage society must be subject to the rule of law, which is then applied sensitively and proportionately.” (Coram Family)

“Physical punishment is often used as a means to silence children. Removing the defence that section 58 provides would make it easier for children to identify abusive behaviour towards them... 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.” (The Children’s Society)

### **... and how common is physical punishment across the population?**

Estimating the extent of physical punishment in the UK is problematic given it is a subject on which the perpetrators may well falsify their practice (even to themselves) and the victims are often too young to provide an accurate account.

Notwithstanding these difficulties two large-scale studies have been conducted on parental physical punishment. The first took place in the 1990s and was commissioned by the government.<sup>14</sup> This found that babies and toddlers were particularly vulnerable to being hit by parents: 75% of babies aged up to one year had been smacked by their mothers; 52% of one year-olds were smacked weekly or more often by their parents, 38% had been smacked more than once a week, and three were reportedly hit or smacked daily or more often; 14% had been smacked with “moderate” severity. Overall, 91% of children had been hit, one in five with an implement, and a third at some time experiencing “severe” punishment.

The second study, published in 2003, found that 58% of parents self-reported using minor physical punishment within the last year, 9% severe (none admitted to using “very severe” punishment over this period). Parents also reported on physical punishment

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<sup>14</sup> Nobes G and Smith M (1997), *Physical punishment of children in two-parent families*. *Clinical Child Psychology and Psychiatry*, 2(2), 271–281; also summary presented as a poster by Dr Marjorie Smith at the Fifth European Conference on Child Abuse and Neglect (International Society for the Prevention of Child Abuse and Neglect), Oslo, May 1995

during the child's lifetime: 71% minor (e.g. smacking and slapping), 16% severe, 1% very severe.<sup>15</sup>

In addition, the NSPCC conducted a study looking retrospectively at the childhood experiences of almost 3,000 young adults aged 18-24<sup>16</sup>. The findings are likely to be an underestimate of actual assaults – young adults' memories of their childhoods may be inexact, with unpleasant experiences suppressed and events in babyhood or early childhood (when parents admit they most often hit children) lost – but nonetheless 7% of the young adults reported abuse by their parents/carers which amounted to serious physical violence, with a further 14% experiencing intermediate abuse and 3% receiving physical mistreatment causing concern.

It is clear from this that most children in the UK experience physical punishment and that an alarming number experience serious assaults, many more than come to the attention of the authorities. ChildLine's figures give a small indication of what is happening now.<sup>17</sup> Physical abuse by adults is, consistently, the third most common reason that children call (after bullying and family tensions) – over 20,000 calls on the subject a year, with more than one in three of those children reporting that they had been hit with implements, bruised or wounded and some saying they “deserved” being severely assaulted. These calls can only represent the tip of a huge iceberg. Only 4% of children calling ChildLine are below eight years – the age-group surveys show are the most subjected to physical punishment – and only 60% of children calling ChildLine manage to get through to a counsellor, owing to pressure on the lines. And of course children must first of all believe they will get help on the issue from ChildLine. Given the legality and widespread social acceptability of physical punishment they are more likely to suffer it in silence.

Some Ministers in the previous Government pointed hopefully to findings which suggest that fewer parents are smacking their children these days.<sup>18</sup> While it is clear that physical punishment has become a less respectable practice, particularly in higher socio-economic groups, there is absolutely no evidence to support the belief that physical punishment would wither away of its own accord while remaining the legal right of parents – any more than other harmful but commonplace practices like drink-driving or smoking in public places stop of their own accord. As it was with school corporal punishment, where the better schools abandoned the practice but a rump determinedly carried on caning until the law prohibited its use, so with parental physical punishment. It is those parents who most need to stop smacking who will not, unless unambiguously required by law to do so.

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<sup>15</sup> Ghate D, Hazel N, Creighton S, Finch S and Field J (2003), *The national study of parents, children and discipline in Britain: key findings*, ESRC

<sup>16</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>17</sup> Most recent ChildLine figures are for the period April 2008-March 2009, but their annual analyses show very consistent numbers of calls on this issue.

