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 £96 on the web and is regularly updated on the web. 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 I admitted my offence in interview and went to the Magistrates' Court. I told my solicitor I wanted to plead guilty. I was instructed to plead "No indication". Exactly the same thing happened when I appeared at the Crown Court. I pleaded at the second appearance there. The Judge said he could only give me 25% discount, not the full third off for my plea. I was given 60 weeks. The difference between the two discounts is 5 weeks. It is my first time in prison and it may seem petty but I think my barrister and solicitor caused me 5 weeks extra. What can I claim?

A This is quite a problem. I don't think it is petty. I would not like to spend one night in prison let alone 5 extra weeks. Of course, I don't know your advocates' side of the story. The law used to be that the one-third discount applied when the indictment was first put. Now an increasing number of courts operate an Early Guilty Plea Scheme. Under the scheme the important time is when a defendant is first asked what his plea will be at that court. So for you, if you had given an indication at the Magistrates' Court you would have received extra mitigation. If you had indicated the first time you were asked in the Crown Court you would have received the full discount. I suspect that if your legal advisors thought it was better to wait until the papers were served, they unfortunately took an overly optimistic view of the chances of a lucky break, bearing in mind your admissions. It looks like a blanket policy to protect them rather than a careful analysis of what is best for you. In any event, such an important issue should have been discussed with you. It's your case and you do the prison sentence.

From the Court's and the CPS's point of view the difference is a saving in resources. The law has recently been clarified: "If poor advice is clearly demonstrated, which is relevant to the issue of first reasonable opportunity, especially in the case of a young or inexperienced defendant particularly in need of advice, that might be relevant. It is, however, likely that before a defendant could satisfy the judge that it was right to proceed on the basis of poor advice, he would have to consider optional full waiver of privilege. That is because the question may well be raised what (if anything) he was telling his lawyers about his actions", *R v Caley* 2012 EWCA Crim 2821 para 28.

You can report barristers to the Bar Standards Board. You can report the solicitor to the Solicitors Regulation Authority. I would expect the advocate not to state the full situation and not much will happen. As far as an appeal is concerned you would have to waive privilege and I don't expect the judges would be very interested. The single Judge would look for an opportunity to refuse leave for your case. Your best line of attack may be to tell everyone in the prison not to use those who let you down. It will have more effect than a report to one of the so-called regulators.

Now let us look at the problem from the advocate's perspective. In cases where the allegation is complicated, the advisor should be able to look at all the papers. Once a positive indication is given, the CPS tend to stop serving papers. Advocates are paid by the page. For some they will factor in they will be paid less if there is a positive indication. Sometimes there will have been only minimal contact between the advocate and the defendant before the court asks for an indication. It may be only ten minutes on a video. Advocates need to build up trust with their clients. It is not going to help that trust if in the first few minutes they are talking about pleading before the evidence is served. In my view (except in clear cases where it creates no problem), every time an indication is requested the advocate should advance reasons why the indication needs to follow the serving of the bulk of the evidence. The application may fail. The unfairness of defendants with minimal contact with their lawyers being asked to choose

between having a full discount and seeing all the key evidence has not been addressed. Further if saving costs is the objective cheating people out of their full discount will often cost more in prison costs than it will save in court and CPS costs.

All this makes it very unfair. I don't suppose anyone can be surprised.

Q I was convicted today of ABH and two common assaults. The Judge adjourned for sentence. I had 3 ABHs in 1993 and one section 18 in 1997 when I was sent to Broadmoor. I also have convictions for two assaults on police. In 2011 and 2012 I had common assaults. Since my release I have been harassed by MAPPA. A barrister said I would be sentenced on the law that was in force at the time of the offences. Can I get an IPP or EPP? What can I expect?

A IPP and EPP are not available as your conviction was after 3 December 2012. Also IPP was never available for ABH. The barrister you spoke to was wrong. However, as he may not have seen the transitionary provisions, it is understandable. I know too little about your case to give a definite answer but the new extended sentences (EDS) (which have only one third off before release, not the usual half off) or a Hospital Order would be two obvious options. Your remand time is important. Your relevant previous will increase the sentence. Lets hope this time your obvious problems are addressed.

Q I was convicted of murder. There was a group of us. The prosecution say it was torture in a drug dispute but they only rely on inferences. The victim was found in a van with burn marks all over his body. He had bled to death. We did not expect him to die. My defence was that I lacked the necessary intent but it failed. The Judge has put the case off for reports. My barrister says he will argue that the murder wasn't 'for gain' to reduce the starting point. What is the likely starting point? Is torture 'for gain'?

A I assume you are not in line for a 'whole life order' as they are very rare. There are a group of murder cases which will normally fall within the 30-year starting point. They include murder of a policeman, murder with a firearm and where the murder was done 'for gain'. It is a common misconception that only those named groups will fall within that 30-year group and if you fall in a category group you will receive the category starting point. If the judge sets out his or her reasons he or she can start at any figure for a category not in any of the lists. Very rarely a judge can start at a different figure from the category figure. Normally they start at the category figure and move up or down.

I expect your Judge to start by saying the facts dictate a starting point outside the listed categories. There appear to be significant aggravating factors, namely the extreme pain I assume the deceased suffered and that the offence was related to the supply of drugs. I would expect the Judge to start at around 35 years. For a really bad case it could be around 40 years. However, I know so little of the facts. From his or her starting point, the Judge may make deductions for the different roles played. The person who actually inflicted the pain may not receive the longest term. That will be given to the organiser unless the Judge treats everyone the same. One factor that may reduce the term will be a lack of an intent to kill. However, in your case it may be worth less than usual because a) when someone bleeds to death, the death could have been envisaged, b) it was a murder over a prolonged time, and c) no one appears to have tried to help the deceased by calling 999 or taking him to hospital. Remember, though, that the fewer facts one knows, the less certain is the answer.

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

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