



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Equalities and Human Rights Committee

**Thursday 7 March 2019**

**Session 5**



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**EQUALITIES AND HUMAN RIGHTS COMMITTEE**

**6<sup>th</sup> Meeting 2019, Session 5**

**CONVENER**

\*Ruth Maguire (Cunninghame South) (SNP)

**DEPUTY CONVENER**

\*Alex Cole-Hamilton (Edinburgh Western) (LD)

**COMMITTEE MEMBERS**

\*Mary Fee (West Scotland) (Lab)

\*Fulton MacGregor (Coatbridge and Chryston) (SNP)

\*Oliver Mundell (Dumfriesshire) (Con)

\*Gail Ross (Caithness, Sutherland and Ross) (SNP)

\*Annie Wells (Glasgow) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Bruce Adamson (Children and Young People's Commissioner Scotland)

Joanna Barrett (Barnardo's Scotland, Children 1st and NSPCC Scotland)

Martin Canavan (Aberlour Child Care Trust)

Lucy Chetty (Scottish Autism)

Alison Davis (Saheliya)

John Finnie (Highlands and Islands) (Green)

Amy Johnson (Zero Tolerance)

Triona Lenihan (Global Initiative to End All Corporal Punishment of Children)

Gordon Lindhurst (Lothian) (Con)

Maureen Phillip (PAMIS)

Nora Uhrig (Equality and Human Rights Commission)

**CLERK TO THE COMMITTEE**

Claire Menzies

**LOCATION**

The James Clerk Maxwell Room (CR4)



# Scottish Parliament

## Equalities and Human Rights Committee

Thursday 7 March 2019

*[The Convener opened the meeting at 09:00]*

### Children (Equal Protection from Assault) (Scotland) Bill: Stage 1

**The Convener (Ruth Maguire):** Good morning and welcome to the sixth meeting in 2019 of the Equalities and Human Rights Committee. Please ensure that mobile devices are switched to silent.

I welcome Gordon Lindhurst MSP and John Finnie MSP to the meeting.

Agenda item 1 is our second oral evidence session on the Children (Equal Protection from Assault) (Scotland) Bill. I welcome our first panel: Bruce Adamson, Children and Young People's Commissioner for Scotland; Joanna Barrett, policy and public affairs manager, Barnardo's Scotland, representing Barnardo's, Children 1st and NSPCC Scotland; Triona Lenihan, advocacy and communications manager, Global Initiative to End All Corporal Punishment of Children; and Martin Canavan, policy and participation officer at Aberlour Child Care Trust.

I will start things off. Do you support the bill's aim of preventing the physical punishment of children in Scotland?

**Bruce Adamson (Children and Young People's Commissioner Scotland):** Yes. As Children and Young People's Commissioner for Scotland, my role is to promote and safeguard the rights of children and young people, and the bill's aim is one of the most important legislative things that we can do right now to secure children's rights.

Assaulting a child for the purpose of punishment should never be legal. It is at odds with the values that we hold in Scotland. The United Nations Convention on the Rights of the Child is clear that children should grow up in a family environment of happiness, love and understanding, and that, although parents have the responsibility to ensure that children grow up in that environment, the state has an obligation to put in place clear protections. Article 19 of the convention says clearly that the state must put in place legislative protections to ensure that children are protected from all forms of violence and, alongside that, all the guidance, support and education to allow parents to fulfil that role. The bill meets both those aims. It ensures

that the state puts in place that guidance, support and education, and it corrects the issue that we have at present where the assault of children is allowable for the purpose of physical punishment.

As the committee is aware, the issue has been a regular feature of concern about Scotland from the international community—the United Nations, the Council of Europe and the European Union. I welcome John Finnie's human rights leadership on the matter and the committee's role as a human rights guarantor to ensure that children in Scotland have their rights respected in relation to their physical integrity.

**Joanna Barrett (Barnardo's Scotland, Children 1st and NSPCC Scotland):** As you said, convener, I am here to represent three organisations—NSPCC Scotland, Barnardo's Scotland and Children 1st. We have been working together for a long time to advocate the change and we, too, commend John Finnie's leadership in bringing the bill before Parliament. It is our strong opinion that the law as it stands has no place in a society that claims to be progressive and wants to do the best for its children, so we strongly advocate the bill.

**Triona Lenihan (Global Initiative to End All Corporal Punishment of Children):** As our name probably suggests, we strongly support the aims of the bill as a means of realising children's rights to dignity and bodily integrity and to health, development and education, and as a means of reducing violence in families and society.

**Martin Canavan (Aberlour Child Care Trust):** Thank you for inviting us along to give evidence this morning. My answer is yes, Aberlour fully supports the bill and the aim of ensuring that children have the same protection from assault as adults through the prohibition of physical punishment. We believe that all physical punishment of children should be prohibited by law and that children require more, not less, protection from violence than adults do. There naturally exists an imbalance of power in adult/child relationships, and as a result it is critical that children are provided with as much protection in law as possible.

Aberlour has a proud history of advocating against the physical punishment of children while promoting positive alternatives to physical punishment. Parenting support is a key focus of the work that we do with families every day, helping parents to become confident and secure in their parenting. We believe that the focus of a prohibition on physical punishment should be on not the criminalisation of parents, but the protection of children, not only by legislating but by promoting positive alternatives to physical punishment. We need to support parents who struggle to feel that they can deliver positive

parenting and help them to become confident in their parenting.

**Alex Cole-Hamilton (Edinburgh Western) (LD):** Good morning. Thank you very much for coming to see us.

Given that Aberlour Child Care Trust is represented, I say for the record that I worked with the trust as head of policy for eight years before I was elected to the Parliament.

I want to address the perceived tension between adults' rights and children's rights. Dr Waiton, who gave evidence to the committee last week, suggested that there is no such thing as children's rights. There are protections, but children are in the care of their parents. Submissions against the bill have cited a tension between the right to family life and article 19 of the convention. Do the panellists agree with Dr Waiton's assertion that there is no such thing as children's rights? Bruce Adamson has said that article 19 states the clear international expectation that children have the right to be free from violence. Is there a conflicting right in any treaty in international law that could be interpreted as giving parents the right to physically punish their children?

**Bruce Adamson:** The position that children do not have rights is completely untenable. We recently celebrated the 70th anniversary of the United Nations Universal Declaration of Human Rights, and the committee had a human rights takeover day on 10 December. Article 1 of the declaration states:

"All human beings are born free and equal in dignity and rights."

The international community has been very clear that children have not only rights, but additional rights. Those have been set out in the preamble to the declaration, which identifies childhood as a time of special care and protection, and in successive international treaties at the UN, Council of Europe and EU levels—most notably in the United Nations Convention on the Rights of the Child, which is 30 years old this year and which I have cited. The convention recognises that, because of the particular vulnerability related to children's physical immaturity, additional rights and protections are necessary. The idea that children do not have rights is therefore simply untenable in any country in the world. Every UN member state signed up to that at the beginning of the basics of our human rights framework, so I cannot understand that argument.

You mentioned the perception of a difficulty in balancing the human rights of parents and the human rights of children. The United Nations Convention on the Rights of the Child, which every UN member state bar one, along with a number of non-UN member states, has signed up to, was

drafted very clearly. The family environment and the role of parents are absolutely essential. I am talking about how the state can support parents and families to ensure that children can access all their rights in relation to health, education and thriving. Article 5 of the convention sets out very clearly that the state shall respect the rights and duties of parents; it also sets out a number of ways in which that should be done. Article 18 recognises the "primary responsibility" that parents have and says that the state has to provide additional support to parents. The state needs to support families in order to deliver the rights of children and young people. There is absolutely no right to use physical violence as part of respect for private and family life.

Article 8 of the European convention on human rights, which is a Council of Europe convention, talks about

"respect for private and family life".

The state can interfere with that only in certain circumstances. The European Court of Human Rights and all the UN committees have been very clear that there is no right to use violence in relation to respect for family life.

**Joanna Barrett:** We totally agree with the commissioner that it is pretty ludicrous to argue that children do not have rights, especially in front of the Equalities and Human Rights Committee. Children's rights are realised through their adults. It is we who are the guardians, almost, of children's human rights. Rather than children's and parents' rights being in conflict, they are actually totally complementary. I see my role as a parent as ensuring that I do my best to realise my children's rights. The job of adults, Parliament and society is to realise children's rights.

**Alex Cole-Hamilton:** Dr Waiton, who gave evidence against the bill last week, suggested that the right to family life is about autonomy and that parents should have autonomy to parent their children as they see fit. Where are the restrictions around that autonomy defined? Are they simply interpreted from the notional right to family life?

**Bruce Adamson:** They are defined and interpreted through a number of sources. There are the core conventions. Article 19 of the Convention on the Rights of the Child, which is 30 years old, makes it clear that parents' role is to protect children from

"all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse".

The Committee on the Rights of the Child issues general comments, which are an authoritative interpretation of the convention, and it has expanded on the convention significantly, making it clear and unequivocal—there is no ambiguity—

that children's right to be protected from violence means that all forms of corporal punishment in all settings must be abolished by law, and that campaigns to support that must also be in place. The UN committee has been clear about that through the text of the convention and in its general comments relating to the convention.

