2. The Prosecution Process

The process of being prosecuted can be broken down into different stages.

In this section, we will concern ourselves with the stages from the Initial Hearing to the Trial. The next two sections cover Judgment and Sentencing, while the process of charged is examined in detail in our guide to arrest.

The Initial Hearing

If you are charged with an offence, the 'charge sheet' presented to you by the police will specify the date for an initial hearing. This will take place at a magistrates court. This initial hearing is not your trial. Defendants are expected to surrender to the court 30 minutes before their hearing time. So if your charge sheet says your hearing time is 9:00am, you should aim to get there for at least 8:30am.

At the initial hearing, the magistrates will decide what kind of court your trial will be heard in: a magistrates court (presided over by 3 lay persons or one stipendiary magistrate) or a crown court (presided over by a professional judge, and jury). Some minor offences – such as willful obstruction of the highway – can only be heard in a magistrates ('summary only offences'), while other more serious offences can only be heard in a crown court ('indictable only offences'). There are also what are known as 'triable either way' which means that they can be heard in either type of court. In such cases, the magistrates at your initial hearing will decide on whether your case is simple enough to be tried by them or instead ought to be moved to a crown court.

If your case is to be heard in a magistrates, you will then be asked to enter a plea of 'guilty' or 'not guilty'. If your case is to be heard in a crown court, the court will adjourn and a later date will be set at a crown court for what is known as the Plea and Trial Preparation Hearing (PTPH), at which you will also enter a plea.

1. Entering a Plea

Activists are sometimes keen to plead guilty to an offence simply to get legal proceedings over and done with as quickly as possible, particularly when their supposed offence is a minor, non-imprisonable one such as obstruction of the highway. However, it is worth giving serious consideration to pleading 'not guilty'. Many things can and do go wrong with prosecution cases and sometimes the evidence brought against activists is so flimsy that the CPS and the police seem to just be hoping that people will automatically accept their own guilt.

In one recent example, an anti-fracking activist – charged with using threatening or abusive language in a manner that was likely to cause harassment, alarm or distress – had the case against them dismissed by magistrates because the prosecution's only evidence was the testimony of one police officer who did not claim they were left feeling harassed, alarmed or distressed.
If you plead 'guilty' then proceedings will move directly to sentencing. If you plead 'not guilty' then several things will happen:

- **The magistrate will make arrangements for the trial hearing, i.e. the date, length and place.**
- **Bail will be set again, often the bail conditions will be dropped or changed.**
- **Other dates may be set, e.g. for the CPS (Crown Prosecution Service – they conduct the case for the police) to provide (disclose) their evidence.**
- **Both the defence and the prosecution will be asked to address questions relating to 'trial preparation'(formerly 'case management' – for more on this, see below).**

2. Bail

At the initial hearing the court might decide to either uphold or impose (fresh) bail conditions upon you, such as banning you from a protest camp or being on a particular stretch of road. These conditions can be challenged by your solicitor or yourself, if you are self-representing. Breaking bail conditions is *not* itself an offence, although failing to surrender at the allotted date and time *is*. If you do break conditions you can be arrested and held on remand (i.e. in custody) until your next trial date. However: you cannot be remanded if the offence you are charged with does not carry the possibility of a custodial sentence. As such, if you are charged only with having willfully obstructed the highway – which is not an imprisonable offence – you will not be remanded for breaking any bail conditions.

If you break conditions relating to an imprisonable offence, you could be held in custody until your next court date to prevent you committing further offences. Magistrates take failure to comply with conditions imposed by them – rather than the police – much more seriously and it is ultimately they who decide whether or not to remand you.

Trial Preparation/Case Management

Trial preparation (formerly case management) is an early stage in the prosecution process in which the court attempts to identify what the core issues in dispute are and to determine whether or not they can be narrowed down before trial. This will usually involve both sides producing a list of witnesses they intend to call during the trial and outlining to the court the general arc of their case.

On the basis of the submissions given by both the prosecution and the defence, the magistrate(s)/judge will make a decision as regards to when the trial will take place and how long it is likely to take (effectively: how many days to book out the court for). They will then possibly give further directions concerning when the prosecution have to disclose all their evidence or the date by which the defence has to serve the prosecution with an outline of their arguments (the defence statement).

Discussions around trial preparation or case management take place after the defendant has entered their plea. Thus: for trials in the magistrates, it takes place during the initial hearing, while in the crown court, it occurs at the Plea and Trial Preparation Hearing.

Trial

At the trial the prosecution will attempt to prove to the court that you have committed the offence of which you have been charged. Often this will involve them calling witnesses and discussing physical evidence such as CCTV footage or forensic data. Your solicitor (or, if you are self-representing, you) will be given a chance to question ('cross examine') the witnesses for the prosecution. Once the prosecution has finished putting forward their case, it is your turn and you or your representative will attempt to show the court that you did not commit the crime in question.