

Revisions to the Totality guideline

Response to consultation

June 2023

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Foreword



The Totality guideline was one of the first guidelines produced by the Sentencing Council and has been in force since 2012. The Council receives, and indeed actively invites, feedback on its guidelines and we conducted some research in 2021 with sentencers on the Totality guideline. That led to the decision to revise the guideline and to consult on those proposed revisions.

We have been greatly assisted by those sentencers who took part in the research and by the responses to the consultation, including some very detailed and thoughtful responses. The Sentencing Academy held a consultation event at which academics and some practitioners discussed the proposals and the Justice Committee held an oral evidence session where they heard from Professor Andrew Ashworth, Professor Mandeep Dhami and Dr Rory Kelly which helped to inform their response.

On behalf of the Sentencing Council I would like to thank all those who took part in this consultation. The responses have led us to make changes to the proposals, the full details of which are set out in this document.

Lord Justice William Davis
Chairman, Sentencing Council

Introduction

Background

The Sentencing Council has a statutory duty (Coroners and Justice Act 2009 s.120(3)(b)) to 'prepare sentencing guidelines about the application of any rule of law as to the totality of sentences.' The Totality guideline came into force on 11 June 2012 and has been used in all criminal courts.

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.

In September 2021 the Council published a research report on the Totality guideline: [Exploring sentencers' views of the Sentencing Council's Totality guideline](#). 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 scope of the revisions

The evidence from the research was that sentencers generally found the guideline to be useful and clear and a practical help in sentencing. The Council therefore concluded that the revisions should focus on updating the guideline without changing the essentials of the content.

The revisions we consulted on concentrated on ensuring that the content was up-to-date and arranged in a way that was clear and easy to access for sentencers and other guideline users. The proposed structure took advantage of the digitisation of guidelines by placing the examples within the guideline in dropdown boxes making the guideline easier to navigate without losing any of the detail.

The consultation ran from 5 October 2022 to 11 January 2023. The consultation paper and more information about the consultation process can be found on our website:

<https://www.sentencingcouncil.org.uk/publications/item/totally-consultation-2022/>

Summary of responses

There were 26 responses to the consultation. Some of the responses were from groups or organisations, and some from individuals.

Breakdown of respondents

| Type of respondent | Number of responses |
|-------------------------------|---------------------|
| Academics | 3 |
| Charity | 1 |
| Government | 3 |
| Judges | 5 |
| Legal professionals | 2 |
| Magistrates | 9 |
| Member of the public/ unknown | 1 |
| Prosecutors | 2 |

Details of the responses to each issue are set out below.

General principles

The Council consulted on making the following changes to the opening section (proposed deletions are shown struck through and proposed additions are shown in red):

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 offences 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 ~~components~~. The overriding principle is that the overall sentence must be just and proportionate.

Professor Mandeep Dhimi stated that “just and proportionate” ought to be clearly defined at the outset, and felt that it was unclear how sentencers will calculate “overall” harm and culpability. She also said:

[B]y saying “There is no inflexible rule governing whether sentences should be structured as concurrent or consecutive”, and then later in the guidelines providing examples of when sentences should be concurrent or consecutive, the Council is undermining the latter guidance and presenting a mixed (confusing) message.

The Council disagreed with this assertion and felt there was no contradiction in saying that there is no inflexible rule and then giving examples of how in different circumstances the court should approach the issue. Further, the Council considered that defining ‘just and proportionate’ at the outset was not a practicable suggestion. The point about it not being clear about how sentencers will calculate overall harm and culpability was not repeated by any other respondents. Indeed, Dr Rory Kelly, drawing on his article ‘Totality: principle and practice’ [2022] (7) CLR 562-580 welcomed this addition:

The Council proposes adding reference to harm and culpability in the General Principles section of the Totality Guideline. This is an important and positive step. Consideration of harm and culpability may help the sentencing judge to frame the overall seriousness of a series of offences, and to avoid the risk of double counting where the offences have overlapping harm and/or culpability factors.

The West London Magistrates' Bench was among those who approved of the reference to harm and culpability, stating: "The addition of text that mentions overall harm and culpability is a good idea, as that is where sentencing should start in categorising the seriousness of an offence".

In contrast, the Justices' Legal Advisers and Court Officers' Service (JCS) said:

The deletion of the words "as a whole" renders section two redundant. It is a statutory principle of all sentencing that sentences refer to harm, culpability, aggravating and mitigating circumstances, doesn't need repeating here, and now adds nothing. The essential point of section two was that the TOTAL sentence should reflect those factors. If section two doesn't say that, there is no point in it being there. We recommend that "as a whole" is restored.

Professor Dhami referred to a study she had published (Dhami, 2021) using data from the Council's Crown Court Sentencing Survey in which she showed that for a majority of offence types the penalties imposed in multiple offence cases were the same or less severe than those imposed in single offence cases. She suggested that one explanation for this could be that personal mitigation is considered twice in multiple offence cases. Secondly she suggested that the amount of downwards adjustment for consecutive sentences may be too great and/or the amount of upwards adjustment for concurrent sentences too little or that the two adjustments cancel each other out. From this she concluded that the Totality guideline ought to include clear guidance on how much downward adjustment should be made for consecutive sentences, and how much upward adjustment should be made for concurrent sentences.

The Council considered these points carefully. The Council noted that the study draws conclusions from a comparison of sentences passed for a single offence and the lead offence where there were multiple offences without identifying whether the other offences were sentenced consecutively or concurrently, because this information was not available in the data. The Council's view is that without that information it is not possible to draw conclusions about sentencing severity. The issue of providing clear guidance on the amount of adjustment is discussed further below, but the Council rejected the idea that the guideline should be prescriptive in that regard. The suggestion that personal mitigation may be considered twice appears to be based on the misconception that the guideline as originally worded required consideration only of mitigating factors when it referred to 'factors personal to the offender'. In order to ensure that sentencers would not make that error this was changed in the consultation version to 'aggravating and mitigating factors personal to the offender'.

