

Review of Section 58 of the Children Act 2004: consultation

NCH the children's charity

NCH welcomes the opportunity to respond to the review of Section 58 of the Children Act 2004.

Fundamentally, NCH believes that children across the UK should be offered the same protection in law from assault, and/or the threat of assault, as adults. We also believe that Section 58 of the Children Act 2004 allows parents and others to continue to justify common assault on children as 'reasonable punishment' and as such it does not improve the protection offered to children and young people.

Who are we?

NCH is one of the largest children's charities in the UK. We run nearly 500 services and work with more than 170,000 children, young people and their families across the UK - some of the most vulnerable in our society.

We complement our role in promoting social justice through our services by lobbying and campaigning for change. NCH is one of the main providers of Children's Centres and we are the sector's leading provider of preventive and intensive support to families with vulnerable children, including those in care, in trouble with the law, who are disabled and who have mental health problems.

Our purpose is to help the most vulnerable children and young people break through the barriers caused by injustice, deprivation and inequality, so they can achieve their full potential. Our vision is of a world where all children and young people have a sense of belonging, are loved and valued and have the ability to reach their potential.

Key messages

- NCH believes that children and young people have a fundamental right to equal protection from assault
- NCH believes that section 58 of the Children Act 2004 has not improved the legal protection of children and young people
- Section 58 sends out a dangerous message about the acceptability of violence against children and young people
- This message undermines efforts to promote positive, non-violent discipline
- As service providers, NCH believes that Section 58 has created public confusion and professional uncertainty
- We do not believe that these concerns can be addressed by the issuing of guidance - explaining an unjust and confusing law is not the answer. What is needed is a change in the law

Consultation questions

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

NCH believes that section 58 has not improved the legal protection of children and young people in cases of alleged assault by their parents. Section 58 allows parents and others to justify common assault on children as 'reasonable punishment'. This means children have less legal protection from assault than any other population group.

We believe that the law in this area is confused and that, in many ways, the introduction of Section 58 has made the legal protection of children more difficult.

This is because of the message it sends out about the acceptability of violence against children and young people, as well as being complex and difficult to explain in practice.

This is born out through our experience of working with vulnerable children and young people whose families have complex needs. We believe the section is framed in such a way that it makes the provision of practical advice to parents and carers difficult. For example, NCH runs number of parenting programmes through our Children's Centres. NCH has extensive experience of deterring parents from using physical punishment and encouraging positive, non-violent discipline, and the real obstacle that Section 58 brings to this work by allowing it.

Another example is working with families where domestic violence is an issue. Section 58 makes it very difficult to send out a clear message of zero tolerance to violence.

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?

NCH's experience is that the introduction of Section 58 has not produced large changes in our professional responses, nor in that of other agencies.

NCH already had clear policies that forbade the use of physical chastisement of children and young people, by anyone, on NCH premises. Our work is clearly based on children's right to be protected from physical violence of any sort, as well as working with parents to develop more effective options.

However, Section 58 undermines the promotion of positive discipline, because it re-affirms parents' right to assault their children. This

inevitably makes it more difficult to clearly deter and prevent assaults on children.

The law is confused and confusing, for parents and all others – but because it is unjust and unsafe, explaining it more through guidance and public education could only make things worse. The only solution is complete removal of the defence to fulfil children’s right to equal protection.

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

Despite our extensive experience of working directly with children, young people and families, NCH has no evidence that the changes in the law have deterred parents from using unacceptable levels of physical punishment in the upbringing of children. Conversely, our experience is that the level of awareness is low and the implications ill understood.

It would appear that Section 58 has encouraged some parents committed to physical punishment to use forms of it which, although highly dangerous, do not leave marks. We also know that physical punishment tends to escalate. The only safe, legal solution is the complete removal of the ‘reasonable punishment’ defence to fulfil children’s right to equal protection.

We would also like to take issue with the wording of this question. It suggests that there is an acceptable level of physical punishment. We disagree and would point out that this message contradicts the Government’s statement that it does not ‘condone’ physical punishment by parents.

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?

Our experience of working with more than 170,000 children, young people and their families across the UK has been that Section 58 has not helped with the development of effective discipline. On the contrary, in reaffirming parents’ right to hit, it has tied the hands of agencies and undermined positive discussions and the promotion of positive discipline.

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

As above, the law has not helped agencies, such as NCH, working with children and families either to protect children or support parents.

We do not believe that Section 58 could help, even with the production of detailed guidance. You cannot protect children in the context of an unjust and undermining legal framework.

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

Section 58 has increased a dangerous confusion.

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?

NCH believes that legislation should be introduced to ensure that children across the UK enjoy the same protection in law from assault, and/or from the threat of assault, as adults.

Would do not believe that the answer is to promote greater 'understanding' of section 58, through guidance, public education etc. It would in fact undermine child protection as any guidance would perpetuate the message that parents and others have a legal right to assault their children.

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?

We have no evidence that groups have been differentially affected by this law. Section 58 does have a discriminatory impact on children as a group, in contrast to any other population group, by denying them their basic human right to equal protection under the law. As such, Section 58 represents fundamental discrimination by age.

In addition, research evidence shows that disabled children are particularly at risk of physical assault by parents and others, so the 'reasonable punishment' defence may affect them disproportionately.

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

This is a human rights and equality issue. So the prime evidence is the relevant human rights standards and formal recommendations to the UK.

The UN Committee on the Rights of the Child, when monitoring the UK's compliance with the Convention on the Rights of the Child, has twice recommended equal protection to the UK (in 1995 and 2002).

The October 2006 report of the United Nations Secretary-General's Study on Violence against Children called on all countries to prohibit all physical punishment by 2009.

In their January 2006 joint statement, the UK's four Children's Commissioners called for urgent action, declaring "there is no room for compromise" on equal protection from assault for children.

Sixteen European countries have legislated to satisfy human rights obligations by giving children equal protection from assault: Austria (1989); Bulgaria (2000); Croatia (1999); Cyprus (1994); Denmark (1997); Finland (1983); Germany (2000); Greece (2006); Hungary (2004); Iceland (2003); Latvia (1998); Netherlands (2007); Norway (1987); Romania (2004); Sweden (1979); Ukraine (2004). In 2007 New Zealand became the first English-speaking country to give its children equal protection. (Italy has prohibited all physical punishment by Supreme Court decision and at least another six countries, including Spain and Portugal, are committed to equal protection).

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