

The Role of a Litigation Friend and Parole Reviews

This information sheet sets out the role of the litigation friend in relation to parole reviews of serving prisoners. It provides an overview of what is expected of anyone undertaking this role.

A litigation friend will be appointed by the Parole Board in cases where the prisoner is assessed as lacking the mental capacity to conduct the proceedings before the Parole Board. This means the prisoner is unlikely to be able to follow what is happening, understand the importance of the parole review, or appoint and instruct a legal representative.

Where this is the case, a litigation friend will usually be appointed and must "*conduct the proceedings*" on behalf of the prisoner. This means that they will:

- make decisions for the prisoner related to their parole review, and decide what course of action is in the prisoner's best interests;
- find out their wishes and feelings and take these into account when deciding what course of action to argue for in the prisoner's best interests. The prisoner's wishes and feelings are relevant, but not determinative of what is in his or her best interests;
- do everything they can to tell the prisoner what is happening in the case;
- where a legal representative is instructed, talk to them about what is happening, get advice from them and give instructions to them in the prisoner's best interests.

It is for the litigation friend to decide whether it is in the prisoner's best interests to appoint a legal representative (a prison law solicitor) to act in the parole proceedings. The Board's view is that it will always be in the prisoner's best interests to appoint a legal representative to act in matters relating to parole.

Once appointed, the litigation friend is empowered to make decisions on the behalf of the prisoner in their parole review. They can make any decision and undertake any action that the prisoner is entitled to do in the conduct of the parole review.

Where a legal representative is appointed they will advise the litigation friend and undertake most of the required work, and will seek confirmation (take instruction) from the litigation friend before carrying out such tasks.



A family member or friend acting as a litigation friend may wish to take a more active role in the proceedings themselves, particularly if:

1. they are already managing the prisoner's affairs under a Power of Attorney or authority granted by the Court of Protection (within the limits of that authority).
2. if there are problems accessing funds for legal representation. In such a case they may be willing to act as representative as well as a litigation friend.

The following is a list of work that a litigation friend would need to consider, or more usually instruct a legal representative to undertake:

- a) Apply for directions to be made (about the evidence or general case management) under rule¹ 6. Those directions could be issued to the parties to the proceedings or third parties outside the proceedings (such as a police force or local authority).
- b) Make representations about proposed directions under rule 6.
- c) Apply for a deferral or adjournment under rule 6.
- d) Agree to a short notice adjournment or deferral under rule 6.
- e) Attend and make representations at a Directions Hearing called under rule 7.
- f) Attend and make representations at a Case Conference called under rule 7.
- g) Request, or respond to a request for, an alteration of a time limit under rule 9.
- h) Appoint a legal representative for the prisoner under rule 10 (and then proceed to give them instructions as required).
- i) Serve documents under rule 11.
- j) Apply to call a witness, or respond to such an application, under rule 13.
- k) Apply for an observer to attend a hearing, or respond to such an application, under rule 14.
- l) Appeal a decision to withhold information from the prisoner under rule 17.
- m) Receive information which is withheld from a prisoner under rule 17 (if no representative has been instructed and they are able to give an undertaking that satisfies the Parole Board).
- n) Make representations under rule 18.
- o) Submit evidence under rule 18.
- p) Request an oral hearing under rule 21.
- q) Request, or respond to a proposal for, a direction that a case be decided on the papers under rule 21.
- r) Make representations to a panel deciding the case on the papers under rule 21.
- s) Agree to a short notice listing under rule 22.
- t) Notify a panel under rule 23 that they do not require an oral hearing, or do not intend to attend one.
- u) Attend and take part in an oral hearing held under rule 24, including making submissions, hearing evidence, and questioning witnesses.
- v) Object to production of a summary under rule 27.
- w) Apply for reconsideration of a decision under rule 28.
- x) Request for a decision or direction to be set aside under rule 29 because of an error of procedure.
- y) Request a correction under the slip rule, rule 30.
- z) Apply for termination of an IPP licence under rule 31.
- aa) Request, or oppose a request, for a variation of licence conditions after the proceedings have concluded.

¹ All references to rules relate to the Parole Board Rules 2019

A litigation friend is unlikely to need to do much of the above tasks. If you appoint a legal representative to act for the prisoner, that, and the subsequent instructions to the representative that are necessary from time to time, may be the only action you will need to undertake.

You will of course have access to advice from the legal representative as to the decisions that need to be taken.

However, it may be that in some cases it is appropriate for a litigation friend to take more of an active role in the proceedings.

A legal representative will need to be paid for. In most cases, funding will be available from the Legal Aid Agency and an appointed legal representative will make the application. However, the litigation friend will be asked to provide information about the financial circumstances of the prisoner in order to make this application.

If the prisoner has some financial resources, they may not be eligible to receive legal aid from the Legal Aid Agency. In these circumstances the litigation friend will need to make decisions about the remuneration of legal representatives and arrangements for the payment of the same. There may be restrictions on who can authorise such payments using the prisoner's financial resources. A legal representative will be able to advise about this.

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