

## **Definitive stage resource assessment - Totality**

### **1. Introduction**

This document accompanies the consultation response document and revised definitive Totality guideline. It fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.

### **2. Rationale and objectives for the revised Totality guideline**

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.

The Council has a statutory duty to 'prepare sentencing guidelines about the application of any rule of law as to the totality of sentences' (Coroners and Justice Act 2009 s120(3)(b)). The previous version of the Totality guideline had been in force since 11 June 2012 and was used in all criminal courts. In September 2021 the Council published a research report ([Exploring sentencers' views of the Sentencing Council's Totality guideline](#)) on the Totality guideline which found that while the guideline was generally considered by sentencers to provide practical help in sentencing, there were areas that could be improved. The Council stated that in the light of the findings of the research it would review the guideline and consult on the proposed changes in 2022. The Council consulted on amending the Totality guideline to bring it up-to-date, provide further guidance and examples and improve clarity.

There were 26 responses to the consultation, most of which were broadly supportive of the proposed changes while providing helpful suggestions for changes. The Council adopted some of these suggestions to ensure that the information is clear, that the guideline flows logically and to simplify the language.

### **3. Scope**

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guidelines on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

### **4. Data**

The Totality guideline is relevant to any sentencing exercise where an offender is being sentenced for more than one offence or where the offender is already serving a sentence. However, we are unable to provide a reliable estimate of how many cases this relates to. The Ministry of Justice does not publish figures on multiple offences and the Sentencing Council does not currently have access to extensive information on secondary or non-principal

offences nor the sentences imposed for them. The Council would like to explore this area in the future but to do so would be resource intensive and the Council has therefore decided to prioritise other areas of work in the short and medium term. Once we have a clearer idea of the data that may be available from the Common Platform, the Council will reconsider this. For the purposes of this resource assessment, this means that we are reliant on evidence from small, non-representative samples, which indicate that the Totality guideline is relevant to a substantial proportion of cases sentenced.

## **5. Resource impact**

The aims of revising the guideline are set out in section 2, above. These aims do not include any intention to affect the average severity of sentencing. Consultation respondents agreed that the changes were unlikely to change sentence levels overall. As such, it is expected that average custodial sentence lengths, and the proportion of offenders receiving the various disposal types, will not change.

The estimate is therefore that the proposed revised Totality guideline will have no resource impact on prison, probation or youth justice services.

## **6. Risks**

As noted above, while we have no reliable figures, it is apparent that the Totality guideline will apply to a substantial proportion of the over 1 million offenders sentenced a year on average over the last 5 years (Table Q1.1, Criminal Justice Statistics quarterly ending March 2022

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1098772/overview-tables-March-2022.xlsx](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1098772/overview-tables-March-2022.xlsx)).

As set out in section 5 above, there is no intention to change sentencing practice. Furthermore, the Totality guideline has no direct effect on individual sentences imposed in individual cases. However, since the guideline applies to a large number of cases, if any changes do occur, they have the potential to have a substantial resource effect.

It is not possible to anticipate fully how sentencing behaviour would change as a result of the revised guideline, and hence there is uncertainty surrounding the estimate that the guideline will have no resource impact. Any change to the guidance given to courts may have unintended consequences, and could cause shifts in the average severity of sentencing, with associated resource effects.