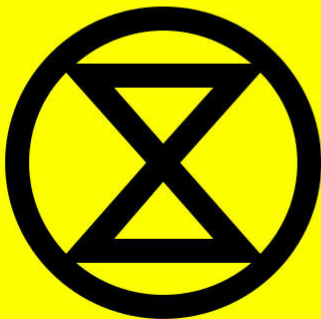


XR LEGAL INFO

As a mutually supporting network we are all responsible for ourselves, and while we support each other as best we can, your actions are your own. It's important to prepare yourself for all eventualities before attending an action (it isn't possible to predict whether you will be arrested or not). Remember, this document is an overview intended to bring things to your attention, and is to be seen as a gateway to further reading.

Links are listed at the bottom of each section.

August 2020



**extinction
rebellion**

ARREST PART 1: PREPARATION

While we support each other as best we can, your actions are your own. It isn't possible to predict whether you will be arrested or not, so prepare yourself for all eventualities before attending an action. This document is an overview, and is to be seen as a gateway to further reading. If you definitely do not want to be arrested, consider volunteering or donating instead.

Before you go

Non-violent direct action is a reasonable and proportionate response to the government's failure to acknowledge the climate crisis emergency and its failure to defend life.

Here are some ways to prepare.



Read the Climate Emergency Document (LS2)

It may help you in court to refer to information you read before taking action. <http://tiny.cc/ls2climateemergency>

Choose a Solicitor

You are entitled to free legal advice at the police station. Know the firm of solicitors you want to use and the police station will call them. Do not use the duty solicitor. (HJA, Birds, EFBW, ITN, Kellys, and Birnberg Pierce)



Pack Carefully

Don't take knives or drugs etc. It may seem obvious but activists do get arrested for possession of similar items.

ARREST PART 2: CONSEQUENCES OF ARREST

Read about the common charges that you might face and make yourself aware of the sentences:
<https://informeddissent.info/frequently-used-laws>

How much could you be fined? What is a typical sentence? And how long is it if custodial?

XR do not contribute towards court fines, court costs, or legal costs.



CRIMINAL RECORD

Arrests can show up in the following places: DBS checks (normally employment related), applications to stay in the UK (visa or EU national), and applications to travel in some countries. The record may not necessarily be a problem, but more reading is highly recommended.



MENTAL HEALTH

The process of getting arrested can be stressful and if you are charged, court cases can add further strain. Take care of your mental and emotional health.



PERSONAL DETAILS

You might be required to give your DNA, fingerprints, and photo for any offence apart from non-recordable offences (e.g. Obstruction of the Highway, or Breach of the Peace).



FINANCIAL

If you don't qualify for legal aid, you will either need to self represent or pay for legal representation. How much is the possible fine? Will you have to pay damages? Take into account travel, court costs, and possible loss of earnings.



Legal Strategy

The legal strategy documents aim to provide you with an overview of how we can turn the criminal justice process (from arrest to prosecution) into an opportunity to advance our strategic objectives - in particular by raising public and political awareness of the climate emergency. While we also refer to some of the risks of action, this document is not a substitute for legal advice. Even if you choose to represent yourself at court after being arrested, it's usually a good idea to take independent legal advice.

The links on the next page are a series of documents we are developing that can help you to support our strategic objectives through the legal process if that's what you decide you want to do - both when self-representing and when working with an experienced sympathetic solicitor.

LS2: CLIMATE EMERGENCY PUBLIC INFORMATION

Try to read this document before taking action. You can then refer back to it to help explain why you did what you did.

<http://tiny.cc/ls2climateemergency>

LS4: EXAMPLE SKELETON ARGUMENT

Courts may ask you to submit a skeleton argument which explains the legal basis of your defence. Even if they don't it can be useful to set out your arguments in writing. This document provides you with an example of how you can argue that established legal principles justify non-violent direct action in response to the climate emergency.

<http://tiny.cc/ls4skeleton>

LS5: EXAMPLE WITNESS STATEMENT

It is not really necessary to call an expert witness about the climate emergency. There is so much documentary evidence about it from government and other sources that if you would like to get relevant evidence before the court, you can do so by preparing a witness statement or an annexe of documentary evidence. This example witness statement provides you with references to materials you could include and an idea of how you might organise them.

<http://tiny.cc/ls5witness>

LS6: EXAMPLE EXHIBIT

Your exhibit should include screenshots of the documents and articles you refer to in your skeleton argument and witness statement. This will help to authenticate your evidence and to bring it to life for the court. If possible, print out colour copies.

<http://tiny.cc/ls6exhibit>

LS7: KEY LEGAL REFERENCES TO SUPPORT A DEFENCE

This document sets out excerpts from previous legal cases and rights protected by the European Convention on Human Rights, which may help you to advance a defence.

<http://tiny.cc/ls7references>

LS8: YOUNG PEOPLE, SCHOOL STRIKES AND NON-VIOLENT DIRECT ACTION

This document focuses on the legal context specific to action taken by those under 18 years old.

