



# Discipline and Punishment in Child Care Settings in Scotland:

## Legislation, Regulations and Practice

Report for Redress Scotland

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## **Commission and Publication**

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## Preface

Redress Scotland is an executive non-departmental public body, set up in 2021. Redress Scotland is one of two organisations responsible for Scotland's Redress Scheme – the other being Scottish Government. Whilst the two organisations work closely together, each have individual roles and responsibilities within the scheme. Redress Scotland's role is to make independent decisions for survivors on applications for redress.

As a learning organisation, Redress Scotland is committed to supporting the continual development of its team, panel and board members. This commitment is realised through – amongst other avenues – Redress Scotland's Library: an evolving hub holding a range of physical and digital resources.

Resources held within the library serve a variety of functions – one of which is the provision of information on relevant topics of interest. Such topics include, as an example, trauma, attachment, and brain development.

The library is continually being updated and expanding, according to the evolving needs of the organisation. There may be occasions within this process of expansion where no published resources – whether that be a book, academic review, or report – are available to fulfil the required brief. In such instances, Redress Scotland will look to fill that gap through creation of a new resource. Depending on the requirements in each instance such work may be conducted internally, or Redress Scotland may commission an external expert.

Due to its potential relevance to a wider audience, all such work is to be considered for publication by Redress Scotland.

**This report, regarding Discipline and Punishment in Child Care Settings in Scotland: Legislation, Regulations and Practice, has been prepared for Redress Scotland by Professor Andrew Kendrick, University of Strathclyde.**

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# 1. Introduction

## 1.1 Context

There has been increasing concern about the historic abuse of children in residential and foster care in countries around the world. Inquiries have taken place in a number of countries and measures have been put in place to address the needs of survivors of abuse in care. The focus of such inquiries and responses to historic abuse have varied significantly from country to country (Sköld and Swain, 2015; Wright, Swain and Sköld, 2020). In Scotland, there has – over the years – been a range of policy and practice developments aimed at safeguarding and protecting children in care from abuse and harm (Kendrick, 2014; Kendrick *et al.*, 2021). These developments have occurred alongside a growing recognition of the needs of survivors of abuse in care.

In the 1990s and early 2000s, inquiries identified the historic abuse of children in care settings in Scotland (Marshall, Jamieson and Finlayson, 1999; Black and Williams, 2002). During a similar period, adult survivors who had experienced abuse in care as children highlighted their experiences and called for justice. A petition to Scottish Parliament by survivors led to an apology from the First Minister in 2004; the setting up of the *Historic Abuse Systemic Review*; and the establishment of a support service for survivors of abuse in care. Further developments included the setting up of the National Confidential Forum and the Scottish Human Rights Commission InterAction on the Historic Abuse of Children in Care; the commitments made by Scottish Government to the InterAction Action Plan; and the establishment of the Scottish Child Abuse Inquiry (SCAI) (Kendrick *et al.*, 2015).

In 2018, the Scottish Government made a commitment to establish a financial redress scheme for survivors of childhood abuse in care. Redress Scotland was

established by the *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021* and launched in November 2021.

Section 19 of the *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021* sets out 'abuse' to include sexual abuse, physical abuse, emotional abuse, and abuse which takes the form of neglect. As outlined within Section 19 (2) of the Act, physical abuse includes:

... corporal punishment to the extent that, at the time it was administered, it was not permitted under or by virtue of any enactment or rule of law because it was—

- (a) excessive, arbitrary or cruel,
- (b) administered for an improper motive, or
- (c) not so permitted for another reason.

Paragraphs 18-19 (p. 4) of the Statutory Guidance regarding Eligibility Requirements for the Redress Scheme states the following:

18. As noted in relevant findings of the Scottish Child Abuse Inquiry, at times “the corporal punishment inflicted was above and beyond what would even have been acceptable in a school setting, approved school setting or family setting”<sup>2</sup>. Such cases would in light of section 19(2) of the Act constitute “abuse” for the purposes of the scheme.

19. However, where corporal punishment was administered in a way that was permitted under or by virtue of any regulations, enactment or rule of law in force at the time it will not be considered “abuse” for the purposes of the scheme.

<sup>2</sup>For example, Case Study no. 2 The provision of residential care for children in Scotland by the Sisters of Nazareth between 1933 and 1984 in the Nazareth Houses in Aberdeen, Cardonald, Lasswade, and Kilmarnock Evidential Hearings: page 23



While the *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021* specifically mentions 'corporal punishment', other forms of punishment may have been permitted by law or regulation but could be considered abuse because they were cruel, caused humiliation or emotional harm.

Section 20(1)(a) of the aforementioned Act defines a relevant care setting as "a residential institution in which the day-to-day care of children was provided by or on behalf of a person other than a parent or guardian of the children resident there." As defined within Section 20 (3), this means—

- a) a children's home,
- b) a penal institution,
- c) a residential care facility,
- d) school-related accommodation,
- e) secure accommodation.

In addition, within the Act (Section 20(1)(b)) the meaning of "a relevant care setting" includes "a place, other than a residential institution, in which a child resided while being— (i) boarded out (ii) fostered."

## 1.2 Aims and Objectives

The principal aim of this research review is to set out the nature of discipline and punishment in care settings in Scotland from 1920 to 2014.

Specific objectives will be to:

- i) describe the relevant legislation relating to punishment in care settings at different points in time.
- ii) describe the main policies and regulations in place as they related to care settings at different points in time.

- iii) explore in more detail some critical aspects of punishment and regulation in Scotland over the period under review, specifically:
  - a. changes relating to corporal punishment;
  - b. changes relating to isolation and solitary confinement;
  - c. changes relating to the use of medication as punishment; and
  - d. instances where punishment was identified as being excessive, arbitrary, cruel, or administered for an improper motive.

### 1.3 Methods

The research review has collated and analysed a range of material relevant to punishment and regulation in Scotland. These have included:

- i) legislation and regulations that set out parameters and expectations in relation to discipline and punishment;
- ii) histories and reviews of care services in Scotland, in particular those focusing on child protection and safeguarding;
- iii) individuals' experiences of discipline and punishment in care services, including:
  - i. children and young people
  - ii. adults who experienced care as children
  - iii. carers, staff and professionals;
- iv) research studies, which comment on discipline and punishment in care services; and
- v) grey literature, including:
  - i. care service providers' reports and documentation
  - ii. policy documents relating to discipline and punishment in care services.

It must be acknowledged, however, that there is limited information and research on punishment and attitudes to punishment in Scotland, particularly in the early period of the review (Elsley, 2017).

## 1.4 Structure of the Report

The report has been structured around four pieces of significant child care legislation:

- the *Prevention of Cruelty to, and Protection of, Children Act 1889*;
- the *Children Act 1948*;
- the *Social Work (Scotland) Act 1968*; and
- the *Children (Scotland) Act 1995*.

These pieces of legislation mark important milestones in efforts to safeguard and protect children and young people from abuse and harm, and in the development of care services.

**Chapter 2** provides an in depth consideration of how attitudes to children, and our understanding of what constitutes abuse, have changed over time. This prefaces discussion regarding definitions of abuse – particularly in the context of care – and factors contributing to the abuse of children in care.

**Chapter 3** is concerned with the period between the *Prevention of Cruelty, to, and Protection of, Children Act 1889* and the introduction of the *Children Act 1948*.

**Chapter 4** takes us forward from the *Children Act 1948* through to the *Social Work (Scotland) Act 1968*.

**Chapter 5** considers the period between the introduction of the *Social Work (Scotland Act) 1968* and the *Children (Scotland) Act 1995* – a time of significant change, particularly early in this period.

**Chapter 6** takes us through the – again significant – developments which occurred between the *Children (Scotland) Act 1995*, and the introduction of the *Children and Young People (Scotland) Act 2014*.

## **2. Discipline, Control and Punishment, and the Historic Abuse of Children in Care**

### **2.1 Introduction**

Consideration of discipline and punishment in the context of alternative care settings, and the historic abuse of children in care, raises a number of complex issues. In Scotland, over the period covered by this review there has been a changing acceptability of various forms of discipline and punishment, both in general society and in relation to child care settings. While this has led to changes in policy, regulations and legislation over time, these changes have been continually debated and contested. Alongside this there has been evolving knowledge about different types of child abuse, and debates about the nature and definition of such abuse and maltreatment.

The thresholds that determine when particular behaviours and situations are defined as constituting abuse have often been vague and imprecise, and have shifted over time. This includes the thresholds that determine whether discipline and punishment moves from being reasonable and acceptable to being abusive and unacceptable. The question of how to consider and evaluate discipline and punishment at specific points of time has also led to debates about whether behaviour that was considered reasonable and acceptable in the past should be determined as abusive because it falls short of current standards.

The age at which children are considered to become adults has changed over time and, even today, the age at which children can legally do certain things varies (for example, in Scotland, children can buy alcohol or cigarettes at 18, hold a license to drive a car at 17, and can marry at 16). Legislation and regulations about discipline and punishment have also applied differently to children of different ages, and to boys and girls. Over time, social attitudes to

children have changed, reflecting increasing recognition of children's needs, agency and rights. Further, there are cultural differences in beliefs about the stages of children's development and maturity.

There are distinctive aspects to the abuse of children in care settings, and four main types have been identified: abuse by individual carers, programme abuse, sanctioned abuse, and systemic abuse. Discipline and punishment can feature across the four types of institutional abuse, taking the form of, for example, excessive corporal punishment by individual carers; inappropriate and degrading punishments allowed and/or approved by managers; or the cumulative impact of harsh discipline, humiliation and stigmatisation on the health and educational outcomes of children in care.

A range of factors have been clearly linked to the abuse of children in care settings, including: the denial and cover up of abuse; the isolation and vulnerability of children in care, and their lack of voice; the absence and/or failings of leadership and management; and staff and carers who are overworked, underpaid, and lack training and status. These factors often come together in creating cultures of abuse. Despite the fact that these factors have been highlighted in inquiries and reviews over many years, they have still been raised in recent cases of the abuse of children in care settings.

## **2.2 Changing Attitudes, Changing Knowledge, Changing Times**

Issues relating to the discipline and punishment of children and young people have been debated and contested in public and professional arenas in the context of changes in social attitudes, legislation, child care policy, and professional practice. Such debates and changes in professional practice have affected different types of care settings in various ways over the years.

### 2.2.1 Attitudes to Children

Elsley (2017) considers the shifts in attitudes to children over time which, although significant, have not changed in a way that can be easily pinned on a timeline. She highlights the complexity in understanding the ways in which attitudes to children have changed, the diversity of perspectives at any one point in time, and the need to view attitudes in terms of their wider historical context. Further, Ennew (1998, p. 9) highlights that “there are wide cultural variations in expectations of the level of maturity expected at different ages or stages” (see also, Donnelly, 2005).

Children have been relatively powerless over time, and have lacked a voice. Traditionally, they have been considered as weak, needy and vulnerable, without the same rights and agency as adults (Hill and Tisdall, 1997). Childhood has been viewed as “a time of innocence and vulnerability”, and as a time for “instruction and education” in preparation for their future role as adults in society (Elsley, 2017, p. 14). The acknowledgment of the rights of children and young people have advanced from early manifestations such as the *Geneva Declaration of the Rights of the Child* in 1924. While such developments have themselves been questioned, there has been an increasing recognition of children's needs and implementation of their rights of protection, participation and provision (Freeman, 2020).

### 2.2.2 Recognition and Definition of Abuse

The recognition of different types of abuse and maltreatment of children has been disputed and questioned in the period under review. Kempe, at the second international congress of the International Society of Child Abuse and Neglect in 1978, described a specific sequence of development stages in addressing the problem of child abuse that occurred in every country he had considered. This moved from denial that abuse exists to a significant extent,

through the recognition of physical abuse, failure to thrive, emotional abuse, and sexual abuse at different points in time (Kempe, 1978, pp. 262-3).

Smart (2000) details the range of competing accounts contributing to a persistent inability to define sexual contact with children as abusive or harmful over the first 60 years of the twentieth century (see also, Olafson and Corwin, 1993). Similarly, Iwaniec (2006) describes the history of the concept of emotional abuse, from early studies through to its recognition as a distinct form of child abuse in the 1980s. The author further highlights continuing issues in the identification of emotional abuse and uncertainties in decision-making about intervention (Iwaniec, 2006; see also, Glaser, 2002). More broadly, Platt (2006) emphasises the uncertainty that existed in child protection work in the UK in the 2000s, where professionals were affected by popular and political opinion. This led to a range of practice from minimisation of abuse to over-zealous legislation (Platt, 2006).

### **2.2.3 Societal Attitudes**

In this complex context, broader societal attitudes are important when considering the experience of children in care. Care experienced children's powerlessness and lack of voice is exacerbated by stigma and discrimination. The situation of being in care is stigmatising in itself, and this is overlaid by the stigma of children's experience of poverty, illegitimacy, abuse, delinquency, and/or disability (Kendrick, 2005). Further, religious attitudes have imposed a moralistic framework on conceptions of childhood and children in care.

Abrams and Fleming (2019a) consider that while there may have been a sympathetic attitude to children in care after World War II, "this was coupled with low expectations and limited understanding of the reasons that underlay their behaviour on the part of those responsible for their care" (p. 64). By the 1970s, more progressive attitudes were being encapsulated in regulations and



policies, but “these ideas needed to be heard by people directly responsible for daily care in services run by both voluntary organisations and statutory authorities” (Abrams and Fleming, 2019a, p. 291). There have continued to be divided opinions about the rights of children in care and the questioning of children’s rights by staff and carers (Willow, 1996), and concerns about the extent to which the rights of children in Scotland have been achieved (BBC Scotland, 2023).

In society at large, there has been a general move away from severe corporal punishment and other extreme forms of discipline. While historians may disagree with the timing and influences, the “pattern evident through successive conceptions of childhood is a gradual softening of sentiments toward children, a shifting away from largely instrumental attitudes, a strengthening of emotional ties” (Donnelly, 2005, p. 46-7; see also Foucault, 1995; Freeman, 2010). Donnelly (2005, p. 52) notes, however, that this has not been a smooth and gradual change; rather, there have been cycles of social reform and cultural change that have driven forward perceptions and practice of corporal punishment. Freeman (2010) notes that while two early declarations on children’s rights (the *Geneva Declaration of the Rights of the Child*, 1924 and the *UN Declaration on the Rights of the Child*, 1959) address child welfare and children’s best interests, there is no explicit mention of corporal punishment.

Social attitudes continue to contest these developments. A recent study in Scotland which analysed social media comments posted in reaction to the *Children (Equal Protection From Assault) (Scotland) Bill 2019* found that those who favour smacking hold beliefs that smacking is beneficial and harmless, and feel it is superior or complementary to other forms of discipline (NicAllen-Roeder, 2022). Attitudes are anchored in ideological networks that lend resilience to beliefs about smacking. It concluded that “those who favour smacking would be unlikely to change their attitudes or behaviours in response

to either the Bill or the planned accompanying educational campaign“ (NicAllen-Roeder, 2022, p. A46).

#### 2.2.4 Corporal Punishment in Different Settings

In his seminal work 'Discipline and Punish', Foucault (1995) contrasted the physical torture of an attempted regicide with the rules and timetable for young offenders in an agricultural reformatory colony of the 19<sup>th</sup> century. He noted the move from corporal punishment as a public spectacle to punishment as a legal or administrative practice (Foucault, 1995, p. 9). The exemplar of the development of “the carceral archipelago” was the Mettray Reformatory Colony, because it is:

... the disciplinary form at its most extreme, the model in which are concentrated all the coercive technologies of behaviour. In it were to be found 'cloister, prison, school, regiment.' (Foucault, 1995, p. 293)

It is crucial to note, however, that France banned corporal punishment in schools and other institutions in the nineteenth century, such that corporal punishment was not allowed at Mettray.

While Mettray rapidly gained an international reputation, and influenced the development of reformatory schools in Scotland (Driver, 1990; Kelly, 2012), the use of corporal punishment continued to be recognised in common law in Scotland. The use of reasonable punishment was carried through into early legislation to protect children and young people, and this included punishment by carers and teachers. Over subsequent years, while some care settings were governed by detailed government regulations about discipline and punishment, others had vague rules or guidance about how to discipline children and young people. This did not just include corporal punishment -

other forms of punishment were also involved, such as isolation, physical and medical restraint, deprivation of visiting rights, and restriction of family contact.

It must be acknowledged that corporal punishment of children and young people continues to be legal in many countries, including in alternative care settings. The *End Corporal Punishment* initiative of the *Global Partnership to End Violence against Children* monitors the progress of states, nations and territories in achieving the prohibition of corporal punishment in all settings, including alternative care. In 2021, while 69 states prohibited corporal punishment in alternative care settings, 130 states had not fully prohibited it (End Violence Against Children/End Corporal Punishment, 2020).

### 2.2.5 Changing Standards

A final issue concerns the standards by which past behaviours and practice should be measured: the standards set out at the particular time, or the standards of today. In discussing abuse in residential child care in Scotland, Smith, Cree and Clapton (2012), refer to J.P. Hartley's phrase '*The past is a foreign country: they do things differently there*' (p. 11), and caution the reader "against attempting to understand the past from a position in the present" (p. 11). They highlight the difficulties of defining abuse, particularly in a historical context:

In the absence of such historical understanding, former care workers risk being judged against a class of act, child abuse, which, for most of the period covered by *TTBH* [*Time To Be Heard*] did not exist as a concept. (Smith, Cree and Clapton, 2012, p. 16; see also Smith, 2009)

Conceptual understanding of abuse may have developed over time, but legislation to protect children from cruelty and neglect dates back to the 1880s - and, indeed, was recognised prior to this in common law in Scotland (Norrie,

2017). Browne (2014), in considering child sexual abuse in the 1970s, critiques responses that argue the past is a '*foreign country*', deeming them too simplistic. Such responses fail to acknowledge a more complicated history in which child abuse was confronted and contested at the time. Browne (2014, p. 13) highlights, for example, that the feminist "challenge to the sexual norms of their era, and to the deeper power structures underpinning those norms, did not go unnoticed" (see also Aldridge, 2018). Similarly, abuse and excessive discipline and punishment of children and young people in care settings has been challenged and contested over time.

Shaw (2007) questions whether it is fair to judge what happens in the past on the basis of our current knowledge of abuse. He discusses the protection given by law in the past, and the way in which punishment methods, such as corporal punishment, were questioned.

It is also evident that past abuse – whether society accepted it as normal or not – remains abuse, and that certain practices we recognise as abusive today were also regarded as unacceptable practices hundreds of years ago. (Shaw, 2007, p. 24)

It is a complex issue, then, to balance whether behaviours would, or should, be classed as abuse within accepted practice at the time they occur. The situation of staff and carers working to time-specific legislation, regulations and standards, and the experience of those individuals who were subjected to mistreatment in care settings which were meant to protect them need to be taken into account in striking this balance.

### 2.3 The Broader Context of Abuse in Care

The abuse of children and young people in care settings covers a wide range of behaviour on the part of individual staff and carers as well as the impact and consequences of broader systemic issues on the lives of children. Gil (1982, p. 9) provides an early and useful definition of abuse in residential and foster care:

... any system, program, policy, procedure, or individual interaction with a child in placement that abuses, neglects, or is detrimental to the child's health, safety, or emotional and physical well-being or in any way exploits or violates the child's basic rights. This abuse of children in out-of-home care is of three types: physical and sexual abuse; program abuse, and system abuse.

