



## How the Process Starts

There are three ways a prosecution can start: either you are held overnight and taken to court the next day<sup>1</sup>, or you are released from the police office on an Undertaking or you receive a citation. If you receive a “warning letter” from the Procurator Fiscal saying that he's not going to prosecute you this time (but might next time) then you can't then be prosecuted for that action.

### Receiving a Citation

You can receive a citation in a number of ways. The usual method, if you have simply been released without any paperwork, is for it to be sent by recorded delivery post. If there are problems with that then they may send the local police round to hand it to you personally. You can also be handed the citation as you are released from the police office.

The citation will contain a copy of the “complaint” the Procurator Fiscal (PF — the prosecutor in Scotland) is making against you. It will also include the date of the Plea Hearing (see below), a form which you can fill in and post back if you want to enter a plea by post and a copy of your criminal record. There will also be a page with advice about Legal Aid.

If you are released from the police station without any paperwork and move from the address you gave to the police you should make sure whoever is there will either forward the citation on to you or tell the postman/police that you no longer live there so that the citation will be returned to the PF.

If the PF has been unable to deliver a citation they might ask the court for a warrant, but this is just to catch up with you to get you to court so they can find out your new address and give you a court date. They don't *usually* come looking for you but wait until you show up at Faslane again although some people who have been arrested at other demos have been held on a Scottish warrant and brought here. They have also arrested people on a warrant as they are released from prison.

If the citation has been delivered and you don't show up or send in the reply form then they will also ask for a warrant and will do the same thing as above, although they will view it slightly more seriously as you did know about it.

### Release on an Undertaking

This is where you sign a document in the police office (before being released) agreeing to come back to court on a certain date. In this situation you do not get the actual “complaint” (the charge against you) until you get to court on that day. You can also be given a citation as you leave the police station (see above). The difference is that the Undertaking is a single piece of paper with just a court date whereas the Citation has the full charge, reply form, criminal record, etc.

If you have signed an undertaking then it is an extra offence not to come to court on the specified day. If you can't make it, or live a long way away and would have great difficulty getting here, then you should probably consult a solicitor as soon as possible. (Note that you don't have to sign the Undertaking so if you know in advance you can't come that date, don't sign.) The court hearing that day will be a Pleading Diet (see below).

---

<sup>1</sup> Or held over the weekend and taken to court on Monday if arrested on Friday or Saturday

## Appearing From Custody

If you are taken straight to court (the next working day) then you will still be in custody when you get to court. You should be given a copy of the “complaint” (the charge against you). You have the right to consult with a solicitor before going in to court — if you want to do this make sure you ask as early as possible so as not to be delayed more than necessary. You can either ask the solicitor to represent you in court or just ask them for some advice then represent yourself. Seeing a solicitor at this stage (while in custody) is always free.

## The Plea Hearing

The first hearing in any case is a Plea Hearing or Pleading Diet. If relevant it is also a Bail Hearing. This hearing will not be a trial. They will simply check your details, ask you to enter a plea (“Not Guilty” or “Guilty”) and possibly consider whether you should be on bail or not.

### Bail

The court has three options in terms of releasing someone until the next hearing: They can release you on bail, release you without bail conditions (you will be “Ordained to Appear” at the next hearing) or remand you in prison.

If you have received a citation and plead by post then they can't put you on bail — you have to be present to agree to the bail conditions to end up on bail. Thus, if you have received a citation then you shouldn't be put on bail even if you go along in person.

If you appear on an Undertaking they may ask for bail but you can argue that there is no need. If you appear from custody then you are more likely to end up on bail. Unless you are No Fixed Abode or are already on bail in Scotland or it's VERY serious then you are very unlikely to be remanded — unless you refuse to accept the bail conditions!

If you are put on bail in Scotland then there are a number of standard conditions which are always imposed. These are that you:

- Turn up for all the court hearings in the case (unless excused attendance).
- Do not commit another offence while on bail.
- Do not interfere with witnesses or obstruct the course of justice.
- Make yourself available for any reports the court has ordered.

(In practice, only the first two are usually relevant in our cases.) The PF can also ask for special conditions, such as not enter a certain area. You have the right to argue against any such conditions, or the need for bail at all. Once the court has decided to put you on bail and on what conditions you will be asked to agree to them. If you don't you will be remanded (sent to prison until the trial). If you are on bail and break any of the conditions then they can add an extra charge of Breach of Bail.