<http://tiny.cc/ls8youth>

Personal preparation for an action day.

We hope that taking action will be a very empowering experience. If you are part of an XR group then there will be group preparation. This document is aimed at each XR Rebel as an individual.

We believe that an important part of being empowered is making informed decisions, and urge Rebels to get to know the **5 Key Messages** and attend the **Know Your Rights Training** (links below).

We never know how an action will be policed, but it's up to us to be as smart as possible. We also recognise that the police often use their powers in a discriminatory manner to target Black people, people of colour, LGBTQ+, and disabled people (to name a few) due to institutional racism, sexism, transphobia, and ableism within the police force. Being informed about these issues helps us to rise up together.

IMPORTANT LINKS:

INFORMED DISSENT – 5 KEY MESSAGES

<https://informeddissent.info/5-key-messages>

SIGN UP FOR 'KNOW YOUR RIGHTS' TRAINING

<http://tiny.cc/xr-kyr-2020>



BRIEF DEFINITIONS:

ARREST

Getting arrested for something – that’s what happens on the street when the police arrest you. For example, the police may arrest you for criminal damage and then take you to the police station. At that point, there’s only an initial suspicion that you have committed criminal damage. Read more about what happens when you are arrested below and here: <https://informedissent.info/being-arrested>

CAUTION

You might be offered a caution at any time after arrest. Generally it is recommended that you do not accept a caution (nor is it recommended to accept a Community Resolution Order – similar to a caution but less serious).

CHARGE

Getting charged with something is what happens after your arrest, when you are being released from the police station, or even days, weeks, or months after your release. Getting charged means that the police have decided that they won’t just let you ‘get away’ and that they have reasonable grounds for their initial suspicion. You will be given a court date to appear in court and it’s up to you to make sure your solicitor (if you have one) knows that date if you want them to attend the hearing.

Often, people get arrested for one thing and then get charged with something else. You can also be charged without being arrested. If the police have your name and address they may choose not to arrest you, and you will receive a summons through the post.

CONVICTION

Being convicted is what happens when you’re found guilty by a judge in court. The police cannot convict you of a crime.

VENUE

Depending on what you are charged with, your case could be tried in the Magistrates Court or the Crown Court. ‘Summary only’ offences are tried in the Magistrates Court and will be heard by a lay bench (generally retired volunteers) or a District Judge sitting alone. You will only be entitled to have a trial before a jury if you are charged with a more serious offence: ‘either way’ offences can be tried in either venue, and ‘indictable only’ can only go to the Crown Court.

Read before you go.

As part of XR's aim to turn the criminal justice process (from arrest to prosecution) into an opportunity to advance strategic objectives - in particular by raising public and political awareness of the climate emergency - please read the links below.

If you read the **Climate Emergency document (LS2)** and Dr James E Hansen's **letter 'To the General Public of the United Kingdom'** before taking action, it may help you later in court to reference these to explain your motivations. The documents are works in progress but you can find the most up to date versions at the links below.

LINKS:

LS1: Legal Strategy Overview

<http://tiny.cc/ls1strategy>

LS2: Climate Emergency – What you need to know

<http://tiny.cc/ls2climateemergency>

Dr James E Hansen's letter

<https://planb.earth/wp-content/uploads/2019/03/Hansen-letter-to-general-public.pdf>

Know the name of the firm of solicitors you will ask the police station to call.

If you get arrested and are taken into custody, **you are entitled to free legal advice at the police station.** Give the name of the law firm you want to use and the police station will contact the Defence Solicitor Call Centre, who will call them. Know beforehand which firm you want to represent you and tell the police the name of the firm – you don't have to know the phone number or individual solicitor's name.

Do not use the duty solicitor. Even if you are in a remote area, an experienced protest solicitor can instruct a local firm to act as their 'agent' and this is preferable to asking a local solicitor who is not specialised in protest law to attend the police station.

NB: during the Covid pandemic some solicitors may not attend the police station in person but are dealing with clients remotely, and are present at police interview by phone or skype. While the current situation is ongoing, XR recommended solicitors can deal with cases in rural areas over the phone rather than instructing local agents.

If you are charged, you might then be entitled to legal aid for the court case (see below for more). You can use the solicitor you already instructed at the police station or choose a different one, however, once you've been granted legal aid for a particular solicitor, it can be very difficult to transfer to another. So think carefully about which firm you want to contact before applying for legal aid.



If you are London based, many XR activists are already using, HJA and ITN, Birds, and EFBW. Please refer to the XR regional bustcards. If your area doesn't have a bustcard, Kellys is Brighton-based but works across all of England and Wales and has experience in instructing a local agent if needed. If you are looking for a local solicitor give Kellys a call before your action to ask them if they can cover your area.

Laws frequently used against protestors.

