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Crime and Criminal Offences:

Assaults

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Authorised Professional Practice

These notes are aimed at learners completing their Initial training to meet the learning outcomes specified on the National Policing Curriculum. The primary source of content is the Authorised Professional Practice (APP) and the supporting evidence based research of “what works” in policing.

APP can be found at: <http://www.app.college.police.uk/>

1. Assaults

These notes are for Pre-Join, Police Officers and IL4SC Phase 1 and 2.

This chapter provides an introduction to the legislation applicable to assaults and the various offences committed under the Offences Against the Person Act 1861 and the aggravated forms committed when the offences are racially or religiously motivated. There will be information to assist you with identifying when an assault has been committed and how offences can be committed against those who are representing or assisting emergency services.

When called to deal with allegations of assault you will need to know:

- whether an assault has actually occurred
- what type of assault it is
- what action you can take

The notes that follow will give you a working knowledge of the various types of assault and relevant defences.

1.1 Key Terms Defined

Various terms are relevant to the different levels of offences related to assault covered by these notes. A basic knowledge and understanding of these terms is required before you study each specific offence.

Assault and Battery

Definition of Assault (Fagan v Metropolitan Police Commissioner [1969] 1 QB 439)

An assault is:

‘any act where a person intentionally or recklessly causes another person to apprehend immediate and unlawful personal violence’.

The person needs to ‘apprehend immediate personal violence’ i.e. anticipate that someone is going to be violent to them there and then. A future threat such as “I’m going to give you a good kicking next Saturday” is therefore not an assault as the threat is to do something in the future not immediately. Note the relevance of the key term ‘immediate’.

Definition of Battery (Fagan v Metropolitan Police Commissioner [1969] 1 QB 439)

‘A battery is committed when a person intentionally or recklessly (subjectively) inflicts unlawful force on another’.

Difference between an assault and a battery: In simple terms an assault is when someone makes another think they are going to be violently harmed immediately whereas a battery is the actual physical contact or harm being done. Offences of assault reported to the police tend to involve both an assault and a battery.

Force

Force can be applied in many ways. This includes a simple punch or kick, a blow with a stick or the throwing of a stone at someone. A person who threatens another by shaking their fist at them or using some other threatening gesture commits an assault if they put the other in fear of immediate personal violence. It is the act of putting someone in fear rather than the injury that must be intended.

Words alone can constitute an offence and this conduct could amount to assault if it caused the victims to fear that physical violence might be used against them in the immediate future. The individual circumstances need to be carefully considered to identify whether any offences including assault or harassment have been committed.

Intentionally or Recklessly

Mens Rea: Before examining the different types of assaults, it is important to understand the guilty state of mind i.e. the ‘mens rea’, of the defendant relative to ‘intentionally and recklessly’. This will help you to determine whether or not the case can be proved against the defendant and also on occasions, which particular offence to charge them with. The mens rea differs depending on the severity of the offence.

The ‘mens rea’ required to prove both a common assault contrary to section 39 of the Criminal Justice Act 1988 and an assault occasioning actual bodily harm contrary to Section 47 of the Offences Against the Person Act 1861 are the same. They require either:

- An **‘intention’** to cause apprehension of immediate unlawful violence or an intention to apply force to the body of another or
- **‘Subjective recklessness’** as to that consequence. In simple terms this means that the prosecution would have to prove that the defendant foresaw (i.e. anticipated) the risk of causing apprehension of violence or application of force.

Example/s:

- You have a grudge against a former employer and go looking for them with intent to confront and hit them. This would evidence an intention to cause apprehension of immediate unlawful violence or intention to apply force to another
- Your friend gets very drunk in a bar one night and starts throwing bar stools around and several people flee the scene. The prosecution would have to prove that the defendant foresaw the risk of causing apprehension of violence or application of force on another. The people in the bar clearly apprehended it by fleeing but it is the state of mind of the person throwing the stools that needs to be proved

Causes a Person to Fear

If you are investigating an alleged assault where a victim has been 'caused to fear unlawful and immediate personal violence' by the defendant, such as the threat "I'll come over there and smack you in the mouth", you will need to consider the following points:

Did the defendant's behaviour cause another person to fear immediate and unlawful personal violence? If the answer to this question is 'yes' then the defendant will be guilty of committing an assault, but only if it can be shown that at the time the defendant:

- 'intended' to cause that fear, or was
- 'subjectively reckless' as to whether such a fear would result from his or her actions

This intent or recklessness will typically be established during an interview after the person's arrest. You will need to ask open questions to elicit this evidence such as, "What were you going to do to the person?" "What did you anticipate the effect on the threatened person would be?" or "Why did you threaten this person?"

