

*Community
Legal Service*



Dealing with the police

Your legal rights

CLS information
leaflet number

11

If you have a complaint about the way that the police have treated you (or someone else), there are things you can do about it.

This leaflet explains your rights, and the different types of action you can take.

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If you have a problem with the police

Most people know that the police have certain powers that they can use against you if you have committed a crime (or if they think you are about to commit a crime). But there are certain ways the police must behave when they deal with people, whether they have committed a crime or not. If a police officer treats you badly or unfairly (or worse, for example, by injuring you), you can take action against them.

Your options for taking action

There are different types of action you can take. The one you should use will depend on:

- what happened to you; and
- what you want done about what happened to you.

What you want to be done can include:

- an apology;
- compensation for physical injuries, damage to your property or injury to your feelings; or
- making sure that you, or someone else, isn't treated the same way in the future.

This leaflet looks in detail at the three types of action you can take, and when you can take them. They are as follows.

- *Civil proceedings against the police* (suing the police). By doing this, you can get compensation if you win your case. But you can sue the police only for very specific reasons. See 'Suing the police', on page 4 for more information.

- *Making a complaint against an individual police officer.* This could get you an apology, and also may result in the officer involved being disciplined. You can't get compensation, but you can make a complaint about almost anything that you felt was unfair. See page 12 for more information.
- *Prosecuting an individual police officer.* This could get you compensation, but only if the officer is found guilty of committing a crime. See page 14 for more information.

If you are stopped and searched

The police do have powers in many situations to stop and search you. But the rules on when they can do so, and how long they can stop you for, are complicated. See 'When searching you can be an assault' on page 5 for an explanation of the rules.

Suing the police

If you want to sue someone, you can do so only for certain reasons – what are legally called 'causes of action'. When you take proceedings against someone, you have to show that what happened to you fits into one of these causes of action. If you can't, you won't be able to take proceedings against the police.

For example, if a police officer carried out a legal search of you on the street but was offensive and abusive during that search, you would not be able to sue the police, because that would not fit with one of the causes of action. However, you could make a complaint against the police officer (see page 12 for more about this).

Also, you can take proceedings against the police only for what they have done to you personally. So you can't sue the police if, for example, you see them assaulting someone else. Only the person who was assaulted can do this.

Many of the causes of action in this leaflet can be used in cases that don't involve the police. For example, if you are forced to stay in hospital and the doctors don't have a legal reason for keeping you there, you would be able to sue the hospital or the doctors for false imprisonment. In the same way, you could also sue them for assault if they gave you treatment without your permission.

Below are the seven main causes of action against the police. If you read them and think that your complaint might be one that you could sue the police for, you will need expert advice to be sure about whether you would be able to do so. The law relating to police powers is complicated and you should get advice from a lawyer who specialises in cases against the police.

When you can sue the police

1 Assault

An assault (which is sometimes called battery) happens when someone touches you or uses violence against you when the law doesn't allow it. It also happens when someone makes you fear that they are about to assault you. It is not always against the law to touch someone, of course, for example, if you are walking along a crowded pavement or travelling in a crowded train and you brush against them.

The rules on assault apply in the same way to the police as they do to anyone else. The police are allowed to use force in certain situations. These are:

- to protect someone from a criminal offence;
- to prevent a criminal offence from being committed;
- to carry out a lawful arrest;
- to prevent a breach of the peace; and
- to carry out various powers under the Police and Criminal Evidence Act, as long as using force is necessary and reasonable.

Even when the police are allowed to use force, it is assault if they use more force than is reasonable in the circumstances. So if you were

legally arrested, but then restrained by the police in an excessive way or for longer than they needed to, you could bring a claim against the police for assault.

When searching you can be an assault

If the police search you, you can bring a claim for assault if they do this when:

- they don't have the power to search you; or
- they don't give a reason for searching you.

The police are allowed to search you on the street when they have a good reason to believe that you have:

- items on you that are stolen;
- items on you that could be used to steal, commit a burglary, take a car or 'commit a deception';
- a weapon on you; or
- drugs on you.

If you are stopped and searched by the police on the street, you may also have a claim against them for false imprisonment if you are stopped and held for more than a few minutes without a good reason.

If the police have arrested you, they are allowed to search you:

- if they have a good reason to believe you may be a danger to yourself or to someone else;
- to check whether you have something on you that will help you to escape;
- to check whether you have anything on you that may be evidence of a crime; or
- if they need to check what belongings you have on you at a police station.

