



# PRISONERS' ADVICE SERVICE

THE INDEPENDENT LEGAL CHARITY PROVIDING INFORMATION AND REPRESENTATION TO PRISONERS

## The Pre-Tariff Review Process

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### SELF HELP TOOLKIT

#### ***What is it, and how is it different from a post-tariff Parole Hearing?***

The purpose of a Pre-Tariff Review is to decide whether there is evidence that you are suitable to be transferred to open prison before your parole date. Your Pre-Tariff Review should take place 3 years before your tariff expiry date.

Please note that these hearings do not direct your release on licence and the Secretary of State can reject recommendations reached by the board. These reviews apply to indeterminate sentence prisoners who are approaching their first parole review to consider a transfer to open prison.

The Pre-Tariff Sift is the stage which decides whether your case should be referred to the Parole Board for a Pre-Tariff Review. The review follows a successful Sift and is heard by the Parole Board who may recommend a move to open prison.

#### ***What about representation? Are Sifts and Pre-Tariff Reviews covered by legal aid?***

Unfortunately, as the Sift and Pre-Tariff Reviews cannot result in your release on licence, they are not covered by legal aid. However, parole hearings where your actual release on licence is a possible outcome are still covered.

#### ***Who conducts the review?***

Some cases will be considered by Her Majesty's Prison and Probation Service (HMPPS) staff without being referred to the Parole Board. The *Guittard* case was heard in the courts and decided that prisoners with indeterminate sentences can be considered for a transfer to open prison without their cases being referred to the Parole Board.

The Sift takes place during a "Sentence Planning Review Meeting" or SPRM. If the case is referred to the Parole Board, a panel will conduct a review and make a recommendation as to whether you should be moved to open prison or not. However, the final decision will be made by a member of Public Protection Casework Section (PPCS) who may accept or reject the recommendation on behalf of the Secretary of State.

### ***When should it happen?***

According to paragraph 4.8 of Prison Service Instruction (PSI) 22/2015, the pre tariff SPRM at which the initial Sift review will be conducted must be 2 months before the parole review process would have otherwise started. You must be notified of the date of this meeting in order to submit representations. You must be provided with copies of reports which are to be considered at the SPRM.

For example:

- Your tariff expires on 6 September 2019, so,
- Your pre-tariff parole date is 6 September 2016, so,
- Your SPRM should be held before 6 July 2016 and
- The date for your SPRM should be set, and you notified, around 6 May 2016.

### ***I have been told I am presumed unsuitable for a Sift/Review. Why?***

Some cases will be deemed unsuitable. According to paragraph 4.13 of PSI 22/2015, the following factors will normally lead to a presumption that a prisoner will not meet the criteria to be referred to the Parole Board for a Pre-Tariff Review. However, this does not mean the prisoner will be automatically excluded. All cases must be considered on their own individual merits. The factors are:

1. Category A status;
2. Offender Assessment System (OASys) appraisal of high/very high risk of harm;
3. Proven adjudication for serious violence within the last 12 months.

Prisoners with a history of absconding / attempted escape, failing to return from Release On Temporary Licence (ROTL) or convicted of an offence whilst on ROTL during their existing sentence will not be eligible for a Pre-Tariff Review unless there are exceptional circumstances.

### ***Which documents will be considered at the Review?***

Reports will be submitted by prison and probation staff, such as your personal officer, offender supervisor and Counselling, Assessment, Referral, Advice and Throughcare services (CARATS) worker. Additionally, the Sift panel will look at representations made by you or on your behalf.

### ***What issues are considered at the Review?***

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

The **key questions** covered at the SPRM are the following:

1. Have you (the prisoner) 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 under licensed temporary release?
2. Are you likely to comply with temporary release in the community?
3. Are you trustworthy enough not to abscond?
4. Will you benefit from being tested in a more realistic environment?
5. Have you had any adjudications and why did they occur?
6. Do you have any relevant medical, psychiatric or psychological considerations that might prevent you from being successful in open conditions?
7. 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 Sift date.** If this is not realistically going to happen, consider deferring your pre-tariff Sift by submitting an application to the PPCS caseworker for the prison. If there is no representative, the Offender Management Unit (OMU) could submit an application on your behalf with the assistance of your offender supervisor.
- Prepare **written representations** which make note of all the work you have carried out to reduce your risk, and show examples of how you can prove that the reduction in risk is real. See the enclosed representations template if you are unsure of how to structure these.
- Be sure to check that the members of your Sift review panel 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.
- **If you have made good progress since your last SPRM or pre-tariff reference,** your latest SPRM may consider whether it would be appropriate to recommend that your case be referred to the Parole Board for a further Pre-Tariff Review prior to tariff expiry. The decision to recommend referral in these circumstances is for the SPRM. **You should note** that an exceptional pre-tariff review will only be agreed if there is sufficient time to complete it prior to the start of the tariff expiry review.