<sup>18</sup> In particular, the survey of 1882 parents conducted as part of the review of section 58 which showed that smacking is less likely to be used by parents whose children are currently under 18 than those whose children are now adults, and younger parents tend to hold a more negative view of smacking.

## **Question 2. Do we know how to improve children’s social and emotional capabilities in a cost-effective way?**

Yes. Although legal reform prohibiting physical punishment accompanied by a government-led public information campaign would not be entirely cost-free, the beneficial outcomes for children massively exceed this relatively small expense.

### **The public information campaign**

The major expense would be the information campaign. This should be recognised as offering a unique opportunity to break the paralysis that grips official discussion of parental discipline.

We have already touched on the complete silence on this issue in Government guidance, with dozens of circulars on child protection, domestic violence, early years, family support, crime prevention, every child matters, every parent matters etc. being issued over the years without a single reference to the subject – not to mention official inquiries (for example neither Laming I nor Laming II mentioned it) and your own earlier report. Failure to raise the subject also pervades government-funded initiatives: for example one of the first publications of the government-funded National Family and Parenting Institute was a booklet on positive parenting of young children which managed to avoid mentioning smacking and physical punishment altogether.<sup>19</sup>

We believe that this silence is deeply unhelpful to parents and children. The reasons for it are understandable. Almost all those involved in parent education and family support do not support physical punishment in any form and would like to give parents the simple message that they must never hit their child. Many local practitioners, in fact, advise parents not to smack regardless of the law and deliberately avoid mention of section 58 lest it encourages them to smack. Official and government-sponsored information to parents, however, is not able to ignore the law. So instead we see the awkward words of the English document for parents *Being a parent in the real world*, and their Scottish and Northern Ireland equivalents, where parents are told that although smacking should be avoided and “is not the answer” nonetheless it is lawful (and confusedly so) and statements are made, like “there are many positive alternatives to smacking” or “when self-discipline is taught, smacking becomes unnecessary”, which tend to reinforce the idea that physical punishment is an acceptable part of parenting.<sup>20</sup>

Physical punishment is, ultimately, a pointless red herring that muddles discussions about what it really means to be a good parent. There is nothing good about smacking and if it was made unlawful the decks could be cleared to deliver the messages we would really like to give to struggling parents: setting boundaries, encouraging empathy, giving

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<sup>19</sup> Family and Parenting Institute, *From breakfast to bedtime*, 2003, reprinted in 2007

<sup>20</sup> See *Children, physical punishment and the law: a guide for parents in Scotland* Scottish Executive 2003; *Tips For Parents: Your Guide to Positive Parenting*, Family Policy Unit, Stormont Northern Ireland and *Safe parenting handbook* (2007) Northern Ireland Department of Health, Social Services and Public Safety.

attention to good behaviour rather than bad, listening to and understanding your child's behaviour and so forth. But instead we have to spend time explaining that, although they have a legal right to hit their children, we'd much rather they didn't and they mustn't do it too severely, though we can't be quite clear about how severe is too severe.

For this reason alone legal reform is worth embracing. Whether or not Britain is "broken" there is a general consensus that parents are struggling with how best to raise their children to be sociable, thoughtful of others and self-disciplined. We need greater clarity about such a vital matter, not yet another debate about the pros and cons of smacking.

### **Law reform as a public health measure**

Are there other potential benefits? Of course, the main one being that British children, particularly very young children (who are the most smacked), will experience far less violence and its attendant damage to development, and will not learn that violence is an appropriate way to resolve conflict.

The legal ban is essentially a public health measure – draining the swamp – explained as follows:

“From a public health perspective, preventive interventions targeting risk factors that are highly prevalent in a population 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>21</sup>

In other words, a reduction of serious child abuse can be achieved by tackling widespread low-level violence against children and social tolerance of this violence, as well as by developing interventions targeted on the relatively small number of families who are identified as being at risk of serious violence. This approach has been adopted in relation to other spheres, for example in the zero tolerance campaigns by police forces in cities with high levels of serious crime, or in safe driving campaigns. In 2004, when section 58 was being introduced, the *British Medical Journal* published a leading article by Sarah Stewart-Brown, Professor of Public Health at Warwick University, in which she argued that:

