

Cross Party Group on Children and Young People
Tuesday 13th May
13.00-15.30
Committee Room 3, The Scottish Parliament
Chair: Alison Johnstone MSP

Physical punishment of children

Attendees

Alison Johnstone MSP
Fiona Mcleod MSP
Danielle Adam, Scottish Children's Reporter Administration
Bruce Adamson, Scottish Human Rights Commission
Anela Anwar, Roshni
David Ashford, Youth Scotland
Mark Ballard, Barnardo's
Anna Chrystal, Scottish Independent Advocacy Alliance
Sara Collier, Children in Scotland
Mark Cooper, NSPCC Scotland
Carole Ewart, Human Rights Consortium Scotland
Sarah Gallacher, Division of Forensic Psychology - Scotland
Emma Grindulis, Together
Juliet Harris, Together
Kate Higgins, Children 1st
Anne Houston, Children 1st
Staffan Jansen, Swedish Paediatrician
Fiona Jones, Cl@n Childlaw
Nico Juetten, SCCYP
Catriona Laird
Cathy McCulloch, Children's Parliament
Jane McDonald, Enable Scotland
Garry McGregor, Befriending Networks
Eloise Nutbrown, Save the Children
Sarah Paterson, Youthlink
Paula Raymond, Quarriers
Barbara Schuler, Youthlink
Jonathan Sher, Wave Trust
Clare Simpson, Parenting across Scotland
Annie Taylor, Children 1st
Alison Todd, Children 1st
Laura Tomson, Zero Tolerance
Alison Wales, NSPCC Scotland/Childline
Nicki Wray, Barnardo's

Apologies

Fiona Barlow, Samaritans

Morag Coleman, Families First St Andrews
Rozanne Chorlton
Jennifer Drummond, Children in Scotland
Carly Edgar, Who Cares? Scotland
Ross Gilligan, Children in Scotland
Kin Hartley, Royal College of Speech and Language Therapy
Louise Hill, CELCIS
Brandi Lee Lough Dennell, LGBT Youth Scotland
Sharon McCluskie, Play Scotland
Brian Magee, COSCA
Felicity Mehendale, Royal Hospital for Sick Children, Edinburgh
Jennifer Mowat, Enable Scotland
Helen Reilly, BMA Scotland
Tracy Rodger, CLIC Sargent
Donna Tomlin, Contact a Family Scotland

Welcome and introduction

Alison Johnstone welcomed everyone to this special meeting of the CPG and explained that it had been requested by the Children are Unbeatable alliance. The meeting had originally been intended to tie-in with the Criminal Justice (Scotland) Bill, but the Bill's progress through Parliament has been delayed due to the issue of corroboration. Alison then introduced the speakers and invited **Anne Houston** of Children 1st to present first.

Anne started by providing some background information on the Children are Unbeatable (CAU) alliance and the law on physical chastisement in Scotland. Children 1st was a founding member of CAU which is an alliance of organisations and individuals. Their aim is that children should have equal protection in law, as adults do. It is a human rights and a public health issue. The UN has repeatedly recommended that the UK and Scotland reform their laws to offer children equal protection. Anne explained that Parentline, which is hosted by Children 1st, is a confidential phone and online service. They receive many calls from parents who are distressed because they have hit their child and who are looking for advice on alternatives to physical chastisement. Changing the law would send a clear message to the public but parents need to be supported so that they are confident about using alternative means of discipline.

Anne explained that the Criminal Justice (Scotland) Act allows for justifiable assault by adults against children. In the rest of the EU, 17 states offer full protection against assault and only the UK, Ireland, Belgium, France and Malta have yet to ban physical punishment.

Staffan Jansen, a paediatrician from Sweden, was the next to present. Staffan is an expert in development work in relation to child abuse and corporal punishment and works on child and maternal health in developing nations.

Staffan explained that Sweden banned corporal punishment of children in 1979 and gave the historical context. Punishment was equated legally to cruelty from 1957 when it was banned in schools. Staffan presented evidence of the change in parental attitudes and behaviour towards physical punishment. In the 1950s and 60s, smacking was seen as normal and around 90-95% of parents reported doing it and 50% upwards thought that it was acceptable. Since the ban, there has been a generational change with 95% of young parents now regarding smacking as unacceptable. This is a reversal of adult attitudes and behaviour. According to the violence and health survey of school children in 2014, only 2-3% reported that they had been physically punished. Deaths of children aged 0-17 are around 4 per annum, which is a decline of around 1/3 since the 1970s. There was surprise in Nordic countries that Scotland has not followed a similar route as it is seen in other respects as progressive and shares a similar culture.