Physical and sexual abuse in care is like abuse that occurs in family situations but is perpetrated by the professional carer or foster carer (Gil, 1982; Kendrick, 1997; 1998). Stein (2006, p. 15) notes that such individual direct abuse can also include emotional abuse.

Programme abuse occurs when "programs within a facility are below normally accepted standards; have extreme or unfair policies; or rely on harsh, inhumane, or unusual techniques to teach or guide children" (Gil, 1982, p. 10). Examples of programme abuse include over-medication, inappropriate isolation, excessive corporal punishment, and incorrect physical restraint (Gil, 1982; Kendrick, 1998).

Kendrick (1998) highlights two examples of programme abuse in the UK: the 'pindown' regime in Staffordshire and regression therapy used in Leicestershire.

### **'Pindown' regime in Staffordshire**

Some 132 children and young people were subjected to pindown between 1983 and 1989. Pindown involved persistent isolation in an area cordoned off as a 'special' or pindown unit; removal of ordinary clothing and the enforced wearing of shorts or night clothes; persistent loss of 'privileges'; non-attendance at school; and no writing or reading materials, television, radio or visits. While the pindown regime had a purported 'philosophy' to give children intense, individual attention, the Inquiry concluded that it was "intrinsically unethical, unprofessional and unacceptable" (Levy and Kahan, 1991, p. 167).

### **Regression Therapy in Leicestershire**

In Leicestershire, an approach known as regression therapy involved dealing with young people as one would with a child under five. For example, dressing the child, spoon-feeding them or using baby bottles, and "the apparently bizarre use of the paraphernalia of babyhood in the treatment of adolescent boys and girls" (Kirkwood, 1993, p. 57). There were significant complaints regarding the approach "because young people found the treatment to which they were subjected in the name of therapy to be abusive in itself (Kirkwood, 1993, p. 62).

Stein (2006, p. 16, emphasis in the original) suggests that the term 'programme abuse':

... fails to capture the 'behind the programme' philosophy, the wider organizational context and 'beyond the programme' levels of responsibility. I would argue that we should conceptualize such abuse as *sanctioned abuse* – abuse by commission or omission, of interventions in the lives of looked-after children and young people.

Stein (2006) suggests that this would include the failure of staff to report abusive practices which become normalised in care practice - an example given being inappropriate restraint methods such as “the use of arm and wrist locks to ‘deck’ young people on the floor” (p. 16). Stein (2006) makes a useful and significant point in considering these cases. However, it continues to be important to recognise the abuse and mistreatment of children that occurs without wider organisational sanction because of sub-standard practice at an establishment level. It also serves as an important reminder that such typologies are not clear cut but are complex and overlap.

Gil (1982) suggests that the third type of abuse – system abuse – is the most difficult to define, acknowledge or correct, and gives examples of the damaging effect of ‘foster care drift’ and multiple placements to highlight the abuse “by the immense and complicated child care system, stretched beyond its limits and incapable of guaranteeing safety to all children in care” (p. 11). Over a number of years, research in Scotland has highlighted the disruption and harm caused to children and young people by multiple care placements and changes in educational provision, leading to poor outcomes in educational attainment, health and well-being, housing, and employment. Frequently, children and young people were moved on from placements because of the inability of residential and foster carers to understand and cope with their behaviour, which was often an expression of their trauma, anxiety and fear. In addition, issues of stigmatisation and discrimination impact on the lives of care experienced children and young people (Kendrick *et al.*, 2021).

## **2.4 Factors Contributing to the Abuse of Children in Care**

A range of factors have been identified as contributing to the abuse of children and young people in child care settings. These involve the denial and

cover up of abuse; the vulnerability and isolation of children in care; failures in management and organisation; and the circumstances of staff and carers.

### 2.4.1 Denial and cover-up of abuse

Possibly the greatest impediment to the safeguarding and protection of children in care has been the denial of abuse, and the attitude that “it can’t happen here” (Bloom, 1992, p. 133). A significant feature in the investigation of abuse at Castle Hill School, Ludlow was the “disbelief of other professionals and parents and their initial inability to accept and comprehend the sheer volume and extent of the abuse” (Brannan, Jones and Murch, 1993a, p. 273). In relation to abuse in Fife residential care, Black and Williams (2002) consider that “there would have been total disbelief at any hint of abuse by staff to gratify their own sexual needs” (p. 19). Lovett, Coy and Kelly (2018), in their work considering the responses of different institutions (such as schools, churches, and the media) to child sexual abuse, identify three overlapping ‘dominant’ discourses: the discourse of *deflection*, the discourse of *denial*, and the discourse of *disbelief*.

Dominant discourses appeared to take for granted as ‘truths’ certain ideas relating to child sexual abuse. They emerged in relation to the different institutional arenas... and can be seen as having dominated thinking on the subject in these contexts...

- *Discourses of deflection*: These discourses serve to either deflect responsibility for child sexual abuse from perpetrators or deflect responsibility from institutions...
- *Discourses of denial*: These discourses serve to deny either the harm caused by child sexual abuse or the extent of the abuse...
- *Discourses of disbelief*: These are discourses that outright refuse to accept that child sexual abuse has occurred...

(Lovett, Coy and Kelly, 2018, p. 9)



Institutions may be reluctant to report incidents of abuse because they fear damaging their reputation. Describing their work with educational programmes for deaf children in which sexual abuse had occurred, Sullivan, Vernon and Scanlon “have seen staff and students threatened and coerced into not talking to investigators, records destroyed, and children who sought therapy intimidated and ostracised... the reaction was denial, lying, stonewalling and a Gestapo-like martial law environment as the crisis peaked” (1987, p. 258).

Following a BBC Panorama programme showing the physical and emotional abuse of children and young people in the Medway Secure Training Centre, an independent Medway Improvement Board was appointed. The report of the Board identified evidence of a “culture of corruption in which falsification of records was encouraged by management in order to avoid contractual penalties,” and “bullying of trainees and staff by senior managers, including allegations that staff who were subject to serious allegations were promoted while staff who raised concerns were forced to leave” (Medway Improvement Board, 2016, p. 41).

#### **2.4.2 Vulnerability and isolation of children in care**

The power imbalance between adults and children is exacerbated by their placement in care. Kendrick (2005) stresses that the very process of entering care reinforces children's social exclusion; they have frequently been described as ‘voiceless’, having little control over decisions affecting their placement, and no influence over the quality of care they receive. This is particularly true the further back in time we go. This lack of power and voice has been highlighted as a crucial factor in preventing children and young people in residential and foster care from reporting abuse and maltreatment (Kendrick, 1998; Stein, 2006; Sköld and Swain, 2015; Kaufman *et al.*, 2016) and

has been highlighted in a number of Inquiry reports (Levy and Kahan, 1991; Waterhouse, 2000; Shaw, 2007).

They [children] were reluctant to tell about the abuse because they felt no-one would believe them. They felt stigmatised by being in care. They felt others thought they were in care because they had been bad. They would not even tell people they liked, because they were afraid of the consequences. They might be moved somewhere worse, or things might just get worse in the Unit. (Marshall, Jamieson and Finlayson, 1999, p. 99)

Children and young people in care will frequently have suffered previous abuse and trauma, “and maltreated children are at greater risk of further abuse, revictimisation and polyvictimisation” (Radford *et al.*, 2017, p. 66). Further, survivors of different kinds of child abuse and maltreatment face a range of barriers to disclosure: physical abuse (Christian *et al.*, 2015), emotional abuse (Iwaniec, 2006); neglect (Daniel, Taylor and Scott, 2010), and child sexual abuse (Winters *et al.*, 2020). For example, among “the most frequently cited barriers to disclosure of CSA [child sexual abuse] are psychological factors, such as the child’s abuse-induced shame, guilt, self-blame and fear for self and others (Winters *et al.*, 2020, p. 589). Even when children disclose abuse, they are often not heard and opportunities to intervene are missed (Allnock and Miller, 2013).

Disabled children are particularly vulnerable to abuse, and three core issues have been identified: dependency, institutional care, and communication. Disabled children are dependent on a wide network of carers and other involved professionals, and this can involve intimate care activities, such as bathing and toileting. The use of residential and specialist establishments for disabled children increases the likelihood of abuse. There are additional issues in relation to communication for disabled children, such as the inability to understand or verbalise episodes of abuse, and the need to use non-verbal

methods of communication (Westcott and Jones, 1999; Oosterhoorn and Kendrick, 2001; Stalker and McArthur, 2012; Jones and Taylor, 2018; Barron *et al.*, 2019). Flynn (2019) also draws attention to broader cultural and social factors that impact on the increased risk of abuse and neglect for disabled children.

### **2.4.3 Failures in management and organisation**

The absence of clear lines of accountability and failures in management have been consistently identified as factors in institutional abuse (Wardhaugh and Wilding, 1993; Berridge and Brodie, 1996; Colton, 2002; Stein, 2006). The management of residential establishments has been ineffective or non-existent. External managers have often had little direct involvement with residential homes, and inspection, supervision and complaints procedures have been ineffectual. The Waterhouse Report, for example, concludes that there was no adequate provision for the monitoring and supervision of children's homes by higher management, and there "was no recognised complaints procedure, direct contact with headquarters was discouraged and such complaints as did penetrate the system were treated dismissively" (Waterhouse, 2000, p. 143). The inquiries into abuse in residential care in Edinburgh and Fife found similar failings of management, with lack of supervision of staff and involvement in the homes, and failure to listen to children and act on signs of abuse and complaints (Marshall, Jamieson and Finlayson, 1999; Black and Williams, 2002).

We saw above the role of management in the denial of abuse. Stein (2006) stresses the role of management in suppressing complaints and 'whistle blowing' by individual members of residential staff. Particular leadership styles have also been identified in certain cases of institutional abuse. The terms 'autocratic' (Siskind, 1987), 'totalitarian' (Brannan, Jones and Murch, 1993b), and 'charismatic' (Wardhaugh and Wilding, 1993; Doran and Brannan, 1996;

Coates, 1997; Timmerman and Schreuder, 2014) have all been applied to residential managers and directors who have used their power to create cultures of silence, oppression and fear.

In the context of organisational child sexual abuse cases, Erooga, Kaufman and Zatzkin state that “becoming a powerful perpetrator is not simply defined by a particular type of job title, but rather by attaining power secondary to a position (or through celebrity or self-created/charismatic authority) and using that authority or influence to circumvent safeguarding rules...” (2019, p. 63). While there are commonalities in the modus operandi of powerful perpetrators and other child sexual abuse offenders, Erooga and colleagues highlight the differences in how powerful perpetrators operate. Powerful perpetrators frequently use violence related threats and coercion, and this is linked to “grooming organisation and/or organisational staff” and using “efforts to minimise detection” such as denial, covering up or rationalising of behaviour, or intimidating staff members (Erooga, Kaufman and Zatzkin, 2019, p. 75).

... powerful perpetrators in this study often used organisational grooming and efforts to minimise detection as opportunities to “flex their authoritative muscles”, clarify that others are not in a position to challenge them, and to point out the potential consequences to staff of challenging them. (Erooga, Kaufman and Zatzkin, 2019, p.82)

Colton (2002) and Stein (2006) also identify the way in which institutional cultures can develop to deprive children and young people of their ‘humanity’. Ferguson (2007), drawing primarily on the situation of Irish industrial schools, highlights the way in which attitudes to childhood, poverty and child abuse contribute to the abusive regimes in the schools. The children placed there “were the ‘moral dirt’ of a social order determined to prove its ‘purity’, and other children and good citizens needed to be protected from their

'contaminating' influences" (Ferguson, 2007, p. 133; see also, Powell *et al.*, 2013).

Adult survivors of residential care homes and industrial schools in particular have reflected on the use of numbers or pseudonyms, head shaving and severe corporal punishment, often dispensed openly in front of their peers, as a means of public shaming, dehumanisation and removing any vestiges of their former identity. (McAlinden, 2022, p. 141)

#### **2.4.4 Circumstances of staff and carers**

Over the years, the circumstances of staff and carers have been linked to the abuse of children in care. Residential workers and foster carers have often been overworked and under-rewarded, with low levels of pay or remuneration, and little say in decision-making (Baldwin, 1990; Triseliotis, Borland and Hill, 1998; Colton and Roberts, 2007; Uliando and Mellor, 2012; Shaw and Kendrick, 2017). Generally, they have been poorly trained and have lacked effective management and supervision (Kendrick, 1998; Shaw, 2007; Seti, 2008; Shaw and Kendrick, 2017). Residential workers and foster carers can also experience abuse and aggression from young people in care (Lipscombe, Moyers and Farmer, 2004; Milligan, Kendrick and Avan, 2004; Winstanley and Hayes, 2015; Perry and Price, 2017).

In this context, then, research has identified how the particular personal, interactional and organisational stresses of carers for children can lead to exhaustion, compassion fatigue and burnout.

Burnout is a syndrome of emotional exhaustion and cynicism that occurs frequently among individuals who do 'people-work' of some kind. (Maslach and Jackson, 1981, p.99)

Compassion fatigue is conceptualised in terms of two factors: burnout and secondary traumatic stress. Hannah and Woolgar (2018) found that over one quarter of UK foster carers reported high levels of secondary trauma and burnout. Similarly, in a study of 100 residential workers, Audin, Burke and Ivztan (2018) found that “one-third of participants were experiencing high levels of burnout and that just over one-quarter were experiencing high levels of secondary traumatic stress” (p. 18).

A number of authors have identified the way in which burnout is characterised by increasing negative attitudes towards children, including depersonalisation and dehumanisation (Maslach and Jackson, 1981; Mattingly, 1981; Winstanley and Hales, 2015; Bowman, 2022). Abuse can occur when carers are unable to cope with the stress under which they live and take out their frustrations on troublesome, vulnerable children. Harrell and Orem (1980) suggest that “institutional maltreatment often results from the gradual development by a staff member of a pattern of reacting impulsively and impatiently to residents and of resorting more and more frequently to physical solutions to the problems of confrontation and challenged authority” (p. 16). As Winstanley and Hales suggest, “there may be some sort of cyclical relationship between burnout and aggression leading to an increased incidence of both...” (2015, p. 30).

There is also the potential for burnout to be a factor contributing to the development of rigid and inflexible institutional cultures. McGrath (1986) highlights the potential for the alienated, burnt-out child care worker to affect practice through their influence, or even bullying. Siskind (1986, p. 19) also states that burnout can contribute to an institutional climate in which there is greater potential of sexual abuse.

Because of their lack of knowledge and training, many residential workers have not felt able to raise concerns and “the questioning of practice was at

times met with derision and occasionally outright hostility by other staff members and those in charge" (Shaw and Kendrick, 2017, p. 385).

#### 2.4.5 Multiple Factors in Abuse in Care

Inquiries and reviews have also highlighted how these factors can come together to create the perfect storm in the context of the abuse of children and young people in care. Despite the fact that attention, over many years, has been drawn to such factors, recent cases would indicate that lessons have not necessarily been learned.

In October 2022, the Child Safeguarding Practice Review Panel (CSPRP) published its report on the abuse suffered by children with disabilities and complex health needs in three residential establishments in Doncaster run by the Hesley Group.

Evidence of the abuse and harm experienced by the children included: physical abuse and violence, neglect, emotional abuse, sexual harm, and medical needs not being met. There was also evidence that medication was misused and maladministered... There was an over-use of restraints and disproportionate use of temporary confinement. (CSPRP, 2022, p. 12)

It identified a number of key findings that led to the abuse:

- the voices of children and young adults were not heard
- placement far from home increased the children's vulnerability
- some children were placed at the settings inappropriately
- leadership and management in the three settings were inadequate and failed to meet statutory requirements
- there was a culture of poor practice and misconduct by care staff

- high rates of staff turnover and vacancies, as well as poor-quality training, support and supervision, were significant factors affecting the children's quality of care
- there were significant weaknesses in compliance with statutory reporting requirements
- inaccurate and inconsistent record keeping and statutory reporting led to a false picture of the care, safety and progress of the children
- quality assurance processes in the local authorities placing children were inconsistent and did not enable them to have a full picture of the children's progress, welfare and safety
- there were major failings in the Local Authority Designated Officer (LADO) function, resulting in allegations about the conduct of staff in the residential settings not being investigated to a satisfactory standard
- national regulatory arrangements had a limited impact on identifying and responding to the many concerns and complaints about children's safety and wellbeing

(CSPRP, 2022, pp. 12-17)

These findings echo the factors contributing to the abuse of children in care set out above. In the words of the Chair of the Child Safeguarding Practice Review Panel, it is "profoundly shocking that, in the twenty first century, so many children who were in 'plain sight' of many public agencies could be so systematically harmed by their care givers" (CSPRP. 2022, p. 4).



## 2.5 Discipline and Punishment and Types of Abuse

### 2.5.1 Physical Punishment and Abuse

During the early part of the period of this report, the corporal punishment of children in care has been allowed in Scotland through legislation and regulations. There have been ongoing debates about the role of corporal punishment in the upbringing of children and young people, its use in different contexts and settings, and the threshold at which it becomes unreasonable and abusive.

Article 19 of the UN Convention on Rights of the Child (UNCRC) states that children shall be protected “from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child” (UNICEF UK, 1989). The second point of Article 28 – which addresses the rights of the child to education – sets out that “States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention” (UNICEF UK, 1989). Additionally, Article 37 states that “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment” (UNICEF UK, 1989).

In 2006, the UN Committee on the Rights of the Child “noted with great concern the widespread legality and persisting social approval of corporal punishment and other cruel or degrading punishments of children” (UN Committee on the Rights of the Child, 2006, p. 3). It highlighted “the obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children” (UN Committee on the Rights of the Child, 2006, p. 3).

The Committee on the Rights of the Child defines 'corporal' or 'physical' punishment as:

... any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting ("smacking", "slapping", "spanking") children, with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). (UN Committee on the Rights of the Child, 2006, p. 4)

Lenta (2017) argues that the corporal punishment of children is "morally wrong on the grounds that it violates children's rights to bodily security, to non-discrimination and not to suffer degrading punishments" (p. 75). He questions the boundaries of corporal punishment and torture, and highlights that "judicial corporal punishment and corporal punishment of children (CPC) have in common with most instances of torture that they involve the deliberate infliction of physical pain on someone who is defenceless" (Lenta, 2017, p. 74). He sets out the contention of defenders of corporal punishment that "the administration of CPC that inflicts physical pain yet does not result in injury" is permissible and non-abusive (Lenta, 2017, p. 75). He concludes that the level of pain involved in non-abusive corporal punishment, in this sense, can be sufficiently severe for it to count as torture, but that there is reason to think that corporal punishment that inflicts "mild pain" does not amount to torture (Lenta, 2017, p. 85).

Van Bueren (1998), Ennew (1998) and Whitman (1998) consider corporal punishment in the context of torture and the cruel, inhuman and degrading

treatment of children, highlighting the complexities in definition and judicial decision-making.