“The long term solution has to be legislation for a complete ban on physical punishment coupled with widespread parenting education and support of the sort proposed in the recently published national service framework for children, young people, and maternity services... We need to remember that it took 10 years of public debate and intensive lobbying by those who knew it made sense before an earlier government had the courage to pass legislation requiring car drivers to wear seat belts, but such legislation was passed in the end.”<sup>22</sup>

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<sup>21</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>22</sup> *British Medical Journal* 329 Saturday November 20 2004, 1195-6

### **Does it work?**

This is simultaneously easy to answer – yes, we can see it works from the experiences of other countries that have already banned physical punishment – and difficult, because this evidence has been as fiercely disputed as the evidence on whether climate change is man-made or smoking causes cancer. Banning physical punishment of children is up there with banning capital punishment, gun laws and abortion choice as one of the great European evils identified by fundamentalists in the US, who have funded energetic campaigns against it in America and other countries. And in this country, though smacking is becoming much less respectable, some newspapers are still eager to defend it as a parental right and promote spurious research supporting its use.

To give one recent example, in January this year much media coverage was given to research purporting to study over 2,600 adults which found that children who were smacked between the ages of 2 and 6 were more likely “to do well at school, do more volunteer work and go to university” than those that were not.<sup>23</sup> In fact it turns out that this research, which failed peer review, only studied the self-rated behaviour of 177 teenagers (of which 42 said they had not been smacked) none of whom had completed high school let alone gone to university. Insofar as it showed anything, it showed that smacking after the age of six, and particularly after 11, was likely to make children significantly more violent.

And Children Are Unbeatable! has learned one lesson from the countries that have banned, which is that any reform must be energetically promoted. For example Finland passed its law over twenty-five years ago, but did little to disseminate information about the new law or to promote positive parenting. A survey of 1,000 Finnish people in 2007 found that at least a quarter considered corporal punishment acceptable in some situations and 73% of women and 68% of men reported they had sometimes used physical punishment.<sup>24</sup> While the prevalence of physical punishment, particularly severe assaults, is considerably lower than in Finland than other European countries where hitting is still legal, it is clear that law reform on its own will not suffice. This has been confirmed by the findings of comparative research between seven Eastern European countries in 2005 and 2009, four of which have passed laws banning all physical punishment but did not accompany this with an information campaign, and changes in behaviour in these countries have been slow and unimpressive.<sup>25</sup>

### Sweden

Sweden was the first country to explicitly prohibit all forms of physical punishment, in 1979, and has inevitably attracted the most attention, both from those that support a ban and those that do not. We are therefore including more detail on this country than any

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<sup>23</sup> See, for example, *The Daily Mail*, *Express*, *Daily Telegraph* and *Sunday Times*, of January 3 and 4 2010.

<sup>24</sup> Research commissioned by the Central Union of Child Welfare, reported in *Helsingin Sanomat*, International Edition, 27 September 2007

<sup>25</sup> Centre Against Abuse ‘Dardedze’ et al, 2009, *The Problem of Child Abuse: Attitudes and Experiences in Seven Countries of Central and Eastern Europe - comparative report 2005-2009*  
[http://www.canee.net/bulgaria/problem\\_of\\_child\\_abuse\\_in\\_central\\_and\\_eastern\\_europe\\_in\\_2005\\_2009](http://www.canee.net/bulgaria/problem_of_child_abuse_in_central_and_eastern_europe_in_2005_2009)

other, because we know that politicians are continually fed a lot of misinformation about it.

When the law was passed in 1979 Swedish critics predicted that the ban would lead to large numbers of parents being branded as criminals and that it breached rights to religious freedom and to respect for private and family life. The government therefore undertook to ensure that the new legislation achieved its intentions, including commissioning regular independent research to discover the impact of the ban.

