



Sentencing on Conviction

Civil disobedience

If you are found guilty of a crime, judges or magistrates will consider mitigating circumstances and are generally prepared to accept that for most offences committed in the context of peaceful direct action, the appropriate penalty is a conditional discharge, whether a protester has pleaded guilty or has been convicted following a trial.

This is based on remarks made about civil disobedience by Lord Hoffman in a Court of Appeal judgment in 2006, involving convictions resulting from protests at RAF Fairford on the eve of the Iraq War. Hoffman said:

My Lords, civil disobedience on conscientious grounds has a long and honourable history in this country. People who break the law to affirm their belief in the injustice of a law or government action are sometimes vindicated by history. The suffragettes are an example which comes immediately to mind. It is the mark of a civilised community that it can accommodate protests and demonstrations of this kind. But there are conventions which are generally accepted by the law-breakers on one side and the law-enforcers on the other. The protesters behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the law. The police and prosecutors, on the other hand, behave with restraint and the magistrates impose sentences which take the conscientious motives of the protesters into account. The conditional discharges ordered by the magistrates in the cases which came before them exemplifies their sensitivity to these conventions.

This can apply even if a defendant has a prior conviction in similar circumstances involving acts of conscience, although convictions for other

offences can also become an aggravating factor. Thus, the few anti-fracking protesters arrested at Barton Moss in Salford and later convicted all received conditional discharges and small fines. Similarly, most defendants convicted over protests at Ellesmere Port have been conditionally discharged and fined but in April 2015, one received a prison sentence because of an extensive criminal record for robbery and violence.

District Judges are usually aware of Lord Hoffman's remarks, but lay justices (and their clerks) are often not. It is important that advocates – and especially defendants representing themselves – draw the court's attention to this passage on acting on grounds of conscience, which is in paragraph 89, *R v Jones* [2006] UKHL16.