### Pleading

You will also be asked at this first hearing to enter a plea — “Not Guilty” or “Guilty”. If you want to challenge the validity of the charge in law, or are on an Undertaking and have only just got the complaint and want to consult a solicitor before pleading, then you can ask for the case to be Continued Without Plea to another date. Otherwise you would enter a plea. If you are on a citation then you can plead by post by filling in the attached form.

If you are jointly charged with one or more other people we suggest you get in touch with them so that you know which of you is pleading guilty or not guilty, and whether any of you wants a solicitor. Your Legal Support Team should be able to help put you in touch with co-accused.

**Keep copies of all documents you receive from or send to the court. You may need them at a later date. You may also wish to send some or all such letters by recorded delivery.**

## **Pleading Not Guilty**

If you have a citation then all you have to do is fill in Section 1 on the reply form and send it back. If there are extra things you want to ask the court you can add a covering letter.

These could include:

1. Tell them what dates you are not available to appear for trial. They don't have to take any notice of this but usually do. Trials are usually set for several months after the pleading date.
2. Ask to be excused attendance at an Intermediate Diet. (All Scottish court hearings are called 'diets' — don't worry, they won't ask what you had for breakfast and count the calories!) An Intermediate Diet is a hearing a week or two before the trial diet to check that both you and the PF are ready to go to trial. It means if you are not ready or there is a problem with one of the witnesses, etc. then they can change the trial diet and not have the witnesses turning up unnecessarily. In practice the PF still regularly asks for adjournments on the day of the trial because the police have only just told him/her they can't come. Intermediate Diets usually only take a few minutes and the District Court is usually willing to excuse you attendance at this if you have to travel any distance or most of the time doesn't bother setting them.
3. If you have any special requirements for the court, e.g. that it has disabled access for you or your witnesses or that it has the microphone loop system because you have hearing difficulties. The District Court in Helensburgh is held in the Municipal Building, on the first floor with no lift. If disabled access is required they have to arrange a date when they can use Victoria Halls. Likewise they set up the microphones at Victoria Halls. There is no disabled access to the main courtrooms at Dumbarton Sheriff Court and special arrangements have to be made to call the court in the ground floor annexe. Recently some activists have been arguing that *all* cases should be heard in an accessible court so that *any* member of the public can attend. While Helensburgh District Court has not accepted this when put explicitly they have been accepting requests to have the case heard in an accessible venue without requiring any special justification. However, they have fewer dates available in Victoria Halls so it will mean you have to wait longer for your trial. Also, if you have a lot of dates when you are unavailable and you don't physically need an accessible venue (either for yourself or a witness) then it might be safer to not ask for an accessible court. The dates they currently have available in Victoria Halls are already getting on for six months away and if your unavailability would push it much further back they may decide it's not reasonable --- but they would have to allow the request for an accessible court.
4. If English is not your first language then you can ask the court to arrange an interpreter.

5. You could include your request for copies of witness statements in the same envelope (see page 8 for more on requesting witness statements).

The court will write to you to tell you when your trial date is. They should write to you within a few weeks of the Plea Hearing, although the actual trial date is likely to be 2-3 months away.

## **Pleading Guilty**

You can either do this by letter or come in person. Either way you can make a 'plea of mitigation'. This means you explain the mitigating circumstances of why you did what you are pleading guilty to. You can do this on the form at section 3 or if you want more room add a separate sheet. You can send anything you like really: leaflets, poems, songs, paper cranes, photographs.

If you plead by letter, when your name is called the PF will open your file and read your letter, then pass it to the clerk to read who then passes it to the Justice or Sheriff. No one reads it out aloud but those of us in court can see the reactions. If there are people in court supporting other people, whether from your Blockading Group or another, then it's quite nice for them to have a copy of your letter to pass around among themselves. Talk to your Legal Support Team (who can check with the Legal Working Group to see if there are other groups there that day). You may (or may not) also want to release the letter to your local press.

A word of warning — if in your explanation you say that you don't really think you did breach the peace then the court *can* decide not to accept your guilty plea and set a trial date anyway.

It is up to you whether you want to give details about your financial circumstances. In principle the court will fine you according to your means, although it often seems to rely more on who is 'on the bench' and what mood they are in.

The court can decide that even though you have pled guilty by letter they want you to appear in person for sentencing.

## **If you don't reply**

If you forget to reply in time, lose the paperwork etc. you can phone the PF's office (see page 1) to find out if they have set another date or issued a warrant. You may even hear through your Legal Support Team (if there was another group in court that day). Even if there is a warrant you can arrange with the PF to appear at the court in person on an 'invitational warrant' to sort it out. This means that you are not in custody but handing yourself into the court voluntarily. Often if they have not heard from you they 'Continue without plea' a couple of times to give you a chance to respond.