In 2009 the Swedish government published a booklet *Never Violence – Thirty Years on from Sweden’s Abolition of Corporal Punishment* which summarises this research. The findings overwhelmingly confirm that the ban was followed by positive results. Although smacking does not entirely disappear (any more than other forms of domestic violence disappear when made unlawful), both children and parents report a steady decrease in the use of physical punishment over the three decades, particularly where severe or frequent punishment is involved, and also parallel changes in attitude, so that parental support for physical punishment is now below 10%:

“In 1981, two years after the anti-smacking ban was introduced – and following an unprecedented publicity campaign – more than 90 per cent of Swedish families were aware that the law had changed. But did the campaign also produce changes in values and actual behaviour? The Government Committee on Child Abuse concluded in its report “Child Assault – Prevention and Action” [2001] that most preschool children in the 1960s had been smacked by their parents once or several times per year, and that one third were smacked regularly. Figures from the 1970s indicate that less than 50 per cent of children experienced smacking during this era. During the 1980s this figure fell further to around one third. After 2000, data provided by parents suggests it is now down to just a few per cent. Not only has the number of children who are smacked fallen, but those who are still smacked experience this less often and only rarely with implements (1–1.5 per cent).

Not until 1994 were children themselves asked to say how often they were smacked at home. In 1994, 35 per cent said they had been smacked at some previous point in time, and after 2000 this figure has fallen considerably. One in ten of those who had been smacked said they were smacked regularly, and the same ratio said they were smacked with implements. Thus, schoolchildren born around 1990 say they are smacked considerably less often and with less force than children born ten years earlier.

Interviews with parents in 1980, 2000 and 2006 reveal a sharp decline in the more serious forms of physical punishment, such as punching or use of implements. This means that forceful punishments with the potential to cause serious injury have decreased substantially... [The research] also shows a narrowing gap between the number of parents who are positive to physical punishment and the number who actually inflict physical punishment. In the 1960s, there was a wide

gap between what respondents considered to be right and how they actually behaved: many thought it was wrong to use physical punishment but did so anyway. As time went by, people learned new ways to raise their children, gaining new insight and experiences that enabled them to dismantle old codes of behaviour. For every decade that passed, fewer children were subjected to physical punishment – and more parents stopped doing what they believed was wrong.”

The government attributes these changes in attitudes to a number of factors, not just the smacking ban – for example Sweden’s highly developed welfare system, anti- and post-natal support for children, universal daycare provision and greater equality between the sexes. It also reports on the official statistics on youth crime because of claims being made that “Swedish youth have been getting into more trouble since physical punishment was banned.” Statistics show that there has been a decrease in youth crime generally in Sweden since the mid-1990s, though violent offences have remained relatively constant. The report also notes the research on risk factors leading to criminality, showing that poor or violent parenting significantly increase the risk of children engaging in criminal activity.

As regards serious assaults:

“Cases of suspected assault on children reported to the police have increased since the early 1980s, rising by 190 per cent between 1990 and 1999 (Children and Assault – A Report on Physical Punishment and Other Abuse in Sweden in the Late 1990s). Opponents of law reform have claimed that this increase in reporting reflects an actual increase in assaults and use these figures to suggest that banning physical punishment increases child abuse. But this increase in reporting reflects the fact that tolerance of assaults on children has decreased, so people are more willing to inform the authorities about suspected cases. Violence that was once a family secret is more likely to be reported today because we are less likely to excuse or minimize instances of physical abuse of children by parents or others close to them.

Contrary to what the law’s critics predicted in 1979 – and contrary to what today’s opponents of law reform continue to predict, the proportion of reported assaults that are prosecuted has not increased. This is partly due to the fact that it is extremely difficult to obtain convictions for crimes committed within the four walls of a home where there are no witnesses other than the perpetrator and the child. The legal system does not allow a lower burden of proof in cases of assault on children than in other criminal cases. But the fact that only a small proportion of child assault reports lead to prosecution does not mean that children and parents do not receive support or protection. Social services investigate all allegations of child maltreatment, assess the family’s need for support and the child’s need for protection and provide a range of supportive and preventive measures.”