Below is some information about the common charges that you may face. Make yourself aware of the sentences. You'll need to know: how much the possible fine is; what a typical sentence is; and how long could it be if custodial.

Arrest is only the first step in a process. Many arrests are not taken any further - in the past roughly 10% of people who were arrested were actually charged. Often, for a first time minor offence committed at a protest, the sentence will be a conditional discharge. Though note the variation below in the case of individuals who are arrested multiple times.

Laws frequently used against protestors include: Aggravated Trespass; Obstruction of the Highway; Criminal Damage (including going equipped with items to commit criminal damage); Obstruction of a Police Officer (people can be arrested for this fairly frequently, but it's not often that the CPS decides to prosecute for this offence); Resisting arrest; Threatening words and behaviour (or disorderly behaviour); Violent disorder and Affray; Breach of the Peace (not a criminal offence).

<https://informeddissent.info/frequently-used-laws>

SECTION 12 AND SECTION 14

<https://informeddissent.info/conditions-on-protest>

Public Nuisance has begun to be used by the police against protestors relatively recently. It can be tried in either the Magistrates or the Crown Court (it is known as an "either way" offence).

What we do know is that when these cases go to the Crown Court there is a risk of higher sentences as well as expensive and lengthy court cases which can last months.

If you want to lower the risk of public nuisance being used against you, then you might want to think about the following options: leave an action if police are present; don't take a role where you look like you are organising; try to be seen to minimise the impact on the public. You can always watch from a safe distance until the coast is clear and then rejoin. Although the risk can be minimised, arrest for Public Nuisance on protest actions remains a current possibility and so it's about making informed choices. It's worth noting that necessity defences were ruled inadmissible in the most recent Public Nuisance protest case, and so perhaps this charge is the least favourite for attempting to force the courts to listen.

It's also worth noting that if you have already been arrested/convicted (even if for another offence, such as aggravated trespass or criminal damage) this can count against you if you are arrested again. If you were convicted of offence 1 and then of offence 2, your sentence can also be greater.

NB: XR do not contribute towards court fines, court costs or legal representation.

LINKS:

FREQUENTLY USED LAWS

<https://informeddissent.info/frequently-used-laws>

TABLE OF COMMON OFFENCES

<https://bit.ly/2UwYc2I>

SENTENCING COUNCILS FULL LIST OF OFFENCES (MANY NOT PROTEST RELATED)

<https://www.sentencingcouncil.org.uk/offences/>

SENTENCING AND CIVIL DISOBEDIENCE BY NETPOL

<https://netpol.org/wp-content/uploads/2015/04/sentencing-on-conviction.pdf>

Cautions and Community Resolution Orders.

In general the advice is not to accept either a Caution or a Community Resolution Order, especially if your intention is to have your say in court. However, always talk to an experienced protest law solicitor about your choices. Do not follow advice from a duty solicitor to accept a caution.

A caution is an admission of guilt and will stay on your record for 5 years. It can affect visas, travel, and job applications. Often the police offer cautions in 'Public Order' cases when the evidence they have is weak. It's an easy result for them: an admission of guilt without having to present evidence against you.

However, there are specific instances when you might want to think about accepting a caution, such as you committed a fairly serious offence and the caution allows you to walk away without having to go to court, and that may be in your best interests. Or perhaps there are personal circumstances that mean you want to get the process over and done with and don't mind having a caution.

Motivations to accept a caution are that it is a quick and cheap route to end the legal process and removes additional uncertainty. You will have been arrested and can explain to the police at the station why you did the actions that you did, but your reasons won't go any further than this. You do have to admit what you have done though. Remember to be very careful with what you say about other people.

Community Resolution Orders Summary.

It's like an apology. You have to make a clear admission of guilt. It is not classed as a conviction (so no criminal record), but can be taken into consideration if further offences are committed and may be recorded and accessible for police information. These tend to be recorded locally at the police station where you were taken and may still show up on an enhanced DBS check. They are primarily for first time offenders who admit guilt, and the victim's views are taken into account.

LINK:

INFORMED DISSENT ON CAUTIONS:

<https://informeddissent.info/cautions-and-community-resolution-orders>



Notes

Having a record.

Is it okay if you get a record that shows up in these places:

- In DBS checks (normally employment related)
- When applying to stay in the UK
- When applying to travel to some countries abroad.
- The record won't necessarily cause a problem, but reading more about records is highly recommended.

Employment.

If you are charged with an offence and plead not guilty you will be required to attend court for 3 - 10 days typically, but not all consecutively and so you should be prepared to take that time off work.

Some jobs, including those in the medical, legal and teaching professions, or if you work in the care sector, require an enhanced criminal record check (DBS check - previously known as CRB). Any work that involves contact with children also requires the enhanced DBS check, including being the cleaner or bus driver for a school, for example. Please read the link below to see if yours is one of the jobs that requires an enhanced check.