1.2 Defences

There are a number of defences that may be used for charges of assault and battery including:

- Consent
- Lawful correction/reasonable chastisement of a child

- In execution of a legal right or duty
- Self Defence (under common law)
- Legal justification for use of force to prevent crime (Section 3(1) of the Criminal Law Act 1967)

Consent

Consent can be:

Implied – not specifically given but allowed, e.g. gently tapping a person on the shoulder to get their attention.

Invalid – specifically given but not valid, e.g. a child being too young to understand what they are consenting to.

Not required – when the use of force is lawful, e.g. arresting a person or in self-defence. A parent can chastise a child providing it is moderate and reasonable, for example mild smacking, and no injury is inflicted on the child. (This will only be a defence for a section 39 of the Criminal Justice Act 1988 offence and not those more serious offences under sections 47, 20 or 18 Offences Against the Person Act 1861. See below.)

The offence occurs when there is no true/legal consent for the Assault or Battery.

Implied: Consent is only implied for reasonable bodily contact. For example, while our friends would strongly object to us beating and kicking them, a slight application of force such as a tap on the shoulder, a nudge or a (not too hard) slap on the back could be accepted as everyday bodily contact. Another example would be commuters on busy buses or trains where consent to reasonable bodily contact is implied by getting on a crowded transport where standing in close proximity is the norm. It is not difficult to imagine how easy it would be to overstep the mark for example making a deliberate and dangerous foul committed during a football game.

Invalid: Even when consent is specifically given the consent may be invalid and there might still be a battery (i.e. a person intentionally or recklessly inflicts unlawful force on another).

For example when a child is too young to know what he or she is consenting to, or, when an adult knows what they are consenting to and freely gives their consent but that consent is deemed invalid. This could be for example when an adult consents to something that causes them serious injury for their own sexual gratification during a sado-masochistic sexual act. The person may say they consented to the act that caused the injuries but the law will only

allow minor, transient (passing) harm. The consent would be invalid in law if they suffered more serious harm. Consent is invalid as a defence to causing actual bodily harm to another.

Lawful correction/reasonable chastisement of a child

A reasonable chastisement defence remains available for parents or adults acting in loco parentis but only against charges of common assault under Section 39 Criminal Justice Act 1988. This does not include school staff as the use of corporal punishment in all British schools is not lawful. School staff may however restrain violent or disruptive pupils.

Section 58 of the Children Act 2004 removed the availability of the reasonable chastisement defence for parents, or adults acting in loco parentis, where the accused is charged with a more serious assault than common assault causing injury or bodily harm. For example wounding, causing grievous bodily harm, assault occasioning actual bodily harm or cruelty to persons less than 16 years of age.

Use of force in execution of a legal right or duty

A police officer has legal rights and duties when acting in the execution of their duties. When taking hold of someone during an arrest, although there is technically a 'battery' on that person, it is not unlawful provided that the arrest you are making is lawful. You may use only such force as is reasonable in the circumstances, otherwise you commit a criminal offence, i.e. common battery, or, depending upon the force used, a more serious form of assault. When using force that is reasonable in the lawful execution of your duties you are protected from civil action being taken against you provided that the use of force is reasonable in the circumstances. If you have to use force to arrest someone tell the custody officer so that it is recorded.

Example:

- If you were to arrest a suspected shoplifter who appeared frail but calm, and you are taller and stronger, you may need to only take hold of the person's arm. This would likely be reasonable use of force in the circumstances.
- If you were trying to arrest a suspected shoplifter who was under the influence of alcohol, struggling to escape and trying to assault you. It may be reasonable in these circumstances to use more force such as a Home Office approved restraint hold or hand cuffs.

Lethal Force

In the event of lethal force, where someone dies as a result of the force being used, Article 2 of the European Convention on Human Rights comes into play. Article 2 of the European Convention on Human Rights permits the intentional deprivation of life only where the use of lethal force is for a legitimate aim and is absolutely necessary i.e. it was the minimum amount of force that was absolutely necessary. To be 'absolutely necessary', the lethal force used must be strictly proportionate to the legitimate aim being pursued.

Under Article 2(2), the only circumstances in which the use of lethal force may be justified are:

- where the defendant was acting in defence of any person from unlawful violence
- in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- in action lawfully taken for the purpose of quelling a riot or insurrection."

However, the taking of life in order to prevent crime is not stated in Article 2.

Legal Justification for Any Person to Use of Force

In law any person, including members of the public, may use as much force as is reasonable for the purpose of preventing a crime. The use of force is acceptable and justified under certain circumstances. These can be when:

- preventing crime
- defending yourself or another
- protecting property
- or effecting or assisting in the lawful arrest of persons

1.3 Preventing Crime and Use of Force

The Criminal Law Act 1967 section 3(1) states that:

'A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large'

The key wording here is 'such force as is reasonable in the circumstances'. What is considered to be 'reasonable' depends on the circumstances, but could be anything from a verbal warning to lethal force.