The report's reference to "today's opponents of law reform" includes academics, of which the most vocal is Professor Robert Larzelere of the University of Nebraska, who has written extensively on the Swedish ban and, in particular, has criticised the findings of Professor Joan Durrant, University of Ontario. Durrant's review of research published in 2000 and mostly using official government figures, showed that the ban, whether directly or indirectly, resulted in benign outcomes including improved child protection.<sup>26</sup> In 2004 Professor Larzelere published a critique of these findings claiming that in fact Swedish children were suffering more violence as a result of the ban<sup>27</sup>:

"At every point, the evidence contradicts Dr. Durrant's conclusions. The decline in acceptability of smacking in Sweden occurred prior to their 1979 smacking ban and, if anything, has reversed since then. Their rates of physical child abuse and criminal assaults by minors against minors have increased at least five- or six-fold since the smacking ban. Finally, their programs to support childrearing include removing children from their homes far more often than in most other countries. Before other countries follow Sweden's example of a smacking ban, they need to explain Sweden's subsequent increase in child abuse and criminal assaults, if they hope to avoid those consequences of the Swedish example. As one of the least violent countries in the world, perhaps Sweden can afford a six-fold increase in criminal assaults by minors against minors. Most countries cannot risk a six-fold increase in criminal assaults by minors.... Policy makers need more clear-cut, unbiased evidence that smacking is invariably detrimental before they impose the view of anti-smacking advocates in the face of generations of disciplinary practices by parents in most cultures."

These are not new arguments – for example Durrant and Larzelere had already submitted detailed affidavits in the Canadian Supreme Court case in the late 1990s challenging the constitutionality of physical punishment which cover the same data and arguments. In 2005 Durrant produced a 40-page booklet specifically refuting every one of Larzelere's claims. She points out that reporting of child abuse rose but not abuse itself, in that there was no increase in reports of aggravated (i.e. more serious) assaults and that a study by the Swedish National Crime Prevention Council concluded the increase seen in reporting did not reflect a true increase in violence against children; that his claim about the numbers of children removed from home is based on a serious misreading of 1982 care figures, which in any event declined by 20% over the next decade and that reports of child on child assaults can be shown to have risen at the point when zero tolerance for school bullying was introduced. She also challenged his objectivity on this issue in

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<sup>26</sup> Durrant, J. E., (2000) *A Generation Without Smacking: The impact of Sweden's ban on physical punishment*, London: Save the Children UK

<sup>27</sup> Larzelere, R E (2004) *Sweden's smacking ban: more harm than good*, Families First and The Christian Institute

general.<sup>28</sup> Larzelere then posted a response to her refutation, but Durrant told us she was tired of repeating herself and would not engage with him again.<sup>29</sup>

Larzelere is widely quoted by defenders of physical punishment around the world but is clearly partisan. Of greater concern was UNICEF's Innocenti Research Centre's 2003 publication *Report Card 5: A League Table of Child Maltreatment in Rich Nations*. As quoted by Conservative MPs in the 2004 Children Act debates, this report shows a table of the annual number of deaths from maltreatment among children under the age of 15 years averaged over a five year period and expressed per 100,000 children in the age group, in which Sweden has more such deaths on average (0.5) than the UK (0.4).

However when deaths of "indeterminate intent" are factored in, the UK slips to seven places below Sweden (though in this table Spain is shown as having the fewest maltreatment deaths and Portugal having the most, more than even the US or Mexico). And UNICEF is frank in confessing that both tables are suspect, noting that while the first table is plainly inaccurate, the revised table also has its flaws: "It may, for example, punish countries that are more sensitive to the child abuse issue and more zealous in reporting it (for example those countries in which suspicious child deaths are more carefully investigated and more likely to be classified under 'undetermined cause' as opposed to 'accident')." The report also notes that child deaths are not necessarily the result of long-term maltreatment: "A review of almost 100 child deaths in Sweden, for example, has shown that more than half involved a mother or father who killed his or her children before committing suicide." Although the UNICEF report makes a strong case for banning physical punishment, no doubt it will continue to be used to falsely claim that Sweden has proportionately more child deaths from abusive assaults than the UK, along with the other misinformation about Sweden.

We are satisfied that the Swedish Government is correct in its claim that the ban on smacking has been enormously effective in changing behaviour and attitudes for the good, and that the supporters of physical punishment have deliberately disseminated inaccurate allegations about the state of Swedish children, but we would encourage you to review the evidence and make up your own mind about this.

