

Guidance on prisoners who maintain their innocence

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Executive Summary

Prisoners who Maintain their Innocence

Definition

The term “maintaining innocence” refers to those who continue to deny an offence for which they have been convicted at Court – usually the index offence but sometimes a different or historic offence.

Legislation (2.1 – 2.6)

Courts follow the principle that “everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law”. However, prisoners who come before the Parole Board have been proven guilty and convicted. The Parole Board is bound by the verdict of the sentencing Court. The Board’s starting point is that the prisoner was rightly convicted and is, therefore, guilty of the offence for which they have been convicted.

- It is unlawful for panels to refuse release solely because a prisoner maintains innocence, without considering how this will affect risk.

The role of the Board is not to revisit whether someone is guilty or give credence to denial, but to assess risk to determine if the test for release has been met.

- A denial of guilt may, in appropriate circumstances, be a very significant factor, but it should not be treated as conclusively against the case for release or a progressive move to open conditions.

Types of Denial (3.6 – 3.11)

- Connecting the type and level of denial with why someone might maintain their innocence can help assess risk.

- The level of denial could vary, such as **complete denial** of any involvement in the offence, or **partially accepting some** (but not all) involvement in the offence.
- Types of denial can be identified as:
 - Of the behaviour (the offence never happened)
 - Of responsibility (blaming substances / the victim / others)
 - Of the impact of behaviour (minimisation)
 - Rationalising or justifying the behaviour
- There are a number of reasons why someone may maintain their innocence:



Denial of the behaviour/responsibility/impact, or justification of the behaviour

- Seeking to understand the reason for the denial will help to determine how significant it is to risk.

Assessing Risk (3.1 – 3.4)

- There is a misconception that those who maintain their innocence must pose a higher risk of harm.
- In some cases, it can be an **indicator of higher risk**, such as where the prisoner has not completed work that could evidence a lower risk.
- In other cases, it may not impact upon the assessment of risk, and could be considered a protective factor.

The weight attached to denial will depend upon all the circumstances and, in particular, whether there are other factors indicative of a reduction in risk.

Denial should not be assessed in isolation and is not a valid measure of risk.



It is necessary to consider other factors indicative of risk reduction.

Panels will need to consider the known characteristics of the offence.

- What would be the **likely risk factors** associated with someone who had behaved in this way?
- Have they demonstrated those risk factors in the past?
- Are they **displaying or actively managing** those risk factors now?
- Have they **completed therapeutic work** aimed at increasing strengths and protective factors?
- Can they talk in generic terms about **what might make them vulnerable** to committing crime in the future and any **coping strategies** they have to prevent this occurring?
- Do they have a good range of **protective factors** in place and **viable plans for desisting** from offending in the future?

MCA Stage (5.2 - 5.5)

- Detail of the presence of denial (i.e., the type of denial and how it is linked with risk) should be identified within the reports in the dossier.
- The MCA panel can seek to understand this further by directing reports (e.g., from the COM or Psychologist witness) and drawing conclusions from the offence analysis or formulation. Should there be concerns that denial is present as a result of a mental health issue or neurodiversity, panels could direct a specialist report indicating that this should address the link, if any, with denial.
- It is possible that the presence of denial can cause gaps in risk

assessments/analysis. This may be an indicator that an oral hearing is necessary to explore the prisoner's understanding of their offending and attitude towards wider offending.

Conducting Hearings (5.6 –5.12)

- The panel may benefit from questioning the prisoner in a way that allows for the prisoner to reflect on the amount of responsibility and level of acceptance they have towards the offence.
- If the individual completely maintains their innocence, it may be helpful to explore their life at the time of the index offence. For example, the panel may wish to consider the following:
 - What were their attitudes towards sex and women like?
 - How did their peer group behave?
 - Would they carry a weapon in certain situations?
 - What were their relationships with others like?
 - How frequently would they be abusing substances?
 - How did this alter their behaviour?

Writing Decisions (5.13 – 5.15)

- As with all cases, the decision should focus on risk factors and an analysis of offending behaviour, evidence of change, and the manageability of risk.
- Where the maintenance of innocence is a significant risk factor it can be helpful to break down the denial and the wider implications that this has had on the prisoner's engagement in desistance. In undertaking this, denial should not be the prominent factor. It is the individual risk factors that should sit at the core, connecting these to how denial has impacted on the risk factors.
- It is good practice to state that the panel is aware that maintaining innocence is not necessarily a barrier to release being directed/a recommendation for a move to open conditions.