Examples:

- If a person draws a knife and goes to stab someone, then reasonable force could amount to that person breaking the assailant's arm with a baton to prevent being stabbed
- If a person throws a small stone at someone then reasonable force would not include causing a very serious injury or wounding them to prevent them from throwing another stone

Whether the degree of force used by the defendant was reasonable in the circumstances is to be determined by consideration of the circumstances as the defendant honestly believed them to be. If the defendant genuinely believed that certain circumstances existed, he is entitled to rely on that belief even if it was mistaken, or if it was mistaken, the mistake was a reasonable one to have made. The degree of force used by the defendant will not be deemed to be reasonable in the circumstances if it was disproportionate in those circumstances. Ultimately the court that will decide whether the force used was reasonable.

Self-defence

A person may use such force as is reasonable in the circumstances for the purposes of defending:

- themselves
- another (e.g. close relatives, husband, wife, partner, child, parent etc.)
- property (although it is harder to justify self-defence where property is concerned)

For example if somebody sees their child being attacked the law recognises that the person may defend them but may only use enough force as is reasonable in the circumstances to turn the attacker away. If the attacker is then chased and an assault and battery is committed this goes beyond self-defence and the parent would be liable to prosecution.

Section 76 of the Criminal Justice and Immigration Act 2008 clarifies self defence under common law and the defence provided by section 3(1) of the Criminal Law Act 1967 relating to the use of force in the prevention of crime or making an arrest. Section 76 is intended to

improve understanding of the practical application of these areas of the law. It does not change the current test that allows the use of reasonable force.

The defence is available to a person if they honestly believed it was necessary to use force and if the degree of force used was not disproportionate in the circumstances as they viewed them. Section 76 reaffirms that a person who uses force is to be judged on the basis of the circumstances as they perceived them, that in the heat of the moment they will not be expected to have judged exactly what action was called for, and that a degree of latitude may be given to a person who only did what they honestly and instinctively thought was necessary. A defendant is entitled to have their actions judged on the basis of their view of the facts as they honestly believed them to be, even if that belief was mistaken.

It is not necessary to wait until you have been assaulted before using force to defend yourself. However there must be an attack, or the threat of an attack, before the issue of self defence can be raised and 'pre-emptive strike' be used as a defence against a charge of assault.

Example:

- A person is approached by another in the street who shouts "I'm going to give you a good kicking for what you did to my pal last week" and runs towards the person with fists clenched. The person who feels threatened punches the assailant and makes good their escape. The original assailant is injured and the person who ran away is subsequently investigated for assault. This illustrates a pre-emptive strike that may be deemed by the defendant to have been in self defence.

Protecting Property

It is unclear how far a person can act in defence of property. Common sense should dictate that the level should be lower than that permitted to protect persons. It would be very difficult, for example, to justify the deliberate killing of another in order to protect property. This is borne out by Article 2(2) of the European Convention on Human Rights which does not permit the taking of human life to protect property.

The law surrounding reasonable use of force and self defence is difficult to understand and the law applies to members of the public as well as police officers and staff. There have been high profile cases that focused on self defence where, for example, a householder severely injured or killed an intruder during a suspected burglary in progress.

As a result general advice has been published to help people to understand the law. In order to clarify this, the Crown Prosecution Service and the Association of Chief Police Officers have issued a joint public statement, which is produced in full below. It is important for you to understand this area of law plus you may be asked to explain these issues to a member of public.

Joint Public Statement from the CPS and the ACPO – ‘Householders and the Use of Force against Intruders’

What is the purpose of this statement?

It is a rare and frightening prospect to be confronted by an intruder in your own home. The Crown Prosecution Service (CPS) and Chief Constables are responding to public concern over the support offered by the law and confusion about householders defending themselves. We want a criminal justice system that reaches fair decisions, has the confidence of law-abiding citizens and encourages them actively to support the police and prosecutors in the fight against crime.

Wherever possible you should call the police. The following summarises the position when you are faced with an intruder in your home, and provides a brief overview of how the police and CPS will deal with any such events.

Does the law protect me? What is ‘reasonable force’?

Anyone can use reasonable force to protect themselves or others, or to carry out an arrest or to prevent crime. You are not expected to make fine judgements over the level of force you use in the heat of the moment. So long as you only do what you honestly and instinctively believe is necessary in the heat of the moment, that would be the strongest evidence of you acting lawfully and in self defence. This is still the case if you use something to hand as a weapon. As a general rule, the more extreme the circumstances and the fear felt, the more force you can lawfully use in self defence.

Do I have to wait to be attacked?

No, not if you are in your own home and in fear for yourself or others. In those circumstances the law does not require you to wait to be attacked before using defensive force yourself.

