

# Activists' Legal Project

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## THE ARREST PROCESS AND YOUR RIGHTS

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### 1. Giving your details

Whenever you come into contact with the police, they will ask you for your details. It's not an offence to refuse to give the police your name and address, **except**:

- 1) when you are the driver of a vehicle (an offence under the Road Traffic Act) or
- 2) if the police say you have committed 'antisocial behaviour' (behaviour which has caused or is likely to cause harassment, alarm or distress), when refusing to give your name and address is an offence (section 50 Police Reform Act 2002) and could lead to your arrest. Before giving your details it's worthwhile asking what 'antisocial behaviour' they suspect you've committed, as they could just be trying it on.

If the police say you have committed a criminal offence they will also ask you for your details. You still don't have to give them, but it may make it more likely that you will get arrested if you don't. Before giving your details ask what offence they suspect you have committed. If they respond by saying that they are considering prosecuting you for a plausible offence then you might want to give them your details, otherwise they may arrest you (they want your name and address so that they can send you a summons to attend court) so giving your details could save you several hours in a police cell. If they can't tell you what offence they think you have committed or it doesn't sound at all plausible then they may just be trying to get your details for evidence gathering purposes, in which case there is no need to give them the pleasure.

### 2. Being arrested

A police constable has the power to arrest you for **any** offence, however minor, but they must have reasonable grounds for suspecting that you have committed or are about to commit an offence **and** it is 'necessary'

to arrest you.

The reasons that it is 'necessary' include:

- they can't ascertain your name or address
- they believe you've given a false name or address
- to prevent you injuring yourself or someone else
- to prevent you damaging property or obstructing the highway
- to allow the prompt investigation of the offence.

Your arresting officer will say something like, "I'm arresting you for (or, 'on suspicion of')....You do not have to say anything, but it may harm your defence if you fail to mention when questioned something which you intend to rely on in court. Anything you say may be given in evidence." This is called the caution. You do not have to say anything in reply to it, but anything you do say should be noted down by the police and will later be read out in court, so saying something brief and non-incriminating (eg "Nuclear weapons are a crime against humanity") may be worthwhile. You may be asked to read and sign the arresting officer's notes, but you are under no obligation to do that either. They may take your photograph and also search you at this point for anything which may be evidence of the commission of an offence (for more info on photos and searches see later).

Throughout your time with the police they will ask you questions, and however innocuous sounding these questions might be, they are all part of evidence gathering. There's no such thing as a 'friendly chat', so be careful what you say, or better still say no comment.

### 3. Street bail

Generally you will be taken to the nearest police station after your arrest. But the police also have the power to grant bail immediately after you have been arrested without taking you to a police station. which means they can arrest you, take your details in the street and then give you a notice requiring you to attend a police station at a later date, when they will decide whether to charge you. The police cannot attach additional conditions to this type of 'street' bail (see section 16 for more info on police bail). It is an offence to fail to turn up at the police station on the appointed date.

### 4. At the police station

If you are taken to a police station, you'll be taken in front of the custody sergeant, who is the officer who authorises your initial detention and is responsible for you whilst you remain in custody. Your arresting officer will give brief details of the offence for which you were arrested, and you will be asked a number of questions including your name and address, date and

place of birth, height, and occupation. Its not a criminal offence to refuse to give this information, so don't feel pressurised into doing so. But if you do refuse to give your name and address it's likely to delay your release. If you give false details you could be charged with obstructing a police officer (see our briefing, A Guide to Possible Offences, for more information). They may try to verify your name and address either by sending a local officer round to your house, ringing your house or checking the electoral register (often they don't bother to check your address but don't count on this). If you refuse to give your date of birth they may put pressure on you to give it, as it makes it easier to locate you on the police computer. They may say for example you won't be released. This is almost certainly just bluff - once they realise you're not going to be moved, they'll let the matter drop. It's good to decide in advance whether you're going to give them any information or not.

## 5. Your rights in detention

You have a number of rights when you are in detention. The custody sergeant has a duty to inform you of them and will ask you to sign a form to confirm the rights have been offered to you. They include:

### a. The right to have someone informed of your detention

This right can be delayed, but only in serious offences and where the police can claim that they believe that allowing you to contact someone will lead to interference with evidence or will alert other people involved in the offence. You may be able to make the call yourself, but it is more likely that it will be made for you. You only have a right to one call (but ask if you need to make more - you may be lucky) or you can ask that the person contacted lets others know that you're in custody.

### b. The right to independent legal advice

This right can only be delayed for the same reasons as above. The right to free and independent legal advice in police stations has recently been modified. There are now different arrangements for free advice depending upon the severity of the offence with which you have been charged.

