

Sentencing Council meeting:
Paper number:
Lead official:

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SC(22)MAR05 - Totality
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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 this meeting the Council will be asked to consider suggested changes to the format of the guideline and some small changes to content. There is one further meeting scheduled before consultation on the changes.

2 RECOMMENDATION

2.1 That the Council agrees changes to the format and minor changes to the text of the Totality guideline and considers whether further changes should be made to provide greater assistance to sentencers and to address issues of equality.

3 CONSIDERATION

Background

3.1 The aim of the proposed changes is to ensure that the content of the guideline is up-to-date and to address comments from sentencers in the research regarding the length and format of the guideline without losing useful content. The current [Totality guideline](#) can be viewed online or in document form at **Annex A**.

3.2 In summary, when sentencing an offender for more than one offence, or where the offender is already serving a sentence, courts must consider whether the total sentence is just and proportionate to the overall offending behaviour. The Totality guideline sets out the principles to be followed, the approach for different types of sentence and gives examples of how sentences should be structured in different circumstances.

3.3 The key findings of the research carried out with sentencers were:

- a. The guideline provides practical help in sentencing; there were positive comments regarding the guideline's examples, clarity and usefulness.
- b. The most common way to use the guideline is to apply its principles, based knowledge of its contents, and consult it only for difficult or unusual cases.

- c. It can be difficult to apply the guideline in some circumstances, for example when sentencing offences that are dissimilar or have multiple victims, and sentencing some specific offences.
- d. In cases with multiple victims and a range of offending, it can be difficult to reflect the seriousness of the offending against each individual victim in the final sentence.
- e. It was suggested that it could be helpful to include in the guideline a reminder to the court to explain how a sentence has been constructed.
- f. The length of the guideline was a concern and there were requests for improvements to its format.

The proposed changes

3.4 The proposed changes are set out in **Annex B**. Most of the content remains unchanged, but there are a number of suggested amendments.

3.5 In the 'General principles' section at point 2 the words 'aggravating and mitigating' have been added. This is to address the misapprehension (evident among academics) that the reference to 'factors personal to the offender' applies solely to mitigating factors.

3.6 In the paragraph headed 'Concurrent/consecutive sentences' the word 'components' has been struck through as unnecessary.

3.7 The content of the 'General approach' section remains unaltered, but the order has been changed so that the four steps are listed together followed by the explanation and examples, rather than having steps 3 and 4 at the end.

3.8 Throughout the guideline, where there are examples or tables, these are now in dropdown boxes, to make the guideline quicker to navigate. A demonstration of how this will look in the on-line guideline will be given at the meeting.

3.9 The current guideline has footnotes which give the source of the rules/guidance included in the guideline. These have been removed as they are unnecessary.

3.10 The heading of the table on extended sentences has had the words 'for public protection' removed.

3.11 In the table: 'fines in combination with other sentences' the list of penalties that cannot be combined with a fine has been updated.

Question 1: Does the Council agree to make the proposed changes to the format?

Question 2: Does the Council agree to make the proposed changes to the content?

Further changes

3.12 One of the key findings from our research with sentencers was:

Some survey respondents highlighted perceived problems with the guideline, such as difficulties ascertaining appropriate financial penalties for multiple offences. In addition, nearly half of survey respondents reported that there are certain offences and circumstances where they have problems applying the guideline. This included offences with multiple victims and offences which are dissimilar, as well as specific offences, such as sexual offences, assaults, driving offences, thefts and drug offences. Interviewees largely agreed that these offences presented the most problems when applying the guideline, and highlighted sexual offences and driving offences as posing the greatest difficulties. They also commented that, in cases with multiple victims and a range of offending, they experience problems reflecting the seriousness of the offending against each individual victim in the final sentence.

3.13 The examples given in the guideline do relate to some of these situations but it is not possible to include examples for every combination of offences and cases will be fact specific. It is important that the guideline is not too prescriptive – there is often more than one way to arrive at a just and proportionate sentence. Suggestions are invited as to how the guideline could assist with the difficult sentencing situations highlighted by users.

3.14 There was also a suggestion that the guideline should remind sentencers to explain how the sentence has been constructed. It may be thought that this is already covered by the Reasons step in all offence specific guidelines ('Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence'). If something more explicitly related to the construction of the sentence was thought to be useful, the best place in the Totality guideline to cover this might be in the General approach section, either by expanding point 4 ('Consider whether the sentence is structured in a way that will be best understood by all concerned with it') or by adding an extra point.

3.15 Any suggestions for further changes will be developed and brought back to the Council for consideration at the April meeting.

Question 3: What further changes should be made to the guideline to address the issues raised by sentencers?

4 EQUALITIES

4.1 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.

4.2 At the top of guideline there is the usual reminder about referring to the Equal Treatment Bench Book (ETBB). If the Council felt it to be appropriate, further references to

the ETBB could be included in the body of the guideline. The examples of concurrent and custodial sentences include some offences where disparity between different ethnic groups is potentially an issue (e.g. robbery, possession of weapon, supply of drugs, assault, firearms) but it is difficult to see how references to equal treatment could usefully be incorporated. Other places where mention could be made would be in the General principles section and/or the general approach section – but again it is not clear how this could best be done.

