

Answers by Robert Banks, the barrister who 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. Updates are posted on our website.

The main work is now in an App for iPad, which is available from the Apple iTunes Store. It is priced at £109.99. The App will be updated with the May 2012 edition and legal changes as they occur.

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Thanks to all the readers who wrote in about the difficulties there are of seeing *Banks on Sentence* and also seeing a current edition of the book in prison libraries. I have had replies from HMP Dovegate, Durham, Ford, Gartree, Gloucester, Preston, Risley and Wandsworth. I will wait for others to have a chance to write in before I pick out five letters at random and send a free copy of both Volumes 1 and 2 to the five winners. If readers would prefer a free iPad App instead of a book, please say so (although I suspect very few readers will be allowed one). The address is *Banks on Sentence*, PO Box 35, Etchingham, East Sussex TN19 7WS.

Q I was sentenced for murder with a whole life tariff. The prosecution made some dreadful allegations against me and the court said there was similar activity and relied on the fact there was more than one murder. I have now been in custody for over 25 years. I have co-operated with the regime here well and my reports are good. I have read that there have been challenges to the whole life regime. What is the situation?

A The order remains in force, but that may change. This area of law has a long and far from rational background. The difficulty is that the only time when you can tell whether it is safe to release a prisoner is at the time of that release. The first time that will occur can only be a guess. Consequently some judges choose never to use the power. This creates inconsistency. Before the Criminal Justice Act 2003 changes, the Home Secretary's practice was to review such terms after 25 years. This was changed by David Blunkett, who introduced the higher tariffs for murder and the mandatory life terms with no built-in review. It can be assumed that these measures did not reduce the murder rate. There remains compassionate leave, which is so rarely exercised that it can be disregarded, as it only means that a defendant might be allowed to die at home or in a hospice. Only England, Wales and the Netherlands in the European Union have such sentences. Turkey does not. Portugal, Norway and Spain do even not have life sentences.

There have been three main challenges to the order. The first one was about extradition and was unsuccessful. In the second challenge the Court of Appeal relied on the limited power of the Home Secretary to release prisoners to demonstrate there was no breach of human rights. The appeal was also unsuccessful. In January 2012, the European Court of Human Rights was split 4-3 and so just dismissed the application. An appeal is envisaged. In February 2012, an amendment to the current sentencing Bill to allow for a review after 30 years was debated. This review would only be possible where the Lord Chief Justice consents and the trial judge, if available, consents. The Parole Board would then decide whether the whole lifer would be released. The Government as ever prefers the status quo, which will at least prevent nasty 'We've gone soft on murder' articles in certain newspapers. But the tone of the Minister when opposing the amendment, and the strength of the supporters, indicate that there will be change sometime. Perhaps it is only a matter of time before every prisoner has a review. This review would clearly need to be extended to those who have fixed minimum terms of over 30 years. Of course it may be that even if the law were changed, very few if any whole lifers would ever be released.

Q I am on remand for conspiracy to supply heroin and crack cocaine. I supplied an undercover officer through a friend on four occasions. The heroin was sold for £10 and the crack sales were four times at £40 each. I cut the punter's drugs in two and gave him half of it. I am being classed as a go-between. The police have recordings of the conversations and I will be going guilty. My brief is trying to get the CPS to drop the conspiracy and accept being concerned. I would then plead to two supply counts involving the undercover officer and being concerned in the supply.

A This question follows on from my answer last month. You will need to look at the guideline tables etc. in that answer. I am not sure what the disadvantage of the conspiracy count is, as your mitigation

is you were acting under the control of another. It may be the conspiracy is open-ended but this should be dealt with by an agreed basis of plea. This would ensure that the factual basis is fair for you.

Your case will be dealt with as a Category 3 Class A drug supplier under the new guidelines. The penalties are:

	Leading role	Significant role	Lesser role
Starting point	8 ½ years	4 ½ years	3 years
Range	6 ½ years to 10 years	3 ½ years to 7 years	2 years to 4 ½ years

On your account, you are someone who was just told to deliver drugs to customers. Someone who, no doubt, takes all the risk and little of the profits. You should on your account be able to be sentenced as playing a 'lesser role'. I expect the judge would determine the sentence on the 'scale of the dealing', which is a key part of sentencing in this area. If the amounts are agreed or if the amount is specified in the indictment, there is no problem. If not, this decision will not always be made solely on the amount of drugs sold to the police officer but on the other dealing that can be inferred, if any, as well.

The provision for those dependent on drugs in the new guideline reads: 'Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under the Criminal Justice Act 2003 s 209 can be a proper alternative to a short or moderate length custodial sentence.'

It is too early to tell how the courts will interpret this new provision. I suspect judges will look critically at the 'prospect of success' and expect proof in pre-sentence reports. Further, judges will be slow to accept the word of the defence advocate. I anticipate judges will also look very carefully at your previous convictions, if any, and what the response was to the sentences imposed. I would expect most judges to consider that a 3-year starting point is not a 'moderate' custodial sentence, but a few might.

As to the final figure all I can do is ask you to apply all the factors to the guideline figures for each of the two scenarios you outline. Having done that, you should consider the discount for the plea, which is one third off if entered at the first opportunity.

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 with it marked for Robert Banks. Please make sure your question concerns sentence and not conviction or release. 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. Facts which indicate a prisoner's identity will not be printed. Letters which a) are without an address, b) which 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.