Durrant and Stewart-Tufescu (2017, p. 359) set out five principles for the discipline of children in the age of children's rights:

- discipline is non-violent, both mentally and physically
- discipline respects children's evolving capacities
- discipline respects the child's individuality
- discipline fosters children's participation
- discipline respects the child's dignity

### 2.5.2 Emotional Abuse

In a seminal paper published in the 1970s, Garbarino defined emotional abuse as being:

... deliberate behavior that seriously undermines the development of competence. Operationally, this means punishing an infant's operant social behavior (including attachment), punishing a child's manifestations of self-esteem and punishing the behaviors needed for normal interaction in extra-familial settings. (Garbarino, 1978, p. 89)

Garbarino (1978, pp. 95-96) suggested that there were four principles involved in the emotional abuse of children:

Principle I: Punishment of positive, operant behaviors such as smiling, mobility, exploration, vocalization and manipulation of objects is emotional abuse.

Principle II: Discouraging caregiver-infant bonding is emotional abuse.

Principle III: Punishment of self-esteem is emotional abuse.

Principle IV: Punishing interpersonal skills necessary for adequate performance in nonfamilial contexts such as schools, peer groups, etc. is emotional abuse.

Following Gil's typology, Iwaniec (2006) identifies three forms of emotional abuse and neglect in care settings: "acts of omission/commission by carers, staff, or peers; regimes and programmes which are inherently emotionally abusive; and poor policies and practices within the care system as a whole" (p. 87).

The UN Committee on the Rights of the Child stated that there are non-physical forms of punishment that are cruel and degrading and, therefore, breach the UNCRC. These "include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child" (UN Committee on the Rights of the Child, 2006, p. 4).

Carr *et al.* (2019) identify examples of emotional abuse of children in care drawn from witness statements made to the Scottish Child Abuse Inquiry.

Frequently non-physically punished, including isolation for long periods, deprived of food for long periods, deprived of clothing or blankets for long periods, denied access to bathroom for long periods. Frequently insulted, humiliated, threatened, ostracized, made to watch siblings or friends being abused, or made to punish siblings or friends. (Carr *et al.*, 2019, p. 44)

### 2.5.3 Neglect

Neglect involves the persistent failure to meet a child's basic physical and/or psychological needs. This can lead to serious impairment to a child's health or development. Although neglect often involves chronic deficiencies, a single

instance of neglect can cause significant harm. Neglect of children as punishment is never appropriate and, over time, there has been an increasing recognition, for example, that making a child miss a meal as a punishment is unacceptable. There has also been an increasing recognition of the potential harm of isolation and segregation of children and young people.

Carr *et al.* (2019) identify examples of both 'emotional neglect' and 'physical neglect' of children in care. In terms of 'emotional neglect', these involve:

Emotionally neglected for more than 6 months or until removed. A daily routine where survivors didn't feel close to, supported by, or loved by carers. This was not an active punishment but due to care being under-resourced (psychologically or financially), for example not enough care staff, high staff turnover, poor staff training, depression or other mental health problem, or intoxication with drugs or alcohol. (Carr *et al.* 2019, p. 44)

In relation to 'physical neglect', the examples were:

Physically neglected for more than 6 months or until removed. A daily routine that involved not having enough to eat, enough clothes to keep warm, a warm safe place to sleep, and wasn't taken to the doctor when sick or injured physically. This was not an active punishment but due to carers being under-resourced. (Carr *et al.* 2019, 44)

Another aspect of discipline that can be interpreted as constituting neglect is the removal of children and young people from placements as a form of discipline for their behaviour. Rather than managing children and young people's behaviour, professional staff and foster carers have, at times, abnegated responsibility by moving children on to another placement. Such

actions contributes to what Gil (1982) termed 'system abuse' and the harm that lack of stability has been shown to have for children and young people.

#### 2.5.4 Sexual Abuse

Sexual abuse of children or young people can in no sense be considered an appropriate form of punishment. Children and young people may, however, experience it as such. Sexual abuse has been linked to the corporal punishment of children because of issues of domination and control, and physical contact with children's naked or semi-naked bodies, particularly the buttocks (Johnson, 1994).

More recently, Green, Butt and King (2002) address this directly in their discussion of the corporal punishment of children. They highlight that the term 'spanking' now has specific sexual meaning linked with sexual fetishism. Therefore, spanking as corporal punishment of children "can be interpreted in a variety of different frameworks and whether it constitutes a sexual abuse depends on perspective and interpretation" (Green, Butt and King, 2002, p. 211). The sexualisation of corporal punishment and spanking by adults has been addressed in the context of judicial, comic and sexual discourses (Butt and Hearn, 1998, pp. 206-9). The 'judicial' includes the sanctioned corporal punishment in a variety of contexts such as schools. The 'comic' highlights the discourse of seaside postcards and *Carry On* films. In relation to the 'sexual', Butt and Hearn (1998) detail Victorian 'flagellatory pornography' as a starting point, through to *Fifty Shades of Grey* and its sequels as a contemporary example. Importantly, Green and her colleagues highlight the way in which child victims interpret the sexual nature of corporal punishment.

If corporal punishment can be construed and interpreted sexually by either, or both, those who administer it and receive it, then why have these constructions rarely been recognized or alluded to, when arguing

for its abolition, in relation to children? (King, Butt and Green, 2003, p. 205)

King and colleagues go on to argue that psychological arguments against the use of corporal punishment have focused on evidence about the short and long term harm to children, such as modelling of aggression and damage to the parent-child relationship, and while a link to physical abuse is sometimes made, it is rarely made to sexual abuse (King, Butt and Green, 2003, pp. 206-7). They conclude that there is a "need to challenge society's adherence to the myth of the asexual child which, while framed in terms of protecting innocence, can actually leave children vulnerable to the potentially sexualized abuse of spanking" (King, Butt and Green, 2003, pp. 213-4).

Coldrey (2000a; 2000b) argues that the culture of discipline and punishment in institutional care promoted the sexual abuse of children and young people.

... there are valid reasons for thinking that the British practice of disciplining adolescents in care – especially older adolescents – by caning them on the bare buttocks stimulated the sexual abuse of inmates by some staff, though this was not its intention. (Coldrey, 2000a, p. 7, emphasis in the original)

Coldrey (2000a, pp. 8-9) also notes how 'non-punitive routines' such as standing naked in line for showers, or undergoing regular inspections after showers, blurred the boundaries between acceptable behaviour and abuse (see also Rinaldi and Rossiter, 2021). Green and colleagues (2002, p. 218) refer to how some adult sexual abusers have used corporal punishment as a strategy to both groom children in residential care for further abuse, and also to abuse them.

### **3. Discipline and Punishment - From the Prevention of Cruelty, to, and Protection of, Children Act 1889 to the Children Act 1948**

#### **3.1 Introduction**

Prior to the 19<sup>th</sup> century, children had very few legal rights and could be subject to abuse and appalling conditions at home and at work. Children were expected to work from an early age and there were few opportunities for education.

By the end of the nineteenth century, all this had changed. Few children under the age of twelve were in full-time employment, and education up to that age had become compulsory and free. The general standard of health had greatly improved, together with the expectation of life, and there was much less physical chastisement; legislation now existed against cruelty to children. (Hopkins, 1994, p. 1)

Before the earliest legislation to protect children was enacted in 1889 (*Prevention of Cruelty to, and Protection of, Children Act 1889*), the principle of common law was “that those with a pre-existing duty of care towards children could be prosecuted if they neglected that duty” (Norrie, 2020, p. 95). Common law in Scotland also “granted to parents the right to visit corporal punishment upon their children, certainly their pupil children and probably their children in minority” (Norrie, 2017, p. 346). This ‘right’ was subject to two limitations: the first involved the intention that punishment should be to educate the child and to further the child’s welfare; and the second involved a limitation to the severity of the punishment, which should be moderate and reasonable. This collectively came to be known as “reasonable chastisement” (Norrie, 2020, p. 106). This common law defence against assault could also apply to others, such as teachers, who disciplined children.



Driven by the work of the local societies to prevent cruelty to children that later came to form the NSPCC, there were increasing calls for the government to bring in specific legislation to protect children from abuse and neglect (Behlmer, 1982). This legislation was eventually enacted in 1889.

## 3.2 Legislation and Regulation

### 3.2.1 Early Child Protection Legislation

The *Prevention of Cruelty to, and Protection of Children Act 1889* made it an offence if a person over sixteen years who has custody, control or charge of a child “wilfully ill-treats, neglects, abandons, or exposes such child, or causes or procures such child to be ill-treated, neglected, abandoned, or exposed, in a manner likely to cause such child unnecessary suffering, or injury to its health” (Section 1, *Prevention of Cruelty, to, and Protection of, Children Act 1889*).

However, the common law right for parents to punish children was carried forward in the 1889 legislation. Section 14 of the Act specifically excluded physical punishment from the definition of ill-treatment or neglect.

Nothing in this Act contained shall be construed to take away or affect the right of any parent, teacher, or other person having the lawful control or charge of a child to administer punishment to such child. (Section 14, *Prevention of Cruelty, to, and Protection of, Children Act 1889*)

Subsequent legislation added to the 1889 Act. The *Prevention of Cruelty to Children (Amendment) Act 1894* added “assault” to the list of actions that amounted to an offence. It also provided an expanded definition of injury to health that stated “including injury to or loss of sight, or hearing, or limb, or organ of the body and any mental derangement” (Section 1, *Prevention of*

Cruelty to Children (Amendment) Act 1894). While the 1894 Act was repealed by the *Prevention of Cruelty to Children Act 1904*, the offences of ill-treatment, neglect and causing unnecessary suffering were re-enacted in Section 1 of the 1904 Act.

The *Children Act 1908* further amended the legislation, and added neglect of a child likely to cause injury to health through failure “to provide adequate food, clothing, medical aid, or lodging” and if unable to provide these, through failure “to procure the same to be provided under the Acts relating to the poor” (Norrie, 2020, pp. 97-8).

The right of parents, teachers or others in charge of a child to administer punishment was carried forward in Section 37 of the *Children Act 1908*, though the wording changed from ‘children’ to ‘children and young people’.

### **3.2.2 The Children and Young Persons (Scotland) Act 1932**

The *Children and Young Persons (Scotland) Act 1932* aimed “to amalgamate the treatment of juvenile offenders with that of neglected and deprived children” (Norrie, 2017, p. 21). Children in need of care and protection under the 1932 Act were:

- children who had been abandoned or deserted, or whose parents were unfit or not exercising proper care;
- children who were the victims of specific crimes or who lived in the same household as a victim or perpetrator of such an offence; and
- children of vagrants who were not receiving efficient elementary education.

There were some further amendments to sections on the prevention of cruelty and exposure to moral and physical danger. However, again parental rights to administer punishment continued unchanged.

### **3.2.3 Children and Young Persons (Scotland) Care and Training Regulations 1933**

The *Children and Young Persons (Scotland) Care and Training Regulations 1933* set out rules for the management and discipline of approved schools. They addressed the standards of premises and accommodation; staffing; education and training of children; recreation and privileges; the employment of children; contact with parents; health and dental provision; leaving and after-care; and records. The Regulations addressed discipline and punishment in detail.

The discipline of the school was to be maintained by the personal influence of the headmaster or headmistress and the staff, and punishment should be kept to a minimum.

Punishment, where necessary, shall consist mainly of forfeiture of privileges or rewards; loss of conduct marks, recreation or liberty; or degradation in rank. No boy or girl shall be deprived of recreation for more than one day at a time. The stopping of a period of home leave, i.e. leave extending to more than a day or two, is a severe punishment and should be resorted to only in the case of a serious offence. (Section 11, *Children and Young Persons (Scotland) Care and Training Regulations 1933*)

It is set out that the type of punishment would reflect both the gravity of the offence and the offender's temperament and physical condition, and "[i]n no case shall the nature or extent of the punishment be such as might be injurious

to physical or mental health" (Section 12, Children and Young Persons (Scotland) Care and Training Regulations 1933).

Where isolation was considered the "best method of correction and reform", it should not exceed six hours, in a room that was "light, airy and safe for the purpose", with provision of some form of occupation, and with regular visits and a means of communication with staff (Section 13, Children and Young Persons (Scotland) Care and Training Regulations 1933).

Corporal punishment should be carried out with a "light tawse only", with the use of a cane or any form of "cuffing or striking" forbidden (Section 14, Children and Young Persons (Scotland) Care and Training Regulations 1933). The medical officer needed to sanction corporal punishment for a boy or girl who showed any sign of physical or mental weakness.

Corporal punishment should rarely be imposed on girls, whose treatment in other respects may differ from that required for boys, or be a modification of it (Section 14, Children and Young Persons (Scotland) Care and Training Regulations 1933).

Section 15 details the use of corporal punishment:

In girls' schools corporal punishment may be inflicted only on the hands and the number of strokes shall not exceed three in all on any one occasion. In boys' schools corporal punishment may be inflicted only on the hands or on the posterior over ordinary cloth trousers, and the number strokes shall not exceed on any one occasion:

(a) *for boys under fourteen years of age, two strokes on each hand, or four strokes on the posterior over ordinary cloth trousers;*

*(b)for boys who have attained the age of fourteen years, three strokes on each hand, or six strokes on the posterior over ordinary cloth trousers.*

(Section 15, Children and Young Persons (Scotland) Care and Training Regulations 1933, emphasis in the original)

Section 16 of the 1933 Regulations covers punishment in the school room, outlining that the principal teacher and assistant teachers could be authorised to administer minor punishments. The principal teacher could be authorised to administer corporal punishment consisting of no more than three strokes in all, on the hands (Section 16, Children and Young Persons (Scotland) Care and Training Regulations 1933).

Punishment should not be inflicted more than once for the same offence, and, apart from punishment in the school room, “no boy or girl shall receive corporal punishment in the presence of other boys or girls” (Section 17, Children and Young Persons (Scotland) Care and Training Regulations 1933).

Particulars of all punishments should be entered into the punishment book without delay, and include:

- the date of punishment,
- the name of the offender and his or her age,
- the nature of the offence,
- the name of the officer who administered the punishment,
- the nature of the punishment and, in the case of corporal punishment, its exact amount; and
- any observations of the medical officer.

(Section 18, Children and Young Persons (Scotland) Care and Training Regulations 1933)

Part C of the Regulations deals with the boarding-out of children committed to the care of Education Authorities, and addresses medical and dental attention; education; parental contact; inspection visits; and the fitness of foster carers. It is stated that “Education Authorities shall make rules to be observed by foster-parents” (Section 40, Part C of Children and Young Persons (Scotland) Care and Training Regulations 1933). This section goes on to state that:

The foster-parents shall be required (a) to give boys and girls the care and attention necessary for their proper training in habits of punctuality and thrift, of good manners and language, of cleanliness and neatness, of cheerful obedience to duty, of consideration and respect for others, and of honour and truthfulness to word and act... (Section 40, Part C of Children and Young Persons (Scotland) Care and Training Regulations 1933)

Part C, however, does not make any specific reference to discipline and punishment.

### **3.2.4 The Remand Home (Scotland) Rules 1933**

Norrie (2017) gives details of the *Remand Home (Scotland) Rules 1933* which came into force on 1 November 1933. The rules cover a range of issues, such as sleeping arrangements; food; clothing; instruction and practical work; recreation and exercise; contact with parents; and inspection.

Section 15 (Remand Home (Scotland) Rules 1933, cited in Norrie, 2017, p. 256) of the rules states that “[t]he discipline of the remand home shall be maintained by the personal influence of the Superintendent.”

16: Punishment, where “necessary for the maintenance of discipline” had to be either temporary loss of recreation, reduction in quality or quantity of food (but not deprivation of two meals in succession), separation from other inmates (unless the subject of punishment was under 12) or, “for boys only, moderated corporal punishment. This shall be inflicted only by the Superintendent... The Superintendent shall immediately record particulars of each punishment, and the reason for it, in the Log Book required to be kept under Rule 21 of these Rules”. (Remand Home (Scotland) Rules 1933, cited in Norrie, 2017, p. 256)

Norrie (2017) states that these rules regarding remand homes are not as detailed as rules drawn up for approved schools, and the “limitation of corporal punishment to boys in remand homes is to be noted, a limitation not found in the approved schools rules” (p. 256).

### **3.2.5 Poor Law (Scotland) Act 1934 and Poor Relief Regulations (Scotland) 1934**

In Scotland, there was an established practice for Poor Law authorities to board-out orphaned and deserted children with families in rural areas. It was not until 1934 that this was regularised by the *Poor Law (Scotland) Act 1934* (Norrie, 2017, p. 41). Section 10 of the Act allowed local authorities to:

make arrangements for the lodging, boarding, or maintenance otherwise than in a poorhouse of children under the age of sixteen years who are orphans, or who have been deserted by, or are separated from, their parents, so however that any arrangements so made shall be subject to such regulations as the Department may make with respect thereto. (Section 10, Poor Law (Scotland) Act 1934)

Regulations addressing the boarding out of children and the placement of children in institutions other than poorhouses came into force on 10 December 1934 (Part III of the *Poor Relief Regulations (Scotland) 1934*). The Regulations address the suitability of the foster carer or institution; the suitability of accommodation and sleeping arrangements; the health and well-being of the child; education and medical provision; religion; and inspection visits and reports. There was, however, no specific reference to discipline and punishment.

### **3.2.6 Children and Young Persons (Scotland) Act 1937**

Throughout most of this period, the legislation governing child abuse and neglect in Scotland has been the *Children and Young Persons (Scotland) Act 1937*. Section 12 addresses cruelty to children under sixteen. Subsection 1 (Section 12, Children and Young Persons (Scotland) Act 1937) states:

If any person who has attained the age of sixteen years or over and has custody, charge, or care of a child or young person under that age, wilfully assaults, ill-treats, neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person will be guilty of an offence.

Subsection 2 (Section 12, Children and Young Persons (Scotland) Act 1937) goes on to give detail of neglect as the failure to provide adequate food, clothing, medical aid or lodging, or failure to provide such through use of the Acts relating to relief of the poor. Other sections of the aforementioned Act, taking forward issues from previous legislation, address: seduction or prostitution of a girl under sixteen; allowing children under sixteen to be in



brothels, or to be used for begging; and giving alcohol to children under five. In addition to those set out above, Schedule 1 of the Act set out offences against children and young persons, including sexual offences against children under the *Criminal Law Amendment Act 1885*; incest involving children, and any other offence involving bodily injury to a child.

Again, this Act, made explicit “the right of any parent, teacher, or other person having the lawful control of a child or young person to administer punishment on him” (Section 2, Subsection 7, *Children and Young Persons (Scotland) Act 1937*).

### **3.2.7 The Remand Home (Scotland) Rules 1946**

Shaw (2007) provides details of the *Remand Home (Scotland) Rules 1946*, which came into force on 1 July 1946 and revoked the 1933 Rules. The rules addressed the health and cleanliness of ‘inmates’; education, and the suitability of premises; parental contact; and inspection.

In general, the discipline of the remand home was to be maintained by “the personal influence” of the superintendent. When punishment was necessary, it should take the form of temporary loss of recreation or privileges, reduction in food, or - for those aged over 12 years - separation from other inmates as long as they had some way of communicating with a member of staff (Shaw, 2007, p. 63).

Corporal punishment was allowed if these punishments proved ineffective but could only be administered to boys and under the following conditions:

- It should be administered by the superintendent or, if the superintendent wasn't available, by whoever was left in charge.

- Only punishments described by the rules were allowed: striking, cuffing or any shaking were forbidden.
- Only a strap approved by the council could be used:
  - for no more than three strokes on each hand' or
  - for no more than six strokes on the bottom, over trousers.

