

SCRA response to the consultation

Background

The Children's Hearings System is Scotland's distinct system of child protection and youth justice. Among its fundamental principles are:

- whether concerns relate to their welfare or behaviour, the needs of children or young people in trouble should be met through a single holistic and integrated system
- a preventative approach, involving early identification and diagnosis of problems, is essential
- the welfare of the child remains at the centre of all decision making and the child's best interests are paramount throughout
- the child's engagement and participation is crucial to good decision making

SCRA operates the Reporter service which sits at the heart of the system. SCRA employs Children's Reporters who are located throughout Scotland, working in close partnership with panel members and other professionals such as social work, education, the police, the health service and the courts system.

SCRA's vision is that vulnerable children and young people in Scotland are safe, protected and offered positive futures. We will seek to achieve this by adhering to the following key values:

- The voice of the child must be heard
- Our hopes and dreams for the children of Scotland are what unite us
- Children and young people's experiences and opinions guide us
- We are approachable and open
- We bring the best of the past with us into the future to meet new challenges.

Response

SCRA welcomes the opportunity to comment on the proposed Children (Equal Protection from Assault) (Scotland) Bill.

Our Board has taken a clear view that the Bill should be fully supported, in line with SCRA's responsibilities:

- as a public body in terms of the UN Convention on the Rights of the Child under s2 of the Children and Young People (Scotland) Act 2014
- as a corporate parent under Part 9 of the 2014 Act
- as an agency responsible for the welfare and protection of vulnerable children

If we are to be consistent in applying a child rights based approach to policy and practice in the children's hearings system, then we must argue that children should enjoy the same protection from physical assault as adults do.

In coming to this conclusion we noted and were influenced by the fact that the research published in November 2015 found that more than 50 countries have now banned physical punishment of children outright and that there was substantial evidence to support the following conclusions:

- Physical punishment is associated with increased childhood aggression and antisocial behaviour.
- Physical punishment is likely to make existing problems worse.
- There is a link between childhood physical punishment and adult aggression or antisocial behaviour.
- Physical punishment also affects children's emotional and mental health and is linked to depressive symptoms and anxiety among children.
- The harmful effects of physical punishment were the same even when levels of maternal warmth were high.
- There is a link between physical punishment and child maltreatment - the notion that physical punishment and physical abuse are part of a continuum of violence, differing only by severity or degree.

The current law expressly prohibits punishment of children in the following circumstances

- Hitting on the head
- Shaking
- Punishing with a belt, cane or other implement

However, there is a legal grey area below that threshold where it has been left to the courts to decide what is and is not reasonable chastisement taking account of the factors set out in legislation. Changing the law to make clear that physical punishment is not an acceptable or appropriate way to discipline a child would help to bring clarity to this area for parents and children. It would also assist in meeting Scotland's obligations under the UN Convention on the Rights of the Child, which requires that: "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth".

The Scottish Government has made genuine progress in this area, most obviously through its commitment to legislate on the Minimum Age of Criminal Responsibility. However, physical punishment is an area where Scotland seems increasingly out of step with the rest of the world, and where Scottish Government policy seems to be profoundly disconnected.

For example, it is striking that the Government's Equally Safe Strategy makes clear that:



“Violence against women and girls, in any form, has no place in our vision for a safe, strong, successful Scotland. It damages health and wellbeing, limits freedom and potential, and is a violation of the most fundamental human rights.”

We agree, and our own research, for instance into offending by 8-11 year olds, shows the extent to which violence features in the backgrounds of children referred to the Reporter on a whole range of different grounds.

We understand that there are concerns about the potential for a change in the law to result in the criminalisation of parents and an unwarranted intrusion into family life. To some extent these concerns were reflected when Mark McDonald MSP (Minister for Childcare and Early Years) set out the Scottish Government’s view in Parliament on 8 November: *“The Scottish Government does not consider that further legislative change is appropriate, as we do not wish to see parents unnecessarily or unreasonably criminalised.”*

We doubt that this would be the case however. In order to be convicted of an assault, a parent would have to undertake a deliberate attack on a child with the intent to cause physical injury or fear of physical injury. As Janys Scott QC notes, a “trivial contact or harmless warning tap” is unlikely to constitute an attack. Furthermore, Police and PFs would still be able to exercise discretion in how to deal with individual cases and a prosecution would only be undertaken if it were in the public interest.

Similarly, in terms of the hearings system, the Reporter would still need to be satisfied that a child required compulsory measures of supervision before taking a decision to bring them to a hearing. We do not therefore expect significant increases in referral rates, but a change in the law would give us more confidence in being able to intervene and protect those children who need it, while sending a clear message about appropriate discipline of children.

In fact, the Scottish Government has already set a precedent on the use of legislation to communicate social messages. We would draw an analogy with s28 of the Sexual Offences (Scotland) Act 2009, which criminalises consensual sexual activity between children aged 13-15 in order to “send a message” to young people about the age of consent. However, it was made clear by the then-Cabinet Secretary for Justice in the Parliamentary debates surrounding that legislation that prosecutions would be few and far between, as authorities would exercise their best judgement about the most effective way to respond. Criminalisation of such behaviour was recognised to be inappropriate and unnecessary in most cases.

We suggest, gently, that if it is considered appropriate to use the criminal law to send messages to children and young people about their conduct, then might it not also be appropriate to use it to send a message to their parents?

In relation to concerns over Article 8 of the ECHR, it is worth remembering that the protection applies to children as well as parents and covers private life as well as family life. In other words it requires the state to protect a child from any interference with their private life. If physical punishment is seen as an interference with that right, then the state must justify why it has not acted to protect children from that interference.

