

FASO leaflet P33
Maintaining Innocence (courtesy of Dean Kingham Swain & Co Solicitors LLP July 2014)



Maintaining Innocence

We are all familiar with the maintaining innocence/denial problem. It always frustrates me when I hear the term “denial”. History shows that there have been gross miscarriages of Justice, most recently Victor Nealon.

Those who maintain their innocence are routinely penalised within the system. Even more so given the new PSI covering Incentive and Earned Privileges PSI 20/13 expiring 4 Sep 2017. A number of my clients are stuck in the system and have been detained in high security establishment’s way beyond their tariff’s.

We operate generally in a risk adverse culture, which permeates across the Parole Board, Ministry of Justice, Probation, Prison Psychologists and risk assessments. Factors such as denial of guilt, attitudes to treatment and absence of risk reduction work are all therefore added into the mix of risk assessment despite their neither being reliable or valid. The Parole Board openly accepts that they tend to be risk averse. A key point for the Parole Board is given there will always be a risk, to what extent is that level of risk acceptable?

It poses a real problem as how do prisoners whom maintain their innocence progress through the system and ultimately secure release?

Every prisoner who maintains his or her innocence, must accept that the Parole Board have to treat you as being properly convicted. This is very different to them viewing maintaining innocence/denial as elevating any risk you pose. In R v the Parole Board and Secretary of State for the Home Department ex part Oyston (unreported, 1st March 2000), when considering the impact of any denial;

*“Such denial will always be a factor and may be a very significant factor in the board’s assessment of risk, but it will only be one factor and must be considered in the light of all other relevant factors. **In almost any case the Board would be quite wrong to treat the prisoner’s denial as necessarily conclusive against the grant of parole**”.*

From experience, Parole panels routinely refer to this very point. It is an issue for risk assessment purposes, but steps can be taken to address this.

Firstly, is this the only conviction? It could be that the individual has previous convictions for similar offences. In those instances it is possible to undertake courses/work based upon previous offences. This will assist provide evidence of risk reduction.

Secondly, if you have no previous convictions look for ways you can evidence a reduction in risk. This need not be through offending behaviour programmes. However, I am a realist, we are in a system whereby it has become the norm for offending behaviour programme to be completed and progression is judged based on the conclusion.

It is settled law that offending behaviour programmes are not the be all and end all. There are other ways to reduce risk; Gill vs Secretary of State for Justice [2010] EWHC 364 (Admin) Justice Cranston at paragraph 80 “*that Offending behaviour programmes are neither a necessary nor sufficient condition for release from prison. There are other recognised pathways to reduce re-offending and to achieve release*”.

DONATIONS urgently needed to keep the helpline available – FASO Was 10 YEARS OLD on 28TH SEP 2011

www.false-allegations.org.uk support@false-allegations.org.uk Registered under the Data Protection Act 1998 faso is a voluntary organisation dedicated to providing support to anyone affected by a false allegation of abuse FASO c/o, 176 Risca Rd., Crosskeys, Newport NP11 7DH – National help line 0844 335 1992 (as of 1.3.2011) (Mon to Fri 6pm to 10pm)

FASO leaflet P33

Maintaining Innocence (courtesy of Dean Kingham Swain & Co Solicitors LLP July 2014)

Think about how you can evidence such a reduction, this could be through trusted roles, education, vocational work, employment etc. Be sure to rely on the case of Gill if arguing for re-categorisation and/or Parole.

Thirdly, engage with your OM* and OS* including any sentence planning meetings, but make it clear whilst you would be willing to engage in programmes you cannot due to not being eligible. You can attempt to have courses removed from your sentence plan on the basis they are not SMART* – See PSI 41/2012 expires 16th Dec 2016 on sentence planning for more information

Fourthly, routinely issues are elevated due to input from prison psychologists. These risk assessments commonly penalise those whom maintain their innocence. If in a position to do so always seek an independent psychological report. In most cases from my experience these assist any argument to the Parole Board.

If you are an Indeterminate sentence prisoner the Government has a public law duty to provide you with risk reduction work to enable you to evidence to the Parole Board around the time of tariff expiry that risk has reduced. Do not be afraid to remind the prison of that duty if you wish to pursue 1:1 work etc. Again, I recognise 1:1 work is not widely available, but this can serve assist risk reduction as it can be tailored to the individual needs.

It is clear that individuals whom maintain their innocence and are serving for sexual offences are the most worst off. From experience they are the most heavily penalised as the SARN* reports generally apply each and every risk factor to the individual. SARN reports can be highly prejudicial and poorly reasoned, which is another reason to ensure Independent Psychological input is required. Whilst maintaining innocence/denial makes it difficult to obtain a clear understanding of any risk it does not alone serve to increase risk.

The Parole Board has no mechanism to allow the Board to look behind the court's verdict and this is not going to change, but do not be afraid to coherently set out to the Parole Board why you maintain your innocence. I am not advocating serving a wealth of case papers, but rather identifying the key grounds as to why you maintain your innocence. I have had a number of cases where we have taken this approach and it has clearly been considered by panels. They have it in their mind. Apply it to you, once you have considered something it is difficult to keep it out of your mind when thinking about the topic.

Some may have had poor previous experiences of solicitors for those whom maintain their innocence. My firm advice is to always ensure you are represented especially for Parole matters and hearings. There are many firms of solicitors whom say they specialise in prison law, but do they truly have experience of dealing with those who maintain their innocence. Do not be afraid to ask and seek out that information. I say that as often the risk assessments in these types of cases are complex.

OM = Offender Manager (outside Probation Officer) OS = Offender Supervisor (inside Probation Officer)

SMART =

Specific – target a specific area for improvement.

Measurable – quantify or at least suggest an indicator of progress.

Assignable – specify who will do it.

Realistic – state what results can realistically be achieved, given available resources.

Time-related – specify when the result(s) can be achieved.

SARN- Structured assessment of risk and need for sexual offender - It is the report undertaken by prison psychologists following sexual offending behaviour work.

Regards

Margaret FASO helpline

DONATIONS urgently needed to keep the helpline available – FASO Was 10 YEARS OLD on 28TH SEP 2011

www.false-allegations.org.uk support@false-allegations.org.uk Registered under the Data Protection Act 1998 faso is a voluntary organisation dedicated to providing support to anyone affected by a false allegation of abuse FASO c/o, 176 Risca Rd., Crosskeys, Newport NP11 7DH – National help line 0844 335 1992 (as of 1.3.2011) (Mon to Fri 6pm to 10pm)