Among those who were supportive of the General principles section there were suggestions for changes. The Crown Prosecution Service (CPS) said:

Some of the current phrasing may be a little difficult to follow ... we wonder whether the principles might address, first, the lack of an inflexible rule and, secondly, the mirror principles of consecutive and then concurrent sentences and what, in outline, totality means in respect of each in terms of downward/upward adjustment.

We offer the following suggested wording for the Sentencing Council's consideration:

General principles

When sentencing for more than a single offence, the overall sentence must be just and proportionate. There is no inflexible rule governing whether sentences should be structured as concurrent or consecutive.

1. If consecutive, it is usually impossible to arrive at a just and proportionate sentence for more than a single offence simply by adding together notional single sentences. Ordinarily some downward adjustment is required.
2. If concurrent, it will often be the case that the notional sentence on any single offence will not adequately reflect the commission of more than a single offence. Ordinarily some upward adjustment is required.

HM Council of District Judges (Magistrates' Courts) suggested rewording:

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:

It is necessary to address 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.

The Attorney General's Office (AGO) observed "that judges at the Crown Court are routinely passing concurrent sentences when consecutive sentences would have been more appropriate". They suggested adding the words in red:

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, **taking into account the aggregate effect of all offending. A sentence that is just and proportionate would generally reflect whether the multiple offending had arisen out of the same facts and incidents, or not.**

The Sentencing Academy suggested the following alterations:

(1) The final sentence in the first element would seem better placed in the section 'Concurrent / Consecutive Sentences'. The general principle here is simply that the sentence imposed is just and proportionate with regards to all the offending behaviour.

(2) The second principle builds on this by stating that a sentence should consider 'overall harm and culpability' in determining a proportionate sentence (as well as aggravating and mitigating factors if relevant). It would be worth stating that harm includes intended harm or harm that might foreseeably have been caused (s.63 Sentencing Act 2020).

The Academy went on to say, "sentencing guidelines have multiple audiences and we can see value in providing an example of both concurrent and consecutive sentencing in this section. This would reiterate the fact that concurrent sentences would usually be longer than a sentence for a single offence".

A circuit judge agreed with the proposed wording but suggested a stylistic changes:

When sentencing for more than a single offence, sentences can be structured as concurrent or consecutive. There is no inflexible rule as to this.

However such a sentence is structured, the court must apply the principle of totality.

The overriding principle is that the **overall** sentence must be just and proportionate.

Accordingly, all courts must pass a sentence which:

- Reflects **all** the offending behaviour before it; AND
- Is just and proportionate.

When considering what is just and proportionate, note:

- Concurrent sentences will ordinarily be longer than a single sentence for a single offence.
- Consecutive sentences will rarely involve simply adding together notional single sentences. Address the offending behaviour with reference to overall harm and culpability, together with the aggravating and mitigating factors personal to the offender.

The Council reflected on these responses and considered that it would be helpful for the guideline to spell out more explicitly that where consecutive sentences are passed some or all of them will usually need to be reduced to achieve a proportionate overall sentence and where concurrent sentences are passed the lead sentence will usually need to be increased to achieve a proportionate overall sentence.

The Council also noted an issue that was not raised by any respondents – which is that the General principles section referred only to sentencing for more than one offence, it made no mention of the other situation to which the guidelines applies, namely when sentencing an offender who is already subject to a sentence.

Building on the suggestions in responses to the consultation while maintaining the reference to harm and culpability the Council decided to reword this section as follows:

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.

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- 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

The Council consulted on making the following changes to the General approach section (proposed deletions are shown struck through and proposed additions are shown in red):

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(s) against the requirement that ~~they be~~ **the total sentence is** just and proportionate to the offending as a whole.
4. Consider ~~whether~~ **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 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 the mandatory minimum sentence for the firearms offence.

However, it is **not** permissible to impose consecutive sentences for offences committed ~~at the same time~~ **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.

The Council then proposed a separate section 'Reaching a just and proportionate sentence'. Much of the content was previously part of the General approach section. The Council considered that the information in this section was key and giving it a separate section would give it more prominence.

Reaching a just and proportionate sentence

There are a number of ways in which the court can achieve a just and proportionate sentence. Examples include:

- when sentencing for similar offence types or offences of a similar level of severity the court can consider:
 - whether all of the 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 ~~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 such that they can be ordered to run concurrently so that the sentence for the most serious offence(s) can be clearly identified.

We received very detailed and helpful responses to these sections, with many cross-cutting points being made. A consideration of the responses is set out under two sub-headings below, the first relating to the overall structure of these sections and the second relating to the examples given.

The overall structure

The AGO suggested some additions to the four steps in part to address their experience that judges often categorise correctly and adopt an appropriate starting point for a lead offence but fail to make an uplift for totality (additions in red):

1. Consider the sentence for each individual offence, referring to the relevant sentencing guidelines.
2. Determine, **following the guidance provided below**, whether the case calls for concurrent or consecutive sentences. When sentencing **for 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, **aggravating the lead offence where appropriate**.
4. Consider and explain how the sentence is structured in a way that will be best understood.

Dr Kelly suggested adding a reference to harm and culpability to step 3 to link the General principles section to the General approach section suggesting:

3. Test the overall sentence(s) against the requirement that the total sentence is just and proportionate to the offending as a whole noting that that the relevant offences may have distinct or overlapping harm and culpability factors.

He went on to explain:

The sentencing judge considers the relevant offence specific guidelines independently at part one of the General Approach. At part three they then have an important and complex task in bringing together this information to arrive at a just and proportionate overall sentence. At part one the sentencing judge may rely on the same factor more than once when reaching initial sentences for each individual offence. Take an attack on V where V is badly beaten, and their watch is broken. When sentencing the criminal damage, the judge may, for example, have considered the intention to create a high risk of injury, which would also affect the sentencing of a s. 20 offence. An explicit reminder that harm and culpability factors may overlap at part 3 then would give the judge a test by which to assess overall proportionality in difficult cases as opposed to this being instinct lead.

Professor Dhami stated:

... in point 3, it is unclear what the Council means by “Test the overall sentence against the requirement that the total sentence is just and proportionate to the offending as a whole.” Specifically, what is the so-called “test”? It appears that the Council is simply asking sentencers to use their own judgment to test if their own judgment meets the requirement. This is an inadequate test. The Council ought to provide a clear and objective test that all sentencers can apply and which can be used by others when reviewing the sentences meted out in multiple-offence cases.

