

Robert Banks, a barrister, writes *Banks on Sentence* and *Banks on Sentence Compact*. The main work is the second largest selling practitioner's criminal text book and is used by judges for sentencing more than any other. The book is classified by the Ministry of Justice as a core judicial text book. It is priced at £94.99 and is regularly updated. The latest edition is also available in an App for iPads from the Apple iTunes Store. If you have access to a computer, you can follow him on [twitter](#): [@BanksonSentence](#)

Q In December, I pleaded to a section 20 assault. Luckily the prosecution dropped a section 18. They had witness problems. The case was adjourned. The victim was knifed by two of us. I will claim it was all in a frenzy. I have a conviction for another section 18 and quite a few other convictions. For most of them I received custody. I'm told IPP has been abolished so what is the worst I face?

A I have very little to go on. I am not sure two people using a knife in a frenzy is much mitigation. The maximum sentence is 5 years. I assume you are over 18. You will be entitled to receive a discount for the plea. How much will depend on when you offered to plead and what was said at your PCMH. Without more details of your previous offending I couldn't predict the answer.

IPP which could not be given for section 20, was replaced on 3rd December 2012 with the new extended sentences (EDS).

The Judge will consider whether you are a 'dangerous offender' within the definition in the Criminal Justice Act 2003. EDS is available where a) the defendant pleads or is convicted of an offence which is in Criminal Justice Act 2003 Sch 15 b) and where either i) the appropriate penalty is 4 years more or ii) where there is a conviction for a serious offence like section 18. Therefore your previous section 18 offence means EDS is available. EDS means that you would have to serve two thirds of your sentence rather than the usual requirement of one half of your prison sentence. For you, because you were convicted of a Schedule 15B offence, there would be a release after serving the custodial sentence, but this does not apply to all prisoners.

You might be interested to know that had you been convicted of section 18, on 3 December 2012 automatic life was introduced which applies to a) offences in Criminal Justice Act 2003 Sch 15B like section 18, b) offences committed on or after 3rd December 2012 and c) where either i) the appropriate penalty is 10 years more or ii) where there is a conviction for a serious offence in Criminal Justice Act 2003 Sch 15B.

Q I was convicted of affray at the Magistrates' Court. There was a Saturday night pub fight and I think I was arrested because I won the fight. There was no knife. The loser only had four stitches and a loose tooth. I had similar previous and I was given four months. I would like to appeal but my solicitor is against it. Should I?

A I doubt it. My perception is that magistrates try to impose a community sentence if they can. Here they may have thought that the other sentences that had been imposed before hadn't worked and it was time for custody. I suspect you were arrested because you were part of a group causing fear to others, which are the ingredients of affray. The injuries are not insignificant. The guidelines indicate that you are either in the middle band, where there was 'substantial fear', which has a range of 'medium-level community order to 12 weeks' custody', or the top band. The top band is where the 'conduct caused risk of serious injury'. This has a range of '12 weeks' custody to a committal to the Crown Court'. Both these ranges would need to be enhanced because of your previous convictions. If you had a weapon, you were lucky. If it was just fists, then late-night pub violence is often dealt with by a custodial sentence.

The other problem is that if you appeal you are dealt with by a judge. The general view is that they resist overruling magistrates whenever they can. Very few appeals succeed. The judge is also able to increase your sentence, which I think he or she might do.

Q I will be pleading to a burglary where I tricked my way into an old person's home. I took money from her purse. I needed the money for drugs. I am utterly ashamed of it and am very worried that the case will be reported in the papers. My partner doesn't know the true facts and I have children at a local school. If they had to read what it was I would be devastated. I wasn't going to tell them the date of my sentence hearing. Surely there must be some application I could make to spare my family the distress of reading about what I've done and having to cope with what other children might say to my children. My brief says there is not much we can do. What can I do?

A In many countries open justice is not seen as important. In this country it has a long and important past. The public is entitled to know who is appearing at the courts and what they are being sentenced for. There are a number of very tightly drawn exceptions to this. Even where a defendant is accused of sexually abusing members of his family his real name is used in court. The reporting restrictions on the case will not be to protect the defendant. They will be there to ensure that the witnesses remain anonymous. There have been occasions when full-time magistrates who face charges have had their cases heard on a Saturday or first thing, and many suspect that this was done to avoid publicity. It still didn't mean that there was any anonymity or any hearing was in a closed court. In one case involving drink/drive the timing made the story more newsworthy. Some judges would think that publicity would be a good thing. It would show people who are tempted to commit this type of offence that they will receive the long sentence that I expect you to receive. Further it will enable the victims of this type of offence to see what the courts think is the appropriate penalty and to know that some of the offenders are arrested. Recently a prison governor at Wakefield was prosecuted for having extreme pornography on his laptop. The case received publicity in the papers. The effect on him was devastating. But he could not in any way claim that the case should not be reported. I am afraid there is no way of blocking publicity. However, you should remember that the press rarely report what you expect them to.

Asking Robert questions

Please make sure your question concerns sentence, prison law or release and not conviction. It is usually not possible to determine whether a particular defendant has grounds of appeal without seeing all the paperwork. Analysing all the paperwork is not possible. The column is designed for simple questions and answers.

Please start your letter with the question you want answered and send the letter to Inside Time, marked for Robert Banks. Unless you say you don't want your question and answer published, it will be assumed you don't have an objection to publication. No-one will have their identity revealed. Letters which a) are without an address, b) cannot be read, or c) are sent direct, cannot be answered. Letters have to be sent from Inside Time to a solicitor. If your solicitor wants to see a previous question and answer, they are posted on the website, www.banksr.com.