#### 1. Minor offence and no interview

If the police are not going to interview you, and you have been arrested for a minor (non-imprisonable) offence (eg obstruction of the highway, disorderly conduct or minor road traffic offences) or for breach of bail then you will not get to see or to speak on the phone to a solicitor of your choice (unless you agree to pay for the advice). Instead, you will be able to

speak on the phone to a “legal adviser”. This legal adviser is provided by the state through a scheme called Criminal Defence Services Direct - CDS Direct (think NHS direct). Whilst these advisers may know about the law they may not necessarily be sympathetic or understand the needs of activists in the way that your own solicitor would.

## **2. Serious offence or minor offence with interview**

For more serious (imprisonable) offences, and where an interview will take place for the minor offences mentioned above, then you will still be entitled to see a solicitor of your choice, for free, provided they can be contacted within two hours, if not you will be allocated a duty solicitor. The police will ask “Do you want legal advice?” And if you say yes, “Do you want a particular solicitor?” If you can’t name a solicitor or a solicitor’s firm then you will be offered a duty solicitor (some of whom are good and others less so). The police will pass your request to the Defence Solicitor Call Centre who will attempt to contact your solicitor (or the duty solicitor if you have opted for them). If your solicitor hasn’t responded to a message within two hours, then you will be offered a duty solicitor instead.

After your release from custody, you will be able to instruct your own solicitor if your case is going to court, though you may not be able to get free legal representation if its a minor offence

## **c. The right to consult the PACE Codes of Practice**

The PACE Codes of Practice set out details of how you should be treated in police custody, for example the conditions of detention, your rights, and so on. It’s worth knowing what your rights are so that you can ask for them if they’re ‘forgotten’. Its also a good read if you forget to bring a book!

All these rights should be offered to you when you first arrive at the police station (unless the offence is very serious and the police decide to delay them). Even if you decide that you don’t want to take advantage of any of them when you arrive, you have the right to exercise them at any time during your detention.

You also have the right to ask to see a forensic medical examiner, more commonly called a police doctor, if you are unwell or need medication or believe you have sustained an injury. If you have been injured by the police you should ask to see an independent doctor (not the police doctor), your solicitor can help you sort this out. An independent doctor’s notes can help to corroborate your version of events, useful if you want to make a complaint or a claim against the police.

## **6. Being searched**

You will be searched; however, this usually consists only of being ‘patted down’ by an officer of the same sex as yourself. You cannot, under most circumstances, be asked to remove more than outer clothes. On occasions, the police may want to retain some of your clothing as evidence (eg in cases of criminal damage where there may be paint etc on them). In such a case, they must provide you with something else to wear. The police are only allowed to strip search you if there is good reason to believe that you are concealing an item such as a weapon or evidence or drugs. If you have been arrested for a more serious or ‘indictable’ offence (ie the offence is one that can be heard either in the magistrates court or the Crown Court or an offence that must be heard in the Crown Court eg criminal damage, theft or burglary) the police have the power to conduct a search of premises (your home or workplace) or vehicles, without the need to obtain a search warrant. The premises or vehicles must be occupied or controlled by the arrested person, so in a shared house they can search your room and the shared areas (kitchen, loft, garden shed etc) but not the rooms of your housemates. In order to carry out the search they must reasonably suspect that there is evidence relating to the offence or to other similar offences in the premises. See our briefing - A Guide to Possible Offences’ for more info on indictable offences.

## **7. Your property**

The custody officer will ask you to take everything out of any bags which you have with you, and to turn out your pockets. Anything which has allegedly been used in the commission of the offence for which you have been arrested will be taken from you and retained by the police as evidence. This will include things like paint, boltcutters, banners and leaflets. They will be listed on your custody record and you will be asked to sign for them. Do so if you wish, but there is no obligation to sign. If you do sign, make sure you do so directly under the last item listed as well as in the place they tell you, so that nothing can be added later. Do this when you’re signing for your other property too. The police can retain anything which they think you could use to cause harm to yourself or to others (belts, ties, laces, glasses, watches etc), interfere with evidence, damage property or effect escape. In practice, this is open to wide interpretation with some officers allowing you to keep such things as pencils and others deciding that you’re going to graffiti their walls and taking them away from you (although the codes of practice referred to above say that prisoners should be allowed to have writing materials (pencil and paper), so make a fuss if they try this). Your personal property will be returned to you on your release, but

if you're bailed to return to the police station or are charged, they will keep the items to be used as evidence until your trial.