This reflects her point made earlier that ‘just and proportionate’ should be defined. The difficulty that the Council identified with this suggestion that is not possible to define an overarching objective test that could be applied in practice in the wide range of situations covered by the guideline (see also the discussion on the ‘reaching a just and proportionate sentence’ section below).

Professor Dhimi welcomed the reference to explaining how the sentence is structured and suggested that the Council should “monitor the extent to which the explanations given are useful”. She went on to say that “the Council ought to consider the extent to which reminding sentencers of their obligation to provide reasons for their decision might alter the decision/judgment process they apply in cases, and consequently the decision (outcome) itself.”

The Council noted that this level of monitoring cannot be done with the data available. As we set out in the resource assessment published with the consultation, the Ministry of Justice does not publish figures on multiple offences and the Council does not currently have access to extensive information on secondary or non-principal offences nor the sentences imposed for them.

Dr Kelly also welcomed the addition of a reference to explaining the sentence in step 4 and the JCS suggested that it would be clearer to have this as a distinct step:

4. Check that the sentence is structured in a way that will be best understood by all concerned with it.
5. Consider how to explain the sentence clearly.

The CPS welcomed the emphasis on explaining how the sentence is structured and suggested taking it slightly further to promote greater clarity and transparency, particularly in complicated sentencing exercises, saying:

- Where consecutive sentences are imposed, is it good practice to identify and explain in open court what the notional sentence on each count is, and then indicate where any downward adjustment has been made and to what extent, so that the application of totality is clear?
- Where concurrent sentences are imposed, is it good practice to identify and explain in open court what sentence would have been imposed for a notional single offence, and what upward adjustment and to what extent has been made to reflect the commission of more than a single offence?

The Justice Committee agreed with the CPS and welcomed the Council’s decision to make explicit reference to the need for the sentencer to explain how the sentence is structured in a way that will be best understood by all concerned. They recommended that:

the Council considers going further and includes within the guideline specific reference to the elements that the sentencer should explain when applying the totality guideline, or the principles of totality more generally. We would recommend that there is a stand-alone principle in the general approach section on how to explain the application of totality to the sentence, as was recommended by the Justices' Legal Advisers and Court Officers' Service. We also support the Ministry of Justice’s suggestion of an inclusion of a further explanation box to assist sentencers with explaining how sentences are constructed in the context of totality. The principle and the box should set out what the explanation of the application of totality to the sentence should cover. Giving evidence to the Committee, Professor Andrew Ashworth, said that the Council’s guidance on the explanation of the application of the principles should also ask the sentencer to explain how the sentence is calculated. The Office of the Attorney General also recommended included a reminder that “greater clarity may be achieved by explaining the effect of totality on the notional sentence”.

The instruction in the draft guideline is to: ‘Consider and explain how the sentence is structured in a way that will be best understood by all concerned’. The Council considered that while in many cases this would involve stating the notional sentence for each offence, in others that would be an artificial and over-complicated process. The suggestion in the Ministry of Justice’s response to the consultation was to add some wording to the totality step in offence specific guidelines to remind sentencers to explain how they have arrived at the overall sentence. The Council considered this suggestion noting that there is already a step in all sentencing guidelines requiring sentencers to give reasons for their sentence. The Council recognised the importance of sentences being explained in a way that would be understood by victims, but considered that any more detailed guidance on this was more of an issue for judicial training than for sentencing guidelines.

Regarding the wording:

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.

HM Council of District Judges (Magistrates’ Courts) suggested rewording the second sentence to read: “the sentence should appropriately reflect the aggravating feature of the presence of the associated offences”.

The CPS suggested making the need to uplift the sentence clearer, suggesting:

Where concurrent sentences are to be passed the sentence should reflect the overall criminality involved. Consideration should be given to what increase in sentence is appropriate to reflect the commission of more than a single offence. The increase may be none, minimal or significant, depending on what is required in each individual case to reflect properly the commission of more than a single offence. In some cases a significant uplift is required to reflect properly the offending in its totality.

The CPS questioned the helpfulness of adding: “When sentencing three or more offences a combination of concurrent and consecutive sentences may be appropriate”. Their concern being that “it may give the impression that it is more likely to be appropriate to use a combination”. The Sentencing Academy, by contrast, welcomed this addition noting that it will be particularly important where this applies that the sentence is explained “as it may not be apparent to defendants, victims and the public why offences are being treated in different ways”.

In relation to:

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

The CPS suggested it would be more consistent with the general principles section to say: “add up the sentences for each offence and consider the extent of any downward adjustment required to ensure the aggregate length, looked at in totality, is just and proportionate”.

The AGO suggested rewording point d. under consecutive sentences to read:

- 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.

The Justice Committee commented on the inclusion of a separate Reaching a just and proportionate sentence section in the draft guideline, stating:

We support the aim of seeking to make the guidance on reaching a just and proportionate sentence more prominent within the guidelines. However, the Council should consider whether this point might be more prominent if it was integrated within each section, as the “golden thread” that runs throughout the guideline, rather than as a standalone section.

The Sentencing Academy said:

The Academy understands why the revised guideline has a bespoke section to emphasise the central aim of achieving a just and proportionate sentence. Inevitably though there are questions of placement and potential overlap (much of the previous section relates to reaching a just and proportionate sentence in that it considered issues relating to culpability and harm).

The consultation paper is focussed on design and on improving the guideline’s practical usefulness. This is indeed an important objective, but a prior question is on what basis the court should decide whether a particular sentence for a multiple offender is ‘just and proportionate’. The question ‘proportionate to what?’ is usually answered by saying ‘proportionate to the total offending for which the court is passing sentence’. But as soon as the curtain is drawn back, the complexities are revealed.

...[examples are given from the fines section of the guideline]

All of this is to be seen in the context of general principle (2) stated at the beginning of the Consultation Paper:

It is usually impossible to arrive at a just and proportionate sentence for multiple offences simply by adding together notional single sentences. It is necessary to address the offending behaviour with reference to the overall harm and culpability together with the aggravating and mitigating factors personal to the offender.