Special rules apply to strip searches. The police don't usually touch you in the course of a strip search. Legally, though, it isn't clear whether you can bring a claim for assault if you are given a strip search:

- when the police don't have the power to give you one; or
- when they don't follow the correct procedures.

2 False imprisonment

You can bring a claim against the police for false imprisonment if they detain you when the law doesn't allow them to. This can cover if you are arrested, as well as other situations. This could be, for example, if:

- the police stop you in the street and make it clear that you cannot leave (for more than a few minutes); or
- you have gone voluntarily to the police station and decide to leave, but the police won't let you go.

If the police arrest or detain you, they have to be able to show that the law allows them to do this.

When an arrest can be false imprisonment

The law says there are two types of offence.

- Arrestable offences, which are the more serious type and include theft, taking a car without the owner's permission, and 'affray' (fighting or rioting).
- Offences you can't be arrested for, which include most driving offences.

The police can arrest you if they have a good reason to think that you:

- are committing an arrestable offence;
- are about to commit an arrestable offence;
or
- are guilty of an arrestable offence.

The police can arrest you for a non-arrestable offence only if they have a good reason to think you have committed an offence, and one of a number of conditions apply. These conditions include:

- they don't know your name and can't easily find it out;
- they have a good reason to think that the name you have given is false;
- you haven't given an address which is good enough to send a summons to; or
- they have good reason to think that the address that you've given is false.

When a court decides if a police officer had good reason to think something, it will look at whether:

- the police officer genuinely thought it; and
- because of what they knew at the time, it was reasonable for them to think it.

The police can also arrest you:

- to stop a breach of the peace; or
- when they think a breach of the peace is about to happen.

Finally, the police can arrest you if a court has issued an arrest warrant for you. If a police officer arrests you and you are the wrong person, you can claim against them for false imprisonment. But the police are not responsible if you were arrested because

the court that issued the warrant made a mistake. In this case, you may have a claim against the court.

If you are arrested, the police have to tell you the reason for the arrest. If they can't do this immediately, perhaps because you are violent, they have to do it as soon as reasonably possible. If the police do not tell you why you have been arrested, the arrest is illegal. It will become legal as soon as the police tell you why you have been arrested.

When you can't legally be detained after being arrested

If you have been legally arrested, your arrest can become illegal if:

- there is no longer any reason for keeping you under arrest;
- you aren't charged even though there is enough evidence to charge you; or
- the police don't follow procedures under the Police and Criminal Evidence Act for regularly reviewing your detention.

3 Malicious prosecution

Lots of people are tried for offences and not found guilty. But you have limited rights in law to claim compensation in this case. You can claim compensation only if you can show you have been a victim of a 'malicious' (deliberately harmful) prosecution. You have to show four specific things to be able to claim compensation. These are as follows:

1 *The prosecution caused you damage or harm*

You have to show that:

- you were charged with an offence that you could be sent to prison for;
- being prosecuted damaged your reputation; or
- defending the case cost you money.

2 *You 'won' your case*

You win your case if:

- you were found 'not guilty' after a trial;
- the case was dropped before it got to trial;
- the magistrates would not send your case to the Crown Court for trial; or
- you were found guilty, but succeeded in your appeal against the verdict.

3 *The police did not have 'reasonable or probable cause' to prosecute you*

You have to prove that:

- the police didn't believe you were guilty; or
- there wasn't a good reason for the police to believe that you were guilty.

In most cases it is difficult to show either of these two things, and this is why there are very few claims for malicious prosecution.

4 *The police acted 'maliciously'*

You have to prove that the police prosecuted you for an unacceptable reason. Sometimes you can do this by referring to something that a police officer said. Sometimes the circumstances make it clear that the police can't have been acting properly.

As well as claims for malicious prosecution, it is possible to get compensation for miscarriages of justice if you were found guilty, and new facts have come to light which show that the conviction was a miscarriage of justice.

4 Trespass

You can sue someone for trespass if they come into your property without your permission when the law doesn't allow them to. This includes rented properties, if you are the tenant, as well as property that you own. You can also sue someone you have let into your house or flat if they don't leave when you clearly ask them to. If you aren't the owner or tenant, you may be able to bring a claim for trespass if it is clear that the owner or tenant gave you the authority to stop people from coming in.