1. Purpose of this guidance and key definitions

- 1.1 The term “maintaining innocence” refers to those who continue to deny an offence for which they have been convicted at Court – usually the index offence but sometimes a different or historic offence. This term will be discussed in more depth below and the concept of denial and risk explored. The terms “maintaining innocence” and “denial” are used interchangeably throughout.
- 1.2 This guidance provides information, research outcomes and practical advice for Parole Board panels when presented with a prisoner who maintains their innocence. It offers support for panels through the Member Case Assessment (MCA) stage, through oral hearings and when writing decisions.
- 1.3 It aims to offer support to panels when assessing risk in cases where a prisoner maintains their innocence. It will set out the relevance and weight to attach to denial of guilt and other interlinking factors.

2. Legislation

- 2.1 Courts follow the principle that “everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law”. However, prisoners who come before the Parole Board have been proven guilty – they have been convicted either on a guilty plea or after a trial.
- 2.2 The Parole Board is bound by the verdict of the sentencing Court and so the Board’s starting point is that the prisoner was rightly convicted and is, therefore, guilty of the offence for which they have been convicted. The role of the Board is not to revisit whether someone is guilty or not guilty, but to assess risk to determine if the test for release has been met.

Relevant case law

- 2.3 The Parole Board’s understanding of how it should treat prisoners who maintain innocence was challenged in R (Raw) v Parole Board [2021] EWHC 1934 (Admin). The judgment can be found [here](#).
- 2.4 The judgment analysed the case law, from the key case of [Oyston \[2000\] EWCA Crim 3552](#) and others which followed it, and summarised the key principles:
 1. The Parole Board's task in every case is to assess the risk of reoffending. That involves balancing that risk against the benefit to both the public and to the prisoner of early release back into the community under a period on licence.

2. The Parole Board must assume the correctness of a conviction and it must give no credence to a denial by the prisoner.
 3. A denial of guilt will always be a factor, and that it may, in appropriate circumstances, be a very significant, even “determinative” factor (see [Gourlay \[2014\] EWHC 4763](#) at [26], [30]) to which the Parole Board must have regard but, importantly, it should not be treated as necessarily conclusive against the case for release or a progressive move to open conditions.
 4. The weight to be attached to the denial of guilt will depend upon all the circumstances and, in particular, whether there are other factors indicative of a reduction in risk.
 5. It is necessary to take into account other factors indicative of a reduction of risk. Those factors may or may not in any particular case outweigh the negative effect of a prisoner’s denial in a particular case.
- 2.5 The Court also dismissed arguments that the prisoner should be considered as an ‘uncertain perpetrator’. They pointed out that their conviction for the crime established guilt to the necessary degree of certainty.
- 2.6 It is unlawful for panels to refuse release solely because a prisoner maintains innocence, without considering how this will affect risk. A panel will need to carefully examine factors and behaviours that are a result of this e.g., an unwillingness to undertake offence related programmes. In considering whether the test for release has been met, the focus must be an assessment of risk and not the denial.

3. Assessing the risk of those who maintain innocence

- 3.1 There is often a misconception that those who maintain their innocence must pose a higher risk of harm. Whilst in some cases it can be an indicator of higher risk, such as where the prisoner has not completed work that could evidence a lower risk, in other cases it may not impact upon the assessment of risk, or indeed potentially be a protective factor. It has been argued in the desistance literature (e.g., Maruna & Mann, 2006; Blagden et al., 2007) that maintenance of innocence can be protective of self-identity and reduce stigma and shame. People are more likely to desist when they have strong ties to family and community, employment that fulfils them, recognition of their worth from others, feelings of hope and self-efficacy, and a sense of meaning and purpose in their lives; this may be easier to achieve if someone maintains their innocence.

- 3.2 Research on sexual offending shows that maintaining innocence does not necessarily increase risk and focus should be placed on engagement with treatment and supportive factors¹. Whilst there is not yet sufficient research on other forms of offending, an investigative approach is required when assessing risk for all cases where the prisoner maintains innocence.
- 3.3 Denial should not be assessed in isolation and is not a valid measure of risk. Denial can be explored to see if it is helpful or in making positive change and how much weight should therefore be placed on its presence. The [types of denial](#) and cause of denial, where known, can be assessed to determine any link with desistance.
- 3.4 If a prisoner maintains their innocence, it can often be difficult to draw up a formulation or identify risk factors as the prisoner cannot say what was going through their mind or how they were feeling in the build up to the offence. In such cases, it is important to consider that maintaining innocence in itself is not reliably related to risk. Panels will then need to think about the known characteristics of the offence. For example:
- What would be the likely risk factors associated with someone who had behaved in this way?
 - Has the prisoner demonstrated any of those risk factors in the past?
 - Is the prisoner displaying or actively managing any of those risk factors now?
 - Have they completed therapeutic work aimed at increasing strengths and protective factors?
 - Can they talk in generic terms what might make them more vulnerable to committing crime in the future and what coping strategies they have to prevent this from occurring.
 - Do they have a good range of protective factors in place and viable plans for desisting from offending in the future?