Bruce Adamson of the Scottish Human Rights Commission was the next to present. Bruce began by saying that there is a large amount of information on the harmful physical and psychological effects of corporal punishment in childhood and later life and how this links with other forms of violence. As a basic principle of human rights we shouldn't allow children to be assaulted, yet in Scotland the law says that the assault of a child by their parent can be justified. Bruce set out the framework of human rights relating to the physical punishment of children and reflected on what the next steps in Scotland could be.

Bruce explained that Articles 19 and 37 of the UNCRC reinforce the child's right to physical integrity and protection of their human dignity. This reflects protection against assault in the ECHR and other international treaties.

The 2006 report of the UN Secretary-General's Study on Violence against Children calls on all countries to prohibit all violence against children, including all corporal punishment, including in the home, as a matter of priority. Successive UN High Commissioners for Human Rights have also made significant comments about the need to ban physical punishment and remove defences which allow for legalised violence against children.

The UK has ratified seven of the nine UN human rights treaties. Each treaty has a body which is set up to monitor the implementation of the treaty. The UN Committee on the Rights of the Child has systematically insisted that children's right to protection from violence and to equal protection under the law means that states which have ratified the Convention must enact legislation which prohibits, without exception, all forms of corporal punishment of children in all settings.

In 2006, the Committee consolidated its guidance to states in General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment".

The Committee has now considered the UK's (including Scotland) implementation of the CRC on three occasions – in 1995, 2002, 2008. On each occasion the Committee has expressed concern that we do not provide legal protection for children and has recommended a law change.

Other UN treaty bodies have raised the issue of corporal punishment of children – and recommendations to prohibit and eliminate it – including specific references to the UK:

The Committee on Economic, Social and Cultural Rights: twice, in 2002 and 2009 the Committee recommended prohibition, "Given the principle of the dignity of the individual, which provides the foundation for international human rights law..."

The Committee on the Elimination of Discrimination against Women: In 2008 and 2013 the Committee recommended prohibition, stating: "... The Committee also notes with concern that corporal punishment is lawful in the home and constitutes a form of violence against children, including the girl child".

The UN Committee Against Torture called for complete legal abolition of physical punishment in its fifth concluding observations on the UK, including the repealing all legal defences currently in place, and further promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment".

The Human Rights Council has been very active in the protection of the human rights of children, particularly through the process of Universal Periodic Review, where each country is subject to a peer review on the implementation of all of its human rights obligations.

As at January 2013, recommendations on corporal punishment had been made to more than 110 states – accepted by around 70, rejected by only around 20.

When the UK went through the second cycle of UPR in 2012 a number of countries (Sweden, Norway and Finland) made recommendations on corporal punishment. The UK joined the minority of countries rejecting such recommendations.

The Human Rights Council also has regular debates on the human rights of children. National Human Rights Institutions, have speaking rights at the Human Rights Council, so the Scottish Human Rights Commission was able to speak directly to UN members states. In its statement in March 2014 the Scottish Human Rights Commission highlighted a number of concerns, including the failure in Scotland to provide children with full legal protection against assault (and the low age of criminal responsibility).

Bruce then discussed the Council of Europe. In 2004 the Parliamentary Assembly of the Council of Europe adopted a resolution stating that any

corporal punishment of children is in breach of their fundamental rights to human dignity and physical integrity.

In 2008 the Council of Europe launched a Europe-wide campaign for prohibition of all physical punishment and the promotion of positive non-violent parenting to create "a continent free of corporal punishment".

In 2008, the Commissioner for Human Rights of the Council of Europe, following his visits to the UK in February and March/April 2008, stated in a formal Memorandum to the UK Government that laws allowing 'reasonable punishments' on children are not compliant with international human rights standards.

In 2005 and again in 2012, the European Committee of Social Rights reviewing compliance with Article 17 of the European Social Charter, found that the UK was in breach because it had not prohibited all corporal punishment in the family.

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Since 2009, the EU Treaty has required protection of the rights of the child. The EU's Charter of Fundamental Rights insists that human dignity is "inviolable", that "everyone" has the right to respect for their physical and mental integrity and to equality before the law.