## **If you move abroad.**

If you leave the country and therefore miss a trial or don't answer a citation the court may well issue a warrant. If you contact the court before the court date to explain that you have now left the PF may well just abandon the case. If a warrant is issued it will sit on the computer for several years. They are not going to send Interpol after you for a Breach of the Peace. It might show up at immigration if you come back into the country, and you might be arrested and brought here for court. If you come back here for another action or camp you may be recognised and arrested. We don't know if anyone who needs a visa to enter the country will be affected by outstanding warrants.

After a couple of years the warrant will be dropped. A warrant for an outstanding fine stays active for longer than a warrant for a missed court appearance.

# So You've Pled Not Guilty .....

## Now What?

If you pled by post then the court should write and give you your trial date. If you were there in person they will not write to you but will just expect you to turn up so make sure you have the date somewhere safe.

If you want a solicitor to defend you and you are eligible for legal aid the application to the legal aid board must be made within 14 days of the plea (although you can apply later in certain circumstances). If you contact a solicitor they will make the application for you.

There are good reasons both for and against being defended by a solicitor.

### Reasons to have a solicitor

- If you are unfamiliar with the court procedure and are worried about when is the right time to say what then they will do it for you. You can still give evidence from the witness box and a good solicitor will give you the opportunity to explain your motives.
- If you are charged with something you didn't do (e.g. violently resisting arrest) you might need the help of a solicitor to get the evidence before the court. They will be more experienced at questioning the police.

### Reasons to represent yourself

- You have a lot more freedom to say things than lawyers do (they can be reported to the Law Society if they go beyond laid down restrictions).
- You can run whatever type of defence you like. You can research lots of good legal arguments or you can just talk common sense or you can even recite a poem.
- If you don't qualify for legal aid it's cheaper.
- Reclaiming the courts for ordinary people is part of the process of making the law accountable.

### If You Decide to Have A Solicitor

Then you need to contact them as soon as possible after you have put in a plea. You can contact them before pleading if you like and they can go to court and enter a plea for you.

We have been through quite a number of solicitors over the years in various campaigns at Faslane ... and without risking being sued all we will say is there have been problems!

The solicitor we are currently using (who IS very helpful and DOES reply to messages) is:

Clare Ryan, 2 Douglas Gardens, Bearsden, Glasgow G61 2SJ. Tel: 07977 000 312

Even if you are represented by a solicitor you need to think about what you want to say when you get the opportunity.

### If You Decide to Represent Yourself

Then think about the kind of things you want to bring out. You can look at the Trident Ploughshares website for examples of defences used in the past. There are also lots of legal documents there that may help you. Don't get overwhelmed by it all. You can keep it as simple as you like. Please feel free to send us any questions you have. We have lots of legal documents and know where to get others and can copy and send them to you.

You should also read the briefing on Representing Yourself and What Happens in Court. It also helps to talk to other people you know who have been in court.

## **Support**

It is always a good idea to have a few supporters in court. This is not an imposition or an extra, but part of supporting each other and being sustainable in our resistance to Trident. It's also always good to show the Courts that we are part of a growing movement. You may even find that there are people who couldn't risk arrest for whatever reason, maybe who couldn't even make the trip the first time, who value the opportunity to contribute in this way.

If someone from the group gets in touch with the Legal Working Group just before the trial we can let you know if anyone else from other groups is likely to be there or if there are plea hearings from other groups to listen out for.

## **Checking the trial is on**

It is a good idea to phone the PF's office a couple of days before the trial to ask if they expect it to go ahead. If they are asking for an adjournment they might agree that you don't need to come. If on the trial day they then want to adjourn for something they should have known about in advance then you can complain that you had phoned and they might drop the case.

# REPRESENTING YOURSELF IN A SCOTTISH COURT

**You may want to refer to the briefing on procedure as you read this section.**

If you defend yourself the Justice<sup>1</sup>/Sheriff usually advises you as you go along as to the procedure. If you are in any doubt ask. Remember just stay calm, take your time. Speak up so that everyone can hear you. (Including your supporters who are behind you — literally!). You have the same rights as the PF and can interrupt if you think something he/she says is irrelevant!

The District Court is fairly informal and you can enter into debate with the Justice (Justice of the Peace — who is usually a lay person, not a trained lawyer). The Sheriffs Court is more formal, but because the sheriff is a trained lawyer they will give more serious consideration to any good legal arguments you may have.

