# Trial in the Magistrates' Court.

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NOTE THAT THIS BRIEFING IS A GUIDE TO PROCEDURE IN THE MAGISTRATES' COURT ONLY.

(Crown Court procedures are broadly similar but with some important differences - we would advise you to seek advice if you are in Crown Court).

## 1. Which court will I be tried in?

Every offence falls into one of three categories:

* Summary: can only be tried in a Magistrates' Court.

* Indictable: can only be tried in a Crown Court (jury trial).

* Either way: can be tried in either court.

a. Summary trial: Trials for most minor arrests arising from direct action and demonstrations will take place in a Magistrates' Court. These courts hear a large percentage of all cases in Britain, and the Crown Prosecution Service (CPS) will usually do their utmost, except in very serious cases, to keep "political" cases out of Crown Court. They will often go to the extent of reducing charges from indictable to summary / either-way offences. Most cases are heard by "lay" (unqualified) magistrates. They are supposedly ordinary members of the community who are not paid for their services, and have little legal knowledge, though they are advised on law by the clerk of the court (a qualified lawyer). They usually sit in threes, or occasionally twos. Sometimes cases may be heard by a single district judge.

b. Trial on indictment: There are few offences which activists may be charged with that can only be tried in the Crown Court, with the exception of "conspiracy" to commit offences.

c. Either way offences: These include criminal damage over £5000, going equipped to commit criminal damage, and many other offences. You will first appear in front of magistrates. They have to decide whether the case is suitable for summary trial. If they decide it isn't (they decide that it's too serious to be heard in a Magistrates' Court), the case will be sent to Crown Court. If they decide the case is suitable, the defendant can accept this or insist that the case goes to Crown Court.

The government on at least 2 occasions have attempted to take away the right of the defendant to choose to go to the Crown Court, leaving it entirely with the magistrate to decide. The idea behind this is quite simply to save money, as Crown Court trials are much more expensive than magistrate hearings. However, on these occasions the proposals have been defeated in the House of Lords. Labour had proposed instead to increase magistrates' sentencing powers from 6 to 12 months, and to introduce a new system where defendants can ask for an indication as to what sentence they will receive if they plead guilty.

Most people choose Crown Court when given the choice, on the basis that you are more likely to get a sympathetic hearing from 12 ordinary people on a jury than from three probably very pro-establishment magistrates. Factors to consider in making your choice include:

Magistrates' Courts advantages:

- If you intend to plead guilty, you should keep your case in the Magistrates' Court, where you are likely to get a lower penalty.

- Your case will most likely be heard sooner.

- Procedures in court are simpler.

- If convicted, your sentence and any court costs are likely to be lower than in Crown Court.

- The venue may be less intimidating, especially if you intend to represent yourself.

Magistrates' Courts disadvantages:

- There's a much lower rate of being acquitted (found not guilty) than in Crown Court.

- Magistrates are less likely to accept "political" defences than juries.

- Magistrates may well be biased against activists belonging to on-going campaigns that have caused disruption to the community (the SNGP and SHAC campaigns as examples).

- Magistrates have no legal training (unless your case is heard by a district judge) and often do not understand the law.

- Magistrates may get matters "out of proportion" and could possibly impose larger penalties than the Crown Court would in a similar case.

- If you are acquitted in a magistrates' court, the prosecution has the right to lodge an appeal on a point of law. If the appeal is successful, you will be convicted and sentenced.

- The legal procedures are less "sophisticated". For example, if there is an argument about whether certain evidence (e.g. evidence of your previous convictions) is admissible in court, then the magistrates themselves will decide if it is admissible. Even if they decide it isn't, the fact remains that they've already heard it and may be influenced by it, whether consciously or not.

- The Magistrates' Court has limited powers to ensure disclosure of evidence by the prosecution compared with the Crown Court.

Crown Court advantages:

- Much higher acquittal rate.

- Juries are more likely to accept "political" defence and less likely to believe the police.

- If you are acquitted and the CPS appeals - and wins - on a point of law, your acquittal cannot be overturned.

Crown Court disadvantages:

- Crown Court cases usually involve many more hearings, so you will be required to travel to court more times, at your own expense.

- Your case will drag on much longer - it may take up to a year or even longer to reach trial.

- Your trial will be longer and more complicated, and require more work if you are representing yourself.

- If convicted, you are likely to get a higher sentence and court costs than if your case was heard in the Magistrates' Court.