The Parliamentary Assembly of the Council of Europe has said very much the same thing. In 2008, it said that the right to respect for private and family life needs to be interpreted within the context of protecting children from all forms of violence. In fact, almost all countries in Europe, as well as a significant number—more than 50—across the world, interpret the right in that way. The idea is that there must be a comprehensive legal framework to protect children from all forms of violence in all settings and that the right to respect for family life needs to be interpreted within that.

The European Court of Human Rights has been very good at dealing with the issue, and our domestic courts can address it as well. It is interesting that all the leading cases in relation to physical punishment of children have been against the United Kingdom, on issues ranging from corporal punishment in the criminal setting to abolishing corporal punishment in schools, focusing on independent schools, and to restricting the use of implements and other things in the home, which led to the most recent change in Scotland.

In my view, the current position in Scotland is in breach of the European standard and there is a real risk that, if the bill is not passed urgently, we could end up with a child again having to go through the courts to seek redress. The current position is not compliant with the European convention on human rights or the broader framework. The courts are very good at interpreting the issue, and the limits on respect for private and family life are set within the clear guidance on protecting children from violence.

**Alex Cole-Hamilton:** Before I move on to my next question, perhaps Triona Lenihan or Martin Canavan wants to come in.

**Martin Canavan:** We are an organisation that has children's rights at the heart of the work that we do every day with children and young people and families, and we are committed to supporting, promoting and protecting children's rights. Therefore, to us, the notion that children do not have rights is a nonsense—it is ludicrous—and we reject any evidence that the committee has heard thus far that makes such a suggestion.

**Triona Lenihan:** I strongly agree with everything that has been said. We have talked a lot about promoting children's rights and protecting

children, but the change would have a positive impact on families as a whole. The positive changes in behaviour and social norms that could come about would benefit parents and children in families. The feedback and anecdotal evidence from parents who have participated in positive parenting courses and similar things is that the knock-on effect on the whole family is of great benefit.

**Alex Cole-Hamilton:** I will move on to the arguments that are deployed by those who oppose the bill. They say that there is empirical evidence to show that things such as back-up smacking can be an effective parental control and discipline tool. My anxiety about that is that it presupposes that everybody who uses smacking does so in a proportionate and controlled manner. When the Parliament legislated on the issue in 2003, the restrictions that it put on smacking were that there should be no head shots, no shaking and no use of implements—that was it. Have those parameters created a landscape in which parents understand that they have to retain control when using smacking, or has that legislation led to more confusion?

**Joanna Barrett:** It has led to a lot of confusion. If you ask a parent on the street whether smacking is banned, they will probably say that it already is. There is not a lot of clarity, and legal change would bring absolute clarity for parents, professionals seeking to support parents and, ultimately, children, on how they can expect to be treated.

09:15

I am uncomfortable talking about back-up smacking. I am not an expert on the empirical evidence, but, in the report that we—Children 1st, NSPCC Scotland and Barnardo's Scotland—commissioned, Dr Heilmann was really clear that there is no evidence that physical punishment is a useful discipline tool or that it does children any good. What is the impact on the child of back-up smacking? Do they think that it is okay, because they know that it is a back-up smack that is used as a last resort? That is not how a child receives a form of physical punishment. They know that they have been hit—they do not give it an academic label.

With back-up smacking and the threat of smacking, we draw an invisible line in our mind about what is and is not acceptable, and the law allows us to draw that line. The problem is that everybody around this table would have a different invisible line for the punishment that would or would not be okay for a child to receive. For each person, the line would change as circumstances change, and it would sometimes be completely blurred. It is totally unjustifiable that our law allows

that. It should be absolutely clear to parents, professionals and children how children should be treated with regard to children's physical dignity.

That opens up a different conversation about how we manage children's behaviour. All the evidence from the growing up in Scotland study shows that there is a peak between the ages of three and five in the amount of smacking used, so we are not talking about children with whom we can rationalise or who have an understanding of how to regulate their emotions. They are very young children who do not have the cerebral capacity for that. As parents, we need to teach them how to emotionally regulate, given that—ostensibly—we have the capacity to regulate our own emotions. We will not model that behaviour for our children if our response to frustration is to lash out.

**Alex Cole-Hamilton:** In this debate, some reasonable people are suggesting that physical punishment is sometimes in the best interests of the child—for example, if they are about to put their hand in a fire or run out into traffic. In the 54 countries where physical punishment has already been abolished, has there been a decline in children's welfare due to people not being able to restrain their children in that way?

**Joanna Barrett:** There is absolutely no evidence of increased prosecutions. I cannot attest to there being increased incidence of children being knocked down, electrocuted or anything like that.

The idea that the bill would not let parents stop children running in front of a car, touching a hot iron or touching a plug is often used, so it is incumbent on us to be absolutely clear about what the bill seeks to do. It is my understanding that such action is not assault and we are here to talk about removing a defence for assault. The purpose of such action is to stop a child coming to immediate harm.

If we did not mess with the current law, the existing defence would not even come into play, because it talks specifically about physical punishment. Me pulling my child out of the way of a car is not an act of physical punishment; it is an act of protection. It is a red herring to focus on such things as examples of what the bill seeks to do.

We have a responsibility. We talk about public opinion perhaps not being with the bill, so, in order to garner good public opinion, we need to be really clear about what the bill will and will not do.

**Martin Canavan:** I return to Joanna Barrett's original point about clarity. For the parents we work with every day—and for parents in the general public, out in the street—what the law currently does and does not allow with regard to

physical punishment is not clear. A consequence of passing the bill would be that absolute clarity could be ensured, because all physical punishment, of any description, would be prohibited by law. That clarity would be important in ensuring that parents who required support were provided with it. It would also ensure that parents who otherwise might not seek out advice about or assistance with parenting issues or concerns would be encouraged to seek out such support.

Like Joanna, I have often heard cited the examples of a child running out into traffic or otherwise putting themselves in harm's way, and I echo what she said about stopping a child doing that not being the same as physically punishing them.

It is also important to recognise that we might have to do the same thing to stop an adult with an impairment—dementia, for example—walking out into traffic. However, we would not then physically punish them afterwards to reprimand them or show them that they had done something that they should not have done. The same consideration applies to children as applies to adults.

Children learn from the example that we set and from the behaviours that we model—that is how they learn as they grow up. I think that even the slightest smack shows a child that hitting people is okay. By prohibiting physical punishment, we will prevent that and ensure that children grow up learning that hitting others is simply not acceptable.

**Annie Wells (Glasgow) (Con):** We know from opinion polls and the individual submissions that we have received that public opinion is not with the bill. How can we bring the public along with us on this journey? Is it a question of information and education rather than legislation?

**Bruce Adamson:** That is an important point. We must make clear the point that we were just making. What we are talking about is assault: a deliberate attack on another person with an evil intent, which is to cause physical injury or fear of personal injury. That is something that is proscribed by law, unless you are the parent or carer of a child and you are doing it for the purpose of punishment. That is all that we are talking about. We are not talking about using physical contact to keep a child safe. That is not an assault, and it would not meet the test of it being for the purpose of punishment.

The international evidence is interesting. It shows that, in most countries that have taken this step through law—indeed, in all of them, I think—public opinion was not with the legislation. That is because, generally, even though this is not the test that we are seeking to bring in, the opinion



polls asked, “Should we criminalise parents who smack children?”

There is great evidence internationally, in particular from New Zealand, that, over time, people’s opinions change, once they see that the approach works. Generally, what is required is human rights leadership, which uses the legislation to deliver the culture change. That culture change takes quite a long time. In New Zealand, for example, there was a citizens-initiated referendum to try to reverse the change. Again, the majority of the people who took part in that referendum said that they thought that the law should be repealed. The Government said no, because a human rights principle was involved. That position has proved to be right, because public opinion has changed. It took quite a long time and happened fairly slowly but, without that legislation, there would not have been that culture change.

You need the legislation to deliver the culture change—we know that to be true. In that regard, this issue could be seen in the same way as seat belts in cars, drink driving and smoking in pubs. On such issues, you need to lead with the legislation in order to deliver the culture change. It is not the prosecutions that change the culture; it is the clear indication in the law about what is expected. What we have seen internationally is that there is not a massive increase in the number of prosecutions—the associated prosecutions are extremely rare. Also, you do not see an instant change public opinion; what you see is a gradual change in public opinion and a culture change in relation to violence.

**Oliver Mundell (Dumfriesshire) (Con):** I have a supplementary question, specifically for Bruce Adamson. You set out the tests for the common-law offence of assault. Do you think that parents who smack their children show “an evil intent”?

**Bruce Adamson:** “Evil intent” has been interpreted by the courts as involving an intention to cause physical injury and fear of injury.

