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Robert Banks, a barrister, writes Banks on Sentence. It is the second largest selling criminal practitioner’s 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 There was a row in a pub over a pool game. It turned into a fight and my lot was definitely winning. Then police arrived and they looked at my Peaky Blinder hat and I had a proper one with a razor blade in the rim. I had shown it to people during the fight. They charged me with an offensive weapon which I think is ridiculous. What is it all about and what will I get if convicted of it? I do have a string of fighting offences on my record.

A As I understand it, these hats originate from the Small Heath area in Birmingham where members of a protection and betting racket sewed a razor blade into the peak of their hats. Those wearing the hat could draw the blade quicker than a knife and slash someone’s face very quickly. Recently these hats have featured in a TV programme. An offensive weapon is defined as ‘any article made or adapted for use for causing injury to a person’. I suspect you would have trouble in saying the razor blade was just intended as a fashion statement, but you must speak to your advocate about it. The relevant Magistrates’ Court guideline says:

Examples of nature of activity	Starting point	Range
Weapon not used to threaten or cause fear	High level community order	Band C fine to 12 weeks’ custody
Weapon not used to threaten or cause fear but offence committed in dangerous circumstances	6 weeks’ custody	High level community order to Crown Court
Weapon used to threaten or cause fear and offence committed in dangerous circumstances	Crown Court	Crown Court

The guideline then lists the aggravating and mitigating factors that ‘may be particularly relevant’.

Your case fits into the bottom category. The Crown Court guideline case is too long to reproduce here. However, the following may be relevant to you.

‘An offence may be aggravated if committed at a large public gathering, especially one where there may be a risk of disorder, or if committed on...licensed premises. As to the nature of the weapon, some weapons are inherently more dangerous than others. A defendant with previous convictions for violence or carrying weapons who is convicted of carrying a particularly dangerous weapon, in circumstances aggravated by any of the factors (not all listed here) and doing so with the clear intention of causing injury or fear, can expect to receive a sentence at or near the statutory maximum (4 years).’

Assuming you choose to go to the Crown Court or are sent there, I would expect the judge to consider this to be a particularly serious weapon as it is designed to slash someone’s face. That would cause permanent scarring and possible damage to the eyes. I wonder if that is why the hat is called a Peaky Blinder. So expect custody and for it to be measured in years.

Q I thought my barrister was useless. Now I know he was. In April of last year I went to the Crown Court and pleaded to handling some expensive cars. I received 2½ years and I expected my tag time would be deducted. When I saw my ERD the tag time wasn’t there. I rang up my solicitor, who was nearly as useless, and he told me that no order had been asked for. What should I do about it? Why should the time people like me serve depend on whether their barrister remembers the obvious?

A The answer is not simple. It is not only tag time which barristers forget about. Barristers may forget (or even not know) the statutory criteria for an extended sentence and, as a result, their defendant may receive an extended sentence whereas if the barrister had been properly prepared, the judge is unlikely to have made such an order. However, it is not only the defence advocate who may forget things. Prosecutors who see a conviction for rape being quashed sometimes forget to ask for a retrial when the court is expecting such an application to be made. When they realise their mistake it's often too late to ask. I have seen a prosecutor forget to ask for the confiscation procedure to be started and then months later try to start it up. The causes of this are low pay and poor training.

Back to your question. On 3 December 2012, the absurd rule that the judge had to make an order for remand time to count towards a sentence was abolished. However, it remains the rule that in order for tag time to count, the judge has to make a specific order. If an order is not made because the judge was not asked to make an order, a defence can ask the court to make an order if the request is made within 56 days of the sentence hearing. In order to do that it is always best for the defence to reach agreement with the prosecution about the number of days that count.

If, however, the 56-day time limit has expired it becomes more problematic. In *R v Leacock and Others* 2013 EWCA Crim 1994, the Court of Appeal, dealing with a case where counsel accepted it was his error, said, 'It is the duty of the advocate to check carefully [what the position was]. The Court will not correct errors unless an application is promptly made. The Court will apply the time limits strictly.' This refers to the 28 days for a defendant to lodge his or her appeal at the Court of Appeal. However, the Court did agree exceptionally to direct 21 days to count. In *R v Sinclair* 2013 EWCA Crim 2567 in similar circumstances, the appeal was lodged 2 years and 11 months out of time. The Court said anxious consideration was required in determining whether to depart from the Lord Chief Justice's clear direction in *R v Leacock and Others* 2013 (above) and said that as a matter of fairness to the defendant and bearing in mind the substantial difference (126 days) it would make, the days would be deducted. The Court also said the case was an exceptional one and would not detract from the guidance in *Leacock*.

So you should tell your solicitors to appeal as you are out of time for applying to the Crown Court. Also, if any reader has tag time, they must tell their advocate.

Q I shot someone with a gun and he died. It was all over very quickly. I pleaded to murder as there was no defence. The Judge said it was drugs related and she started at 32 years and said I was entitled to a full plea discount as it was understandable my brief asked for medical reports. She gave me 27 years minimum term with the plea. Yet the brief told me I would get a sixth off so surely I should have got more off. Have I been cheated of my full discount?

A Criminal Justice Act 2003 Sch 22 para 5(2)(b) determines that normally a murder involving the use of a firearm has a starting point of 30 years. It is true the court gives one sixth off. However, the relevant guideline lays down that the maximum that can be deducted for the plea is 5 years. That is why you received 27 years and not the full sixth off.

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 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 have no 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 at www.banksr.com.