## 8. In the cells

Once all the above procedures have been completed, you will be put in a cell. There should be a mattress and a pillow, but there sometimes isn't, and you should be provided with blankets or extra clothes if you ask for them. It can get very chilly so make sure you have plenty of warm clothes with you. Once in the cells, you may be left for several hours before anything else happens, but the gaoler is supposed to come and check on you every hour which gives you a chance to ask what's going on. Although the gaoler is unlikely to know, or to want to tell you even if s/he does know.

## 9. Eating and drinking

The police are required to feed you three times in a 24 hour period, at roughly 'normal' mealtimes, and to provide you with drinks at 'reasonable' intervals, whatever that means. They are supposed to take account of special dietary requirements, but don't count on it. You may be allowed to keep food you have with you when arrested (police stations vary widely in what they allow) so it's worth taking shop-bought sealed snacks and cartons of drink, but not homemade snacks, glass bottles or canned drinks.

## 10. Being interviewed

If you have been arrested for something like highway obstruction or disorderly conduct, it's unlikely (but not impossible) that you'll be interviewed. However, if you've been arrested for a more serious offence (eg criminal damage, burglary), there is a good chance that you'll be interviewed, unless you were caught red-handed in which case they may not bother. If damage has been done, and they're not sure who did it (or even if any of you did it), you will almost certainly be interviewed in the hope that someone will spill the beans.

You have the right to have a solicitor present when you are being interviewed - this may give you some moral support but don't let the solicitor talk you into saying anything if your inclination is to refuse to answer questions. Remember that you have the right to consult with your solicitor at any time in private, or to request a solicitor at any point even if you've previously refused one. This might be a good idea, for example, if the interview is not going the way you expected. At least two tapes are made of the interview; one is sealed in your presence and kept sealed in case of later dispute. The other is copied and made

available to the Crown Prosecution Service and the defence. If you are charged, you or your solicitor can request a copy of the tape.

Whether or not to speak to the police at an interview is a hotly debated issue. It is often claimed that the right to silence was abolished by the Criminal Justice Act 1994. This isn't strictly correct - you still have the right to remain silent, but now inferences can be drawn from your silence, which previously couldn't be. For example, suppose you were arrested for shoplifting, and in your interview failed to mention that at the time you were actually at home watching Neighbours with your mates. If you then try to argue a defence of mistaken identity in court, the court could draw adverse inferences from your failure to say anything earlier (ie you only thought up the alibi after the fact).

Generally we recommend that if you are at all concerned that you might say the wrong thing then just say 'no comment, to each question you are asked. It is perfectly OK to do this. The police are trained in interview techniques and may try to lull you into a false sense of security by pretending to be sympathetic to your cause, in the hope that you will drop your guard and give them some vital information. It's easy to get drawn into answering questions you don't mean to, it may also look suspicious if you answer some and not other questions, a firm no comment is much easier to sustain throughout the interview.

You will be asked not only about the action itself but also background questions such as who organised it, how you got there, what you know about other people and so on. Whether you answer questions about your own actions is of course entirely up to you, but on no account should you talk about what other people have done, or mention any names at all, in any context.

Another way out of the dilemma of whether to answer questions is to prepare a careful statement beforehand setting out everything you wish to say about why you are taking the action. You can carry it on the action with you and then at the interview you can tell the police that you'll read out your statement but don't wish to say anything beyond that. This should prevent the 'you didn't tell us about your defence at the time' problem, at the same time as avoiding being drawn into answering questions you'd rather not answer. If you're not allowed to read the statement, you should state clearly that you wish to read it out and are being prevented from doing so, and then insist on your right to have the whole tape played, or the transcript read out in court) so the court is clear that you wished to say something but were not allowed.

## 11. Length of detention

You should reckon on an absolute minimum of three to four hours in custody, but it could be much longer, and it's probably unwise to risk arrest if you have any urgent engagements that day. A senior officer must review your case six hours after you first arrive at the station, and decide whether there are grounds for your continued detention. If s/he decides that there are such grounds (and in practice, this is basically rubber-stamping), you can be held for another nine hours before another review takes place, and so on for a total of up to 24 hours where you have been arrested for a relatively minor offence that can only be tried in the Magistrates court.. If it's a more serious or 'indictable' offence (ie the offence is an 'either way' offence or must be heard in the Crown court eg criminal damage or theft) the maximum period of detention is 36 hours. You must either be released or charged before the time limit (24 or 36 hours) has expired. The police must apply to a magistrate if they wish to detain you further without charge.