**Oliver Mundell:** Do you think that that is the intention of parents when they smack their children?

**Bruce Adamson:** That is the way in which the criminal law would approach it. If that is not the intention, the issue would not be a matter for criminal law. Criminal law is concerned only with—

**Oliver Mundell:** They have to want to injure their child, or cause them an injury.

**Bruce Adamson:** That must be their intention. That needs to be set in the context of physical punishment. Something that is not for the purpose of punishment—grabbing or restraining—would not be a criminal law concern.

There is an obligation to provide education and guidance, and all the evidence shows that positive parenting is much more effective.

**Triona Lenihan:** This comes down to definitions. We use definitions, as Bruce Adamson said, to differentiate between a punitive action—an assault or a physical punishment—and a protective action. The United Nations Committee on the Rights of the Child uses the same approach. It defines physical or corporal punishment as a physical action that has the intent “to cause some degree of pain or discomfort, however light.”

Therefore, it is not that the parent is being malicious and has a negative motivation but that their action has that intent.

**Oliver Mundell:** I fully accept that definitions are very important, but we have to recognise that assault is a common-law offence in Scotland, so the issue is how the courts interpret an action and its intention. I just wonder whether the ordinary or reasonable person would think that parents set out with an intention to cause injury to their child. It is a question of interpretation. Would you be confident that the court would see such an action as intending to cause injury?

**Bruce Adamson:** I think that the courts are very good at interpreting such matters. The common-law offence of assault applies to adults, and cases do not generally get to court. I cannot really foresee that the small, physical interventions that you are talking about would end up in court.

The bill is about setting very clear standards that any form of physical violence for the purpose of punishment—using pain as a tool of punishment—is wrong. In order for criminal law to be engaged, the standard would be in relation to assault, which would require the intention that I described.

**Oliver Mundell:** Do you recognise the vagaries of the law and the fact that, if there is not a more carefully defined definition, a grey area could be created?

**Bruce Adamson:** That is certainly not the experience anywhere else; neither is it the experience in Scotland—we have a long history of the police, the procurators fiscal and the courts being able to interpret our laws. This is not a new offence; the courts are already very aware of it.

**The Convener:** I am conscious that that was a supplementary, Oliver, and that we cut across Annie Wells. Apologies for that, Annie.

**Annie Wells:** Does anyone else have anything to add in response to my question about how we bring the public on this journey?

**Joanna Barrett:** We need to accept that this is an emotive issue—it speaks to how we were

parented and how we parent. I think that it is fair to say that there is no universal consensus on the issue. As the commissioner said, although most of the places around the world that have introduced similar legislation faced public opposition, they did so because it was the right thing to do.

A ComRes poll, in which more than 1,000 people were surveyed about smacking, is often cited. If the results are disaggregated by age, there is a huge disparity between older people, who are more likely not to support the bill, and younger people, who overwhelmingly support it.

We need to look at the views of children and young people. The Scottish Youth Parliament has carried out work—it has provided it to us—that shows overwhelming statements from tens of thousands of young people who agree that we need to introduce these measures. We are seeing a decline in the use of physical punishment anyway, so younger people are more likely to support legislation. They are the parents of the present and the future. Although we know that the proposal does not have universal support, it is important to acknowledge that there is increasing support from younger generations.

On your question about whether this issue should be dealt with through public education or legislation, it has to be both—all the evidence says that a change in the law alone will not achieve the behavioural and cultural change that we want. We cannot change the law without telling people about the issue. There need to be sustained public information and awareness campaigns, not just a one-off campaign. Equally, those public education campaigns alone will not achieve the change that we want.

09:30

**Martin Canavan:** I agree with everything that Bruce Adamson and Joanna Barrett have said. The legislation is just one part of a much wider approach, which should include a public information campaign and awareness raising, so that information is available to parents, families, children and young people through multiple channels and formats.

A third element is to ensure the provision of accessible support, information and advice for all parents who require it. That would ensure that parents who feel that they need help or support with their parenting, particularly in the light of the bill, can be confident in finding the help, support and advice that they need. There are three elements to the approach, but legislating is key.

The role that you, committee members, and your colleagues in Parliament have as legislators and policy makers is to legislate in the best interests of your constituents and wider society.

That work should be done from an informed, evidence-based point of view. Although it is important to be aware of and to take note of public opinion, consideration of public opinion should not outweigh a strong and robust evidence base. In relation to the bill, there is a strong and robust evidence base in favour of prohibiting the physical punishment of children.

**Triona Lenihan:** The Government and the Parliament are responsible for protecting the human rights of all their citizens, including children. Protecting the rights of a minority sometimes requires a top-down approach, particularly when the policy is evidence based and supported by guidance from international rights bodies and international health and medical bodies, including the World Health Organization.

It is worth noting that most parents do not want to use physical punishment. They do not like doing it and they do not feel good after having done it. The UNICEF multiple indicator cluster surveys programme covers a range of issues, including violent discipline. The surveys that it has conducted in countries all over the world have consistently found that the use of corporal punishment is far higher than the number of parents and carers who believe that such punishment is necessary to raise a child properly. That finding is encouraging, because it implies that parents would use alternative methods if they were more aware of them and were more comfortable and confident in using them. Therefore, there is a responsibility to meet those needs and to fill that gap in the law, and the bill would go a long way towards doing that, particularly through providing clarity.

Clarity in law is essential in providing the foundation for all the work on education and parent support. Without clarity, there will be ambiguity and confusion, because often people assume that if the law allows something, it must be okay. Following a similar change in law in Ireland, one of the greatest benefits has been the clarity that has been provided to the police, social services and everyone who works with and for families. If it is clear that physical punishment is never acceptable, people can then talk about the positive things that they can do.

**Mary Fee (West Scotland) (Lab):** I want to ask about the published evidence that the physical punishment of children can cause long-term harm. Such punishment has been linked to further childhood aggression, adult aggression and antisocial behaviour. Do you agree with that? If so, why do you have that view?

**Triona Lenihan:** I agree. A huge body of evidence supports that view. The global initiative prepared a summary of the research in 2016. At that point, more than 250 studies showed

associations between experience of corporal punishment as a child and the wide range of negative health and behavioural outcomes that you mentioned. More research has been published since then, so an enormous body of evidence supports that view, and there is no comparable body of evidence against it.

**Bruce Adamson:** Last week, the committee received strong evidence from academics who are authors of some of the papers and reviews in this area. The evidence base on the negative impacts of the early experience of violence and physical punishment is growing and is very consistent.

On Tuesday, the special representative to the secretary general on violence against children, Marta Santos Pais, gave her report to the UN Human Rights Council and highlighted a number of other reports. Therefore, the issue was discussed earlier this week at the Human Rights Council. Marta Santos Pais was clear about the fact that she welcomed the Scottish bill, and she said that she thought that the evidence was now so strong that all countries needed to introduce such legislation as a matter of urgency. She also linked the issue to the sustainable development goals—goal 16, in particular—and to health and development. She said that such legislation would play a strong role in the lifelong development of children and young people and that experiencing violence clearly affected their ability to access rights across the board.

**Mary Fee:** Do any of the other panel members want to comment?

**Joanna Barrett:** I will speak for the panel—I am willing to be corrected if I am wrong. Nobody is suggesting that the link in question is causal—that because someone has been physically punished, they will experience X, Y or Z. Among all the nuances, that can be lost. We are not suggesting for a minute that, because someone has experienced physical punishment, they will go on to do X, Y or Z. However, so strong and consistent is the link that the evidence shows that it undermines what we have on the statute book and makes the proposed change really urgent.

**Martin Canavan:** I agree with what others have said. There is a significant and robust evidence base. As Bruce Adamson mentioned, last week the committee heard from some academics who have published papers and conducted studies in this area. They are far more qualified to comment on what the long-term outcomes are than I am.

In the work that we do on a daily basis in providing family and parenting support, we see the direct impact of that work and what can be achieved as a consequence of it. All the work that we have done with families over the years has shown that, by addressing at as early a stage as

possible underlying issues for parents, such as mental health and other factors that might affect their parenting capacity, we can improve not only their capacity but their relationships with their children. We do that by role modelling, demonstrating good behaviours, providing opportunities for stay and play, and building routines such as sleep routines in an effective way. All those things contribute to the ability of parents to build and develop positive relationships with their children. We know what the outcomes are—we have heard a great deal of evidence on the impact of such work in building positive relationships and improving children's wellbeing in the long term. We can say with some confidence that we see the impact of the work that we do from day to day on the families we work with.

**Mary Fee:** Are you aware of any specific equality groups that are more likely to be subjected to physical punishment? I am thinking of groups such as children with additional support needs or physical disabilities.

**Triona Lenihan:** There is research that shows that children with disabilities can be more vulnerable to violence generally, including physical punishment. Beyond that, there are differences in how physical punishment can be applied. It can sometimes be used for different reasons or in a different way for boys and girls.

**Bruce Adamson:** There are studies that look at areas such as gender and disability, which I am not an expert on, but what we are looking for and what is required is a universal protection, whereby no child should be subjected to physical violence. Some children, especially those who have additional communication needs, are at a heightened risk of assault. I am not an expert on the studies that suggest that they are more likely to be assaulted, but they are at heightened risk and have less ability to express themselves or to seek justice if they are subjected to physical violence.