Why people maintain their innocence

- 3.5 The purpose of maintaining innocence can be for a multitude of reasons and seeking to understand this will aid the assessment of how significant it is to risk. Whilst not exhaustive, below are some considerations for panels:
- Feelings of shame and guilt towards their offending: this can be most prevalent in those who commit offences which are highly stigmatised in society (e.g., sexual offending against children). This may be indicative of dissociation and wishing to stop further offending.

¹ Harkins, L., Barnett, G.D., Wakeling, H., Howard, P. (2014). Relationships Between Denial, Risk, and Recidivism in Sexual Offenders. *Archives of Sexual Behaviour*. 44 (1), 2.

- Threats to self-esteem and image: some prisoners may not want to be perceived in a certain way and wish to disassociate and detach themselves from their offence. This can be a prominent factor in desistance.
- Family relationships: some prisoners may have strong relationships with family, peers or a partner they do not wish to risk jeopardising by admitting their wrongdoing. By denying their offending they may be preserving potential protective factors.
- Fear of the consequences of admitting offending: this could be for harm posed to themselves through social stigmatisation and victimisation.
- Anti-social personality traits which link to risk: a prisoner with such traits may not perceive their behaviour as wrong, instead believing that they acted out of necessity. Or they might admit that something occurred but not the way it was perceived by the victim/courts. This could lead to lacking empathy or remorse for their actions.
- Future contact with victim: continuing to deny offending could be a tool used to promote the likelihood of future contact with victims enabling future offending opportunities.
- Appeals: for those who are currently appealing their sentence or conviction maintaining innocence could be an integral part of their case.
- Concealing evidence: some prisoners may wish to conceal evidence so continue to deny their offence. For example, they may not wish to disclose the whereabouts of the victim's body (Helen's Law). In such circumstances, panels are under a statutory duty to take into account the non-disclosure of victim information in initial release cases and also to explore and take into account the reasons, in the panel's view, for the prisoner's non-disclosure. Please refer to Guidance on Disclosure of Victim Information for more detailed information on this duty.
- Cognitive considerations: with those who categorically deny the offence, exploration as to whether this is due to a refusal to admit wrongdoing or their understanding in beliefs, opinions and interpretations is required.

Types of denial (maintaining innocence)

3.6 Connecting the type and level of denial with why someone might be maintaining their innocence can help assess risk. For example, accounts

that dehumanise or demean the victim are likely to promote further offending, as are offence-related beliefs that are very stable, for example seeing the behaviour of others as hostile in intent. On the other hand, excuses such as blaming alcohol may help the person separate out their behaviour from their core self, making them more able to move towards desistance. The level of denial could also vary, such as complete denial of any involvement in the offence, or partially accepting some but not all involvement in the offence.

- 3.7 Types of denial can be identified as²:
- Of the behaviour – the offence never happened
 - Of responsibility – blaming substances / the victim / others
 - Of the impact of the behaviour – minimisation
 - Rationalising or justifying the behaviour
- 3.8 In assessing the type of denial, links may be made with feelings of remorse and empathy. Both can be linked to desistance, with empathy being a protective factor in the Structured Assessment of Protective Factors for Violence and Risk (SAPROF) (Risk Assessment Guidance). Difficulty in expressing remorse and empathy may be a sign of shame. However, it is important to note that some people cognitively struggle to recognize, describe, or express emotions. This is particularly prevalent amongst neurodivergent individuals. In addition, those who score highly on psychopathy scales can also find it difficult to emotionally express remorse and empathy³.
- 3.9 Assessing the presence of shame for those who maintain innocence can be important in understanding future engagement with desistance. Shame should be separated from feelings of guilt; with shame focusing on the negative global view of the self, whereas guilt focuses on the behaviour. Those experiencing guilt are more likely to seek to make amends, whereas those with shame can withdraw socially, evade responsibility, and mismanage emotions such as anger and responsibility⁴.
- 3.10 A prisoner who continues maintain innocence could be less likely to express remorse or empathy for any victim. Panels can refer to Community Offender Manager (COM) and psychological reports where the offence analysis and victim perspective can be informative. In such scenarios, prisoner engagement with general victim perspective work can

² Spencer, A. (1999) Working with Sex Offenders in Prisons and through Release to the Community. A Handbook. London: Jessica Kingsley Publisher.

