

Oily Money Out general legal briefing

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Disclaimer

This written briefing is intended to accompany in-person briefings during Oily Money Out. This document is not legal advice, nor a substitute for it. It is a compilation of information which may be useful for those interested in taking protest action with Oily Money Out. This document does not reflect any details or likely outcomes of our actions - only information that we hope helps fully inform participants of protest law in the UK before taking any kind of protest action.

We are all responsible for ourselves. 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. At a protest, we cannot guarantee what measures the police will choose to enforce, so it is not possible to predict with certainty whether you will be arrested or not.

Oily Money Out action principles and approach to arrests

Oily Money Out will comprise a range of protest actions - nobody will be expected to do anything they are not willing to. Arrests are not an objective of Oily Money Out, though they cannot be ruled out. As far as possible, we intend to offer accessible, family-friendly protest options, and we will take precautions to avoid arrests being made where we can. There is also safety in numbers - your presence at a mass action will reduce risk to other activists - and will likely make for a more effective and successful action overall.

As well as taking responsibility for ourselves, we have a responsibility to others taking protest action with us - keep everyone safe by not sharing information with police or security, including not identifying organisers. We also support the use of protest code names.

If participating in any protest at Oily Money Out, you will be given a bustcard (small card with key information about your rights and relevant contact numbers). You should also write the name of a recommended protest solicitor on your body, alongside the number of the Oily Money Out back office as this will be the best place to notify in case of arrest. Back office will arrange support for you and ensure you are met and safe if released from custody.

'Back office' – Climate Action Support Pathway (CASP)

+447783176190

Please only contact this number in unlikely case of arrest and they will ensure you are met from custody, supported and safe – this number will be on your bustcard, and ideally on your body. **Do not use this number for any other purpose.**

Arrests and first-time offences

Arrests are not an objective of Oily Money Out, though they cannot be ruled out.

If police do begin the process of carrying out arrests, they may warn participants at risk of arrest beforehand, but they don't have to. If they do, they would inform you of the grounds of arrest and give you a chance to cease any arrestable action, meaning you are likely to have a chance to remove yourself from a situation without being arrested.

If you are arrested, these resources go through in detail what to expect:

<https://informedissent.info/being-arrested> and <https://informedissent.info/arrest-flowchart>

If you were to be convicted with a first time offence, the sentencing would likely be light and without prison time - usually a fine, conditional discharge or suspended sentence. You would be supported by the Oily Money Out team to access the right support and resources if you were arrested, charged or convicted.

Read a guide about the potential impacts of convictions by Seeds for Change - <https://seedsforchange.org.uk/convictions>

Useful resources

The following resources are from trusted and recommended organisations, useful to those who wish to know more about legalities and practicalities associated with protesting. Please use these to search for the answers to any further questions you have after reading this briefing. If you still have questions please contact the Oily Money Out team.

Green and Black Cross - <https://greenandblackcross.org/guides/>

Netpol - <https://netpol.org/resources/>

Informed Dissent - <https://informedissent.info/>

Impact of convictions, Seeds for Change - <https://seedsforchange.org.uk/convictions>

Know your rights - 5 key messages - if you remember anything, remember these!

1. No Comment

You do not need to answer police questions, so don't. You might accidentally incriminate yourself or someone else - even if you think you are sharing harmless information. Just say "no comment" (or "I won't be answering any questions, thank you") to all police questions – during 'informal chats', in the police van and especially in police interviews unless specifically advised otherwise by a recommended protest solicitor.

2. No Personal Details

You do not have to give personal details to police before or at the point of arrest. We recommend not giving your details when inside the police van / car or being transported to the police station. Sometimes the police will arrest you without grounds and primarily for the purpose of obtaining your personal details. They also sometimes just release activists after driving a few roads away (before reaching the station). In this case, there is usually no record of your arrest and so it is best to keep yourself anonymous at this point.

Typically people only give their details when checked in at the custody desk at the police station. This allows you to be released within 24hrs - if you withhold personal details at the police station it's likely you'll be kept in until you can be taken to a Magistrates' Court.

3. 'Under What Power?'

If the police ask you to do something, ask them "am I legally obliged to do that?" and if they say something along the lines of "yes", then ask "under what power?" to challenge the police to act lawfully. Police officers rely on you not knowing the law. Make a note of what was said and by whom (badge number / shoulder number) as soon as possible afterwards.

4. No Duty Solicitor

The "duty solicitor" is the solicitor who is present at the police station. They are unlikely to know about protest law. If arrested and in custody, use the solicitor with protest experience identified on your bustcard at no cost. You just need to remember the firm's name so you can give it to the police (it is good to write this on your body just in case). The police will call your solicitor for you.