That links strongly to the work that my office has done on restraint and seclusion in educational settings, which shows that it is much more likely to happen to children with communication additional support needs. However, that is not what we are discussing in the context of this bill. It is a universal principle, so the key thing is that no child should be subject to physical violence. The protections that should be put in place for particular children also need to be looked at, but I am not an expert on the evidence around equalities issues.

**Mary Fee:** Does the panel think that restraint should be covered by the bill? As I said when I raised the issue last week, I have seen restraint being used and it can be shocking and alarming to see it used on a young person. There is a fine line

between using restraint to prevent someone from causing further harm to themselves or others and using it to punish or harm them. It is more commonly used in residential care settings, but it could be used by carers of a young person with complex behavioural needs. I am interested in the panel's views on whether the bill could be used to protect young people from the use of restraint.

**Bruce Adamson:** I am particularly concerned about that broader issue. I recently conducted an investigation into the use of restraint and seclusion in educational settings. The report was laid before Parliament last year, and I would welcome the opportunity to come and speak to the committee about that and its recommendations. The evidence from Who Cares? Scotland and the conversations that we had with care-experienced young people raised restraint as a significant concern that needs to be addressed but, in my view, the bill is not the place for that. That is partly because someone within a residential or educational setting would not be able to rely on the defence at the moment, even if they were exercising parental responsibilities. They would be excluded because the bill is not about that.

It would be better to look at restraint and seclusion separately, and at what changes to legislation, policy and practice are needed. A number of those are in my report and the work from Who Cares? Scotland. It is an issue that urgently needs to be addressed, but it does not sit within the context of this bill. That specifically looks at whether the use of assault for the purpose of physical punishment can be justified when exercised by parents or carers on children. I strongly agree that we need to take action on restraint and seclusion, but this bill is not the place to do that.

**Mary Fee:** Do any other panel members want to comment?

**The Convener:** I am conscious that time is marching on. It would be good to hear any different opinions, but if you want to agree we will move on to the next question.

**Martin Canavan:** I absolutely agree, but I also want to say that, as providers of residential childcare where restraint is significant in the work that we do with looked-after children, we would also welcome the opportunity to come and speak to the committee about it at some future point. It is an important issue, but I do not think that this bill is the right place to address it.

**Oliver Mundell:** In last week's evidence, it was suggested that the bill will not lead to an increase in the number of prosecutions or fines. Is that correct?

**Bruce Adamson:** The experience in other countries has been that such increases have been

nominal. In New Zealand, for example, there were, I think, eight cases over the 10-year period, and some of those would have fallen foul of the law in Scotland anyway. A very small number of cases needed intervention through prosecution in the courts. Intervention that fell short of prosecution tended to involve not fines or criminal diversion but additional support being put in place.

I foresee a need for increased resource to be put into support services for families, and that is set out in the financial memorandum. The bill will allow us to put more support in place, but I do not foresee a significant increase in prosecution or in other criminal responses to behaviour that is not covered by the current legislation.

09:45

**Oliver Mundell:** Are the rest of the panel of the same view? You do not need to give a long answer if that is the case.

**Triona Lenihan:** I will give a specific example from Sweden. A study was done in 2000 that examined the impact of the ban there. It found that the ban had been effective in providing opportunities for increased early intervention and early identification of children and families who were at risk of violence, as well as providing increased support to families. The number of interventions that required out-of-home care declined by a third and there were a range of other positive benefits.

**Oliver Mundell:** Is the bill drafted in the correct way to legislate in this area, or is there an opportunity to do something more comprehensive that sets out our aspirations with more detail and clarity?

**Joanna Barrett:** We totally support how the bill is drafted. Correct me if I am wrong, commissioner, but, under our international human rights obligations, we have to remove any permission for violence against children from our legislation. We therefore need to remove a defence for assault from the common law.

We are not alone in relying on the common law. Ireland made the same change in 2014 or 2015, and the Welsh Government is seeking to make the same change—its legislation very much mirrors ours. Culture change takes a while, so, if we pass the bill, we might revisit the issue at a different point and decide that more needs to be done. However, given where we are right now, this is absolutely the repeal that we need to make.

**Oliver Mundell:** Do you think that the bill amounts to a ban on smacking?

**Joanna Barrett:** We need to be absolutely clear that no offence is being created in the bill; it is removing the defence for assault. If a parent is

charged with assault and the Crown Office has deemed that there is sufficient evidence and that it is in the public interest to prosecute that parent, there should be no relying on a defence that the young person they ostensibly assaulted is a child. No offence is being created in the bill—we need to be absolutely clear about that.

**Oliver Mundell:** So, this is not a ban on smacking—is that correct?

**Joanna Barrett:** It is hoped that the impact of the bill will be a decline in the use of physical punishment as a result of behaviour change. In black-and-white terms, though, that is not what the bill is doing; it is repealing a defence for assault.

**Oliver Mundell:** Is the bill ambitious enough, Mr Adamson, or should we be setting out in law our intention to make violence against children an offence?

**Bruce Adamson:** I agree with everything that Joanna Barrett has just said. That was a very good explanation of the position.

It is clear that the bill is drafted—very simply and correctly—to address the failure in our law to protect children’s rights in relation to the current defence. There are lots of other things that we need to do to make sure that children live free from violence, a lot of which are to do with education. However, removing that defence to make sure that there is a comprehensive protection is the correct approach and it is generally the approach that is being taken. We know what assault means under the law as it stands, and that is what we need to address. We could overcomplicate matters if we took a different approach.

**Oliver Mundell:** Thank you.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** The concerns that have been expressed by my colleagues to my right—both at today’s evidence session and at last week’s meeting—are about the possible criminalisation of parents for what they would currently deem to be good parenting. I do not share that concern, as it happens, and I think that some of the evidence that we have heard today has been quite powerful.

As a former social worker—the panel members will all have experience in that field—I know that it is quite difficult to secure prosecutions for quite serious and heinous crimes against children. I therefore do not think that that is the purpose of the bill or that it will lead to some sort of criminalisation of parents for what would be seen as a lesser offence than what I have alluded to. Do you think that the bill will help not only to clarify the existing law, as you have said, but to protect children from a whole range of things that could happen to them?

**Triona Lenihan:** This speaks to the status of the child and how they are viewed by society. I think that the bill could mark a turning point and a significant step away from the dominant view of children as possessions and the property of parents towards the more progressive view of children as being entitled to a full range of rights. In countries that have implemented similar legislation, we have seen a positive knock-on effect of children’s rights in general being advanced. For example, in Austria, where a ban was introduced in 1989, a survey that was conducted 25 years later, in 2014, put statements that had been put to people in 1977 to people over 15 years old. Besides showing a significant decrease in support for physical punishment, the survey showed a significant decrease in support—from 64 per cent in 1977, I think, to about 16 per cent in 2014—for the view that children should remain silent when an adult is speaking. That illustrates how this kind of approach can lead to a shift in attitudes towards, and views on, children and their rights to participate, to be heard and so on.

**Joanna Barrett:** We agree that the bill will lead to better protection of children. Because of the invisible line that, as I said earlier, we have drawn in our legislation, children are at increased risk of harm. The bill would provide absolute clarity for professionals who are seeking to help families. After all, this is tricky territory. If a health visitor goes into a home and the parent asks, “Is this okay?”, they cannot really answer that question unequivocally; at the moment, it is a value judgment, and the response is usually, “Well, not really, but ...”. The bill would provide absolute clarity and would, I suppose, draw a solid line between what is and is not acceptable.

I would also point to the overwhelming evidence from other countries that have changed their legislation in this way of a significant decrease in injurious and severe child maltreatment. I know that that is not the bill’s principal purpose, but it shows that there is a correlation between creating absolute clarity and reducing the incidence of more serious abuse.

**Fulton MacGregor:** My questions have been answered very well, convener. In the interests of time, I am happy to leave things there.

**Gail Ross (Caithness, Sutherland and Ross) (SNP):** Thank you for your evidence so far. It has been mentioned a few times that in the countries that have introduced such legislation, there has been no increase in the number of prosecutions. However, concern has been expressed that there might be an increased financial burden on public services. Is such a concern well founded, or is it unreasonable?

**Bruce Adamson:** The evidence from other countries is that, although the legislation might lead to additional costs, it is actually a very good economic decision. Early intervention works, and, although we might expect an increase in the number of early interventions with families, we know that the economic benefit of such an approach is exponentially greater than the amount of money that is spent on it.

We know that early intervention services work, and we know that there is a need to put more money into them. If the bill helps in that respect, it will be a useful additional element. The international evidence shows that those kinds of early interventions work very well and make good economic sense, as well as respecting the rights of children and young people. Ensuring, through early intervention, that families and parents get the positive parenting support that they need delivers much better results, which can be seen in the health and education systems. It is important, therefore, to point out that any additional cost would be money well spent.