What if the intruder dies?

If you have acted in reasonable self – defence, as described above and the intruder dies you will still have acted lawfully. Indeed, there are several such cases where the householder has not been prosecuted. However, if for example: having knocked someone unconscious, you then decided to further hurt or kill them to punish them; or you knew of an intended intruder and set a trap to hurt or to kill them rather than involve the police, you would be acting with very excessive and gratuitous force and could be prosecuted.

What if I chase them as they run off?

This situation is different as you are no longer acting in self defence and so the same degree of force may not be reasonable. However, you are still allowed to use reasonable force to recover your property and make a citizen's arrest. You should consider your own safety and, for example, whether the police have been called. A rugby tackle or a single blow would probably be reasonable. Acting out of malice and revenge with the intent of inflicting punishment through injury or death would not.

Will you believe the intruder rather than me?

The police weigh all the facts when investigating an incident. This includes the fact that the intruder caused the situation to arise in the first place. We hope that everyone understands that the police have a duty to investigate incidents involving a death or injury. Things are not always as they seem. On occasions people pretend a burglary has taken place to cover up other crimes such as a fight between drug dealers.

How would the police and CPS handle the investigation and treat me?

In considering these cases Chief Constables and the Director of Public Prosecutions (Head of the CPS) are determined that they must be investigated and reviewed as swiftly and as sympathetically as possible. In some cases, for instance where the facts are very clear, or where less serious injuries are involved, the investigation will be concluded very quickly, without any need for arrest. In more complicated cases, such as where death or serious injury occurs, more detailed enquiries will be necessary. The police may need to conduct a forensic examination and/or obtain your account of events.

To ensure such cases are dealt with as swiftly and sympathetically as possible, the police and CPS will take special measures namely:

An experienced investigator will oversee the case. If it goes as far as CPS considering the evidence, the case will be prioritised to ensure a senior lawyer makes a quick decision. It is a fact that very few householders have ever been prosecuted for actions resulting from the use of force against intruders.

1.4 The Offences

Degrees of assault

To help you understand the different degrees of assault you will see some lists of injuries shown which have been taken from the charging standards. The Crown Prosecution Service (CPS) offer guidance to assist prosecutors in selecting the most appropriate charge by providing a 'charging standard' in relation to degrees of assaults plus other aggravating factors. The charging standard does not override the need for each case to be considered on its individual merits, nor does it override the discretion to charge and to prosecute the most appropriate offence depending on the particular facts of the case.

Having decided there is an assault or battery you need to know:

- how serious any injury is
- whether it was a reckless or intentional act

1.5 Common assault and battery

Common Assault and Battery – Section 39 of the Criminal Justice Act 1988

The Offence:

The Act States that:

'Common assault and battery shall be summary offences'.

This only applies to section 39 which is the mildest form of assault and/or battery in our criminal law. Summary offences are those that can only be tried at a Magistrate's court. You should consider how this applies in relation to PCSO powers, 'any person' powers of arrest Section 24A of the Police and Criminal Evidence Act 1984 (PACE) and local force policy.

The Crown Prosecution Service (CPS) charging standards state that a charge under section 39 of the Act would be appropriate where no injury or injuries which are not serious occur. In determining the seriousness of the injury relevant factors, such as significant medical

intervention and/or permanent effects have resulted, would help to decide the appropriate charge.

Examples:

- grazes
- scratches
- abrasions
- minor bruising
- swellings
- reddening of the skin
- superficial cuts
- a black eye

In law, the only factors that distinguish common assault from assault occasioning actual bodily harm contrary to Section 47 of the Offences Against the Person Act 1861, is the degree of injury that results and the sentence available to the sentencing court. Although an injury that is more than transient or trifling can be classified as actual bodily harm, the appropriate charge, will be contrary to Section 39 of the Criminal Justice Act 1988 where injuries amount to no more than the list above.

1.6 Assault occasioning Actual Bodily Harm (ABH)

Assault Occasioning Actual Bodily harm – Section 47 of the Offences Against the Person Act 1861

Actual bodily harm means any harm which interferes with the health or comfort of the victim. The harm need not be permanent but must be more than transient and trifling. Where the injuries exceed those that can suitably be reflected by a common assault, a charge of assault occasioning actual bodily harm should normally be preferred.

The following injuries should normally be prosecuted under Section 47:

Examples:

- loss or breaking of tooth or teeth
- temporary loss of sensory functions, which may include loss of consciousness
- extensive or multiple bruising
- displaced broken nose
- minor fractures
- minor, but not merely superficial cuts of a sort probably requiring medical treatment, for example stitches
- psychiatric injury that is more than mere emotions such as fear, distress, or panic. In any case where psychiatric injury is relied upon, as the basis for an allegation of assault occasioning actual bodily harm, and the matter is not admitted by the defence, then expert evidence must be called by the prosecution.

