

April 2014 copy for May 2014

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 was published on 29 April 2014. The book will be available for tablets and computers. The print copy costs £102 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: @BanksonSentence](https://twitter.com/BanksonSentence)

Q I pleaded not guilty at my PCMH. I wanted to see what the evidence was and it wasn't all served. The case was given a trial date and the prosecution served a phone schedule which meant I would be silly not to plead. Two weeks before the trial date my solicitors wrote to the prosecution and said I would be pleading. When I was brought from prison to the court on the day listed for trial I pleaded. The witnesses had been told they need not attend. The Judge said, "Pleas must be entered early. You waited until just before the trial date to tell anyone you were pleading. You knew you were guilty from the start. You will only receive the plea discount for pleading at the door of the court." I only got 10% discount. It was hardly worth pleading. Can the Judge give me so little?

A You should have received a larger discount. If you indicate a guilty plea at the first reasonable opportunity the discount is one-third off. The first reasonable opportunity is often the Early Guilty Plea Hearing. There is then a sliding scale. The discount reduces to 25% when a trial date is fixed. If there is a plea at the door of the court or when the trial has started the plea discount is 10%. These amounts are subject to a number of exceptions such as a) where the defendant is disbelieved at a *Newton* hearing (which is a hearing to decide the factual basis for sentencing), b) when the case is overwhelming, and c) when minimum sentences apply. In *R v Redhead* 2013 EWCA Crim 1997, the defendant indicated his plea a week before his trial date and was only given a 10% discount. He appealed and the Court of Appeal said, "Although the plea was only a week before, it was not a court door plea. There are good policy reasons for encouraging pleas before the date of trial. The discount should have been 20%." There is no reason why you should not have the same discount. You should contact your solicitors and if they are not interested you should contact BBM, whose details are below. However, you must act quickly because of the time limits for appealing.

Q I was given an extended sentence with 4 years' custody and a 4-year licence for a Protection of Harassment Act 1997 s 4A offence. The court clerk said I would serve half of the 4 years' custody and then be released. I read a copy of Archbold and as far as I can see the clerk was right. The prison said I would serve 2 years 8 months and they are adamant about that. Should I serve only the 2 years? Also in the PSO/6000 it says the extended sentence can't total more than the offence. The maximum for section 4A is 5 years. So have I been given more than the maximum?

A Yes, you have. Your sentence was unlawful. Section 4A, as you say, carries a maximum sentence of 5 years. The total length of the custodial part of the sentence and the licence must not exceed the maximum, Criminal Justice Act 2003 s 226A(5). You should appeal your sentence. I will ask BBM to write to you.

Incidentally, on your release point, the prison's calculation is correct. On a new extended sentence (in force from 3 December 2012), you have to serve two thirds of the sentence and not half, Criminal Justice Act 2003 s 246A. The fact that the judge was wrong, the court clerk was wrong and both the prosecution and the defence failed to spot the mistake makes no difference. It is not an order of the court, it is just the rules laid down by Parliament being applied.

Q I was sentenced for drug importation and received 22 years. There was then a confiscation hearing where they seized all my assets and then it was said I had hidden assets. The Judge

then ordered me to pay over £1.5 million. Well I don't have the money. The Judge then gave me a 10-year prison in default term. I am told I will serve that sentence consecutive to the 22 years, making 32 years. Well that must be wholly disproportionate to my actual crime. My solicitor says that is not a point of appeal. Please tell me they are wrong. I am aged 53, so I will die here unless I can reduce the term.

A There are a number of issues here.

1 An appeal can be launched for the 22-year sentence if it is arguably manifestly excessive. You don't say it was.

2 Confiscation is in many respects wholly unfair and complex. You can appeal the findings the Judge made if it can be said they were findings he was not entitled to make.

3 The 10 years is unappealable as 10 years is the suggested figure for an order of £1 million or more.

4 The prison in default term has to be consecutive to the 22-year prison term.

5 The 10-year prison in default term is not a punishment, it is way of ensuring you pay the £1.5 million the Court has assessed you as having.

6 Any cash assets which have been seized (if there are any) will be transferred to the body that receives court fines and the total figure will be deducted from your £1.5 million order.

7 You can apply to extend the time to pay. You will need to show that you are converting your assets and you are not just trying to delay.

8 After the time period has expired, if there is still money owing you will be brought before the Magistrates' Court and the focus will be on making you pay.

9 If the Magistrate believes you are not co-operating, he or she can send you to prison for a period not more than the 10-year prison in default term. The period will be reduced to take into account any money you have paid and any cash assets transferred to the Fines Office.

10 In answer to your question about the total period being disproportionate. In *R v Price* 2009 EWCA 2918, the defendant was sentenced to 28 years for importing 693.9 kilos of cocaine. He was given a £2.34 million confiscation order with a 10-year prison in default term. He argued that no one should be expected to serve 38 years in prison. The Court of Appeal said it was his own choice not to pay and the purpose of the prison in default order was to ensure he did pay the money. The period in default was separate from the prison term. The 10-year term was upheld. So you can see that the Court of Appeal would reject arguments about the total period being disproportionate.

11 If you do not have full confidence in your legal team, you may wish to consider having independent advice to check the way your confiscation order was calculated. Like the other reader, you need to act quickly so you don't miss the 28-day time limit for appealing.

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.