<http://hub.unlock.org.uk/wp-content/uploads/A-Z-of-specific-job-roles-and-eligibility-for-criminal-record-check.pdf>

<https://www.gov.uk/find-out-dbs-check>

If your job isn't included in the links above, then after a certain amount of time (known as a 'rehabilitation

period'), you do not need to tell most potential employers about most of your past convictions.

Before your conviction is spent, you only have to tell the employer about your past record if they ask you - most employers will ask you at the point of making a job application. This doesn't necessarily count against you, as they are able to see the nature of your conviction, and you should have the chance to explain your motivations.

From the Unlock website:

'If an employer wants to know about criminal records, they will normally ask you to disclose in a certain way; this might be at interview or after they've made a conditional offer. Some employers ask on their application forms. Where possible, we suggest that you disclose your record face-to-face; this tends to be most effective.'

<http://hub.unlock.org.uk/quick-links/top10/#for-more-information>

The 'rehabilitation period' depends on the sentence. For a community order, it is 6 months. For a fine, it is year. After that, you generally don't need to tell anyone about it if you don't want to.

<http://hub.unlock.org.uk/knowledgebase/spentposter/>

DBS CHECKS AND BEING ARRESTED ON PROTESTS

The Disclosure and Barring Service (DBS) is primarily used by employers to check whether potential employees have criminal convictions. Some jobs require you to have a DBS check, mainly those working with children and people deemed 'vulnerable' by the state.

It is often asked whether arrests, charges and convictions related to protest activities will show up on a DBS check and whether this will affect people's employment prospects.

In short: expect convictions and cautions to show up on your DBS check. Arrests or charges may show up on Enhanced DBS checks, at the police's discretion. Your potential employer may ask you to explain what shows up, but having convictions etc. doesn't automatically mean you can't get the job and won't necessarily count against you.

What will show up on a Standard/Enhanced DBS?

Spent and unspent convictions, cautions, reprimands and warnings that are held on the Police National Computer.

Additional for an Enhanced DBS: anything that the Chief Officer of a police force thinks is relevant.

This can include arrests. We find it unlikely that anything related to protest activity would show up here, but it could include arrests that don't result in conviction. If you have to go through an enhanced DBS check and information related to protest activity is included, the Network for Police Monitoring would be interested to know as this could be a method of intimidating people out of protest.

Will an arrest that doesn't lead to a charge show up on a DBS check?

It may show up on an Enhanced DBS check, at the discretion of the Chief Officer of the relevant police force.

If I am arrested, tried and acquitted, will this show up on a DBS check?

It may show up on an Enhanced DBS check, at the discretion of the Chief Officer of the relevant police force.

Immigration status.

Being arrested or convicted may impact your ability to stay in the UK and it might affect future immigration applications. This is particularly relevant in circumstances where you are convicted of an offence and receive a custodial sentence, but you may in any case want to consider a volunteer role with XR rather than taking part in actions (in order to reduce your risk of arrest).

Please seek legal advice if you are worried about your immigration status.

Notes



LINKS:

VOLUNTEER ROLES:

Volunteer in the Arrest Support Back Office during Rebellion – join the WhatsApp group to express your interest and be kept updated:

<http://tiny.cc/backofficewhatsapp>

ARREST AND COURT PROCESS FLOWCHART

<https://informeddissent.info/arrest-flowchart>

UNLOCK INFORMATION ABOUT CONVICTIONS

<http://hub.unlock.org.uk/information/>

WHEN WILL MY CONVICTION BE SPENT?

<http://hub.unlock.org.uk/knowledgebase/spentposter/>

UNLOCK – CRIMINAL RECORDS AND IMMIGRATION

<https://hub.unlock.org.uk/information/coming-to-staying-in-the-uk/>

FREE MOVEMENT – CONVICTIONS AND IMMIGRATION

<https://www.freemovement.org.uk/general-grounds-refusal-criminal-convictions-public-good-character-conduct-associations/>

INFORMED DISSENT INFORMATION ON IMMIGRATION STATUS

<https://informeddissent.info/immigration-status>

Mental Health.

The process of getting arrested can be very stressful and if you are charged, court cases can add further strain. Take care of your mental and emotional health.

MENTAL HEALTH PROBLEMS IN CUSTODY

Some of the questions you will be asked when you are booked in at the station will concern your physical and mental health (including whether you have a history of self-harm). The stated purpose of these questions is to ascertain whether you have any disabilities and/or pre-existing health conditions which may put you at risk while you are in custody. It is important to know that if you tell the officer at the police station desk that you do have mental health problems and/or a history of self-harm, or if you answer 'no comment' to those questions, the custody officer is very likely to call a mental health nurse to talk to you. This can cause significant delay. The police are also very likely to put you on suicide watch which will involve more regular check ins when you are placed in a cell. This can be unpleasant and seriously disrupt any attempts to sleep. On the other hand, you will need to declare mental health problems if you want to have access to an appropriate adult (see below). If you think you are likely to be arrested on a demonstration, it is worth considering how you will deal with this. Our recommendation is to do whatever makes you feel safest.

