

Section 58 of the Children Act 2004 Review (consultation)

Analysis of responses to the consultation
document

Introduction

This report is based on 1405 responses to the consultation which formed part of the review of the practical consequences of section 58 of the Children Act 2004.

The public consultation was open to anyone to respond, but especially sought the views of parents on physical punishment and evidence from those working with children and families on the practical consequences of the changes in the law brought about by section 58 of the Children Act 2004. Section 58 limits the availability of the 'reasonable punishment' defence in cases involving alleged assaults by parents on their children. This consultation ran from 15 June to 10 August 2007.

As some respondents may have offered a number of options in response to a particular question, total percentages listed under any one question may exceed 100%. Throughout the report, percentages are expressed as a measure of those answering each question, not as a measure of all respondents.

The organisational breakdown of respondents was as follows:

Parent/Relative	831
Individual	203
Charity/Voluntary Organisations	113
Medical/Health Professional	74
Teacher	55
Other*	38
Social Worker	28
Faith Group	20
Local Safeguarding Children's Board	16
Local Authority	15
Police/Legal Professional	12

**Those which fell into the 'other' category included childminders, people working with children, Association of Schools and Colleges, Sure Start and the Liberal Democrats.*

It should be noted of course that people responding to the consultation are self-selecting and therefore views are not necessarily representative of the population as a whole, for example as they may be taking part in organised lobbying.

838 responses were based on a leaflet from the NSPCC. These respondents felt section 58 caused confusion and perpetuated a 'grey area' around the 'reasonable punishment' defence. They suggested that children should be given the same rights to protection that adults receive and that all physical punishment of children should be banned.

The report starts with an overview of responses, followed by a summary analysis of each question within the consultation.

Annex A provides a statistical analysis of responses by respondent 'type'. Comments expressed by less than 5% of respondents appear in Annex A only.

Annex B lists comments made by respondents in answer to each question.

Overview

Respondents generally felt that section 58 of the Children Act 2004 had made little positive impact on children, families and those working with them. It was considered that section 58 has not improved legal protection for children in cases of alleged assault by their parents. Many respondents felt that the only way to protect children is to ban physical discipline outright.

Respondents considered that there has been no change in practice as a result of section 58 by those working with children and families in considering incidents involving an alleged assault by a parent upon a child. Most commented that the legal position on the physical punishment of children is confusing for both parents and professionals and makes it difficult to make sound judgements of potential child abuse incidents.

The general opinion of respondents was that changes to the law have not deterred parents from using unacceptable levels of physical punishment in bringing up their children. A number of respondents were concerned by the use of the phrase “unacceptable levels of physical punishment”; they believed that there is no acceptable level of physical punishment.

The majority of respondents were of the opinion that local agencies struggle to help parents to establish effective boundaries for their children. Many said that agencies’ anti-smacking beliefs often conflict with the Government’s message (as they perceived it) that parents are allowed to smack their children. It was felt that, as a result, agencies find it difficult to send clear messages about discipline to parents.

Most respondents considered the legal position relating to the physical punishment of children to be widely misunderstood by those working with children and families. It was felt that there is too much ambiguity surrounding the ‘reasonable punishment’ defence and that professionals might struggle to judge the severity of a smack by the mark it left on a child’s skin.

Some respondents were concerned that changes to the law may have had a discriminatory effect on children that had different skin tones. It was feared that black children would be more at risk of not receiving the protection they need because a mark might not show up as easily as on a white child.

Respondents suggested various evidence sources that should be considered as part of the review. An overwhelming majority called for children to enjoy the same rights to protection as adults. Many stated that the UN Convention on the Rights of the Child should be considered.

Summary

Q1 To what extent has section 58 improved legal protection for children in cases of alleged assault by their parents?

888 (68%) respondents were totally opposed to any form of physical punishment of children. Among parents and relatives, the proportion was slightly higher (74%) and, among practitioners¹, was considerably lower (43%). Some respondents commented that violence often breeds violence. It was felt that children who are physically punished often suffer from ongoing emotional problems and low self-esteem and that many experience resentment towards their parents which continues through their adult lives. It was suggested that a total ban on smacking is the only way to improve legal protection for children.

