

**Sentencing Council meeting:**  
**Paper number:**  
**Lead official:**  
**Lead Council member:**

**8 April 2022**  
**SC(22)APR03 - Totality**  
**Ruth Pope**  
**Maura McGowan**  
[Ruth.pope@sentencingcouncil.gov.uk](mailto:Ruth.pope@sentencingcouncil.gov.uk)

## **1 ISSUE**

1.1 At the January meeting the Council agreed to consult on updating the Totality guideline without changing the overall approach or making substantial changes to the content. This decision was informed by the research carried out with sentencers ([Exploring sentencers' views of the Sentencing Council's Totality guideline](#)) which found that the guideline was considered to be useful and clear. At the March meeting the Council agreed changes to the format and content of the guideline and raised some technical issues to be resolved.

1.2 Since the last meeting, an academic, Dr Rory Kelly, has sent an advance copy of his paper 'Totality: Principle and Practice' which proposes reform to the Totality guideline by adding explicit reference to harm and culpability. The paper makes some interesting proposals for the Council to consider.

1.3 At this meeting the Council will be asked to consider changes arising from the discussion in March and to consider whether further changes should be made as proposed by Rory Kelly.

1.4 If the Council is able to agree a version for consultation at this meeting the plan is to consult from June to September. If, not that timetable will be delayed.

## **2 RECOMMENDATION**

2.1 That the Council:

- Confirms the changes discussed in March;
- Agrees further changes to address technical issues; and
- Considers whether and to what extent any of the proposals put forward by Rory Kelly should be adopted.

## **3 CONSIDERATION**

3.1 The current [Totality guideline](#) can be viewed online or in document form at **Annex A**.

### *The changes discussed in March*

3.2 A revised version of the guideline incorporating changes agreed at the March meeting is at **Annex B**. **Yellow** highlighting indicates changes proposed in response to the discussions in March and a subsequent review of the guideline.

3.3 These changes are:

- Additional wording in the reference to the Equal Treatment Bench Book (ETBB);
- A reference to explaining the adjustments for totality at point 4 of the general approach;
- In March the highlighted section beginning ‘Examples include’ had been presented as a drop down box and labelled as if it were examples of consecutive sentences. However, on reviewing the guideline it is proposed that this content should form part of the core of the guideline as it gives general examples of how a sentence can be structured rather than specific examples of types of cases. Also, the examples are not all of consecutive sentences so the approach previously proposed would have been misleading.
- In the section ‘Indeterminate sentence (where the offender is already serving an existing determinate sentence)’ (on page 5) wording is proposed to cater for the fact that release provisions for determinate sentences may vary.
- Similarly, flexible wording is proposed in the section ‘Ordering a determinate sentence to run consecutively to an indeterminate sentence’ (on page 6).
- In the section ‘Offender convicted of an offence while serving a community order’ (on page 8) additional wording is proposed to clarify the procedure where a magistrates’ court cannot commit the new offence.

3.4 The Council may wish to consider the practical implications of the proposed wording at point 4 relating to explaining the structure of the sentence and whether it is compatible with the decision in *R v Bailey* [2020] EWCA Crim 1719 in which it was said:

[W]hether a judge has applied totality is a question of substance and not form.

[V]arious arguments were advanced that the stages set out in the Totality Guideline under the heading “*General Approach*” (in relation to determinate sentences) should be referred to expressly in the sentencing remarks. Once again, substance cannot prevail over form. The stages or steps set out in the Guideline are intended to guide how the judge should “*consider*” the structuring of the sentence to arrive at a just and appropriate end result. The steps set out are not drafting instructions.

The Totality Guideline provides a structured approach to guide judges in this endeavour. Our conclusions on the law are not, of course, intended to discourage any judge who wishes to provide fuller explanation or reasoning; but the essential

point is that what matters on an appeal is the final sentence and whether that is just and proportionate and not the articulation of the chain of reasoning which led thereto.

**Question 1: Does the Council agree to make the changes proposed at 3.3 above?**

*Further changes arising out of the discussions in March*

3.5 The current guideline has footnotes which give the source of the rules/guidance included in the guideline. The proposal was to embed statutory references into the text and to remove references to case law on the basis that the cases have effectively been encoded in the guideline and the guideline supersedes any cases that predate it. The Council felt that some of the references to case law could still be useful and asked for further consideration to be given to this.

3.6 An attempt has been made to incorporate any key points from the referenced case law that are not already included in the guideline. These changes are highlighted in **green** in Annex B.

3.7 On page 3 of Annex B a suggested example has been added to 'c. one or more offence(s) qualifies for a statutory minimum sentence and concurrent sentences would improperly undermine that minimum'. This is taken from the case of *R v Raza* [2010] 1 Cr App R (S) 56 which states:

in assessing the appropriate length of another custodial sentence for a different offence, one has to have regard in any adjustment for totality to the fact that Parliament has assessed the degree of culpability for possessing a prohibited firearm as requiring a mandatory minimum sentence of five years' imprisonment. In our judgment therefore in a situation in which that is one of the sentences which the court has to pass, the principle of totality has to be applied in such a way that it does not undermine the will of Parliament by substantially reducing an otherwise appropriate consecutive sentence for another offence so as to render nugatory the effect of the mandatory minimum sentence for the firearms offence. In this particular kind of case, before this court, involving offences of possession of drugs and possession of weapons clearly possessed in connection with drug supply and the protection of it, it is important in our view to ensure that any reduction on grounds of totality does not reduce the effect of properly deterrent and commensurate sentences for this combination of offences.

3.8 The next sentence in the guideline currently reads: 'However, it is not permissible to impose consecutive sentences for offences committed at the same time in order to evade the statutory maximum penalty' with a reference to *R v Ralphs* [2009] EWCA Crim 2555. This was a case involving several counts of possession of a prohibited firearm and ammunition for which the maximum sentence is 10 years (and the minimum 5 years) which the court noted 'leaves remarkably little room for case-specific flexibility'. The Court reviewed

examples of cases where consecutive sentences were or were not appropriate (examples which are used in the guideline):

Two long-standing general principles are engaged. The first principle is totality. The aggregate of the sentences must be appropriate to the offender's criminality in the context of the available mitigation. Second, consecutive terms should not normally be imposed for offences which arise out of the same incident or transaction. *R v Noble* [2003] 1CAR(S) 312 provides a clear example: consecutive sentences for causing several deaths by dangerous driving were quashed. Notwithstanding the numerous deaths there was a single act of dangerous driving. However there is sometimes a difficulty in deciding whether criminality under consideration may or may not be regarded as a single incident. The fact that offences are committed simultaneously is not necessarily conclusive. Thus *R v Fletcher* [2002] 2 CAR (S) 127 exemplifies orders for consecutive sentences in the context of indecent assault and threats to kill which arose out of the same incident.

Examples abound of occasions when consecutive sentences are justifiably imposed. Obvious examples include a robbery committed with the use of a firearm, or violent resistance of arrest, or offences committed on bail: in all these examples however distinct offences are committed in circumstances where the offences, although distinct, can properly be said to increase the relevant criminality.

3.9 The Court went on to say:

The problem is simple. In the context of a narrow range of available sentencing powers, and in particular the statutory maximum sentence, we are in reality being invited to circumvent the statutory maximum sentence on the basis that we believe it to be too low and to achieve our objective by disapplying well understood sentencing principles of which Parliament must be deemed to have been aware when the statutory maximum and minimum sentence was fixed. Tempting as it is to do so, that is a step too far.