You should always consider the injuries first, and in most cases the degree of injury will determine whether the appropriate charge is a Section 39 or Section 47. There will be borderline cases, such as where an un-displaced broken nose has resulted. Generally, when the injuries amount to no more than those described in the section on common assault, then common assault will be the most appropriate charge.

When dealing with an Assault Occasioning Actual Bodily Harm (ABH), it is important that the investigating officer is able to establish and separate the assault or battery from any other consequences that may subsequently be caused by that assault or battery.

Example:

A defendant throws a pint of beer over the victim but accidentally lets the glass slip from their hand and it hits the victim in the face. The glass breaks causing the victim to suffer a 'minor' cut to their face that needed three stitches.

When investigating this case the investigator would first need to question the suspect to establish their 'intent' rather than basing any subsequent charge solely on the degree of injury sustained by the victim.

1.7 Wounding or Inflicting Grievous Bodily Harm (GBH)

Wounding or Inflicting Grievous Bodily Harm, Section 20 Offences against the Person Act 1861

The Offence

“Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person either with or without any weapon or instrument shall be guilty of a misdemeanour”

Having outlined the basic offence you need to examine each part to see what it means.

Unlawfully: Unlawful means without the authority of law. Someone acting in lawful and reasonable self-defence may well be acting lawfully as would a police officer exercising reasonable force.

Maliciously: Malicious means ‘recklessly’. The defendant must realise that there is the chance or risk of some kind of harm being caused to the victim. For the purposes of the Section 20 Offence, the defendant does not need to intend or foresee the degree of harm that will be caused to the victim, simply that his/her actions will cause some harm. Therefore, an intent to cause minor injury, which inadvertently results in the infliction of a wound or serious injury is sufficient to establish an offence under Section 20.

Wound: The human body has several layers of skin and all layers must be broken to constitute a wounding. A mere abrasion is not enough, but the splitting of the skin in the mouth is sufficient.

Grievous Bodily Harm (GBH): Grievous bodily harm means really serious bodily harm.

Example:

When someone is assaulted in this manner they suffer injuries of a more substantial nature such as broken limbs or substantial loss of blood.

1.8 Wounding or Causing Grievous Bodily Harm with Intent (GBH with intent)

Wounding or Causing Grievous Bodily Harm with Intent, Section 18 Offences Against the Person Act 1861

The Offence

“Whosoever shall unlawfully and maliciously, by any means whatsoever wound or cause any grievous bodily harm to any person with intent to do some grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detention of any person shall be guilty of felony”

Although there is a difference between ‘wounding with intent’ and ‘causing grievous bodily harm with intent’, they are both charged under the same heading, i.e. Section 18, Offences Against the Person Act 1861. The maximum penalty for this offence is life imprisonment.

Many of the terms used within this section are the same as the Section 20 offence however there are some new terms outlined below:

By any means whatsoever...cause: This means that the harm may be caused by the deliberate application of force such as a punch, kick or by striking someone with a weapon, in other words an assault. Alternatively the harm may be caused without the same direct application of force.

Examples:

A person throws a brick at a group of people without taking particular aim, but still intends that the brick hits and injures someone. In this case the person can still be charged with a Section 18 offence against the person that he injures.

Intentionally means deliberately. ‘Intent’ is explained earlier in these notes however, to assist you to understand ‘intent’ in this context, here are a number of factors that may indicate ‘specific intent’ for Section 18.

Examples:

- a repeated or planned attack
- prior attacks
- the deliberate selection of a weapon or adaptation of an article to cause injury (e.g. breaking a glass before an attack; hammering nails into a piece of wood)
- using an offensive weapon against the victim
- kicking the victim’s head

Or with intent to resist or prevent the lawful apprehension or detention of any person:

This means exactly what it says and applies when a person causes GBH or wounding with intent to resist his own or another's arrest.

Section 18 also gives this alternative 'specific intent' to the second part of the Section, i.e. to resist the lawful apprehension or detention of any person. The accused need not intend to wound or cause GBH in these circumstances, but could be reckless as to the outcome of their actions which if carried out with the intention of resisting the lawful apprehension of any person turns Section 20 'circumstances' into a Section 18 offence. So 'maliciously' does have an effect on the second part of Section 18.

Examples:

- A person resists arrest and grabs a piece of wood, swinging it around close to the officer's head forcing them to release the grip on the detainee (reckless as to harm caused)
- A friend of a detainee sees them being led towards a police van and, in an effort to set them free, drives their car at the officer who leaps out of the way losing grip on the detainee

Comparing the two Sections – 'intent' and 'maliciously'

For the Section 18 offence the offender must either have an intent to do some GBH to any person, or, intend to resist or prevent the lawful apprehension or detention of any person. This intent makes an assault under Section 18 a more serious assault than one under Section 20.

