

Parole Board delays

SELF HELP TOOLKIT

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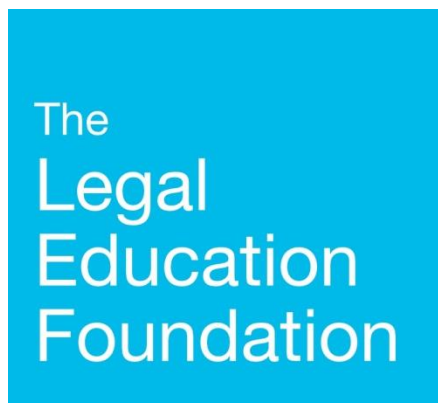
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JUSTICE BEHIND BARS

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The Legal Education Foundation



PRISONERS' ADVICE SERVICE

THE INDEPENDENT LEGAL CHARITY PROVIDING INFORMATION AND REPRESENTATION TO PRISONERS

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SELF HELP TOOLKIT

If my hearing is delayed, can I make a claim for compensation?

Article 5(4) of the European Convention on Human Rights provides indeterminate sentenced prisoners with a right to a speedy review of their detention after they have served their tariff period.

Indeterminate sentenced prisoners whose parole hearings have been delayed may be eligible to make a claim for compensation against the Parole Board.

There is also a legal duty to provide timely pre-tariff expiry hearings for indeterminate sentenced prisoners who are looking to progress to open conditions.

Breach of these rights or legal duties may give a right to compensation.

Can I make a claim?

You will first need to answer the following questions in order to get the important and relevant facts of your case together:

1. Are you serving **an indeterminate sentence** (e.g. an Imprisonment for Public Protection (IPP) or life sentence)? If not, it is unlikely that you will be able to make a claim for a delay to your hearing.
2. **Was your hearing:**
 - a. a 'pre-tariff expiry' hearing?
These are hearings at which you can only apply for open conditions.
 - b. An 'on tariff' hearing?
This is the first hearing at which you can apply for your release. It should take place just before your tariff expiry date.
 - c. A 'post-tariff' hearing?
These are hearings which take place after your tariff has expired.
3. **In which month should your hearing have taken place?**
You should have received a letter from the Public Protection Casework Section at the Ministry of Justice (MOJ) with this date. If you have not received such a letter, you can estimate that the hearing date should have

been 12 weeks after the case was referred for oral hearing (based on the guidelines set out in Prison Service Instruction (PSI) 22/2015 on the Generic Parole Process).

4. When did your hearing actually take place?

This should be on your parole hearing decision letter.

5. Do you know why the hearing was delayed?

If your hearing took place later than the date on the MOJ letter or the date you have estimated from the PSI, did you or your legal representative do anything to cause any delay to your case?

Did you ask for the case to be adjourned or deferred so that you could complete a course or instruct an independent witness, or for some other reason? It is unlikely you will be able to submit a claim for damages, as the Parole Board is only going to agree to compensate you for delays which it is responsible for.

6. What was the outcome of your hearing?

- If you were released after a delayed hearing you will need to consider the reports which were prepared at the time your hearing should have taken place. You will need to show that it is more likely than not that you would have been released if your hearing had happened on time.
- If you were not released after a delayed hearing you may still be entitled to compensation if your hearing was delayed by three months or more and you did not cause the delay.
- If you were recommended for open conditions at your pre-tariff hearing you may be entitled to compensation if your hearing was delayed and you did not cause the delay. It is likely that you will need to show that the hearing was delayed by three months or more.

Claims for compensation for breaches of the Human Rights Act will normally need to be made **within one year** of the parole decision letter.

How much compensation will I get?

There are two cases which provide guidance on compensation.

The case of Faulkner sets a guideline rate of £650 per month for **delayed release**.

The case of Sturnham sets a guideline rate of £50 per month for **other delayed hearings**.

There is no published guideline rate for **pre-tariff expiry open conditions delays** but it is likely (following the case of *Hussain*) that a similar rate of £50 per month will apply.

The courts have set these guidelines to take into account the frustration, anxiety and distress which would be expected as a result of delays to hearings. If you are able to show that you suffered more than would normally be expected as a result of the delay, it may be possible to argue for a higher amount of compensation. However, you would need to provide some evidence to the effect that you have suffered a 'psychiatric injury' as a result of your continued detention. An example of this would be if you were being held in a prison where you were known to be, and could prove you were, in physical danger.

Can I get additional compensation?

You might be able to claim additional compensation (this is known as 'special damages'). Special damages are awarded where you can show financial loss arising directly from the delayed decision by the Parole Board. For example:

You are in open prison conditions and you have a job outside of prison. You have a delayed decision by the Parole Board to recommend your release of 4 months. During those 4 months you paid the victim levy. You can claim back the levy you paid over those 4 months because if you had been released on time you would have continued working and not have had to pay it.

What do I need to do to make a claim?

