**PAROLE BOARD FOR ENGLAND & WALES**

**LITIGATION STRATEGY FROM**

**1 APRIL 2013**

The Parole Board is constituted as a corporate public body, created and empowered by statute. It is not an agent or servant of the government, although it is publicly funded and is accountable to the Ministry of Justice for its expenditure. The Board’s wider accountability is to Parliament.

There is no legal route of appeal against Parole Board decisions, but as a public body its decisions are open to challenge in the Administrative Court by judicial review, and private law actions for damages can be brought in respect of administrative decisions.

Most Parole Board reviews engage article 5(4) of the European Convention on Human Rights. Article 5(4) states:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

Where 5(4) is engaged, the Parole Board sits in a judicial capacity as a court for this purpose. It is also widely recognised in common law that Parole Board sits as a court when considering early release.

Article 5(5) states:

“Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.”

**Litigation against the Parole Board**

Litigation against the Parole Board generally takes the following forms –

* 1. Application for judicial review against a judicial decision made by the Parole Board.
	2. Application for judicial review not relating to a judicial decision, including the failure of the Parole Board to do something, an administrative decision, and the independence or conduct of the Parole Board.
	3. Application for judicial review against the Parole Board’s application or interpretation of primary legislation or a statutory instrument such as the Parole Board Rules 2011.
	4. Private law claims for damages/compensation.

Judicial decisions may include:

* All substantive decisions on release
* Directions
* Refusals to grant an oral hearing
* Judicial listing decisions
* Licence conditions
* Applying the correct test for release

**STATEMENT OF GENERAL PURPOSE**

It is an established principle of common law that the role of judicial decision making bodies as defendants in judicial review proceedings is not, save in exceptional cases, to contest the proceedings (Brooke LJ in *R (Davies) v HM Deputy Coroner for Birmingham (Costs)* [2004] 3 All ER 543 set out the history). The role of the court is simply to provide the reviewing court with relevant information where necessary (Brooke LJ in *R (Stokes) v Gwent Magistrates’ Court* [2001] EWHC Admin 569).

The judicial body may explain matters relating to its jurisdiction, practice or procedure (*R (Davies) v HM Deputy Coroner for Birmingham (Costs)*). It might also provide factual information about a case. Unless the court or tribunal plays an adversarial role in proceedings, it should not to be liable for costs.

The Parole Board will decide on a case by case basis whether it should defend a judicial decision. As a statement of general purpose:

* In any form of litigation, the Parole Board will first consider whether it wishes to concede. Where it decides not to:-
* The Parole Board **will** **not** normally seek to defend the decision of a panel to refuse early release or recommend a prisoner’s transfer to open conditions.
* The Parole Board **will** normally defend other types of judicial decision, and all administrative decisions
* The Parole Board **will** defend private law claims for damages

**JUDICIAL REVIEW**

The procedures for judicial review are governed by the CPR Part 54. The pre-action protocols are governed by the CPR Pre-action Protocol for Judicial Review.

1. PRE-ACTION PROTOCOL

### The Protocol is available in full at

#### <http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_jrv>

#### At 3.1 it states:

“The parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation, and if so, endeavour to agree which form to adopt. Both the Claimant and Defendant may be required by the Court to provide evidence that alternative means of resolving their dispute were considered. The Courts take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is still actively being explored. Parties are warned that if the protocol is not followed (including this paragraph) then the Court must have regard to such conduct when determining costs. However, parties should also note that a claim for judicial review ‘must be filed promptly and in any event not later than 3 months after the grounds to make the claim first arose’.”

No one can be forced to utilise the pre-action protocol but the courts will normally expect it to be used and it may affect orders for costs in the event that it is not. Individuals can address the Parole Board directly, but since the outcome may affect a subsequent judicial review, it is strongly advised that legal representation is sought first.

The recommended format for a pre-action letter is at Annex A of the Protocol; however the Board will treat any letter which seeks to challenge a decision of the Board as complying with the Protocol. A claimant should always include:

1. **the date and details of the decision, exactly what is being challenged and a clear summary of the facts** on which the claim is based; and
2. **details of any relevant information** that the claimant is seeking and an explanation of why this is considered relevant; and
3. the action that the claimant expects the Parole Board to take.

The Protocol requires that a full response will normally be made within 14 days. The Parole Board will seek to respond within 10 *working* days to take account of bank holidays etc.

Pre-action responses will be drafted in line with the statement of general purpose above.

In all cases letters should be addressed to:

 Parole Board Litigation Team

 4th floor

Grenadier House

99-105 Horseferry Road

London, SW1P 2DX DX address : 155620 Victoria17

2. JUDICIAL REVIEW

Part 54 of the CPR is available in full at

<http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part54>

The judicial review procedure under 54.2 must be used in a claim for judicial review where the claimant is seeking–

(a) a mandatory order (an order requiring action to be taken);

(b) a prohibiting order (an order stopping the Parole Board from doing something it plans to do);

(c) a quashing order (an order making a Parole Board decision invalid); or

(d) an injunction under section 30 of the Supreme Court Act 1981 (restraining a person from acting in any office in which he is not entitled to act);

#### And under 54.3 where the claimant is seeking

 (a) a declaration (a statement by the court that the claimant has certain rights, and where appropriate, that those rights have been breached); or

(b) an injunction (an order stopping the Parole Board from acting unlawfully)

An application for judicial review must be brought within 3 months of the decision being challenged, and will be considered initially on paper by a single judge. Only if permission is granted will an application proceed to a hearing.

