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Requested note from

PRIME MINISTER

EDUCATION (CORPORAL PUNISHMENT) BILL

I attach a note setting out the options available to us following our defeat in the House of Lords and suggesting a course of action.

2. In my view it is essential that we act urgently to bring this matter to a conclusion this session. Otherwise we will be seen to be drifting at the mercy of events outside our control. I understand that the next meeting of H Committee is planned for 22 July, and I am due to answer an oral Question on the subject on 23 July. However, this timetable would leave us perilously little time to complete the Parliamentary process this session. If it is feasible, we should reach a collective decision as soon as possible this week.

3. I am copying this minute to the other members of Cabinet, the Attorney General, the Lord Advocate, the Chief Whips in the Lords and Commons, Sir Robert Armstrong and First Parliamentary Counsel.

KJ

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15 July 1985

Department of Education and Science

RESTRICTED

EDUCATION (CORPORAL PUNISHMENT) BILL

Following the judgement of the European Court of Human Rights in the Campbell and Cosans case in 1982 that the philosophical convictions of parents should be respected in the matter of corporal punishment in schools, we were faced with the choice of either abolishing corporal punishment in maintained schools altogether or allowing individual parents to exempt their children from corporal punishment. H Committee decided in 1983 (H(83)7th meeting) to allow parental choice through an exemption scheme. We took this decision in the knowledge that the legislation would be controversial and that it would lead in practice to the abolition of corporal punishment in the great majority of schools.

2. After a consultation process, the legislation was introduced this session and passed all its stages in the Commons and Second Reading and Committee Stage in the Lords without significant amendment. However at Report Stage in the Lords on 4 July a wrecking amendment was carried against the Government by 108 votes to 104. This not only abolishes corporal punishment in all schools and institutions, including independent schools, but makes it a criminal offence for anyone other than a parent or guardian to use it. Consideration of the Bill was adjourned and we now need to decide urgently how to proceed. I think we have three options.

(1) Seek to force through the Government's proposals

3. It would be necessary to delete most of the remaining clauses of the Bill during further consideration in the Lords in order to bring it into respectable shape as an abolition Bill. It would then be sent back to the Commons, who would restore it to its original form and return it to the Lords for their acquiescence. We would argue that it would be illogical for the Lords to resist further, since they had accepted the Bill without a vote on Second Reading, when the opposition said that they stood by the tradition of not voting against a Bill which had passed through the Commons. However I understand that it is the Lord President's judgement that we would not succeed in overriding the Lords in this way.

(2) Abandon the Bill for this session

4. We have already been slow in implementing the European Court's judgement and if we postpone the legislation we would be accused of deliberately defying it. The Court would press ahead with other corporal punishment cases which are pending and could well rule that corporal punishment should be abolished entirely as being inhuman and degrading under Article 3 of the European Convention on Human Rights (ECHR). Thus - if we were not to perpetuate defiance of the Court - legislation would be necessary anyway and the difficulties in securing its passage would not diminish. There is no place for this legislation on our programme for next session.

(3) Accept the abolition of corporal punishment in maintained schools

5. It would be necessary to amend the Bill as it currently stands in order to make it technically sound and to restrict its scope. We could make it a civil (not criminal) offence to use corporal punishment in maintained schools, but not in independent schools (except for assisted places pupils and pupils placed in independent schools by local education authorities). This could take effect from September 1986, the date from which we envisaged our original scheme would apply. If we adopted this approach it would be better presentationally if the necessary amendments were made in the Lords. This would require a recommittal of the Bill in the Lords. The Commons would then be asked to pass at a single sitting (on consideration of the Lords amendments) what would be to them a totally new Bill. We only have the short time remaining before the recess and the October spill-over period to complete this process in the Lords and Commons.

6. If we chose this course we would need to explain to our supporters that, on the one hand, if we did not act we would face the prospect of a European Court judgement enforcing abolition on us, and, on the other hand, it was not practicable to get an exemption Bill through the Lords. We would say that the Government had felt it worth while to try to preserve the principle that decisions on corporal punishment should be left to teachers and parents, if this could be achieved despite the acknowledged difficulties; but that this was not an issue which warranted using the sledgehammer of the Parliament Act.

Abrogation of European Convention on Human Rights

7. I do not consider it an option to base our decision now on the assumption that we will wish to make a radical change in the terms of our adherence to the ECHR, eg. by no longer accepting the compulsory jurisdiction of the Court. This is a much wider issue which Ministers are considering separately and which will take time to resolve.