3.10 In a more recent case (*R v Omar Naeem* [2018] EWCA Crim 2938) where the offender was sentenced for a series of driving offences: three summary offences (driving whilst disqualified, drug driving and failing to stop) and one indictable offence (dangerous driving), the court considered the wording in the guideline and the decision in *Ralphs* and concluded:

It is not possible to treat the offences of dangerous driving, driving whilst disqualified and drug driving other than as a single incident. The fact that the appellant was disqualified and the fact that he had consumed a substantial quantity of cocaine were matters which seriously aggravated his offence of dangerous driving. In the circumstances of this case, we find that it would be artificial and contrary to principle to regard those summary offences as distinct matters justifying the imposition of consecutive sentences. The length of each individual sentence was in our judgment amply justified. However, we conclude that all three prison sentences should have been ordered to run concurrently rather than the consecutively, making a total sentence of 16 months' imprisonment. That total figure of course reflects the statutory maximum for the dangerous driving offence, subject to full credit for the prompt guilty pleas.

3.11 It appears that the wording in the guideline accurately reflects and neatly summarises the decision in *Ralphs* though it might be preferable to use the term ‘in a single incident’ rather than ‘at the same time’.

**Question 2: Does the Council agree to make the change proposed at 3.11 and is any further explanation required?**

3.12 On page 4 of Annex B in the section on ‘Offender serving a determinate sentence but released from custody’ there is currently a footnote referencing the case of *R v Costello* [2010] EWCA Crim 371 as authority for the rule that a sentence ‘must be commensurate with the new offence and cannot be artificially inflated with a view to ensuring that the offender serves a period in custody additional to the recall period’. This is a clear statement and there does not appear to be any need to add anything.

3.13 At the bottom of page 4 and top of page 5 there is guidance on extended sentences. The current guideline contains a footnote referring to *R. v Pinnell* [2010] EWCA Crim 2848 which states:

If no one offence would justify a four year custodial term on ordinary principles, the seriousness of the aggregate offending must be considered. If a four year custodial term results from aggregating the shortest terms commensurate with the seriousness of each offence, then that four year term can be imposed in relation to the specified offence. If there is more than one specified offence that aggregate term should be passed for the lead specified offence, or, if appropriate, concurrently on more than one specified offence. If appropriate a concurrent determinate term may be imposed for other offences. The combination of the custodial term and extension period cannot exceed the maximum statutory sentence for the offence to which the extended sentence is attached.

3.14 As can be seen the wording in the guideline is very close to that in *Pinnell* and it is suggested that wording is clear and does not require further explanation or justification.

3.15 However, there are some more recent cases on totality in the context of extended sentences which refer to case law but do not even mention the Totality guideline: *R v Rashid Ulhaqdad* [2017] EWCA Crim 1216 and *R v Wilding* [2019] EWCA Crim 694. The latter case is mentioned in the Sentencing Referencer chapter on ‘Concurrent and Consecutive Sentences’ as an authority for the statement: ‘In a serious, multiple-count case the sentencing judge should endeavour to impose one term of imprisonment which reflects the defendant’s overall criminality as that produces clarity and simplicity.’ Taken out of context this appears to be a rather sweeping statement and runs counter to the more nuanced and detailed guidance in the guideline.

**Question 3: Should any changes be made to the section on extended sentences?**

3.16 The Sentencing Referencer also refers to the case of [R v Green \[2019\] EWCA Crim 196](#) which gave guidance on sentencing for offences committed prior to other offences for

which an offender has been sentenced. In summary, the case said that it had been wrong for the judge to refuse to take into account the previous custodial sentence simply on the basis of the gravity of the instant offences. In such a situation, a judge should consider all the circumstances in deciding what, if any, impact the previous sentence should have on the new sentence, *R. v Cosburn (Sandy)* [2013] EWCA Crim 1815, [2013] 7 WLUK 382 followed. Without laying down an exhaustive list, such circumstances could include: (a) how recently the previous sentence had been imposed; (b) the similarity of the previous offences to the instant offences; (c) whether the previous and instant offences overlapped in time; (d) whether on the previous occasion the offender could have "cleaned the slate" by bringing the instant offences to the police's attention; (e) whether taking the previous sentences into account would give the offender an undeserved bonus; (f) the offender's age and health, and whether their health had significantly deteriorated in prison; (g) whether, if the previous and instant sentences had been passed together as consecutive sentences, the totality principle would have been offended. Having considered those or other relevant matters, the judge should reach the appropriate sentence for the instant offences, taking into account totality in respect of the instant offences alone. They then had a discretion whether to make further allowance to take into account the previous sentence. It was not simply a matter of considering the overall sentence as though the previous court had been seized of all the offences and deducting from that figure the sentence already imposed.

3.17 If this guidance was felt to be useful, it would be possible to add a section to the Totality guideline (as a dropdown) as follows:

### **Sentencing for offences committed prior to other offences for which an offender has been sentenced**

The court should first reach the appropriate sentence for the instant offences, taking into account totality in respect of the instant offences alone. The court then has a discretion whether to make further allowance to take into account the previous sentence. The court should consider all the circumstances in deciding what, if any, impact the previous sentence should have on the new sentence. A non-exhaustive list of circumstances could include:

- (a) how recently the previous sentence had been imposed;
- (b) the similarity of the previous offences to the instant offences;
- (c) whether the previous and instant offences overlapped in time;
- (d) whether on the previous occasion the offender could have "cleaned the slate" by bringing the instant offences to the police's attention;
- (e) whether taking the previous sentences into account would give the offender an undeserved bonus - this will particularly be the case where a technical rule of sentencing has been avoided or where, for example, the court has been denied the opportunity to consider totality in terms of dangerousness;
- (f) the offender's age and health, and whether their health had significantly deteriorated in prison;
- (g) whether, if the previous and instant sentences had been passed together as consecutive sentences, the totality principle would have been offended.

It is not simply a matter of considering the overall sentence as though the previous court had been seized of all the offences and deducting from that figure the sentence already imposed.

#### **Question 4: Does the Council wish to make the addition proposed in 3.17 above?**

3.18 The table on indeterminate sentences on page 5 of Annex B currently contains a footnote referencing *R v Rahuel Delucca* [2010] EWCA Crim 710 in the section on 'imposing multiple indeterminate sentences on the same occasion and using multiple offences to calculate the minimum term for an indeterminate sentence' as authority for point 1: 'first assess the notional determinate term for all offences (specified or otherwise), adjusting for totality in the usual way'. This appears to be clear and unambiguous and so no additional wording is proposed.

3.19 In the next section on 'Indeterminate sentence (where the offender is already serving an existing determinate sentence)' there is currently a footnote referencing the case of *R v O'Brien* [2006] EWCA Crim 1741 as authority for the statement: 'It is generally undesirable to order an indeterminate sentence to be served consecutively to any other period of imprisonment on the basis that indeterminate sentences should start on their imposition'. Again, this appears to be clear and unambiguous and so no additional wording is proposed.

3.20 In the third section on ‘Indeterminate sentence (where the offender is already serving an existing indeterminate sentence) there is currently a footnote referencing the cases of *R v Hills* [2008] EWCA Crim 1871 and *R v Ashes* [2007] EWCA Crim 1848. It might be helpful to include in the guideline the example in *Hills* of when it might be necessary to impose a life sentence consecutive to a life sentence already being served: ‘such as where the offender falls to be sentenced while still serving the minimum term of a previous sentence and an indeterminate sentence, if imposed concurrently, could not add to the length of the period before which the offender will be considered for release on parole in circumstances where it is clear that the interests of justice require a consecutive sentence’. It may also be useful to provide a link to the relevant provision of the Sentencing Code that permits a sentence to commence other than on the date it is imposed. A link can also be provided to the legislative provision dealing with release for life prisoners.