With a Section 20 assault no intent is needed. The offence only requires an unlawful and malicious act resulting in either a wounding or grievous bodily harm.

'Maliciously' only has real effect in relation to Section 20 and the second part of Section 18. The first part of Section 18 requires a specific intent to do some GBH, i.e. it was the accused's purpose to cause GBH, or if not, they must know the GBH was a virtual certain consequence of their act.

If you compare the specific intent required in Section 18 with Section 20, you can see that with the Section 20 offence the injury could also be caused 'recklessly'. It does not require that the accused must foresee that a wounding or GBH is the likely result of their actions, only that some physical harm to a person, even of a minor nature, might result. An example

of this would be where a person intends only to bruise a victim, but ends up by breaking their jaw. If this happens then the aggressor should still be charged under Section 20.

Psychiatric harm

The law recognises the fact that in some cases the harm caused to a person may not necessarily be physical such as a broken limb, but is caused to a person's state of mind, the words 'bodily harm' are capable of covering recognised psychiatric illnesses and such harm would be sufficient for a charge of Section 20 or Section 18 to be brought against the offender. The House of Lords have made it clear that no 'assault' is needed and that harm could be inflicted indirectly such as through menacing telephone calls inflicting psychiatric harm. There need not be any accompanying physical action.

1.9 Racially or Religiously Aggravated Assault

Definition of 'racially or religiously aggravated'

Section 28 of the Crime and Disorder Act 1998 defines an offence as being 'racially or religiously aggravated' for the purposes of these offences as:

- one motivated (wholly or partly) by racial or religious hostility towards members of a racial or religious group based on their membership of that group'; or if
- at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a racial or religious group.

The section includes 'association with members of a racial group' to cover cases where a person is attacked because of their relationship with a member or members of a racial group. 'Racial group' is defined as 'a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins'.

'Religious group' means "a group or person defined by reference to religious belief or lack of religious belief".

Racially or Religiously Aggravated Assault – Section 29 Crime and Disorder Act 1998

The offence

'A person is guilty of an offence under Section 29 of the Crime and Disorder Act 1998 if they commit an offence of common assault, actual

bodily harm and wounding or inflicting grievous bodily harm which is racially-aggravated’.

N.B. There is no need to establish any intent to wound or inflict GBH.

The penalties have been increased, due to being racially or religiously aggravated, to demonstrate a commitment to preventing this type of offence. The offence of assault, if linked with a racial or religious motive can have a devastating effect on the victim, their family and the local community.

1.10 Assault a constable or a person assisting a constable

Assault a police officer – Section 89(1) Police Act 1996

Police officers are sometimes assaulted while carrying out their duties. This is not just in connection with serious public disorder, but in everyday situations when people get excited by drink, drugs or unusual events.

The Offence

“Any person who assaults a constable in the execution of his duty, or a person assisting a constable in the execution of his duty, shall be guilty of an offence”

The duty must be a lawful one. You must bear in mind that if a police officer is trying to make an unlawful arrest, or otherwise acting in circumstances where they have no special police powers, for example assisting a private person to eject a trespasser, they are not ‘executing their duty’ as a police officer. For example if a police officer entered a property as a trespasser, as they had no power to enter or warrant to do so in the circumstances, they would not be in lawful execution of their duty.

You are entitled to the protection of the law as any other citizen, but it is expected that in some respects your tolerance will be higher than most.

If an assault on a constable results in injury which amounts to those described in the notes relating to section 39 common assault, then a prosecution under Section 89(1) of the Police Act 1996 will be appropriate, provided that the officer is acting in the execution of his or her duty.

Note: This offence cannot be attempted.

Where the injuries are more serious, for example, the injuries are such that an offence contrary to Section 47 or worse has been committed, then the offender would be charged in relation to an assault of a level the same as they would be charged if the assault had been on a member of the public.

This offence also applies to assaulting a person assisting a constable in the execution of their duty.

Example:

- A police officer in uniform stops a car on a road with the intention of checking the driver's documents. The driver is angry about being stopped and repeatedly shouts at the officer. Following investigation the officer reports the driver for driving without insurance and they respond by kicking the police officer in the shins causing bruising.

1.11 Obstructing a police officer

Obstructing a police officer – Section 89(2) Police Act 1996

Obstructing police is a similar offence to the above offence but does not involve direct assault.

The Offence

“Any person who resists or wilfully obstructs a constable in the execution of his duty, or a person assisting a constable in the execution of his duty, shall be guilty of an offence”

Obstruction has been interpreted as making it more difficult for a constable to carry out his or her duty. This may take many forms for instance warning other drivers of a speed check operation or providing misleading information. Refusing to answer an officer's questions is not obstruction, unless perhaps the defendant was under some duty to provide information.

