



Anti-fascist organising and legal strategy

The Dover demonstration in January 2016 was the most violent anti-fascist action in Britain for many years. 77 people have been arrested and more are being searched for. See appeals on Kent Police website for details.

As of 29th September 28 people received custodial sentences totalling 587 months. 25 people have been sentenced for violent disorder (s2 public order act 1986) and received between 4 years and 6 months. The good news is only three of those imprisoned are anti-fascists and one of them has had their sentence suspended on appeal. But there have been 77 arrests in total and 64 people charged so more cases are pending and the police are still looking for people, with two arrests made on 28th September.

Bear in mind the sentence is not how long you will spend in jail. This is normally half the nominal sentence unless you commit offences against prison discipline while inside and you may be eligible for early release on Home Detention Curfew (tagging).

Any counter demonstration to a fascist march like in Dover is likely to lead to physical confrontation. The extent being largely determined by the numbers and organisation of the policing. Compare Dover (Kent 400 cops) with the March for England in Brighton in 2014 (1050 cops). Anyone who goes on these demos may become involved and if identified and found they are likely to be prosecuted for public order offences regardless of whether they instigated the violence. Since the only alternative to fighting back is being beaten to a pulp, and your friends too, we take a look at your legal options if you end up in court.

What you will be charged with

The public order act 1986 creates a series of offences ranging from Riot (maximum 10 years) to causing harassment alarm or distress (maximum a fine)

The CPS has guidelines on what to charge:

“Riot: Charges of riot should only be used for the most serious cases usually linked to planned or spontaneous serious outbreaks of sustained violence

Conduct which falls within the scope of this offence might have the one or more of the following characteristics:

- the normal forces of law and order have broken down;
- due to the intensity of the attacks on police and other civilian authorities normal access by emergency services is impeded by mob activity;
- due to the scale and ferocity of the disorder, severe disruption and fear is caused to members of the public;
- the violence carries with it the potential for a significant impact upon a significant number of non-participants for a significant length of time;
- organised or spontaneous large scale acts of violence on people and/or property.”

“Violent Disorder: This offence should only be charged in relation to instances of serious disorder falling short of those elements required to establish an offence of riot. Planning may

be an important ingredient in a case of violent disorder but regard should be had for the potential of minor incidents to flare up into serious disorder sufficient to meet the requirements of this section.

The offence may be committed in a public or private place. The relevant conduct may be directed against a person or persons or against property.

Examples of the type of conduct which may be appropriate for a section 2 offence include:

- fighting between three or more people involving the use of weapons, between rival groups in a place to which members of the public have access (for example a town centre or a crowded bar) causing severe disruption and/or fear to members of the public;
- an outbreak of violence which carries with it the potential for significant impact on a moderate scale on non-participants;
- serious disorder at a public event where missiles are thrown and other violence is used against and directed towards the police and other civil authorities."

In practice anything that involves throwing heavy objects or using weapons like sticks tends to be charged as violent disorder (maximum 5 years). No one has to be injured for violent disorder, just 3 or more people using or threatening violence such as would make a person of reasonable firmness fear for their safety. The seriousness of the offence depends in part on what you do but also on what is happening in total. This is the offence we'll consider in detail.

Facing a violent disorder charge carries a high risk of imprisonment. If convicted you have statistically a three in four chance of immediate custody with the other possibility being a suspended sentence and, very rarely, community service.

We strongly advise everyone going on an anti-fascist march/demo to think about the possibilities in advance and plan what they will do in various circumstances.

A. Going guilty - pros and cons

Plea bargaining.

It may be possible to persuade the CPS to accept a guilty plea to a lesser offence. This is a far better option than a simple admission and therefore harder to come by. But check carefully with your lawyer what you're pleading to and its implications for your future.

Goodyear indications

This is where you ask the judge what sentence you will get if you plead guilty and can then decide whether to do so. The downside is that if you refuse the deal the same judge will preside over your trial knowing you tried to cut a deal and won't give you as light a sentence if you're found guilty.

Reduction for guilty plea

A guilty plea at the first opportunity should reduce your sentence by 33%. A sliding scale applies until pleading "at the court door" when the trial is about to start gets 10% off. In practice it's not so clear cut. Judges can be creative with discounts to arrive at the sentence they want and there are no sentencing council guidelines for violent disorder. The most important case law comes from the August 2011 riots. In 2012, 78% of people pleading guilty got immediate custody with an average of 19.3 months, while of those convicted after trial 74% went directly to jail for an average sentence of 23.6 months.