Before you make a decision, you are entitled to be given a summary of the prosecution case against you ("advance disclosure"), which may influence what you decide to do. The worst thing you might do would be to plead “not guilty”, ask for the case to be heard in the Crown Court, then change your mind and plead “guilty”. You will then be sentenced in the Crown Court without having had the advantages of having a trial there.

Even if you choose to be heard in the Magistrates' Court, the magistrates can send your case to the Crown Court for sentencing if they feel their sentencing powers are in sufficient. This, however, is unlikely except in very serious cases.

**2. Pre-trial hearings**

a. First hearing (plea hearing): When you have been charged and released on bail from the police station you will be given a date to attend court. This will usually be the next 2 weeks. If you are not sure by then how you wish to plead, you can ask for an adjournment. A good reason for this might be that you want to consult a solicitor and have not had enough time to do so. The court may allow an adjournment of one or possibly two weeks, especially if there has been very little time to prepare your case.

If you plead "not guilty" your case will be adjourned for a pre-trial review. If you're pleading "guilty", you will often be sentenced straight away, unless it's a serious offence. In this case the magistrates may want you to return for sentencing. You might want to object to this as it's just more hassle - try saying you can't afford to come back again.

b. Pre-trial review: This is the hearing where details of the trial are decided - in very minor cases, the courts may not bother with this hearing. Each side will be asked how many witnesses they want to call and the court will decide how many days should be set aside for the trial. It's also a chance to ask for any documents you might not have been given and to tell the court if you're going to need special facilities for the trial (e.g. a video recorder or slide projector).

A date will be set for the trial. Make sure you have a list of "dates to avoid" in advance of going to court and have good reasons why you can't make those dates. Ensure you know of any dates that your witnesses cannot attend court as well, with reasons. It's a lot harder to get a court date changed once it has been set.

**3. Trial procedure**

a. Prosecution opening speech: The prosecutor will briefly outline the case against the defendant(s) and set out the evidence that will be called during the trial.

b. Prosecution witnesses: Eye-witnesses to your alleged crime will be called by the prosecution to tell the court what they saw. These will be followed by each person's arresting officer and any other officers at the scene. They will be questioned by the prosecution solicitor first, describing the circumstances surrounding the arrest and bringing up anything you may have said at the time of arrest or when charged. If the police wish to refer to their notes (which they usually do) they will usually be given permission to do so provided the notes were made soon after the arrest and while the incident was still fresh in their mind (which of course they always claim is the case).

The prosecution are not allowed to ask leading questions in order to get the evidence they need. For example they may ask: "So after you had told Mr. Smith to leave the area, what happened next?" but they cannot ask: "So after you told Mr. Smith to leave, did he punch you in the face?" This would be a leading question, as it would hint at the desired answer to the question rather than allowing the witness to reply in their own words. You are entitled to object if the prosecution start asking questions like this, although your solicitor will do this if you are represented.

There may be other witnesses relevant to the case - someone from a company whose property was damaged, council officials, etc. depending on what the alleged crime was.

c. Cross-examination of prosecution witnesses: When the prosecution has finished examining its witnesses you will then have the chance to cross-examine them. You may wish to question them in more detail regarding the circumstances of your arrest and what you said at the time. Unlike the prosecution you are allowed to ask leading questions. For example the police may deny that you said anything at the time of your arrest. You may reply to this something like "Isn't it true, officer 517, that I said that I did not hear the warning at the time of my arrest?"

d. Prosecution re-examination of its witnesses: When you have finished cross-examining, the prosecution has a chance to clarify any points which may have arisen as a result of the defence questioning. The magistrates are also entitled to ask questions to clarify any points which have arisen.

e. Submission of no case to answer: This is optional, but at this point any or all of the defendants have the chance to make a submission that there is no case to answer - that the prosecution has failed to produce enough evidence to prove their case. If the magistrates agree to this, the case will be dismissed. This is uncommon, but possible - usually only when there are clear inconsistencies in the prosecution evidence. If you are representing yourself, be ready to get up and say that you wish to make a submission as they may just try to charge straight on with the case.

f. Defence witnesses: Normally each side is permitted to make only one speech - the prosecution makes an opening speech, and the defence a closing speech. If, however, you want to say a few words outlining your case before you call your witnesses, you'll probably get away with it. There are broadly four types of evidence:

*The defendant's evidence*: If you (the defendant) have decided to give evidence yourself, you always go into the witness box before any witnesses you might be calling. Before you give evidence you'll be asked to take the oath (put your hand on a religious book and swear to tell the truth). For those not of a religious persuasion, you're allowed to affirm instead - reading a statement from a card promising to tell the truth.

