

Totality

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Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Sentencers should have this in mind in relation to individual sentences but also when considering the total sentence.

General principles

The principle of totality comprises two elements:

1. All courts, when sentencing for more than a single offence, should pass a total sentence which reflects all the offending behaviour before it and is just and proportionate. This is so whether the sentences are structured as concurrent or consecutive. Therefore, concurrent sentences will ordinarily be longer than a single sentence for a single offence.
2. It is usually impossible to arrive at a just and proportionate sentence for multiple offending simply by adding together notional single sentences. It is necessary to address the offending behaviour **with reference to harm and culpability**, together with the aggravating and mitigating factors personal to the offender as a whole.

Concurrent/consecutive sentences

There is no inflexible rule governing whether sentences should be structured as concurrent or consecutive. The overriding principle is that the overall sentence must be just and proportionate.

General approach (as applied to determinate custodial sentences)

1. **Consider the sentence for each individual offence, referring to the relevant sentencing guidelines.**
2. **Determine whether the case calls for concurrent or consecutive sentences. When sentencing three or more offences a combination of concurrent and consecutive sentences may be appropriate.**
3. **Test the overall sentence against the requirement that the total sentence is just and proportionate to the offending as a whole ensuring that the harm relating to all offences and the overall culpability of the offender are reflected in the final sentence while avoiding double counting.**
4. **Consider whether the sentence is structured in a way that will be best understood by all concerned with it and explain how the individual elements have been adjusted to arrive at the total sentence.**

Concurrent sentences will ordinarily be appropriate where:

- a. offences arise out of the same incident or facts.
- b. there is a series of offences of the same or similar kind, especially when committed against the same person.

Where concurrent sentences are to be passed the sentence should reflect the overall criminality involved. The sentence should be appropriately aggravated by the presence of the associated offences.

Consecutive sentences will ordinarily be appropriate where:

- a. offences arise out of unrelated facts or incidents.
- b. offences that are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences.
- c. one or more offence(s) qualifies for a statutory minimum sentence and concurrent sentences would improperly undermine that minimum.

However, it is **not** permissible to impose consecutive sentences for offences committed **at the same time** in order to evade the statutory maximum penalty.

Where consecutive sentences are to be passed add up the sentences for each offence and consider if the aggregate length is just and proportionate.

If the aggregate length is not just and proportionate the court should consider how to reach a just and proportionate sentence. There are a number of ways in which this can be achieved. Examples include:

- when sentencing for similar offence types or offences of a similar level of severity the court can consider:
 - whether all of the offences can be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively
 - whether, despite their similarity, a most serious principal offence can be identified and the other sentences can all be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively in order that the sentence for the lead offence can be clearly identified
- when sentencing for two or more offences of differing levels of seriousness the court can consider:
 - whether some offences are of such low seriousness that they can be recorded as ‘no separate penalty’ (for example technical breaches or minor driving offences not involving mandatory disqualification)
 - whether some of the offences are of lesser seriousness and are unrelated to the most serious offence(s), that they can be ordered to run concurrently so that the sentence for the most serious offence(s) can be clearly identified