(Shaw, 2007, p. 63)

All punishments should be recorded within the log books (Shaw, 2007).

### **3.2.8 Children (Boarding-Out, Etc.) (Scotland) Rules and Regulations 1947**

These regulations were made by the Secretary of State for Scotland in exercise of the powers under Section 10 of the *Poor Law (Scotland) Act 1934* and Section 88 of the *Children and Young Persons (Scotland) Act 1937*. They came into operation on 20<sup>th</sup> October 1947. These rules and regulations supersede Part III of the *Poor Relief Regulations (Scotland) 1934* and Part C of the *Children and Young Persons (Scotland) Care and Training Regulations 1933*. The Regulations cover both children boarded-out with foster parents, and children placed in an institution that is, “an institution providing for the boarding, care and maintenance of children other than a poorhouse or remand home or approved school” (Section 2, Children (Boarding-Out, Etc.) (Scotland) Rules and Regulations 1947).

The rules and regulations cover a range of issues such as the fitness of foster parents, suitability of foster placements and institutions, and inspection and visiting. Discipline and punishment is addressed in the Schedule to the rules and regulations (Children (Boarding-Out, Etc.) (Scotland) Rules and Regulations 1947), entitled *Boarded-Out Children with Foster-Parents: Principles to be followed*.

Section 5 of the Schedule, titled 'Training and Discipline', reads:

- (a) Each child shall be brought up in accordance with his or her religious persuasion.
- (b) The foster-parent shall train each child in habits of punctuality and thrift, of good manners and language, of cleanliness and neatness, of self-respect, of consideration and respect for others, and of honour and truthfulness in word and act.
- (c) Each child shall also be brought up in habits of industry, but shall be given adequate opportunity for play and recreation.
- (d) Each child of school age shall, if his or her health permits, be sent regularly to school.
- (e) Wherever possible each child shall be encouraged to join some juvenile organisation.
- (f) The foster-parent shall not administer indiscriminate or harsh punishment. Persistent misconduct by the child shall be reported to the local authority...

### **3.3 Policy and Practice of Discipline and Punishment**

#### **3.3.1 Introduction**

Even in this early period before and during World War II, the issue of the discipline and punishment of children was contested and debated, and some child care professionals considered that corporal punishment was likely to do more harm than good (Shaw, 2007, p. 21).

An extreme form of corporal punishment, the birching of young offenders, had been opposed for a number of years - although it was not abolished until 1948. Birching was seen as a short, sharp punishment, "an ideal method of treating boy offenders" which would act as a deterrent and mean that young

offenders would not need to be imprisoned (Mahood, 2002, p. 442). The use of the birch was subject to regulations, including specifications for the birch itself which was a bundle of twigs, soaked in water to make it flexible. It was administered “across the bare flesh of the bottom” and every boy had to be medically examined to ensure their fitness for punishment (Mahood, 2002, pp. 440-1). There was a mounting professional, political and public opposition to birching, and there was also a reaction to these anti-birching arguments because of concerns about increasing juvenile offending (Mahood, 2002; Smith, 2007). In the face of public pressure, in 1938 the Cadogan Committee (*Departmental Committee on Corporal Punishment*) unanimously recommended the repeal of corporal punishment on boys by the courts – although enactment was, due to the intervening war, delayed until 1948.

For the most part, however, corporal punishment was considered to be an essential part of the disciplinary regime of residential care and foster care. Children’s homes, orphanages, industrial schools and reformatories were characterised by discipline, physical violence and emotional deprivation (Mahood, 1995; Abrams, 1998; Magnusson, 2006; SCAI, 2018; 2019). Indeed, Abrams and Fleming (2019b; 2019c) note that recruitment notices for posts at Aberlour and Quarrier’s in the 1940s often referred to the quality of being a ‘good disciplinarian’.

### **3.3.2 Guidelines and Policy**

Abrams and Fleming (2019c) detail the Corporation of Glasgow guidelines on discipline provided to foster carers in the 1930s and 1940s. The guidelines stated that a “guardian shall not administer indiscriminate or harsh punishment on any pretext whatsoever” (Corporation of Glasgow Instruction Booklet, cited in Abrams and Fleming, 2019c, p .43). They go on to state that if the Corporation is satisfied that a child has been subjected to cruel or harsh treatment, the child will be removed and “if the Corporation consider it necessary, the case will be

reported to the Criminal Authorities without delay” (Corporation of Glasgow Instruction Booklet, cited in Abrams and Fleming, 2019c, p. 43). The phrase ‘indiscriminate or harsh punishment’ appears in the *Children (Boarding-Out, Etc.) (Scotland) Rules and Regulations, 1947*.

We have seen that there were regulations and rules for discipline and punishment in approved schools, but there was no equivalent guidance for other residential homes. In some, there were no rules or policy. The Sisters of the Daughters of Charity, who gave evidence to the SCAI, “said that they had received no instructions about disciplining the children, and there were no guidelines or punishment books” (SCAI, 2018, p. 21). The Directory and Book of Customs published by the Sisters of Nazareth in 1921 exhorted that the Sister in charge of the babies should treat them “in a gentle, motherly way” (Directory and Book of Customs, cited in SCAI, 2019, p. 3). Children should be treated considerately and spoken to “with kindness and mildness, and always in a tone becoming a Religious” (Directory and Book of Customs, cited in SCAI, 2019, p. 3). The treatment of children in these homes, as clearly evidenced by the SCAI, was in stark contrast to these exhortations.

Corporal punishment was provided for in the Directory and Book of Customs published by the Sisters of Nazareth, including “severe corporal punishment” such as “whipping and caning” for “a very grave fault” - although the latter had to have the permission of the Superior and be carried out in the presence of at least two Sisters” (SCAI, 2019, p. 5). The Directory and Book of Customs of the Order also stated that “depriving children of their food as punishment is absolutely forbidden” (SCAI, 2019, p. 43).

Abrams and Fleming (2019b) give detail on Aberlour staff guidance on the rules on punishment extant in the late 1940s.

## PUNISHMENTS

### Rules Governing Punishments throughout the Whole of the Orphanage

With a large family of children, there will always be minor offences and irregularities in conduct and discipline, as well as from time to time major offences, such as stealing, lying, defiance, persistent laziness, etc. It will be left to the discretion of the Housemistresses and Housemasters to decide the degree of the offence. The following, however, is a rough guide to the system of discipline operating in the Orphanage:-

A Black-mark Register will be kept. Minor offences will be punished by giving one black mark. This covers offences such as: -Neglect of work; untidiness; dirtiness of hands; faces and boots; acts of disobedience; untruths and so forth. Major offences comprise stealing; defiance; out of bounds; foul or filthy language; serious damage to furniture or fabric of the Orphanage.

Housemasters may administer Corporal Punishment at their discretion to Boys guilty of Offences which merit Corporal Punishment, but only to the extent of THREE STROKES on the hand or on the Trouser Seat. Housemistresses may occasionally smack a naughty child on the hand or on the trouser seat, BUT UNDER NO CIRCUMSTANCES MUST HOUSEMASTERS OR HOUSEMISTRESSES STRIKE THE CHILDREN ABOUT THE HEAD, FACE OR EARS.

Every case of corporal punishment must be marked in the Black Mark Book with the Letter "P." More serious offences deserving of corporal punishment must be sent to the Warden or Lady Superintendent.

At the close of each week the black marks will be read out by the Warden or Lady Superintendent, and any boy with more than four black

marks will be degraded for a fortnight. If during that fortnight he preserves a clean sheet he will be reinstated to his former grade. The senior boys and girls are graded and pocket-money is given at the rate of 3d, 4d and 6d per week. Other punishments may be given such as: impositions, depriving them of little privileges, standing outside the Housemaster's room, going early to bed, but under no circumstances ARE THE CHILDREN TO BE DEPRIVED OF THEIR FOOD EXCEPT WITH THE WARDEN'S SANCTION...

#### SPECIAL NOTE

Punishment should always be remedial, never administered in a temper, and always of such nature that the child will recognise its justice.

(Aberlour Orphanage Rules and Regulations, cited in Abrams and Fleming, 2019b, pp. 36-7, emphasis in the original)

Quarrier's Homes also issued guidance in 1944, which drew on the regulations for approved schools.

DISCIPLINE AND PUNISHMENTS.- Discipline shall be maintained by the personal influence of parents who shall endeavour to reduce all forms of punishment to a minimum. Punishments must be regulated according to the "Children and Young Persons (Scotland) Care and Training Act [sic], 1933:-

- (1) Punishment, where necessary, shall consist mainly of reasonable forfeiture of privileges or rewards.
- (2) Children must not be deprived of meals.
- (3) Children must not normally be deprived of recreation for more than one day at a time.
- (4) Where punishment takes the form of a reasonable period of isolation, the child must never be locked in a room or cupboard.

- (5) If corporal punishment is considered necessary, a light tawse only may be used on only to the following maxima:-
- (a) Girls:- Three strokes only may be inflicted in all on any one occasion, and only on the hands
  - (b) Boys under 14 years: Two strokes on each hand or four strokes on the posterior over ordinary cloth trousers.
  - (c) Boys aged 14 years or more: Three strokes on each hand or six strokes on the posterior over ordinary cloth trousers.
- (6) Every punishment must be immediately entered into the Punishment Book and the record shall show:-
- (a) Date of punishment.
  - (b) Name of offender.
  - (c) Age.
  - (d) Nature of offence.
  - (e) Name of person who administered the punishment.
  - (f) Nature of punishment, and in the case of corporal punishment, its exact amount.
- (The Orphan Homes of Scotland: Standing Orders, cited in Abrams and Fleming, 2019c, pp. 42-3)

It can be seen, then, that there was a wide variation in the nature and scope of guidelines and policy on discipline and punishment.

### **3.3.3 The Practice of Corporal Punishment**

Mahood (1995) examines discipline and punishment in industrial schools and reformatories in this period. In Mossbank Industrial School, at the start of the twentieth century, corporal punishment was used for a range of misdemeanours: “bad language, lying, deception, neglecting duties, noisiness and disorderly conduct, general carelessness, idleness, unexplained absence from work, quarrelling, absconding, smoking cigarettes and chewing



tobacco" (Mahood, 1995, p. 72). In February, 1923, for example, the punishment register detailed six strokes over the trousers for three 14 year old boys caught smoking in the dormitory. "For workroom and school faults such as errors in lessons or disobeying instructors, between four and six "palmies" were the appropriate punishment given" (Mahood, 1995, p. 72).

Billy P, in recalling his time at Aberlour Orphanage between 1938 and 1950, commented that corporal punishment was common:

As a boy I copped it a few times. You had to hold your hands out, both hands, palm upwards, and then he lashed you across the palm, and it might be three or four, you know, if it was perceived as a serious misdemeanour and you'd have these welts across your hand and up your wrist... We just accepted it I suppose. It was part of our upbringing. Sometimes a cane would be used. Applying the standards of 2012, you could say that it was fairly harsh... But by the standards of the time, the 1930's, it was quite good. (Divine, 2012, pp. 25-7)

Another boy, Charles, in Aberlour Orphanage in the 1940s, also recalls that: "We all got whacked if we done things wrong in the Orphanage but that was the accepted thing" (Divine, 2012, pp. 25-7).

In discussion of Quarrier's Homes, Magnusson (2006) wrote:

There was certainly a different attitude to physical punishment in those days, but those who experienced physical abuse as children don't complain about being spanked or having to endure strict discipline. What they are describing, by any standards, is cruelty and excessive physical punishment. (p. 133)

While Helen Tennent had overwhelmingly positive memories of her time in an evacuation home in Cove, she recalls being “spanked vigorously” when she was two years old for attacking a little boy who had thrown a toy brick at her (Tennent, 2007, p. 11). Later, at the age of four, she was humiliated by a public spanking for wetting the bed (Tennent, 2007, p. 15).

Abrams and Fleming (2019b) also address the issue of the corporal punishment of older girls at Aberlour Orphanage in the 1940s. We have seen that the *Remand Home (Scotland) Rules 1933* did not allow the use of corporal punishment for girls (Norrie, 2017, p. 256) and, following an inspection in October 1947, an inspector forwarded a copy of these rules to the Orphanage. The Headmaster of Aberlour, Dean Wolfe, asked for further clarification from the Home Department inspectorate, asking for “the sort of method adopted for the punishment of rebellious and obstreperous girls” and arguing that the Lady Superintendent considered “that if corporal punishment is allowed in the School and not in the House for really serious offences, it would create an invidious and difficult situation.” The reply from the inspectorate stated that experts considered that corporal punishment generally does more harm than good, and “it is worse than useless as a means of training” (cited in Abrams and Fleming 2019b, p. 38).

World War II saw radical experiments in residential care, such as the “Barns Evacuation Hospital for disturbed and unbilletable evacuees” set up by David Wills, a leading exponent of therapeutic child care (Bridgeland, 1971, pp. 189-90). Wills implemented a policy of no punishment and, after an initial period of chaos, he described the atmosphere as totally changed, saying:

... we who lived with them knew that something had happened. They were convinced of our sincerity, and were ready to accept us... They were no longer in opposition. (Wills, 1945, pp. 12-13)

Abrams (1998) also identifies a children's home in Fife where it was stated that staff were not allowed to use corporal punishment of any kind.

There is extensive evidence of the use of excessive punishment on children and young people over this period. The Clyde Committee, however, only acknowledged that there had been "isolated instances of cruelty to children, on which the fierce light of publicity has been brought to bear" (Scottish Home Department, 1946, p. 16). One such high profile case saw the prosecution and conviction of John and Margaret Walton of Fife for wilful mistreatment, for severely beating two foster boys aged ten and twelve years old. In another case involving a foster parent, Abrams and Fleming (2019a) discuss the prosecution of an Aberdeenshire farmer charged with assault of a boarded out child for smacking the boy on his bare bottom. However, giving evidence, the doctor who had examined the boy stated that the boy "just got a good thrashing. The boy was well cared for and well nourished" (The Scotsman, 1<sup>st</sup> June 1945, cited in Abrams and Fleming, 2019a, p. 70).

Mahood (1995) evidences extreme violence inflicted as punishment. For example, one former resident of a reformatory school in the 1920s described punishment which left him bedridden for nine days (Mahood, 1995, p. 72).

The Scottish Child Abuse Inquiry summarised the experience of children and young people in residential establishments run by the Daughters of Charity:

Being hit with or without implements was the norm for many, whether as an excess of punishment or for reasons that were unexplained. Punches, slaps, kicks, being thrown about, being "knuckled", being forced to kneel in corridors, heads being banged together, hair being pulled, ears being pulled and carbolic soap being forced into children's mouths, were practices that featured. Implements used included canes, sticks, brushes, cricket stumps, belts and plastic sandals. (SCAI, 2019, p. 24)

In some cases, staff were 'brought to book' for using excessive punishment. In 1932, a teacher at Aberlour orphanage was admonished "for bruising a boy in a way that was 'contrary to regulations'" (Aberlour Minute Book, cited in Abrams and Fleming, 2019b, p. 41). Magnusson (2006) also notes a letter written in 1937 by the chairperson of Quarrier's Homes, Dr James Kelly, to all the fathers of the boys' cottages. In the letter, he raises concerns about "extreme corporal punishment" brought to the notice of the Executive Committee. He condemns the practice of 'excessive corporal punishment' or 'thrashing' (Magnusson, 2006, p. 134).

In 1947, Ayrshire Educational Committee held an inquiry into absconding and excessive punishment at Dr Guthrie's School for Boys, an Edinburgh approved school. This had been requested by Councillor Robina Lambie following complaints about the school. The head master declared that the forms of punishment used in the school were strictly in conformity with the Scottish Education Department rules for approved schools and he produced for inspection the punishment book and other records required to be kept in terms of these rules. The inquiry found that the allegations were unfounded, but Cllr. Lambie produced a dissenting, minority report. While she agreed that as far as she could see the material wants of the boys were well met, she repeated the complaints of excessive punishment. One member of the Committee stated that he was satisfied that there were absolutely no grounds at all for any allegations of cruelty or carelessness, and added that approved schools had to deal with a very difficult type of boy (Sen *et al.*, 2007, pp. 184-5).

### **3.3.4 Other Forms of Punishment**

Martin (2013) listed a range of punishments inflicted upon the girls in Waverly Park Home, the first school in Scotland to receive a certificate as an Industrial School for Mentally Defective Girls. Such punishments included deprivation of

privileges, and spatial isolation such as being put to bed – one girl, for example, spent six weeks in bed for running away (Martin, 2013, p. 78).

Following allegations of abuse, an inquiry into methods of discipline at the Home was carried out by two Commissioners of the Board of Control in 1938. The allegations of abuse included the use of the 'sick needle' - an injection of apomorphine that caused sickness and diarrhoea - on a girl. The inquiry found internal tensions between staff, and evidence that one teacher used the strap, which was not allowed. The institution's doctor admitted that the 'sick needle' had been used as a punishment. Despite criticisms of the matron by the Commissioner, she remained in post (Martin, 2013, p. 71).

Inspections of Aberlour Orphanage in the 1940s raised concerns about punishment. One report from 1948 highlighted the way that the Warden, Dean Wolfe, "held individual children up to ridicule in front of the other children and pilloried the boy [S] in front of the whole dining room" (Inspectorate minute, cited in Abrams and Fleming, 2019b, p. 39).

Magnusson (2006) also details the memories of former residents of Quarrier's about discipline and punishment. Children could be punished by being force fed for not eating their food.

My sister was the worst offender... [The housemother]... would drag her out of the seat by her hair, and make her stand beside the unlit fireplace facing the serving table; she would slap her about and push the plate into her hands. Sometimes she stuck her face into it, eventually castor oil was poured over it and she would be force-fed with the help of an older girl... (Jan Gordon, cited in Magnusson, 2006, p. 132)

One housemother locked children in cupboards all night as a punishment, or put them under the floorboards (Magnusson, 2006, p. 133).

There was a particularly unsympathetic approach to bed-wetting, at Quarrier's and more generally, with extensive evidence of abusive punishment involving excessive corporal punishment, humiliation, name calling, cold baths, and children wearing their wet bed-sheets (Magnusson, 2006; SCAI, 2018; 2019; 2020). Hawthorn also details such punishments and argues that bed-wetting was seen as a sign of 'dirtiness' or 'wickedness', thus provoking a punitive response (Hawthorn, 2018, p. 46).

## 4. Discipline and Punishment – From the Children Act 1948 to the Social Work (Scotland) Act 1968

### 4.1 Introduction

The experience of evacuation during World War II brought together two different worlds – the inner city and rural Britain – and highlighted issues of poverty, health and education (Holman, 1996; Stewart and Welshman, 2006). Evacuation profoundly altered attitudes to state welfare and had a significant impact on post-war welfare policies (Titmuss, 1950; see also Welshman, 1998). Not least, there were concerns about child welfare and provision for the needs of children and young people and, in particular, the needs of children and young people separated from their parents.

The Care of Children Committee in England and Wales, which led to the Curtis Report (Care of Children Committee, 1946), and The Committee on Homeless Children in Scotland, which produced the Clyde report (Scottish Home Department, 1946), were both established in 1945. Though the remits of the two Committees were slightly different, their findings were similar and both contributed to the development of the *Children Act 1948*.