Question 4: Should further references to equalities or disparities be added to the Totality guideline? If so, how can this be achieved?

5 IMPACT AND RISKS

5.1 The limited nature of the review of the guideline is likely to attract criticism from academics. The consultation document will 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 The guideline is of wide application and therefore any changes could have a significant impact on sentencing practice, although the limited scale of the proposed revision of the guideline is unlikely to lead to substantive changes.

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;¹
- robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it;²
- 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.³

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;⁴
- a Bail Act offence;⁵
- 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;⁶
 - 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;⁷
 - 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.⁸

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;⁹
- 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.¹⁰

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

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
Offender serving a determinate sentence (Offence(s) committed before original sentence imposed)	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.
Offender serving a determinate sentence (Offence(s) committed	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

after original sentence imposed)	proportionate. Where a prisoner commits acts of violence in prison custody, any reduction for totality is likely to be minimal. ¹²
Offender serving a determinate sentence but released from custody	The new sentence should start on the day it is imposed: s225 Sentencing Code 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); ¹³ this is so even if the new sentence will in consequence add nothing to the period actually served.
Offender sentenced to a determinate term and subject to an existing suspended sentence order	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

Circumstance	Approach
Extended sentences – using multiple offences to calculate the requisite determinate term	In the case of extended sentences imposed under the Sentencing Code, providing there is at least one specified offence, the threshold requirement under s267 or s280 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. ¹⁷ 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. ¹⁸ 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

Circumstance	Approach
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<p>Imposing multiple indeterminate sentences on the same occasion and using multiple offences to calculate the minimum term for an indeterminate sentence</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 272-274 or sections 283 – 285 of the Sentencing Code apply then:</p> <ol style="list-style-type: none"> 1. first assess the notional determinate term for all offences (specified or otherwise), adjusting for totality in the usual way;¹⁹ 2. ascertain whether any relevant sentence condition is met; and 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.
<p>Indeterminate sentence (where the offender is already serving an existing determinate sentence)</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.²⁰</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>Indeterminate sentence (where the offender is already serving an existing indeterminate sentence)</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.²¹ 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.²² 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>Ordering a determinate sentence to run consecutively to an indeterminate sentence</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.²³ 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>Offender convicted of more than one offence where a fine is appropriate</p>	<p>The total is inevitably cumulative. The court should determine the fine for each individual offence based on the seriousness of the offence²⁴ 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.²⁵ 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"> • 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. • 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. <p>Where separate fines are passed, the court must be careful to ensure that there is no double-counting.²⁶</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>Multiple offences attracting fines –</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.²⁷ However, if the offences are non-</p>

crossing the community threshold	imprisonable (e.g. driving without insurance) the threshold cannot be crossed. ²⁸
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Fines in combination with other sentences

Circumstance	Approach
A fine may be imposed in addition to any other penalty for the same offence except:	<ul style="list-style-type: none"> • a hospital order;²⁹ • a discharge;³⁰ • a sentence fixed by law³¹ (minimum sentences, EPP, IPP); • a minimum term imposed under s 313 or s 314 of the Sentencing Code;³² • a life sentence imposed under section 274 or 285 Sentencing Code or a sentence of detention for life for an offender under 18 under section 258 Sentencing Code.³³
Fines and determinate custodial sentences	<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"> • the sentence is suspended; • a confiscation order is not contemplated; and • there is no obvious victim to whom compensation can be awarded; and • the offender has, or will have, resources from which a fine can be paid.

Community orders

Circumstance	Approach
Multiple offences attracting community orders – crossing the custody threshold	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. ³⁴ 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.
Multiple offences, where one offence would merit immediate custody and one offence would merit a community order	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.
Offender convicted of more than one offence where a	A community order is a composite package rather than an accumulation of sentences attached to individual counts. The

community order is appropriate	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.
Offender convicted of an offence while serving a community order	<p>The power to deal with the offender depends on his being convicted whilst the order is still in force;³⁵ 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>

Disqualifications from driving	
Circumstance	Approach
Offender convicted of two or more obligatory disqualification offences (s34(1) Road Traffic Offender Act 1988)	The court must impose an order of disqualification for each offence unless for special reasons it does not disqualify the offender. ³⁶ 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.
Offender convicted of two or more offences involving either:	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>1. discretionary disqualification and obligatory endorsement from driving, or</p> <p>2. obligatory disqualification but the court for special reasons does not disqualify the offender</p> <p>and the penalty points to be taken into account number 12 or more (ss28 and 35 Road Traffic Offender Act 1988)</p>	<p>imposed on him.³⁷ 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.³⁸</p>
<p>Other combinations involving more two or offences involving discretionary disqualification</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>Global compensation orders</p>	<p>The court should not fix a global compensation figure unless the offences were committed against the same victim.³⁹ Where there are competing claims for limited funds, the total compensation available should normally be apportioned on a pro rata basis.⁴⁰</p>
<p>The court may combine a compensation order with any other form of order.</p>	
<p>Compensation orders and fines</p>	<p>Priority is given to the imposition of a compensation order over a fine.⁴¹ 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>Compensation orders and confiscation orders</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.⁴²</p>
<p>Compensation orders and community orders</p>	<p>A compensation order can be combined with a community order.</p>
<p>Compensation orders and suspended sentence orders</p>	<p>A compensation order can be combined with a suspended sentence order.⁴³</p>
<p>Compensation orders and custody</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

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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 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.**
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.**

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.