## ***What are the possible outcomes of the Sift?***

1. Your case is referred to the Parole Board for a Pre-Tariff review to consider a transfer to open prison or,
2. Your case is recommended for a further (previously known as exceptional) Pre-Tariff Review to consider a transfer to open prison or,
3. Despite negative aspects, your case is recommended for a Pre-Tariff Review or,
4. It is confirmed that you are automatically excluded or,
5. Your case is not referred for a Pre-Tariff Review.

## ***What happens after the Sift?***

The record of your Sift SPRM must be sent to the PPCS case manager within 5 working days of the Sift concluding. You must be notified of the decision in writing within 14 days.

- **If the PPCS agrees:** Your case is then referred to the Parole Board and you would normally receive the dossier on the date of your Pre-Tariff Review.
- **If the PPCS disagrees:** You can **appeal** via the internal complaints procedure or if you are able to instruct a solicitor he or she can submit a letter on your behalf to PPCS.

## ***What is a Pre-Tariff advancement?***

If you become a Category C or female 2<sup>nd</sup> stage prisoner 4 and ½ years before tariff expiry, the date of your Pre-Tariff Review can be brought forward by 6 months to begin 3 and ½ years before your tariff expires. What this means is that you may be considered for a transfer to open prison at an earlier stage.

Requests for an advancement must be signed off by the Head of OMU and must not be made any sooner than 4 and ½ years before tariff expiry. **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.

## ***I've heard about a Guittard Application – what is it?***

If the PPCS accepts a recommendation reached during your Sift, the matter is referred to the Parole Board and a dossier of your case will be compiled. Once the dossier is disclosed, it is possible to submit a *Guittard* Application. This is the consideration of a transfer to open prison in exceptional circumstances without a referral to the Parole Board.

The main criteria that need to be met to make a successful *Guittard* Application are:

1. Your Parole Dossier must contain **evidence** that you have made **significant progress in addressing ALL of your identified risk factors**; and
2. There must be **agreement** among report writers that you are **suitable and it is safe** for you to be transferred to open conditions; and
3. That there are **no areas of concern** identified by report writers which would clearly benefit from further exploration by the Parole Board at an oral hearing; and
4. That you have **demonstrated in your representations** that there would be **clear benefits** in you being transferred to open conditions immediately rather than following the usual process.

In summary, if there is clear consensus within your dossier for a transfer to open conditions, it is worth submitting a *Guittard* Application. The OMU can assist you with making the application directly to PPCS. Remember: it is important that you set out, with evidence, how you meet the above criteria.

**Please note the following:**

1. The application should be sent directly to PPCS at 102 Petty France, London SW1H 9AJ.
2. If the PPCS Team Manager considers that the criteria for a transfer to open prison are **not** met, they can reject the application within 14 days without referring it to the Head/Deputy Head of Casework.
3. If the PPCS Team Manager is of the view that the prisoner **is** suitable to transfer to open conditions the case must be passed to the Head/Deputy Head of Casework within 14 days. If it is then rejected, reasons must be provided and the PPCS Case Manager notified within 14 days.
4. If the Head/Deputy Head of Casework agrees that the case meets the criteria it must be passed to the Head of PPCS within 14 days who will then forward it to the Head of the Offender Management and Public Protection Group (OMPPG) for final approval. The final decision letter must be sent to the prisoner within 7 days.
5. If the case is accepted, the PPCS Team Manager must ensure the Parole Board is notified immediately.

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

Your Pre-Tariff Review should take place 3 years before your tariff expiry date. For indeterminate prisoners who are post-tariff, there is a requirement for the Secretary of State to refer the matter to the Parole Board once the minimum term has been served and at least every 2 years thereafter.

The Pre-Tariff Review follows the general Parole Board review process, which is currently referred to as the "Generic Parole Process." It begins with a 26 week period to allow for the dossier reports to be compiled and the Parole Board to consider your case on the papers and whether an Oral Hearing should be convened.

When the review process has started, you should receive a form asking whether you wish to proceed with a review and whether you wish to notify the Parole Board of your representative. If you do not have a representative at this stage, it is important to make the Parole Board aware of this.