During this period, there continued to be a twin track approach to the care of children and young people. Alongside the *Children Act 1948*, the *Children and Young Persons (Scotland) Act 1937* continued to deal with juvenile offenders; children in need of care and protection; children and young people beyond parental control; and truants. Such children and young people continued to be placed into care through the juvenile courts.

## 4.2 Legislation, Regulation and Guidance

### 4.2.1 Children Act 1948

The *Children Act 1948* represented an important reform of child care legislation across the UK and led to a major integration of the organisational response to children in need (Parker, 2011). The Act emphasised the child's best interests and made the child's welfare central. Specifically, it laid a duty on local authorities to – where this was in the best interests of the child – receive a child into their care when:

- the child had no parents or guardians;
- the child had been abandoned;
- the child's parents were unable to provide care because of mental or physical health issues or incapacity; or
- in any other circumstances.

Several sections of the 1948 Act set out responsibility for the care of children when they came under the provisions of earlier legislation that continued to be in force, for example, the *Children & Young Persons (Scotland) Act 1937*; the *War Pensions (Administrative Provisions) Act 1918*, the *Mental Deficiency (Scotland) Acts, 1913 and 1940* and, the *Lunacy (Scotland) Acts, 1857 to 1919*.

### 4.2.2 The Boarding-out of Children (Scotland) Regulations 1959 and the Memorandum on the Boarding-out of Children

In 1948, the *Boarding-Out Committee of Advisory Council on Child Care for Scotland* was appointed to consider the boarding-out system and recommend improvements. The first report of the Committee, published in 1950, addressed a range of issues such as boarding out children in rural areas,



the shortage of foster parents, recruitment and selection, and contact with parents. It also drafted revised boarding-out regulations.

It took nearly a decade, however, for the regulations to come into force, on 1<sup>st</sup> August 1959. *The Boarding-out of Children (Scotland) Regulations 1959*, then, replaced *The Children (Boarding-out, etc.) (Scotland) Rules and Regulations 1947*. The 1959 Regulations applied to children boarded-out by local authorities, and also by voluntary organisations (with the exception of managers of approved schools). Unlike the earlier regulations, boarding-out here (within the 1959 Regulations) refers only to placement with a foster parent as a member of a family.

The Regulations deal with both the suitability of children to be boarded-out and the suitability of foster parents. In general terms, they address the health and welfare of foster children, including the condition of the foster home, the suitability of sleeping accommodation, water supply and sanitary facilities. They also discuss medical and dental treatment. Norrie notes that:

The 1959 Regulations represented more detailed regulation of boarding-out than its predecessor had done, especially in relation to the cooperation required between different local authorities (to facilitate the long-established practice of boarding-out children in areas other than their local area). (Norrie, 2017, p. 157)

Whereas the 1947 Regulations stated that foster parents should not administer indiscriminate or harsh punishment, there is no explicit discussion of discipline and punishment in the 1959 Regulations.

Alongside the Regulations, the Memorandum on the Boarding-Out of Children was published "to help towards the attainment of a uniform standard of good boarding-out throughout Scotland" (Scottish Home Department, 1959, p. 5). It

addressed similar issues as the 1950 Report, and stressed the importance of good foster care.<sup>1</sup>

Although the 1959 Regulations did not mention discipline and punishment, the Memorandum included a specimen statement of principles to be provided to all foster parents. These provided detailed advice on caring for children in relation to health and medical attention, education, recreation, training, and employment. In relation to health, the principles acknowledge the anxiety that foster children may feel and show as "nightmares, fear of the dark, stammering or bed-wetting" (Scottish Home Department, 1959, p. 25).

Foster parents should realise that the child in these circumstances needs comfort and affection rather than scolding or punishment, and that once he feels really secure and 'at home' the behaviour troubles are likely to disappear. (Scottish Home Department, 1959, p. 25)

With regard to training, the principles detail the expectation of bringing up foster children with good habits, self-respect and truthfulness.

The child should not be punished harshly or indiscriminately, and the threat of the removal from his foster home should in no circumstances be used as a punishment for misconduct. (Scottish Home Department, 1959, p. 27)

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<sup>1</sup> The Memorandum marked a very different approach to parental contact. It stressed the fundamental nature of the relationship between the child and their parent, and that foster parents should receive guidance on supporting regular contact where this was appropriate, particularly in short-term placements when the aim was for the child to return home.

### 4.2.3 The Administration of Children's Homes (Scotland) Regulations 1959

The *Administration of Children's Homes (Scotland) Regulations* came into force on 1<sup>st</sup> August 1959. Discipline and punishment was addressed within the Regulations, but only briefly.

Section 10 of the 1959 Regulations stated that the "general discipline of the children accommodated in a home shall be maintained by the personal influence of the person in charge." Normally, punishment for misconduct should only involve "a temporary loss of recreation or privileges" (Section 10, Administration of Children's Homes (Scotland) Regulations 1959).

Section 11 addresses corporal punishment and states that it may only be administered "exceptionally". Such punishment must be carried out:

- (i) by a person specifically empowered by the administering authority for the home to administer such punishment; and
  - (ii) In accordance with such rules as to the manner and limits of administering such punishment as may be made by that authority.
- (Section 11, Administration of Children's Homes (Scotland) Regulations 1959)

The Regulations specify that the medical officer of the home must sanction corporal punishment of a child with a physical or mental disability.

A record of any punishment administered to a child must be made, and where a child is punished with "abnormal frequency", the administering authority must be informed and it "will arrange for an investigation of the child's mental condition" (Section 10, Administration of Children's Homes (Scotland) Regulations 1959).

Section 20 of the 1959 Regulations set out exemptions for schools that were part of a children's home. If "a home includes a school which is a public school, a grant-aided school or an independent school" under the relevant Education Acts, certain sections of the Regulations would not apply to the school, and these included the regulations on discipline and punishment.

#### 4.2.4 The Approved Schools (Scotland) Rules 1961

The *Approved Schools (Scotland) Rules* came into force on 1<sup>st</sup> December 1961, and addressed the issue of punishment in a number of ways. It is outlined within Section 11(2)(g) that, along with other records, the Headmaster shall keep a punishment book. In discussing the care of pupils, Section 19(1) of the Rules states: "A meal shall not be withheld from a pupil as a form of punishment."

Sections 28 to 32 of the 1961 Rules deal specifically with discipline and punishment. It is stated within Section 28 that these are the responsibility of the Headmaster who, subject to special provision within the Rules, may give instruction and delegate such responsibility.

Section 29 sets out the allowed forms of punishment:

- (a) reprimand;
  - (b) forfeiture of privileges or rewards;
  - (c) loss of conduct marks or reduction in rank;
  - (d) loss of recreation or liberty;
  - (e) performance of useful additional tasks;
  - (f) the disallowance of home leave, which may be used only in the case of a serious offence; or,
  - (g) corporal punishment.
- (Section 29, Approved Schools (Scotland) Rules 1961)

Exceptions to these forms of punishment would need the consent of the Secretary of State.

Section 30 of the Rules details that the type of punishment shall be determined by the gravity of the offence and also by the age, temperament and physical condition of the offender. "The Medical Officer shall be consulted if there is reason to think that punishment might be harmful to the pupil." This section goes on to state that: "In no case shall the nature or the extent of the punishment be such as might be injurious to physical or mental health. Punishment shall not be awarded more than once for the same offence" (Section 30, Approved Schools (Scotland) Rules 1961).

Section 31 sets out that corporal punishment may only be inflicted under the following conditions:

- (a) for an offence committed in the course of ordinary lessons in the schoolroom the principal teacher may be authorised by the Managers to inflict on the hands not more than three strokes in all;
- (b) except as provided in the last foregoing paragraph, the punishment may be inflicted only by the Headmaster or, in his absence or incapacity, by the Deputy Headmaster or by the master specifically directed by the Managers under Rule 14 to exercise the functions of the Headmaster;
- (c) except when the punishment is inflicted in the presence of a class in a schoolroom, an adult witness must be present;
- (d) no pupil may be called upon to assist the person inflicting the punishment;
- (e) the punishment may not be inflicted on a girl other than a pupil in a school classified under subsection (1) of section 85 of the Act as a junior school and not more than three strokes in all may be inflicted on the hands only;

- (f) for boys under 14 years of age, the number of strokes may not exceed two on each hand or four on the posterior over ordinary cloth trousers;
- (g) for boys who have attained the age of 14 years, the number of strokes may not exceed three on each hand or six on the posterior over ordinary cloth trousers;
- (h) only a light tawse may be used: a cane or other form of striking is forbidden;
- (i) the punishment may not be inflicted on more than one occasion for the same offence; and
- (j) no pupil who shows any sign of physical weakness or mental illness shall receive corporal punishment without the sanction of the Medical Officer.

(Section 31, Approved Schools (Scotland) Rules 1961)

The rules state that any person who commits a breach of this rule shall be liable to dismissal or other disciplinary action.

Section 32 of the 1961 Rules requires the Headmaster to enter into the punishment book full particulars of each occasion on which home leave is stopped or corporal punishment inflicted. The punishment book shall show: the date of punishment; the name of the offender; his age; the nature of the offence; the name of the officer who awarded the punishment and, when appropriate, the name of the officer who administered it; the nature of the punishment and its exact amount; in the case of corporal punishment any witness; and observations, if any, of the Medical Officer.

The Rules also detail segregation of a pupil who is behaving in an 'unmanageable or violent manner.' The Headmaster may order that the pupil shall be temporarily confined in a special room approved for the purpose by

the Secretary of State. However, they may be confined no longer than is necessary. Segregation shall be subject to the following conditions:

- (a) the room shall have good natural lighting by day and be kept lit after dark; it shall have good natural ventilation.
- (b) no pupil under the age of 13 may be confined in such a room;
- (c) the Medical Officer shall be consulted if there is reason to think that segregation might be harmful to the pupil;
- (d) some form of occupation shall be provided;
- (e) means of communication with a member of staff at all times during the day and night shall be provided and the pupil shall be visited frequently by a member of staff and at least once each day by the Headmaster;
- (f) if segregation is to be continued for more than 24 hours or for more than two successive nights, written consent of one of the Managers shall be obtained and the circumstances shall be reported immediately to the Department; and
- (g) each period of segregation of a pupil and the circumstances shall be entered in the log book without delay.

(Section 33, Approved Schools (Scotland) Rules 1961)

Section 34 of the Rules sets out the ability of the Secretary of State to approve the use of part of a school as a special section for pupils who are abnormally unruly, or are persistent absconders, or for such other categories of pupils as he may from time to time determine.

The appointment and duties of the Medical Officer is detailed in Section 40. This includes the duty to examine the punishment book at each visit, and that the Medical Officer shall draw the attention of the Managers to any apparent case of excessive punishment (Section 40, Approved Schools (Scotland) Rules 1961).

#### 4.2.5 The Remand Home (Scotland) Rules 1964

The *Remand Home (Scotland) Rules 1964* came into force on 1<sup>st</sup> October 1964, and *The Remand Home (Scotland) Rules 1946* were revoked. Norrie (2017) points out that the “[w]elfare of the children detained in remand homes was a more prominent feature of the 1964 Rules than it had been in the 1946 Rules, and the dehumanising language of “inmate”, found in the earlier Rules, was changed in the 1964 Rules to “children” (p. 260).

The discipline of the remand home shall be maintained by the personal influence of the Superintendent of his staff, and may be enforced when necessary by the forms of punishment authorised by these rules. (Section 23, *Remand Home (Scotland) Rules 1964*)

Section 24 of the 1964 Rules states that punishment “may be by reprimand, or by temporary loss of recreation or privileges, provided that a child shall not be deprived of any meal or of exercise in the open air.” This is followed, in Section 25, by the conditions for corporal punishment when the methods in Section 24 were not appropriate. For the most part, these reflect the conditions in the *Approved Schools (Scotland) Rules 1961*.

- (a) it shall not be administered to a girl;
- (b) it shall be administered only by the Superintendent in the presence of an adult witness, and any assistance necessary in administering it may be given only by a member of the staff of the remand home;
- (c) it shall not be inflicted on more than one occasion for one offence;
- (d) it shall not, without the approval of the medical officer, be administered to any boy who shows any sign of physical weakness, mental illness or mental deficiency;



- (e) it shall be inflicted only by means of a light tawse;
- (f) a boy who has reached the age of 14 years may be given not more than three strokes on each hand or six strokes on the posterior over ordinary cloth trousers, and a younger boy may be given not more than two strokes on each hand or four strokes on the posterior over ordinary cloth trousers;
- (g) corporal punishment in any form not authorised by these rules shall not be inflicted by any person on any child and striking, cuffing and shaking are strictly forbidden; and
- (h) any person who commits a breach of this rule shall be liable to dismissal or other disciplinary action.

(Section 25, Remand Home (Scotland) Rules 1964)

The Rules also allow the Superintendent to “order a child who is behaving in an unmanageable or violent manner or is likely, in the opinion of the Superintendent, to exercise a bad influence on the other children to be temporarily separated from the other children by being confined in a room approved for the purpose by the Secretary of State” (Rule 26). However, a number of conditions apply:

- (a) no child shall be so separated for longer than, in the opinion of the Superintendent, is reasonably necessary;
- (b) the room shall have good natural lighting and when occupied shall be kept lit after dark, and shall have adequate ventilation and heating;
- (c) the medical officer shall be consulted if there is any reason to think that such separation might be in any respect harmful to the child;
- (d) suitable forms of occupation shall be provided;
- (e) the child shall as far as practicable be given exercise and recreation;

- (f) means of communication between the child and a member of staff shall be available at all times during the day and night and the child shall be visited frequently by a member of staff and at least once each day by the Superintendent;
- (g) such separation shall not be continued for more than 24 hours or for more than two successive nights without consultation with the medical officer and the prior consent of the local authority.
- (h) each separation and the circumstances thereof shall be recorded in the log book without delay.

(Section 26, Remand Home (Scotland) Rules 1964)

The Superintendent must keep records and the log book must include occasions where corporal punishment was administered, occasions where visits to a child were suspended, occasions on which a letter from or to a child is withheld, and occasions where a child is separated under Rule 26.

### **4.3 Policy and Practice of Discipline and Punishment**

#### **4.3.1 Introduction**

Following World War II, with a greater understanding of child development and attachment, there was an increasing consideration of the individuality and development of children in care. The better understanding of child development led to changes in services, and a move away from large institutions. There was more involvement of child psychologists and child psychiatrists in working with children in care, and some residential establishments developed therapeutic approaches to care. However, there continued to be strict and authoritarian regimes in some residential settings, particularly those for young offenders. In other care settings, the focus continued to be on physical health and cleanliness, rather than on the emotional and mental well-being of the child. There was little emphasis on

recruitment and selection of staff and carers, nor on training and supervision (Kendrick *et al.*, 2021).

As in previous years, some people “showed concern about children’s welfare and opposed practices such as corporal punishment” (Shaw, 2007, p. 24). Abrams and Fleming, however, note that in the 1950s and 1960s, “the need to apply firm discipline was not seen as antithetical to a constructive approach to their care” (2019a, p. 65).

Overall, conformity was what was expected (and required) of children who entered the care system: mechanisms put in place to care for them—whether this was by boarding out or placement in an institution—aimed to encourage self-discipline and ensure that children reached adulthood with the necessary skills to become self-supporting. (Abrams and Fleming, 2019a, p. 67)

#### 4.3.2 Guidelines and Policy

Across this period, guidelines and policies on discipline and punishment continued to be inconsistent across different care settings and corporal punishment was still allowed. It is only in the late 1960s that there was an increasing push, at governmental level, to ban corporal punishment.

Abrams and Fleming (2019a, p. 94) note that while it is:

... easy to identify the rules and regulations governing the operation of the boarded-out system in Scotland. Evidence of how these were put into practice at local authority level is less visible in the written record.

With regard to residential care, Abrams and Fleming (2019d) discuss policies in relation to Quarrier’s, Aberlour, and Barnardo’s. Before the *Administration of*

*Children's Homes (Scotland) Regulations, 1959* came into force, each organisation had its own guidance for staff (examples of which were detailed in the previous chapter).

There was little consistency across all three organisations prior to 1959, when common rules regarding discipline and the exercise of punishment were applied via the Scottish Office 1959 Regulations. Each provider offered different guidance to staff but all accepted corporal punishment was permissible in some cases and within certain boundaries. (Abrams and Fleming, 2019d, p. 9)

Quarrier's issued the 1959 Regulations to all houseparents in a newsletter (Abrams and Fleming, 2019d, p. 8).

Amendments made to the Sisters of Nazareth Directory and Book of Customs in the early 1950s are detailed within The Scottish Child Abuse Inquiry (SCAI).

SCAI recovered a further copy of the Directory, which is amended by way of mark-ups in pen up to 1952. The only substantive amendment from 1921 to 1952 in relation to caring for children appears to be that the following direction is deleted: "[children] are not to be taught plays, as it gives them a taste for theatre and music halls as well as wasting their time as that of the Sisters." The directions in relation to crossing arms in bed and corporal punishment including whipping, for example, remain. (SCAI, 2019, p. 96)

By 1958, the Sisters of Nazareth Directory has been considerably amended. It now states that the Sisters must have the necessary training to undertake the important work of child care.

Guidance is given that “the Sisters must have motherly hearts and make the part of the house they occupy a happy home.” There is no mention of corporal punishment or of children crossing their arms across their chest in bed. (SCAI, 2019, p. 96)

The Scottish Child Abuse Inquiry, however, presents clear evidence that the harsh, cruel and brutal regimes in the Nazareth homes continued throughout the 1950s and 1960s.

In describing a case of excessive punishment in a Banffshire children's home in 1964, Abrams and Fleming (2019a) provide details of the Children's Committee interpretation of the 1959 Regulations:

Para 11: Corporal punishment

- a) (i) That Matron be empowered to administer corporal punishment. A child proving to be difficult will be referred to the Children's Officer
- (ii) that the method of punishment shall be by strap. No child under the age of five and no girl over the age of eleven shall be punished.

(Banffshire Children's Committee, cited in Abrams and Fleming, 2019a, p. 163)

Following this case, Banffshire Children's Services stopped the use of corporal punishment in its children's home.

Following adverse publicity in 1967 about excessive corporal punishment at Gryffe Children's Home run by Glasgow City Corporation, the Social Work Services Group undertook a review of corporal punishment in children's

homes.<sup>2</sup> Information on policies and guidelines was gathered for the review. At the beginning of 1968, nine of the 39 authorities in Scotland which have children's homes prohibited the use of corporal punishment (NRS, ED11/854/1).

As part of a survey on corporal punishment, a number of authorities returned copies of their rules or guidelines, and examples of these follow.

Midlothian, East Lothian and Peebles Child Care Service returned an extract from the minutes of the Children's Committee held in December 1959.

The Committee agreed that slight misdemeanours such as bad manners should not be noted in the Log Book, and that in the case of more serious misdemeanours a brief note of the offence and the punishment given should be entered in the Log Book. Punishment should generally consist of deprivation of privileges such as being sent to bed early, not being allowed to go to the pictures, not being allowed to watch television or by doing extra domestic duties, and that as a general rule children should not be prevented from visiting fostering aunts or relation [sic] or from attending outside organisations.