366 (28%) were of the opinion that section 58 has done nothing to improve legal protection for children in cases of alleged assault by their parents. This view was expressed by 47% of practitioners. Many respondents felt that, in its present form, section 58 justifies physical punishment against children.

201 (15%) expressed a view that section 58 has exacerbated the ambiguity around the distinction between common assault and actual bodily harm. Respondents felt that children are now at greater risk of harm as section 58 has increased the likelihood of their parents being charged with actual bodily harm, as opposed to common assault.

200 (15%) respondents were unhappy with the term 'reasonable punishment' and felt that it would still allow adults to argue that they had 'reasonably punished' their child by smacking them. Respondents called for the 'reasonable punishment' defence to be removed altogether, to give children the same physical protection rights as adults.

179 (14%) were concerned that section 58 created too much confusion to improve legal protection for children in cases of alleged assault by their parents. It was felt that parents are confused by the new law and are unsure about what constitutes 'reasonable punishment'.

111 (8%) said that children were already protected under previous laws and that they saw no reason for the change. Some respondents felt that the new law has not protected any children from real abuse, but has caused parents to think twice before using mild physical punishment, because they are worried about prosecution.

111 (8%) respondents, of whom 83 were parents and relatives, felt that the right to physically chastise their child should be maintained. It was felt that a 'short sharp smack' at the time of disobedience is a way of showing love and an effective means of preventing children from turning into difficult and unruly teenagers.

¹ The category of respondents referred to throughout this document as 'practitioners' includes teachers; social workers; police/legal professionals; local authority and LSCB employees; and medical/healthcare professionals.

Q2 To what extent have the changes brought about by section 58 altered the practice of those working with children and families in considering incidents involving an alleged assault by a parent upon a child?

129 (47%) respondents said that there had been no change in the practice of those working with children and families. 66% of practitioners expressed this view, but only 29% of parents and relatives agreed.

63 (23%) said that section 58 was confusing for parents and professionals. Respondents felt that the term 'reasonable punishment' needlessly created a 'grey area', clouding the distinction between common assault and actual bodily harm.

54 (20%) respondents believed that there should be a zero tolerance approach to smacking. It was felt that by totally banning physical punishment of children, professionals working with children and families could establish clearer boundaries and offer parents sounder advice on other, more effective means of disciplining children.

45 (16%) commented that parents feel unsupported by professionals working with them and their children. Respondents were concerned that parents could be unjustly accused of actually bodily harm, especially since some children mark more easily than others. This was a view expressed by 28 (29%) of parents and relatives, but only 5 (5%) of practitioners.

31 (11%) respondents felt that without the threat of physical punishment, children are unruly and uncontrollable in the classroom and at home. It was suggested that the right to physically punish children should be maintained in order to control children's behaviour and stop them from controlling their parents. 20 (21%) parents and relatives expressed this view.

20 (7%) were concerned that section 58 still allows parents to physically chastise children as they see fit.

Q3 To what extent have the changes to the law deterred parents from using unacceptable levels of physical punishment in the upbringing of children?

289 (51%) respondents said that the changes to the law have not made much difference in deterring unacceptable levels of physical punishment in the upbringing of children.

265 (46%) objected to the terms of the question, arguing that there is no acceptable level of physical punishment of children.

128 (22%) commented that the change to the law meant that loving parents who would previously have physically chastised their child in a controlled and loving manner now avoid using any form of physical chastisement for fear of being charged with actual bodily harm. This response was much more widespread among parents and relatives (29% of whom voiced such a view) than among practitioners (only 10% of whom felt that section 58 has deterred loving parents from giving a firm smack).

59 (10%) believed that, regardless of the law, parents would still use unacceptable levels of physical punishment against their children behind closed doors.

57 (10%) respondents commented that the changes to the law have generated widespread confusion. A number of respondents observed that some parents think any form of physical punishment against their child is illegal.

53 (9%) said that parents believed it was their legal right to smack their own child as they saw fit. Among practitioners this response was more common (16%).

Q4 To what extent have the changes to the law stimulated local agencies to help parents in knowing how to establish effective boundaries for their children?

119 (48%) respondents said that, because of the changes in the law, agencies are now less able to help parents to establish effective boundaries for their children. Respondents commented that agencies have tried to teach parents alternative methods of disciplining their child, such as 'the naughty step' and reward charts, and have tried to help parents to improve their communication skills, but that parents are still able to say that the Government condones smacking. It was also noted that agencies are often accused of intruding in the lives of families. Many parents said that they would prefer agencies to stop 'meddling' in their lives and trying to force their 'anti-smacking' beliefs upon them.