The same rules apply to the police. You can sue the police for trespass if they go into your property and:

- they don't have permission; or
- the law doesn't allow them to.

The law allows the police to go into private property to arrest you:

- under an arrest warrant made by a court;
- for an arrestable offence; or
- if you have escaped from prison or other custody.

In each of these situations, the police have to have a good reason to believe that the person they are looking for is in the property. They can search the property only to check whether the person they are looking for is there.

In certain situations the law also allows the police to go onto private property to carry out a search. These include when:

- a court has granted the police a search warrant;
- you have just come from the property, the police have arrested you, and they have a good reason to think that there is evidence there relating to the offence you have been arrested for; or
- the police have arrested you for an arrestable offence, and the property is either your home or a place that you control (your business, for example).

In this last case, the police have to have a good reason to think that there will be evidence in the property relating to the offence for which they have arrested you or evidence of a similar or related offence. The police normally have to have the permission of an inspector to carry out such a search.

The police can also enter private property to:

- save people from death or injury;
- prevent serious damage to property; or
- prevent a breach of the peace.

5 Trespass to goods and conversion

If someone damages or interferes with your property, you can sue them for 'trespass to goods'. If someone refuses to give your property back to you when they are not legally allowed to keep it, you can sue them for 'conversion'.

The law gives the police wide powers to take and hold onto people's belongings. They can take and hold onto property if they have a good reason for thinking that the property may be the proceeds of crime or evidence of an offence. However, they should only take items of property if it they need to stop them being:

- lost;
- hidden;
- altered; or
- destroyed.

The police can only hold onto your property for as long as they need to. This can include when they want to use the item as evidence at a trial, but they shouldn't hold onto something if a photograph or a copy would do. They can also hold onto something when they want to work out who the true owner is.

If property is taken off you after you have been arrested, it should be given back to you when you are allowed to leave the police station. The police can only hold onto it if they have a reason for thinking that it is the proceeds of crime or evidence of an offence.

If you successfully sue the police for interference with your property, you can expect to get compensation as well as getting your belongings back. If you just want your belongings back, you can take out a summons in the magistrates' court under the Police (Property) Act 1897.

6 Negligence

You can sue someone for negligence if they cause you harm or damage when they should have been taking care not to. Negligence is the most frequently used cause of action for suing (for example, it is what you would use if you sue somebody for causing a car accident).

The law allows you to sue the police if they are negligent in the way they carry out their general duties. So, for example, you can sue the police if a police car knocks you down. Until recently, you could not sue the police if they were negligent in:

- the way they carried out an investigation; or
- in deciding whether or not to protect someone.

This meant, for example, that you couldn't sue the police if they failed to catch someone who burgled your house.

However, this rule was challenged in the European Court of Human Rights after a man was murdered by someone who had been stalking him. He had asked the police for protection from the stalker several times. The European Court of Human Rights decided that the rule that prevented someone suing the police for failing to protect them was unfair. However, it isn't yet clear how far the courts in this country will go in allowing this type of claim.

7 The Human Rights Act

Under the Human Rights Act 1998, you can sue the police if they act in a way that doesn't fit in with the rights under the European Convention on Human Rights which the Act made part of British law. For more about this type of claim, see the Community Legal Service leaflet, 'The Human Rights Act'.

How to bring a claim against the police

If you've read about the 'causes of action' and you think that you have a reason to sue the police for something they have done to you (or something they haven't done which they should have), there are several other things you need to know before you can consider taking legal action.

How long have I got to bring my claim?

You should try and bring proceedings as quickly as you can, while events are still fresh in your memory (and any witnesses' memories). However, specific time scales apply, depending on the type of case you are bringing.

- You should give the police at least three months' notice that you plan to start a case against them, unless doing this would put you outside one of the following time limits.
- If you are claiming compensation from the police under the Human Rights Act, you have to issue court proceedings within a year of your rights being broken.
- If you are claiming compensation from the police for negligently injuring you, you have to issue court proceedings within three years of the day you were injured. In theory, if you say that the injury was caused deliberately, you have six years, but to be on the safe side, you should issue court proceedings within three years.
- For all other cases, you have to issue court proceedings within six years. If your claim is for malicious prosecution, the six years will run from the day you won your original case.

Who do I sue?