**Question 5: Does the Council agree make the additions proposed in 3.20 above?**

3.21 In the table ‘Multiple fines for non-imprisonable offences’ on pages 6 and 7 of Annex B references to the Sentencing Code have been incorporated into the text. In the table ‘fines in combination with other sentences’ a reference to the relevant sections of the Sentencing Code has been added.

3.22 In the table ‘Community orders’ on page 8 of Annex B references to the Sentencing Code have been incorporated into the text.

3.23 In the ‘Disqualifications from driving’ table on page 9 of Annex B statutory references have been incorporated into the text.

3.24 In the table ‘Compensation orders’ on page 10 of Annex B references to the Sentencing Code have been incorporated into the text.

**Question 6: Does the Council agree to the approach proposed in 3.21 to 3.24 above?**

*The proposed approach from Rory Kelly*

3.25 In his paper ‘Totality: Principle and Practice’, Rory Kelly of UCL proposes adding explicit reference to culpability and harm to the Totality guideline. With his permission a copy of his, as yet, unpublished paper has been circulated to Council members on the understanding that it will not be shared more widely.

3.26 Kelly argues that ‘Harm and culpability frame the assessment of offence seriousness. The concepts are familiar: they form the basis of establishing offence seriousness in offence-specific guidelines, the Imposition Guideline, and the General Guideline. The Sentencing Code also requires sentencers to consider harm and culpability when assessing the



seriousness of an offence. On its face then it appears odd that the concepts are not relied on in the more complex domain of sentencing multiple offenders.’ He identifies three challenges in sentencing multiple offences and suggests that his approach would address these:

1. the risk of double counting;
2. sentencing a single incident made up of multiple offences; and
3. sentencing above the offence range or maximum for the most serious offence.

3.27 The paper suggests a process for sentencing multiple offences as follows:

**1. Consider the nature of the lead offence and the other offence(s).**

- Establish which offence is the lead offence. This will typically be the most serious offence.
- Assess whether the harm of the other offence(s) and the offender’s culpability in committing them can be dealt with whilst sentencing for the lead offence or whether those offences must be addressed separately. This assessment will require consideration of the sentences available for the lead offence in addition to whether the offence-specific guideline for the lead offence offers sufficient guidance for sentencing the other offence(s).
- If the other offence(s) can be wholly accounted for whilst sentencing the lead offence, impose a concurrent sentencing applying the method at 2.
- If the other offence(s) cannot be wholly accounted for whilst sentencing the lead offence, impose consecutive sentences applying the method at 3.

**2. Concurrent sentencing method.**

- Sentence the lead offence using the relevant offence specific guideline. Account for the impact of the other offence(s) on seriousness. The other offence(s) may affect sentencing at step 1 (determining the offence category) and step 2 (starting point and category range).
- Sentence the other offence(s) with reference to the relevant offence specific guidelines. Account for all relevant harm and culpability factors.
- Set a sentence for the other offence(s) to run concurrently to the sentence for the lead offence.

**3. Consecutive sentencing method.**

- Sentence the lead offence with reference to the relevant offence-specific guideline. Account for all harm and culpability factors of relevance for the lead offence. Do not account for any harm and culpability factors related only to other offences.
- Sentence the other offences with reference to the relevant offence specific guidelines. If a culpability or harm factor has already been accounted for when sentencing for the lead offence (or another offence), do not consider it again.
- Set a sentence for the other offence(s) to run consecutively to the sentence for the lead offence.

**4. Reassess the total sentence**

- Assess the overall sentence against the requirement that it be just and proportionate.
- It may be useful to consider single offences likely to attract a comparable sentence.

**5. Explain the process of sentencing and the final sentence.**

- Where a concurrent sentence has been imposed under step 2, explain the process of sentencing and the final sentence reached. The below paragraph may assist in structuring your remarks.

“The offender has committed multiple offences. They are sentenced to \_\_\_ for the lead offence of \_\_\_ and a concurrent sentence of \_\_\_ for the offence of \_\_\_. The total sentence is \_\_\_. The decision to impose concurrent sentences relates to the nature of the sentencing exercise. I emphasise that the harm of both offences and the overall culpability of the offender are accounted for in the sentence for the lead offence. The length of the total sentence that the offender will serve is thus proportionate to the severity of all their offending.”

- Where a consecutive sentence has been imposed under step 3, explain the process of sentencing and the final sentence reached. The below paragraph may assist in structuring your remarks.

“The offender has committed multiple offences. They are sentenced to \_\_\_ for the lead offence of \_\_\_ and a consecutive sentence of \_\_\_ for the offence of \_\_\_. The total sentence is \_\_\_. The decision to impose consecutive sentences relates to the nature of the sentencing exercise. The length of the total sentence that the offender will serve is proportionate to the severity of all their offending.”

3.28 Consideration has been given as to whether this approach would be preferable to the current structure of the guideline and/or whether elements of his approach could usefully be adopted. It is undoubtedly the case that the consideration of culpability and harm is central to sentencing and is a familiar concept for all sentencers. However, there are dangers in providing a more rigid structure and any attempt to incorporate the necessary flexibility alongside greater guidance could lead to greater complexity. Kelly’s proposed structure appears to operate on the basis that the sentence would be constructed as either concurrent or consecutive whereas, in practice, a combination of the two is often appropriate. His suggestion at point 4 above that ‘It may be useful to consider single offences likely to attract a comparable sentence’ may be particularly problematic and could have wider implications. Kelly states (at page 17 of his paper):

Explicit reference to harm and culpability would add clarity to the Totality Guideline. It would not give rise to irresolvable issues within proportionality. Instead, the reform may draw out the difficulties of achieving both inter and intra-offence proportionality in sentencing multiple offenders. Where these accounts conflict, parsimony dictates the shorter sentence should be preferred. In the longer term, any divide between inter and inter-offence proportionality emphasises the value there would be in a wider review of sentencing levels in offence-specific guidelines.

3.29 Given that adopting Kelly’s structure would not be straightforward it may be preferable to incorporate some of his ideas into the existing structure. **Annex C** contains just the core structure of the Totality guideline (incorporating some of the changes already agreed) with some suggested additional text highlighted in yellow. This additional text is

designed to ensure that considerations of culpability and harm are part of the assessment and to remind sentencers not to double count factors. Some wording acknowledging that concurrent and consecutive sentences may be combined is also suggested. The Council may feel that it is important to keep the core text of the guideline as concise as possible.

3.30 If the Council wishes to make more radical changes to the guideline this will inevitably delay the process. A working group could be set up to consider the details of Kelly's proposals. It would probably be necessary to road test any radically different version of the guideline before consulting on it. Alternatively, the Council may wish to incorporate some of the ideas into the existing structure and sign the guideline off for consultation at this meeting and consult over the summer as planned.

**Question 7: Does the Council wish to change the approach of the Totality guideline based on the proposals from Rory Kelly?**

**Question 8: Does the Council wish to adopt any of the proposed changes in Annex C?**

*Explaining the structure of the sentence*

3.31 Mention was made at the March meeting of working with the Judicial College to amend the pronouncement cards to ensure that a clear explanation is given (including for the benefit of victims) when sentencing for multiple offences. The suggestions from Kelly above are helpful but also illustrate the difficulty of providing a set form of words. The pronouncement card for a custodial sentence in magistrates' courts is as follows:

### **Custodial sentence**

**We are sending you to [prison] [a young offender institution] for a total period of ..... days/ weeks/months.**

[State each offence.

State the term of custody.

State whether concurrent or consecutive.]