LINK:

ACTIVIST TRAUMA SUPPORT – ARCHIVED RESOURCE

<https://www.activist-trauma.net/>

Your details and biometric information will be recorded.

You can be required to give your DNA and fingerprints (and they can be held indefinitely) for any offence which is not a 'non-recordable offence'. The most common non-recordable offence in the protest context is Obstruction of the Highway. If you are arrested for Breach of the Peace you should also refuse to be photographed and have your DNA/fingerprints taken as it is not a criminal offence, and the police must release you as soon as the breach of the peace is over (regardless of whether you have given them your details or not).

For most offences the police can use 'reasonable force' to take your DNA and fingerprints, and they can also take your photograph without your consent (e.g. if you are not looking). People have made requests for the police to destroy these records, once cases have been dropped, but often without success.



LINK:

INFORMED DISSENT INFORM ON ARREST

<https://informeddissent.info/being-arrested>

Financial Implications.

If you are charged with an offence and found guilty, there can be lots of different financial risks to plan for. For example: travel to court, court costs, fines, cost of legal representation (if you don't qualify for legal aid), damages, and your possible loss of earnings (e.g. taking time off work for court hearings). If you are found not guilty, then the courts will compensate your travel and so remember to keep your receipts.

LEGAL AID

Some people qualify for legal aid to cover some or all of their defence costs if they:

- 1) are under 16; *or*
- 2) are 16-18 and in full time education; *or*
- 3) receive: Income Support (IS); Income-based Jobseeker's Allowance (JSA); Universal Credit (UC); State Pension Guarantee Credit and income-based Employment and Support Allowance (ESA); *and* their case passes the 'Interests of Justice' test (Crown Court trials are deemed to automatically satisfy this test); *or*
- 4) they pass the 'means test' and the 'Interests of Justice' test. The means test takes into account things like income, accommodation costs, number of dependents etc.

Eligibility also depends on the type of case and where it's heard. You can find more info about legal aid and a link to the financial eligibility calculator here:

<https://www.gov.uk/guidance/criminal-legal-aid-means-testing>

If you don't qualify for legal aid you will need to self-represent or pay for legal representation privately. Also, legal aid only covers legal representation, so bear in mind potential fines that you may have to pay.

You can see a criminal offences and sentencing guide here:

<https://bit.ly/2UwYc2l>

If you are found guilty, you will need to take into account court costs. The prosecution also generally apply for a contribution to their costs. If your solicitor is not local, make sure they are experienced in working with clients remotely to save the cost of travel expenses to solicitor meetings. If you take part in an action that is far from where you live, you may need to pay for your travel expenses to several court hearings.

If the court sentences you to a fine, it will be means related. The court can also order that you pay damages and a Victim Surcharge.

Some people may not want to pay these fines and costs. It is important that you take legal advice, as wilful refusal to pay can mean (in extreme circumstances) that you are sent to prison.



XR don't pay for costs of any kind, however they do encourage you and affinity groups to make crowdfunder pages to cover them. The Court sets fines to be a punishment and if public crowdfunder pages explicitly state that this is the intended aim, then it could cause the Court to set higher fines in general or impose a different sentence. Please exercise caution when describing the crowdfunder. For example, 'XR Local Group Costs' would be fine, but not 'Help pay XR Court fines'.

LINKS:

SELF - REPRESENTING:

[http://ldmg.org.uk/files/how to defend yourself in court.pdf](http://ldmg.org.uk/files/how%20to%20defend%20yourself%20in%20court.pdf)

LEGAL AID:

<https://www.gov.uk/guidance/criminal-legal-aid-means-testing>

GROUNDS FOR GRANTING LEGAL AID:

<https://www.gov.uk/guidance/work-out-who-qualifies-for-criminal-legal-aid#merits-interests-of-justice>

COURT COSTS:

<https://www.cps.gov.uk/legal-guidance/costs-annex-1>

MAXIMUM FINES AND MEANS TESTING INFO:

<https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/>

INSURANCE

You only have to disclose convictions when asked or if convictions are mentioned in assumptions or terms/conditions of cover. You never have to mention spent convictions. You do not have to disclose any convictions you get during a policy until renewal, unless there is an explicit condition in your policy. If you are with an insurer who is making it difficult or more expensive then the Unlock website, where this information is summarised from, has a list of insurers.

<http://hub.unlock.org.uk/knowledgebase/insurance-convictions-simple-guide/>

Notes:

Being under 18, having learning difficulties or mental health problems (even if you do not have a formal diagnosis).

You have the right to an “appropriate adult.” An appropriate adult’s role is to make sure you understand what is happening during your time in custody by facilitating communication, making sure your interview is conducted fairly, and giving you non-legal advice.

