

Lifers Who Maintain Their Innocence

Nigel Newcomen, *Head of Sentence Management Group, Prison Service Headquarters.*

In the wake of some high profile cases in which life sentence prisoners have — after many years — proved their innocence, there have been a number of highly inaccurate articles in the Press claiming that if lifers do not admit their guilt for the offences of which they have been convicted they will remain in prison literally for life. This brief article seeks to set the record straight and offer some clarification for prisoners, prison and probation staff and others interested in this issue.

The fact of the matter is that lifers who do not admit their guilt are not in consequence kept in prison literally, for life. Indeed we have the figures to demonstrate this. A survey of cases dealt with in one of the two main caseworking commands in Lifer Unit in Prison Service Headquarters, showed that nine out of the 48 lifers who were released between January 2001 and January 2002 continued, at release, to maintain they were innocent of the offence for which their life sentence had been imposed.

Despite this, no-one would pretend that there are not difficulties involved in managing the cases of those who do not accept that they were rightly convicted. Life sentence planning and the parole process are based on risk assessment and risk reduction. Once the tariff (that part of the life sentence prescribed for punishment and retribution) has been served, the question of progress towards release hinges on a prisoner demonstrating that he or she is safe to release and that any risk has been reduced to a minimum. Clearly, it is not easy to set the risk reduction process in train where prisoners do not accept that they committed the offence, or that the risk factors identified as connected with the offence apply. Nevertheless, and contrary to recent media claims, this does not make participation in the sentence planning process and ultimately the Parole process impossible.

There is a further fundamental point to stress: for any Prison Service working, as we do, under strict adherence to the rule of law, it is right that we assume that those sentenced by the Courts have been rightly convicted. It is not for prison staff to question a conviction or sentence and double-guess a court of law. Our duty is to do what we can to ensure that such offences are not committed again. If an individual working in the Prison Service uncovers evidence that suggests a prisoner is innocent then it is important that that evidence is placed before the relevant authorities. It is for the courts and the independent Criminal Cases

Review Commission to review alleged miscarriages of justice, not the Prison Service.

So what can the Prison Service do to help a person who maintains their innocence through a life sentence? Obviously this makes it more difficult to form a proper assessment of the factors contributing to the prisoner's offending. Consequently, there may be less certainty about the level of risk and the extent to which it has been reduced during sentence. This is particularly the case as far as accredited offending behaviour programmes are concerned. These are programmes accredited by a panel of independent, international experts as those, that research evidence suggests, are most likely reduce the risk of future re-offending. The Government has invested heavily in these programmes and they are increasingly used as our principal method of enabling prisoners to reduce their risk of re-offending.

Accredited programmes, such as the Sex Offender Treatment Programme (SOTP) and Controlling Anger and Learning to Manage It (CALM), to a large extent depend on an offender being willing to discuss their offences, either during the initial assessment stage or during the programme itself. They are therefore not usually made available to those individuals who do not accept their guilt. This can make it more difficult to judge whether an individual's level of risk has diminished. There is also the problem that many 'deniers' refuse to undertake any offending behaviour work whether it involves discussing the index offence or not.

However, the two cognitive skills programmes, Enhanced Thinking Skills and Reasoning and Rehabilitation, and work on addressing drug and alcohol problems do not require offenders to talk about their offences. So prisoners who do not accept their guilt but are willing to take part in this work should be able to do so without difficulty. Assessment of the impact of their attendance on offending behaviour courses is measured through the use of psychometric tests. Such tests are carried out before and after the courses. If the tests show that the offender still possesses cognitive deficits, which can be shown to be linked to offending, then a clinical judgement can be made about the extent to which they are at risk of re-offending.

Although denial undoubtedly makes it harder to conduct a risk assessment, it should nevertheless still be possible to make one. This can be done, for example,

by using police reports about the offence in combination with social history information, the prisoner's performance in interview and his behaviour during sentence. By taking all this information into account, it should be possible to form a reasonable assessment of the factors that underlie the prisoner's risk. Once the factors which underlie the lifer's offending have been provisionally identified, it should be possible to judge how far these factors continue to be expressed in their current behaviour. On this basis, an assessment of whether the prisoner's risk is increasing or declining can be made.

The assessment of the prisoner's current level of risk must be the pre-eminent factor in determining whether he is ready to progress to lower security conditions or be released. Denial of guilt is only one element to be taken into account in reaching that decision.

International research and our own experience indicates that it is not at all uncommon for offenders, and especially sex offenders, at some point to deny the offences for which they have been convicted. It is also true that a number of these individuals, for a variety of reasons, subsequently admit the offence. Approaches to addressing the offending behaviour of deniers vary because offending behaviour programmes differ in the extent to which they are able to treat those who refuse to admit their guilt. Although, as we have seen, the SOTP requires participants to discuss the offence for which they were convicted or the sexual elements of their offence, and is therefore not available to those who completely deny their offence, it can be undertaken by those who admit partial guilt. For example, those who concede that an incident took place but attempt to minimise their culpability.

However, inevitably with many deniers the emphasis has to be on working on the offending behaviour identified in any pre-convictions and or other/identified problem behaviour, such as alcohol, drugs, anger, relationships, poor social skills. For instance, although participants on the Controlling Anger and Learning to Manage It (CALM) programme are not expected to talk about their offending during the programme sessions they *must* do so during the assessment process. With the Cognitive Self Change Programme (CSCP), it is within the Treatment Manager's discretion as to whether a denier should take part, based on their discussions with the individual.

Of course risk assessment does not just depend on successful completion of offending behaviour programmes. There are a range of factors which need to be taken into account and weighed in the balance. There may, for example, be cases in which the nature of the index offence was such that the circumstances leading to it are very unlikely to be repeated. Or there may be factors about the convicted person's own circumstances at the time that risk is being assessed which allow us to conclude that the risk of future

offending is very small. We have to be on guard against constantly looking for 'progress' which for many who continue to maintain their innocence throughout their sentence is inherently unlikely. When completing reports on lifers the question prison staff should be asking is 'what is the risk currently presented by the prisoner?' not 'what has the prisoner done since the last reports to reduce risk?' — although the latter will often provide a guide to the former. In all risk assessments we need to weigh positive factors, such as stable family support, employability, accommodation, lack of alcohol problems etc., against the negative factors which might, for example, include the denial itself, poor and aggressive relationships in prison, difficult custodial behaviour or refusal to participate in programmes such as ETS which do not require the acceptance of guilt.

Prison Service Lifer Unit has issued detailed guidance along these lines to all staff who manage lifers in prison (it is set out in the Lifer Manual). The guidance emphasises that denial of guilt should not of itself prevent progress and ultimately release. Many lifers will be released after they have served the tariff set to meet the requirements of retribution and deterrence if the Parole Board, and Ministers in the cases of those convicted of murder, are satisfied that risk has reduced to a level where it is safe for them to live in the community again.

The Prison Service accepts that the general presumption that the conviction was correct does not meet the case of the person who is genuinely innocent and who has exhausted all avenues of appeal without success. But the key issue affecting a lifer's progress and ultimate release is whether their level of risk, irrespective of their denial, has reduced. Similarly, the Parole Board's first duty is to assess the risk that a life sentence prisoner may commit further offences if he is released on life licence. For that reason it is *unlawful* for the Board to refuse to consider the question of release solely on the ground that the prisoner continues to deny guilt. We can therefore state categorically that refusal to admit guilt does not preclude release for life sentence prisoners — despite what you may have read to the contrary in the media.