#### Other countries

Apart from Sweden, little research has been undertaken in the other 28 countries that have banned all forms of physical punishment.<sup>30</sup> There are some studies of prevalence of and attitudes towards physical punishment before and after the bans, which are

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<sup>28</sup> Durrant, J. E. (2005) *Law Reform and Corporal Punishment in Sweden: Response to Robert Larzelere, The Christian Institute and Families First*, University of Manitoba

<sup>29</sup> Larzelere R. E. (2005) *Differentiating Evidence from Advocacy in Evaluating Sweden's Spanking Ban: A Response to Joan Durrant's Critique of my Booklet "Sweden's Smacking Ban: More Harm Than Good"* <http://ches.okstate.edu/facultystaff/Larzelere/rdurrunl.75.pdf>

<sup>30</sup> Sweden (banned in 1979), Finland (1983), Norway (1987), Austria (1989), Cyprus (1994), Denmark (1997), Latvia (1998), Croatia (1999), Bulgaria, Germany and Israel (2000), Iceland (2003), Romania and Ukraine (2004), Hungary (2005), Greece (2006), Spain, Venezuela, Uruguay, Portugal, New Zealand and Netherlands (2007) Liechtenstein, Luxembourg, Republic of Moldova and Costa Rica (2008), Kenya, Tunisia and Poland (2010)

sometimes contradictory or implausible. However all make one thing clear: although support for physical punishment is everywhere declining, only one country of the 29 has enacted a ban on the back of favourable public opinion.<sup>31</sup> All the others introduced prohibition of smacking against the majority view of parents and the general public, although these views have been shown to change quite rapidly after prohibition, particularly among younger parents. A ban therefore requires leadership from Government, rather than reactive policy based on popular polls.

New Zealand is the only English-speaking country to have banned, in 2007, after fierce debates and public demonstrations which no doubt would also occur in the UK (US funds supported the pro-physical punishment campaign in New Zealand and could be expected to do so here). The Government's research into prosecutions is dealt with below, but it should be noted that – despite a citizen-initiated referendum in 2009 against the smacking ban – surveys are showing a decline in the acceptability and use of physical punishment since the ban, and the new Conservative government decided to keep it.<sup>32</sup>

As regards other European countries, a study carried out between October and December 2007 examined five European countries: Sweden, Austria and Germany, which have prohibited corporal punishment, and France and Spain which had not prohibited corporal punishment at the time of the study (Spain prohibited all corporal punishment in December 2007).<sup>33</sup> Five thousand parents (1,000 in each nation) were interviewed about their use of and attitude towards corporal punishment.

Nearly all forms of corporal punishment were used significantly less in countries which had prohibited than in those where corporal punishment was still lawful. For example, while over half of French and Spanish parents had “spanked” their child's bottom, only 4% of Swedish parents and around 17% of Austrian and German parents had done so. Alarmingly, nearly half of Spanish and French parents said they had used severe corporal punishment (a resounding slap on the face, beating with an object or severe beating) on more than one occasion, compared with 14% of Austrian and German parents and 3% of Swedish parents. Parents in nations where corporal punishment was prohibited at the time of the study showed less acceptance of justifications for corporal punishment: 20% of Spanish and 27% of French parents agreed that “a slap on the face is sometimes the best/quickest way to deal with a situation”, compared with 15% of German, 13% of Austrian, and 4% of Swedish parents.

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<sup>31</sup> The only exception to this is, ironically, Finland. Two years before its ban in 1983 a public opinion survey asked “After long debate, the physical punishment of children was banned by the Swedish Parliament. In your opinion, should a similar law be passed in Finland too?” 60% of respondents agreed that a similar law should be passed.

<sup>32</sup> The 2009 referendum question was “Should a smack as part of good parental correction be a criminal offence in New Zealand?” Although it received a large majority of “no” votes, the confusing and presumptive wording of the question was widely criticised. In September 2010 the far right party (ACT) tabled for a bill to repeal the anti-smacking law, which was defeated by 115 to five (the five ACT MPs).