## Gathering information

You may want to go for a full legal defence using every argument you can lay your hands on. You may want to introduce a lot of moral arguments and personal testimonies. Or you may want to keep it simple. Whatever you feel is right for you must still do some preparation. The Justice/Sheriff can refuse to hear evidence if he doesn't think it is relevant. So have a fall back position if what you want to say is not allowed.

## Prosecution Witness Statements

Witnesses against you (usually police) send statements to the Procurator Fiscal before the trial. You can write to the PF and ask him for the names of the prosecution witnesses and copies of their statements. Historically, the Crown's position has been that we don't have an automatic right to copies of statements if representing ourselves. However, Dumbarton PFs have usually given us them. It has often taken a bit of pushing (several letters/phone calls). The times when we haven't got them from Dumbarton have usually been because they didn't have them themselves. The Introduction of the European Convention on Human Rights into Scots Law a few years ago changed this situation somewhat. Our position is now that we **do** have the right to copies of statements. There have been a couple of occasions in other parts of Scotland where we have initially been refused statements and have had to put formal legal arguments — however the Crown has so far always conceded the argument before it was put! If you are refused statements and would like to know more about how to push for them then get in touch with the Legal Working Group. Cases have been adjourned because the PF has promised to send the statements and then has failed to do it or has only done it very near to the trial.

The witnesses can still say things in court that weren't in their statements, but it does give you an indication of who they are and where they fit into the picture. They help you focus and work out what questions you could ask them.

Also the statements let you know if the police are likely to give a completely different version of events to one you have. This gives you a chance to arrange your own witnesses, photos, videos etc to back up your story.

---

<sup>1</sup> Or, in the District Court, sometimes the Clerk

## **Defence Witnesses**

The PF will not allow witnesses who cannot come to the trial to write statements to be read out in the court, because they cannot be cross-examined. You can however present documents to the court as 'productions' for your defence if you give evidence yourself. These can include reports, articles, letters from MPs etc.

You can call anyone who was a witness to the action to give evidence on your behalf.

If you are defending yourself and are therefore not on legal aid your witnesses cannot claim their travel expenses.

We have in the past called expert witnesses to talk about things like the effects of Trident and International Law. The courts were very reluctant to hear them and since the Lord Advocates Reference Opinion was issued we have only tried once and been refused.

If you are found guilty, legally before sentencing you can call character witnesses (if you have no previous convictions).

## **McKenzie's Friend / Note taker**

In English courts it is possible to have what is called a McKenzie's Friend if you are representing yourself: this someone (it can be but often isn't a lawyer) ideally sitting next to you and helping you during the trial — e.g. with paperwork, whispered consultations re examinations of witnesses, moral support, etc. This right is established by the judgment in McKenzie v McKenzie which is an English case is not binding in the Scottish Courts. There was no objection to a McKenzie's friend in Helensburgh District Court at first but after a few instances (some years ago now) of the police identifying the 'friend' instead of the accused the PF started objecting. The court allows a note taker but usually don't let them sit next to you.

There have since been a helpful (although not technically binding) judgment from a Scottish civil court. Furthermore, under the European Convention of Human Rights you are entitled to a fair trial and it is very arguable that someone representing themselves should be allowed an assistant. If you wish to press for an assistant then we can offer some more detailed advice.

# Preparing Your Defence If You Are Representing Yourself

If you are representing yourself then it is a good idea to prepare the bits where you can speak. You can either read things out word for word or have notes to help you. Everyone is different so do whatever you feel comfortable with. Have a look at the Court Procedure briefing so that you can see where these bits fit in. These are all optional. You can go through the whole trial and say nothing — in fact it has been done to make a point!

## Questions to the Police

If you think that they got anything wrong in the evidence they gave then question them on it. If you disagree with what they say make that clear. Say something like *“Can I suggest to you, officer, that you are mistaken about that and what actually happened is this.....”*

You might want to ask them about the general atmosphere at the action or your behaviour in particular.

You can ask why there was a demonstration and had they been briefed before they arrived about what to expect.

## Submission that there is ‘No Case to Answer’

If after the PF has put all the Crown evidence before the court you don't think it amounts to what you are charged with you can say so. It's hard to prepare this bit in advance other than to think about the kind of things you will be looking for in the evidence. At this stage it's not the quality of the evidence that is considered but the quantity. In other words your saying “even if everything the PF and his witnesses have said is true, it's still not enough to show I committed a Breach of the Peace” If the PF has not made out a case that you committed a crime then you can ask the court to throw it out without having to offer a defence.

If you have more than one charge you can submit that there is no case to answer on one charge and still continue to trial on the other charge(s).

