Information sheet for people Maintaining Innocence

What is meant by maintaining innocence?
‘Maintaining Innocence’ is a term used for people who refuse to admit guilt for something they have been convicted for. It is most often used in reference to serious crimes such as sexual and violent offences, but can also be used for people who convicted of other offences.

Use of the term ‘denial’ instead of ‘maintaining innocence’
Ministry of Justice and NOMS policies use the term ‘denial’ instead of maintaining innocence. They can use the words ‘denial’, ‘deny’ and ‘denier’.

NOMS must accept the verdicts of the courts and, hence, it follows that convicted prisoners have to be treated as being guilty of the offence (with some allowances made for those who are appealing).

We often receive requests for legislation or case law which says that prisons have to use the term ‘maintaining innocence’. We are not aware of anything that supports this. Prisoners sometimes reference the Taplin case says that the prison should not use the term ‘in denial’. The Taplin case is about doing Sex Offender programmes whilst Maintaining Innocence, and does not speak to the use of the term ‘in denial’.

Distinguishing between being an ‘appellant’ and maintaining innocence
Prison policies, such as IEP, often distinguish between people who are maintaining innocence and those who are ‘appellants’

You are an appellant if your conviction is the subject of review by a higher court. This is most often the Court of Appeal, but if you were convicted in the Magistrate’s Court the appeal would be heard by the Crown Court. This might be an appeal against the finding of guilt immediately after sentencing, or it might be after having your case referred to the Court of Appeal by the Criminal Cases Review Commission (CCRC).

You are NOT an appellant if you have just asked the CCRC to examine your case, because the CCRC does not have the power to overturn a conviction itself.

To prove you are an appellant you will usually be asked for your criminal appeal number to show your case is pending. More information about this can be found in Annex D of PSI 30/2013 Incentives and Earned Privileges.
Maintaining Innocence and the Incentives and Earned Privileges (IEP) scheme

Maintaining innocence should not automatically result in reduction to your IEP level or to stop you progressing. PSI 30/2013 Incentives and Earned Privileges states the following:

Prisoners who deny their offence or who are appealing their conviction

6.10 In determining IEP levels, the fact that someone is in denial of their offence should not automatically prevent them from progressing through the privilege levels, including to Enhanced level. It is a prisoner’s commitment to rehabilitation, good behaviour and willingness to use their time in custody constructively which should determine whether they meet required standards.

Although maintaining innocence should not have an automatic affect on your IEP level, it can be difficult to demonstrate some of the criteria to progress, such as commitment to rehabilitation, particularly for Enhanced. For example, if SOTP is the ONLY remaining target then it can prevent you from obtaining Enhanced and even Standard in some cases.

Annex D of PSI 30/2013 states that ‘it is reasonable for NOMS to expect prisoners to address their offending and to offer incentives for them to do so’. Refusal to engage in offender behavior targets which you are otherwise eligible for could therefore affect you IEP status.

If you are an appellant, refusal to engage in offender behavior targets should not be detrimental to you IEP status or automatically prevent you progressing to Enhanced status. Each case should be considered independently in line with the criteria for each level. You will normally be asked to provide your criminal appeal number to prove this.

You should be given reasons for IEP decisions which must be enough to understand which criteria you have not met and why. If you think the decision has been made unfairly because you are maintaining innocence then you may wish to make a complaint through the internal complaints system. If the outcome remains unsatisfactory after the appeal stage you can then pass the complaint to the Prisons & Probation Ombudsman, PO BOX 70769, London SE1P 4XY

There is more information about this in Annex D of PSI 30/2013 Incentives and Earned Privileges
Sentence Planning and Offender Behaviour Courses

PSI 19/2014 *Sentence planning* states that ‘Plans must be realistic and attainable in order to be effective in providing offenders with an opportunity to address offending related factors and reduce risk.’

If you are maintaining innocence this will be relevant to courses which require admission of the offence, such as the Sex Offenders Treatment Programme (SOTP). An objective can be added to your sentence plan to take part in an assessment of suitability to for SOTP.

Annex D of PSI 30/2013 makes a distinction between ‘being eligible’ and ‘being ready’ for courses. It describes someone as being eligible for SOTP if they have the risk and need factors which SOTP addresses, and someone as being ready for SOTP if they recognise they have issues to work on and are willing to do so via the accredited programme.

Therefore if you have been convicted of a sex offence but are maintaining innocence you may be seen as eligible for SOTP but not ready because SOTP requires analysis of the lead up to offences.

If you are assessed as not ready for a course such as SOTP, it can still remain on your sentence plan as a future target. Other objectives may be included in the meantime aimed at addressing the readiness or other identified issues.