- 1. The offence(s) is/are so serious that only a custodial sentence can be justified. [or]**
- 2. There has been a wilful and persistent failure to comply with your community order. [or]**
- 3. You have refused to agree to the making of a .....requirement on a community order.**

**Our reasons are:**

[State your reasons]

3.32 In the Crown Court the Compendium gives various examples such as:

**Example: Court has to sentence for two offences**

On count 1 of this indictment, the charge of wounding {name} on {date}, the sentence will be two years' imprisonment. On count 2, the charge of assaulting {name} occasioning actual bodily harm on {date}, the sentence will be one year's imprisonment. The sentence on count 2 will run consecutively to the sentence on count 1, making a total sentence of three years in all. That is the least sentence that I can impose to mark the totality of your offending. You will serve up to half of your total sentence in custody and then .....

**Example: where D is already serving a life sentence with a minimum of 10 years**

For this offence of wounding you will serve a sentence of 18 months' imprisonment. You will serve no more than half of this sentence in custody – i.e. nine months. However, this sentence will be served consecutively to the minimum term of 10 years which you are currently serving. This means that when you have completed the minimum term of 10 years you will then serve the custodial portion of this sentence – namely nine months – and you will not be eligible to be considered for parole until you have served that additional period.

3.33 We could suggest to the Judicial College that wording such as that proposed in the guideline could be added: 'When sentencing for more than one offence explain how the individual elements have been adjusted to arrive at the total sentence'.

**Question 9: What changes should be proposed to the Judicial College to assist with sentencing multiple offences?**

**4 EQUALITIES**

4.1 At the March meeting the Council agreed to add some additional wording to the reference to the ETBB (see 3.3 above). As previously noted, the nature of the guideline and the lack of reliable data on multiple offences makes it difficult to draw any conclusions about how the guideline applies to different demographic groups and so no other changes relating to equalities are proposed.

4.2 The views of consultees will be sought as to whether there are any equalities issues that the guideline should address.

**Question 10: Is the Council content with the proposed approach to equalities?**

**5 IMPACT AND RISKS**

5.1 If the Council decides to consult on a fairly limited review of the guideline this is likely to attract criticism from academics and some other commentators. The consultation

document can explain why the Council is taking this approach and leave open the possibility of a future revision if and when better data become available.

5.2 If, on the other hand, the Council chooses to consider a more radical review, this will delay the process and may attract criticism from sentencers who are broadly happy with the guideline in its current form. The more radical the changes, the greater the risk of unintended and unforeseen implications given the limited data available.

5.3 The guideline is of wide application and therefore any changes could have a significant impact on sentencing practice. If only limited changes are made these are unlikely to lead to substantive changes.

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## Totality

Effective from: 11 June 2012

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.

**Applicability - DROPDOWN**

## 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, together with the 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 components. 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.**

**Concurrent sentences will ordinarily be appropriate where:**

a) offences arise out of the same incident or facts. Examples include:

- a single incident of dangerous driving resulting in injuries to multiple victims;<sup>1</sup>
- robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it;<sup>2</sup>
- fraud and associated forgery;
- separate counts of supplying different types of drugs of the same class as part of the same transaction.

b) there is a series of offences of the same or similar kind, especially when committed against the same person. Examples include:

- repetitive small thefts from the same person, such as by an employee;
- repetitive benefit frauds of the same kind, committed in each payment period.

**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.**

Examples include:

- a single incident of dangerous driving resulting in injuries to multiple victims where there are separate charges relating to each victim. The sentences should generally be passed concurrently, but each sentence should be aggravated to take into account the harm caused;
- repetitive fraud or theft, where charged as a series of small frauds/thefts, would be properly considered in relation to the total amount of money obtained and the period of time over which the offending took place. The sentences should generally be passed concurrently, each one reflecting the overall seriousness;
- robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it. The principal sentence for the robbery should properly reflect the presence of the weapon. The court must avoid double-counting and may deem it preferable for the possession of the weapon's offence to run concurrently to avoid the appearance of under-sentencing in respect of the robbery.<sup>3</sup>

**Consecutive sentences will ordinarily be appropriate where:**

a) offences arise out of unrelated facts or incidents. Examples include:

- where the offender commits a theft on one occasion and a common assault against a different victim on a separate occasion;
- an attempt to pervert the course of justice in respect of another offence also charged;<sup>4</sup>
- a Bail Act offence;<sup>5</sup>
- any offence committed within the prison context;
- offences that are unrelated because whilst they were committed simultaneously they are distinct and there is an aggravating element that requires separate recognition, for example:
  - an assault on a constable committed to try to evade arrest for another offence also charged;<sup>6</sup>
  - where the defendant is convicted of drug dealing and possession of a firearm offence. The firearm offence is not the essence or the intrinsic part of the drugs offence and requires separate recognition;<sup>7</sup>
  - where the defendant is convicted of threats to kill in the context of an indecent assault on the same occasion, the threats to kill could be distinguished as a separate element.<sup>8</sup>

b) offences that are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences. Examples include:

- where offences committed against different people, such as repeated thefts involving attacks on several different shop assistants;<sup>9</sup>
- where offences of domestic violence or sexual offences are committed against the same individual.

c) one or more offence(s) qualifies for a statutory minimum sentence and concurrent sentences would improperly undermine that minimum.<sup>10</sup>



However, it is not permissible to impose consecutive sentences for offences committed at the same time in order to evade the statutory maximum penalty.<sup>11</sup>

**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 in the context of the most serious offence(s) 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.

**3. Test the overall sentence(s) against the requirement that they be just and proportionate.**

**4. Consider whether the sentence is structured in a way that will be best understood by all concerned with it.**

### Specific applications – custodial sentences

Existing determinate sentence, where determinate sentence to be passed	
Circumstance	Approach
<b>Offender serving a determinate sentence (Offence(s) committed before original sentence imposed)</b>	Consider what the sentence length would have been if the court had dealt with the offences at the same time and ensure that the totality of the sentence is just and proportionate in all the circumstances. If it is not, an adjustment should be made to the sentence imposed for the latest offence.
<b>Offender serving a determinate sentence (Offence(s) committed</b>	Generally the sentence will be consecutive as it will have arisen out of an unrelated incident. The court must have regard to the totality of the offender’s criminality when passing the second sentence, to ensure that the total sentence to be served is just and

<b>after original sentence imposed)</b>	proportionate. Where a prisoner commits acts of violence in prison custody, any reduction for totality is likely to be minimal. <sup>12</sup>
<b>Offender serving a determinate sentence but released from custody</b>	The new sentence should start on the day it is imposed: <a href="#">s225 Sentencing Code</a> prohibits a sentence of imprisonment running consecutively to a sentence from which a prisoner has been released. The sentence for the new offence will take into account the aggravating feature that it was committed on licence. However, it must be commensurate with the new offence and cannot be artificially inflated with a view to ensuring that the offender serves a period in custody additional to the recall period (which will be an unknown quantity in most cases); <sup>13</sup> this is so even if the new sentence will in consequence add nothing to the period actually served.
<b>Offender sentenced to a determinate term and subject to an existing suspended sentence order</b>	Where an offender commits an additional offence during the operational period of a suspended sentence and the court orders the suspended sentence to be activated, the additional sentence will generally be consecutive to the activated suspended sentence, as it will arise out of unrelated facts.