A parent or guardian or appropriate adult must be called and be present for any police interview. The police can refuse for a nominated person to be an appropriate adult, and they may not agree to someone who has a criminal record or who was involved in the action. The police’s default expectation is often that it will be a parent, guardian, or adult sibling. However, it doesn’t have to be, and you can have one of these or another person of your choosing in mind before going out on an action. If you don’t provide your own appropriate adult the police will call for a social worker, but it is better to have someone you know. The police might also use an appropriate adult scheme to source one for you.

Please also read the information on Mental Health above if appropriate.



You might want to think about getting an appropriate adult ready before you go on an action. They don’t need to be with you at the action and it is better that they don’t know any details, but perhaps let them know to expect a call from the police station. We recommend this as there is always the risk of arrest at an action, and so it is about being prepared for every eventuality, even if you have done nothing wrong. The police’s position on this, however, is that where an adult is aware of your actions in advance, or involved in the protest, they are unlikely to be accepted as an appropriate adult.

Is it different if I've already been arrested, charged or convicted?

Having previous criminal convictions, especially for similar offences, can affect the likelihood that you are charged, and the sentence you receive if convicted.

EFFECTS ON YOUR CHANCE OF BEING CHARGED

If you have been arrested before, especially for the same or similar offences, you are more likely to be charged as the police and prosecutors consider there is a greater "public interest" in prosecuting you. Similarly, if you have previous convictions, your chance of being charged is higher.

You may also be less likely to be offered a caution, although we discourage people from accepting cautions, and in all cases you should discuss the offer with a lawyer experienced in protest law. This advice is reiterated on the bustcards:

<https://informedissent.info/bustcard>

In all cases, they can only charge you if they have enough evidence to believe there is a realistic prospect of convicting you. The fact that you have previous convictions or arrests does not on its own mean you should accept a caution, or plead guilty if charged. You should certainly still follow the "No Comment" advice.

If you are charged, you are less likely to be released from the police station before your first appearance in court if you are already on bail. If you are arrested for a new offence after you have appeared in court for a previous offence (when the case for that previous offence is ongoing) then, again, sentencing for the previous offence may be harsher. You may also be remanded to custody for the new offence (i.e. jailed for the period of the trial) if you are charged with the new offence.

EFFECTS ON SENTENCING

If you have a criminal record, you are likely to get a heavier sentence if convicted of a new offence. A heavier sentence is more likely if your previous convictions are recent or similar to the new offence. You are also likely to receive a higher sentence for offences you commit if you're already on bail. When sentencing, the court can take into account other recent criminal records. Recent probably means within the last five or so years, but cautions, guilty pleas and guilty verdicts will still count. Other arrests or charges waiting for trial shouldn't count.

If you received a conditional discharge for the first offence, you could be re-sentenced for that offence too if you breach the conditional discharge by committing a second offence during the period of the conditional discharge.

Being Arrested.

(NB: this section is adapted from guidance from Green & Black Cross, a grassroots project providing advice and support to protestors.)

YOU SHOULD BE TOLD WHY YOU ARE BEING ARRESTED

... as well as the name or identification number of the arresting officer. You should ask what police station you are being taken to, although at large protests, the police officers do not always know.

You will probably be handcuffed. You will be searched – usually just a ‘pat down’ by an officer of the same sex as you. 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 drugs.

You will be taken to the police station. This may be individually, or you may be taken along with other arrestees. In mass arrest scenarios in the past, the police have used buses for multiple arrestees, and there have been very long waits before arrival at the police station.

You will then get ‘booked in’ at the police station. Your personal belongings will be taken from you. These are listed on the custody record and usually you will be asked to sign it to say that the list is correct. You do not have to sign it, but if you do, you should sign immediately below the last line, so that the police can’t add something incriminating to the list. You should also refuse to sign for something which isn’t yours, or which could be incriminating. They will ask you all kinds of questions about who you are and what you do. You do not have to give any details when arrested or at the police station. You are only legally obliged to give your details if and when you appear in court.

Although you are not legally obliged to give your details at the police station, we recommend giving your name, address, and date of birth to speed up your release.

They will take your photograph. You don’t have to comply, but the police are allowed to use “reasonable force” to view your face.

They will take your fingerprints and DNA. Again, you don’t have to comply, but they are allowed to use “reasonable force”. Two important exceptions to this are if you are arrested for Breach of the Peace (not a criminal offence) or Obstruction of the Highway (a ‘non-recordable’ offence) – they should not take fingerprints/DNA in those cases.

You will then be put in a cell.

You have the right to **free legal advice at the police station**. You also have the right to have an “appropriate adult” present if you are under 18 or have learning difficulties or mental health problems, even when undiagnosed. See above for more information on appropriate adults.

You have the right to have a solicitor representing you during interview. We strongly recommend that you use a solicitor with experience of supporting activists. If you have a solicitor coming, refuse to be interviewed before arrive. If they can't be contacted within a couple of hours then we recommend that you give a 'No Comment' interview. NB: during the Covid pandemic, some solicitors are advising and providing interview representation remotely (see above).