Other objectives might include other courses such as Thinking Skills Programme (TSP) for example, which is about decision making and is not offence specific so you can do this without admitting guilt. They might also include engagement in substance misuse programmes if they have been identified as relevant.

There are currently no courses specifically designed for people maintaining innocence. However we are aware of a new course being trialed for people convicted of a sexual offence who are considered medium risk, called Horizon. Although it is not specifically aimed at people maintaining innocence, admission of guilt is not a requirement of the course. Please note that this course is only a trial at the time of writing and, if successful, is not expected to be rolled out to the whole prison estate until sometime in 2017.
Recategorisation and Maintaining Innocence

Some people who are maintaining innocence find that it affects their recategorisation and can prevent them progressing. Though it may be more difficult to progress if you have been unable to take part in offender behavior courses, the prison should take wider risk evidence into consideration when reviewing your category.

Both PSI 40/2011 *Categorisation and recategorisation of Adult Male Prisoners* and PSI 39/2011 *Categorisation and Recategorisation of Women Prisoners* state the following:

- Prisoners who deny their guilt may have refused to undertake any relevant offence-related work. While the establishment must proceed on the basis that the prisoner is guilty of the offence for which he has been convicted, the recategorisation review should consider whether there is other evidence available which might indicate that the risk has been reduced sufficiently to justify recategorisation to a lower security establishment. This consideration should be fully recorded on the RC1 form.

You should be given reasons for any categorisation decision and can request a full explanation in writing. If you think your categorisation is wrong or has not fully considered all evidence you can appeal via the internal complaints system. If the outcome remains unsatisfactory after the appeal stage you can then pass the complaint to the Prisons & Probation Ombudsman, PO BOX 70769, London SE1P 4XY

Parole and Maintaining Innocence

The Parole Board has to accept the court’s verdict. They cannot assess whether someone is guilty or not guilty, they have to assess risk.

The Parole Board cannot refuse to release someone just because they are maintaining innocence but it is harder. It is harder because it becomes more difficult to show evidence of a reduced risk of re-offending if the person has not done the treatment programmes.

However, *PSI 36/2010* does say that ‘a prisoner who takes a full and active part in the risk assessment processes, undertakes relevant interventions, addresses and reduces identified risk factors and reduces the perceived level of risk of harm they pose to the public, can potentially gain release at tariff expiry whilst still maintaining their innocence or denying full or partial guilt for the actual offence.’

If you have an upcoming parole we advise you to get a solicitor with experience in this area.
On Licence

We are often asked about attending Sex Offender courses whilst on licence. Our 'Information booklet for people on licence for a sex offence' explains that these courses are not always suitable if you are maintaining innocence and, if so, should not be included on your licence. However, a condition to attend an assessment for the course can be on your licence.

If you maintain your innocence, and you have a course like this on your licence, then you could be in breach if you fail to attend the assessment for the course. When you have the assessment this should show that you will not be accepted onto the course. This means that failure to attend the course should not be a breach. If you are being asked to do a course when you are maintaining innocence, you can seek legal advice.

We are aware of a new course being trialed for people convicted of a sexual offence who are considered medium risk, called Horizon. Although it is not specifically aimed at people maintaining innocence, admission of guilt is not a requirement of the course. Please note that this course is only a trial at the time of writing and, if successful, is not expected to be rolled out everywhere until sometime in 2017.

If such a course is available and suitable and is a condition on your licence, you would be in breach if you failed to attend.

Prisoners sometimes ask why a course such as SOTP, for which they are not suitable for because they are Maintaining Innocence, has been included on their licence anyway. It may be included as a future objective so that, in the event that the person does change their stance, they can then be put onto the course straight away. NOMS have explained to us that this is sometimes done in case a suitable course does become available.
Further information
The following may be of interest to you. If you are unable to access them elsewhere feel free to contact our Advice and Information Service and we will be happy to send you a copy.

Useful PSIs and PSOs (these should be available in the library):
PSI 30/2013 Incentives and Earned Privileges (Particularly Annex D)
PSI 19/2014 Sentence planning
PSO 2205 Offender Assessment and Sentence Management - OASys
PSI 40/2011 Categorisation and recategorisation of Adult Male Prisoners
PSI 39/2011 Categorisation And Recategorisation Of Women Prisoners

Information sheets
Prison Reform Trust - Information booklet for people on licence for a sex offence

Articles
Terry McCarthy, How Do I Maintain my Innocence and Get Parole?
Matt Evans, The Dilemma of Maintaining Innocence.