<sup>33</sup> Bussmann, K. D. (2009) *The Effect of Banning Corporal Punishment in Europe: A Five-Nation Comparison*, Martin-Luther-Universität Halle-Wittenberg

From this survey one can, again, be confident that a smacking ban contributes to a reduction of violence to children, including the kind of severe violence that everyone agrees is likely to impair their development.

### **Question 3. If we know how to improve children's capabilities in a cost effective way, why are we not doing so?**

This is, of course, a key question. Considering all the evidence against physical punishment, the complete absence of anything in its favour and the strength of the human rights obligations, one could have expected a complete ban years ago.

There seem to be three main reasons for this not to have happened:

The first and most obvious reason why physical punishment has not been banned is political caution. As described above (pages 7-9), although the overwhelming verdict in the section 58 review from professionals working with dysfunctional families was negative, as was a survey of children's views conducted as part of the review, the Government chose to rely instead on its poll of 1,822 parents, almost 70 % of whom expressed opposition to a complete ban on physical punishment, a finding which is replicated in most (though not all) polls on the subject. In addition to public opposition, influential newspapers – particularly *The Mail* and *The Sun* – have vigorously opposed a smacking ban (although not recently), and a small minority of fundamentalist Christians energetically responds to any threat to physical punishment with well-funded lobbying campaigns. In the face of all this it is not surprising that successive Governments opt to avoid such a tricky issue.

This review is of course independent of Government and political considerations and we hope it will not confine its recommendations only to uncontroversial matters. However in any event we believe that circumstances have changed the political calculation that banning smacking is more trouble than it is worth.

While no doubt there will be an active campaign against a ban, extremely vociferous but small in numbers (few people actively enjoy defending the hitting of children and every newspaper now has a sizeable number of journalists who don't believe in it), there is now an impressively large and influential body of individuals and organisations who would give the Government strong and energetic support if it took this step – for example all the relevant Royal Colleges (paediatric, nursing, general practice, psychiatric, speech therapy and midwives) and all the parent education and support organisations, health visitors, child protection and early years providers that the *Early Intervention* report identifies as the essential partners for creating change at the grass roots are passionate in their support for a ban. As regards religious opposition, many mainstream religious groups and religious leaders are now supporters and the Churches' Network for Non-Violence (a sister group to Children Are Unbeatable!) sets out the Christian case for ending all violence to children, including physical punishment.<sup>34</sup> (It should also be noted that the

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<sup>34</sup> <http://www.churchesfornon-violence.org/charter.html>

human rights claim for respect for religious belief in physical punishment was lost decades ago, when seven Swedish parents were turned down by the European Court of Human Rights on the grounds that the Swedish ban was a legitimate measure “intended to protect potentially weak and vulnerable members of society.”<sup>35</sup>)

The fact is a ban is now inevitable, and with the majority of European Union countries having already enacted prohibition (and with only four now without government commitment to do so), the question may soon be, is the UK going to be the last country in Europe to protect children from being hit? There is also the consideration that a Coalition-led ban is likely to have relatively muted opposition in Parliament: it is unthinkable that Labour, many of whose members were deeply unhappy about being strongly whipped into opposing a full ban, would decide to spring to an active defence of smacking.

The second reason is that politicians are not alone in their reluctance to engage with the issue. Physical punishment is a deeply personal matter for everyone, which – because it relates to our childhoods and how we have parented our own children – involves feelings more than intellects. Almost every organisation signing up to the aims of Children Are Unbeatable! has only done so after internal struggles and debates; the issue has plainly tested the objectivity of academics; professionals frequently display a blind-spot about the role physical punishment plays in, for example, child protection or domestic violence, and many individuals tell us of the struggle they had in reaching the simple truth that we shouldn't hit children. Physical punishment is a traditional part of the British society (as it is a traditional part of almost all societies) with deep roots in our culture and psyche.

The purpose of Children Are Unbeatable! is definitely not to denounce parents for doing something that was expected of them and they thought was right. Most members of Children Are Unbeatable! were smacked by their parents and have smacked in their turn and do not support the campaign from any sort of holier-than-thou position. Its purpose is to move society on, just as we moved on from a society where women were second-class citizens who could be beaten by their husbands, not to persecute or guilt-trip parents.

