

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. The May 2012 edition is now published. This edition will shortly be available in an App for iPads, available from the Apple iTunes Store. It is priced at £94.99 and will be regularly updated until March 2013. If you have access to a computer, follow us on [Twitter](#): [@BanksonSentence](#)

Q I was speeding and I lost control of the car on a bend. I hit an oncoming car. Two other cars joined the pile-up. Two people died in the first car I hit. They died not because of my car but because one of the other cars hit their car. Others were injured but not as badly as I was. I was really badly injured. I lost a kidney and had injuries all over my body. I was in hospital for six weeks. Parts of my body will never be repaired. I can't understand why the CPS are prosecuting me. I have suffered enough already. My barrister says my injuries will not assist me very much and I will be sent to prison. What is the point in that? Also it was an accident that others ran into the first car. Why should I be responsible for matters which I did not want to happen and which occurred through sheer chance?

A I note that you concentrate on your injuries and not on those who died, the families of those who died and the others who were injured. I take your questions in order.

Why am I being prosecuted when I have suffered such bad injuries? I suspect the CPS took the view that you were responsible for all the loss of life and all the injuries. Therefore you must take responsibility for your actions. Further, they are likely to have considered that it was necessary to deter others from driving badly which causes such dreadful events. The CPS caseworker was no doubt simply following the CPS guidelines.

Will my injuries cause a significant reduction in sentence? The causing death by driving guideline 2008 says: 'Injury to the offender may be a mitigating factor when the offender has suffered very serious injuries. In most circumstances, the [weight] it is given will be dictated by the circumstances of the offence.' A past Lord Chief Justice has said that "An offender's injuries are in themselves a punishment and should bring home to the offender, in the most direct possible way, what can be the consequences of dangerous driving. The fact that an offender has been injured should not automatically be treated as a mitigating factor and only 'very serious, or life-changing injury' should have a significant effect on the sentence".

Why should I be punished for matters which are caused by chance and which I didn't intend to happen? If someone intends to kill another but through sheer chance the murder doesn't happen, the defendant will receive a shorter sentence because the sentence reflects not only what was intended but also the harm caused. The same is true for death by driving cases. The penalty reflects what actually happened. If this were not so, most offenders in these cases would be able to say, "I didn't intend to injure or cause death", so the penalty should only reflect the offence of speeding or dangerous driving.

Q I am on remand after pleading guilty to conspiracy to supply cocaine. The prosecution says I played a leading role. In your previous books you stated that weight was to be assessed at 100% purity. In the guideline it says that purity is not to be taken into account when determining the category for the starting point and the range. Will I be sentenced on the basis of weight or purity? There were numerous seizures over 12 months and the total weight for all the seized drugs was 6 kilos before purity was taken into account. Three of the 6 kilos were seized in different operations from the one I was involved in. Category 1 is 5 kilos. Will the extra kilo increase the sentence? If so, by how much? Can my barrister argue that I should be sentenced for 3 kilos only? If I am sentenced for 3 kilos which is between Category 1 and 2, how will they determine the sentence?

A No one knows for sure what the position is and everyone must wait for a ruling from the Court of Appeal. Before the guidelines, the law was clear. It is far from clear now. I will break the answer into the various topics.

Factual basis for the sentence It is the task of the judge to determine the factual basis for sentencing. He or she does that for matters adverse to the defendant by only considering matters which he or she can be sure about. In multi-handed conspiracy and supply cases the judge makes individual assessments for each defendant. The key finding is usually the scale of the dealing or proposed dealing. This is not only determined by the amount of drugs seized. It can be based on the weight of drugs the judge is sure the defendant was involved in.

Will I be sentenced on weight based on actual weight or weight at 100%? The guideline is quite specific that the purity of the drugs is not to be taken into account when considering which category the case falls into. This has the potential to create serious injustice. Consider the situation if A and B each have an identical kilo of high-purity cocaine and each decides to cut it so creating 5 kilos for sale. Suppose they are both considered to be playing a leading role. If the police visit A first and before he cuts the cocaine, his starting point will be 11 years with a range of 9-13 years. If the police later in the afternoon visit B after he has cut the cocaine, his starting point will be 14 years with a range of 12-16 years. High purity and low purity are considered afterwards but there is no guidance as to how they should be considered. It may be that guidance will be given by the Court of Appeal or the Sentencing Council that the purity in the tables is to be assumed to be so much and adjustments from that notional figure should be made. That as yet has not happened. Purity will, however, remain a significant factor.

In Southwark Crown Court this month, a defendant was sentenced on the basis that the weight should be assessed at 100% purity. In most courts I imagine the judge will assess the figure at actual weight.

Will the court consider the overall weight of the drugs in all the operations or those in my operation? Courts normally consider the overall weight to determine the size of the conspiracy that the defendant agreed to join. They then consider the drugs that can be attributed to him or her. In your case, that is likely to be all or part of the drugs in the operation you are involved with. It is the latter figure that is critical. Your barrister, I suspect, will argue for the lowest figure he or she can legitimately argue for.

What about amounts of drugs that fall between the categories? For cocaine and heroin Cat 1 is 5 kilos, Cat 2 is 1 kilo, Cat 3 is 150 grams and Cat 4 is 5 grams. I would expect the Court to treat amounts of drugs that are between the figures in the same way as they treat amounts of money owing when setting a prison in default term. The judge treats the listed figures as fixed points and then adjusts the starting point depending on how close it is to the fixed points above and below. So if there were 3 kilos of cocaine (so half way between Cat 1 and Cat 2), he or she would start half way between the starting point for a Cat 1 case and the starting point for a Cat 2 case. If the amount is over the 5 kilos in this example, the judge would take the starting point for a Cat 1 case and add a bit extra.

Prize draw

I sent the five books to the five winners and was told that R Todd of HMP Durham had been released from prison and the prison was not authorised to provide me with his address. I therefore sent another set of books to M Lewis of HMP Gartree. I was very touched to receive thank you letters from winners. I am grateful for those letters.

Please make sure your question concerns sentence and not conviction or release. 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. Facts which indicate a prisoner's identity will not be printed. 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.