If you are represented, your solicitor will ask you questions, if you are representing yourself, you can give a kind of statement of your side of the story or can be questioned by any co-defendants. Unlike the police, you will not usually be allowed to take any notes into the stand with you. Magistrates always like you to confine yourself to the circumstances of the arrest but you can usually manage to bring in other

issues by relating them to what happened on the day (e.g. "I was sitting on the road thinking about all the animals who would be poisoned to death in the laboratory that day.")

*Witnesses to fact*: These are people who were there when you were arrested and saw what happened, or can provide some other factual information like an alibi. Note that witnesses to fact are not allowed in the courtroom before their evidence is heard. If they're in court during the early part of the trial, they won't be allowed to give evidence. You cannot ask leading questions of your own witnesses.

*Expert witnesses*: These are people who are an expert in their field either by virtue of academic qualifications or because they've studied the subject extensively. Unlike witnesses to fact, who are allowed only to say what they saw/heard, expert witnesses are allowed to state their opinion on the issue. The prosecution is likely to object to most expert witnesses and you should have arguments ready as to why they're relevant to your case. If you're calling experts, you must give the prosecution a statement from them, outlining what they're going to say at least a week before the trial (ask a solicitor for the appropriate form). If you fail to do this, it's likely your experts will not be allowed.

*Character witnesses*: These are the last to be called. Their function is basically to say what a good upstanding member of the community you are in order to try and influence the court in your favour. It might be worth calling a character witness but they should be of good character themselves ("good character" in this context meaning having no criminal convictions) and obviously the more respectable they look, the better. Be warned that if you produce a character witness, the prosecution then has the right to raise any previous convictions you might have, which otherwise can't usually be mentioned until you're convicted. If you have no criminal record, this isn't a problem but for those with criminal records, character witnesses are usually best avoided.

*Section 9 statements*: If any of your witnesses can't come to court in person, you can submit what's called a "Section 9" statement from them (forms available from solicitors), to be read out in court. However, a Section 9 statement can only be read with the consent of the prosecution, who may well not agree as it means they don't have the chance to cross-examine the witness. Likewise, the prosecution can ask to use a Section 9 statement for their witnesses - you don't have to agree to this and can demand that the witness come to court. Whilst it's your right to have all the prosecution witnesses present in court, the magistrates will not look kindly on you if you insist any on witnesses being there who you have no intention of cross-examining.

g. Cross-examination of defence witnesses: The prosecution can cross-examine each defence witness in turn. In terms of cross-examining you, the prosecution will usually want you to restate what happened at the time of your arrest (even if you've just said it all in your own evidence) to make absolutely certain the court is clear about the facts of the case. They will of course try to trip you up. For example, if you are being tried for breaching a Section 14 order on a demo, and you are claiming that you did not hear the police warning, they will use several techniques to imply that you must have known about the notice - that you saw other protestors receiving the warnings, or that that you had received such warnings before and knew what to expect.

It is not unknown for prosecutors to use the cross-examination to fish for information totally irrelevant to the case. At a trial regarding a demonstration at an Arms Fair, one defendant was asked repeatedly to reveal with whom he travelled to the action, and pressed to give the names of the organisers. This is clearly an abuse of the process and if confronted with questions like this you'd be well advised to turn to the magistrates and ask politely if they could explain the relevance of such questions. If there are any questions you don't want to answer you can refuse outright to do so, but the court is allowed to draw "adverse inferences" from your silence.

h. Defence re-examination of its witnesses: After the prosecution has cross-examined your witnesses, the defence has the chance to ask further questions to clarify anything raised.

i. Defence closing speech: This is the chance for you each to sum up the legal or moral elements of your defence, to highlight the evidence pointing to your innocence, and to invite the magistrates to find you "not guilty".

j. The decision: The magistrates may retire to make their decision. They'll return to the court, ask you to stand up, and announce their verdict. If you're acquitted, you should ask for your expenses to be met - travel to every court hearing, phone calls, photocopies, stamps, travel to meetings with legal advisers, etc. It's worth preparing a list of expenses before the trial just in case - expenses are usually granted but magistrates have discretion not to grant them. If you're convicted, the court will proceed to sentence you.

k. Mitigation: If convicted, and before sentencing, you should be given the chance, if you wish, to make a statement of mitigation - this is to tell the court why you should be treated leniently. People might say that they committed the offence because they were under a lot of pressure at work, their marriage was breaking down, financial problems, or whatever. In political cases mitigation is less obviously relevant - some people use the opportunity to make a final statement about the issue, whilst others feel that it's grovelling to the court and prefer not to say any more once convicted.

