The problems with attempting to rehabilitate the innocent: A joint submission to the Home Affairs Committee Inquiry into Rehabilitation of Prisoners

This submission was specifically compiled for the Committee by Hazel Keirle, Legal Researcher, Miscarriages of Justice Organisation and Dr Michael Naughton, Research Fellow, Department of Sociology, University of Bristol.

Introduction

Over the last decade, a range of 'cognitive skills', 'thinking skills', 'reasoning and rehabilitation' and various other 'offending behaviour' programmes and courses have dominated prison regimes in England and Wales. These courses are almost universally based on the work of psychologists in the correctional service of Canada and work from the premise that as offenders 'think' differently to law abiding citizens, once their 'cognitive distortions' are corrected then they can be released with a reduced risk of recidivism.

Against this background, this submission draws attention to a range of issues that relate to prisoners who allege their innocence and who are deemed to be 'in denial' of the crimes for which they were convicted. In particular, it suggests that more recognition and appropriate forms of penal response be given to the significant number of prisoners who are innocent.

The prison population and re-offending

It is a matter of common knowledge that the prison population in England and Wales stands at an all time high of almost 75,000. As this relates to the general population, in February this year, Britain was listed as the prison capital of Western Europe, with an average incarceration rate of 139 for every 100,000 of population in England and Wales, and is said to outstrip the jailing rate of Libya and Malaysia. The statistics indicate that our courts are far more punitive than those of Canada and Australia, and beat all those of its closest European neighbours, including courts in France (jailing 85 for every 100,000), Germany (96), and Spain (126).

The statistics also show that the rise in prison numbers in the 1990s was also accompanied by a significant increase in the reconviction rate. In 1993 - 53% of prisoners were found guilty of another offence within two years of leaving prison. By 2000, this percentage had risen to 59%. Re-conviction rate statistics are based on the predictor principle that prisoners once released are liable to re-offend. Hence when two groups of 50 prisoners are researched, the fact that the 'treated offenders' group had a lower reconviction rate than the other, is not proof of the effectiveness of the courses. Those group of people may simply have not re-offended in any event. We acknowledge that research indicates that 50% of offenders released from prison will re-offend within two years and for males under 21 years this percentage is over 70%.

Miscarriages of justice

The foregoing statistics indeed emphasise the urgent need to address the issue of re-offending/re-conviction, not least for the financial costs that are incurred to society as a whole. However, an issue that has been absent from the debate, thus far, is the matter of miscarriages of justice and the appropriateness and/or relevance of correctional programmes to the innocent who are the victims of wrongful imprisonment. Simply put, how can a person be rehabilitated for a crime that they did not commit?

In terms of statistical data on wrongful imprisonment, it is over a decade since research conducted by the National Association of Probation Officers (NAPO) found that as many as 700 people may well have been wrongly imprisoned in 1992. At the time, conflicting research branded NAPO's figure extremely conservative.

More recently, with the dramatic increase in the prison population, it has become commonplace for charitable campaign organisations against miscarriages of justice to work on the basis that around 5% of the prison population may be innocent. This currently amounts to around 3000 prisoners. Whilst this estimate is unsatisfactory and speculatively derived, it is claimed that it appeared in a Home Office Bulletin, in *Prison News*, was confirmed by a prison governor, a senior police officer and was broadcast as accurate on several occasions by the BBC. It also correlates with the number of applications for conviction reviews to the Criminal Cases Review Commission.

This raises general issues about the treatment of all prisoners, as it is impossible to know which individual prisoners out of the whole prison population are innocent. More specifically, the sheer scale of England and Wales' wrongful imprisonment problem that is indicated contravenes almost all of the provisions that are contained in the European Convention of Human Rights and the Human Rights Act (1998). (We will not elaborate here but Michael Naughton is currently completing an academic journal article on these matters).

The 'parole deal'

One of the most troubling aspects of the current penal regime is the so-called 'parole deal', which has been defined as very much akin to a 'plea bargain' for it attempts to make innocent prisoners acknowledge guilt for crimes that they did not, in fact, commit. Significantly, both offer the same essential 'deal' in an attempt to obtain judicial finality in cases: 'We say you are guilty. Admit it and you get something in return'.

This plays out with the prisoner being offered an enormous range of incentives including more out-of-cell time, more visits and a speedy progress through the system, to follow the course of action desired by the prison regime – to go on an offending behaviour course to ensure that the prisons performance target is met. This is made to appear as an entirely rational and subjective choice, especially as it will be the basis for ensuring early release through parole.

At the same time, if the prisoner does not go on a course, the threat of continued imprisonment remains, as the prisoner will be deemed too much of a 'risk' for release

at all. This is because they form part of the prisoners Sentence Plans (SP's) and failure by the prisoner to meet the targets set in their SP's almost invariably leads to loss of parole at the first opportunity.

