



## 'What's next?' - A Guide to the Post-Charge Legal Process

So you were arrested for protesting and the authorities have decided to charge you with an offence: what happens next?

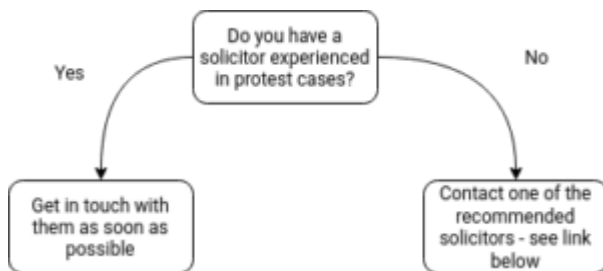
Being prosecuted can be a confusing and intimidating experience. This guide sets out what you can expect at each stage in this process and how you can put yourself in the strongest possible position as a (potential) defendant.

We will cover:

1. [Legal Representation and Self Representation](#)
2. [The Prosecution Process](#)
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5. [FAQs](#)

### 1. Legal Representation and Self Representation

Legal representation is the first thing to consider after being charged with an offence.



[Find a solicitor experienced in protest cases.](#)

For a more detailed overview of the role of solicitors in defence cases, please consult [this handy guide](#) produced by the Legal Defence Monitoring Group (LDMG).

1. [Legal Costs and Legal Aid](#)
2. [Representing Yourself](#)
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#### 1. Legal Costs and Legal Aid

Having a solicitor represent you costs money. If you cannot afford the cost of legal representation, the state may pay part or all of your fees via a scheme known as 'Legal Aid'. Whether you qualify for legal aid or not depends on your financial circumstances and the seriousness and complexity of your case. Sadly, due to cuts, much fewer people now qualify. However: if your case is a serious one and/or you are unemployed or on a low income, there is a good chance you will receive some form of state support with legal costs if you are prosecuted.



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Solicitors sometimes agree to represent people who don't qualify for legal aid, because one or more of their co-defendants does, allowing people to effectively 'piggyback' on the aid other people receive. If you do not qualify and are being tried as part of a group involving others who do, it is worth asking your solicitor about whether this is a possibility (assuming you have the same one). If you wish to find out if you qualify for legal aid you should contact one of our recommended solicitors.

More information on eligibility is available on the [Citizens' Advice Bureau website](#).

**Solicitors bills and fines are not the only costs you might face if you are prosecuted – travelling to and from court can be a costly business, particularly if the court is at the other end of the country**

## 2. Representing Yourself

If you cannot afford or do not want to be represented by a solicitor, you will need to represent yourself in court. If you are doing this for the first time, we strongly recommend you get in contact with us (07946 541 511) or with [Activist Court Aid Brigade](#), as we can help support you through this process. '[How to Defend Yourself in Court](#)' by Michael Randle, is a detailed guide to defending yourself – produced by the Civil Liberties Trust and annotated by LDMG. Defendants who represent themselves in court can – at the discretion of the judge – have someone stood with them during proceedings called a McKenzie friend. If you would like someone to act as a McKenzie Friend during your court appearances, please contact [the Activist Court Aid Brigade](#).

## 3. Putting in the Legwork

Even if you do end up being represented by a solicitor, this does not mean you can simply let them get on with it without any input from you. It is important for you to:

- 1) Keep in contact with them.**
- 2) Assist them in building a strong defence case by gathering evidence (e.g. film footage) and witnesses.**

## 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.



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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.

## 3. Possible Outcomes

**The court process can end in different ways. Many protest cases do not get as far as sentencing, and it is extremely rare to get a prison sentence.**

If you are charged with a criminal offence, there are four possible outcomes:

1. The CPS may drop the case against you altogether – this can happen at any stage of the proceedings, even on the day of the trial itself.
2. The judge or magistrate may throw the case out. Again this can happen at any stage, but most frequently would be during the trial, for example if the police did not turn up to give evidence, or the judge thought your defence case was strong enough by halfway through the trial.
3. The trial may proceed to its end and you may be found not guilty of the alleged offence.
4. You may decide to plead guilty or you may be found guilty at the end of the trial. There will then be a sentence given to you. Sometimes this will happen at the end of the trial itself, but often it does not. If you are possibly facing time in prison, the judge will ask the Probation Service for a 'Pre-Sentence Report' (PSR), and a further date will be set for sentencing. You may then decide to appeal against the verdict or the sentence. In that case, the legal procedure, will continue.

**If you wish to appeal your sentence: either speak to your solicitor or, if you are self-representing, contact [Activist Court Action Brigade](#).**

## 4. Sentencing

**If you either plead or are found guilty, the judge will pass a sentence.**

Sentences usually consist of a fine, a suspended sentence or a community order (which could require you to perform community service, not enter a certain area etc). On the very very rare occasions that a custodial sentence (prison) is given, there are other groups – such as your local branch of the Anarchist Black Cross- that can help support you both before and during your time inside.