This general principle is important, but yet again it does not spell out exactly what factors go to make up ‘proportionality’ in this context. The various offence guidelines created by the Sentencing Council indicate what proportionality means for a single offence, and for comparisons between single offences. But nowhere, in the Council’s documents or the Court of Appeal’s judgments, is there any guidance on what a court should do, once it departs from the simple cumulation of sentences. General principle (2) states bluntly that ‘it is usually impossible to arrive at a just and proportionate sentence ... by adding together notional single sentences.’ But what criteria should guide the court? Often the format will be to identify the most serious offence and then to make some modest increase in the sentence to reflect the other offences. The choice of concurrent or consecutive sentences is largely presentational. But how is the size of the increase to be calculated? Reference to ‘overall harm and culpability’ and to ‘aggravating and mitigating factors’ is all very well, but offers no specific guidance to the sentencer.

The proposed text starts by presenting alternatives for situations where (a) the offences are of a similar type or severity (b) the offences are of a differing level of seriousness. This could come earlier in the guideline – perhaps even in the general principles – as it presents the options available. Guidance on the operation of these principles is largely found in the preceding section. Questions can arise about whether offences are of a similar type (e.g. in the context of property offences) or severity, but, particularly with regards to the latter, sentencers will follow offence-specific guidance which typically detail factors which are to be taken into account in assessing offence-severity.

Dr Kelly made a similar comment:

The relationship of this new section to the General Approach section could be made clearer. Part three of the General Approach requires the judge to “Test the overall sentence(s) against the requirement that the total sentence is just and proportionate to the offending as a whole.” The new section has been taken out of the General Approach section because it is “key and by giving it a separate section it will give it more prominence”. A risk may be that it is overlooked if the judge focuses on the earlier requirement in the General Approach. It may then be safer to re-join this section with the previous one, or at least to include a cross-reference.

The new section provides numerous ways for a court to reach a proportionate sentence to include proportionate reductions across similar offences and imposing no further penalty for very low serious offences. The Council though could do more to explain how a judge is to know whether the overarching sentence is proportionate. If the section is to be retained, the following text may usefully be added between the section heading and the current first sentence:

“The judge should assess whether the overall sentence is just and proportionate with reference to the overall seriousness of the offences committed. Overall seriousness may be assessed through reference to the offender’s culpability in committing the offences and any harm the offences caused, were intended to cause, or might foreseeably have caused.”

The AGO welcomed this section but suggested elaborating further, to remind judges that reaching a just and proportionate sentence can include upward as well as downward adjustments. They considered that there is a greater emphasis on the reduction of an overall sentence to reflect totality than on the need to accurately reflect the level of criminality. They referred to examples where the sentence on a lead offence was not aggravated sufficiently to reflect the overall criminality of the multiple offending or the severity of the other offences. They suggested adding a requirement for judges to detail how the sentence has been aggravated for totality, to ensure that it is a just and proportionate sentence and proposed changing the opening paragraph to read:

There are a number of ways in which the court can achieve a just and proportionate sentence. Greater clarity may be achieved by explaining the effect of totality on the notional sentence(s).

Conversely, a magistrate commented that it would not be helpful to have to announce in court what each element of the sentence should be.

The Magistrates’ Association (MA) agreed with the content of this section but suggested it should come before the General approach section.

A circuit judge commented:

I like the principle. The matter that concerns the Judiciary is how much extra to sentence a Defendant to in cases where there are multiple victims, for example Death by Dangerous Driving, or multiple offences against the same victim, for example domestic context rapes. It would be helpful to have a guide as to how much extra for 2 rapes, 3 rapes etc.

The JCS disagreed with the changes to the wording in the existing guideline:

- whether some offences are of such low seriousness in the context of more serious offences that they can be recorded as 'no separate penalty'

Arguing:

For example it is common for offenders to commit a number of road traffic offences, which are of only slightly differing seriousness, e.g. defective tyre, no insurance, no MOT certificate. Under the old guideline one offence (probably the defective tyre or no insurance) would bear the fine and the rest No Separate Penalty. But since none of these offences are of VERY low seriousness, it would imply that in future each should bear a fine, which would not have been the case before. We also think that the removal of the words "relative to each other" has the same tendency. It means that the only offences which would receive a No Separate Penalty would be offences which are in absolute terms of very low seriousness. But for example, while careless driving may seem relatively minor when committed in conjunction with a GBH assault, and might justify NSP, it would not when committed in conjunction with a defective windscreen wiper. We think the old wording should be restored.

RoadPeace also had concerns about this wording:

We would prefer to see clarity on "technical breaches" and what exactly is considered to be a "minor" driving offence when sentencing. RoadPeace's opinion is that the judicial system is too accepting of unacceptable driver behaviour and that sentencing should always reflect a zero tolerance of offences that challenge Road Danger Reduction (safety) or working towards Vision Zero.

The Council found these responses to be extremely helpful and reflected that (leaving aside issues of drafting) it raised two points for consideration: firstly what is the relationship between this section and the references to reaching a just and proportionate sentence earlier in the guideline, and secondly, could or should the guideline give a more precise indication of how to identify if a sentence is 'just and proportionate'?

As to the first point, the Council felt that respondents were right to point out that there is a degree of overlap between the different sections and there is no clear logic as to what information is in each section. The reason 'Reaching a just and proportionate sentence' was given its own section in the version consulted on was that in the existing guideline it appears to be included in the consecutive sentences part and it does not really fit there.

The Council concluded that it would be preferable to restructure the information to place the first two examples (which relate to consecutive sentences) at the end of the consecutive sentences part of the 'General approach' section and the second two examples (which relate to concurrent sentences) at the end of the concurrent sentences

part of that section under the subheadings 'Structuring concurrent sentences' and 'Structuring consecutive sentences'.

As to giving a more precise indication of how to reach a just and proportionate sentence, the Council recognised that it is certainly arguable that the more room the guideline leaves for sentencer discretion the more chance there is of uncertainty of outcome, but if more certainty is desirable, it is by no means clear how to achieve this. There can be no precise mathematical formula and even employing a more informal rule would be problematic. For example, the number of charges that an offender faces for a course of conduct could vary depending on prosecutorial decisions. The Council concluded that the number of permutations of related and unrelated matters of varying seriousness that a particular sentencing exercise can involve are too great to devise an objective test for what is 'just and proportionate'.