For Lifers this can mean additional decades in prison post tariff. For example:

- *Stephen Downing* overturned his conviction in January 2002 for the murder of Wendy Sewell following 27 years incarcerated for an offence which he might normally have served 12 years had he not been classified 'IDOM' – in denial of murder. It is well documented that because of his continued denial of a murder he was also deprived of better jobs, training opportunities and parole consideration. It was reported that all the prison officers knew Stephen Downing was innocent. They were begging him to say he had murdered Wendy Sewell so they could release him.
- *Frank Johnson* served 26 years for the murder of Jack Sheridan was also offered parole long before his release if he admitted to the crime. This he refused because he was determined not to leave prison with a conviction against his name.
- *Robert Brown* was informed after he had served 15 years that if he admitted that he had murdered Annie Walsh he would be given parole. This he refused and he served a further 10 years until his case was overturned by the appeal courts in November 2002.

Against this, a likely consequence will be for many innocent prisoners to 'acknowledge' their 'guilt' in the interests of a more tolerable prison experience or existence and early release through parole. Once embarked upon this course of action, however, it will be virtually impossible for the wrongly imprisoned innocent to overturn their wrongful conviction.

In this context, it is, also, interesting to note that research conducted by MOJO (Miscarriages of Justice Organisation) estimates that more than 8000 prisoners currently remain in prison past an earliest release date. This includes 1,500 life prisoners who are currently past their tariffs, a figure that was obtained in response to a Parliamentary question.

Moreover, in April this year, MOJO received written confirmation that 800 prisoners who were eligible for parole had been denied on the basis of their continuing denial of guilt. Clearly if release dates can be met on target, there would be a knock-on reduction in the increasing prison population and the spiralling costs.

Consequences

Whilst the Prison Service and Parole Board acknowledge that it is unlawful to refuse to recommend release solely on the ground that a prisoner continues to deny guilt, it tends to work under the simultaneous assumption that denial of offending is a good indicator of a prisoner's continuing risk. Accordingly, prisons proceed on the basis that convictions are safe, which, in principle, seems an entirely reasonable and practical policy. In practice, however, this serves to exacerbate the harmful consequences of the injustice already done to the wrongly convicted prisoner.

In consequence, prisoners who protest their innocence not only serve longer sentences, they also experience a range of other discriminatory practises:

- Prisoners who do not engage with correctional and/or educational programmes also lose other privileges such as the IEP system, which continues to downgrade enhanced to standard for failure to complete courses, this induces even guilty offenders to undertake courses for the wrong reasons;
- Failure or unsuitability to attend and engage in the offending behaviour courses leads to negative decisions by the Prison Service on categorisation matters. Thus a Category B Prisoner who in all other respects is suitable for transfer to Category C Establishments can and often does remain in Category B conditions as a direct result of failing to meet the intervention programme targets. This applies routinely to those in denial of guilt;
- In addition, psychological research conducted by Adrian Grounds (Cambridge University) on victims of wrongful imprisonment following successful appeal shows that during imprisonment, innocents focus almost entirely on the processes necessary to try and establish innocence to the point where all social skills were lost - leading to an inability to return to family life and proper social integration. It should be noted that this research has been conducted amongst prisoners released in the last decade and only a proportion of those were prisoners will have been subject to offending behaviour intervention programmes. As such, the psychological harm caused by the increased pressure to accept and confront offending behaviour that does not exist may be much worse for future victims. This is evidenced in the vast majority of complaints received by MOJO that testify that denial of guilt causes major problems within the system;
- MOJO's research amongst long term prisoners, and especially those who have already been in the system for more than 6 years, indicates that basic educational levels attained before conviction have slowly deteriorated during the term of imprisonment. The effects of imprisonment itself has not been researched as a factor of educational and social skills dilution.

Recommendations

As a matter of urgency, the Committee should commission an integrated research agenda that:

- Seeks information from the Home Office as to how many prisoners remain in the penal system, past their first parole eligibility date or tariff date because of failings to meet all of the rehabilitation programmes;
- Following on from this, more focused research into the precise causes of failure to meet parole eligibility must be conducted. This need not only be down to innocent victims refusing the parole deal but could also be due to guilty offenders not wanting to be reformed;
- This will help to determine the likely scale of wrongful imprisonment that is currently occurring.

Finally, we call for more appropriate forms of assessment to be devised for prisoners that allege their innocence. We acknowledge that not all prisoners who allege innocence will be innocent. However, there are indicators that show that within two years most genuinely guilty prisoners will have given up their pretence and started to follow their Sentence Plan's. Until such time as these matters receive acknowledgment and more relevant responses, the psychological harm to prisoners who continue to allege their innocence will be exacerbated and they will continue to present as a disruptive element to the system. Alternatively, a programme of intervention workshops could be devised that would:

- Serve to educate prisoners to help them to understand their situations and allow guilty offenders to proceed through the system. Around 20% of applicants to MOJO simply do not understand their conviction, i.e. if they were convicted of murder, they feel it should have been manslaughter. However, after lengthy, and time (resource) consuming correspondence they eventually accept their guilt. Research has concluded that this is not a role that could be effectively delivered by existing Legal Service Officers;
- Once those who have got a plausible claim to innocence have been identified they could be directed in the proper legal processes that they should follow to overturn their wrongful convictions. This idea, in principle, already has backing from the Criminal Cases Review Commission;
- At the same time such a process would provide invaluable key data on a range of aspects pertaining to wrongful imprisonment, which is not available from any other source.

Hazel Keirle and Michael Naughton 20 October 2003.