67 (27%) believed that the change in the law has not stimulated any help at all from agencies. Respondents mentioned that they had had to approach their local agency for help and clarification on the legal position regarding physical punishment, rather than agencies promoting this knowledge in their area.

54 (22%) respondents said that local agencies (such as Sure Start) had provided extremely useful parenting programmes, to teach parents alternative methods of disciplining their children. Some mentioned that their local agencies had produced leaflets on positive parenting techniques and had offered parenting skills courses.

37 (15%) felt that the law is not clear regarding common assault and 'reasonable punishment' and that this grey area prevents agencies from helping parents to establish effective boundaries for their children. Respondents felt that removing the 'reasonable punishment' defence would allow agencies to help parents establish effective boundaries.

12 (5%) respondents believed that clear messages about acceptable behaviour are being communicated to parents, allowing them to establish more effective alternatives to physical punishment when it comes to disciplining their children.

Q5 In your experience have the changes to the law assisted those working with children and families to protect children and support parents?

196 (66%) respondents said that in their experience the changes to the law had not assisted those working with children and families to protect children and support parents. It was felt that the 'grey area' of reasonable punishment makes it more difficult to protect children and to offer sound advice to parents.

96 (32%) said that section 58 has created a climate of confusion, making more difficult the job of those working with families to protect children and support parents. Respondents commented that even with detailed guidance on the law, section 58 would not assist those working with children and families.

54 (18%) respondents stressed that all forms of physical punishment should be banned in order to protect children.

14 (5%) felt that the changes to the law have assisted those working with children and families to protect children and support parents. The respondents believed that, as a result of section 58, agencies are now more able to offer clear advice to parents and understand better what their own responsibilities are when reporting unacceptable punishment.

Q6 To what extent is the legal position on the physical punishment of children widely understood by those working with children and families?

252 (76%) felt that the legal position regarding physical punishment of children is not well understood and is confusing for those working with children and families. Respondents said section 58 has created uncertainty among professionals as to what is actual bodily harm and what is common assault. Respondents felt that it is very difficult to make judgments on the severity of any mark left and that reddening of the skin is an unfair way of distinguishing common assault from actual bodily harm, since some children's skin marks more easily than others'. It was believed that many parents are wary of taking a child with a bump or bruise to the doctor or allowing them to mix with other children in case the parent is accused of having harmed their child when, in fact, the child received the injury as a result of playing.

50 (15%) respondents believed that the legal position in relation to the physical punishment of children is widely understood by those working with children and families. It was mentioned that some agencies have provided more child protection training in order to raise professionals' understanding of the legal position in relation to physical punishment.

48 (14%) commented that, whether or not the legal position is well understood by those working with children and families, it undermines their professional and/or personal values and beliefs that children should not be physically punished. Several respondents felt that only a total ban (including the complete removal of the 'reasonable punishment' defence) would send a sufficiently clear positive message to those working with children and families about the legal position in relation to physical punishment.

Q7 If your answer to question 6 above was that the legal position was not widely understood, please tell us what would be your preferred way of improving this situation?

130 (43%) respondents believed that the legal position would only be widely understood if all physical punishment of children were banned. It was felt that until this happened, children would remain vulnerable due to the misinterpretation of section 58 by professionals and parents. This view was more common among practitioners, 52% of whom said a total ban was needed, than among parents and relatives, only 32% of whom felt this was the case.

93 (31%) respondents stated that, on the contrary, the only way to improve the situation was to repeal section 58 and restore the previous legal framework (prior to the Children Act 2004), so that the 'reasonable punishment' defence was more widely available. A few respondents called for section 58 to be repealed in order for it to be replaced by a total ban on physical punishment. A repeal of section 58 was widely advocated by parents and relatives (43% called for it) but was only supported by 14% of practitioners. It is not clear whether those advocating a repeal of section 58 understood that this would lead to an expansion of the availability of the defence.

