

PRISONERS' ADVICE SERVICE

THE INDEPENDENT LEGAL CHARITY PROVIDING INFORMATION AND REPRESENTATION TO PRISONERS

The Pre-Tariff Review Process

SELF HELP TOOLKIT

What is it?

In brief. You will only be eligible for a Pre-Tariff Review (PTR) if you are serving an indeterminate sentence. The purpose of a PTR is to decide whether there is sufficient evidence that you are suitable to be transferred to open prison before your tariff expiry date (TED). The review will be conducted by the Parole Board.

Please note that:

the Parole Board **cannot** direct your release on licence at a PTR, and
the Board can only recommend, not direct, your transfer to open, and
the Secretary of State for Justice can reject the Board's recommendation

The procedure for PTRs is set out in the Generic Parole Process Policy Framework (GPP) issued in February 2020, which replaced PSI 14/2015.

What about legal representation?

Legal aid is not available for the preliminary Pre Tariff Sift (see below). However, if referred to the Parole Board for a Pre-Tariff Review, advice and representation at a hearing can be funded by legal aid; provided you pass the Means Test set by the Legal Aid Agency (LAA).

When should a Pre-Tariff Review happen?

According to paragraph 5.4.1 of the Policy Framework, you will be eligible for your case to be referred to the Parole Board up to three years before your TED. After your sentence, the PPCS will calculate your PTR review date on the basis of your TED.

For example:

Your tariff expires on 6 September 2024, so,
Your pre-tariff parole date is 6 September 2021.

How does the PTR process work?

The PTR process starts with what is known as the Sift. The Sift is conducted by the Public Protection Casework Section (PPCS) within Her Majesty's Prison and Probation Service (HMPPS) on behalf of the Secretary of State.

The Sift is based on paperwork produced by the prison, principally a record of a pre-tariff Sentence Planning Review Meeting (SPRM). The SPRM will be conducted through OMU in the prison. See below for more details as to who and what is involved and how you can participate.

The PPCS will issue a SPRM notification three months prior to the commencement of the PTR process. The pre-tariff SPRM is the responsibility of the prison; it must take place two months before the PTR process starts. The prison will be expected to account for a failure to hold one on time.

You must be notified by the prison of the date of this meeting. You must be provided with copies of the reports that are to be considered at the SPRM. You are entitled to submit representations and/or to attend.

The SPRM should consider whether your case should be referred to the Parole Board for it to consider your transfer to open conditions. The prison must send the minutes of the SPRM to the PPCS within five working days. You must be provided with a copy of the full SPRM report.

The PPCS will then conduct the Sift that is, it must decide whether to refer your case to the Parole Board. The Secretary of State, via the PPCS, refers only those cases where there is a reasonable prospect of the Board making a positive recommendation.

You must be notified of the decision within 10 working days of the PPCS receiving the SPRM report from the prison. The prison must ensure you get a copy of that decision within one working day after the prison has received it.

If your case is referred to the Board, the PPCS will go on to prepare a dossier of your case for the Board to consider. This will be disclosed to you (or your solicitor if you have one). You would normally receive a copy of the dossier on the PTR date. The Parole Board will then go on to conduct the actual review.

Exceptionally, as a result of the case of *Guittard*, some cases can be considered and decided by the PPCS rather than the Parole Board. You can apply to the PPCS for an exceptional transfer - what is called a *Guittard* application – either yourself or via your solicitor. Exceptionally, the prison can also apply if, during a SPRM, it has been decided that you would benefit from a transfer.

This process only applies if your case has been referred to the Parole Board and the parole process has started. The criteria for this process are that:

- the dossier must contain evidence of significant progress in addressing all your identified risk factors and

- there is consensus amongst the report writers that you are suitable to be transferred and

- there are no concerns that would benefit from an exploration by the Parole Board at an oral hearing and

- you have demonstrated in your representations that there are clear benefits for you to be transferred immediately.

In summary, if there is clear consensus within your dossier for a transfer to open conditions, it is worth submitting a *Guittard* Application. If you have demonstrated exceptional progress in prison, the Secretary of State is required to consider transfer.

If the PPCS accepts your application and conducts the assessment, it must notify you, your legal representative if you have one, and the Parole Board of its decision within 14 days.

What if my case is not referred to the Parole Board?

If, after conducting the Sift, the PPCS decides not to refer your case to the Board, you can appeal against that decision or, if you are able to instruct a solicitor, he or she can submit a representations to the PPCS on your behalf.

An appeal must be decided by someone in the PPCS, who was not involved in the original Sift.

If your appeal is successful, your case will be considered as an exceptional further PTR.

If your appeal is not successful, your next review will be your on-tariff review unless you are eligible to apply for an exceptional PTR prior to your TED.

Can I advance the PTR date?

If you become a Category C or are a female 2nd stage prisoner and you are 4½ years before your TED, the date of your PTR can be brought forward by 6 months to begin 3½ years before your tariff expires. If this is the case, you can ask the prison to request that your PTR be advanced. Such requests are made to the PPCS by the prison. They must be signed off by the Head of OMU and must not be made any sooner than 4½ years before your TED. Remember that an advancement does not guarantee that a Pre-Tariff Review will take place. You would still have to go through the Sift process described above.