**Gail Ross:** You would class any money that had to be spent as a result of the bill as preventative spend.

**Bruce Adamson:** Yes.

**Gail Ross:** Does anyone else wish to comment?

**Martin Canavan:** I agree with everything that Bruce Adamson has said about what we know about early support. Any resource that, as a result of the bill, goes into providing additional support could be clearly demonstrated to be preventative spend. We know that early support works and that working with families who need additional help, support, advice and information as early as possible has positive outcomes and prevents far worse consequences for families and children. Working with families as early as possible is part of the early intervention agenda and fits firmly into our current childcare policy framework, getting it right for every child. Any additional support that is required as a result of the bill could be seen in that context.

**Gail Ross:** I want to have a wee look at the financial memorandum. We have heard that the Scottish Government's estimate of £20,000 for marketing might not be sufficient. I know that you have provided written evidence on that aspect. We are talking about preventative spend, awareness raising, positive parenting courses and everything else that goes along with the bill. In one of my other committees, I heard this week that a six-week campaign for awareness raising on a change in the law could cost up to £500,000. Do you think that the financial memorandum is accurate? If not, what needs to be added to it, and

where should that money come from? Bruce Adamson said that the bill crosses a lot more portfolios than the one that we are looking at here.

**Bruce Adamson:** The key issue for me is that the educative work should be done anyway, regardless of the bill. Article 19.2 of the United Nations Convention on the Rights of the Child says that the state has an obligation to do all of that promotion and support anyway. Even if the bill was not progressing, that work should be done—it should be provided for in the budget. Linking that work to the financial memorandum is perhaps not the right way of looking at it. The work is an obligation on the Government anyway, so we should be seeing that spend allocated.

A rights-based approach to budgeting would have highlighted very clearly that more work needs to be done. We need to put more money into this issue, although that is not necessarily a direct criticism of the financial memorandum, because what we are talking about is not a consequential change—it is something that we should have been doing anyway, because we know that it works and because it is a requirement.

**Joanna Barrett:** I am not a marketeer, so I have no idea how much such things cost. I would say only that, if the law changes, that work must happen and should be sustained. As I said earlier, messages about positive parenting should be consistent and not a one-off resulting from a change in the law.

We have a range of resources already. Every parent receives "Ready Steady Baby!", and there is a toddler edition. Health visitors visit families a minimum of eight times, I think. These messages should be communicated through our existing resources as much as through any additional resources.

**Martin Canavan:** I agree. I am not an expert on marketing or the costs of marketing, but I think that the evidence you heard last week compared how much was spent on previous public information campaigns—for example, on the smoking ban—with what is outlined in the financial memorandum. As Joanna Barrett said, it is sensible to utilise existing resources, with help to achieve public information and public messaging.

We should not decide not to implement everything that needs to be implemented to achieve what the bill hopes to achieve simply because it is seen as being unaffordable or costing too much. As far as I am concerned, protecting children should never be unaffordable, and I do not see that as an argument for not passing the bill.

**The Convener:** We have a couple of minutes left for this panel. Gordon, do you have a question?

**Gordon Lindhurst (Lothian) (Con):** I have a quick question for Bruce Adamson. Are you familiar with the Non-Fatal Offences Against the Person Act 1997, from Ireland?

**Bruce Adamson:** No.

**Gordon Lindhurst:** You suggested that what we are doing is the same as what they did in Ireland, but assault is defined in that act, so they did not fall back on the common law there. Are you saying that you have not looked at the law in Ireland?

**Bruce Adamson:** That was not my suggestion—it was not me who said that.

**Gordon Lindhurst:** Everyone seems to agree that the law should be clear.

**Bruce Adamson:** Yes. The law should certainly be clear. Is there a suggestion that the current law of assault in Scotland is not clear? This seems to be an argument about—

**Gordon Lindhurst:** The common law is unclear. Can you name one country where the issue has been dealt with without an act of Parliament defining the circumstances? New Zealand dealt with the issue in section 59 of the Crimes Act 1961, where the matter is set out in detail.

10:00

**Bruce Adamson:** In New Zealand, we codified the criminal law. If Mr Lindhurst is making an argument about codifying the criminal law generally, we could look at that and consider how to make the common law clearer. However, I am confused about the suggestion that the current criminal system and the common law are not clear. The point does not seem to be about the specific offence that we are considering; it seems to be an argument that we should codify all common law in relation to criminal matters. This matter is no different from any other element of the common law, and in Scotland we are used to dealing with that.

**Gordon Lindhurst:** But the common law provides defences, such as that of self-defence for an adult who assaults another adult. Therefore, if we are changing the defence, we are changing the common law. Other countries, including common law jurisdictions such as New Zealand and Ireland, did it by setting the matter out clearly in statute.

**Bruce Adamson:** But they did that when they codified the common law. As you say, in New Zealand, that happened in 1961; indeed, it also happened previously to that, as New Zealand has always had that tradition. The change that was made through the Crimes (Substituted Section 59)

Amendment Act 2007 did not codify the law in relation to assault, as that had already been done.

**Gordon Lindhurst:** Would the bill be a good place to start to make the law clear in that way, as it is in other jurisdictions?

**Bruce Adamson:** If we are going to look at codifying the whole criminal law, that would be a matter for the Scottish Law Commission and others—

**Gordon Lindhurst:** No—I mean just with regard to this offence.

**The Convener:** Mr Lindhurst, as a courtesy, visiting members get to question the panel, but you need to do it in the same manner as everyone else, so ask your questions through the chair, please.

**Gordon Lindhurst:** Thank you, convener.

**Bruce Adamson:** If this discussion is about providing additional clarity to the common law by codifying it more generally, that would be a massive piece of work. I do not think that there is an issue with a lack of clarity in the common law—we are used to understanding it. Choosing one specific change and opening that up into codifying the criminal law is not the right approach.

Some of the things in section 59 of the New Zealand act that Mr Lindhurst mentioned have questionable legal effect. For example, on discretion in relation to prosecution, which was considered, the first three words in section 59(4) are “To avoid doubt”. That phrase was put in as a political compromise just to reaffirm existing practice. Generally, in New Zealand, although we have the codification of some criminal law, that is only to the same extent as we already understand the common law in Scotland—it sets out exactly the same tests that we already know and understand, which are applied every day by courts in Scotland.

**The Convener:** Mr Finnie, do you wish to ask any questions?

**John Finnie (Highlands and Islands) (Green):** I have no questions, convener.

**The Convener:** I thank the panel members for their evidence and suspend the meeting briefly to allow the panel to change.

10:03

*Meeting suspended.*

10:10

*On resuming—*

**The Convener:** Our second panel is here. You are all very welcome. Amy Johnson is policy

officer at Zero Tolerance, Alison Davis is chief executive officer at Saheliya, Maureen Phillip is senior family support director at PAMIS, Nora Uhrig is senior associate at the Equality and Human Rights Commission, and Lucy Chetty, who is headteacher at New Struan school, is here on behalf of Scottish Autism.

I will ask you the same question that I asked the first panel. Do you support the bill's aim to stop physical punishment of children in Scotland?

**Lucy Chetty (Scottish Autism):** Yes—we support the bill's aim. Bruce Adamson talked about the awareness that it will bring of support for families. The bill represents a proactive approach to enabling that. Anything that raises awareness of that agenda is positive.

**Alison Davis (Saheliya):** We agree with and fully support the spirit of the proposed legislation, but we are concerned about the possible impacts of implementation.

**Maureen Phillip (PAMIS):** PAMIS very much supports the bill. Quite frankly, for our families, it will be a lifeline.

**Nora Uhrig (Equality and Human Rights Commission):** The Equality and Human Rights Commission supports the bill. We are of the opinion that children deserve more protection than adults, not just equal protection, from assault.

**Amy Johnson (Zero Tolerance):** Good morning and thank you for the opportunity to give evidence today. We warmly welcome the bill—especially its aim to end physical punishment of children. We believe that it will send out positive messages on respect, responsible use of authority, healthy relationships and the tackling of violence within the family and society as a whole.

Zero Tolerance works to prevent violence against women and girls, and our core position is that everybody has the right to live without fear of violence. Physical punishment of children is part of a wider continuum of violence within our society, so ending justification for and normalisation of physical punishment will help to reinforce the attitude that violence is never okay in Scotland.

**The Convener:** Thank you.

**Alex Cole-Hamilton:** Good morning. I will try to be brief in order to let others in. I will ask the same question that I asked the previous panel. We have heard conflicting views on whether there exists in the international law, treaties and conventions to which this state is signatory a tension between children's rights and family rights, or the right to family life. Do you recognise that tension? Do children have rights? If there is a conflicting right that allows parents to physically punish their children, are you aware of where that exists in international law?

**Nora Uhrig:** I would just repeat everything that Bruce Adamson said about that. It is very clear that children have rights, not just at an international level in the UN conventions—particularly the Convention on the Rights of the Child—but at European level. We recognise those rights in Scotland, as well.

On a tension with other rights, particularly the right to family life, international human rights law is clear about the best interests of the child. People have the right to family life, but that right does not include a right to use physical punishment.

