

## Use of force against intruders

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### Do “have a go heroes” need greater protection from criminal prosecution?

There has been considerable media coverage in recent years of householders who have been prosecuted after taking action against intruders. In 2000 Tony Martin was convicted of murder (later reduced to manslaughter) after shooting a burglar. In 2009 fresh attention was drawn to the issue when Munir Hussain was convicted of causing grievous bodily harm after chasing a group of intruders from his home and beating one of them with a cricket bat. Cases such as these, in particular the perceived treatment of victims as criminals, cause public outcry and attract a great deal of media attention. Some have therefore called for changes to the law of self-defence so as to give householders greater protection from criminal prosecution in these circumstances. *But would such changes really improve public perceptions?*

The law currently allows people to use “reasonable force” to protect themselves, others or property, to carry out an arrest or to prevent crime. Guidance from the Crown Prosecution Service (CPS) says that a householder who does only what he “honestly and instinctively believes is necessary in the heat of the moment” is likely to be acting lawfully and in self-defence. If, however, a householder finds himself in the dock, the jury must consider the following questions:

- Was the use of force **necessary**?
- If so, was the particular force used **reasonable**?

The Conservatives have pledged to give householders greater legal protection if they have to defend themselves against intruders in their homes. They argue that the concept of “reasonable force” is unclear and that prosecutions should only be brought where the actions involved were “grossly disproportionate”. An ICM poll for the Sunday Telegraph, which is running a campaign to give householders greater rights to defend themselves, suggested that 79 per cent of all voters support such a change.

### Would the press and public be placated by a change in the law?

However, both Labour and the Liberal Democrats consider that the current law works well and that adequate protection is provided by “the exercise of prosecutorial discretion and the good sense of the jury”. Paul Mendelle QC, chairman of the Criminal Bar Association, has expressed concerns that the Conservatives’ proposed change could encourage vigilantism and would effectively

#### SELF-DEFENCE IN IRELAND

Ireland is currently considering amendments to its self-defence law. The Law Reform Commission has suggested that the current “reasonableness” test be replaced with a “minimum threshold” test, and that a householder should be under no duty to retreat from an attack within their home, even where they could do so with complete safety.

sanction extrajudicial punishment. The current law is also supported by Michael Wolkind QC, who acted as defence counsel for both Tony Martin and Munir Hussain, and Keir Starmer, Director of Public Prosecutions. Mr Starmer said that there were “many cases, some involving death, where no prosecutions are brought”.

Contrary to popular belief, Munir Hussain did not actually raise self-defence at his trial: his (unsuccessful) defence was instead that the intruder’s injuries had not been inflicted by him at all but by a group of youths who had come to his aid. However, even if self-defence *had* been raised, it is arguable that even under the Conservatives’ “grossly disproportionate” test, Hussain would still have been prosecuted and convicted.

The perceived injustice for many was not simply his prosecution, but the fact that he initially received a custodial sentence, whereas the intruder he caught did not: despite having some 50 previous convictions, he was found unfit to plead on the basis of his injuries and given a supervision order. His accomplices are still at large.

Given the rarity and nature of prosecutions against householders who attack intruders, is it right to assume that public disquiet regarding the treatment of “have a go heroes” would actually be addressed by self-defence reforms? Or does the real problem lie with the policing and sentencing response to such cases? *If these issues are left unaddressed, there may be a limit to the impact any self-defence reforms made in isolation would have.*

#### HOW MANY CASES?

An “informal trawl” by the CPS suggested that between 1990 and 2005 there were only 11 prosecutions of people who had attacked intruders in houses, commercial premises or private land. Only 7 of those appeared to have resulted from domestic burglaries.

**Examples of prosecutions** included a case where a man lay in wait for a burglar on commercial premises, caught him, beat him, threw him into a pit and set him alight.

**Examples of decisions not to prosecute** included a case where a woman took a baseball bat off a burglar and hit him over the head, fracturing his skull.