The third reason is that there is a strong and entirely understandable reluctance to interfere with private family life, to undermine parents' autonomy and self-confidence with “nanny state” laws instructing them how to rear their children and, in this instance, criminalising every parent who inflicts even the mildest smack.

As regards the “criminalisation” of parents, while it is true that if children are given the same protection under assault laws as everyone else then even a mild tap (or threat of a mild tap) will technically constitute an assault, it is not true that these parents would find themselves in the criminal justice system.

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<sup>35</sup> European Commission on Human Rights, admissibility decision, *Seven Individuals v Sweden*, 1982, Application No. 8811/79. In a similar decision in September 2000 the European Court rejected unanimously and without a hearing an application objecting to the UK ban on corporal punishment in private schools, European Court of Human Rights, decision on admissibility, *Philip Williamson and Others v UK*, 2000, Application No. 55211/00

In 2008 the following joint statement was made 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; 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 and Royal College of Paediatrics and Child Health:

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.

Parents who mildly smack their children would not be charged or prosecuted, any more than an adult who mildly smacks another adult is. Trivial assaults are a waste of police and prosecution time (the *de minimis* principle), not in the public interest and therefore not pursued. Where parents are concerned, action would be even less likely because the child’s best interests also have to be taken into account – and prosecutions of parents are generally not in their children’s interests. The previous Director of Public Prosecutions sensibly refused to rule out the possibility that a parent might be taken to court for a mild smack, but considered that this might be appropriate only in very rare circumstances.<sup>36</sup>

Families would not be policed by social services. The point of the law is to prevent violence happening and to change attitudes; it is not about putting CCTVs in living rooms or having neighbours – even children – take parents to court for a smack. (All private prosecutions must be reviewed by the Attorney General, who either takes them over as public prosecutions or discontinues them.)

The threshold for formal social service intervention in families would remain the same – risk or perpetration of “significant harm,” which triggers an investigation under section 47 of the Children Act 1989, and can lead to a child protection plan or application for a care order. Physical punishment which did not reach this threshold might be reported and

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<sup>36</sup> Evidence to the Joint Parliamentary Committee on Human Rights, May 25 2004. Examples of when even a light smack might be prosecuted include: when the victim is very young or vulnerable, when the parents have publically challenged the law or where they have ignored repeated warnings, when the child is smacked repeatedly and has suffered emotional damage etc.

followed up, as it is already, but would not lead to statutory interventions in family life – numbers of children in care would be expected to remain the same, or, hopefully, fall.

The New Zealand experience is relevant here. Because of public anxieties, the Government took pains to reassure that parents would not be unnecessarily criminalised. The law therefore states that, while there is no defence to any form of physical punishment:

To avoid doubt, it is affirmed that the Police have the discretion not to prosecute complaints against a parent of a child or person in the place of a parent of a child in relation to an offence involving the use of force against a child, where the offence is considered to be so inconsequential that there is no public interest in proceeding with a prosecution.

The Government also undertook to ask the police to collect data on responses to parents under the 2007 Act. The police have produced six periodic reports on this question and in November 2009 the Chief Executive of the Ministry for Social Development and Employment, as required under statute, reported to the Minister that the police data showed that, although there had been a rise in the reporting of violence generally, parents had not been prosecuted for “light smacking.” He comments that the police believe that the new law “has had a minimal impact on their business” and there has been no change in the reporting of smacking since it was enacted. He notes that twelve acts of what the police call “minor physical discipline” were prosecuted, but comments that in his view “these could not reasonably be described as ‘minor acts’” because they involved, for example, the child being punched in the face or hit multiple times or assaulted in anger.<sup>37</sup>

The *Early intervention* report speaks eloquently of the invisibility of young children who are mistreated behind closed doors and how one of the factors militating against their protection is the British “high regard for personal privacy.” We absolutely support parents’ rights to raise their children in whatever way they see fit, so long as their children’s human rights are respected in the process. Indeed, we believe that it is only in a human rights framework that cultural diversity and individual freedom can truly flourish.

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<sup>37</sup> 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