### Extended sentences for public protection

<b>Circumstance</b>	<b>Approach</b>
<b>Extended sentences – using multiple offences to calculate the requisite determinate term</b>	In the case of extended sentences imposed under the Sentencing Code, providing there is at least one specified offence, the threshold requirement under <a href="#">s267</a> or <a href="#">s280</a> of the Sentencing Code is reached if the total determinate sentence for all offences (specified or not) would be four years or more. The extended sentence should be passed either for one specified offence or concurrently on a number of them. Ordinarily either a concurrent determinate sentence or no separate penalty will be appropriate to the remaining offences. <sup>17</sup> The extension period is such as the court considers necessary for the purpose of protecting members of the public from serious harm caused by the offender committing further specified offences. <sup>18</sup> The extension period must not exceed five years (or eight for a sexual offence). The whole aggregate term must not exceed the statutory maximum. The custodial period must be adjusted for totality in the same way as determinate sentences would be. The extension period is measured by the need for protection and therefore does not require adjustment.

### Indeterminate sentences

<b>Circumstance</b>	<b>Approach</b>
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<p><b>Imposing multiple indeterminate sentences on the same occasion and using multiple offences to calculate the minimum term for an indeterminate sentence</b></p>	<p>Indeterminate sentences should start on the date of their imposition and so should generally be ordered to run concurrently. If the life sentence provisions in sections <a href="#">272-274</a> or sections <a href="#">283 – 285</a> of the Sentencing Code apply then:</p> <ol style="list-style-type: none"> <li>1. first assess the notional determinate term for all offences (specified or otherwise), adjusting for totality in the usual way;<sup>19</sup></li> <li>2. ascertain whether any relevant sentence condition is met; and</li> <li>3. the indeterminate sentence should generally be passed concurrently on all offences to which it can apply, but there may be some circumstances in which it suffices to pass it on a single such offence.</li> </ol>
<p><b>Indeterminate sentence (where the offender is already serving an existing determinate sentence)</b></p>	<p>It is generally undesirable to order an indeterminate sentence to be served consecutively to any other period of imprisonment on the basis that indeterminate sentences should start on their imposition.<sup>20</sup></p> <p>The court should instead order the sentence to run concurrently but can adjust the minimum term for the new offence to reflect half of any period still remaining to be served under the existing sentence (to take account of the early release provisions for determinate sentences). The court should then review the minimum term to ensure that the total sentence is just and proportionate.</p>
<p><b>Indeterminate sentence (where the offender is already serving an existing indeterminate sentence)</b></p>	<p>It is generally undesirable to order an indeterminate sentence to be served consecutively to any other period of imprisonment on the basis that indeterminate sentences should start on their imposition. However, where necessary the court can order an indeterminate sentence to run consecutively to an indeterminate sentence passed on an earlier occasion.<sup>21</sup> The second sentence will commence on the expiration of the minimum term of the original sentence and the offender will become eligible for a parole review after serving both minimum terms.<sup>22</sup> The court should consider the length of the aggregate minimum terms that must be served before the offender will be eligible for consideration by the Parole Board. If this is not just and proportionate, the court can adjust the minimum term.</p>
<p><b>Ordering a determinate sentence to run consecutively to an indeterminate sentence</b></p>	<p>The court can order a determinate sentence to run consecutively to an indeterminate sentence. The determinate sentence will commence on the expiry of the minimum term of the indeterminate sentence and the offender will become eligible for a parole review after serving half of the determinate sentence.<sup>23</sup> The court should consider the total</p>

	<p>sentence that the offender will serve before becoming eligible for consideration for release. If this is not just and proportionate, the court can reduce the length of the determinate sentence, or alternatively, can order the second sentence to be served concurrently.</p>
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## Specific applications – non-custodial sentences

Multiple fines for non-imprisonable offences	
Circumstance	Approach
<p><b>Offender convicted of more than one offence where a fine is appropriate</b></p>	<p>The total is inevitably cumulative. The court should determine the fine for each individual offence based on the seriousness of the offence<sup>24</sup> and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the court.<sup>25</sup> The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate the court should consider how to reach a just and proportionate fine. There are a number of ways in which this can be achieved.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>• where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences.</li> <li>• where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the court should consider whether all of the fines can be proportionately reduced. Separate fines should then be passed.</li> </ul> <p>Where separate fines are passed, the court must be careful to ensure that there is no double-counting.<sup>26</sup></p> <p>Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.</p>
<p><b>Multiple offences attracting fines –</b></p>	<p>If the offences being dealt with are all imprisonable, then the community threshold can be crossed by reason of multiple offending, when it would not be crossed for a single offence.<sup>27</sup> However, if the offences are non-</p>

<b>crossing the community threshold</b>	imprisonable (e.g. driving without insurance) the threshold cannot be crossed. <sup>28</sup>
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### Fines in combination with other sentences

<b>Circumstance</b>	<b>Approach</b>
<b>A fine may be imposed in addition to any other penalty for the same offence except:</b>	<ul style="list-style-type: none"> <li>• a hospital order;<sup>29</sup></li> <li>• a discharge;<sup>30</sup></li> <li>• a sentence fixed by law<sup>31</sup> (minimum sentences, EPP, IPP);</li> <li>• a minimum term imposed under <a href="#">s 313</a> or <a href="#">s 314</a> of the Sentencing Code;<sup>32</sup></li> <li>• a life sentence imposed under section <a href="#">274</a> or <a href="#">285</a> Sentencing Code or a sentence of detention for life for an offender under 18 under section <a href="#">258</a> Sentencing Code.<sup>33</sup></li> </ul>
<b>Fines and determinate custodial sentences</b>	<p>A fine should not generally be imposed in combination with a custodial sentence because of the effect of imprisonment on the means of the defendant. However, exceptionally, it may be appropriate to impose a fine in addition to a custodial sentence where:</p> <ul style="list-style-type: none"> <li>• the sentence is suspended;</li> <li>• a confiscation order is not contemplated; <b>and</b></li> <li>• there is no obvious victim to whom compensation can be awarded; <b>and</b></li> <li>• the offender has, or will have, resources from which a fine can be paid.</li> </ul>

### Community orders

<b>Circumstance</b>	<b>Approach</b>
<b>Multiple offences attracting community orders – crossing the custody threshold</b>	If the offences are all imprisonable and none of the individual sentences merit a custodial sentence, the custody threshold can be crossed by reason of multiple offending. <sup>34</sup> If the custody threshold has been passed, the court should refer to the offence ranges in sentencing guidelines for the offences and to the general principles.
<b>Multiple offences, where one offence would merit immediate custody and one offence would merit a community order</b>	A community order should not be ordered to run consecutively to or concurrently with a custodial sentence. Instead the court should generally impose one custodial sentence that is aggravated appropriately by the presence of the associated offence(s). The alternative option is to impose no separate penalty for the offence of lesser seriousness.
<b>Offender convicted of more than one offence where a</b>	A community order is a composite package rather than an accumulation of sentences attached to individual counts. The

<b>community order is appropriate</b>	court should generally impose a single community order that reflects the overall criminality of the offending behaviour. Where it is necessary to impose more than one community order, these should be ordered to run concurrently and for ease of administration, each of the orders should be identical.
<b>Offender convicted of an offence while serving a community order</b>	<p>The power to deal with the offender depends on his being convicted whilst the order is still in force;<sup>35</sup> it does not arise where the order has expired, even if the additional offence was committed whilst it was still current.</p> <p>If an offender, in respect of whom a community order made by a magistrates' court is in force, is convicted by a magistrates' court of an additional offence, the magistrates' court should ordinarily revoke the previous community order and sentence afresh for both the original and the additional offence.</p> <p>Where an offender, in respect of whom a community order made by the Crown Court is in force, is convicted by a magistrates' court, the magistrates' court may, and ordinarily should, commit the offender to the Crown Court, in order to allow the Crown Court to re-sentence for the original offence. The magistrates' court may also commit the new offence to the Crown Court for sentence where there is a power to do so.</p> <p>The sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence. The court should consider whether the combination of associated offences is sufficiently serious to justify a custodial sentence. If the court does not consider that custody is necessary, it should impose a single community order that reflects the overall totality of criminality. The court must take into account the extent to which the offender complied with the requirements of the previous order.</p>