Conclusion

8. I would prefer option 1 - to restore our exemption Bill and force it through. However, if it is the Lord President's considered judgement that this cannot be achieved then the choice is to wait and face the prospect of abolition being imposed upon us by the European Court or to promote an early abolition Bill ourselves. In these circumstances I would favour option 3 - accepting the abolition of corporal punishment in maintained schools - as the lesser evil now that the Lords have forced our hand. This would be a shift in our policy, but it would not represent a great change in practice, since we have recognised that our scheme will lead to something close to abolition of corporal punishment in the maintained sector. It would have the advantage, if the Parliamentary processes can be completed in time, of effectively disposing of this awkward and contentious matter this session.

KJ

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PRIME MINISTER

H COMMITTEE: CORPORAL PUNISHMENT

You may like to know that H Committee turned down Sir Keith Joseph's bid to restore his Corporal Punishment Bill to the legislative programme. There was clearly no enthusiasm in the Committee for the Bill itself and political alternatives e.g. a Bill abolishing corporal punishment altogether or allowing the Lords to insert a provision abolishing it were not attractive. Sir Keith Joseph however was not keen on a circular. All of this leaves us in limbo rather although the Law Officers are having another look at whether the present legal position might not be more defensible than previously thought. I suspect that in the end we may be forced into formal abolition against our will but there is no harm in delaying the evil day.

Tim Flesher

3 October 1985

MJ2BEJ

(2)

PRIME MINISTER

EDUCATION (CORPORAL PUNISHMENT)

Sir Keith Joseph has decided to resist the proposal to try and deal with this problem by administrative action in the form of a Government circular to local education authorities.

He proposes to put a further paper on this to colleagues in September. It may be necessary, at that stage, to chair a meeting to decide the best way forward.

Mark Addison

MARK ADDISON

7 August 1985

VC4ABN

BG

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DEPARTMENT OF EDUCATION AND SCIENCE
ELIZABETH HOUSE YORK ROAD LONDON SE1 7PH
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FROM THE SECRETARY OF STATE

The Rt Hon Viscount Whitelaw
Lord President of the Council
68 Whitehall
LONDON SW1

6 August 1985

Dear Willie.

EDUCATION (CORPORAL PUNISHMENT)

Your Private Secretary's letter of 24 July records the proposal to consult the local education authorities and other bodies about the possibility of a Government circular in favour of allowing parents an individual right of exemption; and to return to the question of legislation only if the consultations failed to result in the issue of a circular or if a circular was issued but proved ineffective. I am afraid that I must counsel against such a course.

We know what answers we would get if we consulted as proposed. Nicholas Edwards and I consulted widely in 1983 about the form of a statutory exemption scheme, and received a very clear message from the local authorities, the teachers and others that they disliked an exemption approach, largely because they believed it to be unworkable. We have all known that if exemption were imposed by statute, the great majority of schools would decide to abolish corporal punishment rather than operate the exemption scheme. So we would be told by the great majority of the consultees that they would not voluntarily work an exemption scheme (and a Circular cannot compel them to do so); that we already knew that this was their opinion; that, this being so, if we wanted them to give effect to the judgment of the European Court of Human Rights we should ask them outright to abolish corporal punishment; was this in fact what we were asking them to do?

Moreover I ought to explain that in England and Wales a voluntary arrangement is not mainly something to be effected through the local education authorities. Whereas there is no provision for school governing bodies in Scotland, these exist in England and Wales and in the case of voluntary aided and many other schools have by law the responsibility for the conduct of the school, so that it is they, and not the LEA, who would decide whether there should be an exemption scheme at the school.

There is also the position of pupils at independent schools who are State-financed under the assisted places scheme or through

local authority placements. We are unlikely voluntarily to secure exemption for these pupils from all the schools in question.

In short, I fear that the response to consultation would embarrass us politically and vis-a-vis the Commission (see para 6 below), and would rule out the subsequent issue of a Circular.

The Exemption Bill would not only have required exemption - it would also have given parents objecting to corporal punishment a remedy against a teacher who administered it. Merely issuing a circular would leave unchanged the present position whereby a teacher has a right, acting in loco parentis, to use moderate and reasonable corporal punishment. A teacher who exercised this right against an exempted pupil in a school which voluntarily operated exemption or against any pupil in a school which has voluntarily abolished corporal punishment, might be subject to disciplinary action, but apart from asking for such action the parents would have no remedy against him. That point would weigh with the Commission and the Court.

