

Overarching Guidelines Professional Consultation

Allocation, Offences Taken Into Consideration and Totality

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The consultation will end on 8 December 2011

A consultation produced by the Sentencing Council.
This information is also available on the Sentencing Council's website:

www.sentencingcouncil.org.uk

About this consultation

To:

This consultation is open to all and may be particularly relevant to anyone who works in or has an interest in criminal justice.

Duration:

From 15 September 2011 to 8 December 2011

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Additional ways to feed in your views:

This consultation exercise is accompanied by a set of short guides designed to facilitate public understanding of the issues which can be found at:

www.sentencingcouncil.org.uk

A series of consultation meetings with interested parties is also taking place. For further information please use the “Enquiries” contact details above.

Response paper:

Following the conclusion of this consultation exercise, a response will be published at: www.sentencingcouncil.org.uk

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Introduction

The Sentencing Council is consulting on draft guidelines on allocation, offences taken into consideration (TICs) and totality, and seeks views from the judiciary, criminal justice professionals and all other interested parties through this consultation.

Why produce this package of guidelines?

In producing these overarching guidelines, the Council aims to improve consistency of approach to the range of issues covered.

This consultation paper is divided into separate sections which deal with each of the overarching guidelines in turn. The rationale for producing each of the guidelines and the aims of the Council in relation to each issue are set out within the relevant sections.

The Council has decided to produce these draft guidelines in line with its statutory remit set out in the Coroners and Justice Act 2009. The Council has a statutory discretion to produce an allocation guideline and TIC guideline and a statutory duty to produce a totality guideline. The Sentencing Advisory Panel (SAP) produced advice to the Sentencing Guidelines Council (SGC) entitled *Offences Taken Into Consideration* in March 2010 and the Council is grateful to the SAP for its advice which has been considered carefully in the development of the draft guideline.

The Council decided to issue these three, non-offence specific guidelines, as a package to minimise the burden on respondents who otherwise would have been asked to respond to three separate consultations. The Council also believes that a single consultation on these topics represents a more efficient use of resources than three separate consultations.

Consultation process

The consultation period is 12 weeks and meetings with interested parties will be held during this time in order to seek views on the proposals.

This consultation sets out the detail of the Council's proposals for the three guidelines. A summary of the consultation questions is at annex A. The draft guidelines are at annexes C, D and E.

Alongside this professional consultation paper and draft guidelines, the Council has produced a set of short guides designed to facilitate public understanding of the issues, a resource assessment and an equality impact assessment. These documents can be found at: www.sentencingcouncil.org.uk

Section one: Allocation

Allocation decisions (also known as mode of trial) are generally taken by a magistrates' court (and occasionally the Crown Court) determining whether an offence is more suitable for summary trial or trial on indictment.

Allocation decisions can be made in the magistrates' court under section 19 of the Magistrates' Courts Act 1980¹, or the Crown Court under section 7(7) or 8(2) (d) of Schedule 3 to the Crime and Disorder Act 1998². The draft guideline is intended for use in the magistrates' court, where the vast majority of allocation decisions are made.

The Sentencing Council has a wide discretion to prepare sentencing guidelines and section 122(2) of the Coroners and Justice Act 2009 states –

'The Council may prepare allocation guidelines'

Section 122(8) states –
'When exercising functions under this section, the Council must have regard to –

- (a) the need to promote consistency in decisions of the kind mentioned in subsection (1), and
- (b) the results of the monitoring carried out under section 128.'

¹Section 19

(1) The court shall consider whether, having regard to the matters mentioned in subsection (3) below and any representations made by the prosecutor or the accused, the offence appears to the court more suitable for summary trial or for trial on indictment.

(2) Before so considering, the court—

(b) shall afford first the prosecutor and then the accused an opportunity to make representations as to which mode of trial would be more suitable.

(3) The matters to which the court is to have regard under subsection (1) above are the nature of the case; whether the circumstances make the offence one of serious character; whether the punishment which a magistrates' court would have power to inflict for it would be adequate; and any other circumstances which appear to the court to make it more suitable for the offence to be tried in one way rather than the other.

² Section 7 applies where a person has been sent under section 51 Crime and Disorder Act 1998 but has not been arraigned and changes to the indictment mean it contains only either way offences. Where that person either makes no indication or indicates a not guilty plea, the Crown Court shall consider whether the offence is more suitable for summary trial or trial on indictment. Section 8 applies where a person has been sent under section 51 but has not been arraigned and changes to the indictment mean that it contains only either way offences and he is legally represented but because of his disorderly conduct before the court, the court considers the matter should proceed in his absence. In such a case, the legal representative's answers will be treated as those of the accused.