5. No Caution

If under arrest, you may be offered a caution instead of being charged with an offence. Cautions are an admission of guilt. Offering you a caution is a way the police may ask you to admit guilt for an offence without having to charge you. We only ever recommend accepting a caution if a [protest experienced solicitor](#)) advises you to do so. Even then, ask why.

Common protest-related laws

Stop and search

The police have specific powers that allow them in some circumstances to stop and search you. The best way to protect yourself is to know the law and not to talk. There is no need to respond to the officer asking you questions during the search. You do not need to give your name or address, or any personal details. Police officers must specify before the search who they are and where they are from, what they are looking for, what power they are using, and search only in places that they might find the items. To avoid difficult situations, try not to carry any items that can be used to identify you, eg. a driving license or bank card. If you are carrying a phone, lock it. Where possible, avoid carrying any items that could be seized or give the police reason to arrest you (including items that could be used in a 'lock-on', described in more detail below).

If the police find a item on you that they suspect may be illegal, they may confiscate it; arrest you on suspicion of possessing an item that may be illegal; issue you with a fixed penalty notice; or demand your name and address in order to send you a summons at a later date.

Find more information about new Stop and Search powers from Liberty here:
https://www.libertyhumanrights.org.uk/advice_information/stop-and-search/

Obstruction of the highway

The police commonly use this power to arrest protesters who are standing outside buildings, sitting down blockading entrances or roads and in many public order situations. The offence is committed if a person without a lawful excuse or authority wilfully obstructs the free passage of the highway. The 'highway' is not just limited to roads but also includes pavements, grass verges and private property used as a public thoroughfare.

The maximum sentence has increased to 51 weeks' imprisonment, an unlimited fine or both. First time offenders are likely to be dealt with by way of a fine or a conditional discharge.

Conditions placed on a protest - also known as Section 12 or 14

Do not accept or pass on leaflets, make announcements or share knowledge in person or on social media about conditions under Section 12 or 14. This can incriminate you and others. If police attempt to communicate Section 12 or 14 with you, walk away and/or sing a protest song.

When people are assembling, the most senior police officer present can impose such conditions as appear necessary to prevent disorder, damage or disruption. The police may impose conditions that can restrict the location, the duration and the number of participants allowed to participate in the assembly or procession. For example, 'No more

than 20 people allowed at Marble Arch and they must leave by 3pm today'. They will often set up a "protest pen" and ask you and the people around you to move into it.

You can be guilty of an offence of breaching conditions placed on a protest/procession if you fail to comply as a participant or organiser and knew or ought to have known the conditions were in place. The 'ought to have known' condition is newly added in the Public Order Act, so it is as yet untested in court whether it will make convictions more likely.

A senior officer may make an announcement, post on social media, or sometimes visual displays or leaflets will be used to tell people that conditions are in place. Other officers will usually go around the protest, speak to individuals, and inform them of the conditions. They will be filming themselves (using their body-worn cameras) telling you about the conditions so they can use this as evidence in court later. It must be proved that the person knew or ought to have known about the conditions imposed. **Do not talk to the police or other activists about these conditions.**

A person who participates in a 'public procession' or 'public assembly' and fails to comply with a condition imposed on it is guilty of an offence. If convicted, the maximum sentence is a fine of £2,500. First-time offenders would likely receive a fine of about £200-300 or a conditional discharge. It is a defence for the person to prove that the failure to comply arose from circumstances beyond their control.

Trespass and aggravated trespass

Trespass: Trespass is a civil matter so is not an arrestable offence. You trespass when entering or putting property on or remaining on land that belongs to someone else without their express or implied permission (implied permission exists for e.g. shops, hotels, other public spaces). If you fail to leave the land when requested by the owner, then they may take civil action against you (sue you by bringing a legal case against you usually to claim compensation). The land owner or a representative of the owner may also use 'reasonable force' to remove you from the land.

Aggravated trespass: Aggravated trespass is a criminal offence. This means that the police can get involved and you can be arrested for it. In order to be convicted of the offence of aggravated trespass, the prosecution must prove that

1. You trespassed on land
2. where people were engaging, or were about to engage in lawful activities (such as working)
3. and you then did something (apart from the trespassing) to intentionally obstruct, disrupt, or intimidate others from carrying out those lawful activities.

When ordered by police or having committed aggravated trespass, instructions may include not being allowed to return to the same land for between 3 - 12 months.

The maximum sentence is 3 months' imprisonment, or a fine of £2,500, or both. First-time offenders would likely receive a fine of between £200 – £300 and a conditional discharge.

Criminal damage

If value of damage is under £5,000

Sentencing starting point: conditional discharge and compensation order (i.e. you may be asked to pay back the costs of cleaning and repair), tried in a Magistrates' Court. Maximum sentence: custodial sentence of up to 3 months, £2,500 fine.