You can sue:

- the police officer who you think was responsible; or
- the Chief Constable of the police force that the officer belongs to.

The Chief Constable will have the money to pay you any compensation if you win, so it is normal to sue them.

Who will decide on my case?

If your claim is for false imprisonment or malicious prosecution, you have the right to have your case tried by a jury, unless the jury will have to study a lot of documents as part of the evidence. You or your solicitor have to ask for a jury trial at the correct time.

A judge will try all other cases, unless you ask for a jury trial and the court agrees. If you are claiming compensation for an injury, it is very unlikely that the court will let you have your case tried by a jury.

How much compensation can I expect to win?

In a case tried by a jury, the jury decides how much compensation you should get, although the judge will give them guidance. In other cases, the judge decides.

It is not easy to predict how much compensation you will win. Each case is different and the judge's or jury's decision will be influenced by the evidence they have heard. However, the Court of Appeal has given some idea of how much compensation you should get in false imprisonment and malicious prosecution claims.

For false imprisonment, you should expect to get basic compensation of £500. This should increase to £3,000 if you are falsely imprisoned for 24 hours. For malicious prosecution, you should expect to get at least £2,000 in compensation. This will increase to £10,000 if the prosecution goes on for two years.

If the circumstances of your case are particularly bad, a judge or jury can award 'aggravated damages' on top of the basic compensation. They will do this if they feel this is needed to properly compensate you for what you have been through. This may be the case if:

- the circumstances of your arrest were especially humiliating; or
- the police were insulting or offensive.

Aggravated damages should be at least an extra £1,000, but they shouldn't usually be more than twice the basic compensation.

In some cases a judge or jury may award 'exemplary damages'. These are meant to punish the police when they have behaved very badly. For example, if the police have:

- lied when giving evidence; or
- subjected you to sexist or racist abuse.

Exemplary damages should be at least £5,000 but no more than £50,000. They shouldn't normally mean that the total compensation is more than three times the basic compensation.

Making a complaint against an individual police officer

If you want to make a complaint about a police officer, you can complain about more things than you could sue them for. This means that you can complain about the way a police officer treated you, even when they were doing something they were legally allowed to, such as carrying out a search.

A complaint is normally made by the victim (the person who was mistreated), but you can also make a complaint if you were with the victim, or if you saw what happened.

You can make a complaint about a police officer's behaviour even though you would be able to sue the police for it. For example, if you would have to pay a solicitor to sue the police, you might want to make a complaint because it would be cheaper.

You can't get compensation as the result of a complaint. But as long as you don't miss the deadline for issuing court proceedings, there is nothing to stop you making a complaint before deciding whether to sue the police. However, you would need to first discuss with your solicitor whether this would be a sensible approach.

You have to make a complaint within a year of the incident that you are complaining about. Many people who make a complaint do so while they are still under arrest at the police station or just after they have been released. It is probably best to wait until after you have been released and have had the chance to get advice and help.

If you want to complain about the police injuring you, you may want to see your doctor so that they can make a note of your injuries. You should also get photographs of any injuries that you can see.

When you make a complaint, you should complain about a particular police officer or officers. It is best to make your complaint in writing. You may want to get your solicitor to help you with this. If you make your complaint in writing, you should send it to the:

- Chief Constable of the police force that the officer belongs to; or
- Metropolitan Police Commissioner if the officer is a member of the Metropolitan Police in London.

The informal procedure

A complaint can be dealt with formally or informally. It can only be dealt with informally if you agree to this. If you are not happy with the informal procedure, or the issue turns out to be more serious than you thought, you can then ask for it to be formally investigated instead. Less serious complaints probably wouldn't be upheld under the formal procedure.

If the complaint is dealt with informally, generally an officer the rank of inspector (or higher) will be appointed to run the investigation. They may want to interview you and you can have someone with you if they do. You can insist that this takes place away from the police station. You can also tell the investigating officer about any witnesses they should speak to.

You may get an apology from the police, although they can't make the officer you have complained about apologise personally. If your complaint is upheld, no formal record will be made on the officer's file, although a record will be made of the complaint. You can ask for a copy of this within three months of your complaint being dealt with.

The formal procedure

A superintendent (or higher-ranking officer) will supervise the investigation of a formal complaint. They will appoint an inspector (or higher-ranking officer) to investigate the complaint. The investigating officer should have no connection with the incident or officer you are complaining about.