The examples

The Justice Committee noted that others had drawn attention to the application of the totality principles to cases involving multiple offences against the same victim in the concurrent sentences examples in the General approach section:

- 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

Dr Kelly queried why the fact that it was the same victim was relevant, stating: "This may risk creating the misimpression that there is a discount for targeting one person." He suggested removing the words 'especially when committed against the same person' and suggested that the first example could be changed to read 'repetitive small thefts from an employer'.

Several respondents were concerned that while the examples relate to theft and fraud offences, this approach could be applied to sexual offences and domestic abuse cases and result in sentences that fail to take account of the overall offending. The AGO in its response provided some examples of sentences increased on referral to the Court of Appeal, suggesting that courts have fallen into error in this regard.

The guideline includes the following under the consecutive sentences examples:

- 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

The AGO and CPS both suggested that the guideline should include examples of how concurrent sentences can be applied to sexual offending. The AGO suggested adding a fourth bullet to the dropdown list 'Concurrent custodial sentences: examples':

- Repeated sexual offences against the same victim. The sentences can be passed concurrently, but the lead offence should be aggravated to take into account the overall criminality carried out

In the consecutive sentences example the Council noted that it should refer to ‘domestic abuse’ rather than ‘domestic violence’.

The CPS made the additional point of the importance of a clear explanation of the sentences for the benefit of victims:

In particular with serious sexual offending where a maximum life sentence is available, in our experience consecutive sentences are not always necessary to achieve a just and proportionate sentence. A lead offence or offences of rape, for instance, can be appropriately adjusted upwards with all sentences running concurrently to reach an appropriate sentence. This further emphasises the importance of a clear explanation to ensure that victims understand how the sentence has been reached.

The Council considered that it was important that the guideline needs to make clear that however sentences are constructed, the final sentence needs to reflect the overall offending and that this should be explained to offenders and victims.

A magistrate asked for more examples that relate to the offences sentenced in magistrates’ courts. The Council noted that the examples can never cover all eventualities and that it is important that sentencers focus on the principles rather than look for an example to match the case before them.

The CPS commented on the examples given under concurrent sentences ‘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

In relation to the second bullet they suggest it might be clearer to express this as:

- robbery with a weapon where the use of a weapon has been taken into account in categorising the robbery

In relation to the third bullet they suggest that this could be clearer if it also referred to the possession/making an article used in that fraud. The Council agreed with both these suggestions.

In relation to the fourth bullet they state:

This might imply, by “transaction”, an actual single physical occasion of supplying a drug. We would also suggest that this principle could equally apply when sentencing for more than one conspiracy charge which cover the same offending

period but relate to different types of drugs of the same class. There would also be no issue, from our perspective, with concurrent sentences for drugs of different classes, provided the more serious offence was taken as the lead offence.

The Council considered that the list of examples is clearly non-exhaustive and it was not necessary to expand on this example.

The West London Bench suggested that it would be clearer if, under the examples for consecutive sentences option 'a offences arise out of unrelated facts or incidents', each example listed comprised of at least two offences. They suggested that the third and fourth bullet points could be reworded as:

- where one of the offences is a Bail Act offence
- where one of the offences is committed within a prison context

The Council thought that these were helpful suggestions and looked again at these points.

HM Council of District Judges (Magistrates' Courts) felt that it was confusing in the General approach section to list examples of when consecutive sentences should be used and then to state what the sentencer should not do:

However, it is **not** permissible to impose consecutive sentences for offences committed **in a single incident** in order to evade the statutory maximum penalty.

They thought it was not clear what the sentencer might do wrong from the examples given. No other respondent expressed a concern with these examples.

Taking account of all of these points the Council decided to reword the section as follows:

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.**

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 has been taken into account in categorising the robbery
- fraud and associated forgery or possessing or making an article used in fraud

- 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 an employer
- repetitive benefit frauds of the same kind, committed in each payment period

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

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 offence to run concurrently to avoid the appearance of under-sentencing in respect of the robbery

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). See also the 'Multiple fines' guidance below
- 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 offences can be clearly identified

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
- where one of the offences is a Bail Act offence
- offences committed within a prison context should be ordered to run consecutively to any sentence currently being served

b. offences committed in the same incident are distinct, involving 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 an 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 are committed against different people, such as repeated thefts involving attacks on several different shop assistants
- where offences of domestic abuse 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 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 exceed 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 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

This dropdown section was new in the draft guideline:

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 earlier 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 earlier 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 earlier sentence had been imposed
- (b) the similarity of the offences sentenced earlier to the instant offences
- (c) whether the offences sentenced earlier and instant offences overlapped in time
- (d) whether on a previous occasion the offender could have "cleaned the slate" by bringing the instant offences to the police's attention
- (e) whether taking the earlier 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 earlier 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 offence(s) sentenced earlier, 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 offence(s) sentenced earlier, 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 offence(s) sentenced earlier see also the relevant guidance in the section below 'Existing determinate sentence, where determinate sentence to be passed'.

HM Council of District Judges (Magistrates' Courts) wondered whether point 3 should make more explicit reference to the restriction on ordering a consecutive sentence where an offender who is still subject to a previous sentence has been released rather than cross-referencing to the information below. A magistrate asked if a link could be provided to the relevant information.

The West London Magistrates' Bench welcomed this content and had some suggestions for clarifying the language, a view echoed by other magistrates. Professor Dhimi also thought that some of the language could be simplified and suggested it would be helpful for the non-exhaustive list of circumstances to be divided into those that would increase the sentence and those that would decrease it. The Sentencing Academy made a similar point:

Surely it would be more helpful if each circumstance was worded clearly as a plus or minus factor; thus, (a) if the earlier sentence was imposed recently, that would tend to be more serious than if it was long ago; (b) if the previous offending was of a similar nature, that would tend to be more serious than if it was dissimilar. The present non-exhaustive list hints at this, but holds back from utter clarity.