The Committee agreed that corporal punishment, which should be kept to a minimum and never administered to a girl over the age of 12 years, should consist of not more than 6 smacks with the hand or with a soft slipper. It was further agreed that the only persons specifically authorised to administer corporal punishment should be the Matron, or in her absence the Senior Nurse. (Midlothian, East Lothian and Peebles Child Care Service, NRS ED11/854/1)

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<sup>2</sup> Work was also being undertaken in England following an inquiry into excessive punishment at Court Lees Approved School which led to the closure of the school. The Plowden Report (Central Advisory Council for Education (England), 1967) had recommended the abolition of corporal punishment in primary schools in England. In addition, work in Scotland on the abolition of corporal punishment in schools was being done.

Within their return, Falkirk Child Care referred to approval by the Town Council of a Children's Committee recommendation on corporal punishment.

14.9.65 Town Council approved Children's Committee recommendation that corporal punishment should be administered solely by the bare hand immediately the misbehaviour requiring it has occurred, it being in the power of all members of the Home's staff to inflict this subject to the proviso that junior members of the staff inflicting such punishment should be bound to report it to the matron as early as possible. It has also agreed that corporal punishment be restricted to children under 10 years of age (Falkirk Child Care, NRS ED11/854/1)

Glasgow Corporation returned regulations regarding corporal punishment. These were undated.

1. Corporal punishment is administered only by the person in charge of the Home, or his depute, in the presence of another member of staff. No other child is allowed to be present.
2. Children under 10 years of age may be slapped with the bare hand on the buttocks.
3. Girls over 10 years of age must not receive corporal punishment.
4. Boys over 10 years of age may be punished with a strap,
  - (a) by not more than 2 strokes on each hand.
  - (b) by not more than 4 strokes on the buttocks applied over ordinary cloth trousers. Strapping is not allowed over pyjamas or football shorts.

The strap is supplied by the Corporation.

5. The punishment must be entered immediately in the Log Book.  
(Glasgow Corporation Children's Department, NRS ED11/854/1)

Lanark County Council Children's Committee stated that Paragraphs 10 and 11 of the 1959 Regulations "must be strictly observed."

Particular attention is directed to the fact that as a general rule, a child shall be punished only by a temporary loss of recreation or privileges and that all punishments shall be recorded in the log book.

Corporal punishment may exceptionally be administered to a child, subject to the following conditions:-

- (a). The only persons empowered to administer any form of corporal punishment shall be the persons in charge of the Homes (Matrons or Housemothers as the case may be) or, in their absence on leave or from other cause, the responsible deputies in charge of the Homes.
- (b). Corporal Punishment shall not be administered in the presence of another child, but, wherever possible, another senior member of staff should be present.
- (c). Where a child is under 10 years of age, the only permissible form of corporal punishment shall be smacking on the hands or on the buttocks with the bare hand.
- (d). Corporal punishment shall not be administered to a girl over 10 years of age. Boys over 10 years of age may be so punished with a strap approved by the Children's Committee, which may only be applied on the hands or on the posterior over the boy's ordinary cloth trousers, and shall be limited to not more than two strokes on each hand or four strokes on the posterior.

(Lanark County Council Children's Committee, NRS ED11/854/1)



Red House Home for Boys in Musselburgh detailed an excerpt from a minute of a meeting of the Governors from April 1946.

#### Corporal punishment

Corporal punishment, when found necessary, should be administered privately preferably some little time after the offence, upon the posterior with a strap kept for the purpose. Mr. Cairns was informed that it was the desire of the Governors that corporal punishment should be kept to a minimum and that he should keep a special book recording the date and full particulars of the corporal punishment administered, together with some details of the offence.

After the publication of The Administration of Children's Homes (Scotland) Regulations, 1959, Mr. Cairns told me he and the Chairman of the Governors had discussed Rules 10 & 11 but the above minute still stood. (Red House School for Boys, NRS ED11/854/1)

We have seen that a number of authorities had prohibited corporal punishment in their children's homes and, where authorities allowed corporal punishment, there was little consistency in their guidance. Differences are evident both in the forms of corporal punishment allowed (hand, slipper or strap) and in relation to age and gender.

#### **4.3.3 The Practice of Corporal Punishment**

Corporal punishment continued to be administered routinely in the 1950s and 1960s, although there were signs of a continued move away from corporal punishment in care settings, albeit slowly. There were also widely differing practices in different care placements, and clear evidence of excessive punishments in some places.

Abrams and Fleming (2019a, p. 68) describe a case from 1952 where a foster mother was found guilty of assaulting and ill-treating a seven-year-old boy in her care by striking him repeatedly with a leather belt causing considerable bruising on various parts of his body. Josephine Duthie's autobiographical account of her experiences in foster care in the 1950s and 1960s threw a spotlight on some of the worst excesses of the boarding out system in Scotland (Duthie, 2012). Josephine and her brothers and sister were subjected to physical beatings, humiliation, verbal and emotional abuse, being locked in a dark cupboard, or locked in their room for up to three days without food or water.

Her favourite expression from the first few weeks we were there was 'You buggers of hell.' (Duthie, 2012, p. 56)

Other accounts of boarding-out in this period, however, describe more positive experiences with foster parents (Tennent, 2007; Whelan, Scott and McBeth, 2010), highlighting the contrast in children's experiences of care.

... the croft would echo with our laughter. We were content. Life was anything but easy. Morag and Willie were disciplinarians, insisting on the maintenance of Christian values that were adhered to strictly. (Whelan, Scott and McBeth, 2010, p. 26)

The Scottish Child Abuse Inquiry case studies found that through the 1950s and 1960s, children and young people in Sisters of Nazareth homes, Daughters of Charity homes, Aberlour homes, Barnardo's homes and Quarrier's Homes were subjected to cruel and harsh corporal punishment, at the hands of staff and carers (SCAI, 2018; 2019; 2020).

As far as can be ascertained from the records, houseparents at Quarrier's Homes were issued with leather straps until the late 1960s (though some

houseparents did not accept them). An inspection of Quarrier's in 1965 highlighted serious concerns about discipline and punishment, in that there was no recognised standard or system of corporal punishment, and it was left to houseparents to punish as they saw fit (Abrams and Fleming, 2019a, p. 147). As David Whelan attests, "Corporal punishment remained a way of life" (Whelan, Scott and McBeth, 2010, p. 94).

Abrams and Fleming present a letter from Dean Wolf of Aberlour Orphanage to the secretary of the RSSPCC in 1950, which illustrates that "the physical punishment was simply treated as acceptable—both as a form of reprimand and as a deterrent, provided it did not cause lasting injury" (Abrams and Fleming, 2019b, p. 35). By the early 1960s, however, a housemother at Aberlour Orphanage (Aunty Phylis) said that "[w]e were never allowed to use corporal punishment on them at any time; wouldn't believe in it anyway" (Divine, 2012, p. 94).

In the 1950s, Helen Tennent was placed in Eversley Children's Home where there "was discipline, but it was not intrusive, for when you know the rules they become part of your way of life" (Tennent, 2007, p. 95). However, Helen also describes the punishment meted out by the matron of Castlemilk home. Children and young people were publicly caned. "I had seen Matron publicly lash out with her cane across the back of a nude girl," and this in the presence of boys in the home (Tennent, 2007, p. 107). She, herself, was slapped across the face by the matron for being in an area that was out of bounds, but Helen slapped her back and threatened the Matron to never slap her again.

Inspections of Clyde Cottage, a Glasgow Corporation Home in Dunoon, between 1955 and 1967 highlight the inadequacy of inspection to bring about change as, over a number of years, concerns were raised about the limitations of the matron in charge. It was not until a new housemother was appointed in 1965 that improvements were made, and the inspector commented on the

housemother's approach: "constructive discipline and routine where the children build up self-respect" (Abrams and Fleming, 2019a, p. 153).

Following an investigation of excessive punishment by staff of Clydeville Children's Home (a Banffshire County Council home), three members of staff, including the matron, resigned after they were found unsuitable for their posts. The punishments included children being strapped on the bottom and legs, causing bruising; smacked almost daily; struck on the face and head; strapped 20 times; hit on the face and belted on the back of the neck and bottom; and hit on the face (Abrams and Fleming, 2019a, p. 162). Banff Children's Officer was advised to update the guidance on corporal punishment; however, the use of corporal punishment was stopped and a further inspection of the home in 1964 found that "the discipline in the home is kindly; the staff are averse to the use of corporal punishment" (Inspection report cited in Abrams and Fleming, 2019a, p. 163).

The Shaw review "found evidence of people who, in the 1950s and onwards in Scotland, showed concern about children's welfare and opposed practices such as corporal punishment" (Shaw, 2007, pp. 24-5). The review (Shaw, 2007) gives details of the dismissal of a housemaster in a voluntary children's home because of his behaviour in the punishment of children.

In the mid-1960s, school inspectors found "extensive ill-treatment" in approved schools and, in one school in particular – Geilsland School – there were over 250 punishments over an 18-month period. The headmaster of Geilsland School was warned about his behaviour, and told that there was no justification for striking or cuffing boys (Henderson, 1998).

Boys in the former approved schools sometimes defecated when waiting for the next whack of Lochgelly leather on their buttocks, Scottish

Office inspectors protested in 1966. They reported almost 1,000 floggings that year. (Henderson, 1998)

In November 1967, the Social Work Services Group issued a circular to approved schools regarding discipline and punishment. The circular outlined proposals for a review of the regulations and invited the managers and heads of approved schools to report on their policies and experience. The circular also brought to attention that responsibility for discipline and punishment “does not detract in any way from the power and duty of the Managers to ensure that the school is conducted, as required by Rule 4, in the interests of the welfare, development and rehabilitation of the pupils” (Approved Schools Circular Letter No. 21/1967: Discipline and Punishment, Social Work Services Group. NRS ED11/854/1).

Abrams and Fleming (2019a) cite the response to this circular from the headmaster of Thornly Park Approved School:

Unhappily the child population of an Approved School consists chiefly of those with little social training; such are outwith the control of parents, and, often, of day-school teachers; boys with anti-authority attitudes; children who are wilfully disobedient and harmful to society. It does not seem possible, therefore, to discipline and control such unruly children without the imposition of sanctions which are necessarily unpleasant. (Letter from Headmaster, Thornly Park School, Paisley, cited in Abrams and Fleming, 2019a, p. 81)

The survey carried out by the Social Work Services Group for its review of punishment in children's homes provides some information on corporal punishment. The survey included 99 local authority homes and 77 voluntary homes. Most of these homes (60 per cent of local authority homes and 70 per cent of voluntary homes) made a nil return. Many of the homes that provided

information on punishments only recorded a small number – single figures or in the teens – leading the Social Work Services Group to question the “credence” of the returns. In contrast, “Caladh House, with a population of 22, have recorded 64 corporal and 289 other punishments; this may be the only realistic return” (Punishment in Children’s Homes, Social Work Services Group. NRS ED11/854/1).

The survey highlights, then, the lack of recording of punishments in children’s homes in this period.

#### **4.3.4 Other Forms of Punishment**

The Social Work Services Group review of corporal punishment involved a survey of children’s homes in February 1968. This detailed a number of punishments:

Total loss or reduction of pocket-money. In some cases the pocket-money is returned. The punishment being that the children cannot spend it at the time; in other cases the pocket-money deducted is put into a common fund – sweets, etc.

Loss of privileges, e.g., no television, early to bed, no outings, pictures.

Extra gardening and household duties.

No supper for four nights.

Occasional smack on bottom at the time of the offence (smaller children)

Sunday evening meals withheld.

Fined 1d or 2d for being late for a meal without cause.

Loss of company of other children (child normally kept at the side of member of staff).

Sent to room for specified period.

Sit or stand still for a quarter of an hour if badly behaved in Church.

Working boys – no late or night passes, fines.

(Punishment in Children's Homes, Social Work Services Group. NRS ED11/854/1)

Aunty Phylis a housemother in Aberlour Orphanage in the early 1960s, having said that they were not allowed to use corporal punishment, went on to say:

But maybe they would be sent to bed early... never without a meal... Not allowed to go to the cinema shows that used to be shown once a month, in the Orphanage itself, in the big hall, or didn't get television – well, when television did come along, were the other punishments. (Divine, 2012, p. 94)

An inspection report from 1969, on an Aberlour Trust home in Cumbernauld, records that:

Corporal punishment is NOT allowed. Discipline is maintained by personal relationships, but if necessary pocket-money is reduced, or some other small punishment is made. The money is placed in a box and is used to provide extra little treats on holidays or outings. (Inspection Report cited in Abrams and Fleming, 2019b, p.45)

However, as outlined within The Scottish Child Abuse Inquiry case studies concerning the Sisters of Nazareth homes, Daughters of Charity homes, Aberlour homes, Barnardo's homes and Quarrier's Homes, there is continuing evidence of inappropriate and abusive punishments within care settings for bed-wetting (humiliation, name calling, cold baths, and wearing wet bed-sheets) and the force-feeding of children (SCAI, 2018; 2019; 2020).

David Whelan describes the cruel punishments at Quarrier's. As well as the extreme corporal punishment, he was locked in an outhouse overnight, and made to do excessive chores:

... I was by now intimate with the cloying darkness of the outhouse. Care and compassion played little part in the repressive regime that was life in Cottage 31. (Whelan, Scott and McBeth, 2010, p. 88)

Following an extremely positive four years boarded out on a croft near Inverness, Helen Tennent moved to a foster home in Inverness itself. This was a strict household and Helen struggled to fit in. At one point, she ran back to her previous foster home but was returned because she had to attend school. In punishment, she was “sent to Coventry – not even the children were allowed to speak to me” (Tennent, 2007, p. 86).

Abrams and Fleming (2019a) detail allegations of cruelty at St Olaf’s Home, a local authority home in Kirkcaldy. The allegations consisted of “the forcible feeding of one child, securing younger children in their beds by means of string or tape, of placing children behind a fireguard, and of putting children in a cloakroom on their own” (Fife Free Press, & Kirkcaldy Guardian, cited in Abrams and Fleming, 2019, p. 157). When the recommendation of the Children’s Committee and Children’s Officer to severely censure the Matron were discussed by the Town Council, however, the allegations were not taken seriously by councillors and there was a vote of confidence in support of the Matron.

Following complaints by a boy, an inspection of Wellington Farm Approved School raised a number of concerns about discipline and punishment. It identified a punishment for absconders called ‘the Track’, which involved boys “doubling round the yard until, in some cases, the boys were ready to drop and some did” (Inspection Report cited in Abrams and Fleming, 2019a, p. 169). At the time of the inspection, this punishment had been ameliorated and referred to a set of restrictions during break periods, such as: not being allowed



to smoke or eat confectionary; missing an issue of cigarettes; and being last for supper.

Lloyd, in discussing approved schools for girls, stated that while there was less physical punishment, there was an increasing use of drugs, and “[v]alium was prescribed by school doctors for use with any girl at the discretion of the staff” (Lloyd, 2000, p. 264).

## 5. Discipline and Punishment – From the Social Work (Scotland) Act 1968 to the Children (Scotland) Act 1995.

### 5.1 Introduction

The period following the introduction of the *Social Work (Scotland) Act 1968* was one of significant change for child care services in Scotland. The Act led to the major reorganisation of social work and child care services and the introduction of a new decision making mechanism, the Children's Hearings system. There was also a significant restructuring of local government in the mid-1970s. This period saw a marked move away from the use of residential child care and the introduction of community-based alternatives, with important developments in foster care services.

The focus on discipline and punishment in residential establishments before the implementation of the *Social Work (Scotland) Act 1968* was not taken forward. Although the Social Work Services Group referred to the review of regulations in the context of the new Act, new regulations did not appear until the mid-1980s.

The UN Convention of the Rights of the Child was adopted in 1989 and ratified by the UK in 1991. The 1980s and 1990s saw the children's rights agenda influencing the social work professional approach to children and young people in care – and the preparations and proposals for the *Children (Scotland) Act, 1995* – although it did not influence education services in the same way.

A growing focus on child protection across the period also led to important developments for services for children in care. The increasing recognition of child abuse and neglect led to significantly more referrals of children on child protection grounds to the new Children's Hearings system. The abuse of

children in care was also highlighted in a number of inquiries in the UK, including the *Review of Residential Child Care in Scotland* (Skinner, 1992).

## 5.2 Legislation, Regulation and Guidance

### 5.2.1 Social Work (Scotland) Act 1968

The *Social Work (Scotland) Act 1968* established the responsibilities of local authorities in promoting social welfare in Scotland. Through outlining their duty to appoint a Director of Social Work and set up a Social Work Committee, it also provided the legislative foundation for social work departments.

Section 12 of the 1968 Act concerning the 'general social welfare services of local authorities' set out the duty of local authorities to make available advice, guidance, and assistance in cash or in kind. In relation to children under the age of 18 years, such assistance should reduce the need for a child to be received into care or referred to a Children's Hearing. Tisdall (1996) commented that to "many early observers, this positive promotion of welfare in the 1968 Act was revolutionary" (p. 26).

Section 15 of the 1968 Act placed a duty on the local authority to receive into their care orphaned or abandoned children, or children whose parent or guardian was temporarily or permanently unable to provide for them because of ill health or another incapacity. The Act also set out the circumstances for the local authority to assume parental rights. When a child was received into local authority care, Section 20 (*Social Work (Scotland) Act 1968*) set out the duty 'to further his best interests, and to afford him opportunity for the proper development of his character and abilities.' The local authority should provide accommodation and maintenance of the child through boarding out or placement in a residential establishment. Duties in relation to the aftercare of children were also specified.

Section 32 of the 1968 Act concerns children in need of compulsory measures of care. Children and young people were considered to be in need of such measures in the following situations:

- they were beyond the control of their parent;
- they were falling into bad associations or exposed to moral danger through lack of parental care;
- they were experiencing unnecessary suffering or seriously impaired health or development because of such lack of care;
- they were subject to abuse as set out in Schedule 1 to the *Children and Young Persons (Scotland) Act 1937*;
- they were a girl who was subject to the crime of incest;
- they were failing to attend school regularly without reasonable excuse;
- they had committed an offence.

The 1968 Act set out the establishment and process of the Children's Hearings system, which has three key actors: the Reporter to the Children's Panel, the Children's Panel and the Social Work Department. Where children were in need of compulsory measures of care, they could be made subject to a supervision requirement which could specify certain conditions such as placement in foster care, or have a supervision requirement to reside in a named residential establishment.

Part IV of the Act set out the duties of local authorities to provide and maintain residential and other establishments, or arrange for such provision.

### 5.2.2 The Secure Accommodation (Scotland) Regulations 1983 and the Residential Care Order (Secure Accommodation (Scotland) Regulations 1988.

The *Secure Accommodation (Scotland) Regulations* came into operation on 30<sup>th</sup> January 1984, and are concerned with the provision and use of secure accommodation for restricting the liberty of children and young people. Most of the 1983 Regulations deal with provisions in relation to placement in secure accommodation under a range of different legislation, and timescales for decision-making and review. The Regulations states that any accommodation to be used as secure accommodation must be approved by the Secretary of State (Section 3, *Secure Accommodation (Scotland) Regulations 1983*).

Section 4 of the 1983 Regulations addresses the welfare of children in secure accommodation and sets out that the person in charge “shall ensure that a child placed and kept in such accommodation receives care appropriate to their needs.” There is no explicit mention of discipline and punishment.

The Regulations revoke Section 33 and 34 of the *Approved Schools (Scotland) Rules 1961*. These sections deal with segregation of young people, and with the designation of a ‘special section for pupils who are abnormally unruly, or are persistent absconders.’