**Alison Davis:** Saheliya works with women who have no points of contact with the mainstream community. They have very different views on parenting and very different cultural contexts for family life. There is very rarely understanding that children have any human rights.

We have worked with 1,180 women in the past year, in 14 different languages, and 763 of those women were from communities in which female genital mutilation takes place and are survivors themselves. We are talking about there being no understanding that a thing that is as severe as FGM—never mind smacking a child—is illegal.

10:15

We deal with people with severe multiple trauma who are not being supported or looked after. We see quite a punitive approach being taken by social work, and health visitors frequently do not know what to do. Saheliya works with women who are unable to access mainstream services due to having a lack of language skills, limited confidence and mental health problems, and who have experienced very severe trauma. I believe that, if we support them and get the approach right for the most vulnerable people, we will be getting it right for everybody.

Saheliya fully endorses the spirit of the bill, but we are concerned about the implementation without some kind of support for parenting, especially in relation to young women who are left alone with children. A lot of the children with whom Saheliya Glasgow is involved are the result of rape. Trauma creates barriers to positive parenting, and the mix is dangerous for children. To take a punitive approach to such families—specifically to the mothers—does not work. It criminalises women and puts pressure on women who are already suffering and have already survived violence.

We need to provide a lot more support. A figure of £20,000 was mentioned earlier. We would need that to provide one month of language support to reach only the women with whom we work and provide wraparound parenting support. When resources allow it, we provide parenting support,



and we do so in six languages. We provide other support in 14 languages. However, support has to be provided in a concerted way. The Home Office could perhaps be persuaded to hand over some of the increasing fees that it is gathering from asylum-seeking and migrant communities to provide that learning and support in a culturally aware and trauma-informed way.

**Lucy Chetty:** Scottish Autism would always advocate the rights of the child, but wraparound support for families is vital. Often, families with whom we work are at the point of crisis, and the level of stress that the parents are feeling contributes to how well they are able to cope and to manage, and to how resilient they are.

**Alex Cole-Hamilton:** We have also had a discussion of whether the current laws around smacking or physical punishment of any kind are clear. The last time we legislated on the issue was in 2003, which is when the limitations that I described to the previous panel—no head shots, shaking or use of implements—were brought in.

From the experience of your organisations, are families and parents aware of where the lines are drawn? Are those lines sufficient? Do they lend themselves to deployment of physical punishment, with control, in every case?

**Alison Davis:** No, people are not aware, because there are no points of integration with the families with whom we work. They do not know what to do. They are told that smacking is wrong and that they cannot smack children here, but they do not know what else to do. That means that children end up not being parented. Parents are frightened about what will happen. Children are hit—very hard—and then told not to tell anybody, which is a double abuse.

**Amy Johnson:** Our position is that the combination of the 2003 restrictions and the grey areas about what is justifiable mean that there are two points of ambiguity. That means that the situation is difficult for parents and families to navigate, and it makes it difficult for children to understand what is okay.

We would expand the idea to society as a whole. The idea that some forms of assault, especially of the most vulnerable people, are justifiable, and that pain can be inflicted as a form of behaviour management, sends a confusing message and sits in opposition to a lot of other messages about combating violence against women in society through the equally safe approach, for example. There is a lack of clarity for families and children, and for society, more generally.

**Maureen Phillip:** I would like to backtrack a little bit and answer the question about the right to family life, because it is relevant. The people

whom I support look after children who have profound and multiple learning disabilities—they are non-verbal and often have significant healthcare needs. Their families use the word “fight” a lot: they have a right to family life without having to fight every day. I spend my life supporting families whose children have been subjected to horrific assaults, physical and sexual.

We have fantastic policies in child protection and we have the getting it right for every child approach in schools, but abuse is still happening. Therefore, the bill is a lifeline, because what the children in those families are subjected to is assault. They regularly say to me that the current legislation is not working in practice, because—I will be very honest—they say that they need a sign above the door saying, “Just help yourself”. That is quite profound.

The bill is a lifeline, because it will mean that those families will have the right to family life. If someone says that a child has been assaulted, somebody will now need to listen, because of the bill.

**Annie Wells:** I will ask the same question that I asked the previous panel. From opinion polls and written submissions to the committee, we know that the general public are not for the bill. How do we bring the general public with us on this journey? Assault—if that is what it is—of any child is wrong, but parents increasingly see the bill as banning smacking. How do we show parents that that is not what the bill is about?

**Amy Johnson:** Fundamentally, most parents want to do what is best for their child and for their family, but they do not have the time to read up on equal protection or Dr Heilmann’s work. We need to make that information accessible for parents and we need to share what we have learned about the harm that corporal punishment causes. We know that the balance of evidence is hugely towards the view that such punishment is not effective and is very harmful. A lot of work needs to be done through public campaigns and other work involving conversations and engaging with the public.

We know that children’s opinions on the issue are very different from the opinions of others. Joanna Barrett touched on that during the previous session. Of the young people who responded to the 2016 Scottish Youth Parliament consultation, 82 per cent agreed that all physical assault against children should be illegal. There is a big role for children to play, and their voices must be heard.

Changes in opinion are already happening. Over time, we are slowly changing our position on the issue. The growing up in Scotland study and an Ipsos MORI poll found that a declining number

of parents say that they have smacked their child, and that the younger population group is more in favour of abandoning smacking altogether.

Our position is that opinions are changing: there is a great opportunity in Scotland for legislation to reflect that. We know that smacking does not work, just as we now know that smoking is harmful. More public awareness of the issue is needed, and children's voices should be at the centre of that.

**Lucy Chetty:** Annie Wells asked a very good question. A lot of change has been achieved through trust and relationship building with families. The focus needs to be on the work that people are doing with individual families to help parents to understand better ways of managing and coping.

**Annie Wells:** The financial memorandum says that £20,000 will be required to be spent for the bill to succeed—

**The Convener:** You are going down Gail Ross's line of questioning.

**Annie Wells:** I am sorry.

**Mary Fee:** I want to ask about specific equalities groups that might be more at risk. Are the witnesses aware of specific groups of children who are more likely to be subjected to physical punishment? I would be interested to hear more about the people whom Lucy Chetty and Maureen Phillip work with. Do other panel members have evidence that they can give us?

**Lucy Chetty:** Autistic young people are more emotionally vulnerable. They are also more fragile. In that sense, they are more susceptible to physical punishment. I will qualify that by saying that my experience of working with families of young people who experience high levels of distress is that the parents' response is mostly about trying to keep everybody safe in that situation.

The language on punishment really does not feature so frequently in the families whom we work with and support. Our work is about coping—it is about putting in place the support to help families to cope better. On how autistic young people perceive punishment and their ability to join cause and effect, because they see the world in a different way, they do not necessarily understand why something happens in a certain way. That is important when considering autistic people.

**Maureen Phillip:** I echo that. I slightly disagree with the Children and Young People's Commissioner Scotland about the bill and its relationship to restraint and seclusion. I have witnessed a child being dragged along beside a swimming pool under the umbrella term "restraint". To me that is assault, not restraint.

If seclusion and restraint stand alone, maybe things will not change, although perhaps policy work could be carried out. I do not see it as a separate issue. If we are to have inclusion, why would we exclude children with profound and multiple learning disabilities and autism from the bill? If we want inclusion across society, surely that group should not be considered separately. The bill should work with other policies. As I said, we have great child protection policies in place, but restraint and seclusion still happen. I would like to see partnership with other policies, not separation from it.

**Nora Uhrig:** International studies show that disabled children are more likely to be punished physically, but we do not have clear evidence to show that that is a trend in Scotland. There is a similar presumption about certain ethnic minorities, with US studies in particular showing that ethnic minorities are more likely to use physical punishment on their children. However, a Joseph Rowntree Foundation study in 2006 found that that was not the case in the United Kingdom.

It is important to note—as Alison Davis, Maureen Phillip and Lucy Chetty have mentioned—that change needs support and an awareness campaign. You have to include everybody—in particular, vulnerable children and parents. It is about creating societal change. The bill and the awareness campaign that accompanies it will be key to changing societal perceptions and making the position on punishment very clear. That will help with the issue that Maureen Phillip has just mentioned, because people will have a better idea of what is and is not acceptable.

**Maureen Phillip:** A little bit more research could be carried out on the evidence base and the figures. Families who have reported through the child protection route often feel that they are just going through a process with no outcome, which is not recorded. There is underrecording—more cases are happening than is recorded.

**Nora Uhrig:** In our submission to the committee, we call for more research and monitoring. Again, an awareness-raising campaign would help. With that information, we could see where support services are needed more, or what a campaign needs to focus on. As Joanna Barrett from the previous panel said, the campaign must be sustained.

10:30

**The Convener:** Fulton MacGregor wants to ask a brief supplementary.

**Fulton MacGregor:** Good morning. You have mentioned child protection. Currently, when a child goes to school and says that he or she has been

hit by a parent, a process is initiated. How will the bill, if passed, and the removal of the defence of justifiable assault, impact on that process?