In Breach of the Peace (BoP) cases there is an argument to be made about what constitutes a BoP. The cases to be quoted are the High Court Opinion in the appeals of Smith v Donnelly and Jones v Carnegie. (On our website or we can e-mail or post you a copy). If the evidence doesn't show that your behaviour caused someone to be alarmed, in fear or seriously disturbed, or would have done if they were there, then you can argue that there was no BoP. Some of our local JPs and Sheriffs think that just stopping people go about their ‘lawful business’ is seriously disturbing. Sheriffs have accepted that a publicised blockade that everybody locally is expecting is possibly annoying but not disturbing. The Helensburgh JPs do not accept this.

Bear in mind that if your submission is accepted then you will be found not guilty and your trial is finished which means that you don't get a chance to talk about Trident. Some people feel that they would rather risk being found guilty and get the chance to explain why they took part in the action so intentionally don't put in a submission at this stage.

## Your Evidence from the Witness Box.

If you go in the witness box the PF can ask you questions after you have given your evidence. It is your choice whether you give evidence or not. If you don't you still have a chance to sum up but can't refer to anything which wasn't given in evidence under oath or affirmation.

In your evidence you are supposed to give your version about what actually happened on the day in question. The court will not let you make a long speech about Trident. However you can get a certain amount in by explaining that you are 'setting the scene', testifying as to your 'state of mind' at the time, giving 'the facts about how you came to be there'. The PF might jump up at some point and object that your evidence is irrelevant. You can explain why it is and then the JP has to decide whether you can continue. If you are told to confine yourself to what happened then talk about the action but don't be afraid to weave Trident into the facts! Very occasionally a Justice decides that you are not supposed to read your evidence, so be familiar with it in case you need to do it from memory.

You can hand in things during your evidence including: Reports, results of polls, press cuttings, photographs, letters to and from people (e.g. MPs), poems. It is helpful to have three copies — one each for the JP/Sheriff (and the clerk), PF and yourself. If it's something you might want to show to one of the witnesses it's a good idea to have a fourth copy for the witness.

Laughter and tears are also important. Don't be afraid to offer both in your defence.

## **Summing Up**

You get a chance to sum up your defence. This is where you argue why you are not guilty as charged. This (or the No Case to Answer) is where you would put your legal argument.

You should point out any inconsistencies in the PFs evidence and the things that any witnesses said that back up your defence e.g. that your behaviour was not threatening or alarming. You can try to pick apart the wording of the charge. The wording 'disorderly' in a legal sense means doing something as outrageous as laying in a road!. Even if your witnesses say you are a very orderly person you can still be considered disorderly in your actions.

You can quote from other cases but you should have a copy of them with you to show to the court. The High Court Opinion in *Smith v Donnelly* has some helpful bits about what is a Breach of the Peace.

If you base your defence on an explanation of how Trident is illegal then the court will ignore it (or stop you from speaking) because the High Court in Edinburgh has said that Trident is not illegal. We still usually say that we know that Trident is illegal even if the Scottish Courts don't recognise it!

You can add lots of politics and morality into your defence, but be ready to be stopped.

## **Plea of mitigation**

After being found guilty you have another chance to speak. You can give details of your income and the impact a large fine would have on you and your dependants. If you plead poverty you will tend to get a lower fine.

You can stress that your action was an act of conscience and was totally nonviolent.

## Appealing.

You can appeal against the verdict, or just against the level of the fine or both. If you want to appeal you have to lodge your appeal papers with the clerk within seven days so don't waste time! You can get the appeal form from our website.

Fines for a first offence for this sort of Breach of the Peace are usually in the £150-£250 range. If you get more than that it might well be worth appealing against the sentence. Appeals against conviction are unlikely to succeed — the most recent High Court judgment was from a court with 5 judges instead of the normal 3 so they won't go back on it. If you find a new angle then it might be worth appealing but think carefully about whether yours is the best case to take it on — a judgment on appeal then applies to all future cases.

You can always lodge the appeal as the first step is that the JP/Sheriff has to write an account of what happened at the trial and why they convicted you. You can then drop the appeal without any judgments.

## Press Work

The trial and any other legal processes represent a further opportunity to raise awareness of the issue of Trident and nuclear weapons in the media. Think in advance about whether you want to do this. It might be that someone else from your Blockading Group offers to take on doing the media work so make sure they are clear on what you are happy to be said in the press and what you would rather wasn't — including if you don't want to be included in a press release at all.

If you do any press work around your trial then please copy it to the Helensburgh Advertiser (the local Helensburgh paper) on [editorial@helensburghadvertiser.co.uk](mailto:editorial@helensburghadvertiser.co.uk)