Rule 6 of the Parole Board Rules states that you can appoint any person of your choosing to act as your representative, except for: any person liable to be detained under the Mental Health Act 1983, any person serving a sentence of imprisonment, any person on licence, or anyone with an unspent previous conviction.

Remember that you cannot be forced to participate in a review. If you do not want the review to take place at that time it is possible to apply for a deferral.

Once the process has begun, the PPCS will prepare a skeleton dossier, which should contain:

- The index sheet (table of contents); and
- The referral to the Parole Board; and
- A summary of your case; and
- Offence related papers, i.e. transcripts of the charge and sentencing remarks, pre/post-tariff sentence reports, 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 skeleton dossier is then sent to the prison and they add updated reports. PSI 22/2015 details guidance on who should provide these reports. For example, reports should be provided by your offender manager, offender supervisor and any relevant key workers who have been part of interventions or offending behaviour work. This may include your personal officer, reports from psychologists, healthcare officers, psychiatrists or security officers.

***Tell me more about the Dossier.***

Once it is compiled, the prison should give you a copy of the dossier. If you are being represented, then a copy is also sent to your legal representative. The Parole Board Rules require representations to be submitted by you or your representative within 4 weeks of the dossier being given to you. A request can be made to the Parole Board for an extension of time. **The content of your representations is extremely important.** Please see the attached template to assist you in drafting these as best you can, as well as sample representations on pages 18 & 19 of this booklet.

Although there is no absolute requirement for an oral hearing to be held the issue is now one of fairness in domestic law. In the case of Osborne & Booth 2010 EWCA Civil 1409 the Supreme Court upheld an appeal in October 2013 and since then the Parole Board has issued new guidance which sets out when an oral hearing should be convened. In practice, in the interest of fairness oral hearings now have to be regularly granted.

***What if there is an error in my dossier?***

If there is incorrect information it can be worth challenging its content. To do this, you should seek to obtain a copy of your security records and/or a printout of any comments noted on your Prison National Offender Management Information System (PNOMIS). This is possible under the Data Protection Act but a fee of £10 is payable. The request needs to be made to:

Prison Service Information Management Section  
Branston Registry Buildings  
16 S & T Store  
Burton Road  
Branston  
DE14 3EG

This disclosure has to be made within 40 days, but can be dealt with more quickly if you ask for specific information rather than a copy of all the records. Remember: you should make a distinction between incorrect information that will have an impact on your hearing, and information that is incorrect but will *not* have an impact.

***(The following pages can be photocopied and filled in following guidance on pages 18 and 19.)***











(continued from page 8)

***What do I do if the prison does not disclose parts of my dossier to me?***

The usual principle applied to disclosure is that all material to be considered by the Parole Board should also be disclosed to the prisoner and the norm is therefore for disclosure.

In some circumstances however, the Secretary of State can withhold material contained in the dossier where this disclosure would adversely affect national security, the prevention of disorder or crime, or the health and welfare of the prisoner or others.

The reasons given by the prison for non-disclosure of your dossier have to be necessary and proportionate to the difficulty this may present to you. The prison have to first ask the PPCS before making an application for non-disclosure and they will have to consider whether you can be given the gist or summary of the information not being disclosed to you.

If you are represented, the information withheld from you should still be disclosed to your legal representative. However, under Rule 8(3)(a) of the Parole Board Rules, this will only be possible where your representative is a barrister, solicitor, medical practitioner or someone the panel considers suitable due to their experience or professional qualifications. Your representative however will be forbidden from telling you what is not being disclosed without the consent of the Chair, and this can present serious problems.

If you are not represented, OMU should check with PPCS if there are any non-disclosure issues and the Chair will need to consider whether it is necessary and proportionate in the circumstances to withhold the information from you. In very rare circumstances, if it is impossible to safely disclose the information to you, a special advocate can be appointed to assist you.

If you are concerned about material in your dossier being withheld you can contact the Prisoners' Advice Service directly to seek our advice.

***What role do victims' opinions play in this process?***

Following the introduction of the Code of Practice for Victims of Crime in February 2014 the **Parole Board** must:

- Consider all representations that victims have made about licence conditions;
- Where a victim has requested a licence condition which has not been included, provide an explanation for the non-inclusion;
- Read a Victim Personal Statement (VPS) if one is submitted;

- Consider applications from the victim if they want to attend the oral hearing; and
- Consent to a request from the victim to attend in person unless there are good reasons for not doing so.

