

## 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

**The principle of totality applies when sentencing an offender for multiple offences or when sentencing an offender who is already serving an existing sentence.**

## General principles

When sentencing for more than one offence, the overriding principle of totality is that the overall sentence should:

- reflect all of the offending behaviour with reference to overall harm and culpability, together with the aggravating and mitigating factors relating to the offences and those personal to the offender; and
- be just and proportionate.

Sentences can be structured as **concurrent** (to be served at the same time) or **consecutive** (to be served one after the other). There is no inflexible rule as to how the sentence should be structured.

- If consecutive, it is usually impossible to arrive at a just and proportionate sentence simply by adding together notional single sentences. Ordinarily some downward adjustment is required.
- If concurrent, it will often be the case that the notional sentence on any single offence will not adequately reflect the overall offending. Ordinarily some upward adjustment is required **and may have the effect of going outside the category range appropriate for a single offence.**

## General approach (as applied to determinate custodial sentences)

1. **Consider the sentence for each individual offence, referring to the relevant sentencing guidelines.**
2. **Following the guidance provided below, determine whether the case calls for concurrent or consecutive sentences. When sentencing more than two 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.**

Concurrent sentences will ordinarily be appropriate where:

- a. offences arise out of the same incident or facts.

Examples include:

V

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

Examples include: V

**Where concurrent sentences are to be passed the lead sentence should reflect the overall criminality involved which may take the lead offence outside the category range appropriate for a single offence.**

Concurrent custodial sentence examples: V

#### Structuring concurrent sentences:

When sentencing for two or more offences of differing levels of seriousness the court can consider structuring the sentence using concurrent sentences, for example:

- 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)
- consider whether some of the offences are of lesser seriousness such that they can be ordered to run concurrently so that the sentence for the most serious offence(s) can be clearly identified.

Consecutive sentences will ordinarily be appropriate where:

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

Examples include: V

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

Examples include: V

- 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: V

- d. one or more offence(s) qualifies for a statutory minimum sentence and concurrent sentences would result in an overall sentence that undermines the statutory minimum sentence.

Examples include: V

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: V

**Where consecutive sentences are to be passed, add up the sentences for each offence and consider the extent of any downward adjustment required to ensure the aggregate length is just and proportionate.**

#### Structuring consecutive sentences:

When sentencing for similar offence types or offences of a similar level of severity the court can consider structuring the sentence using consecutive sentences, for example:

- consider whether all of the sentences can be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively
- consider 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

Sentencing for offences committed prior to other offences for which an offender has been sentenced	V
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### Specific applications – custodial sentences

Existing determinate sentence, where determinate sentence to be passed	V
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Extended sentences	V
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Indeterminate sentences	V
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### Specific applications – non-custodial sentences

Multiple fines for non-imprisonable offences	V
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Fines in combination with other sentences	V
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Community orders	V
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Disqualifications from driving	V
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Compensation orders	V
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