The European Court of Human Rights has progressively condemned corporal punishment of children, in a series of judgments against the UK since the 1970s. They have all been taken under Article 3 of the European Convention – that no one shall be subjected to torture or inhuman or degrading treatment or punishment.

In 1998 the Court ruled in the first case concerning parental corporal punishment. In *A v United Kingdom* ([1998] 2 FLR 959;(1999) 27 EHRR 61), a stepfather who caned his nine-year-old stepson (A) was found not guilty of assault because his actions were deemed to be 'reasonable chastisement'. A claimed the State failed to protect him from ill-treatment in violation of Article 3 ECHR.

The European Court held that the caning breached Article 3 and that States are required to take measures to ensure that individuals are not subject to torture, inhuman or degrading treatment or punishment, including by private persons. The UK was required to pay £30,000 (£10,000 in non-pecuniary damages and £20,000 in cost costs). It was also required to take individual measures to ensure that the victim was protected in future, and general measures to ensure that other people weren't affected by the same breach of their rights.

In terms of general measures – different laws were put in place in the different legal jurisdictions in the UK. In Scotland this was through section 51 of the Criminal Justice (Scotland) Act 2003 which removed the defence of ‘reasonable chastisement’ and replaced it with one of ‘justifiable assault’. The new defence is not available where the punishment involves a blow to the child’s head, shaking or the use of an implement. The 2003 Act also listed factors which should be taken into account by a court in deciding whether physical punishment is justified. These include the nature of what was done, the reason for it and the circumstances in which it took place; its duration and frequency; any effect on the child; the child’s age; and the child’s personal characteristics.

Additionally guidance was issued to prosecutors by the Crown Office and Procurator Fiscal Service prior to the commencement of section 51 of the Criminal Justice (Scotland) Act 2003, drawing prosecutors’ attention to the terms of this section and the case of *A v. UK*, and providing advice on prosecution.

In every case before it concerning the physical punishment of children, the European Court has applied its usual test under Article 3: that is, before finding a violation of Article 3, it must be persuaded that the “minimum level of severity” has been attained. Even in the *A v. UK* case, the European Court has not explicitly stated that every incident of physical punishment of a child violates Article 3.

Should the European Court take a different view of the minimum level of severity of treatment of children in future, the United Kingdom domestic courts will be obliged to take this into account under the Human Rights Act 1998.

Inhuman or degrading treatment violates human dignity and there is therefore sometimes an overlap between Article 3 and Article 8 (the right to respect for private and family life). Even where ill-treatment fails to meet the level of severity demanded by Article 3, a violation of Article 8 may have occurred as Article 8 protects a person’s physical integrity as an aspect of private life.

This protection includes a prohibition upon any unjustified interference with the right to pursue the development and fulfilment of personality, mental stability and relationships with others. In interpreting Article 8 rights, the court is entitled to refer to the UNCRC. Article 8 not only imposes a negative obligation on the state not to interfere with person’s privacy, family life and home. It imposes a positive obligation upon the State to ensure that steps are taken to prevent undue interference with that right.

The Scottish Human Rights Commission has called for the incorporation of the UNCRC and Scotland’s other international obligations and it is hoped that through Scotland’s National Action Plan more can be done in terms of ensuring domestic legal protection of rights.

Bruce concluded by reflecting that Scotland is not meeting its international obligations to protect children. Politically, it is being left behind – we are losing

the opportunity to be one of the progressive nations that act to protect children, and are coming under increasing pressure from the international community – particularly our European partners, the majority of whom have already amended their laws. Legally, Scotland is running the risk of falling even below the lowest standards of human rights protection provided for by the domestic justifiability of ECHR.

Annie Taylor from Children 1st then played video clips from interviews with children, based on them talking about the Dr Seuss book *Horton Hears a Who*. The children talked about adults not listening and not taking children seriously.

The meeting was then opened up to **general discussion**.

Anna Chrystal, Scottish Independent Advocacy Alliance asked the panel whether there was evidence of a difference between mothers' and fathers' behaviour.

Staffan said that in Sweden it is likely to be the case that mothers are doing more of the smacking than fathers but this is because they are likely to be at home more, but in cases of more severe abuse it is fathers who are more likely to be responsible.

Cathy McCulloch, Children's Parliament asked about problematic behaviour in schools and whether adults are finding it more difficult to reinforce boundaries.