You should be aware that the views of victims cannot have any bearing on whether the Board recommends your transfer to open prison unless they raise relevant issues of risk. If such issues are raised this evidence must be included in your dossier in order for it to be challenged.

### ***What does “consideration on the papers” mean?***

The Parole Board will initially consider your dossier “on the papers”, once your representations have been added to it. This is currently done by an Intensive Case Management Member (ICM), although this system is currently under review. The member may make a provisional decision that the prisoner is unsuitable for release or may refer the case to an oral hearing. If the case is to proceed to an oral hearing, the single member will issue directions. If you are found unsuitable for release you can make a written request for an oral hearing with full reasons. If you do not make a request then the decision becomes final (Parole Board Rules 17 (3)(b)).

Remember that when you request an oral hearing following the initial decision, it is *not* an appeal but a request. If any new information has come to light it is important that you submit it before the oral hearing takes place. As stated above, if you ask to participate in the process, it is highly likely you will be granted an oral hearing but **do remember to provide your reasons for wanting an oral hearing.**

In your written request for an oral hearing it may also be helpful for you to highlight any particular reports that you would like the single member to consider or any additional reports that may assist. If there are any issues of timing (for example, if you are currently on track to complete an offending behaviour course) you can ask the single member to consider delaying your hearing for a brief period for you to complete the course.

### ***Aside from prison officials, my advocate and I, who else can attend my oral hearing?***

You can apply for an observer to be present at the hearing; this could be a close friend or family member or even your personal officer to attend in support. This may be particularly important if you are not represented. However, do 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.

Remember that victims may have also requested to be present and have a Victim Personal Statement read on their behalf, or request to be present and read it in person. Normally the victim should be kept apart from you whilst in the prison and you can choose whether or not to attend during the presentation of the victim's personal statement. After the victim has read their statement to the panel at the start of the hearing, he or she will not be allowed to add anything else to its contents. Once the statement has been read the victim will be asked to leave and there is no further room for questioning.

### ***What if I'm not ready?***

You should be given the time of the hearing at least four weeks in advance. If you are not ready you can still ask for a deferral at this stage. Applications for deferrals ahead of your hearing must be submitted to the PPCS if the review has not begun.

If there has been a referral to the Parole Board, your deferral application should instead be made in writing to the oral hearings team, who will pass on your request to the relevant ICM Member. If your case is under consideration by a Parole Board panel your request will be submitted to the Chair of the Panel. Generally it is harder to obtain a deferral the further the case has progressed.

The Parole Board Guide to Oral Hearings suggests that in the following circumstances a deferral will **not** normally be granted:

- You are about to commence a course or wish to complete a course and your report is unlikely to be available within 3 months (this is because there normally has to be a period of monitoring after the course); or
- You are at the end of a course where the outcome is unlikely to be a material factor; or
- You wish to temporarily transfer to another establishment for courses or therapy because the timescales are uncertain; or
- You have recently been transferred to open conditions and wish to complete home leaves (unless these can be completed within a short period of time); or
- You wish to wait for an outcome in outstanding criminal proceedings.

On the other hand, a deferral is likely to be granted where:

- You are about to complete offence related work where the report will be available soon; or
- Material witnesses are unable to attend; or
- You need more time to obtain legal representation.

If your application is refused, it is still possible to request a deferral again at the very beginning of the hearing itself. If granted the Chair will issue a deferral letter.

### ***What happens during the actual hearing?***

The actual oral hearing will normally be held at the prison where you are detained; it is also possible for there to be hearings by video link. The hearing should always take place in a private and quiet room.

All participants sit around a table. Witnesses do not give evidence on oath. In addition to you and your legal representative (if present), there will be a panel consisting of 1 to 3 members. The Secretary of State is not required to be represented at oral hearings or provide a written view and it is now rare for a written view to be given at a hearing or for a representative of the Secretary of State to attend. However, the PPCS may instruct someone to attend on behalf of the Secretary of State if your case requires it. It is normal procedure for the offender manager and offender supervisor to attend the hearing as witnesses.

Rule 25 of the Parole Board Rules states that panel chairs should avoid formality and as far as possible make all their own enquiries regarding the level of risk posed. Your hearing should be informal, inquisitorial (not like a trial) and flexible. However, members of the panel should still be addressed as Sir or Madam. Panel chairs are meant to make the prisoner and witnesses feel at ease, with their goal being the determination of your suitability for open conditions.