**Maureen Phillip:** That is a big question.

**Fulton MacGregor:** I am sorry; it was not meant to be.

**Maureen Phillip:** I am not sure that I can answer that. I hope that if the outcome of a child protection process was not favourable, and the family still felt that an assault had taken place, the provisions in the bill could come into play. My honest answer is that I do not really know what the impact would be.

**Mary Fee:** When you talk about “the family” feeling

“that an assault had taken place”,

are you talking about a young person in a care or school setting?

**Maureen Phillip:** Yes.

**Mary Fee:** I just wanted clarification of that. Are you so concerned about restraint because it is used in school settings?

**Maureen Phillip:** Yes.

**Mary Fee:** Does Alison Davies have anything to add about the groups of families that Saheliya works with? I know that, culturally, they are quite different from the families whom others on the panel represent.

**Alison Davis:** Yes—there are very different cultural approaches to parenting, and there are no routes through which to learn about other approaches. A lot of people say that that is a racist approach. I could say that I was hit a lot, but that does not make my father a monster; it just means that he comes from a different time. In the same way, we see people who are newly arrived from different geographical places. Attitudes have changed.

We spend a lot of time supporting women to learn about human rights and responsibilities and about child protection, but that is also for their own safety and to ensure that they understand that their experience of domestic abuse is against the law. As Amy Johnson has said, that is really important. If we are saying that women should be free from violence in the home—I am old enough to remember men being supported for saying, “It’s none of your business if I beat my wife”—and that they should be supported to learn about their right to safety, it is not a huge leap to say that their children also have the right to physical and emotional wellbeing. A lot more work has to be done on that.

**Mary Fee:** Does the panel agree that the support services that will be put in place or

enhanced, if the bill is passed, will be crucial? We cannot have just a standard support or education service for families. The support must vary according to the type of family and their circumstances.

**Alison Davis:** Absolutely—and health visitors are struggling with that at the moment. They see very good and committed parents who have experienced severe trauma trying to do their best in extremely difficult circumstances, but they are still using the kind of parenting that they—and I—were brought up with. The only way the health visitors can help mothers to learn—which is what we do—is through an interpreter, who might be sitting there, saying, “This is racist. Why are you talking to a white person about this? Don’t tell them anything.” We have great concerns about the role of interpreting, the lack of support for first languages and the lack of trauma-informed support. Health visitors are therefore in a quandary.

Social workers, too, are frequently a bit perplexed about what to do: we see very varied responses from them. Many of them are fantastic, but many are not and take a very punitive approach that could, in some cases, be called institutional racism.

**Mary Fee:** Thank you.

**Oliver Mundell:** I was very interested by Maureen Phillip’s evidence. Are you concerned by comments that were made last week and today that changing the legislation will not lead to a significant increase in prosecutions?

**Maureen Phillip:** I imagine that the change will bring about an increase in prosecutions within the group that I work with. I say that because, already, I have supported a group of families whose cases have gone to court and who do not know how long those cases will sit at court before they are heard. It could be several years. Had the law that we are discussing been in place, I think that the process would have been far quicker and less stressful for them. Their children have been subjected to assault and, in my opinion, have suffered trauma since the day it happened. That trauma is with them while their cases sit waiting to be heard.

**The Convener:** Can you just clarify whether the families you are talking about are taking someone else to court or are being prosecuted for assault?

**Maureen Phillip:** The families are not being prosecuted. I am sorry. The children have all been subjected to abuse in care or education settings, not in the family.

**Oliver Mundell:** Do the families with whom you work trust the Government and the state when it comes to parenting and their family life? Do you think that they find that the law is helpful? Is there

sometimes a breakdown in trust between them and health workers and social workers?

**Lucy Chetty:** The families with whom we work have often had to fight hard to get the support that they have. They feel that they have to be a very loud voice in a large system that can be difficult to navigate. That perhaps has an impact on whether they view agencies as supportive or obstructive. There is multi-agency support for all the families with whom we work. Sometimes it works very well and they feel that the support is helpful and useful. However, sometimes families feel that they are fighting for things that they need.

**Oliver Mundell:** Do you think that, when parents use physical punishment, they always have an evil intent or an intention to cause injury, or is the situation more complicated than that?

**Alison Davis:** With regard to your previous question, I would say that, especially when the women whom we support begin their journey with us, they have huge fear about social work, the police and the state. Refugees have to prove a well-founded fear of persecution in order to get their asylum application recognised. They have come from environments in which they should not trust anybody—certainly not the state or anyone who is seen as representing an arm of the state. There are degrees of terror about social worker and police intervention. We work very hard on that, but it becomes more difficult if ineffective interpreters are used or if social workers—I am talking about a minority of them—take a punitive approach or a colour-blind approach that means that they do not see those people's journeys in context.

**Oliver Mundell:** Thank you for that. To go back to my other question, do you think that, when physical punishment is used by parents, there is always an evil intent or an intention to cause injury?

**Nora Uhrig:** As Amy Johnson said, most parents want the best for their children. A lot of what goes on in a family is a result of how the parents were brought up. That is why the awareness campaign is key and why we need to see this as a long-term change in society and in our perceptions. Just as happened with smoking in pubs, we now have a lot of studies. The studies show that smacking and using physical punishment on children lead to many problems. As you heard from the previous panel, a person's having experienced physical punishment does not necessarily mean that they will end up doing, X, Y or Z. However, from all the studies, we know that among children who have received physical punishment there are higher incidences of antisocial behaviour, violent behaviour and aggression than exist among those who did not.

**Oliver Mundell:** I say with due respect that that is not what I am asking about. I am asking whether parents who use physical punishment always have an evil intent or intend to cause injury.

**Amy Johnson:** I do not think that that is the case. Smacking children comes from a long history of what has been considered to be normal. For a long time, we thought that it was harmless, but we know now that it is not. It is sometimes assumed—as a parent, I have experienced this—that in order to be a good parent it is necessary to smack your child. That view still permeates throughout society.

At the core of the issue is the idea that the parent is inflicting pain in an attempt to manage behaviour. The fact that we do not do that to adults in Scotland raises the question why we still think that it is okay to do it to children and—if we are doing that—how we place children in society.

**Oliver Mundell:** Why, therefore, do we not ban physical punishment of children? Why are we picking off the defence of “justifiable assault”? As we heard from the children's commissioner, that will not increase prosecutions or have a revolutionary impact, in and of itself. Why not make the clear statement in legislation that physical punishment of children is wrong?

**Amy Johnson:** As we have discussed, there is the issue of popular opinion and how we work with the public. The evidence from New Zealand and Ireland suggests that when such steps are taken, smacking stops or decreases quite significantly.

I am not an expert on legislation. However, I argue that we must make sure that we work with the public and bring society with us in the conversation about how we parent and about the need for positive parenting. As the rest of the panel has said, we also need to make sure that there is wraparound support to help parents.

**Nora Uhrig:** As the previous panel mentioned, the bill will not prevent us from coming back to the issue in the future and saying that more is needed; it simply recognises where we are in Scotland at the moment.

**Alex Cole-Hamilton:** I have a brief supplementary to Oliver Mundell's question. Do the members of the panel agree that, if we brought in a new offence to ban physical punishment, we might end up doing what all opponents of the bill fear, which is that we might criminalise all parents? If we were to create such an offence, we would remove the element of judgment that the attending police officer or social worker would apply. We know that, by removing the legal defence, we will send a clear message to parents that they will still have the autonomy to parent their children, but that they will no longer have a legal defence to rely on if they use physical punishment.

The creation of a new offence, on the other hand, would immediately criminalise every parent who ever raised a hand to their child.

**The Convener:** There was a question in there somewhere.

**Alex Cole-Hamilton:** My question is this: do you agree that creation of a new offence might make criminalisation of parents more likely?

**Alison Davis:** I think that it would. A staged approach would probably work better. Once parenting skills are taught in every school curriculum at all ages—maybe in 20 years' time—we could bring in the complete law but, as Nora Uhrig said, the bill is an acknowledgement of where Scotland is at this moment in time.

**Fulton MacGregor:** I apologise to Maureen Phillip for my earlier supplementary question. It was not intended to be a trick question, and I did not mean to put her on the spot; her evidence has been very good. I was trying to explore the idea that, as far as I can see, not a lot would change, because social work and the police would still be called out if an allegation was made. As part of the child protection process, which is extremely thorough, judgments would be made as to whether significant harm had been caused.

I was interested in what Amy Johnson said about where the bill sits in the continuum of offences against children. How can passing the bill help with that?

One of the frustrations that I have had as an MSP and in my previous work—I am sure that all the witnesses have had this frustration, too—is that it is extremely difficult to bring people to justice for really harmful acts against children. That is why I do not buy into the argument that there will be a whole bunch more prosecutions as a result of passing the bill. What are your thoughts on that?

10:45

**Amy Johnson:** I agree. There is continuing violence within families, as well. In New Zealand, the it's not OK campaign, which was associated with the legislation there, was about violence, including domestic violence—domestic abuse, as we call it in Scotland—being unacceptable.

