

Property Claims

Is the Prison Service liable for all my property during my time in prison?

Prison Service policy distinguishes between stored property and property held 'in possession' (that is, property held by you). If stored property is lost either in reception or in transit as a result of a transfer, and this property was on your property record then the Prison Service is liable to pay you compensation. The Prison Service does not normally accept responsibility for property held in possession. This is because of the possibility that prisoners may give their property to other prisoners or exchange it for other items. There are exceptions to this, which are based upon the law of negligence.

What are the exceptions?

- Where a prisoner has been removed from normal location without prior warning and therefore without time to secure in-possession property
- Where the prisoner has been temporarily transferred
- If the prisoner has absconded /escaped

Stored Property

PSI 12/2011 states that the storage of a prisoner's excess property is considered to be an exceptional or temporary measure. If property is not held 'in possession', handed out or stored at the prison, it is stored at the National Distribution Centre in Branston. The Prison Service should ensure a detailed record is kept of all property held by the prison or sent to Branston.

Property held in possession by a prisoner must be able to fit into two standard size volumetric control boxes. The governor has to agree to an exemption for items that exceed this size. An inventory of a prisoner's property must be kept and each prisoner is required to certify whether the inventory is correct or not.

Valuable property

Prisoners are not allowed to retain cash and any existing cash must be paid into an account credited to him/her, but under the governor's control. The amount must be recorded and the prisoner must be asked to confirm in writing that the record is correct. Jewellery is recorded as yellow or white metal rather than gold or silver. Passports or other ID belonging to foreign national prisoners who have been served with notice of intention to deport should be forwarded to Home Office Immigration Enforcement.

How do I claim for lost/stolen/damaged property?

An initial application should be submitted to the governor with details of how the property came to be lost, a list of what exactly has been lost, where and when the items were purchased and the value of each item (include receipts where possible).

Compensation is based on the value of the property at the time that it was lost or damaged (which may be a different value to the purchase price).

How do I appeal against a governor's decision?

If the initial claim for compensation is refused, you can appeal via the complaints system. The two stages of the complaints system should take no longer than two weeks. If the prison needs longer to investigate, they should explain why and keep you informed.

What if I am still not satisfied?

If you want to take your application further you can refer the matter to the Prisons and Probation Ombudsman (PPO), Third Floor, 10 South Colonnade, London E14 4PU. You can write in confidence and your letter should be sent at public expense. If the Ombudsman makes any recommendations in your favour, the Prison Service still does not have to act on them. However any supportive recommendations will be strong evidence in

any legal action which you may pursue (see below). If a monetary award is recommended by the PPO and paid, a greater amount may still be awarded via legal action (but this will take into account the amount recommended by the PPO). The money will normally be paid into your private cash account.

What about legal action?

Legal aid is not available for property claims but you can begin your own proceedings in the County Court. Prior to lodging a claim, you should send a pre-action letter to the Government Legal Department or other legal representative if you are in a private prison, setting out exactly what you are claiming for and giving them a timescale (normally 21 days) within which to respond and settle the claim with you or face litigation.

Assuming there is not a positive response to this, you then need to submit an N1 Claim Form to the County Court Money Claims Centre, PO Box 527, M5 0BY. You need one N1 for each defendant you are claiming from, as well as one for the court and another to be sealed and returned to you. You should keep a copy of anything you send out. You can request N1 and fee exemption forms from your local County Court. Upon request PAS can also provide you with a small claims pack with guidance and forms.

You should note the following:

- The defendant for all private law claims is Ministry of Justice (MOJ) for all state prisons, or the company for private prisons - not the Secretary of State for Justice (SSJ) and not the individual prison governor/director.
- The address of the Prison Service for the purpose of your claim is that of the Government Legal Department, (102 Petty France, Westminster, London, SW1H 9GL) For private prisons you need to obtain the details of the company's head office or solicitors.
- You can apply for the court fees to be waived by submitting a fee exemption form (EX160). You need to attach a print-out of the last three months of your prison account.

- The claim is usually for negligence: the limitation period is 6 years from the date of the loss or damage.
- If you need to attend court for a hearing, you should make an application to the governor to be produced at court. You should seek legal advice if the governor will not produce you or if the prison seeks to charge a fee for production that you cannot afford. You can also attend via Videolink.

Existing county court judgements in favour of prisoners regarding lost or damaged property can be referred to as persuasive evidence, but are not legally binding and in general each case is considered on its own merits.

Unauthorised property

Unauthorised property is anything which either is not permitted in prison or is not the property of the individual prisoner, i.e. not recorded on their property card. Possession of unauthorised items is a disciplinary offence under Prison Rule 51 (12).

An article which would ordinarily be authorised becomes unauthorised in circumstances where the director/governor reasonably believes that the item is being, has been or may be being used for the purposes of:

- a) concealing an article which the prisoner is not authorised to have in their possession;
- b) causing harm to the prisoner or others;
- c) prejudicing prison security or operations.

Under provisions of the Prisons (Property) Act 2013, which came into force in 2015, prisons are entitled to destroy or sell property found in certain circumstances. The governor or director of a prison may destroy or sell an article found in the possession of a prisoner who is not authorised to have that article, or an article found inside the prison/a prison escort vehicle where the owner of the article is a prisoner not authorised to have the item or the owner cannot be ascertained. More detail is set out in PSI 14/2015.

PRISONERS' ADVICE SERVICE PO BOX 46199 LONDON EC1M 4XA Advice line: TEL: 020 7253 3323 Mon, Weds, Fri 10am-12.30 & 2-4pm
