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Robert Banks, a barrister, writes *Banks on Sentence*. It 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. The current edition is also available for tablets and computers. The print copy costs £96 on the web and there are regular updates on www.banksr.com If you have access to a computer, you can follow Robert on [twitter](https://twitter.com/BanksonSentence): [@BanksonSentence](https://twitter.com/BanksonSentence)

Q Visits are my one lifeline in prison. Seeing my children means so much to me. I could not bear to lose touch with them. Last time I had a visit, an interfering officer prevented me from holding them. I didn't want a row in front of them but I was really wound up. Aren't I entitled to hold my own flesh and blood?

A The National Security Framework says: 'Reasonable physical contact between prisoner and visitors should be permitted, subject to security considerations and any public protection measures that may be in place. A notice should be clearly displayed advising prisoners and visitors of any local policy regarding physical contact and the consequences of non-compliance.' This is also set out at PSI 15/2011 para 2.12. However, 'In certain circumstances it may be necessary to impose restrictions on the level of physical contact between the prisoner and their visitor(s)', PSI 15/2011 para 2.13.

You don't say how old your children are. As you can see, the rule above is so hedged with exceptions it isn't going to help you. The real problem is that visits are well known as an opportunity for prisoners to receive drugs. Contact between prisoners and visitors is watched, PSI 15/2011, para 2.11, and if everyone in the visits room is engaged in kissing and hand contact one can understand why officers feel they won't be able to control smuggling. Each prison is obliged to devise its own 'Local Searching Strategy' and ensure that visits are adequately supervised, see PSI 15/2011 and PSI 16/2011. Closed visits in accordance with Prison Rules 1999 Rule 34(3) and Young Offender Institution Rules 2000 Rule 9(3) can be very dehumanising. However, for those with a finding against them for smuggling they are understandable. In addition prisons have the right to ban a visitor under Prison Rules 1999 Rule 35A(4) and Young Offender Institution Rules 2000 Rule 11(4). I would hope that prisoners are allowed to put their young children on their knee, but I would be surprised if every prisoner in every prison is given that right. Perhaps prisoners would like to write in with their own experiences.

Q I went to court and my barrister wasn't there. I was in custody, so I could not find out where he was. The Judge asked me where he was and I said I thought he was coming. The Judge asked me if I had read the statements and the pre-sentence report and I said I had. She then asked me whether I had anything to say and I said it was a silly thing to have done, I had no convictions and my family would be gutted if I served any more time. I received 12 months. Is this lawful?

A No, it is not. The defendant is a human being, not a widget on a conveyor belt. Recently at Snaresbrook Crown Court a Judge dealt with someone in the absence of their barrister and gave the defendant 7 years. The Court of Appeal reduced the sentence to 3½ years. The first thing your Judge should have done was to adjourn the matter so enquiries could be made. If your barrister had signed in on the court computer, he should not have been too difficult to find. If not, the firm of solicitors and the barrister's chambers should have been telephoned. Without an advocate for the defendant, the case should have been adjourned. As you had never been to prison before, the sentence is unlawful, Powers of Criminal Courts (Sentencing) Act 2000 s 83(1). This rule is subject to a few exceptions which do not apply in your case. If you appeal and are granted leave to appeal and given legal representation, the Court of Appeal can then 'cure the defect' and either affirm or reduce the penalty. Whether you should appeal will depend on whether the sentence was manifestly excessive or not. Without more

details I can't help you about that. I can, however, say I think the conduct of your hearing was disgusting.

Q I was sentenced for a serious drug offence and my wife has decided to end our relationship. I can cope with that as I want to make a clean start when I am released. However, my children mean everything to me and the break-up means I don't see them. It churns me up not to be able to see them. Not only has she done that, she has asked the prison not to send any of my letters to the children. They are my children too. Surely I must be able to write to them? Can the prison block the letters I write?

A Yes, in certain circumstances they can. In general the Prison Service abides by the notion that contact with your family is helpful, see for instance Prison Rules 1999 Rule 4. However, if the intended recipient of a letter asks the prison that letters should not be sent to him or her, the prison will honour that request, PSI 49/2011 para 2.20. That means that parents and guardians may request that no further mail is sent to their children. Restrictions are also placed on prisoners writing to other convicted prisoners, PSI 49/2011 paras 2.24 and 2.25, or writing to the victims of their crime or the victim's family, PSI 49/2011 para 2.26. The prison cannot restrict a prisoner's right to correspond with the press, but can place restrictions as to the content of such letters. In particular, issues may arise where the letter could be considered to raise a threat to security or to good order. So, as you can see, prisoners officially are meant to have all the rights that non-prisoners have, where this is possible, but when they try to use them they find the rights have been taken away.

Q I have been charged with theft and am due to appear before the Court Martial. I fiddled my expenses for hotels and living expenses over a number of years when I was sent to Europe. In fact I was staying with a relative. My barrister says the sentencing law is similar to that in civilian courts but there are some major differences. This worries me. What are the differences?

A Your brief is right, but I can't list them all. The Court Martial is presided over by a judge advocate and military lay members make up the board. They retire together to consider the sentence and the decision is made by a simple majority of votes. The sentencing orders have different names but the underlying principles are roughly the same. One major difference is that crime within a small operational unit has a far greater impact than crime in a civilian community. If a theft or assault is on a fellow soldier it affects the operational unit more than a similar theft or assault in the community. One other major difference is that when a defendant faces dismissal from HM's Service, the Court Martial has to consider the financial effect of the dismissal. This means the Court Martial has to consider how the sentence will affect the defendant's pension. If the defendant has many years of service the sums can be very considerable. The sums will be greater for officers than privates with the same service. In 2011, a Financial Systems Administrator in the Army falsely claimed just less than £3,700. He had been in the Army for 22 years. He had considerable mitigation and was sentenced to a Suspended Sentence Order of 4 months and given an unpaid work requirement of 60 hours. Additionally he was dismissed from the service, reduced to the ranks and ordered to pay compensation. He appealed against his dismissal. His retirement package was £292,536 and he stood to lose £239,442 of that if he was discharged. The Court Martial Appeal Court held that notwithstanding the gross breach of trust the dismissal was an excessive punishment. I suspect that one other difference is that time in a military prison is considerably more brutal than time served in a civilian prison. However, I haven't experienced either!

Asking Robert and Jason questions

Please make sure your question concerns sentence, prison law or release and not conviction. Prison law and release are dealt with by Jason Elliott, PO Box 847, North Shields, NE29 1FJ. Please start your letter with the question you want answered and send the letter to Inside Time, marked for Robert Banks or Jason Elliott. Unless you say you don't want your question and answer published, it will be assumed you don't have an objection to publication. 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.

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 sent by readers to Inside Time are sent on to a solicitor, who forwards them to Robert and Jason. If your solicitor wants to see previous questions and answers, they are posted on the website, www.banksr.com.