At the outset, the panel chair will confirm how he or she intends to proceed and invite each party to present their view. It is now more common for panels to take the lead in asking witnesses questions first and then for the representative to question but this will depend on the individual approach of the panel chair.

At the conclusion of the hearing, the panel will invite your legal representative to make closing comments.

The test applied for release is whether the board is satisfied it is no longer necessary for the protection of the public that the prisoner should be confined. A majority decision can be made. The Parole Board requires the decision to be recorded in writing and it will be sent to you (and to your representative if you have one), within 14 days of the hearing.

### ***What if I am subject to deportation?***

Those subject to deportation will normally be deported at the end of their sentence. Indeterminate sentence prisoners can be removed by the Secretary of State without any need for a referral to the Parole Board. The power to release is not dependant on any assessment of risk to the public.



This power only applies to foreign national prisoners who are liable to removal and the guidance on this power is contained in PSI 18/2012 and is known as the Tariff Expired Removal Scheme. The policy states that eligible prisoners will be presumed suitable for removal unless various exceptions apply outlined in the PSI. The PPCS will request information from the UK Border Agency (UKBA) eighteen months prior to the tariff expiry date.

Following the introduction of PSI 37/2014 in August 2014 prisoners who have a Deportation Order against them and have exhausted all available appeal rights in the UK are not eligible for transfer to open conditions. Therefore indeterminate sentence prisoners in this position will not be progressed through the pre-tariff review process. Prisoners who are *liable* for deportation – such as those who do not yet have a Deportation Order, or have further lines of appeal to pursue – will be subject to a more rigorous risk assessment prior to consideration for transfer to open conditions.

(YOUR NAME and PRISONER NUMBER)

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**REPRESENTATIONS  
FOR A  
PRE-TARIFF REVIEW**

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These representations are submitted for the purposes of requesting that I be recommended for a move to open conditions.

Index Offence and general behaviour while in custody

*In this section you should describe your offence in detail.*

*It may be appropriate for you to address whether you accept responsibility for the offence. How do you feel about the offence now?*

*Or do you maintain your innocence? Does your version of events differ from the summary of the offence given in the dossier?*

*You should also briefly outline how you have behaved while in prison. Are you enhanced? If so, how long have you been enhanced for? Have you remained adjudication free? For example:*

*“On 7 September 2008, I was given an indeterminate sentence with a 10-year tariff for wounding with intent to do grievous bodily harm.”*

*“Over the course of my imprisonment, I have done my best to be a model prisoner. I have maintained enhanced status on the Incentives and Earned Privileges Scheme continuously over the past two years. I have not attracted a single adjudication in the past three years, and wing staff consider me polite and engaged with the prison regime.”*

Reduction of Risk

***List the ways in which you have reduced your risk. Make note of the work you have done to complete your sentence plan, and any positive remarks made during previous re-categorisation hearings. Be sure to include examples of any positions of trust you have taken on.***

*For example:*

“Through the Aggression Replacement Training, or ART, programme, I have come to fully accept the serious, violent nature of my offence, and developed strategies for dealing with my aggression in non-violent ways.”

*and*

“At my last categorisation hearing, it was suggested that I obtain a position of trust in order to further demonstrate my compliance with the prison regime. As a result, I took on a job in the servery at breakfast time. Despite the confrontation and verbal abuse I occasionally face from other prisoners while in this role, I have never shown any aggression in return.”

*Be sure to **emphasise how open conditions will give you a chance to further prove your commitment** to overcoming any past offending behaviour, i.e. more chances to take on positions of trust, more opportunities to pursue resettlement work, etc.*

### Resettlement

*In this section you should **explain how open conditions would help you maintain your family ties** and prepare you for resettlement, i.e.:*

“I am currently unable to see my daughter, as my wife does not feel comfortable bringing her into a prison setting...”

*Importantly, **draw attention to evidence that you do not pose a risk of absconding**. For example:*

“I pose no risk of absconding from open conditions; I posed no difficulties while under bail in the 3 months prior to my conviction.”

### Conclusion

***Summarise** the points you made previously, i.e.:*

“Open conditions would give me the chance to demonstrate that I can master my temper beyond the confines of the prison regime. This can only be achieved through my progression to open conditions and eventually in the community.”

# PRISONERS' ADVICE SERVICE

THE INDEPENDENT LEGAL CHARITY PROVIDING INFORMATION AND REPRESENTATION TO PRISONERS



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](http://www.prisonersadvice.org.uk)

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