Do not use the duty solicitor. They are unlikely to have experience in protest law, and may give bad advice.

You also have the right to:

- A copy of the PACE codes of practice. They tell you your rights in custody;
- A translator if English isn't your first language;
- Food that meets your dietary requirements – e.g. vegetarian / vegan / religious requirements;
- A doctor if feeling unwell;
- A warm cell, including blankets and cups of tea/coffee.

You should prepare yourself for boredom, isolation, bad food, frustration, mild sensory deprivation, distressing noises from other detained people, the lights being on continuously, and being kept under constant surveillance. Remember, you can generally only be held for up to 24 hours (however this can be extended for a further 12 hours with authorisation from a senior police officer). You could also be held for up to two weeks if charged with a terrorism-related offence, although this is very unlikely in an XR context.

If you are expecting to be arrested, bring along a book. Chances are you will be allowed to take it to your cell. You might also want to ask the custody sergeant for a pencil and paper to take to the cell.

You may be released in the early hours of the morning, so make sure you have enough money with you to get safely home, or that an appropriate adult is available to pick you up.

Minimising the Risk of Arrest.

XR as a movement needs to be open to everyone, and we encourage people who are taking part in actions to engage in informed dissent. We understand that some people may not wish to be arrested or will be disproportionately affected by arrest.

Although we can never guarantee you won't be arrested (because it isn't possible to predict police behaviour), here are some suggestions for minimising your risk of arrest.

AGGRAVATED TRESPASS OR OBSTRUCTION.

In most cases, police give several warnings before arresting for obstruction or aggravated trespass. You could therefore move when asked to do so by a police officer. How quickly and how far you move will depend on your assessment of the situation. You may also be at lower risk of arrest on the pavement than in the road.

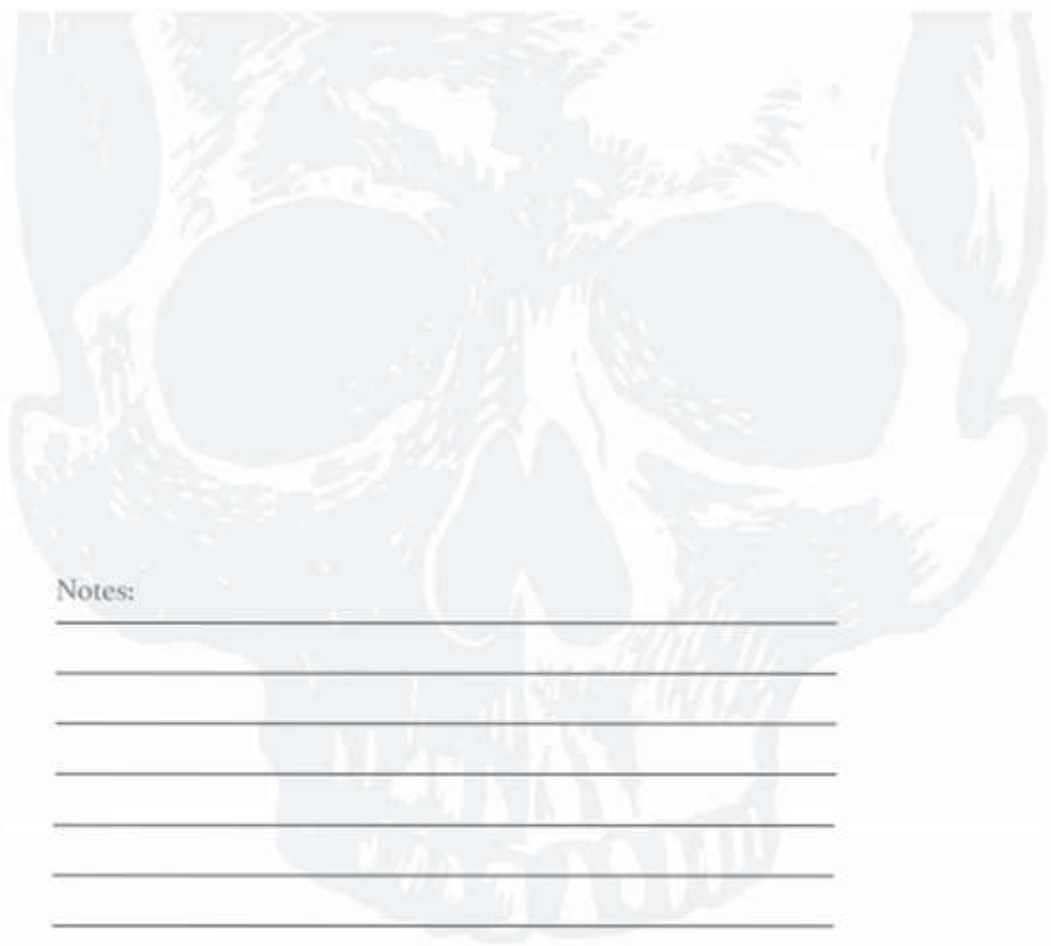
CRIMINAL DAMAGE.