Any obstruction must be wilful; if the defendant was simply trying to help the police, even if that help turned out to be more of a hindrance. Obstruction can be caused by omission but only where the defendant was already under some duty towards the police or the officer. Tipping off people who were about to commit crime has been held to amount to obstruction.

Some extreme forms of obstruction may amount to more serious offences such as perverting the course of justice or concealing offences.

Examples:

- A member of the public attempts to assist an officer who is struggling with a detainee but instead gets in the way and the detainee escapes – this would not be an obstruction
- A member of the public sees a police officer approaching and warns someone who is trying to break into a car – this would amount to an obstruction
- A friend of a motorist who has been involved in a collision whilst drinking gives their friend an alibi when the police investigate the offence – this would be an obstruction

1.12 Assault with intent to resist or prevent lawful arrest

Section 38 – Offences Against the Person Act 1861

This creates the offence of ‘assault with intent to resist arrest’.

The Offence

“Whosoever shall assault any person with intent to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence shall be guilty of an offence”.

This offence was designed to protect officers and those who are assisting them from assault during the arrest process. In this instance ‘assault’ means: ‘any intentional or reckless act which causes a person to apprehend immediate unlawful force or personal violence’.

Example:

- A police officer is struggling with a violent detainee, they are assisted by a member of the public who, whilst attempting to subdue the detainee gets a black eye caused by a flailing arm.

The assault itself need only be as serious as a common assault (which could be considered as an alternative charge), but the intent to resist the lawful arrest, either of themselves or another person, must also be proved.

Also remember the more general offence of assaulting a police officer in the execution of his duty (above).

1.13 Emergency Workers (Obstruction) Act 2006

Emergency workers provide an essential service for their communities. It is clearly essential to ensure that they can go about their business unimpeded and without encountering abuse or violence.

It is unnecessary to create a specific offence of assault for emergency workers as there are already comprehensive measures under the current law for dealing with attacks and violence in a wide range of circumstances. These apply to everybody and include the offences covered within this chapter ranging from common assault through to Actual Bodily Harm to Grievous Bodily Harm. There are also other provisions, such as the Protection from Harassment Act 1997 for persistent harassing behaviour, and offences of theft and criminal damage where essential equipment is at stake. The two offences that are covered here aim to catch disruptive and potential dangerous behaviour, before it escalates to more serious offences, such as assault or other offences of violence.

1.14 Obstruct or hinder emergency workers

Obstruction or hindering certain emergency workers responding to emergency circumstances – Section 1 Emergency Workers (Obstruction) Act 2006

A person who without reasonable excuse, obstructs or hinders another while that other person is, in a capacity mentioned in subsection (2) below, responding to emergency circumstances, commits an offence.

The capacity referred to in subsection (2) defines 'emergency workers' as fire-fighters, ambulance workers and those transporting blood, organs or equipment on behalf of the National Health Service (NHS), coastguards and lifeboat crews.

Emergency workers also include those working under contract and volunteers providing an ambulance service on behalf of the NHS, including air ambulances. It also includes those working for the fire and rescue services of local authorities, airports, the armed forces and

private companies. This will include anyone who is responding to an emergency as part of a reciprocal arrangement with Fire and Rescue services in England and Wales.

Whilst the Act is designed to protect a specific group of emergency workers who respond to 'blue-light' situations, it does not cover police or prison officers in its definition of 'emergency workers' as they are already catered for in provisions in the Police Act 1996. Neither does it cover PCSOs who are covered by provisions in the Police Reform Act 2002.

The offence deals with those people who obstruct or hinder emergency workers who are responding to emergency circumstances, or who are preparing to do so; and those emergency workers responding to circumstances when they believe there is or may be an emergency.

Emergency circumstances are defined as circumstances which are present or imminent and which are causing or are likely to cause death or serious injury or serious illness; worsen any serious injury or illness, or are likely to cause, or worsen, serious harm to the environment, building or property.

'Preparing to respond to emergency circumstances' includes:

- putting on protective suits
- attaching hoses to fire hydrants, and
- other immediately preparatory activities

It will not include training in preparation for a potential incident, as this will not have the same potentially serious consequences as obstructing the emergency worker(s) when responding to an emergency or potential emergency.

Examples:

- Parking a vehicle so as to prevent an emergency vehicle gaining access
- Causing damage to a fire hose to prevent fire and rescue workers extinguishing a fire
- Giving false information to an ambulance crew who are seeking the location of a serious collision

Note: it would not cover deliberate hoax calls, which are dealt with by other legislation.