The Council considered this but concluded that it would not be possible to divide the list of circumstances into those that increase and those that decrease the sentence, because some are not clear cut. For example: '(a) how recently the earlier sentence had been imposed' – if the earlier sentence had been imposed only a very short time ago that might indicate that the offences should have all been dealt with together and therefore the offender should have the benefit of treating them all as one sentencing exercise. On the other hand, if the earlier sentence had been imposed and served many years ago and the offender had lived a blameless life since, that too might indicate that the sentence for the instant offence should be adjusted downwards.

A magistrate was confused by the 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.' The West London Magistrates' Bench suggested it could be re-worded as:

g) whether, if the earlier and instant sentences had been passed together as consecutive sentences, it would not have been appropriate to pass a simple cumulative consecutive sentence without taking account of the totality principle.

Taking account of the various responses, the section has been reworded as follows:

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 earlier 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 earlier 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 able to sentence all the offences and then deducting the earlier sentence from that figure.

A non-exhaustive list of circumstances could include:

- a. how recently the earlier sentence had been imposed, taking account of the reason for the gap and the offender's conduct in the interim
- b. the similarity of the offences sentenced earlier to the instant offences
- c. whether the offences sentenced earlier and instant offences overlapped in time
- d. whether on a previous occasion the offender could have 'cleaned the slate' by bringing the instant offences to the police's attention
- e. whether taking the earlier 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. whether the instant offence qualifies for a mandatory minimum sentence
- g. the offender's age and health, and whether their health had significantly deteriorated
- h. whether, if the earlier and instant sentences had been passed together as consecutive sentences, the overall sentence would have required downward adjustment to achieve a just and proportionate sentence.

If the offender is still subject to the previous sentence:

1. Where the offender is currently serving a custodial sentence for the offences sentenced earlier, 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 offences sentenced earlier, 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 offences sentenced earlier, a custodial sentence for the instant offences cannot run consecutively to that earlier sentence, including where the offender has been recalled to custody – see the relevant guidance in the section below 'Existing determinate sentence, where determinate sentence to be passed'.

Specific applications – custodial sentences

The Council consulted on making some textual changes to this section – proposed additions to the text are shown in red and deletions are struck through.

| Existing determinate sentence, where determinate sentence to be passed [dropdown] | |
|---|--|
| Existing determinate sentence, where determinate sentence to be passed | |
| Circumstance | Approach |
| <p>Offender serving a determinate sentence (<i>Instant offence(s) committed after original sentence imposed offence(s) sentenced earlier</i>)</p> | <p>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 custody, any reduction for totality is likely to be minimal.</p> |
| <p>Offender serving a determinate sentence but released from custody Offender subject to licence, post sentence supervision or recall</p> | <p>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. <i>If the new offence was committed while subject to licence or post sentence supervision</i>, the sentence for the new offence will should take <i>that</i> into account <i>as an</i> the aggravating feature that it was committed on licence. However, the sentence must be commensurate with the new offence and cannot be artificially inflated with a view to ensuring that the offender serves a period in custody additional to <i>any</i> 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.</p> |
| <p>Offender sentenced to a determinate sentence subject to an existing suspended sentence order</p> | <p>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.</p> |

Extended sentences

[dropdown]

| Extended sentences | |
|---|---|
| Circumstance | Approach |
| Extended sentences – using multiple offences to calculate the requisite determinate term | <p>In the case of extended sentences, 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.</p> |

Indeterminate sentences

[dropdown]

| Indeterminate sentences | |
|---|--|
| Circumstance | Approach |
| Imposing multiple indeterminate sentences on the same occasion and using multiple offences to calculate the minimum term for an indeterminate sentence | <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. |
| Indeterminate sentence (where the offender is already | It is generally undesirable to order an indeterminate sentence to be served consecutively to any other |

| | |
|---|---|
| <p>serving an existing determinate sentence)</p> | <p>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 taking account of the relevant early release provisions for the 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 (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 (<u>section 384 of the Sentencing Code</u>). 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 (<u>Section 28(1B) of the Crime (Sentences) Act 1997</u>). 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 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</p> |

can reduce the length of the determinate sentence, or alternatively, can order the second sentence to be served concurrently.

There were no substantive suggestions for changes to this section but some respondents pointed out inconsistencies in how legislation was referenced.

The final version of this section is:

| 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 (instant offences committed after offences sentenced earlier) | 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 custody, any reduction for totality is likely to be minimal. |
| Offender subject to licence, post sentence supervision or recall | The new sentence should start on the day it is imposed: section 225 of the Sentencing Code prohibits a sentence of imprisonment running consecutively to a sentence from which a prisoner has been released. If the new offence was committed while subject to licence or post sentence supervision, the sentence for the new offence should take that into account as an aggravating feature. However, the sentence must be commensurate with the new offence and cannot be artificially inflated with a view to ensuring that the offender serves a period in custody additional to any 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 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 | |
|---|---|
| Circumstance | Approach |
| Extended sentences – using multiple offences to calculate the requisite determinate term | <p>In the case of extended sentences, providing there is at least one specified offence, the threshold requirement under section 267 or 280 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 for the remaining offences.</p> <p>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 |
| Imposing multiple indeterminate sentences on the same occasion and using multiple offences to calculate the minimum term for an indeterminate sentence | <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 any period still remaining to be served under the existing sentence (taking account of the 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>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 (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 (section 384 of the Sentencing Code). The second sentence will commence on the expiration of the minimum term of the original sentence and the offender will become eligible for a parole review after serving both minimum terms (section 28(1B) of the Crime (Sentences) Act 1997) The court should consider the length of the aggregate minimum terms that must be served before the offender will be eligible for consideration by the Parole Board. If this is not just and proportionate, the court can adjust the minimum term.</p> |
| <p>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 becoming eligible for release from the determinate sentence. The court should consider the total sentence that the offender will serve before</p> |

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| | |
|--|--|
| | <p>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

The Council consulted on a version of this section which included some additions to bring it in line with current legislation and a clarification regarding new offences committed during an existing community sentence. The proposed changes are set out below – additions to the text are shown in red and deletions are struck through.