<b>Disqualifications from driving</b>	
<b>Circumstance</b>	<b>Approach</b>
<b>Offender convicted of two or more obligatory disqualification offences (s34(1) Road Traffic Offender Act 1988)</b>	The court must impose an order of disqualification for each offence unless for special reasons it does not disqualify the offender. <sup>36</sup> All orders of disqualification imposed by the court on the same date take effect immediately and cannot be ordered to run consecutively to one another. The court should take into account all offences when determining the disqualification periods and should generally impose like periods for each offence.
<b>Offender convicted of two or more offences involving either:</b>	Where an offender is convicted on same occasion of more than one offence to which section 35(1) Road Traffic Offender Act 1988 applies, only one disqualification shall be

<p><b>1. discretionary disqualification and obligatory endorsement from driving, or</b></p> <p><b>2. obligatory disqualification but the court for special reasons does not disqualify the offender</b></p> <p><b>and the penalty points to be taken into account number 12 or more (ss28 and 35 Road Traffic Offender Act 1988)</b></p>	<p>imposed on him.<sup>37</sup> However the court must take into account all offences when determining the disqualification period. For the purposes of appeal, any disqualification imposed shall be treated as an order made on conviction of each of the offences.<sup>38</sup></p>
<p><b>Other combinations involving more two or offences involving discretionary disqualification</b></p>	<p>As orders of disqualification take effect immediately, it is generally desirable for the court to impose a single disqualification order that reflects the overall criminality of the offending behaviour.</p>

### Compensation orders

Circumstance	Approach
<p><b>Global compensation orders</b></p>	<p>The court should not fix a global compensation figure unless the offences were committed against the same victim.<sup>39</sup> Where there are competing claims for limited funds, the total compensation available should normally be apportioned on a pro rata basis.<sup>40</sup></p>
<p><b>The court may combine a compensation order with any other form of order.</b></p>	
<p><b>Compensation orders and fines</b></p>	<p>Priority is given to the imposition of a compensation order over a fine.<sup>41</sup> This does not affect sentences other than fines. This means that the fine should be reduced or, if necessary, dispensed with altogether, to enable the compensation to be paid.</p>
<p><b>Compensation orders and confiscation orders</b></p>	<p>A compensation order can be combined with a confiscation order where the amount that may be realised is sufficient. If such an order is made, priority should be given to compensation.<sup>42</sup></p>
<p><b>Compensation orders and community orders</b></p>	<p>A compensation order can be combined with a community order.</p>
<p><b>Compensation orders and suspended sentence orders</b></p>	<p>A compensation order can be combined with a suspended sentence order.<sup>43</sup></p>
<p><b>Compensation orders and custody</b></p>	<p>A compensation order can be combined with a sentence of immediate custody where the offender is clearly able to pay or has good prospects of employment on his release from custody.</p>

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- Notes**
- [1] R v Lawrence (1989) 11 Cr App R (S) 580
  - [2] R v Poulton and Celaire [2002] EWCA Crim 2487; Attorney General’s Reference No 21&22 of 2003 [2003] EWCA Crim 3089
  - [3] Attorney General’s Reference Number 21 and 22 of 2003
  - [4] Attorney General’s Reference No1 of 1990 (1990) 12 Cr App R (S) 245
  - [5] R v Millen (1980) 2 Cr App R (S) 357
  - [6] R v Kastercum (1972) 56 Cr App R 298
  - [7] R v Poulton and Celaire [2002] EWCA Crim 2487; Attorney General’s Reference No 21&22 of 2003 [2003] EWCA Crim 3089
  - [8] R v Fletcher [2002] 2 CAR (S) 127
  - [9] R v Jamieson & Jamieson [2008] EWCA Crim 2761
  - [10] R v Raza [2010] 1 Cr App R (S) 56
  - [11] R v Ralphs [2009] EWCA Crim 2555
  - [12] R. v Ali [1998] 2 Cr.App.R. 123
  - [13] R. v Costello [2010] EWCA Crim 371
  - [14]
  - [15]
  - [16]
  - [17] R. v Pinnell [2010] EWCA Crim 2848
  - [18] R v Cornelius [2002] EWCA Crim 138
  - [19] R v Rahuel Delucca [2010] EWCA Crim 710
  - [20] R. v O’Brien [2006] EWCA Crim 1741
  - [21] R v Hills [2008] EWCA Crim 1871; R v Ashes [2007] EWCA Crim 1848
  - [22] s.28(1B) Crime (Sentences) Act 1997
  - [23] s.28 ibid
  - [24] [s.125\(1\) Sentencing Code](#)
  - [25] [s.125\(2\) Sentencing Code](#)
  - [26] R. v Pointon [2008] EWCA Crim 513
  - [27] [s.204\(2\) Sentencing Code](#)
  - [28] [s.202 Sentencing Code](#) restricts the power to make a community order by limiting it to cases where the offence is punishable with imprisonment.
  - [29] s.37(8) Mental Health Act 1983
  - [30] R. v McClelland [1951] 1 All ER 557
  - [31] [s.120 Sentencing Code](#)
  - [32] [s.120 Sentencing Code](#)
  - [33] [s.120 Sentencing Code](#)
  - [34] [s.230\(2\) Sentencing Code](#)
  - [35] Paragraphs 22 and 25 of [Schedule 10 of the Sentencing Code](#)
  - [36] s.34(1) Road Traffic Offender Act 1998
  - [37] s.35(3) ibid
  - [38] ibid
  - [39] R. v Warton [1976] Crim LR 520
  - [40] R. v Miller [1976] Crim LR 694
  - [41] [s.135\(4\) Sentencing Code](#)
  - [42] R v Mitchell [2001] Cr. L. R239
  - [43] [s.134\(2\) Sentencing Code](#)



## Totality

Effective from: tbc

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.

**Applicability - DROPDOWN**

## 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, 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.**
3. **Test the overall sentence against the requirement that the total sentence is just and proportionate to the offending as a whole.**
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.

Examples include: [dropdown]

- a single incident of dangerous driving resulting in injuries to multiple victims;
- robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it

- fraud and associated forgery
  - separate counts of supplying different types of drugs of the same class as part of the same transaction
- b. there is a series of offences of the same or similar kind, especially when committed against the same person.

Examples include: [dropdown]

- repetitive small thefts from the same person, such as by an employee
- repetitive benefit frauds of the same kind, committed in each payment period

**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.**

Concurrent custodial sentences: examples [dropdown]

Examples of concurrent custodial sentences include:

- a single incident of dangerous driving resulting in injuries to multiple victims where there are separate charges relating to each victim. The sentences should generally be passed concurrently, but each sentence should be aggravated to take into account the harm caused
- repetitive fraud or theft, where charged as a series of small frauds/thefts, would be properly considered in relation to the total amount of money obtained and the period of time over which the offending took place. The sentences should generally be passed concurrently, each one reflecting the overall seriousness
- robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it. The principal sentence for the robbery should properly reflect the presence of the weapon. The court must avoid double-counting and may deem it preferable for the possession of the weapon's offence to run concurrently to avoid the appearance of under-sentencing in respect of the robbery

**Consecutive sentences will ordinarily be appropriate where:**

- a. offences arise out of unrelated facts or incidents.

