

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

SOCIAL SERVICES COMMITTEE -15 TH MARCH 2000

REPORT BY THE EXECUTIVE DIRECTOR OF HOUSING AND SOCIAL SERVICES

**GOVERNMENT CONSULTATION
ON THE PHYSICAL PUNISHMENT OF CHILDREN**

The report summarises a Government consultation document on the physical punishment of children and recommends a response. **A copy of the consultation document has been placed in the Members' Room.**

FOR DECISION

1 BACKGROUND

- 1.1 The Government issued a consultation document on the physical punishment of children in January 2000 entitled: 'Protecting Children, Supporting Parents'. A change in legislation is proposed, prompted by a judgement of the European Court of Human Rights. The Government has explicitly ruled out making all forms of physical rebuke unlawful, but it intends to clarify the law to reflect the common sense distinction between acceptable mild physical rebuke and the beating of children. The proposals relate to punishment in the home only and not to settings where corporal punishment has already been prohibited such as schools, children's homes and foster homes. Regulated day care and child minding are also outside the scope of the document. The deadline for responses is 21st April 2000.
- 1.2 The issues addressed by the document are difficult both for individual parents and the community in general. It is important that the law in this field is clear and practical and strikes an appropriate balance between the rights and responsibilities of parents and children. The Government intends that any change in the law is consistent with its overall approach to supporting families. Local Authorities have a particular interest in view of their statutory obligations to protect children from significant harm under the Children Act 1989. The Social Services Department has a lead role, alongside other relevant agencies, in policing the boundary between acceptable and unacceptable child care.

2 THE EXISTING LAW

- 2.1 An adult who is alleged to have physically assaulted a child may be charged under a variety of criminal law provisions. The most commonly used provisions are described below. Decisions about whether to prosecute are taken by the Crown Prosecution Service with reference to a 'charging standard' agreed with the police.
- 2.2 The charging standard for common assault under the Criminal Justice Act 1988 refers to injuries no more serious than : grazes; scratches; abrasions; minor bruising and swellings; reddening of the skin; superficial cuts or a black eye. Where injuries are more serious a charge under the Offences against the Person Act 1861 would normally be appropriate. This includes the offences of occasioning actual bodily harm, inflicting grievous bodily harm and causing grievous bodily harm with intent. The charging standard for actual bodily harm includes injuries such as : loss or breaking of a tooth; temporary loss of consciousness; extensive or multiple bruising; broken nose; minor fractures; minor cuts requiring medical treatment such as stitches and psychiatric injury beyond fear, distress or panic.
- 2.3 If a parent, or someone acting *in loco parentis*, is charged with one of these offences as a consequence of physically punishing a child, they may currently claim a defence of 'reasonable chastisement'. This concept is not defined in law, but dates to a judgement of 1860 which established that the common law right of parents to punish children is limited by the requirement that the punishment be 'moderate and reasonable'.

3 THE NEED FOR CHANGE

- 3.1 The immediate need for change arises from the judgement of the European Court in the case of *A v the United Kingdom* delivered in 1998. The boy had been repeatedly beaten by his step-father with a garden cane. The step-father was charged with occasioning actual bodily harm , but was found not guilty by a jury in 1994 which accepted his defence of 'reasonable chastisement'. The boy brought a case under European law. The Court held that the boy's right not to be subjected to inhuman or degrading treatment under Article 3 of the European Convention on Human Rights had been violated. Whilst the United Kingdom was not responsible for the actions of the step-father, it was responsible for the failure of UK law to protect the boy's human rights.

3.2 The Court stated that punishment amounted to ‘inhuman and degrading treatment’ where it exceeded a minimum severity, but that this threshold was relative and depended on the circumstances of the case. Relevant circumstances in considering this question included :-

- The nature and context of the treatment;
- Its duration;
- Its physical and mental effects; and in some instances,
- The sex, age and state of health of the victim.

3.3 The case illustrated the scope for different views of the same behaviour. What a jury had regarded as ‘reasonable chastisement’ was seen by the European Court as ‘inhuman or degrading treatment’. It also highlights the lack of clarity in current UK law. The Government is committed to abiding by the judgement and accepts the need for change.

4 PUBLIC OPINION AND PARENTAL BEHAVIOUR

4.1 The Government considers that it is very important that the law in this sensitive area commands public acceptance. An opinion survey was therefore conducted through the Office of National Statistics (ONS) Omnibus Survey 1998. The summary of findings is attached to this report as Appendix 1.

4.2 The survey indicates that there is widespread public acceptance of smacking children, but very little support for harsh or potentially harmful punishment. Whereas 88% of respondents agreed that it was sometimes necessary to smack naughty children, only 9% agreed that it was sometimes necessary to use implements such as canes, sticks, belts or slippers to punish a naughty child. Very few thought that parents should be allowed by law to smack a child on the head (2%) or shake them (3%), and less than 1% considered punishment which left marks lasting for more than a few days ‘reasonable’.

4.3 An earlier study of parental behaviour was reported in the DOH publication ‘Child Protection Messages From Research’ (1995). This study is not quoted in the consultation document but supports the conclusion that smacking children is very common. Three quarters of one year old children and 97% of four year olds had been smacked in the preceding year. In contrast, punishment which the researchers considered ‘severe’ was much less common being experienced by some 15% of the children studied.