The *Residential Care Order (Secure Accommodation) (Scotland) Regulations 1988* applied to children under a residential care order under s. 413 of the *Criminal Procedure (Scotland) Act 1975*. This regulation also required that a “child placed and kept in such accommodation receives care appropriate to his needs” (Norrie, 2017, p. 248).

### 5.2.3 The Boarding-out and Fostering of Children (Scotland) Regulations 1985

The *Boarding-out and Fostering of Children (Scotland) Regulations* came into force on 1<sup>st</sup> April 1986. Section 8 of the Regulations specified that there would be an agreement with the foster parent about the care to be provided, and the care authority's policies and practice regarding the welfare of children. However, there was no explicit mention of discipline or punishment.

### 5.2.4 The Education (No. 2) Act 1986

Corporal punishment was banned in Scottish schools in 1986, following a ruling of the European Court on Human Rights (Shaw, 2007, p. 21). The *Education (No. 2) Act 1986* introduced Section 48A into the *Education (Scotland) Act 1980*, and this dealt with the abolition of corporal punishment. Corporal punishment was defined as “doing anything for the purposes of punishing the pupil concerned (whether or not there are also other reasons for doing it) which, apart from any justifications, would constitute physical assault upon the person” (Section 48A(2), *Education (Scotland) Act 1980*). However, corporal punishment was not considered to be administered “by virtue of anything done for reasons which include averting an immediate danger of personal injury to, or an immediate danger to the property of, any person (including the pupil concerned).”

It remained legal in children's homes in Scotland until the following year, when, as we will see below, new regulations addressed this issue.

### 5.2.5 The Social Work (Residential Establishments – Child Care) (Scotland) Regulations 1987

The *Social Work (Residential Establishments-Child Care) (Scotland) Regulations 1987* came into force on 1<sup>st</sup> June 1988. The *Administration of Children's Homes*

*(Scotland) Regulations 1959, the Approved Schools (Scotland) Rules 1961, and the Approved Schools (Scotland) Amendment Rules 1963* were all revoked. Section 4 of the 1987 Regulations sets out the duty for managers of any residential establishment to “make such provision for the care, development and control of each child resident there as shall be conducive to the best interests of each child.”

The 1987 Regulations required the managers of residential establishments to produce a statement of functions and objectives. Schedule 1 of the Regulations addressed the range of matters to be included in this statement, such as the arrangements to meet the needs and development of all children, including their emotional, spiritual, intellectual and physical needs; arrangements for education; arrangements for health care; arrangements for visits by relatives and friends; and policy on the involvement of children and parents in decisions about the child's future.

Section 10(2) of the Regulations states that “the arrangements shall not authorise the giving of corporal punishment and corporal punishment shall for this purpose have the same meaning as in section 48A of the Education (Scotland) Act 1980).”

With regard to other arrangements for discipline relating to the care and control of children, Section 10(1) of the Regulations states that these will be determined by the managers in accordance with the statement of functions and objectives. However, Rule 4 of the Schedule itself, simply repeats that the statement will include “the arrangements relating to the care and control of children as provided for in regulations 4 and 10.”

## 5.3 Policy and Practice of Discipline and Punishment

### 5.3.1 Introduction

With the adoption of the *UNCRC* in 1989, there were significant developments in children's rights over this period and these were increasingly incorporated into policy, practice, and legislation. The establishment of *Who Cares?* Scotland in 1978 also brought the issue of the rights of children in care to the fore and marked a significant step in promoting their voice. There was a growing understanding of child abuse and neglect and the impact this had on children and young people. Alongside this, the criticism of authoritarian regimes in residential settings became more fervent and, importantly, corporal punishment was banned in schools and in residential establishments in this period.

The *Review of Residential Child Care in Scotland* (Skinner, 1992) considered that treating each child and young person as an individual was central to good child care, and highlighted a range of issues that needed to be addressed to promote the individuality and development of children and young people. Children and young people were increasingly involved in decision-making through Children's Hearings and Social Work Child Care Reviews.

Abrams and Fleming (2019a) note, however, that the responsibility for inspection of children's services moved from the Scottish Office to the local authorities following the Social Work (Scotland) Act 1968, and "[o]versight of institutions therefore fell by the wayside" (p. 295).



### 5.3.2 Guidelines and Policy

An example of the development of local authority policy in the 1970s and 1980s is provided by Strathclyde Regional Council's *Room to Grow* (Strathclyde Regional Council, 1978), a wide-ranging review of children and family services in Strathclyde, and its more detailed strategy on residential care, *Home or Away?* (Strathclyde Regional Council, 1984).

While *Room to Grow* addressed foster care, residential care and alternatives to substitute care, the issue of discipline and control was only addressed in relation to residential child care, and this was relatively brief. It noted that corporal punishment was left to the discretion of the Head of each home. Most staff, while being against violence to children, stated that some “smacking” was necessary.

We recommend against corporal punishment as interpreted to mean the use of some instrument—be it a belt, a cane or a slipper—but are in certain difficulties with regards the use of “smacking” as this is difficult to rule for. (Strathclyde Regional Council, 1978, p. 36)

The group highlighted the lack of clarity about “smacking” and the right of children to be clear about “about where they stand and to know where to turn if they think they are being ill-treated (Strathclyde Regional Council, 1978, p. 36). The group went on to recommend that:

... the whole question of punishment in Residential Homes be examined in detail and a policy statement issued to all—as guidelines for practice. It is important to know what can or should be done, rather than what cannot. (Strathclyde Regional Council, 1978, p. 36)

Strathclyde Regional Council published its more detailed strategy on residential child care in its report *Home or Away?*, and addressed issues of discipline and punishment. The working party highlighted the changing role of residential child care and noted that “concern about the relationship between difficult behaviour by children in residential care, the strain it puts on staff, and the subsequent damaging effect on the children has been growing” (Strathclyde Regional Council, 1984, p. 7).

The report set out the five most common problem behaviours: violence, solvent abuse, sexual behaviour, theft, and vandalism (Strathclyde Regional Council, 1984). The working party stressed the importance of positive relationships, tone and ethos in the management of behaviour in residential homes, with opportunities for discussion, negotiation and individual and collective responsibility. In relation to violence, “corporal punishment, or excessive physical restraint, rejection or hostility” were not considered appropriate responses, and could foster confrontation (Strathclyde Regional Council, 1984, p. 10). Punishment should never be threatened in the context of solvent abuse, with it outlined that “[o]ver-reaction by way of punishment may increase the risks and drive the problem underground” (Strathclyde Regional Council, 1984, p. 11). For theft, the working party did not consider “group punishments, the deprivation of food, the cancellation of special trips or reduction of access to the community” as appropriate responses (Strathclyde Regional Council, 1984, p. 11). “Disproportionate sanctions are an over-reaction” (Strathclyde Regional Council, 1984, p. 12). Similarly, “group punishments, the deprivation of home leave, and the involvement of the police for minor incidents, are not suitable responses” for vandalism (Strathclyde Regional Council, 1984, p. 13).

Although Abrams and Fleming (2019b) could not find information about guidance to Aberlour staff in the 1970s, an inspection report for an Aberlour home in Cumbernauld in 1969 stated that corporal punishment was not allowed.

Quarrier's Homes officially banned the use of corporal punishment in around 1974. It was, however, reintroduced on a pilot basis in 1977, but it is not clear what happened subsequently (Abrams and Fleming, 2019d, p. 9).

The Scottish Child Abuse Inquiry provides details from copies of the Sisters of Nazareth Directory and Book of Customs from 1970, 1976 and 1982. In the 1970 copy, it states that the regulations of the state should be followed as far as possible in the care of children, and Sisters should have the necessary training.

The 1976 Directory and Book of Customs provides that the Order, taking the place of parents, "are therefore obliged to provide as far as lies in our power, a homely atmosphere for these little ones." (SCAI, 2019a, p. 97)

The Directory and Book of Customs of 1982 stated that Sisters "should have a motherly heart and realise that these children need understanding, that they have a dignity to be respected and that they must be made to feel wanted" (SCAI, 2019a, p. 97).

### **5.3.3 The Practice of Corporal Punishment**

Although corporal punishment was not explicitly banned in foster care until the *Fostering of Children (Scotland) Regulations 1996*, given the regulations for residential care, some Social Work Departments, if not all, had policies that explicitly prohibited corporal punishment prior to this.

Kendrick and Brodie (1995) carried out research for Tayside Regional Council on incidents of abuse in foster care between 1990 and 1994. Acknowledging that there is no absolute definition of abuse, "all substantiated incidents involving physical or sexual maltreatment, or the neglect of children were included whether or not these were considered to be abusive" (Kendrick and

Brodie, 1995, p. 3). Eighteen of the 24 cases involved children being smacked, hit or physically mishandled, although this was contrary to departmental policy.

In ten of these cases, single, specific incidents were identified. In the remaining eight cases, a number of incidents were acknowledged to have taken place at some period during the placement and these eight cases involved three sibling groups. (Kendrick and Brodie, 1995, p. 6)

The study highlighted the lack of consistency in the response to allegations of physical abuse. This inconsistency occurred at various stages of consideration of the allegation: meetings of social work staff; child protection case conferences; involvement of police; and charges being made against foster carers (Kendrick and Brodie, 1995).

In one case, a single incident of smacking a child led to the removal of the child involved and other children, the carer being charged by the police (although no further action was taken by the procurator fiscal) and no further children were placed with the carers. In another case, where there had been smacking and hitting children with belt and slipper on a number of occasions the police were not informed and after reminding carers of departmental policy, no further action was taken. (Kendrick and Brodie, 1995, p. 13).

The Scottish Child Abuse Inquiry case studies found that throughout the 1970s and 1980s, children and young people in Sisters of Nazareth homes, Daughters of Charity homes, Aberlour homes, Barnardo's homes and Quarrier's Homes were subjected to cruel and harsh corporal punishment at the hands of staff and carers (SCAI, 2018; 2019; 2020). For example, one child aged between three and nine living in a Sisters of Nazareth home, who acknowledged being disruptive, experienced repeated physical abuse from one nun. This included

“slapping, punching, dragging, pulling by the hair, beating with a stick and by locking him in a cupboard” (SCAI, 2019, p. 15). David Whelan highlights the sexual abuse he experienced in the 1970s in Quarrier’s Homes, and also the abusive physical punishment he received linked to this (Whelan, Scott and McBeth, 2010).

Although Aberlour had a policy not to use corporal punishment, in the case of a girl threatening to leave a home without permission, the housemother recorded that she took the child’s clothes away, and when “I came out of the bedroom she screamed, I went in and had to slap her...” (Memo, cited in Abrams and Fleming, 2019b, p. 46).

#### **5.3.4 Other Forms of Punishment**

In the 1980s and early 1990s, there is evidence that some residential homes in Scotland were using a form of ‘pindown’ to punish children or to prevent them absconding. Newspaper articles state that children at the Brodie Youth Centre, near Polmont, were being forced to strip to their underwear and confined for up to 24 hours in rooms with only a bed (Hetherington, 1991; Cusick, 1992). A form of ‘pindown’ was widely used in Lothian children’s homes in the 1980s, where children would be kept in their night-clothes, without shoes and isolated in their bedrooms (Marshall, Jamieson and Finlayson, 1999, p. 102).

At the start of the 1990s, the Secretary of State for Scotland asked Angus Skinner, the Chief Inspector of Social Work Services in Scotland, to carry out a review of residential child care in order to examine current provision and quality of the service provided. In particular, the review was to examine questions of training, control and sanctions, children’s rights and inspection (Skinner, 1992, p. 3).

As part of the *Review of Residential Child Care in Scotland*, Borland (1992) carried out an evaluation of the statements of functions and objectives of residential establishments. She found that there was a wide variation in the statements and not all had been completed in accordance with Schedule 1 of the 1987 Regulations (Borland, 1992, p. 5). Only 40 per cent of the statements made reference to the need to create a safe and secure environment. Most statements addressed issues of care and control, although just over one-fifth (22 per cent) either omitted such issues or only made reference to compliance with agency policy. Again there was a great deal of variation in the amount and type of information included in the statements.

An important respect in which systems for control differed was whether they were based on the needs of the individual, taking account of his/her care plans and stage of development or whether they relied on a standard system of rewards and punishments which applied to all residents. (Borland, 1992, p. 16)

Borland's (1992) work indicated a spectrum, at one end of which were therapeutic units which stressed that their response to difficult behaviour was consistent with the individual child's care programme and needs, and at the other end the use by some residential schools of formal points systems and the earning and loss of privileges. In the middle, a common approach for children's homes was to address the individual needs of children within a consistent framework of rules and expectations.

The underlying approach to sanctions was generally to encourage young people to accept responsibility for their behaviour and recognise the consequences which would follow certain actions. (Borland, 1992, p. 16)

Just over half of the statements analysed (52 per cent), outlined the sanctions which might be used.

There was common reference to the fact that sanctions were to involve loss of privileges rather than rights. Restrictions on free time were most common. Views on reducing and withholding pocket money varied, depending on whether pocket money was seen as due of right or earned... (Borland, 1992, p. 17)

One fifth of statements (20 per cent) addressed the use of restraint, and a small number (four) referred to the use of isolation or time-out.

The use of certain sanctions was prohibited in 41 statements (32%). This referred either to physical punishment or to curtailing contact with family members. (Borland, 1992, p. 17)

Discipline and control were also addressed in another research study linked to the *Review of Residential Child Care in Scotland*. Harvey (1992) carried out a postal survey of heads of residential units, and this included a question on the use of sanctions. The questionnaire was returned by 122 heads of units, a return rate of 80 per cent (Harvey, 1992, p. 1). The frequency of sanctions used in the residential units was:

Restricted Leisure Activities	99	(82%)
Early to Bed	89	(74%)
Physical Restraint	81	(67%)
Control of Pocket Money	75	(62%)
Extra Tasks	56	(46%)
Isolation*	24	(20%)
Withholding of normal clothing	13	(11%)
Grounding/Staying in Unit Boundaries	7	( 6%)

Reduction in Family Contact	6	( 5%)
Loss of Home Visits	5	( 4%)
Reparation of Damage	5	( 4%)

\*Nine of those specifying isolation from the group said that this occurs in the presence of a staff member.

(Harvey, 1992, p. 31)

However, many of the units emphasised the importance of developing trusting relationships with young people to control behaviour. Harvey (1992, p. 32) also identified variation in the use of sanctions depending on the type of residential establishment, and the population of children and young people.

The *Review of Residential Child Care in Scotland* addressed discipline and control in the context of children and young people feeling safe and secure in their residential placement.

All young people and children (and adults) need to have limits set for what is acceptable behaviour and what is not. Without these they do not feel safe. (Skinner, 1992, p. 64)

Skinner (1992) discussed the findings of the survey of residential establishments on the use of measures to control children and young people. He highlighted the “wide variations in practice and the difficulties in spreading knowledge about good practice inhibiting the proper development of the services” (Skinner, 1992, p. 65). The *Review* included draft guidance on care sanctions and constraints for consultation. Skinner (1992) recommended that the Social Work Services Inspectorate should convene a working group to draw up guidance on sanctions and control. Residential homes should then be reviewed annually on their adherence to the guidance, and young people



should be involved in the reviews. Staff training on the guidance should also be reviewed (Skinner, 1992, p. 66).

Introducing the draft guidance, Skinner highlights that “[o]nly staff who genuinely like young people can use sanctions and controls appropriately and effectively in residential child care” (Skinner, 1992, p. 96).

It may be necessary for staff to exert sanctions and controls, but it is essential that this is done in such a way that the respect for the young person, which is central to his or her care, is not compromised. It is the behaviour which is unacceptable, not the child. (Skinner, 1992, p. 96)

The draft guidance listed those sanctions and controls which could be permitted when appropriately used. These were:

1. The restriction or withdrawal of privileges such as outings or leisure, including TV;
2. The imposition of extra tasks, which must always be designed to be as positive and as productive as possible. These should be age appropriate and never beyond the capabilities of a child or young person;
3. A child or young person may be separated from the group to a room on her or his own, as a means of enabling him or her to regain self-control. The door to the room must never be locked, and staff must monitor or accompany the child or young person throughout any period of separation;
4. Where it is necessary to carry out (3) above and the young person refuses to comply it may be necessary to physically remove the young person. This is a serious matter and it should never be carried about lightly. The force used should be the minimum necessary and care must be taken not to hurt the young person,

restrict blood supply or breathing. Whenever possible this should be carried out with two members of staff present...;

5. It is appropriate for a young person or child to be fined sums from their pocket money; rules regulating this should be clearly laid out in the statements of rights and responsibilities. The young person or child should never be deprived of more than three-quarters of his or her pocket money; fines may be extended over time;
6. It is appropriate for a child or young person to contribute from his or her pocket money towards the cost of damages he or she has inflicted on property. Contributions may be collected over time and the limitation that no young person be deprived of more than three-quarters of their pocket money applies;
7. Any article or substance belonging to a young person should be confiscated if it is considered to be potentially dangerous to self or others;
8. Outdoor clothing may be withheld to reduce the likelihood of absconding. No young person, however, should be deprived of normal indoor clothing, or be required to wear alternative dress either as a form of punishment, or in order to prevent absconding;
9. Staff should express disapproval of unacceptable behaviour and make it clear that it is an obstacle to good relationships and to the peace and sense of safety which young people in residence have a right to expect.

(Skinner, 1992, pp. 97-8)

It also set out the sanctions and controls that are not permitted:

1. No young person regardless of age should be subjected to any form of physical punishment, or the threat of physical punishment. No young persons should be hit or smacked;

2. No young person should be deprived of any meal, nor should normal planned menus be modified or altered for the purposes of punishment;
3. No young person should be deprived of contact with any professional e.g. field social worker, lawyer, doctor;
4. Depriving a young person of contact with parents or adults with whom they have a significant relationship should never be used as a sanction; this includes, for instance, cancelling home leave;
5. Withdrawal of communication or positive engagement ("being sent to Coventry") should not be used;
6. No young person should be sent to bed early. This can be a more frightening and lonely experience than may be evident from the young person's behaviour. It is effectively unsupervised exclusion from the group and therefore carries potential dangers. Young people may be disallowed from staying up late to watch T.V. etc.;
7. Withholding or use of medication, or medical or dental treatment, should not be used as a sanction;
8. Humiliation in any form should not be used.

(Skinner, 1992, p. 98)

The draft guidance also addressed the use of locked doors, making the distinction between secure accommodation and other residential establishments. It also discussed when and how to use physical restraint to control violent and disruptive behaviour (Skinner, 1992, pp. 98-9).

## **6. Discipline and Punishment – From the Children (Scotland) Act 1995 to the Children and Young People (Scotland) Act 2014.**

### **6.1 Introduction**

The period between 1995 and 2014 saw unprecedented developments in child care services in Scotland. Initially, this was driven by the recognition of the needs of children in terms of child protection and the broader agenda of children's rights in Scottish child care policy and legislation, particularly the *Children (Scotland) Act 1995*. However, inquiries and reviews into safeguarding and protection of children in care across the period also led to wider developments in the regulation and inspection of care services in Scotland, and an increasing focus on the training and registration of care workers. There was increasing recognition of the poor outcomes of young people leaving care to independence, a growing focus on the education and health of looked after children and young people, and important developments in throughcare and aftercare.