³ Tangney, J. P., Stuewig, J., Mashek, D., & Hastings, M. (2011). Assessing Jail Inmates' Proneness To Shame and Guilt: Feeling Bad About the Behavior or the Self? *Criminal Justice and Behavior*, 38(7), 710–734.

⁴ Tangney, J. P., Stuewig, J., Mashek, D., & Hastings, M. (2011). Assessing Jail Inmates' Proneness To Shame and Guilt: Feeling Bad About the Behavior or the Self? *Criminal Justice and Behavior*, 38(7), 710–734.

help assess empathy and the perspective the offender has towards criminality.

- 3.11 Whilst not exhaustive, below are factors members may wish to consider when assessing the risk of a prisoner who maintains their innocence:
- Custodial adjudications and behaviour reports: a prisoner's engagement with various professionals and other prisoners, and engagement with the prison regime, can be indicative of their attitude and ability to form positive relationships and engagement in the community.
 - Offending behaviour work: this can be undertaken for previous offending or from a wider perspective of offending behaviour. Where the prisoner has a persistent history of offending, especially of a sexual or violent nature: the fact that offending behaviour work has not been completed because of the prisoner's denial may be an influential factor.
 - Attitude and willingness to change risk-related behaviours.
 - Previous offending behaviour: In such circumstances where the prisoner has a wide range of offending, a behavioural pattern of offending can help form an assessment of current risk. Exploring these offences and reducing risk factors associated with these can be useful. Although caution should be exercised where the index offence shows no similarities.
 - Positive engagement with staff conducting risk assessments and seeking to build effective risk management plans.

Understanding denial in those who have committed sexual offences

- 3.12 Panels should be cautious when using broader assessments with those who have committed a sexual offence and maintain their innocence. Whilst these can be helpful, sexual deviance is unable to be discussed and assessed. Treatment programmes which are focused on a strengths-based approach can aid assessors as they approach denial from different angles.
- 3.13 Whilst assessing the relevant weight to place on denial for those who have committed a sexual offence, other factors can be taken into consideration. For example, shame can be a common reason for denying sexual offending. Whilst shame can be a negative factor (as [per 3.9](#) above), shame can also encourage change.
- 3.14 Denial and cognitive distortions could also be present. Research shows that those who commit sexual offences might have previously created

excuses and rationalised their behaviour to help legitimise the sexual contact. Therefore, some prisoners, when discussing the offence, might not intentionally wish to be deceitful but are instead demonstrating a distorted perception of their beliefs.

4. Interventions

- 4.1 Historically, interventions have mainly been tailored to focus on the crime committed and factors leading up to this. They would be heavily reliant on the prisoner admitting their guilt in order to demonstrate risk reduction.
- 4.2 Recently, however, there has been a shift in treatment programmes towards a more strengths-based⁵ approach. These programmes aim to focus on the individual themselves rather than offence type with a practical perspective to bring about change. They no longer require the prisoner to accept their offending. Given the shift in offending behaviour programmes, there may be a higher level of engagement in these and motivation by prisoners who maintain innocence.
- 4.3 If a panel wishes to understand a prisoner's accredited programme options and the suitability of certain interventions, they can choose to direct a 'Programme Suitability Summary' (PSS). A PSS is completed by a suitably trained practitioner such as a Treatment Manager, a Registered Practitioner Forensic Psychologist, trainee psychologist or Qualified Probation Officer and will provide an intervention trajectory. The assessor will assess the level and type of innocence the prisoner maintains to determine what is suitable, noting that some programmes allow those who acknowledge being present at the time of the offence, and those who accept they have previously used violence. It is also likely to provide an indication of a prisoner's motivation to engage with a particular piece of work.

5. Practical Guidance for Parole Board Members

- 5.1 Innocence can be maintained by prisoners throughout long prison sentences and can continue to be present throughout attempts by professionals to seek a deeper understanding of the offence. It can be prominent in serious sexual and violent offending and requires an exploratory approach, with factors you may wish to consider below.

At the MCA stage

- 5.2 The presence of denial should be identified within the reports in the dossier. If the MCA panel assess that this is not adequately addressed,

⁵ [HMPPS Approach to the Management and Rehabilitation of People Convicted of Sexual Offences](#)

i.e., the type of denial and how it is linked with risk hasn't been addressed, further information may need to be directed.