In general, you might expect to be held for between four and twelve hours - however, it must be stressed that these are very rough figures and there are no certainties, so come prepared for a long stay! The police are under a duty to conduct any investigation with 'all due expedition' - ie as rapidly as reasonably possible. You can therefore make representations to the inspector who conducts the reviews regarding any undue delay. You can ask for any representations or concerns to be recorded on the custody record (see below). One reason for delay may be the requirement that prisoners have an appropriate rest period (8 hours) which might mean, for example, that the police will not start an interview at midnight, but may put it off until the morning.

## 12. Getting out

Sooner or later, the police will do one of six things with you. The possibilities are:

- a. They will charge you with an offence.
- b. They will ask you to accept a caution.
- c. They will issue you with a formal warning.
- d. They will bail you pending enquiries
- e. They will report you with a view to prosecution
- f. They will release you without charge.

### a. Charged with an offence

This means that the police believe that they have enough evidence against you to have a reasonable chance of conviction in court. The offence with which you are being charged will be read out to you and you will be asked if you have anything to say.

What you say must be read out in court so this is another opportunity for making a statement about the purpose of the action if you wish. You cannot be asked any more questions about the alleged offence once you have been charged with it. Once charged, the police will decide whether or not to bail you (see section 16).

### b. Caution

This is sometimes used for more minor offences and where the person concerned does not have already have a criminal record. It is more commonly used for children (under 17) than adults. It is supposed to mean that the police believe there is sufficient evidence to convict you in court, but will not ask for you to be prosecuted if you admit your guilt by signing a caution. However, it is not uncommon for people to refuse a caution and then not be charged with the offence, which suggests that the police didn't have enough evidence against them and therefore should not have been trying to caution them at all. Bear this in mind when you decide whether or not to accept a caution; however, you could be unlucky and still be charged if you refuse. If you're anxious to avoid court for whatever reason, it may be an idea to accept it. Although not a conviction, a caution does constitute part of your criminal record. If you're asked only to disclose convictions, eg by a prospective employer, then there is no need to declare the caution. A caution will come up on an 'intermediate' level Criminal Records Bureau (CRB) check (necessary for some types of employment). See our briefing 'The Impact of Arrest and Criminal Convictions' for more information on disclosure of convictions and CRB checks.

### c. Formal warning

A formal warning is a record of your offence - which you have to admit to by signing a form - which is held on record only at the police station at which it is issued. It does not constitute a criminal record and is disposed of if you do not come to the attention of that police station again within three years. If you do end up at that station again, the police will take the formal warning into account when deciding what action to take against you subsequently.

### d. Release on bail pending enquiries

If the police have not yet decided whether to charge you with an offence you might be released on bail pending enquiries. You will be released from the police station with an obligation to return to the same police station, usually after about 4 weeks. For ex-

ample, the police may not have had time to take all the statements they require from witnesses in order to make a decision whether or not to charge you, or they might require advice from the CPS (Crown Prosecution Service) before making a decision. If the offence can only be dealt with in a magistrates court (ie a less serious offence), charges must be brought within six months of the alleged offence. If the offence is more serious or 'indictable' (ie it can or must be tried in the Crown Court), there is generally no time limit on bringing charges.

There is also a power to impose bail conditions when you are released on bail pending enquiries, see section 16 for more details. It is a criminal offence, punishable by a fine, imprisonment or both, not to return to the police station when required.

### **e. Being reported**

This means that the police haven't decided whether to charge you or not; they will send a report of the alleged offence to the CPS, who will make a decision on prosecution. Time limits on bringing charges are the same as if you're released on bail pending enquiries (see above). If a decision is made to charge you, you will receive a summons through the post requiring you to attend court. The police do not have the power to impose bail conditions if you're reported.

### **f. Release without charge**

This is just what it says - the police decide there's not enough evidence against you and release you with no further action. Being released without charge is not at all uncommon for activists; very often there is no reason to arrest you at all, but you will be arrested on some dubious pretext and left to cool your heels for a few hours, simply as a means of getting you out of the way. Before you are released all your property must be returned to you, even if the police think it has been used to commit an offence. Sometimes they may try to hang onto it - don't let them get away with this.

## **13. Photographs**

The police can take your photograph at any time for evidence gathering purposes. If you are arrested the police will take your photograph sometimes with your arresting officer, either before they put you in the van or at the police station. Your consent is not required and if you refuse to co-operate they can and will use 'reasonable force'.

## **14. Fingerprints**

If you are arrested for a recordable offence, essentially any offence punishable with imprisonment, but

also a few others like disorderly conduct and breach of sections 12 and 14 of the Public Order Act 1986, (which covers pretty much everything you might be charged with, except highway obstruction and breach of the peace), the police have the right to take your fingerprints, without your consent. There's no need to co-operate with fingerprinting, but the police will use 'reasonable force' if you don't.