Examples include: [dropdown]

- where the offender commits a theft on one occasion and a common assault against a different victim on a separate occasion
- an attempt to pervert the course of justice in respect of another offence also charged
- a Bail Act offence
- any offence committed within the prison context
- offences that are unrelated because whilst they were committed simultaneously they are distinct and there is an aggravating element that requires separate recognition, for example:
  - an assault on a constable committed to try to evade arrest for another offence also charged
  - where the defendant is convicted of drug dealing and possession of a firearm offence. The firearm offence is not the essence or the intrinsic part of the drugs offence and requires separate recognition
  - where the defendant is convicted of threats to kill in the context of an indecent assault on the same occasion, the threats to kill could be distinguished as a separate element

- b. offences that are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences.

Examples include: [dropdown]

- where offences committed against different people, such as repeated thefts involving attacks on several different shop assistants
- where offences of domestic violence or sexual offences are committed against the same individual

- c. one or more offence(s) qualifies for a statutory minimum sentence and concurrent sentences would improperly undermine that minimum

Examples include: [dropdown]

- offences relating to the supply of drugs and offences of possession of a prohibited weapon (which attract a five year minimum term) – any reduction on grounds of totality should not reduce the effect of properly deterrent and commensurate sentences. The court should not undermine the will of Parliament by substantially reducing an otherwise appropriate consecutive sentence for another offence so as to render nugatory the effect of the mandatory minimum sentence for the firearms offence.

However, it is **not** permissible to impose consecutive sentences for offences committed **in a single incident** 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

## Specific applications – custodial sentences

## Existing determinate sentence, where determinate sentence to be passed [Dropdown]

Existing determinate sentence, where determinate sentence to be passed	
Circumstance	Approach
<b>Offender serving a determinate sentence (Offence(s) committed before original sentence imposed)</b>	Consider what the sentence length would have been if the court had dealt with the offences at the same time and ensure that the totality of the sentence is just and proportionate in all the circumstances. If it is not, an adjustment should be made to the sentence imposed for the latest offence.
<b>Offender serving a determinate sentence (Offence(s) committed after original sentence imposed)</b>	Generally the sentence will be consecutive as it will have arisen out of an unrelated incident. The court must have regard to the totality of the offender's criminality when passing the second sentence, to ensure that the total sentence to be served is just and proportionate. Where a prisoner commits acts of violence in prison custody, any reduction for totality is likely to be minimal.
<b>Offender serving a determinate sentence but released from custody</b>	The new sentence should start on the day it is imposed: <a href="#">s225 Sentencing Code</a> prohibits a sentence of imprisonment running consecutively to a sentence from which a prisoner has been released. The sentence for the new offence will take into account the aggravating feature that it was committed on licence. However, it must be commensurate with the new offence and cannot be artificially inflated with a view to ensuring that the offender serves a period in custody additional to the recall period (which will be an unknown quantity in most cases); this is so even if the new sentence will in consequence add nothing to the period actually served.
<b>Offender sentenced to a determinate term and subject to an existing suspended sentence order</b>	Where an offender commits an additional offence during the operational period of a suspended sentence and the court orders the suspended sentence to be activated, the additional sentence will generally be consecutive to the activated suspended sentence, as it will arise out of unrelated facts.

## Extended sentences [dropdown]

Extended sentences	
Circumstance	Approach
<b>Extended sentences – using multiple offences to calculate the requisite determinate term</b>	In the case of extended sentences imposed under the Sentencing Code, providing there is at least one specified offence, the threshold requirement under <a href="#">s267</a> or <a href="#">s280</a> of the Sentencing Code is reached if the total determinate sentence for all offences (specified or not) would be four years or more. The extended sentence should be passed either for one specified offence or concurrently on a number of them. Ordinarily either a concurrent determinate sentence or no

separate penalty will be appropriate to the remaining offences. The extension period is such as the court considers necessary for the purpose of protecting members of the public from serious harm caused by the offender committing further specified offences. The extension period must not exceed five years (or eight for a sexual offence). The whole aggregate term must not exceed the statutory maximum. The custodial period must be adjusted for totality in the same way as determinate sentences would be. The extension period is measured by the need for protection and therefore does not require adjustment.

## Indeterminate sentences [dropdown]

### Indeterminate sentences

Circumstance	Approach
<p><b>Imposing multiple indeterminate sentences on the same occasion and using multiple offences to calculate the minimum term for an indeterminate sentence</b></p>	<p>Indeterminate sentences should start on the date of their imposition and so should generally be ordered to run concurrently. If the life sentence provisions in sections <a href="#">272-274</a> or sections <a href="#">283 – 285</a> of the Sentencing Code apply then:</p> <ol style="list-style-type: none"> <li>1. first assess the notional determinate term for all offences (specified or otherwise), adjusting for totality in the usual way</li> <li>2. ascertain whether any relevant sentence condition is met and</li> <li>3. the indeterminate sentence should generally be passed concurrently on all offences to which it can apply, but there may be some circumstances in which it suffices to pass it on a single such offence.</li> </ol>
<p><b>Indeterminate sentence (where the offender is already serving an existing determinate sentence)</b></p>	<p>It is generally undesirable to order an indeterminate sentence to be served consecutively to any other period of imprisonment on the basis that indeterminate sentences should start on their imposition. The court should instead order the sentence to run concurrently but can adjust the minimum term for the new offence to reflect <b>any period still remaining to be served under the existing sentence (taking account of the relevant early release provisions for the determinate sentence)</b>. The court should then review the minimum term to ensure that the total sentence is just and proportionate.</p>
<p><b>Indeterminate sentence (where the offender is already serving an existing indeterminate sentence)</b></p>	<p>It is generally undesirable to order an indeterminate sentence to be served consecutively to any other period of imprisonment on the basis that indeterminate sentences should start on their imposition. However, where necessary <b>(such as where the offender falls to be sentenced while still serving the minimum term of a previous sentence and an</b></p>

	<p>indeterminate sentence, if imposed concurrently, could not add to the length of the period before which the offender will be considered for release on parole in circumstances where it is clear that the interests of justice require a consecutive sentence), the court can order an indeterminate sentence to run consecutively to an indeterminate sentence passed on an earlier occasion (section 384 of the Sentencing Code). The second sentence will commence on the expiration of the minimum term of the original sentence and the offender will become eligible for a parole review after serving both minimum terms (Section 28(1B) of the Crime (Sentences) Act 1997). The court should consider the length of the aggregate minimum terms that must be served before the offender will be eligible for consideration by the Parole Board. If this is not just and proportionate, the court can adjust the minimum term.</p>
<p><b>Ordering a determinate sentence to run consecutively to an indeterminate sentence</b></p>	<p>The court can order a determinate sentence to run consecutively to an indeterminate sentence. The determinate sentence will commence on the expiry of the minimum term of the indeterminate sentence and the offender will become eligible for a parole review after becoming eligible for release from the determinate sentence. The court should consider the total sentence that the offender will serve before becoming eligible for consideration for release. If this is not just and proportionate, the court can reduce the length of the determinate sentence, or alternatively, can order the second sentence to be served concurrently.</p>

## Specific applications – non-custodial sentences

Multiple fines for non-imprisonable offences [dropdown]	
Multiple fines for non-imprisonable offences	
Circumstance	Approach
<p><b>Offender convicted of more than one offence where a fine is appropriate</b></p>	<p>The total is inevitably cumulative. The court should determine the fine for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the court (section 125 of the Sentencing Code). The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate the court should consider how to reach a just and proportionate fine. There are a number of ways in which this can be achieved.</p> <p>For example:</p>