47 (16%) said that clear guidelines on section 58 are needed in order to make the legal position widely understood. It was felt that parents and professionals need clear information about what does and does not constitute 'reasonable punishment'. Respondents suggested that professionals should be given Government-approved guidance materials on alternative methods of discipline, which could then be delivered to parents.

35 (12%) felt that parents are extremely confused by section 58 and are under the impression that smacking their child is illegal. Respondents (including 21 parents and relatives) asked for a clear statement from the Government to parents, saying that physical punishment is not illegal and that parents can continue to physically discipline their child in a loving, controlled manner.

35 (12%) respondents suggested that a national media campaign is needed to educate parents and professionals on the legal position in relation to physical punishment of children. It was mentioned that the campaign could include leaflet drops, posters, television adverts and radio adverts. While 23% of practitioners advocated this method of improving the public understanding of the legal position in relation to smacking, only 6% of parents and relatives agreed.

28 (9%) stated that physical punishment should be banned, in order to bring the legal framework into line with the UN Convention on the Rights of the Child and Human Rights legislation. Respondents commented that the UK is behind a number of other European countries, some of whom had already banned physical punishment.

Q8 Have the changes to the law had a differential effect on different groups of children and parents, including on the grounds of gender, race and disability, and if so, to what extent?

82 (42%) respondents were concerned that section 58 discriminates unfairly against

children from different ethnic groups. It was felt that marks would show up more clearly on children with white skin, which could put their parents at greater risk of being charged with actual bodily harm. Others commented that marks would not show up easily on children with black skin and that this could result in their not receiving the protection they need from abusive parents. 28% of practitioners were concerned about this.

51 (26%) commented that physical punishment of children, often involving the use of implements and leaving a mark on the skin, is considered appropriate in some religious and minority ethnic communities. Respondents felt that some professionals are wary of challenging such parenting practices for fear of being accused of cultural insensitivity. It was felt that the present legal framework does nothing to improve the situation, as it permits abusive parents to defend their discipline methods on the grounds that these are deemed 'reasonable' in their family's culture.

40 (21%) respondents did not know how (if at all) the changes to the law have had a differential effect on different groups of children and parents.

27 (14%) said the changes to the law had made no difference. These respondents said that those parents who previously inflicted inappropriate physical punishment on their children were continuing to do so, regardless of gender, race, age or disability.

Q9 What are the key pieces of evidence that should be considered as part of this Review?

564 (71%) respondents pointed out that it was always a criminal offence for an adult to hit another adult and suggested that children should be afforded the same rights as adults. It was mentioned that children are far more vulnerable to harm than most adults and that they rely upon adults to take care of them and not to harm them. This view was shared by 76% of parents and relatives, but by only 54% of practitioners.

133 (17%) said the UN Convention on the Rights of the Child should be considered as part of the review. 32% of practitioners (but only 6% of parents) suggested this.

72 (9%) suggested that consideration should be given to the opinion polls showing that most parents believe they should have the right to discipline their children using moderate physical punishment.

69 (9%) respondents said parents need to show children how to behave acceptably. In order to achieve this, respondents said parents should receive comprehensive advice and support through parenting packages, which show them more effective ways of disciplining their children than using physical punishment.

49 (6%) recommended that evidence of the harm done by anti-smacking laws in Sweden be considered as part of the review. Respondents stated that the anti-smacking laws in Sweden have resulted in an increase in child abuse and child-on-child violence.

Other key pieces of evidence which respondents felt should be considered as part of this review include:

- The views of the UK Children's Commissioners
- Academic research showing the positive effects of smacking
- The views of professionals working daily with families
- The views of children on physical punishment
- The lack of evidence that Section 58 was actually necessary
- www.families-first.org.uk/bp/childbill.pdf
- <http://faculty.biola.edu/paulp/>
- R L Atkinson et al, 'Introduction to psychology'
- Care Matters: Transforming the Lives of Children and Young People in Care, DfES, October 2006
- Working Together to Safeguard Children, HM Government, April 2006
- Willow, C & T Hyder 'It hurts you inside' 1998
- Adele Faber and Elaine Mazlish, 'How to talk so kids will listen and listen so kids will talk' Avon Books, 1980
- Lynette Burrows, 'The Fight for the Family'
- Children are Unbeatable Alliance
- NSPCC FULL STOP campaign
- NSPCC 100 days for Children report May/June 2007.

Further evidence can be found in Annex B.