It is important to look at how the bill is supported by other strategies and policies in Scotland that relate to violence against women and girls—specifically “Equally Safe: Scotland’s strategy for preventing and eradicating violence against women and girls”. It states:

“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.”

It is very hard for me to work out how we can continue with justification of assault of children in any form, in that continuum, and still move ahead with the strategy on violence in Scotland.

**Fulton MacGregor:** I will stick to what I said originally: even if the bill is passed, people will make judgments and some things will not be prosecuted. Do you think that passing the bill will help practitioners to identify patterns emerging and that things that are maybe seen as okay now will be looked at?

**Amy Johnson:** I hope so. I also hope that the bill is supported by the Domestic Abuse (Scotland) Act 2018, in which the existence of patterns of behaviour are acknowledged—such that there is a step away from an incident-based approach towards acknowledging patterns of behaviour that cause harm and humiliation to children and young people.

**Nora Uhrig:** I think that Bruce Adamson, who was on the previous panel, mentioned that. It is hoped that the approach will increase early intervention and the support that families, parents and children receive.

**Alison Davis:** The Scottish Government’s new initiative to increase trauma awareness among all front-line staff in all agencies should have an impact on that. Increased awareness of trauma will have an impact on people’s behaviour—how we negotiate and communicate better with people who are severely traumatised. Generally, the children with whom we work score very highly on the adverse childhood experiences scale. That is a building brick that will help the process of making Scotland violence free.

**Gail Ross:** Good morning, panel, and thank you for your evidence so far.

Should money that is spent on implementation of the bill be classed as preventative spend?

**Witnesses indicated agreement.**

**Gail Ross:** I see nods from everybody. That is pretty straightforward.

In response to a question from Alex Cole-Hamilton about the current law and the changes that were made a few years ago in relation to punishment of children, Amy Johnson said that there is a lack of clarity in society about what is not acceptable in the eyes of the law, and about using implements to smack a child. We talked about having an awareness-raising campaign, should the bill be implemented. Should an awareness-raising campaign be happening now?

**Amy Johnson:** Yes—absolutely. The primary focus should be on violence against children and

young people, but it should cover what is normalised, what is justified and what is acceptable in Scotland, and should relate that to violence as a whole.

**Gail Ross:** Annie Wells asked about taking the public along with us. There seems to be a misunderstanding of what the bill seeks to achieve. Should we have a campaign now, as part of the effort to take the public along with us?

**Amy Johnson:** Absolutely.

**Gail Ross:** You will have seen that, in the previous panel, the children's commissioner said that, as it stands, the financial memorandum should be looked at separately from what is happening. The wider discussion has opened up a conversation about the support that is currently available, which you have all mentioned.

There is work that we should already be doing on trauma awareness with not just front-line staff but communities as a whole. What gaps could be looked at once we start an awareness-raising campaign on the whole issue?

**Alison Davis:** Awareness raising is done in one language—two in Scotland—based on the assumption that everybody understands and buys into equality, social justice and human rights issues. Awareness raising does not reach the people who are already vulnerable and being approached in a punitive way, so there would be a disproportionate impact on marginalised, new, ethnic minority communities—asylum-seeking and refugee communities—which would be a dangerous position to be in. We are already in a difficult position on that, but we would be in a more difficult position if we did not take the preventative measures seriously. That means costing them properly, ensuring that first languages are used and ensuring that there is a culturally aware and trauma-informed approach.

**Nora Uhrig:** As we are talking about costing and the financial aspect, I note that it is vital to realise that, because the measures are preventative, costs will be saved in the long term. The work might require more than £20,000, but to reach the communities that Alison Davis talked about, that work should be done anyway and should be linked to wider issues about violence in society and in the home. It is important that we increase our capacity and the resources that are directed towards that work.

**Gail Ross:** We keep hearing in evidence the words “assault” and “violence”. There are laws in place that should prevent violence against anyone, whether children, women or other family members. Awareness raising about that is vital.

We have had representations from members of the public who say, “I should be able to—”. There

is a gap in our understanding about the difference between an assault on a child or violence against anybody in the home and the slight tap on the back of the hand or thighs that parents have talked to us about. Is there a difference, or should we not lift our hand to children in any circumstances?

**Alison Davis:** We should not lift our hand to children. If someone has been tortured or raped in parts of Africa or the Mediterranean, for example, or simply had no sleep or had a bad day, what is meant to be a slight tap on the back of the hand could be a very heavy slap—they might not be in a state to be able to measure that. An absolute ban makes far more sense and is a lot easier to follow.

**Nora Uhrig:** People interpret “a slight tap” in very different ways. How can you measure that? Also, what message does that send to children?

**Maureen Phillip:** The slight tap on the hand for somebody with a complex sensory disorder could escalate to a full-blown incident, which would lead to restraint. In many ways, the ban would prevent a lot of problems.

**Lucy Chetty:** On that point, when a young person is in a high level of distress and showing some form of what could be deemed violent behaviour, physically intervening could cause the stress transaction to multiply and make the situation a lot worse.

**Amy Johnson:** The “Equally Protected? A review of the evidence on the physical punishment of children” research was mentioned in the evidence and, I think, discussed by the previous panel. It found that parents do not often start off abusing or seriously assaulting their children, but start with lighter or milder physical punishment. That is not to say that abuse will necessarily happen if someone smacks a child, but if we are trying to minimise the risk of that, it is necessary to say that we should not raise our hands to children at all.

**Alex Cole-Hamilton:** I have a supplementary to Gail Ross's question, although this has probably been answered. We have heard about empirical research from academics who oppose a change in the law and who say that so-called back-up smacking is a more effective tool of parenting than other sanctions. Do you agree that, by removing the option to back-up smack, we are impeding the normal parenting behaviour of reasonable parents who can always retain control?

**Alison Davis:** No, but we need to give much clearer messages on what positive parenting is. I know people who do not smack their children but whose children probably wish that they would, because there are huge levels of emotional abuse and coercive control, which are the same thing. We need to send out messages about positive parenting. Rather than say, “Don't smack,” we

need to say, "Support in a positive way." We need positive parenting and positive messages.

**The Convener:** If committee members have no more questions, Gordon Lindhurst can ask any questions that he wishes to put to the panel, through me.

**Gordon Lindhurst:** Thank you, convener. I have two questions for Nora Uhrig from the Equality and Human Rights Commission. In your submission, you state that case law

"demonstrates a general trajectory towards prioritising child welfare and children's rights over parental rights."

That was covered a bit by the first panel. With parents' rights and children's rights, do you see one as being more important than the other?

**Nora Uhrig:** I think that we talked about that earlier. Under international human rights law, it is clear that the best interests of the child need to be a priority. However, I do not see the bill as being about the rights of the parents versus the rights of the child. It is about a change in society and creating a more non-violent society as a whole, and linking that to violence in the home, which Amy Johnson has talked about, and to wider issues. For example, we know that there is a connection between physical punishment and domestic abuse.

**The Convener:** Do you wish to add to that, Ms Johnson?

**Amy Johnson:** No—I agree.

**Gordon Lindhurst:** I have one further question. Who should decide for the parents and the children? Are we not just saying that it is people outwith the family who will decide instead of the parents and children?

**Nora Uhrig:** No. In many ways, you are actually giving more of a voice to children and creating more of a platform for communication. You are recognising that both parents and children have rights, and that it is about the family unit and how parents and children interact with each other. If someone is using physical punishment, what sort of message does that send to the child? We know from long-term studies that children who receive physical punishment are more likely to display antisocial behaviour. Also, in terms of communication, it is much more useful to send more positive parenting messages.

**The Convener:** Mr Finnie, do you wish to add anything?

**John Finnie:** I have no questions for the witnesses, but will you indulge me by allowing me to make a point of information?

**The Convener:** Absolutely.

**John Finnie:** It is about the figure of £20,000 that has been mentioned a number of times. The issue of promoting awareness and understanding of the bill is covered in paragraphs 27 to 31 of the financial memorandum. The figure of £20,000 is actually the Scottish Government's figure. In fairness, as paragraph 30 points out, the Government has said that

"a full marketing campaign would ... cost between £200,000 and £475,000."

To give some balance, the Government went on to say that, by using existing resources such as websites and by sending information to key stakeholders, a full campaign would not be needed.

That is not my view. The figure that I arrived at is £300,000. Paragraph 29 outlines the background to how it was arrived at, which relates to similar campaigns that the Scottish Government has run and for which it has published figures. For example, the figure for the campaign that we took as a comparator was £303,000, which we rounded down to £300,000. That would cover a period of approximately six months before and six months after the law comes into force, were the bill to be passed. That was just a clarification.

**The Convener:** Thank you for that.

I thank the panel for their evidence, which has been helpful. Our next meeting will be on 15 March in the Fingal centre in Portree, on the island of Skye. Our meeting begins at 4 o'clock. Members of the committee will hold a public question and answer session immediately before that, starting at 3.15.

The committee has previously agreed to hold discussions of evidence in private, so we will now move into private session.

11:00

*Meeting continued in private until 11:27.*





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