Am I eligible for a PTR?

A Sift is not required to be held for some prisoners. This will apply if you are excluded from open conditions under the Secretary of State's policy on prisoners with a history of abscond or escape. So, if you have a history of abscond or attempted escape, of failing to return from ROTL or have been convicted of an offence whilst on ROTL, you will not be eligible to be transferred to open conditions and therefore not be eligible for a PTR unless the PPCS finds that there are exceptional circumstances.

Exceptional circumstances are that:

you have made significant progress in reducing your risk of harm and risk of abscond such that it is judged to be very unlikely you will abscond again AND you meet one or more of the following conditions:

1. there are compelling circumstances beyond your control that would make a place in open conditions necessary;
2. a place in open condition is absolutely necessary because your need to provide evidence of reduced risk and/or resettlement work cannot be met in a progressive regime in closed conditions;
3. preventing your transfer or return to open conditions would in all the circumstances be manifestly unjust or unfair.

Can I be presumed unsuitable for a Sift/Review.

Yes, if:

you are Category A or;
you have an OASys assessment of high/very high risk of harm or;

you have had a proven adjudication for serious violence within the last 12 months.

then there will normally be a presumption that you will not meet the criteria to be referred to the Parole Board for a PTR. However, this does not mean you will be automatically excluded from the process. You may still be eligible for an exceptional transfer to open conditions. All cases must be considered on their individual merits.

Which documents will be considered at the Sift?

These will include the minutes of the SPRM which will be supplemented by reports from prison and probation staff, such as your personal officer, offender supervisor or, for example, a CARATS worker. Additionally, the Sift panel will look at representations made by you or your solicitor on your behalf.

What issues are considered at the Sift?

It is important to understand that the point of a Sift is not to consider whether you **should** be transferred to open prison, but whether there is **evidence in support of such a move**, which is sufficient for a panel of the Parole Board to reasonably reach that same conclusion.

*The **key questions** covered at the SPRM for the Sift are:*

have you made sufficient progress in addressing and reducing your risk to a level consistent with protecting the public from harm; should you be in the community unsupervised on ROTLs?

are you likely to comply with temporary release in the community?

are you trustworthy enough not to abscond?

will you benefit from being tested in a more realistic environment?

have you had any adjudications and why did they occur?

do you have any relevant medical, psychiatric or psychological considerations that might prevent you from being successful in open conditions?

how have you dealt with being in positions of trust?

How can I prepare for my Sift and Review?

Do your best to ensure that all of your risk reduction work is completed and your sentence planning targets are met 6 to 12 months before your PTR date. If this is not realistically going to happen, consider deferring your pre-tariff Sift by submitting an application to the PPCS through OMU at the prison.

Be sure to check that the review will have the most up-to-date information about the work you have undertaken in prison.

If you have had any significant adjudications in the past two years, especially those involving drugs or violence, consider deferring your Sift.

Consider instructing a solicitor to write representations on your behalf

Remember that you cannot be forced to participate in a review. And, for example, if you feel you are not yet in a position to persuade the Board that you are suitable for a transfer, then it is possible to apply for a deferral. This might be, for example, if there is offending behaviour work that you have not quite finished.

Where does the Pre-Tariff Review fit in with the overall Parole Process?

If you have had a PTR, your next review will be your 'on-tariff' review. The Secretary of State is required to refer your case to the Parole Board for your on-tariff review and at least every 2 years thereafter.

The PTR follows the general Parole Board review process. This is set out in the GPP Policy Framework. Once your case has been referred to the Board, the PPCS must start to compile a dossier two weeks before the beginning of the review period. This is known as the skeleton dossier. It should contain:

The index sheet (table of contents); and

A copy of the referral notice to the Parole Board; and

A summary of your case; and

Offence related papers, i.e. transcripts of the sentencing remarks, pre/post-tariff sentence reports, a list of previous convictions, any appeals; and

A record of adjudications, a summary of reports on progress and offending behaviour courses completed, and

Any previous Parole Board decisions.

The documents in this dossier will then be uploaded on to the Public Protection Unit Database (PPUD).

The PPCS must issue an initial notification letter to the prison confirming that the review period has started. You must receive a copy of that notice from the prison within one working day. This is designated as week '0'.

The prison must ensure the relevant reports are prepared and are uploaded on PPUD so they can be added to the dossier. These documents should include reports provided by your offender supervisor and any relevant key workers, who have been part of interventions or offending behaviour work you have done and any reports by your personal officer, psychologists, healthcare officers, psychiatrists or security officers. By week 6, your offender manager in the community must also have submitted their report to the PPCS to be included in the dossier.

The PPCS is responsible for ensuring all the relevant documents have been uploaded to PPUD. The full dossier must then be disclosed to you. You then have the chance to instruct a solicitor, who can access the dossier on PPUD and advise you on the merits of your case and start to prepare representations to be submitted on your behalf.

At week 14, the dossier is referred to the Parole Board by the PPCS. At this point, you (or your solicitor on your behalf) can submit representations to the Board. These representations will also be added to the dossier.

