

## **Information sheet for people Maintaining Innocence**

### **What is meant by maintaining innocence?**

'Maintaining Innocence' is a term used for people who do not admit to the offence for which they have been convicted. It is most often used by people who have been convicted of serious crimes such as sexual and violent offences, but it can also be used by people who are 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. 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 a reduction to your IEP level or 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 effect on your IEP level, it can be difficult to demonstrate some of the criteria to progress, such as commitment to rehabilitation, particularly for Enhanced. The PSI explains, as an example, that if SOTP is the ONLY remaining target then it can prevent you from obtaining Enhanced and even Standard in some cases. *However, SOTP has been withdrawn, see below 'New courses for people Maintaining Innocence' for more information.*

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 for which you are otherwise eligible could therefore affect your IEP status.

If you are an appellant, refusal to engage in offender behavior targets should not be detrimental to your 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 your appellant status.

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.'

Some courses require admission of the offence. If you are maintaining innocence, an objective can be added to your sentence plan to take part in an assessment of suitability for a course.

Annex D of PSI 30/2013 makes a distinction between 'being eligible' and 'being ready' for courses. The PSI describes someone as being eligible for a course if they have the risk and need factors which the course addresses, and someone as being ready for the course if they recognise they have issues to work on and are willing to do so via the accredited programme. *The PSI uses the example of the SOTP, however this course has now been withdrawn.*

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

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

### ***New Courses for people convicted of sex offence who are Maintaining Innocence***



*Horizon is a new programme for men who are medium risk of reoffending. Kaizen is a new programme for men who are at high or very high risk of reoffending. These courses are not specifically aimed at people maintaining innocence, but they are both suitable for people who are maintaining innocence because they do not require an admission of guilt. The SOTP has been withdrawn. If you are nearing the end of the SOTP, you are advised to complete the course. If you would like further information about this please contact our advice team.*

Other courses include the Thinking Skills Programme (TSP), which is about decision making and is not offence specific so you can also do this without admitting guilt. The prison may also include engagement in substance misuse programmes if they have been identified as relevant.

## **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 39/2011 *Categorisation and Recategorisation of Women Prisoners* and PSI 40/2011 *Categorisation and recategorisation of Adult Male 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 [they] 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 PSO 4700 New Chapter 4 Serving the Indeterminate Sentence* 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.

Prisoners sometimes ask why a course such as SOTP, for which they are not suitable 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 has explained to us that this is sometimes done in case a suitable course does become available.



*SOTP has now been withdrawn and there are new courses that are suitable for people convicted of a sex offence who are maintaining innocence, these courses are Horizon and Kaizen. If you have nearly finished SOTP you should complete it. If you would like further information please contact our advice team.*

## **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*
- Her Majesty's Prison and Probation Service (HMPPS) (formerly known as NOMS) *Horizon – Information for Potential Participants February 2017*
- *Kaizen – Information for Participants December 2016*

Articles

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

## Contact our Advice and Information Service

We are a small service and we are independent of the prison service.

We can give you information on prison rules, life in prison and how to get help in prison.

Our freephone information line is **0808 802 0060**. This number is for **prisoners** only. This number is **free** and you do not need to put it on your PIN.

This number is open:

- Monday and Thursday afternoon from 3.30pm to 5.30pm.
- Wednesday morning from 10.30am to 12.30pm.

At other times, you can call on **0207 251 5070**. This number is open from Monday to Friday 10.00am - 5.30pm. This number is **not free** but you do not need to put it on your PIN.

You can also write to us at:

**Prison Reform Trust**  
**FREEPOST ND 6125**  
**London**  
**EC1B 1PN**

You do not need to use a stamp.