- 5.3 The presence of denial prevents an in-depth offence analysis or understanding of the prisoner's perspective of what they were doing, thinking, and feeling prior to the offence. Gathering information on the prisoner's ability and motivation to change, progression plans and work towards a positive lifestyle could be required to gain an understanding of the prisoner. Denial can increase the likelihood of a prisoner refusing to engage in offence-related work, in the belief that this could be seen to admit guilt. It is, therefore, likely that when assessing those who maintain their innocence, no or little offending behaviour work may be taken into consideration and so a broader approach should be taken.
- 5.4 At this stage, the MCA panel can seek to understand the type and purpose of denial (see [paragraph 3.5](#)) by directing professional assessments (for example from the Community Offender Manager or Psychologist witness etc) and drawing conclusions from the offence analysis or formulation. Should there be concerns that denial is present as a result of a mental health issue or neurodiversity, panels could consider directing a specialist report indicating that this should address the link, if any, with denial. Please refer to the Guidance on Specialist Reports for more information.
- 5.5 Focus should be drawn to the prisoner's understanding of their offence and professional assessments of this. It is possible that the presence of denial can cause gaps in risk assessments and analysis. This may be an indicator, but not a requirement, that an oral hearing is necessary to explore the prisoner's understanding of their offending and attitude towards wider offending.

Conducting hearings

- 5.6 At the oral hearing the panel may benefit from questioning the prisoner in a way that allows for the prisoner to reflect on the amount of responsibility and level of acceptance they have towards the offence, this often changes throughout someone's sentence. If the individual completely maintains their innocence, it may be helpful to explore their life at the time of the index offence which may have generally made them more vulnerable to commit a crime, even if they say that particular crime didn't occur. For example, the panel may wish to consider the following:
- What were their attitudes towards sex and women like?
 - How did their peer group behave?
 - Would they carry a weapon in certain situations?
 - What were their relationships with others like?
 - How frequently would they be abusing substances?
 - How did this alter their behaviour?

- 5.7 This can allow for the prisoner to self-reflect on potential risk areas that may have been present in their life generally. Following this discussion, it may be possible for them to evidence change in their current attitudes and behaviour and demonstrate their motivation to lead a more pro-social life in the future. They can personally discuss the goals they have for the future which panels will be able to verify with professionals.
- 5.8 If the prisoner has a history of previous offending, this can be analysed and questions can be focused to seek the prisoner's wider perspective of criminality. Should the prisoner admit their guilt in other offences, an analysis of these can aid the panel to assess previous risk factors to determine if these are still prominent and potentially present in the current offence.
- 5.9 Panels should be particularly focused on the attitude the prisoner has towards wider offending. Whilst it is not proven to be necessary for a prisoner to admit their offence to reduce risk, exploration of their views about wider offending can provide insight.
- 5.10 During the hearing panels can explore and assess the level, type, and purpose of denial from questioning the prisoner in addition to professional assessments and evidence relating to this.
- 5.11 Seeking professional assessments from those working with the prisoner can build a broad understanding of the denial. Questions can be targeted towards the prisoner's engagement with staff and other prisoners and confirmation of the attitude and actions they have undertaken to live a pro social life.
- 5.12 Assessing a prisoner's protective factors will be important during the hearing. These should be explored and assessed in the context of denial. Maintaining innocence could be an influential factor in maintaining protective factors such as pro social family relationships and potential release plans. If a risk management plan identifies relationships as a protective factor, the panel could explore what contingency plans are in place should the relationships break down if the prisoner ceases to maintain innocence.
- 5.13 When deciding licence conditions, the panel can explore the prisoner's willingness to comply, given that they are in denial of their offence and subsequently may have negative attitudes towards their sentence and licence. An understanding of how the prisoner will cope with these conditions should be explored.

Writing decisions

- 5.14 As with all cases, the decision should focus on risk factors and an analysis of offending behaviour, evidence of change, and the manageability of risk⁶.
- 5.15 Where the maintenance of innocence is a significant risk factor it can be helpful to break down the denial and the wider implications that this has had on the prisoner's engagement in desistance. In undertaking this, denial should not be the prominent factor. It is the individual risk factors that should sit at the core, connecting these to how denial has impacted on the risk factors.
- 5.16 When drafting decisions, it is good practice to state that the panel is aware that maintaining innocence is not necessarily a barrier to release being directed/a recommendation for a move to open conditions. A decision which appears to show that a decision not to direct release was made primarily because of denial of guilt is vulnerable to challenge through one of the available routes.

6. Further information

- 6.1 HMPPS has developed two guidance papers – Guidance for Assessors and Guidance for Report Writers. These papers emphasise the significance of denial and look at denial from a practical perspective.
- 6.2 HMPPS Risk of Serious Harm Guidance states that those who maintain innocence do not necessarily pose a higher risk of harm and it is not necessarily an instrumental predictor. It instead recommends exploring the complexity of denial.

⁶ See *Decision-Making Framework* (sharepoint.com)