Mitigation

If you plead guilty you are likely to be given a pre-sentence report by Probation. You can call character witnesses and your barrister will make a speech on your behalf saying what a "Citizen" you are in normal life and this was a "moment of madness". The Judge will smile inwardly at this familiar routine. To make any real impression at this point you need to have really exceptional circumstances.

B. Fighting the case

Step one is to get a good legal team. Most criminal lawyers are experienced in helping guilty clients get the best deal they can. Frankly most of their clients are guilty (at least in law) and they approach cases with that in mind. You need specialists in protest law. Very few solicitors or barristers have experience of fighting protest cases, especially overtly political ones. Look at the Netpol recommended lawyers list (netpol.org/solicitors/), talk to your local legal support group and always have a lawyer in mind for where the demonstration is going to be. Tell your friends who you will be using and when you talk to your solicitor tell them to pass on information to your friends and support group

Defences

There are three principle lines of defence: 1. "I wasn't there", 2. "I didn't do it" & 3. "They started it, Miss!" In addition there is the incompetence of the CPS/Police. Remember it is for the CPS to prove the case beyond reasonable doubt.

1. If you are not arrested at the scene it may be a question of whether it is actually you. The best defence is a cast iron alibi. However, all identity evidence is notoriously unreliable and juries are warned by the judge to be very careful because of many previous miscarriages of justice.

2. The factual evidence will come from film footage and police statements. Film cannot show all aspects of a case and the police will inevitably exaggerate what you did. It is very important that the people you are with can act as witnesses and write up what happened as soon as possible after the incident. Get any injuries recorded and identify anyone who has footage or photos that can contradict the police case.

3. You are entitled to use such force as is reasonable in the circumstances to defend yourself and other people, prevent crime or prevent/quell a breach of the peace. You do not have to retreat and you may strike the first blow if you believe you are about to be attacked. You are allowed some leeway in what you do, as you cannot be expected to "weigh to a nicety" the level of force needed. Also the "circumstances" are those that you honestly believe them to be. What you can't do is act in retaliation or to punish.

4. It is not unusual for the CPS to push for many adjournments as they are not ready to proceed and try the patience of the judge, who always has the option of dismissing the case. Nor is it unusual for key police witnesses not to turn up to give evidence or the CPS or police (one always blames the other!) to lose vital evidence (video, photos etc.), so they are unable to prove the case.

What's the chances?

Statistics don't give us much of a guide as the number of anti-fascist protest cases is too small a sample, but from protest cases over the years it's better than 50/50 in front of a jury and anecdotally easier to get off if the "victims" are Fash rather than the police. You are essentially putting yourself in the lap of a jury, but there are some trends we can point out.

Juries are selected randomly but are composed from the area nearby. Juries composed of city-dwelling working class and ethnic minorities are best. For example, you've more chance in Southwark Crown Court than Kingston and far more than in Canterbury.

Juries are asked to reach a unanimous verdict, but if they can't a majority of 10 to 2 can be accepted. In other words, you need to persuade 3 people that clobbering Nazis is OK. Even in very conservative areas people grew up watching *The Dambusters* & *The Great Escape* so there's always hope. Get in the old Pastor Niemoller quote "First they came for the Black Bloc..."

Time scale

If you plead guilty you will be sentenced within a couple of months, but if you plead not guilty it will be considerably longer to get the case decided, typically 6 months for Magistrates Court cases and between one and two years for Crown Court cases. Although the waiting is very stressful, it often means the urgency for the courts to deal severely with an incident has passed and sentences are lower. All the people convicted for violent disorder at the Brighton March For England got suspended sentences, and the fact the trials were two years later helped.

Political implications

This is obviously just the legal practicalities. You, your comrades and organisation will also have to weigh the political implications and develop a well thought through strategy in advance. Here's a quick check list for you and your group to have planned before going on an anti-fascist action:

1. A legal briefing from an experienced legal support group like GBC/LDMG
2. Ensuring all comrades know what happens when they are arrested (drawing on the experience of comrades who have been through the system)
3. Making sure everyone has details of the recommended solicitors who have been briefed before the action
4. Supporting anyone held in the police station by gathering outside (whilst not putting anyone who might be wanted at risk)
5. Attending every single court hearing - the importance of support cannot be underestimated
6. Raising and providing money to cover transport costs
7. Considering how to present a political defence in court, as well as legal arguments
8. Writing to and sending money to anyone unlucky enough to be jailed
9. Contact your local anti-fascist group for support.
10. Co-ordinate with the Anti-Fascist Network.

The state will try to grind us down individually; the defence of every individual is the responsibility of the entire group and the Movement as a whole. Solidarity is the key.