5 GOVERNMENT PROPOSAL AND OPTIONS FOR CHANGE.

5.1 The Government proposes to explicitly set out in law that, when considering ‘reasonable chastisement’, a Court must have regard to the factors identified by the European Court. However, this is considered to be the minimum change required and the Government is consulting on additional options for

limiting the application of the defence of ‘reasonable chastisement’. The options are not mutually exclusive.

Option 1 : expanding the factors to be considered.

5.2 It would be possible to specify additional factors to be considered by the Court such as the persons involved or the reasons given for the punishment. It would also be possible to state that some specific forms of punishment can never be considered reasonable. Specifically, the Government seeks views on two exclusions :-

- Physical punishment which causes, or is likely to cause, injury to the head (including injuries to the brain, eyes and ears)
- Physical punishment using implements (e.g. canes, slippers, belts)

Option 2 : retain the defence of reasonable chastisement for lesser assaults only

5.3 Under this option ‘reasonable chastisement’ could only be relied upon by a defendant charged with common assault, and not to the more serious offences against the person. This would in effect render illegal punishment which caused the kind of injuries described in the charging standard for actual bodily harm.

Option 3 : clarify (and possibly restrict) who may claim the defence of reasonable chastisement.

5.4 Currently the defence of reasonable chastisement can be relied on by all those acting *in loco parentis* including for instance relatives, neighbours and baby sitters. The only exceptions are people specifically prohibited by law, such as teachers. The Government seeks views on whether this should continue, or whether it should be restricted to parents only, or to parents and those to whom parents have given their express permission to physically punish their children. Parents is here defined as those with parental responsibility under the Children Act 1989.

6 ADVANTAGES AND DISADVANTAGES OF THE OPTIONS

6.1 The minimum change of specifying the factors identified by the European Court would not offer much clarification to either parents, or to those responsible for providing support for families and protection for children. Moreover the factors set out by the European Court pertain to deciding whether treatment is ‘inhuman or degrading’. Simply excluding treatment of this kind does not define what is ‘reasonable’.

6.2 Similar comments apply to the possibility of further elaborating the factors. Whilst many factors would no doubt be relevant to the proper consideration of

any individual case, listing these factors would not by itself give a clear statement of what forms of punishment are both unacceptable and illegal.

- 6.3 The exclusions being considered by the Government under option 1 would make those forms of punishment most likely to cause serious injury illegal. They would also seem likely to command popular support given the results of the survey. The banning of punishment likely to cause injury to the head is likely to be the less controversial of the potential exclusions, but it would be necessary to clearly specify the behaviour covered. Does it cover shaking as well as blows to the head? Banning the use of implements to punish children might be seen as a more intrusive step but would have the advantage of indicating clearly to parents which behaviours were not acceptable.
- 6.4 Option 2 provides a straightforward way to establish that punishment resulting in significant injury to a child is not reasonable. The types of injury specified in the charging standard for actual bodily harm (quoted at 2.2) would not be regarded as reasonable by officers of the Social Services Department, nor by the vast majority of respondents to the opinion survey. Implementing option 2 on its own however would not provide guidance to parents as to the types of punishment to be avoided.
- 6.5 Limiting the defence of reasonable chastisement to parents, or those who have the express permission of the child's parents, under option 3 would involve numerous difficulties in practice. The document notes that complexities arise because those who hold 'parental responsibility' for a child will often not coincide with the significant people in the child's life who should normally have discretion over discipline. For example, unmarried fathers or grandparents caring for a child on a long term basis frequently do not have parental responsibility. Moreover in reconstructed families, people may have parental responsibility for some of the children in the family and not others. There would also be scope for disputes about whether permission had been granted and what form and level of punishment the permission covered.

7 CONCLUSION

- 7.1 The existing law is unclear and needs to be revised in the light of the ruling by the European Court. However the minimum change necessary to satisfy the concerns of the Court will not clearly identify the types and level of physical punishment which are unacceptable.
- 7.2 The Government should ensure that measures to limit the defence of 'reasonable chastisement' provide a clear indication to parents, child protection agencies and the Courts as to what behaviour is both unacceptable and potentially subject to the criminal law. This is unlikely to be achieved solely by elaborating on the factors to be considered by the Court when dealing with an alleged assault against a child. A combination of the exclusions suggested under option 1 with option 2 would provide a much

clearer statement of both the types of punishment and injuries resulting from punishment which are not permitted.

- 7.3 Option 3 would appear to be impractical. Parents should continue to be responsible for ensuring that they are confident that those who they allow to look after their children will do so appropriately.

8 RECOMMENDATIONS

The Social Services Committee is recommended to note the content of the consultation document, and to respond to the document as proposed at paragraph 7 above.

FOR DECISION

MOIRA GIBB
Executive Director of Housing and Social Services

Background Papers used in the preparation of this report

Protecting Children, Supporting Parents A Consultation Document on the Physical Punishment of Children (Department of Health January 2000)

Child Protection Messages From Research (Department of Health 1995)

European Court of Human Right judgement, A v The United Kingdom (100/1997/884/1096)

Officer contact

Enquiries should be directed to Ms Laurel Sayer (telephone 020 7361 3193).

Ref. 1503JW.doc
Ref. 0003W1..doc