Detailed sentencing guidelines for offences tried in magistrates courts (i.e. those offences which are 'summary only' such as willful obstruction of the highway, or 'either way' offences which can be tried in the magistrates such as theft) are available [here](#). But for ease of reference, the following table sets out the sentences you could expect to receive if you were convicted of the most common protest related offences:

Offence	Likely Penalty for a 1st Time Offender	Maximum Penalty
Willful Obstruction of the Highway	Conditional discharge or ~£200 fine	£1000 fine



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Criminal Damage	Highly dependent on the cost of the damage you supposedly committed. If it was low the penalty could be anything from a conditional discharge, to community service or a fine of around several hundred pounds.	Where value of damage is less than £5000 – 3 months imprisonment and/or £2500 fine. Where the damage is more than £5000 – ten years imprisonment.
Obstructing/Assaulting a Police Constable	Highly variable but we have seen conditional discharges given for obstruction.	For obstruction: £1000 fine and/or 1 month imprisonment For Assault: 6 months imprisonment and/or £5000 fine
Section 241 of the Trade Unions and Labour Relations Act	Conditional discharge or – if you are unlucky – a fine of somewhere between £200-400	£5000 and/or 6 months in prison.
Section 12/14 of the Public Order Act	~£200 fine	£1000 fine for participants. For organisers: 3 months imprisonment and/or a £2500 fine.
Aggravated Trespass	A fine of under £500	3 months imprisonment, or a fine of £2500, or both
Violent Disorder/Affray	Violent Disorder: 75% chance of immediate custody 6-24 months. Affray: 25% chance of immediate custody 3-12 months	5 years imprisonment and/or a fine for Violent Disorder 3 years imprisonment and/or a fine for Affray

## Prosecution Costs:

In the event that you are found guilty, the CPS will ask the court for a contribution – from you – towards the costs they have incurred in bringing this case (i.e. fees for the CPS solicitors etc). The amount you will be required to pay is ultimately decided by the judge/magistrate(s) but is dependent on a number of factors including, for example, if and when in the proceedings you plead guilty, whether you are in a magistrates or a crown court and what kind of hearing it was (e.g. an appeal of sentence as opposed to a trial).

More information on the costs scale used by the CPS and the courts is available [here](#).

## Victim Surcharge:

In addition to any fine handed to you by the court and an amount for prosecution costs, individuals convicted of criminal offences are obliged to pay what is called a 'victim surcharge'. How much you are obliged to pay depends on the sentence you are given but it ranges from £20 to £170.

## Making a Claim Against the Police:

If your case is thrown out or dropped along the way, you could consider taking a civil action against the police. [Get in touch with us](#) and we can advise you on how best to do this. There is also a guide to making civil claims against the police on [our website](#).

## 5. FAQs

### 1. My bail sheet says I have to report to a police station/court on a certain date – What happens if I cannot make that date?



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If, for whatever reason, you are unable to report to a police station/court on the date given on your bail sheet, you should let your solicitor know at the earliest possible opportunity. If you are representing yourself please get in contact with us.

## 2. What happens if I fail to turn up at all?

Failure to surrender to bail – failing to turn on the date given on your bail sheet whether to a court or to return to a police station – is a crime (Section 6 Bail Act 1976). Although it should be said, the courts take failure to surrender to the cops far less seriously than skipping court and CPS guidelines state that failure to answer police bail should not be prosecuted at all where the substantive case is dropped. The likelihood of the police actively pursuing your arrest and the severity of any punishment you may eventually incur will depend on the perceived severity of the offence (and, of course, whether you are convicted). But if you fail to attend a court hearing, we recommend getting in touch with your lawyer and/or us as soon as possible.

## 3. Will a conviction impact my employability?

Employers can't turn someone down for a job because they've been convicted of an offence if the conviction or caution is 'spent' – unless an exception applies (see below). Convictions with a sentence of 4 years or less will become spent after a certain period of time. This is known as a 'rehabilitation period'. Its length depends on how severe the penalty was. You can find out the rehabilitation periods of different penalties [here](#).

A very small number of jobs do require you to disclose spent convictions, as these jobs are exempt from the Rehabilitation of Offenders Act. These exceptions include working in the medical profession, solicitors, accountants, school-based jobs and other roles involving the supervision of people under the age of 18. Criminal record checks are typically required to take up these roles and spent convictions and cautions will be recorded by them.

Very few jobs (outside of being a police officer) require you to have no criminal record at all, although certain convictions can debar you from becoming a solicitor (and even minor offences can make it significantly harder). Unless you have been convicted for a serious violence offence, supplying drugs or sexual offences, having a criminal record will not necessarily prevent you from working with children. Whether or not it makes it harder depends on the attitudes of your potential employer and the circumstances of your supposed wrongdoing.

More information on how a criminal record might impact your paid or voluntary work is available from the [Unlock Information Hub](#).

## 4. Can I crowdfund the money I need to pay a fine?

We advise against explicitly crowd funding to pay fines, as it could – in theory – encourage the court to increase the figure you have to pay (as a crowdfunder campaign could be seen as increasing your means). However, there is no problem with crowd funding for court costs and general campaign expenses – including travel expenses.