

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 latest edition, published in May 2012, is also available in an App for iPads from the Apple iTunes Store. It is priced at £94.99 and will be regularly updated until March 2013. The book is classified by the Ministry of Justice as a core judicial text book. A supplement to the compact edition has just been published.

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**Q** In 1991, I was charged in the UK with riot, GBH and an assault on a pub manager. I attended the Crown Court and was released on bail. My girlfriend asked me to join her in California and off I went. She rewarded me by alleging five sex charges against me and I spent 20 months on remand. I was convicted and the Judge deemed them at the bottom of the range, which was 3 years. However, he made them all consecutive, so I got 15 years. As a UK citizen I am due to be deported back to the UK next year. While I have been over here my step-daughter invented some sex allegations said to be around the mid-1980s and went to the police. The police interviewed my mother. It was traumatic for her. How will the English courts deal with the issues and the sentencing and can the prosecution use my US record in the historic sex case?

**A** Not much of a homecoming then! First, I expect you will be sent back to the Crown Court for the riot case and charged with absconding/breach of bail. There are a number of aggravating factors including fleeing the jurisdiction, committing offences when on the run, and if there were sureties (as there normally would be for that type of case), letting them down. Sentencing for breach of bail is a bit erratic. A custodial sentence of around 6 months is frequently passed. The rule is you should be sentenced immediately although this is often ignored. Although you are likely to be in custody the effect is that those days do not count if you are ultimately sentenced for the other matters so it is punishment. Bail when you are awaiting trial will be exceptionally unlikely. The prosecution would then be given time to investigate both the other cases. Under the law now in force the prosecution can apply to use hearsay evidence and rely on your previous convictions during trials. In the sex case I would imagine the prosecution would have no difficulty in making the US convictions admissible. Overall I would expect the prosecution would give priority to the sex case. If you were tried and convicted, at the sentence hearing the judge would be told about the US convictions and he would be able to treat them as an aggravating factor when sentencing you although he or she would take into account that they occurred after the offending he or she was sentencing you for.

**Q** I was given a Sexual Offences Prevention Order of three years. I was in custody, so I took no notice of it. About three months later, I received a letter from the Court saying the order had been extended to five years because the original order was unlawful because of an administrative slip. Is this lawful?

**A** I doubt it. A SOPO has to be at least five years long. A three-year sentence is therefore unlawful. If the Judge said "three years", that is the order of the court. If he meant to say five years, or wished he had said five years, that is irrelevant. It is what he said that matters. If the Judge realises he has made a mistake, he has 56 days in which he can vary the order. If he wishes to vary the order he must do so in open court with the defendant present and both parties represented (unless the defendant was unrepresented at the sentence hearing). The variation is therefore unlawful. The prosecution cannot appeal as the time period for referring an Attorney-General's reference (which is what their appeals are called) has expired and the time period cannot be extended. In any event this type of slip-up is not considered suitable for references.

The new order is now of the right length so the authorities will enforce it. Unlike the prosecution, you can apply to appeal out of time and as your first and second order appear unlawful your application is likely to be successful. Judges hearing appeals at the Crown Court can increase sentences. Court of Appeal judges can't, because the relevant Act says that

defendants who appeal to the Court of Appeal cannot be 'dealt with more severely'. There is authority for saying that the SOPO was a preventive order so it could be argued that the rule should not apply. However, the Lord Chief Justice recently decided that extending a SOPO was dealing with a defendant 'more severely' so the unlawful order has to be quashed.

So in your case you should appeal, but realise that if you are successful the police can apply to the Magistrates' Court for a 'stand-alone' SOPO. Whether they would or not is another matter.

**Q** I was given IPP for making a phone call. My brother died and my other brother rang and made a threat to kill me, my wife and my children. The police were contacted and my brother received a harassment warning from the police. He then made a counter-allegation that I had threatened to kill him and I got arrested. The brother made more threats including some to my barrister. In court my brother became so violent he was remanded. The Judge gave me IPP. I appealed and got nowhere. Can I complain about the Judge?

**A** The IPP in your case seems to be based more on your past convictions than the present one, which is one of the reasons IPP is so unfair. You can complain, but it is important to work out exactly what you say the Judge did wrong and consider whether it was acceptable or not. Being aggrieved with the outcome is not enough. As the Court of Appeal has upheld your sentence, the Judge giving you IPP cannot amount to a valid complaint.

The address to write to is: The Office for Judicial Complaints, 3rd Floor, 11 Tothill St., London SW1H 9LH. Tel: 0203 334 0145. Email: [inbox@ojc.gsi.gov.uk](mailto:inbox@ojc.gsi.gov.uk) Those with access to a computer can visit <http://judicialcomplaints.judiciary.gov.uk>

#### **Asking Robert questions**

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 reader'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](http://www.banksr.com).

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