Don't damage or deface anything, even if the material you use is non-permanent, such as chalk. Also don't carry anything that might be used to damage property, such as marker pens, chalk, sprays paints etc, even if you are carrying them for someone else.

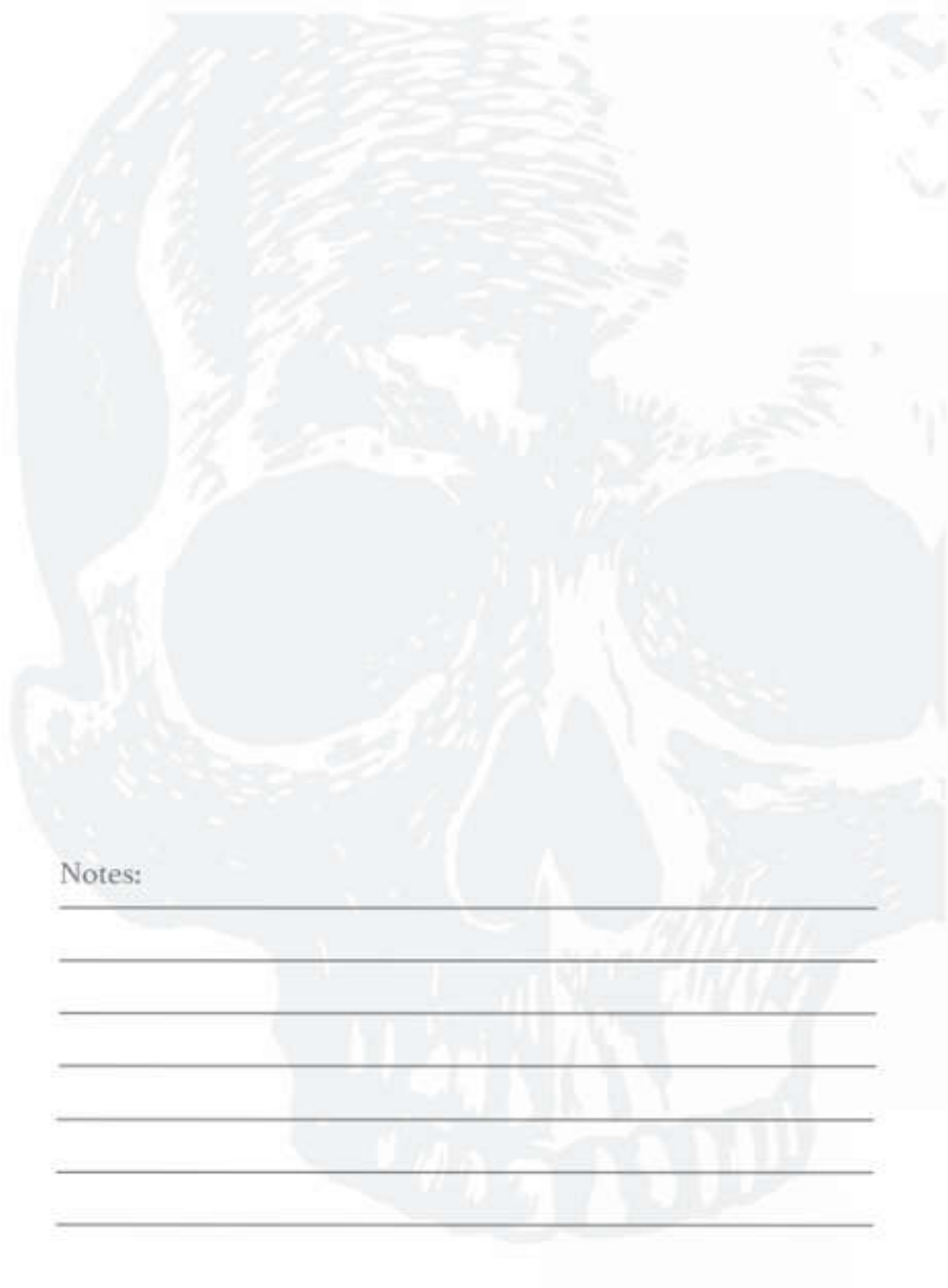
PUBLIC NUISANCE.

Do not seem to be 'organising' an action. Consider ways in which you can minimise the impact on the public and keep a record of these efforts. If swarming, you can always watch from a safe distance until the coast is clear and then rejoin. If there are a lot of police in the area, you might want to step out of the action. Although it's not necessarily the case that where there are lots of police there will definitely be lots of arrests, removing yourself can reduce the likelihood of your arrest. In general, move away from any confrontation.





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