I fear therefore that the delay created by consultation would be disadvantageous rather than advantageous. It would do nothing to stave off the risk that the Committee of Ministers of the Council of Europe might quite quickly move to secure the compliance of the UK with the Campbell and Cosans judgment (which gave rise to the Exemption Bill) given as long ago as 3½ years. Moreover on present plans, the Commission will be publishing its report next year on a complaint which it has declared admissible under Article 3 (relating to inhuman or degrading treatment or punishment) and under Article 13 (which relates to the availability of an effective domestic remedy) on which it has already found provisionally against the UK. Negotiations for a friendly settlement have broken down, and the case could reach the European Court in 1987 or earlier if the Commission were to decide to draw up its report sooner. Failure to have provided an effective response to the Campbell and Cosans judgement by that time would, as we have recognised all along, increase the risk of the Court ruling more widely than on just the merits of the case in question. Also, publication next year of the Commission's adverse findings on Articles 3 and 13 would further expose the weakness of the suggested voluntary approach.

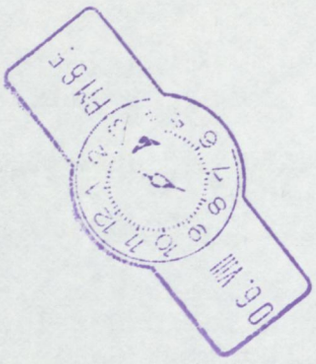
For all these reasons I do believe that, despite the acknowledged difficulties, the next step should be legislation for either exemption or abolition. I propose to put a further paper on this to my colleagues in September.

I am sending copies of this letter to the Prime Minister, the Lord Chancellor, the Foreign and Commonwealth Secretary, the Secretaries of State for Scotland, Wales, Northern Ireland and Social Services, the Lord Privy Seal, the Chief Whips in the Commons and Lords, the Attorney General and the Lord Advocate; and to Sir Robert Armstrong.

Yours ever,

Ken.

Parliament: Legislation PT 4



SECRETARY OF STATE FOR SCOTLAND

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The Rt Hon Sir Keith Joseph Bt MP
Secretary of State
Department of Education and Science
Elizabeth House
York Road
LONDON
SE1 7PH

NBPM
These papers can be pic'd.
The Lord Pres & STEd are to discuss further, following the ECONS meeting on 17/7.
MCM 16/7

17 July 1985

Dear Keith,

EDUCATION (CORPORAL PUNISHMENT) BILL

Thank you for copying to me your minute and note of 15 July to the Prime Minister.

I agree that it would be advantageous to conclude this matter this session if at all possible. Bearing in mind the Lord President's view on the difficulty of forcing through the Bill in its original form, I am entirely content that we should proceed as you propose. We should of course follow suit by amending the Scottish provisions of the Bill on the lines which you set out at option 3 of your note.

I am copying this letter to the Prime Minister, the other members of the Cabinet, the Attorney General, the Lord Advocate, the Chief Whips in the Lords and Commons, Sir Robert Armstrong and First Parliamentary Counsel.

Yours ever,

George.

10 DOWNING STREET

Charles.

On reflection, in view of the fact that the ECHR meeting is at 5 pm tomorrow, there seems little advantage to be gained in getting a provisional view from the PM tonight.

You will, however, wish to have this to hand at tomorrow's meeting - in case the Chief raises it. I shall tell DES they will get a view from us on Thursday am.

MLEA 16/7

PRIME MINISTER 16 July 1985

CORPORAL PUNISHMENT

Keith Joseph reports the Lord President's view that the current Bill cannot be forced through the Lords. He therefore recommends that the Government should amend its legislation following defeat in the Lords, and abolish corporal punishment in maintained schools.

A Bill on these lines would certainly be workable, and would satisfy the European Court. There are three dangers:

1. There will be considerable dissatisfaction on the back-benches and among many Conservative supporters.

2. People will say that the Government is "capitulating to the European Court". (Most people believe, wrongly, that the European Court of Human Rights is part of the EEC.)

3. If corporal punishment is abolished for pupils on assisted places, this will cause severe problems for some independent schools, and may prejudice the success of the Assisted Places Scheme.

Another option, which Keith does not consider fully, is to qualify our adherence to the European Court of Human Rights, so that corporal punishment in schools is explicitly excluded. This should surely be explored further before plunging for abolition. It would not constitute a radical change in our relations with the ECHR, and need not affect the jurisdiction of the Court in other respects.

We recommend that Keith and the Law Officers should be asked to investigate qualifying the terms of our adherence to the ECHR before taking any further action.

OLIVER LETWIN