| Multiple fines for non-imprisonable offences [dropdown] | |
|--|---|
| 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 offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the court (section 125 of the Sentencing Code). The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate the court should consider how to reach a just and proportionate fine. There are a number of ways in which this can be achieved.</p> <p>For example:</p> <ul style="list-style-type: none"> • 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. |

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| | <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 (section 204(2) of the Sentencing Code). However, if the offences are non-imprisonable (e.g. driving without insurance) the threshold cannot be crossed (section 202 of the Sentencing Code).</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 <u>except</u>: | <ul style="list-style-type: none"> • a hospital order • a discharge • a sentence fixed by law (minimum sentences, EPP, IPP) (murder) • a minimum sentence imposed under section 311, 312, 313, 314, or 315 of the Sentencing Code • a life sentence imposed under section 274 or 285 of the Sentencing Code or a sentence of detention for life for an offender under 18 under section 258 of the 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 <p>(Sections 118 to 121 of the Sentencing Code)</p> |
| 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 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"> • 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 |
| 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 (section 230(2) of the Sentencing Code). 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 while the order is still in force; it does not arise where the order has expired, even if the additional offence was committed while it was still current. (Paragraphs 22 and 25 of the Sentencing Code)</p> <p>Community order imposed by magistrates' court</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>Community order imposed by the Crown Court</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,</p> |

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

[dropdown]

| Disqualifications from driving | |
|--|---|
| Circumstance | Approach |
| <p>Offender convicted of two or more obligatory disqualification offences (s34(1) Road Traffic Offender Act 1988)</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>Offender convicted of two or more offences involving either:</p> <ol style="list-style-type: none"> 1. discretionary disqualification and obligatory endorsement from driving, or 2. obligatory disqualification but the court for special | <p>Where an offender is convicted on same occasion of more than one offence to which section 35(1) of the Road Traffic Offenders 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.</p> |

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| <p>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 Offenders Act 1988)</p> | <p>(Section 35(3) of the Road Traffic Offenders Act 1988)</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

[dropdown]

| Compensation orders | |
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| 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 (Section 134 of the Sentencing Code) | |
| Compensation orders and fines | Priority is given to the imposition of a compensation order over a fine (section 135(4) of the Sentencing Code) . 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 (Section 135 of the Sentencing Code) . |
| 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. |

HM Council of District Judges (Magistrates' Courts) queried the wording relating to multiple offences attracting fines crossing the community threshold:

The references to situations where the offences being dealt with are “all imprisonable”, in both the fines and community orders sections, may be misleading to a sentencer who is also dealing with one or more non-imprisonable offences as part of the sentencing exercise. Words similar to “...in relation to those offences being dealt with which are imprisonable...” might be clearer.

The Council agreed that this wording could be improved and, as this part of the guidance refers to both imprisonable and non-imprisonable offences, it would also be preferable to remove the words ‘for non-imprisonable offences’ from the heading.

The Council of District Judges also commented that it was not clear which of the bullet points listed in relation to fines and determinate custodial sentences were intended to be conjunctive and which disjunctive. Again, the Council agreed that this could be made clearer.

In the Community orders dropdown there were some comments on the information on ‘Offender convicted of an offence while serving a community order’. A circuit judge commented:

My only reservation for this part relates to the section dealing with offenders convicted during the currency of a community order and the proposed wording - 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.

Whilst delay is generally inimical to justice, sentencing by the magistrates' court before (rather than after) an offender has been dealt with by the Crown Court does on occasion risk very real difficulties. For example the magistrates' may raise expectations by dealing with an offence by way of a community order in circumstances where the Crown Court would be minded to revoke the existing Crown Court Community Order and re-sentence the offender to a custodial sentence; whilst not a legitimate expectation it can lead to a sense of grievance. More importantly, in circumstances where a community order is imposed by the lower court and the Crown Court determines to leave in place the existing Crown Court Community Order, it risks an offender being subject to two Community Orders and perhaps overly onerous requirements.

The Justices' Legal Advisers and Court Officers' Service by contrast said:

We welcome the clarity that magistrates' courts when committing for sentence should sentence for offences which they cannot commit.

The Council reflected on these responses and was satisfied that the potential for difficulties referred to by the judge would rarely occur, as in most cases where a community order was available for the new offence, the magistrates court would have the power to commit that offence to the Crown Court. The only other changes proposed to this guidance were to make the language gender neutral and to correct a minor error.

The final version of this section is:

Multiple fines

[dropdown]

| Multiple fines | |
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| 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 offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the court (section 125 of the Sentencing Code). The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate the court should consider how to reach a just and proportionate fine. There are a number of ways in which this can be achieved.</p> <p>For example:</p> <ul style="list-style-type: none"> • 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. 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 – crossing the community threshold</p> | <p>If more than one of the offences being dealt with are imprisonable, then the community threshold can be crossed by reason of multiple offending, when it would not be crossed for a single offence (section 204(2) of the Sentencing Code). However, if all the offences are non-imprisonable (e.g. driving without insurance) the threshold cannot be crossed (section 202 of the Sentencing Code).</p> |

Fines in combination with other sentences [dropdown]

| Fines in combination with other sentences | |
|---|--|
| Circumstance | Approach |
| <p>A fine may be imposed in addition to any other penalty for the same offence except:</p> | <ul style="list-style-type: none"> • a hospital order • a discharge • a sentence fixed by law (murder) • a minimum sentence imposed under section 311, 312, 313, 314, or 315 of the Sentencing Code • a life sentence imposed under section 274 or 285 of the Sentencing Code or a sentence of detention for life for an offender under 18 under section 258 of the 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 <p>(Sections 118 to 121 of the Sentencing Code)</p> |
| <p>Fines and determinate custodial sentences</p> | <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"> • the sentence is suspended OR <p>where:</p> <ul style="list-style-type: none"> • 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 |
| <p>Multiple offences attracting community orders – crossing the custody threshold</p> | <p>If the offences are all imprisonable and none of the individual sentences merit a custodial sentence, the custody threshold can be crossed by reason of multiple offending (section 230(2) of the Sentencing Code). If the custody threshold has been passed, the court should refer to the offence ranges in sentencing guidelines for the offences and to the general principles.</p> |