Some investigations are supervised by the Police Complaints Authority. The Police Complaints Authority is independent of the police and its members are not current or former police officers. However, it relies on police officers to conduct its investigations. The Police Complaints Authority supervises investigations if there is a suggestion that something a police officer did led to someone being killed or seriously injured. It may also supervise investigations where it is suggested that a police officer assaulted someone and caused an injury, or did something that would count as a serious arrestable offence.

The officer being investigated will be warned that any statement that they make may be used in disciplinary proceedings against them or a criminal prosecution. You and any witnesses will be asked to make a full statement.

If the supervising officer decides that the officer might have committed a criminal offence, the Crown Prosecution Service should be asked to decide whether to prosecute the police officer. In other cases, the supervising officer will send the file to the Police Complaints Authority, which will decide whether to:

- bring a disciplinary charge against the officer;
- give them a warning; or
- take no action against them.

The Police Complaints Authority will inform the relevant force, and the officer, what they decide to do, and they may say that the officer should face a disciplinary charge.

If the officer faces a disciplinary charge, you will be expected to go to the hearing to give evidence. If the charge against the officer is upheld, one of several things can happen. The officer may:

- be dismissed from the police or made to resign;
- have their rank or pay reduced;
- be fined;
- be given a caution; or
- be reprimanded.

Prosecuting an individual police officer

If you think that an individual police officer has committed a criminal offence, you can bring a private prosecution against them. You will need advice from a solicitor before you do this, to make sure that you have enough evidence and that the evidence is in the right form. Bear in mind that magistrates or a jury can convict someone only if they are satisfied 'beyond reasonable doubt' that the person is guilty. This means that they have to be certain that the person is guilty. You will have to have very strong evidence for this.

There are other difficulties with bringing a private prosecution. These are as follows.

- You can't get funding for your legal costs from the Community Legal Service.
- If you pay privately for a solicitor to represent you, the cost could be high, especially if the case is tried in the Crown Court (which is only for more serious offences).
- If you lose your case, you may have to pay the police officer's legal costs.

If you win your case and the officer is found guilty, you can ask the court to make the officer pay:

- compensation; and
- your legal costs.

However, the court won't automatically do this, and any compensation that you get will almost certainly be less than you would get if you sued the police.

Further help

A Citizens Advice Bureau can offer advice and help with a range of problems. Your local Citizens Advice Bureau is listed in the phone book. Information is also available on its website at: www.nacab.org.uk/cabdir.ihtml

Liberty

Liberty, the civil liberties and human rights organisation, has a legal help line, which may be able to help you. It is available Monday and Tuesday 6pm to 8pm and Wednesday 12.30pm to 2.30pm.
phone: 020 7378 8659
www.liberty-human-rights.org.uk

The Community Legal Service

The Community Legal Service (CLS) is run by the Legal Services Commission, a public organisation which has replaced the Legal Aid Board.

A key aim of the CLS is to make sure that people find the right legal help easily and can be confident of the service they get. All legal services providers in the CLS must meet quality standards set by the Legal Services Commission before they can display the CLS logo (shown on the front cover of this leaflet). The CLS also includes a scheme for funding civil cases (formerly legal aid).

There are CLS Information Points in local libraries and many other public places, which have information leaflets and the CLS Directory of Services. The Directory lists lawyers and advice centres which have met the CLS quality standards, and many others.

You can also phone 0845 608 1122
(minicom: 0845 609 6677)

to find out about advice centres and lawyers in your area, or visit the CLS website at: www.justask.org.uk.

About this leaflet

This leaflet is one of a series produced by Consumers' Association for the Legal Services Commission (LSC). Consumers' Association (CA) is the largest independent, not-for-profit consumer organisation in Europe. CA is committed to empowering consumers to make informed decisions about goods and services. For more information, visit CA's website at www.which.net.

To find out more about the LSC, visit the www.legalservices.gov.uk website, or contact your regional LSC office. Its address is in the phone book. There are also leaflets about LSC funding on the website or from the LSC leaflet line on 0845 3000 343.

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

**This leaflet was written by Consumers'
Association in association with liberty**

**This leaflet is one of a series being produced in 2001.
All the titles below should be available by summer
2001 in a number of languages and formats. The
leaflets will also be online at www.legalservices.gov.uk**

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