The offence will be complete even when the emergency that they are responding to does not materialise. An example might be where a group of people deliberately call out the fire and rescue service when there is no emergency, and then obstruct them. The offence is still committed because such behaviour can be damaging and can prevent the fire and rescue service from reaching another emergency in time.

1.15 Obstructing or hindering persons assisting emergency workers

Section 2 Emergency Workers (Obstruction) Act 2006

The Offence

‘A person who without reasonable excuse obstructs or hinders another in the in the circumstances described below commits an offence’.

These circumstances are where the person being obstructed or hindered is assisting another while that other person is, in a capacity of this Act, responding to emergency circumstances. This covers:

- voluntary and other organisations who are at an emergency and who might otherwise not be covered
- individuals such as first-aiders, who may be helping at the scene of an accident
- those who are directing traffic in order to allow the emergency workers to deal with an incident

Examples of obstruction are the same as those already discussed for the Section 1 offence.

Reasonable excuse

In both offences it is important to note that the offence will not apply where the obstruction was inadvertent or unavoidable. The term ‘reasonable excuse’ will offer a defence to, for example, a person who is in a traffic-jam and causes an obstruction because they cannot get out of the way.

Where violence or a real threat of violence has occurred, consideration should be given to charging the offender with an offence of violence. The level of the violence and the damage or potential damage which might have occurred should be factors in determining which charge is the most appropriate.

It is also important that these two offences should not be viewed in isolation, but as part of a package of measures designed to tackle anti-social behaviour and workplace violence more generally. Where obstruction is part of a pattern of anti-social behaviour, consideration should be given to the whole range of tools which might help to tackle this, including Acceptable Behaviour Contracts, Anti-Social Behaviour Orders and, where young people have been involved, Parenting Contracts and Orders.

1.16 Police Action

Action to be taken at the scene

Your action very much depends on the type of assault. It is your duty to prevent any breach of the peace, or further breach of the peace, as the case may be. If it is clear that anyone needs medical attention, or anyone complains of injury, you must give first aid and obtain medical assistance as appropriate as your first priority. With all assaults, your first priority when attending a scene is the safety of the victim, witnesses and of course yourself.

Following that, when you have restored order and identified any potential weapons, you should preserve any evidence and identify any witnesses. Evidence may be in the form of weapons or traces of blood. Witnesses may be able to direct you towards evidence that may be lost if left until later.

Next you must investigate:

Who, Why, When, Where, What, How?

By using the **'5WH'** you will ascertain all details of injuries not obvious on arrival, how they were caused and who was responsible.

If you are able to identify a suspect at this stage they may be splattered with blood from the victim which can be analysed for a DNA profile and potential match/cross contamination. If there has been a struggle hairs or clothing fibres from the victim may be present on the clothing of the suspect.

If a suspect is later identified then footwear may prove to be a good source of evidence. Outer clothing may be discarded or washed, but shoes and boots are often retained. They may be stained with blood, or a sole impression may have been left at the scene.

It is important that steps are taken to preserve evidence as soon as is possible. If this is delayed then the evidence may be lost. Remember the importance of the golden hour **as** the initial work completed at the scene is vital to the case. The victim's injuries may prove to be even more serious than they are perceived at first and therefore the scene that is being

secured and evidence being gathering may end up being used to investigate a homicide (i.e. murder or manslaughter).

Compensation for Victims

Victims of assault should be informed that they might be eligible for compensation from the Criminal Injuries Compensation Authority and that the witness care unit will assist them to apply if necessary. See the victims and witnesses module for more information for victims about compensation for injuries, loss of earnings etc.

Charging standards/decisions

There may sometimes be confusion in terms of the correct charge to lay against someone who has committed an assault due to the differing nature of injury sustained. Check your local arrangements for information on charging decisions and standards and further information can be obtained from the Crown Prosecution Service (CPS) website.

1.17 Revision Questions

- What is the difference between an assault and a battery?
- Why is it important to understand the term 'mens rea'?
- In what circumstances could a person have a lawful defence to committing assault and battery?
- What sort of injuries relate to the different offences?
- Which is the least serious level of assault?
- What is the impact of an offence being racially or religiously aggravated?
- What offences have been created to deter people from harming police officers and other emergency workers?

2. Key Legislation

Key pieces of legislation applicable to this topic are:

- Sections 18, 20, 38 and 47 of the Offences Against the Person Act 1861
- Section 39 of the Criminal Justice Act 1988
- Sections 28 and 29 of the Crime and Disorder Act 1998
- Section 89(1) and 89(2) of the Police Act 1996
- Section 1 and 2 of the Emergency Workers (Obstruction) Act 2006
- Section 3 of the Criminal Law Act 1967
- Article 2 of the European Convention of Human Rights
- Section 76 of the Criminal Justice and Immigration Act 2008