Guidance on the claim for and service is available at Part 54.5-7. Once service has been made on the Administrative Court, the claim must also be served on the Parole Board **within 7 days**, addressed to:

 Parole Board Litigation Team

 4th floor

Grenadier House

99-105 Horseferry Road

London

SW1P 2DX

DX address : 155620 Victoria17

**Note that CPR Rule 6.10, which states that service of a claim against a government department should be made on the Treasury Solicitor does not apply to any litigation brought against the Parole Board.** The Parole Board is neither a servant nor an agent of the Crown (schedule 19 Criminal Justice Act 2003).

The Parole Board will file an acknowledgement of service under Part 54. Its response will be in line with its Statement of General Purpose. Only where the Parole Board decides to defend an application for judicial review will it instruct the Treasury Solicitor and the claimant will be informed in writing that this is the case. All further correspondence should thereafter be addressed to the Treasury Solicitor.

Where the Board decides to concede after service, it will seek to settle the matter by way of a Consent Order

**PRIVATE LAW CLAIMS**

Private law claims against the Parole are almost exclusively brought for damages under article 5(5) of the European Convention of Human Rights, although there is nothing to stop a claimant for bringing an action for damages in respect of any other act or failure to act. Where a claimant seeks only damages; or damages and a declaration that his rights under article 5(4) have been breached, then in the absence of any further form of redress sought, the claim should normally be brought in the County Court, not the Administrative Court, depending on the complexity and value of the claim (Roche [2011] EWHC 2535 (Admin)).

1. CPR PRACTICE DIRECTION – PRE-ACTION CONDUCT

The Practice Direction in full is available at:

www.justice.gov.uk/courts/procedure-rules/civil/rules/pd\_pre-action\_conduct

There is no specific pre-action protocol for claims for damages in respect of a breach of human rights. However the principle that the parties should attempt wherever possible to reach an agreement without recourse to the courts applies and Section III of the CPR Practice Direction establishes what the courts will expect the parties to do, namely:

 7.1

Before starting proceedings –

(1) the claimant should set out the details of the matter in writing by sending a letter before claim to the defendant. This letter before claim is not the start of proceedings; and

(2) the defendant should give a full written response within a reasonable period, preceded, if appropriate, by a written acknowledgment of the letter before claim.

In all such cases letters should be addressed to

 Parole Board Litigation Team

 4th floor

Grenadier House

99-105 Horseferry Road

London

SW1P 2DX

DX address : 155620 Victoria17

The Parole Board will seek to respond in full within 10 working days of receipt. That response will normally either:

1. make an offer for settlement under CPR Part 36 without admission of liability and without prejudice save as to costs; or
2. give point by point grounds for denying liability.

The Parole Board is not required to pay any legal costs in respect of a settlement procured during the pre-action stage. However, the Parole Board is normally prepared to contribute to a claimant’s legal costs subject to detailed assessment if not agreed.

2 PRIVATE LAW CLAIM

Service of documents is governed by CPR Part 7 which is available in full at:

www.justice.gov.uk/courts/procedure-rules/civil/rules/**part**07

There are three “case management tracks” to which the claim may be allocated by the court – the small claims track, the fast track and the multi track. CPR 26.6 gives information on each one and to which the case is likely to be allocated.

Section 7(5) of the Human Rights Act 1998 states that proceedings for an alleged unlawful act under the Convention must be brought within:

(a) the period of one year beginning with the date on which the act complained of took place; or

(b) such longer period as the court or tribunal considers equitable having regard to all the circumstances,

Proceedings begin at the date the court issues a claim form at the request of the claimant. If the Particulars of Claim are not served with the claim form, within 14 days of that date the claimant should serve the Particulars of Claim on the Parole Board addressed to:

 Parole Board Litigation Team

 4th floor

Grenadier House

99-105 Horseferry Road

London

SW1P 2DX

DX address : 155620 Victoria17

The Parole Board will instruct the Treasury Solicitor. A copy of the Particulars of Claim should, therefore, also be served on:

 The Treasury Solicitor

Team A4

One Kemble Street

London

WC2B 4TS

The Parole Board will file within 14 days of service of the Particulars of Claim and Acknowledgement of Service containing either an admission or an intention to defend the claim (r10(10(3)(a)). After serving the Acknowledgement of Service, the Parole Board has a further 28 days in which to file a Defence

**TRANSITIONAL ARRANGEMENTS**

This strategy will come into effect in 1 April 2013 and will apply to

* Any application for judicial review served on the Parole Board on or after that date;
* Any pre-action letter received in the Parole Board on or after that date
* Any private law claim served on the Parole Board on or after that date.

Existing claims

It has been the Parole Board’s practice to defend any application for judicial review, or pre-action letter in advance of an application for judicial review, where it does not concede, regardless of whether the decision under challenge was judicial or not.

Any application for judicial review, or pre-action letter served on, or received in the Parole Board before 1 April 2013, will continue to be defended in the event that the Parole Board does not concede the claim.

Nothing in the Statement of General Purpose affects private law claims, made pre-action or after claim. The Parole Board has always, and will continue to, defend those claims where it does not make any offer to settle.