## 4. Sentencing

Before each defendant is sentenced, the prosecution reads out previous convictions. These may affect the sentence imposed so people can end up with different sentences for the same offence even if tried together. Courts are required to give credit for a “guilty” plea entered at the earliest opportunity - if you gave a "guilty" plea at the first hearing - and this should be reflected by a reduction of any fine or sentence by about a third.

Sentencing options, in increasing order of severity, are:

a. Absolute discharge: This is a conviction, but the magistrates decide to take no further action against you. It basically means that the court has found you are technically guilty but that you don't have to suffer any further punishment.

b. Conditional discharge: This can be given for a set period of up to two years and basically means that you're being let off a punishment provided you are on your best behaviour for the period stated. If you're convicted of another offence within that period, you will be in breach of the conditional discharge and could be given a further sentence for the first offence at the same time as you're sentenced for the second one.

c. Fine: Used in 80% of magistrates' court convictions. The amount should be linked to your ability to pay, but often defendants are all given the same regardless of their income. You'll be asked what your income is. In the majority of cases, you will have had to fill out a "means form" before the trial began. See below for more information.

d. Community service: The court can sentence you to between 40 and 240 hours. If you do not consent to it you may well get a prison sentence instead. Before the court can impose a community service order they must obtain a "pre-sentence report", which will usually require an adjournment.

e. Prison: Immediate imprisonment is uncommon for minor political offences, unless the defendant has a number of previous convictions. Courts should not sentence someone to prison for the first time if they are not legally represented (unless if you have refused legal representation) and without a pre-sentencing report unless it appears there is no other appropriate way of dealing with the person or they have previously served a prison sentence.

f. Restraining orders and ASBOs: Restraining orders can be imposed on a person if they have been convicted for an offence of harassment. As with ASBOs (which require a further hearing – whereas a restraining order can be imposed immediately upon conviction) the orders will tell you what you can and can't do for a specified period of time – maybe you won't be allowed to attend certain events or enter certain counties, contact specific people, etc.

The maximum period for a prison sentence imposed by magistrates has recently been increased to 51 weeks (from 6 months). Please be aware that the length of time for community service and amounts for fines may well be on the increase too.

## 5. Court costs and compensation

Whatever your sentence, you will usually be ordered to pay court costs. On a guilty plea the usual figure is around £50 - £80. For a trial lasting a day in the magistrates' court the costs could be between £100 and £200. You may also be ordered to pay compensation if you've been convicted of criminal damage or assault. Costs and compensation are pursued in the same way as fines.

**6. Right to Appeal**

If you are convicted you have an automatic right to appeal your conviction and/or sentence. This will take place in the Crown Court and you must apply to them within 21 days of the conviction. The appeal will take the form of a complete re-trial, and will be heard by a district judge and two lay magistrates. Anything said by defence or prosecution witnesses in the original trial can be presented as evidence if there are discrepancies.

An advantage of appealing is that the district judge will be able to understand any technical legal arguments you are presenting. Some cases are lost in the Magistrates' Court simply because the magistrates do not understand the law. Disadvantages are that the prosecution will have had the opportunity to tighten up its case and close any loopholes originally available to you. Prosecution witnesses will know your defence strategy and be able to prepare answers to your questions accordingly. Also, if you lose, you may receive a heavier sentence and the costs will definitely be increased.

If you wish you can appeal against the sentence only (and not the conviction itself) if you feel it was unduly harsh. Again this must be within 21 days of conviction.

**7. Other issues**

a. Joint trials: Having a joint trial does not mean everyone has to bring the same evidence or present the same defence. Each person has to be judged as an individual and each person has to be given an individual verdict at the end. A joint trial offers the advantage that people can offer different defences, but you can all adopt each other's defence so that you get lots of defences for the price of one - that is, each person, when they come to sum up, simply states that they wish to adopt the defences of all the other defendants, and then proceeds to make their own defence. Each person can also question every other defendant's witnesses so a witness only has to be called by one person for everyone to get the benefit of their evidence.

b. Order of defendants: Defendants will usually be called in the order in which they are listed on the court schedule (which seems to be somewhat random). However, it is possible to persuade the prosecutor to bring the cases in an order suiting the defence. For instance, the first person listed may be someone who's never been in court before and doesn't want to go first or the defence put together by the group may work best if people go in a particular order. A word with the prosecutor before the magistrates arrive is usually enough to sort this out - if not, talk to the magistrates at the start of the trial.