You should get together copies, if you have them, of any of the following documents:

- a. The letter from the Secretary of State before your parole review started, this should include the date your parole review should have concluded;
- b. Any Parole Board directions for your case;
- c. Your Parole Board decision letter;
- d. Reports for your parole review by your Offender Manager, Offender Supervisor and any other important reports which made recommendations about your progression e.g. psychological reports.

You do not need to send these to the Parole Board with your pre-action letter (see below). However, it is advisable to have them in order to ensure the details of your claim are accurate and you are ready to provide in evidence if you do end up having to go to court.

How do I start a claim?

First you will need to send what is called a 'pre-action' letter. A sample is attached below. You send it to:

The Legal Adviser
The Parole Board for England and Wales
52 Queen Anne's Gate
London SW1H 9AG

What will happen next?

The Parole Board will usually agree to pay legitimate claims if they receive a 'pre-action' letter within a year of the delayed hearing.

If compensation is agreed and you are still in custody, the Parole Board will pay any compensation into your prison account.

If you have been released you will need to provide details of a bank account for the Parole Board to send you any money, because the Parole Board does not have the facility to send money other than through BACS (electronic payment). If you fail to provide this information, you will be delayed in receiving your damages money. If you are in prison, then the Parole Board will pay any monies into your prison account.

If the Parole Board does not agree to pay compensation or you cannot agree on the amount, you will have the right to make a claim for damages to the County Court.

You can do this by completing a form N1 (that PAS can send you on request) and sending it to:

County Court Money Claims Centre
PO Box 527
Salford
M5 0BY

Assuming you have no income (other than prison income and a small amount of private cash) and no savings, you can submit the claim for free, but you will also need to complete a fee exemption form (EX160A).

If you need more information on the County Court procedure, you may be able to get this from the prison library, or you can call our advice line on 020 7253 3323 or 0845 430 8923 and we can send you a Small Claims Pack which will assist you to submit your claim.

PRISONERS' ADVICE SERVICE PO BOX 46199 LONDON EC1M 4XA

TEL: 020 7253 3323 / 0845 430 8923

(Mondays - Wednesdays - Fridays 10.00 - 1.00 p.m. and 2.00 - 5.00 p.m.)

SAMPLE PRE-ACTION LETTER TO SEND TO PAROLE BOARD

Legal Department
The Parole Board for England and Wales
52 Queen Anne's Gate
London
SW1H 9AG

DATE

Ref number (your prison number)

Dear Sir or Madam

Re: Parole Board delay and claim for compensation

I am writing regarding delay in setting a date for my Parole Board hearing.

I have been advised that this delay constitutes a breach of my rights under Article 5(4) of the European Convention on Human Rights. [FOR RELEASE CASES]

Or

I have been advised that this delay constitutes a breach of the public law duty and ancillary Article 5 duty to provide me with a timely pre-tariff expiry hearing at which I could have an opportunity to seek to progress to open conditions. [FOR PRE TARIFF CASES]

Whilst this matter may give rise to legal proceedings, I hope that it can be resolved without need for such action. This letter is sent to request that you respond to the relevant issues in the hope of avoiding litigation. Please therefore accept this letter as a formal letter before action as required by the pre-action protocol. Should proceedings become necessary, the proposed defendant will be the Parole Board.

Factual background

I am serving a life/indeterminate sentence of x

My tariff expires/expired on x

My case was directed to oral hearing on x

My hearing should have taken place by.....

In fact it took place on.....

Submissions

FAULKNER CASES:

Had my case gone ahead on time in.....on the balance of probabilities it is likely that I would have been released. In line with the guidance of the Supreme Court in the case of Faulkner I should be entitled to compensation at a rate of £650 per month. Hence I should be entitled to compensation of....

STURNHAM (NON-RELEASE CASES)

My hearing was delayed by.... months. In line with the guidance of the Supreme Court in the case of Sturnham I should be entitled to compensation at a rate of £50 per month. Hence I should be entitled to compensation of....

HUSSEIN (PRE-TARIFF DELAY CASES)

My hearing was delayed by.... months. I was recommended for open conditions at my pre-tariff hearing. In line with the case of Hussain I should be entitled to compensation. Although there is no published guidance for Hussain cases, it is anticipated that the courts would calculate compensation in line with the case of Sturnham at a rate of £50 per month. Hence I should be entitled to compensation of....

Action Required

I ask that you respond to my letter within 14 days, agreeing to pay damages as outlined above.

Should you not agree to pay damages, as requested, please provide a statement of your reasons for refusal, to be used in the event of my challenging the delay and your decision further in the County Court.

Yours faithfully

PRISONERS' ADVICE SERVICE

THE INDEPENDENT LEGAL CHARITY PROVIDING INFORMATION AND REPRESENTATION TO PRISONERS

JUSTICE BEHIND BARS

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 10:00-12.30 and 14.00-16.30 on
020 7253 3323

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



www.prisonersadvice.org.uk

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