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.

Consecutive custodial sentences: examples [dropdown]

Examples of consecutive custodial sentences 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

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
Offender serving a determinate sentence (Offence(s) committed before original sentence imposed)	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.
Offender serving a determinate sentence	Generally the sentence will be consecutive as it will have arisen out of an unrelated incident. The court must have regard to the totality

(Offence(s) committed after original sentence imposed)	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.
Offender serving a determinate sentence but released from custody	The new sentence should start on the day it is imposed: s225 Sentencing Code 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.
Offender sentenced to a determinate term and subject to an existing suspended sentence order	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 for public protection

Circumstance	Approach
Extended sentences – using multiple offences to calculate the requisite determinate term	In the case of extended sentences imposed under the Sentencing Code, providing there is at least one specified offence, the threshold requirement under s267 or s280 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>Imposing multiple indeterminate sentences on the same occasion and using multiple offences to calculate the minimum term for an indeterminate sentence</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 272-274 or sections 283 – 285 of the Sentencing Code apply then:</p> <ol style="list-style-type: none"> 1. first assess the notional determinate term for all offences (specified or otherwise), adjusting for totality in the usual way 2. ascertain whether any relevant sentence condition is met and 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.
<p>Indeterminate sentence (where the offender is already serving an existing determinate sentence)</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.</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>Indeterminate sentence (where the offender is already serving an existing indeterminate sentence)</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. 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. 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>

Ordering a determinate sentence to run consecutively to an indeterminate sentence	<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. 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>
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Specific applications – non-custodial sentences

Multiple fines for non-imprisonable offences [dropdown]

Multiple fines for non-imprisonable offences	
Circumstance	Approach
Offender convicted of more than one offence where a fine is appropriate	<p>The total is inevitably cumulative. The court should determine the fine for each individual offence based on the seriousness of the offence²⁴ 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. 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"> • 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. • 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.

	<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>
Multiple offences attracting fines – crossing the community threshold	<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. However, if the offences are non-imprisonable (e.g. driving without insurance) the threshold cannot be crossed.</p>

Fines in combination with other sentences [dropdown]

Fines in combination with other sentences

Circumstance	Approach
A fine may be imposed in addition to any other penalty for the same offence except:	<ul style="list-style-type: none"> • a hospital order • a discharge • a sentence fixed by law (minimum sentences, EPP, IPP murder) • a minimum term sentence imposed under section 311, 312, 313, 314, or 315 s 313 or s 314 of the Sentencing Code • a life sentence imposed under section 274 or 285 Sentencing Code or a sentence of detention for life for an offender under 18 under section 258 Sentencing Code • a life sentence imposed under section 273 or 283 Sentencing Code • a serious terrorism sentence under section 268B or 282B of the Sentencing Code
Fines and determinate custodial sentences	<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"> • the sentence is suspended • a confiscation order is not contemplated and • there is no obvious victim to whom compensation can be awarded and • the offender has, or will have, resources from which a fine can be paid

Community orders [dropdown]

Community orders

Circumstance	Approach
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Multiple offences attracting community orders – crossing the custody threshold	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. 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.
Multiple offences, where one offence would merit immediate custody and one offence would merit a community order	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.
Offender convicted of more than one offence where a community order is appropriate	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.
Offender convicted of an offence while serving a community order	<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.</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>

Disqualifications from driving [dropdown]

Disqualifications from driving	
Circumstance	Approach
Offender convicted of two or more obligatory disqualification offences (s34(1) Road Traffic Offender Act 1988)	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.
Offender convicted of two or more offences involving either: <ol style="list-style-type: none"> 1. discretionary disqualification and obligatory endorsement from driving, or 2. obligatory disqualification but the court for special reasons does not disqualify the offender and the penalty points to be taken into account number 12 or more (ss28 and 35 Road Traffic Offender Act 1988)	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 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.
Other combinations involving more two or offences involving discretionary disqualification	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.

Compensation orders [dropdown]

Compensation orders	
Circumstance	Approach
Global compensation orders	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.
The court may combine a compensation order with any other form of order.	
Compensation orders and fines	Priority is given to the imposition of a compensation order over a fine. 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.
Compensation orders and confiscation orders	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.
Compensation orders and community orders	A compensation order can be combined with a community order.
Compensation orders and suspended sentence orders	A compensation order can be combined with a suspended sentence order.
Compensation orders and custody	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.