If value of damage is over £5,000

Sentencing starting point: a suspended sentence and compensation order, tried in either a Magistrates' Court or Crown Court. Maximum sentence when tried in Magistrates' Court: £5,000 fine and six month custodial sentence. Maximum sentence when tried in Crown Court: custodial sentence of up to 10 years.

Note: attempts to minimise permanent damage may result in a lesser sentence.

Locking-on and going equipped to lock-on

This new law covers those who attach themselves to others, objects, or buildings in order to cause serious disruption; or those who are carrying items for this purpose (this is very broadly defined so could include glue, rope, bike locks etc). It now carries a maximum penalty of six months' imprisonment, an unlimited fine, or both. The maximum penalty for the offence of going equipped to lock-on will be an unlimited fine.

Breach of the peace

The police have the power to detain or arrest you if a "breach of the peace" has occurred, or to prevent it from occurring. A breach of the peace is defined as "an act done or threatened to be done which either actually harms a person, or in his presence his property, or is likely to cause such harm being done." They must release you once the threat of the breach of peace has passed. If arrested for breach of the peace, you should not give any personal details. You must be released once the breach of the peace is over.

Public nuisance

If a person does something OR does not do something that they are required to do by law AND this creates a risk of or actually causes serious harm to the public or a section of the public OR prevents the public or a section of the public from doing something that they would normally have the right to do, then they could be committing the offence of Intentionally or Recklessly Causing Public Nuisance.

'Serious harm' is defined as:

1. "death, personal injury or disease"
2. "loss of, or damage to, property"

3. "serious distress, serious annoyance, serious inconvenience or serious loss of amenity"

If tried in the Magistrates' Court, the maximum sentence would be imprisonment for a term not exceeding 12 months or an unlimited fine or both (6 months under the current law for a single offence)

If tried in the Crown Court, the maximum sentence would be imprisonment for a term not exceeding 10 years or an unlimited fine or both.

More info: To find out more about the new powers under the Public Order Act 2023 we recommend this blog as a summary including some powers not mentioned here

<https://www.bindmans.com/knowledge-hub/public-order-act-2023/>

Information for foreign nationals

The law applies equally to foreign nationals, as does the right to protest. However, as a foreign national, it may be wise to oblige with conditions or orders set by the police to prevent a criminal conviction to avoid being deported or having future entry to the UK refused.

If a non-national is arrested and convicted of any crime, the UK government can refuse an application for entry clearance, permission to enter or permission to stay. The Home Office must refuse entry or permission to stay if you have received a custodial sentence of more than 12 months. The Home Office may refuse entry or permission to stay if you have received a non-custodial sentence, or received an out-of-court disposal that is recorded on their criminal record. This does not apply where removal would breach the ECHR or the Refugee Convention (for example when a third country is not safe).

<https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-9-grounds-for-refusal>

A fine counts as a criminal conviction and forms part of someone's criminal record. Fines must be declared and may result in refusal of cancellation. Simple cautions do not need to be declared. A community resolution is not a conviction, but may be relevant to consideration of whether the person is a persistent offender or should be refused leave or have their leave cancelled on non-conducive grounds. (Home Office, Grounds for refusal – Criminality Version 2.0, *Home office staff*: 9 November 2021).

Arrest and immigration applications to other countries

Arrests and convictions can have consequences for future entry applications to other countries. Most visa applications will require disclosure of any previous convictions and cautions, often accompanied by a police certificate stating whether you have a criminal record. The amount of information required to be disclosed varies greatly from country to country with some requiring arrests not leading to a conviction to also be disclosed.

The consequences of disclosing this in a visa application does generally not bar you from entry automatically but the consequences can vary significantly.

For further information on this topic please see below.

<https://informeddissent.info/arrestandimmigrationstatus>

<https://unlock.org.uk/topic/travel/>. (Includes country specific information)

Impact of convictions, Seeds for Change - <https://seedsforchange.org.uk/convictions>

Definitions

Bustcard - a card distributed to protesters that contains the back office number, and numbers for protest experienced solicitors, as well as our 5 key points of advice

Conditional discharge: the offender is released, with the offence placed on their criminal record, but gives the court the power to review sentencing for the offence if the offender commits any further offence within a time period set by the court. The maximum time period for this is three years.

Suspended sentence: the term given to a prison sentence imposed by the court, and then suspended (i.e. 'delayed'). The court may decide to delay the prison sentence to allow the defendant a period of probation, or to undertake treatment for an addiction, or to meet conditions in the community. If the defendant breaches the terms of the suspended sentence, or commits another offence, they are likely to be sent to prison to serve the original prison term imposed.

Magistrates' courts - where the great majority of criminal cases are heard. Magistrates determine both verdict and sentence. Very rarely they can impose custodial sentences of up to 6 months

Crown Court - There are 71 Crown Courts in England and Wales where more serious criminal cases are heard by a judge and jury. Appeals from the Magistrates' Courts also take place there.