Your fingerprints can also be taken before you have been arrested, **but** only by a constable who has reasonable suspicion that you are committing, have committed or have attempted to commit an offence and you have refused to give your name and address or they believe you have given a false name and address.

Your prints will be added to the national fingerprint database, and will also be subject to a 'speculative search' (ie comparing them with unidentified fingerprints found at scenes of crime to see if they can nail you for anything else as well).

## **15. DNA samples**

DNA samples can be taken without consent from anyone arrested for a recordable offence. Usually this takes the form of a mouth swab but sometimes they may pull hair out of your head instead. They are allowed to use 'reasonable force' to take a DNA sample if you refuse to co-operate. They may also wish in more serious cases to take samples such as blood or scrapings from under your fingernails, which they will use as forensic evidence to link you to the scene of the 'crime'.

It's no longer possible to have your photo, fingerprints and DNA sample destroyed if the charges against you are dropped or you are acquitted. They are now retained on the police national database.

## **16. Bail**

If you are charged with an offence, the police will have to decide whether to grant you bail (ie whether to release you from custody pending your court case). There is usually a right to bail, but there are a number of circumstances where the police may refuse bail. These include a belief that you may not turn up at court (eg if you have not turned up in the past or if they are not satisfied with the address you have given); their belief that you would commit further offences, (eg if you already have a criminal record); that you are already on bail for something else; or that they think that you feel so strongly about the issue that you might take similar action again.

If you are released on bail you may have bail conditions imposed on you such as staying away from

the site where you were arrested, or sleeping at your home address each night. If you don't agree to these conditions, you probably won't be released but will be held in custody and taken to the next sitting of the local court (usually the next day unless it's a weekend in which case you'll have to sweat it out in the cells until Monday) where you will be able to argue that the bail conditions the police wish to impose are too harsh. If you decide to accept the bail conditions imposed by the police you can still challenge them at your next appearance in court.

When you are bailed you will be told where and when to appear in court (or to return to the police station, if you haven't been charged but are bailed pending further enquiries). You will be asked to sign a form agreeing to attend at the time stated. If you refuse to sign the form then you will not be released. Failure to appear in court or return to the police station at the appointed time is an offence which when they eventually catch up with you can lead to a fine, imprisonment or both.

If the police decide that you should not be granted bail at all, they will take you to the next sitting of the court and the CPS will make a case to the magistrates as to why you should not be released, and you or your solicitor will be able to put forward reasons why you should be given bail. If their decision is that you should be remanded in custody, you'll be taken to the nearest prison until your trial.

## 17. Custody records

As soon as the custody officer has authorised your detention, s/he is obliged to start a custody record on you. This is a form which details everything which happens to you whilst you are in police custody and includes a list of your property, the reason you are being detained, whether you seek legal advice or not, times of meals served to you, and so on. You have a right to a copy of your custody record once you are released, whether or not you are charged; this right lasts for 12 months from release.

## 18. What to take on an action

If you're thinking of doing something which carries a risk of arrest, however small, it's good to be prepared for the time at the police station, to make your life as comfortable as possible. Even if you're not thinking of risking arrest, it may be good to have these things with you anyway as there's probably no such thing as a 100% risk-free action.

Recommended articles include:

- A book (or three) - you may be on your own in a cell for many hours.

- A notebook (not spiral bound) and pencil (you're more likely to be allowed to keep a pencil than a pen) - it's useful to write down what you can remember of the action and arrest at once. If your notes are made straight away, you should be allowed to refer to them in court in the same way as the police do. But be careful what you write!

- Toilet paper - there's rarely any in police cells.

- Food and drink in shop bought sealed containers, no glass bottles or metal cans, especially if you have special dietary requirements.

- Spare clothes - it can get very cold in the cells.

- A toothbrush (in case of a long stay, and it gives the police the chance to make jokes about you having come for a holiday).

## 19. What not to take

The police or Special Branch are interested in all 'political' action and would enjoy getting their hands on your address book, diary, list of people you met at a gathering last week. Don't give them the pleasure - leave it all at home. Likewise don't have anything with you which shows that you've been preparing for the action, or anything which mentions future actions or other groups - essentially, leave anything personal or political behind. If you usually carry a penknife, make sure you leave it behind as the police could conceivably construe it as an offensive weapon. In certain circumstances you could have the film from your camera removed and developed by the police, so make sure there are no incriminating pictures on it.

**We have tried to be as accurate as possible.**

**However, it would be impossible to include every point and issue in a short briefing like this. If you are in any doubt about a point, please ask us, and if we can't answer your question we will try to refer you to someone who can.**

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