	<ul style="list-style-type: none"> <li>• where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences.</li> <li>• where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the court should consider whether all of the fines can be proportionately reduced. Separate fines should then be passed.</li> </ul> <p>Where separate fines are passed, the court must be careful to ensure that there is no double-counting.</p> <p>Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.</p>
<p><b>Multiple offences attracting fines – crossing the community threshold</b></p>	<p>If the offences being dealt with are all imprisonable, then the community threshold can be crossed by reason of multiple offending, when it would not be crossed for a single offence (<a href="#">section 204(2) of the Sentencing Code</a>). However, if the offences are non-imprisonable (e.g. driving without insurance) the threshold cannot be crossed (<a href="#">section 202 of the Sentencing Code</a>).</p>

Fines in combination with other sentences [dropdown]

Fines in combination with other sentences	
Circumstance	Approach
<p><b>A fine may be imposed in addition to any other penalty for the same offence except:</b></p>	<ul style="list-style-type: none"> <li>• a hospital order</li> <li>• a discharge</li> <li>• a sentence fixed by law (murder)</li> <li>• a minimum sentence imposed under section <a href="#">311</a>, <a href="#">312</a>, <a href="#">313</a>, <a href="#">314</a>, or <a href="#">315</a> of the Sentencing Code</li> <li>• a life sentence imposed under section <a href="#">274</a> or <a href="#">285</a> Sentencing Code or a sentence of detention for life for an offender under 18 under section <a href="#">258</a> Sentencing Code</li> <li>• a life sentence imposed under section <a href="#">273</a> or <a href="#">283</a> Sentencing Code</li> <li>• a serious terrorism sentence under section <a href="#">268B</a> or <a href="#">282B</a> of the Sentencing Code (<a href="#">Sections 118 to 121 of the Sentencing Code</a>)</li> </ul>

<b>Fines and determinate custodial sentences</b>	<p>A fine should not generally be imposed in combination with a custodial sentence because of the effect of imprisonment on the means of the defendant. However, exceptionally, it may be appropriate to impose a fine in addition to a custodial sentence where:</p> <ul style="list-style-type: none"> <li>• the sentence is suspended</li> <li>• a confiscation order is not contemplated <b>and</b></li> <li>• there is no obvious victim to whom compensation can be awarded <b>and</b></li> <li>• the offender has, or will have, resources from which a fine can be paid</li> </ul>
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## Community orders [dropdown]

Community orders	
Circumstance	Approach
<b>Multiple offences attracting community orders – crossing the custody threshold</b>	<p>If the offences are all imprisonable and none of the individual sentences merit a custodial sentence, the custody threshold can be crossed by reason of multiple offending (<b>section 230(2) of the Sentencing Code</b>). If the custody threshold has been passed, the court should refer to the offence ranges in sentencing guidelines for the offences and to the general principles.</p>
<b>Multiple offences, where one offence would merit immediate custody and one offence would merit a community order</b>	<p>A community order should not be ordered to run consecutively to or concurrently with a custodial sentence. Instead the court should generally impose one custodial sentence that is aggravated appropriately by the presence of the associated offence(s). The alternative option is to impose no separate penalty for the offence of lesser seriousness.</p>
<b>Offender convicted of more than one offence where a community order is appropriate</b>	<p>A community order is a composite package rather than an accumulation of sentences attached to individual counts. The court should generally impose a single community order that reflects the overall criminality of the offending behaviour. Where it is necessary to impose more than one community order, these should be ordered to run concurrently and for ease of administration, each of the orders should be identical.</p>
<b>Offender convicted of an offence while serving a community order</b>	<p>The power to deal with the offender depends on his being convicted whilst the order is still in force; it does not arise where the order has expired, even if the additional offence was committed whilst it was still current. (<b>Paragraphs 22 and 25 of the Sentencing Code</b>)</p> <p><b>Community order imposed by magistrates' court</b> If an offender, in respect of whom a community order made by a magistrates' court is in force, is convicted by a magistrates' court</p>



	<p>of an additional offence, the magistrates’ court should ordinarily revoke the previous community order and sentence afresh for both the original and the additional offence.</p> <p><b>Community order imposed by the Crown Court</b> Where an offender, in respect of whom a community order made by the Crown Court is in force, is convicted by a magistrates’ court, the magistrates’ court may, and ordinarily should, commit the offender to the Crown Court, in order to allow the Crown Court to re-sentence for the original offence. The magistrates’ court may also commit the new offence to the Crown Court for sentence where there is a power to do so.</p> <p>Where the magistrates’ court has no power to commit the new offence it should sentence the new offence and commit the offender to the Crown Court to be re-sentenced for the original offence.</p> <p>When sentencing both the original offence and the new offence the sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence. The court should consider whether the combination of associated offences is sufficiently serious to justify a custodial sentence. If the court does not consider that custody is necessary, it should impose a single community order that reflects the overall totality of criminality. The court must take into account the extent to which the offender complied with the requirements of the previous order.</p>
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#### Disqualifications from driving [dropdown]

Disqualifications from driving	
Circumstance	Approach
<p><b>Offender convicted of two or more obligatory disqualification offences</b> (<a href="#">s34(1) Road Traffic Offender Act 1988</a>)</p>	<p>The court must impose an order of disqualification for each offence unless for special reasons it does not disqualify the offender. All orders of disqualification imposed by the court on the same date take effect immediately and cannot be ordered to run consecutively to one another. The court should take into account all offences when determining the disqualification periods and should generally impose like periods for each offence.</p>
<p><b>Offender convicted of two or more offences involving either:</b></p> <p>1. discretionary disqualification and</p>	<p>Where an offender is convicted on same occasion of more than one offence to which <a href="#">section 35(1) of the Road Traffic Offenders Act 1988</a> applies, only one disqualification shall be imposed on him. However the court must take into account all offences when determining the disqualification period. For the purposes of appeal, any disqualification</p>

<p><b>obligatory endorsement from driving, or</b></p> <p><b>2. obligatory disqualification but the court for special reasons does not disqualify the offender</b></p> <p><b>and the penalty points to be taken into account number 12 or more (ss28 and 35 Road Traffic Offenders Act 1988)</b></p>	<p>imposed shall be treated as an order made on conviction of each of the offences. <b>(Section 35(3) of the Road Traffic Offenders Act 1988)</b></p>
<p><b>Other combinations involving more two or offences involving discretionary disqualification</b></p>	<p>As orders of disqualification take effect immediately, it is generally desirable for the court to impose a single disqualification order that reflects the overall criminality of the offending behaviour.</p>

#### Compensation orders [dropdown]

Compensation orders	
Circumstance	Approach
<p><b>Global compensation orders</b></p>	<p>The court should not fix a global compensation figure unless the offences were committed against the same victim. Where there are competing claims for limited funds, the total compensation available should normally be apportioned on a pro rata basis.</p>
<p><b>The court may combine a compensation order with any other form of order</b> <b>(Section 134 of the Sentencing Code)</b></p>	
<p><b>Compensation orders and fines</b></p>	<p>Priority is given to the imposition of a compensation order over a fine <b>(section 135(4) of the Sentencing Code)</b>. This does not affect sentences other than fines. This means that the fine should be reduced or, if necessary, dispensed with altogether, to enable the compensation to be paid.</p>
<p><b>Compensation orders and confiscation orders</b></p>	<p>A compensation order can be combined with a confiscation order where the amount that may be realised is sufficient. If such an order is made, priority should be given to compensation <b>(Section 135 of the Sentencing Code)</b>.</p>
<p><b>Compensation orders and community orders</b></p>	<p>A compensation order can be combined with a community order.</p>
<p><b>Compensation orders and suspended sentence orders</b></p>	<p>A compensation order can be combined with a suspended sentence order.</p>

<b>Compensation orders and custody</b>	A compensation order can be combined with a sentence of immediate custody where the offender is clearly able to pay or has good prospects of employment on his release from custody.
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## Totality

Effective from: tbc

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