

## 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 with reference to overall 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.**
4. **Consider and explain how the sentence is structured in a way that will be best understood by all concerned with it.**

**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

b. offences that are unrelated because while they were committed simultaneously they are distinct and there is an aggravating element that requires separate recognition.

Examples include: [dropdown]

- an assault on a constable committed to try to evade arrest for another offence also charged
- where the offender 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 offender 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

- c. 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

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

Examples include: [dropdown]

- other offences sentenced alongside possession of a prohibited weapon (which attracts 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 reduce an otherwise appropriate consecutive sentence for another offence so as **to remove the impact of** ~~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.

Examples include: [dropdown]

- more than one offence of causing serious injury in a single incident of dangerous driving.
- **possession of several prohibited weapons and/or ammunition acquired at the same time**

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

### Reaching a just and proportionate sentence

~~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 **the court can achieve a just and proportionate sentence** ~~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~~ **sentences** 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 very 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)~~, such that they can be ordered to run concurrently so that the sentence for the most serious offence(s) can be clearly identified.

#### Sentencing for offences committed prior to other offences for which an offender has been sentenced [Dropdown]

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 (**whether or not that sentence has been served in full**). The court should consider all the circumstances in deciding what, if any, impact the previous sentence should have on the new sentence. 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.

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;
- (g) whether, if the previous and instant sentences had been passed together as consecutive sentences, the totality principle would have been offended.

#### **If the offender is still subject to the previous sentence:**

1. Where the offender is currently serving a custodial sentence for the previously sentenced offence(s), consider whether the new sentence should be concurrent with or consecutive to that sentence taking into account the circumstances set out above and the general principles in this guideline.
2. Where the offender is serving an indeterminate sentence for the previously sentenced offence(s), see also the guidance in the section ‘Indeterminate sentences’ below.

3. Where the offender has been released on licence or post sentence supervision from a custodial sentence for the previously sentenced offence(s) see also the relevant guidance in the section below 'Existing determinate sentence, where determinate sentence to be passed'.

## 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 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 subject to licence or post sentence supervision (whether or not recalled to custody) 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. <b>If the new offence was committed while subject to licence or post sentence supervision, the sentence for the new offence should will take that into account as an the aggravating feature that it was committed on licence.</b> However, <b>it the sentence</b> 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 <b>any</b> 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</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

<p><b>calculate the requisite determinate term</b></p>	<p>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.</p>
--	---

### 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 any period still remaining to be served under the existing sentence (taking account of the relevant early release provisions for the determinate sentence). 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 (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), the court can order an indeterminate sentence to run consecutively to an indeterminate sentence passed on an earlier occasion (<a href="#">section 384</a> 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 (<a href="#">Section 28(1B) of the Crime (Sentences) Act 1997</a>). 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 (<a href="#">section 125</a> of the Sentencing Code). The court should add up the fines for each offence and consider if they are just and</p>

	<p>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> of the Sentencing Code or a sentence of detention for life for an offender under 18 under section <a href="#">258</a> of the Sentencing Code</li> </ul>



	<ul style="list-style-type: none"> <li>• a life sentence imposed under section <a href="#">273</a> or <a href="#">283</a> of the Sentencing Code</li> <li>• a serious terrorism sentence under section <a href="#">268B</a> or <a href="#">282B</a> of the Sentencing Code</li> </ul> <p>(<a href="#">Sections 118 to 121 of the Sentencing Code</a>)</p>
<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 offender. 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 [dropdown]

Community orders	
Circumstance	Approach
<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 ( <a href="#">section 230(2) of the Sentencing Code</a> ). 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 community order is appropriate</b>	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.
<b>Offender convicted of an offence while serving a community order</b>	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. (Paragraphs <a href="#">22</a> and <a href="#">25</a> of the Sentencing Code)

	<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 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.                  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><b>When sentencing both the original offence and the new offence</b>                  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>
--	---

Disqualifications from driving [dropdown]

Disqualifications from driving	
Circumstance	Approach
<p><b>Offender convicted of two or more obligatory disqualification offences (<a href="#">§34(1) Road Traffic Offender Act 1988</a>)</b></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> <ol style="list-style-type: none"> <li>1. discretionary disqualification and obligatory endorsement from driving, or</li> <li>2. obligatory disqualification but the court for special reasons does not disqualify the offender</li> </ol> <p>and the penalty points to be taken into account number 12 or more (ss28 and 35 Road Traffic Offenders Act 1988)</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 imposed shall be treated as an order made on conviction of each of the offences. (<a href="#">Section 35(3)</a> of the Road Traffic Offenders Act 1988)</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
<b>Global compensation orders</b>	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.
<b>The court may combine a compensation order with any other form of order (<a href="#">Section 134 of the Sentencing Code</a>)</b>	
<b>Compensation orders and fines</b>	Priority is given to the imposition of a compensation order over a fine ( <a href="#">section 135(4) of the Sentencing Code</a> ). 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.
<b>Compensation orders and confiscation orders</b>	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 ( <a href="#">Section 135 of the Sentencing Code</a> ).
<b>Compensation orders and community orders</b>	A compensation order can be combined with a community order.

<p><b>Compensation orders and suspended sentence orders</b></p>	<p>A compensation order can be combined with a suspended sentence order.</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>