In the late 1990s and 2000s, there was also a growing recognition of—and attention to—the historic abuse of children in care and this led to important developments, both in terms of addressing the needs of victims/survivors of abuse and for child care services in general.

### **6.2 Legislation, Regulation and Guidance**

#### **6.2.1 Children (Scotland) Act 1995**

The *Children (Scotland) Act 1995* was seen by some as a radical change in the law for children and families. Norrie (2017) states, however, that the “1995 Act is, with hindsight, better seen as marking the end of an era in which traditional

understandings of family life held sway with an established legal framework rather than as a radical restructuring of the law" (p. 107).

Drawing on the commitment to the UN Convention on the Rights of the Child, the 1995 Act addressed the rights of children, particularly the participation of children in decisions that affected them. It also brought in new terminology describing children in care away from home as being 'looked after and accommodated', and set out the duties that local authorities have for children looked after by them. The Act also extended responsibilities for preparing young people for leaving care and supporting children and young people when they left care for independence.

The 1995 Act set out important changes in relation to the protection of children. A new child protection order was introduced and this involved new safeguards for children and parents.

### **6.2.2 Regulation of Care (Scotland) Act 2001**

The start of the 21<sup>st</sup> century saw major developments in both the regulation and inspection of care services and the regulation and registration of the workforce.

The Care Commission was established in 2002 by the *Regulation of Care (Scotland) Act 2001*. Residential and foster care services, along with a range of other services for adults and children, are now required to be registered and are inspected on a regular basis against published standards of care. The functions of the Care Commission were taken over in 2011 by the Care Inspectorate (Social Care and Social Work Improvement Scotland), alongside the Social Work Inspection Agency (SWIA), and the child protection unit of Her Majesty's Inspectorate of Education (HMIE) when it was established by the *Public Sector Reform (Scotland) Act 2010*.

Relevant to this review, the Care Inspectorate regulates:

- care homes for children and young people,
- foster care services,
- school care accommodation, and
- secure care accommodation.

Child care services must be registered with the Care Inspectorate in order to operate in Scotland. To successfully register (and stay registered), the service must continuously meet the requirements of relevant legislation, care standards, and regulations such as the *Social Work and Social Care Improvement Scotland (Requirements for Care Services) Regulations 2011*. These regulations detail a range of issues that care services need to address such as the welfare of users, personal plans, the fitness of managers, employees and premises, the facilities available, staffing, and complaints procedures (Care Inspectorate, 2023a).

The Care Inspectorate inspects services using a framework of quality themes and statements, and against the relevant care standards. Initially, the core themes were: quality of care and support; quality of environment or information; quality of staffing; and, quality of management and leadership. Since 2018, the Care Inspectorate have been rolling out a revised methodology for inspecting care and support services. The core of the new approach is an updated quality framework. Services continue to be given grades on a six-point scale: 1 = Unsatisfactory to 6 = Excellent (Care Inspectorate, 2023b).

The inspection report can make recommendations for the improvement of services. It can also set out a requirement to ensure the care service complies with the law or conditions of registration, which are legally enforceable. The

Care Inspectorate has powers of enforcement and can serve an improvement notice to the provider.

The provider must make the required improvements within a given timescale and, if these are not carried out, the service's registration may be cancelled. If the Care Inspectorate believes that there is a serious and immediate threat to life or wellbeing, it can apply to the Sheriff Court for emergency cancellation of a service's registration. The Care Inspectorate publishes the inspection reports, grading of services, complaints, and enforcements on its website.

The *Regulation of Care (Scotland) Act 2001* also established the Scottish Social Services Council (SSSC) to regulate the workforce. The SSSC has a number of responsibilities. It has developed standards of conduct and practice for the workforce and has published codes of practice for social services workers and for social services employers.

The SSSC has also established a Register of Social Services Workers. Since this was first established on 1 April 2003, with social workers being the first group of workers to register, the Register has grown to include workers, practitioners, supervisors and managers in a range of social care services. (Scottish Social Services Council, 2023)

The SSSC has a responsibility to protect and enhance the safety and welfare of people who use services. As part of this responsibility, the SSSC Fitness to Practice team investigates concerns about good character, conduct and competence of a person on the register or applying for registration. The SSSC can take action where necessary and, ultimately, this includes removing a person from the register so that they are no longer able to practice.

### **6.2.3 The Fostering of Children (Scotland) Regulations 1996**

The *Fostering of Children (Scotland) Regulations 1996* came into force on 1<sup>st</sup> April 1997, and they apply where a local authority foster a child who is looked after by them under Section 17(6) of the *Children (Scotland) Act 1995*. They supersede the *Boarding Out and Fostering of Children (Scotland) Regulations 1985*.

The Regulations cover the approval of foster carers, placement with a foster carer, arrangements with voluntary organisations to provide foster care, and records. Section 8 of the 1996 Regulations states that a written agreement will be set out between the local authority and the foster carer. The only reference to discipline and punishment occurs in Schedule 2, which addresses the matters and obligations in foster carer agreements. Point 6 of the Schedule details the “foster carer’s obligation not to administer corporal punishment to any child placed with him.” (Schedule 2, *Fostering of Children (Scotland) Regulations 1996*).

### **6.2.4 The Residential Establishments – Child Care (Scotland) Regulations 1996**

*The Residential Establishments – Child Care (Scotland) Regulations 1996* came into effect on 1<sup>st</sup> April 1997, and replaced the *Social Work (Residential Establishments – Child Care) (Scotland) Regulations 1987*.

The Regulations state that the managers of residential establishments “shall ensure that the welfare of the child placed and kept in such accommodation is safeguarded and promoted and that the child receives such provision for his development and control as is conducive to his best interests” (Regulation 4, *The Residential Establishments – Child Care (Scotland) Regulations 1996*).



The 1996 Regulations cover the need for a statement of functions and objectives, the number of children who may be accommodated, the appointment of the person in charge, and the appointment and vetting of staff in residential establishments. They also address precautions against fire and accident, provision of education, religious instruction, health and medical care, and personal records and log books.

In relation to sanctions, the Regulations state:

10.—(1) Arrangements for sanctions, relevant to the control of children resident in a residential establishment, shall be determined by the managers in accordance with the statement of functions and objectives formulated under regulation 5(1).

(2) The arrangements shall not authorise the giving of corporal punishment and corporal punishment shall for this purpose have the same meaning as in section 48A of the Education (Scotland) Act 1980(8).

(Section 10, The Residential Establishments – Child Care (Scotland) Regulations 1996)

The Schedule to the Regulations cover what must be included in the statement of functions and objectives. Matters include the “sanctions and other arrangements to the control of children as provided for in regulations 4 and 10” (Point 4, Schedule, The Residential Establishments – Child Care (Scotland) Regulations 1996).

### **6.2.5 Arrangements to Look After Children (Scotland) Regulations 1996**

The *Arrangements to Look After Children (Scotland) Regulations 1996* came into force on 1<sup>st</sup> April 1997. The 1996 Regulations placed a duty on local authorities to draw up a care plan. Also set out were the considerations to

which a local authority must have regard in making a care plan, and the matters to be covered in a care plan. Minimum requirements are set out regarding notifications of placements and incidents, reviews, records, health assessment, monitoring, and short term placements. There are no specific references to the discipline and punishment of children.

### **6.2.6 Secure Accommodation (Scotland) Regulations 1996**

The *Secure Accommodation (Scotland) Regulations 1996* came into force on 1<sup>st</sup> April 1997, and revoked the *Secure Accommodation (Scotland) Regulations 1983* and the *Residential Care Order (Secure Accommodation) (Scotland) Regulations 1988*.

Norrie (2017) writes that the regulations “placed on the managers of the residential establishment providing secure accommodation the duty, in consultation with the person in charge, to ensure that the welfare of a child placed and kept in such accommodation was safeguarded and promoted and that the child received such provision for his or her education, development and control as was conducive to his or her best interests” (p. 249).

### **6.2.7 National Care Standards**

Linked to the regulation of care services, in 2002, the Scottish Executive published 19 sets of National Care Standards covering a wide range of social care services.<sup>3</sup> These later expanded to 23 sets of standards. For services for children and young people there were six sets of standards, four of which are relevant to looked after children (Kendrick, 2014):

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<sup>3</sup> Revised versions of the National Care Standards were published in 2005.

- *Adoption Agencies;*
- *Care Homes for Children and Young People;*
- *Foster Care and Family Placement Services; and*
- *School Care Accommodation Services.*

All the National Standards are based on the principles of dignity, privacy, choice, safety, realising potential, and equality and diversity. The standards for *Care Homes for Children and Young People*, as an example, have 17 standards divided across four sections: beginning your stay; leading your life; moving on; and expressing your views. Point nine of Standard 15 (daily life) explicitly addresses sanctions:

- 9 Sanctions are fair and in line with what you have done wrong. They follow the care home's policies and are properly recorded. No-one will be physically punished.

(Scottish Executive, 2005a, p.35)

In the standards for *School Care Accommodation Services*, these issues are covered in Points nine and ten of Standard three (care and protection):

- 9 You know that sanctions are appropriately matched to the behaviour and are in line with school or hostel policies. They are clearly recorded.
- 10 You can be confident that no-one will be physically punished.
- 11 Groups of pupils are not punished as a result of the behaviour of one person.

(Scottish Executive, 2005b, p.19)

The standards for *Foster Care and Family Placement Services* do not explicitly mention sanctions or punishment (Scottish Executive, 2005c).

The National Care Standards were replaced by Scotland's Health and Social Care Standards on 1<sup>st</sup> April 2018 (Scottish Government, 2017).

In 2014, the Scottish Children's Rights Officers Network produced a booklet giving looked after children and young people information about their rights. In relation to sanctions, it states that looked after children have the right to:

Know about the rules and sanctions/consequences where you live, for these to be fair, and to have a say in any sanctions/consequences used where you live (Scottish Children's Rights Officers Network, 2014, p. 23)

#### **6.2.8 Looked After Children (Scotland) Regulations, 2009**

The *Looked After Children (Scotland) Regulations 2009* came into force on 28<sup>th</sup> September 2009. The regulations were made under powers conferred by sections of the *Social Work (Scotland) Act 1968*, the *Children (Scotland) Act 1995* and the *Adoption and Children (Scotland) Act 2007*. These regulations revoke the *Arrangements to Look After Children (Scotland) Regulations 1996* and the *Fostering of Children (Scotland) Regulations 1996*.

The 2009 Regulations address care planning when a child is, or is about to be, looked after. They set out what information is required/must be obtained, the assessments which must be made, and the requirement to make a 'child's plan'. The Regulations also address kinship care; fostering panels and the approval of foster carers; the placement of a child with foster carers; fostering and kinship care allowances; placement of a child in a residential establishment; emergency placements of a child; case records; review of a child's case, and arrangements with registered fostering services.

Schedule 5 of the 2009 Regulations addresses "Matters and Obligations in Kinship Carer Agreements", with Point 4 stating the kinship carer's obligation

“not to administer corporal punishment to any child placed with them.” Similarly, Schedule 6 addresses “Matters and Obligations in Foster Carer Agreements”, and Point 6 states the foster carer’s obligation “not to administer corporal punishment to any child placed with them.”

### 6.3 Policy and Practice of Discipline and Punishment

In this period of the review, corporal punishment had been prohibited in residential and foster care. Skinner (1992) had also published draft guidance listing sanctions and controls which could be permitted when appropriately used, and those that are not permitted.

This review has found that there has been little published on discipline and punishment in care settings over this period. While local authorities and organisations providing care for children and young people will have policies addressing discipline and sanctions, it has not been possible to review these in the time available.

The inquiry into abuse at Kerelaw School (Frizzell, 2009) made some references to sanctions and control. It mentions Glasgow City Council's *Care and Control Policy* for residential establishments, which was re-issued in 1998:

It referred among other things to the aim of a “safe and caring” environment, and made clear that workers should not participate in horseplay with young people on the grounds that those had experienced abuse might interpret physical contact as “threatening or oppressive”. The document also set out rules on searching, and required each residential unit to have development plan. (Frizzell, 2009, p. 65)

There is also reference within the inquiry to the use of home leave, which was encouraged by Kerelaw, and that its cancellation was used a sanction (Frizzell,

2009, p. 90). Much of the discussion of control relates to the use of physical restraint and the Therapeutic Crisis Intervention (TCI) model for preventing and managing challenging behaviour:

TCI includes restraint methods but its primary purpose is to de-escalate critical situations and reduce the need for restraint. Nevertheless, a significant number of staff and young people saw TCI solely as a method of restraint and some used physical intervention as a first rather than last resort in dealing with difficult behaviours. Such physical intervention was often inappropriate and poorly executed. (Frizzell, 2009, p. 5)

The inquiry concluded that young people were physically and emotionally abused at Kerelaw. Physical abuse involved “poor practice; inadvertently clumsy restraints; deliberately painful restraints masquerading as consistent with approved procedures; and common assaults which owed nothing to guidelines, procedures or acceptable behaviour” (Frizzell, 2009, p. 133). Emotional abuse involved “threatening behaviour towards young people, shouting and swearing, and the use against them of their own life histories to disparage, devalue and among other things discourage complaints” (Frizzell, 2009, p. 133). This was facilitated by a culture that emphasised control.

In 2005, the Scottish Institute for Residential Child Care published guidance on the use of the physical restraint of children and young people in residential child care. It stressed that a decision to restrain a child “must never be made as a punishment or to get young people to comply with staff instructions” (Davidson, *et al.*, 2005, p. 16).

In 2014, Biehal and colleagues published a UK study on the abuse of children in care and presented information on the nature of substantiated cases of

abuse.<sup>4</sup> There were 108 substantiated cases of abuse or neglect in foster care, 37 of which were physical abuse and three of which entailed excessive physical restraint (Biehal *et al.* 2014, p. 75). A number of these involved corporal punishment and the smacking of children, although some involved more serious physical abuse. Twenty-two cases of substantiated abuse were perpetrated by residential staff members, seven of which involved physical abuse and six of which involved excessive physical restraint (Biehal *et al.*, 2014, p. 114-15).

Another context in which there has been some discussion of discipline and sanctions relates to the involvement of police in response to young people's behaviour in residential child care (Paul, 2008; Gentleman, 2009; Moodie and Nolan, 2016). There has been ongoing concern about the criminalisation of young people in residential child care, with the potential to blur the boundaries between challenging behaviour and offending behaviour (Paul, 2008), and variation in staff practice in involving the police (Gentleman, 2009) recognised and discussed.

A range of methods have been used to prevent offending behaviour and police involvement, and to develop positive strategies. These have included professional development, training and induction, a range of de-escalation strategies and consequences, and relationships (Moodie and Nolan, 2016).

Where consequences were required, respondents described a range of options, which one worker described as part of a "toolbox to support the young people". It was reported that consequences would be individualised to what works for that young person and the behaviour and risk presented, with a range of options available as detailed:

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<sup>4</sup> Only a small number of the cases were from Scotland, and because of this the information presented was for the whole of the UK.

- Pocket money (supervised spending, dividing or delaying monies, repaying for damage);
- Restricting access to TV; computer/Wi-Fi; mobile phone; car or activities;
- Earlier bedtime.

(Moodie and Nolan, 2016, p. 20)

Residential staff also emphasised “the importance of relationships between staff and young people and how vital relationship-based care was in preventing and defusing situations” (Moodie and Nolan, 2016, p. 21).



## 7. Conclusion

This review covers some 125 years, from the first legislation to protect children – the *Prevention of Cruelty to, and Protection of Children Act 1889* – to the *Children and Young People (Scotland) Act 2014*. It addresses the discipline and punishment of children and young people in residential and foster care over this period.

It has entailed consideration of a range of complex issues. Attitudes to children and young people have shifted markedly over time, and there has been a changing acceptability of various forms of discipline and punishment, both in general society and in relation to child care settings. This has led to changes in policy, regulations and legislation over the review period. These changes, however, have been continually debated and challenged. Knowledge about different types of child abuse has developed, and there have been debates about the nature and definition of such abuse, and thresholds of abuse. A range of factors have been identified as contributing to the abuse of children and young people in child care settings: the denial and cover up of abuse, the vulnerability and isolation of children in care, failures in management and organisation, and the circumstances of staff and carers.

Before the 1800s, children had few legal rights and could suffer abuse and appalling conditions at home and at work. The common law gave some protection to children against cruelty and neglect. Parents and others such as teachers or carers could punish children, as long as it was 'reasonable chastisement', though there were few mechanisms to protect children. When the first law to prevent cruelty to children was passed in 1889, it did not affect the right of parents, teachers and others in charge of a child to administer punishment.

There have been a number of concerns about corporal punishment over time. In the 1930s, there were campaigns to ban flogging and birching. There was also an increasing recognition that corporal punishment did more harm than good. Most people, however, including social workers, residential workers, foster carers and teachers, thought that reasonable physical punishment was the right way to discipline children.

Detailed regulations were drawn up for approved schools and remand homes in the 1930s, and these set out in some detail how discipline, including corporal punishment, should be carried out. In other residential settings such as orphanages and children's homes, and in foster care, there were no statutory regulations for much of this time, or the regulations did not mention discipline and punishment. In some homes, staff received very little guidance about discipline and punishment.

Punishment, however, could easily go beyond what could be considered 'reasonable' even by the standards of the time, when it was part of a harsh, rigid and cruel regime that showed little love or caring for children. It could be meted out for the smallest infringement, and could involve physical punishment, segregation, shaming and humiliation. Children were hit with a belt, a cane, slippers, hair brushes, or were punched and slapped. Children and young people were often punished for wetting the bed. This was seen as 'dirty', and there was no understanding that this could be caused by stress and trauma – precisely the things that children and young people in care would be experiencing because of past suffering and being placed in care. Punishment in some settings could be brutal and abusive in the extreme.

During the 1960s and 1970s, there were increasing calls to end the corporal punishment of children in schools and care settings and, by the early 1980s, a number of local authorities had banned the belt. Following a ruling by the European Court of Human Rights, corporal punishment was banned in schools

and in residential establishments. There was a growing recognition of children's rights and the UN Convention on the Rights of the Child was signed in 1989. In 1992, the *Skinner Review of Residential Child Care* drafted guidelines on discipline and sanctions. Children and young people should not be subjected to any form of physical punishment, or threat of physical punishment. They should not be deprived of any meal, nor deprived of contact with parents or any professional. Withdrawal of communication or positive engagement should not be used, and children should not be sent to bed early, nor should any form of humiliation be used (Skinner, 1992).

The time has come to shut the door on the dark ages of archaic punishments disguised as discipline. It is time to turn our backs on the naughty chair rather than on children, and to strengthen children's agentive capacity, rather than imposing controls from above. It is time to put an end to legalised violence against children, and challenge justifications put forth to humiliate and frighten children into obedience. By doing so we will reclaim and restore the true meaning of discipline - to facilitate the development of children's understanding – so that all children may thrive, actualise their rights to participation, and live free of punitive violence. (Durrant and Stewart-Tufescu, 2017, p. 375)

This review has highlighted some of the worst excesses of the care system. We must not forget, however, the many positives that children and young people have experienced over the years. Increasingly, the rights of children and young people are becoming central to care services in Scotland, emphasising the importance of dignity, respect, relationships, participation, and individuality.

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## 9. Legislation

Legislation is arranged in chronological order. Where available online, the link has been provided.

*Prevention of Cruelty to, and Protection of, Children Act 1889* (c. 44).

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