



# INFO SHEET 5

## WHAT DOES THE LAW SAY?

### WHAT DOES THE LAW MEAN FOR CHILDREN?

An adult who assaults a child in the UK, provided no injury is caused other than a red mark which is transient or trifling, may be acquitted of a charge of **common assault** using the defence that this was '**reasonable punishment**'.

The adult cannot be anyone with any professional role in relations to the child. They must be a parent or carer, or someone in whose care the child has been left under an informal arrangement – such as with the parents of a friend, or a babysitter. It is not clear if an adult who is not the parent must be given permission to 'smack' by the person with parental responsibility; or must be told they cannot use smacking by the person with parental responsibility.

### ASSAULT

**Assault** is often defined to include not only violence, but any physical contact with another person without their consent. In England and Wales, **battery** is the crime that represents the unlawful physical contact. Exceptions exist to cover unsolicited physical contact which amount to normal social behavior (for example, patting someone on the back).

Assault/battery could include all the euphemisms that are deployed (see *Euphemisms*, Info Sheet 1) when hitting a child is described.

In principle, the law says that one person cannot assault another person.

The law has a range of different offences of assault which people can be charged with, according to how seriously the victim is injured. You can find out more about the different charges in the *Ladder of violence*, Info Sheet 6.

The most minor assaults are charged as Common Assault, under Section 39 of the Criminal Justice Act 1988. A minor assault includes incidents when the victim was not injured.

### COMMON ASSAULT

**Common assault**, when the victim is an adult, can include a range of minor injuries. These are shown in the *Ladder of violence*, Info Sheet 6.

Common assault, when the victim is a child (or otherwise vulnerable, such as elderly or disabled) only applies when there is no injury, or where there is reddening of the skin that is deemed to be **transient** and **trifling**.

Assault of a child that caused other minor injuries would be treated as **actual bodily harm**.

### DEFENCES

A person who assaults another person can claim various defences. A defence is a reason why an assault was allowable in certain circumstances.

Defences for common assault are:

- It is lawful for an individual to use reasonable force in any of, or combination of, the following circumstances:
  - self-defence
  - to defend another
  - to defend property
  - to prevent crime
  - to lawfully arrest
- An individual can also claim a defence of **reasonable punishment** to a charge of **common assault** if the victim is a child. A child is a person under 18.

### REASONABLE CHASTISEMENT, REASONABLE PUNISHMENT AND LAWFUL CORRECTION

**Reasonable chastisement** is the defence against charges of assault on a child which applied from 1860–2004 in England and Wales.

It is based on a common law ruling – *R vs Hoply*, 1860 – which allowed for moderate and reasonable chastisement of a child.

It was confirmed in legislation in Section 1 (7) of the Children and Young Persons Act, 1933.

Reasonable chastisement could be used as a defence against a whole range of charges, including common assault, actual bodily harm, wounding and causing grievous bodily harm, and cruelty to persons under 16.

**Reasonable punishment** replaced reasonable chastisement in Section 58 of the Children Act 2004. Section 58 limited the use of the defence to charges of common assault only.

**Lawful correction** is a term used in some of the legal documents to refer to reasonable punishment, or reasonable chastisement.

### FURTHER INFORMATION

The Law on Common Assault can be found at:

[http://www.opsi.gov.uk/acts/acts1988/Ukpga\\_19880033\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1988/Ukpga_19880033_en_1.htm)

The Crown Prosecution Charging Standards, which give more detail about the law on Common Assault, can be found at:

[http://www.cps.gov.uk/legal/section5/chapter\\_c.html#06](http://www.cps.gov.uk/legal/section5/chapter_c.html#06)

Section 58 of the Children Act 2004 can be found at:  
[http://www.opsi.gov.uk/acts/acts2004/ukpga\\_20040031\\_en\\_6#pt5-pb4-l1g58](http://www.opsi.gov.uk/acts/acts2004/ukpga_20040031_en_6#pt5-pb4-l1g58)

Further discussion of the consequences for children; reasonable punishment and children's rights; campaigning for legal change; the international situation etc. can be found in the *Help at Hand Toolkit*:

- Resource 9 – Children Are Unbeatable Campaign Handbook
- Resource 30 – Global Initiative to End the Physical Punishment of Children
- Resource 31 – Children Are Unbeatable! Alliance
- Resource 33 – 'Sdim Curo Plant! Children Are Unbeatable!