

IMPLEMENTING EQUAL PROTECTION FOR CHILDREN

PRACTICAL IMPLICATIONS OF LAW REFORM REMOVING THE “REASONABLE PUNISHMENT” DEFENCE

JOINT STATEMENT BY:

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

Our organisations represent key elements in the child protection system. We are among the 400-plus organisations in the Children Are Unbeatable! Alliance which believe that legislation to give equal protection for children under the law on assault is vital to fulfil children’s human rights and to set a clear standard for non-violent parenting. We believe full legal reform is the only safe, just and workable way forward.

“Equal protection” is used to refer to giving children the same protection as adults under the law on assault, by removing the existing defence which allows parents and some others to justify common assault on children as “reasonable punishment” (section 58, Children Act 2004). The UK’s human rights obligations under international and European instruments require this reform. Children have the same right as adults to respect for their human dignity and physical integrity.

Beyond fulfilling children’s human rights, the first aim of law reform concerning parental discipline in the “private” sphere of the family must be to change attitudes to children and to discipline and to move parents on from using physical punishment. Removal of the defence sends the clear message that hitting and hurting children is as unlawful as hitting adults. Promoting this message throughout society is fundamental to child protection. Law reform will for the first time provide a clear foundation for child protection and for the promotion of positive, non-violent child-rearing.

Given children’s dependent status and the delicacy of family relationships, prosecution of parents is very seldom in the interests of their children. However, removing the defence will also ease prosecution in those few cases in which prosecution is judged necessary to protect a child and considered to be in the best interests of the child.

As set out below, we consider that implementation of this human rights-based law reform, with appropriate guidance, will improve child protection. For this reform to achieve maximum impact for children, it will need to be accompanied by awareness-raising activities and the promotion of positive, non-violent forms of discipline. Our organisations and other major children’s organisations are committed to supporting the Government in this exercise. We believe this law reform will end current confusion and engender a positive nationwide discussion and understanding of effective parenting.

What happens if an incident of physical punishment is reported?

Concern is often expressed about how this law reform will be implemented. If a report is received by police or social care services that a child has been assaulted, they will record the details, and will need to consider whether the child is suffering or is likely to suffer “significant harm”. This may involve consulting other agencies and/or making further inquiries. This is the position at present, and will not change with law reform. No report which suggests that a child may be at risk of significant harm can be ignored.

Detailed statutory guidance on child protection is provided in *Working Together to Safeguard Children - A guide to inter-agency working to safeguard and promote the welfare of children* (HM Government, 2006). The Children Act 1989 requires social services to make inquiries if they have reasonable cause to suspect that a child is suffering, or is likely to suffer, “significant harm” (section 47). This threshold for formal investigation will not change when the “reasonable punishment” defence is removed.

Working Together emphasises that whenever local authority children’s social care have a case referred to them which constitutes, or may constitute, a criminal offence against a child, they should always discuss the case with the police at the earliest opportunity (para. 5.17). The

guidance goes on to say: “In dealing with alleged offences involving a child victim, the police should normally work in partnership with children’s social care and/or other agencies. Whilst the responsibility to instigate a criminal investigation rests with the police, they should consider the views expressed by other agencies. There will be less serious cases where, after discussion, it is agreed that the best interests of the child are served by a children’s social care led intervention rather than a full police investigation.” (para. 5.20)

Local Safeguarding Children Boards should have in place a protocol agreed between the local authority and the police, to guide both organisations in deciding how child protection enquiries should be conducted and, in particular, the circumstances in which joint enquiries are appropriate (para. 2.104).

Decisions on charging and prosecution

Once the “reasonable punishment” defence has been removed completely, even minor assaults of children will technically be criminal offences. However, there is an important distinction between an act being a criminal offence and deciding to prosecute someone for the act. As the Director of Public Prosecutions has confirmed in evidence to the 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”. Reasonably enough, given the much greater vulnerability of children, the DPP could not completely rule out such prosecutions. But he did, in addition, refer to the *de minimis* principle – that the law does not concern itself with trivial matters.

The Joint Committee on Human Rights comments: “Technically, any adult who taps another adult on the shoulder without that person’s consent is liable to prosecution for assault. We are not aware of any practice on the part of CPS of bringing inappropriate prosecutions for technical assault between adults, or of any single instance of such a prosecution. The application of a criminal law which is very broad in scope is properly regulated through the exercise of prosecutorial discretion. The same would be true of the same law if its protection were extended to children within the family.” (Nineteenth Report 2003-4, Children Bill, para.169)

Working Together emphasises that “Whilst the responsibility to instigate criminal proceedings rests with the police, they should consider the views expressed by other agencies” (para. 5.20, as quoted above). Decisions on charging a person with a criminal offence have been transferred from the police to the Crown Prosecution Service. This means that charging decisions, like decisions on whether to go ahead with a prosecution, are based on two tests:

- The evidential test – ensuring that there is sufficient evidence to provide “a realistic prospect of conviction”; and
- The public interest test – ensuring that the prosecution is in the public interest. According to the Director of Public Prosecutions, in cases where the victim is a child, consideration of the public interest invariably includes consideration of whether prosecution is in the best interests of the child.

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 which 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.

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