Staffan replied that there has been a change in Swedish schools in recent years and that Sweden is now falling below the median in the PISA rankings. However Finland ranks in the top end of the PISA rankings and it also has legislation prohibiting physical punishment of children. There is also some evidence that criminality among young people aged 15-24 has declined, with a drop of around 30% from levels recorded in the 1960s.

Alison Wales, NSPCC/ChildLine asked about levels of prosecution of parents in Sweden and where the protection lies, e.g. is it within criminal law?

Staffan replied that it was uncommon for family members to be prosecuted and that the protection was in the penal code, not in the parental act, as adults and children are treated equally.

David Ashford, Youth Scotland, asked what the forces were behind the resistance to compliance with human rights law, and what lessons could be drawn from human cognitive development.

Staffan commented that there is evidence from ethnologists and psychiatry that children are born with empathy.

Carole Ewart, Human Rights Consortium Scotland asked what the barriers to legal reform are, and whether there was potential for MSPs to undertake mentoring with politicians from Sweden and New Zealand.

Alison Johnstone commented that the justifiable defence is not acceptable and that work needs to be done to change people's understanding of this issue.

Anne Houston, Children 1st commented that MSPs may agree on the issue but moving the agenda forward is proving difficult – cf the outcry over the Named Person provisions in the Children and Young People (Scotland) Bill.

Jane McDonald, Enable Scotland commented that children with disabilities and those with ASN are more likely to suffer violence.

Staffan said that there is evidence to suggest that disabled children are more likely to be assaulted, especially those with neuropsychiatric problems. Those with ADHD, Asperger's Syndrome etc are 8-10 times more likely to be assaulted.

Annie Taylor, Children 1st took over the chair as Alison Johnstone was required to vote in the Chamber.

Anela Anwar, Roshni spoke about the difference between Sweden and Scotland in relation to new communities. In Sweden new communities assimilated quickly, whereas this has not been the case in Scotland. In some ethnic minority communities parents retain the mind-set of their family's country of origin and, for example, will collude with physical chastisement in faith classes.

Staffan commented that without ghettoization, the pace of assimilation and change in attitudes is quicker.

Anela commented that cultural norms and traditions often come first and that the 3rd and 4th generations often agree with this; there is a need to win hearts and minds when working with minority ethnic communities.

Staffan said that there is a need to work with faith leaders and community leaders to promote the message that there is no religious justification for physical punishment.

Nico Juetten, SCCYP spoke about a pattern of minimisation whereby there is a distinction between corporal punishment and 'real violence'.

Staffan commented that the taboo against abuse seems to work even in the case of those who would be inclined to more severe punishment.

Jonathan Sher, Wave Trust asked the panel what it would take to make a change to the current situation. He commented on the 'false image' of children who are hit as being that of a very disobedient older child, whereas the reality is that the majority of maltreatment begins before the age of 1. He asked whether social marketing is needed. Jonathan also spoke about the 'fear factor' on the part of parents and that naming, shaming and blaming is not helpful.

Positive parenting needs to be promoted so that parents know what else they can do in relation to disciplining children.

Staffan commented that the marketing issue is important. In Sweden there was an information campaign at the same time as the law was changed. Information leaflets should be sent to every family. Education needs to start in the maternity ward and well-baby clinics. Preschools and nurseries see parents every day as do teachers so there is opportunity for them to share information.

Juliet Harris, Together, asked about the New Zealand members' bill and legal opportunities to look the minimum level of severity.

Bruce Adamson commented that a judicial review in Northern Ireland had been unsuccessful but there was still scope for review. There are prosecutions currently taking place where the accused is relying on this defence. If this is successful it would be open to the child to contest the verdict.

Fiona Jones, cl@n childlaw, said that there is a lot to do in relation to the general public's attitudes towards this issue. A coordinated approach is needed – educating children about their own rights and that violent behaviour by parents is unacceptable.

Staffan responded that children's participation was not talked about as much in the 1970s and the advantage now is that we have the UNCRC.

Cathy McCulloch commented on work with children in schools and said that it is difficult due to the Rights and Responsibilities agenda. There is a need to work with politicians, teachers and Education Scotland as children's rights is misunderstood as meaning that adults lose control of children.

Close

The chair drew the meeting to a close and the panel and members were thanked for their contributions. There will be another special meeting of the CPG on the independence referendum at which the Scottish Youth Parliament will run one of their Aye, Naw, Mibbe sessions. Members were reminded that they can invite young people along to the event. Confirmation of the date and further details will be available in due course.