c. Getting legal advice: Even if you decide not to have a lawyer to represent you at your trial, you could still instruct a solicitor to help you prepare your case and to represent you at the preliminary hearings, thus taking advantage of their knowledge of procedure, points of law and tactics. You could then "sack"

your solicitor (in the nicest possible way) just before the trial so that you can represent yourself. You may be able to get legal aid for your case, but even if not, solicitors will still give you some free advice.

d. McKenzie friends: Unrepresented defendants have the right to have a "McKenzie friend" in court with them. This person can sit with the defendant, take notes, and offer quiet suggestions, but is not allowed to address the court. This right was established in a case called McKenzie v McKenzie - it's wise to have a copy of the judgment if you wish to have a McKenzie friend. Even if you're confident about your defence, it can be very useful to have someone with you to take notes, leaving you free to concentrate on what's going on. A copy of the court notes regarding McKenzie Friends is included on this site.

e. Enforcement of fines: If you're ordered to pay a fine or court costs, you'll be asked how long you need to pay. You can pay straight away or you might be given a deadline, say 28 days, or in weekly/monthly instalments. If you have no intention of paying, you could tell the court there and then that you won't pay, but they will often give you a deadline, warn you of the consequences and leave it up to you. If you receive JSA they can contact the DWP and take the money anyway (usually £5 a week if you're on JSA).

If you haven't paid up by the deadline, the court will start enforcement proceedings against you. This process varies from court to court, but a typical process might include the following:

- The court sends you lots of letters telling you to pay up, and threatening dire consequences if you don't.

- The fine/costs/compensation are transferred to a bailiff company who will then write to you/visit your home. They will charge you extra costs for doing so. They will be instructed to seize goods to the value of the amount you owe (anything that can be auctioned for money). They do not have the right to force entry, but can push past you if you open the door, or to enter through an open door or window on the ground floor. They can only seize goods belonging to the debtor; otherwise they're guilty of theft. Alarming though all this sounds, bailiffs don't usually try too hard to collect, and often content themselves with a single visit, after which they tell the court they couldn't get into your house, and collect a nice fat fee.

- All else having failed, the court should eventually call you back to a "means enquiry", to account for your non-payment (they may summons you, or issue a warrant for your arrest). Alternatively, the fine may fall into a judicial black hole and never resurface. If you got to a means enquiry, the court will once again ask you about your means; a good answer to this is that your means are irrelevant since you have no intention of paying the fine. The law seems to have changed in recent years, meaning that even if you get sent to prison, you still owe the money upon your release, instead of you “paying off your fine” with a prison sentence.

The whole process of enforcement can take months, even years, which can be pretty frustrating for the determined non-payer. Sometimes it can be speeded up by contacting the court at an early stage, saying that you can't pay the fine (don't say you won't pay it or they won't co-operate) and asking for a means enquiry.

**8. Should I defend myself in court?**

For what it's worth, here are some thoughts:

Disadvantages:

1. Representing yourself can involve a considerable amount of work, and many meetings with co-defendants, even for fairly minor charges.

2. Many people are intimidated by the whole court scene, where you have to stand up and speak publicly in a very alien environment. You might want to visit the court beforehand to familiarize yourself with what goes on, have a McKenzie friend, write out everything you want to say, practice role-playing the trial.

3. Representing yourself means that you usually have to show up to each court hearing, whereas if you are represented you may be excused attendance at some of the hearings. This could be a consideration if the court is a long way from your home. One way around this is to instruct a solicitor to begin with and then dismiss them just before the date of the trial.

Advantages:

1. In most political cases, the chances of acquittal, even with the best lawyer in the world, are at best slim. Given that, there's little to lose, and much to be gained, by representing yourself (on the other hand, if you're charged with a very serious offence which might lead to prison, you may well decide that this isn't the time to represent yourself.)

2. Legal aid may not be granted for minor, non-imprisonable charges like obstruction of the highway, so you might end up paying out a considerable sum to be represented.

3. Representing yourself in court can be very empowering. You're an active participant in the process, rather than simply a spectator who's not allowed to speak except to give evidence.

4. Courts often give unrepresented defendants more leeway to make "political" defences. Solicitors are bound by professional rules that may limit what they're able to say about wider political issues.

We have obviously 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.