The Parole Board will then conduct a 'paper' hearing of your case that is, it considers all the documents in the dossier. This is called a Member Case Assessment (MCA). If it is a PTR, the MCA can only consider your suitability for transfer to open conditions. If it is an on-tariff or post-tariff review, the MCA must consider whether your risk of serious harm to the community is such that it can be satisfied it is no longer necessary for you to remain in closed conditions. The Board will then issue its decision to the prison and to you (and your solicitor).

The MCA can decide:

- to defer your case
- to direct your release (unless it is a PTR)
- to recommend your transfer to open conditions
- to direct that your case be considered at an oral hearing

If the MCA does not recommend your transfer (or if it is a post tariff hearing, direct release) or direct that your case be considered at an oral hearing, you can ask that it reconsiders your case at an oral hearing.

Although there is no absolute right that an oral hearing to be held. However, in the case of Osborne & Booth 2010 EWCA Civil 1409 the Supreme Court decided (at paragraphs 80-96) that circumstances in which an oral hearing should be held include where:

There is a factual dispute;

There is a need for significant mitigation or explanation, which needs to be advanced orally in order to be accepted;

The Parole Board cannot properly or fairly make an independent assessment of your risk or the means by which it should be managed and addressed;

- E.g. where an assessment of risk is based on your characteristics which can be best judged by seeing or questioning you in person;
- E.g. where the Board may be materially assisted by hearing evidence, such as from a psychologist or psychiatrist;

There is a significant dispute concerning expert materials, such as a psychologist's assessment;

The Parole Board is asked specifically to advise the Secretary of State on matters other than your release or transfer that may affect your progress in prison, e.g. courses that you are required to undertake or future reviews;

It is needed to test the views of those who oppose your release or transfer, or to enable you or your legal representative to put your case effectively;

The Parole Board has expressed strongly-worded positive views about your risk levels and it is considered appropriate to explore the impact this may have on categorisation at a hearing;

It would be unfair to allow the paper decision to become final without an oral hearing, e.g. where findings in the paper decision might have a significant impact on your future care;

Lengths of time in a case are significant and/or you are post-tariff;

You have never had an oral hearing before, or have not had one for a prolonged period.

Since that case, the Parole Board has issued new guidance setting out criteria when an oral hearing should be held. In practice, as a result, oral hearings are regularly granted.

What happens at an oral hearing?

The hearing will take place in the prison. It is equivalent to a court hearing but much more informal. Remember, you are entitled to legal representation at the hearing and, if you are eligible, you can obtain legal aid to fund that representation.

The Board who will hear your case will consist of a panel of up to three Parole Board members. It may include a psychologist or psychiatrist. The panel will hear evidence from your offender supervisor and offender manager. If you have had a psychological or psychiatric assessment, it will also hear evidence from the report writers. You or your solicitor can question each witness. The panel will want to hear from you as well. However, you do not have to give evidence although it is likely to help your case if you do.

You or your solicitor on your behalf, can apply to the Board for permission for other witnesses to attend the hearing. There may be other staff in the prison, who you would like to attend. You can also apply for an observer to be present; this could be a close friend or family member or even your personal officer, to attend to offer support. This may be particularly important if you are not represented. However, if they are observers, they will not be able to give evidence. Also bear in mind that the full details of your index offence will be discussed as well as your general offending history. It is important therefore, to weigh up whether you would feel uncomfortable speaking about your offence in front of a friend or family member.

The Board has 14 days after the hearing in which to make its decision. The prison must provide you with the decision promptly

The reconsideration mechanism introduced in July 2019 does not apply to PTRs.

Should you need further advice, please do contact PAS using the address or telephone number below.

PAS offers free legal advice and information to prisoners throughout England and Wales regarding their rights, conditions of imprisonment and the application of the Prison Rules.

We pursue prisoners' complaints about their treatment in prison by providing advice and information and, where appropriate, taking legal action.

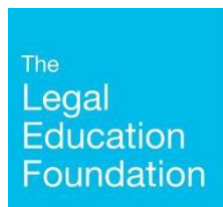
Examples of issues we can advise on include: parole, temporary release, indeterminate sentences, categorisation, adjudications, sentence calculation, licence and recall, discrimination, resettlement and healthcare matters. We also provide advice on Family Law to female prisoners and on Immigration Law to prisoners with issues relating to detention or deportation.

If you have something that you'd like to discuss with one of our Caseworkers, you can:

Write to us at
Prisoners' Advice Service
PO Box 46199
London EC1M 4XA
(Mark your envelope Legal Mail Rule 39 in all correspondence with PAS)

Call us Monday, Wednesday or Friday
between 10am and 12.30pm or 2pm and 4.30pm, or
Tuesday evening between 4pm and 6pm on
020 7253 3323

We produce the Prisoners' Legal Rights Bulletin, three times a year. This shares information about key cases and changes in Prison Law. It is free to prisoners. To sign up for this, please write to the address above.



www.prisonersadvice.org.uk

Prisoners' Advice Service is a registered charity (No: 1054495) and is a company limited by guarantee (No: 3180659).

Updated 7 September 2021