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| <p>Multiple offences, where one offence would merit immediate custody and one offence would merit a community order</p> | <p>A community order should not be ordered to run consecutively to or concurrently with a custodial sentence. Instead the court should generally impose one custodial sentence that is aggravated appropriately by the presence of the associated offences. The alternative option is to impose no separate penalty for the offence of lesser seriousness.</p> |
| <p>Offender convicted of more than one offence where a community order is appropriate</p> | <p>A community order is a composite package rather than an accumulation of sentences attached to individual counts. The court should generally impose a single community order that reflects the overall criminality of the offending behaviour. Where it is necessary to impose more than one community order, these should be ordered to run concurrently and for ease of administration, each of the orders should be identical.</p> |
| <p>Offender convicted of an offence while serving a community order</p> | <p>The power to deal with the offender depends on the offender being convicted while the order is still in force; it does not arise where the order has expired, even if the additional offence was committed while it was still current.</p> <p>(Paragraphs 22 and 25 of Schedule 10 to the Sentencing Code)</p> <p>Community order imposed by magistrates' court</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>Community order imposed by the Crown Court</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>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> |

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| | <p>When sentencing both the original offence and the new offence the sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence. The court should consider whether the combination of associated offences is sufficiently serious to justify a custodial sentence. If the court does not consider that custody is necessary, it should impose a single community order that reflects the overall totality of criminality. The court must take into account the extent to which the offender complied with the requirements of the previous order.</p> |
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Disqualifications from driving [dropdown]

| Disqualifications from driving | |
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| Circumstance | Approach |
| <p>Offender convicted of two or more obligatory disqualification offences (section 34(1) of the Road Traffic Offenders Act 1988)</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>Offender convicted of two or more offences involving either:</p> <ul style="list-style-type: none"> • discretionary disqualification and obligatory endorsement from driving, or • obligatory disqualification but the court for special reasons does not disqualify the offender <p>and the penalty points to be taken into account number 12 or more (sections 28 and 35 of the Road Traffic Offenders Act 1988)</p> | <p>Where an offender is convicted on same occasion of more than one offence to which section 35(1) of the Road Traffic Offenders 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. (Section 35(3) of the Road Traffic Offenders Act 1988)</p> |
| <p>Other combinations involving more two or offences</p> | <p>As orders of disqualification take effect immediately, it is generally desirable for the court to impose a</p> |

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|---|---|
| involving discretionary disqualification | single disqualification order that reflects the overall criminality of the offending behaviour. |
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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 (Section 134 of the Sentencing Code) | |
| Compensation orders and fines | Priority is given to the imposition of a compensation order over a fine (section 135(4) of the Sentencing Code). 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 (Section 135 of the Sentencing Code). |
| 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 release from custody. |

Overall considerations

The overall format and structure of the guideline

Respondents were generally positive about the structure and format of the guideline. HM Council of District Judges (Magistrates' Courts) commented:

The Totality Guideline isn't the easiest to read even with the proposed changes but that isn't intended to be a criticism. We like the attempt to simplify the layout, the use of examples and the use of drop-down menus.

Similarly the AGO said:

We find that the use of dropdown lists has helped to improve the overall look of the guideline; the guideline now looks tidier and is easier to navigate. The incorporation of dropdown lists may encourage greater use of the guideline by making it less of a wall of text which is difficult to navigate at speed for busy judges and advocates.

There were some suggestions for changes, particularly from magistrates who would prefer matters relating to non-custodial sentencing to be given more prominence. The London Criminal Courts Solicitors' Association suggested that it "may be helpful to include an option to have all the dropdown boxes expand with one click, particularly for those printing the guidelines". Others suggested that it would be helpful to be able to link directly to parts of the guideline.

The Council is currently undertaking some work to explore ways in which the accessibility and usability of guidelines can be improved and if any further practical improvements can be identified these will be implemented after testing with users.

Impact of the changes

The consultation document noted that while the Totality guideline is of wide application and therefore any changes could theoretically have a substantial impact on sentencing practice, the Council considered that the proposed revisions were unlikely to lead to substantive changes to current sentencing practice.

Respondents generally agreed with this assessment, noting that the changes should make the guideline easier to use and may lead to improvements in understanding for victims but would not increase or decrease levels of sentencing.

Equality and diversity

The Council consulted on adding some text to the reference to the Equal Treatment bench Book at the start of the guideline (additional text highlighted):

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.

In response to questions asking for views on this change, and other matters relating to equality and diversity that the guideline could and should address, most respondents approved of the change and were satisfied that there were no other matters that the guideline could address.

Professor Dhami pointed out that there is potential for disparity if offenders from some demographic groups are associated with multiple-offending and she suggested that some offence types where ethnic disparities have been identified are associated with multiple offending. However, as noted previously, there is very little data on sentencing for multiple offences and therefore, no analysis of demographic data of those likely to be affected is possible and so the Council is unable to confirm this association.

One suggestion from a magistrate was that the wording in the guideline should be simplified so that it can be understood by all court users. Some of the changes outlined in the sections above have been made with that aim in mind.

Conclusion and next steps

As a result of the consultation the Council will make the changes set out in the sections above. The amended version of the guideline will be published on the Council's website (<https://www.sentencingcouncil.org.uk>) on 1 June 2023 and come into force on 1 July 2023.

Consultation respondents

Attorney General's Office
Criminal Sub-Committee of the Council of His Majesty's Circuit Judges
Crown Prosecution Service
David King JP
DR Girling JP
Dr Rory Kelly
Edward Argar MP MoJ
Gary Cracknell JP
Gary Knight JP
Health and Safety Executive
HHJ Anne Arnold
HHJ Simon Hirst
HHJ Unsworth KC
HM Council of District Judges (Magistrates' Courts)
Individual
John Sharrock JP
Julia Hurrell JP
Justices' Legal Advisers and Court Officers' Service
London Criminal Courts Solicitors' Association
Magistrates' Association
Professor Mandeep Dhami
RoadPeace
Simon Marks JP
The Sentencing Academy
West London Magistrates' Bench