Background

Throughout the development of this draft guideline, the Council has considered carefully the available evidence on current allocation decisions. An allocation decision must be made in the magistrates' court in all cases which are triable either way; the power of the Crown Court to make the decision only arises where the original offence sent was indictable only. The number of adult (aged 18+) offenders proceeded against and committed for trial at the Crown Court for triable-either-way cases has risen in the past few years, from around 310,000 in 2007 to 353,000 in 2010³. In 2010, 21 per cent of adult defendants proceeded against in triable either way cases (73,000 defendants) were committed for trial in the Crown Court.

Why allocation?

There are currently no statutory guidelines regarding the allocation procedure. The Sentencing Guidelines Council issued draft allocation guidelines in February 2006, but they were contingent on various changes introduced by the Criminal Justice Act 2003 coming into force, which to date have not been commenced. Therefore definitive allocation guidelines were never issued.

However, there is separate guidance contained in the Consolidated Criminal Practice Direction (CCPD) issued by the Lord Chief Justice. The CCPD sets out procedures intended to achieve uniformity in practice including in relation to allocation decisions.

There is also a reference to mode of trial in the 'Introduction' to the Magistrates Court Sentencing Guidelines (MCSG). The ways in which the Council's draft allocation guideline will build upon and alter the existing guidance are set out below.

The Council's aims

The most important objective of the draft guideline is to ensure, insofar as it is possible, that all cases are heard in the most suitable court. The volume of cases that are heard at the Crown Court has increased in recent years, including a significant proportion of cases where the sentences imposed fall within magistrates' court sentencing powers. The Council has sought to offer clear and practical guidance to magistrates in the draft guideline in order to ensure greater consistency of approach and transparency in the decision making.

In relation to allocation decisions, the Council wishes to encourage a consistent approach in the magistrates' court in line with statute. The Council will also be monitoring the usage of the allocation guideline and its impact on allocation decisions made in the magistrates' courts following implementation.

The Council's intention is to include the draft guideline in the MCSG and therefore it is intended for use solely in the magistrates' court, where the vast majority of allocation decisions are made.

A defendant has the right to elect trial by jury in the Crown Court under section 20 of the Magistrates' Courts Act 1980. This right will remain unchanged by any allocation guideline issued.

³ Table A3.18, Criminal Justice Statistics 2010, <http://www.justice.gov.uk/publications/statistics-and-data/criminal-justice/criminal-justice-statistics.htm>

Guideline structure

One of the Sentencing Council's aims in producing its guidelines to date has been to ensure that all essential information is in one place wherever possible. This has been most evident in the individually tailored decision-making processes within each of the offence-specific guidelines. In line with this approach, the Council proposes that the allocation guideline should be inserted into the MCSG. The 'Introduction' to the MCSG will be updated in order to include the new guidelines proposed as well as reflect the changes made to the applicability of guidelines by the Coroners and Justice Act 2009. Further detail on the revised introduction to the MCSG is set out below.

The guideline comprises a short summary of the key aspects to be considered by the courts in making an allocation decision. Guidance is also given on the powers of committal for sentence and on linked cases where one or more defendant is under 18.

Q1

Do you think that the structure of the guideline provides sufficient guidance to magistrates to assist them in making consistent, appropriate allocation decisions?

Guidance

The most important aspect of the draft guideline is the direction to courts to "assess the likely sentence in the light of the facts alleged by the prosecution case, taking into account all aspects of the case including those advanced by the defence".

Under the current guidance in the Consolidated Criminal Practice Direction, courts are told to "assume for the purpose of deciding mode of trial that the prosecution version of the facts is correct". The Council believes that this Direction creates a risk that some magistrates may make the allocation decision without appreciating the statutory requirement to have regard to "any representations made by the prosecution or the defence." This is the key issue which the Council hopes to clarify in the issuing of a draft guideline. The draft guideline moves away from the current practice of taking the prosecution case at its theoretical highest; instead, the draft guideline encourages the court to make a balanced assessment in the light of the facts alleged by the prosecution, taking into account both prosecution and defence representations. It is the Council's intention that this revision to the guidance will clarify the statutory duty and encourage more consistent and balanced decision-making.

Subject to the outcome of the consultation and the agreement of the Lord Chief Justice, it is anticipated that the Consolidated Criminal Practice Direction could be amended when the allocation guidance is issued to revoke the mode of trial section and therefore ensure there is a single reference point on allocation contained within the MCSG.

Q2

Do you agree with the approach the guideline takes to assessing the suitability of cases for magistrates' court trial and the emphasis it places on taking a balanced initial view?

Q3

Are there further matters that the guideline might usefully cover?

Introduction to the Magistrates' Court Sentencing Guidelines (MCSG)

It is proposed that Part 2 of the MCSG, *Introduction and user guide*, should be replaced with a new Part 2, *Introduction, user guide and Sentencing Council overarching guidelines*. The current user guide includes a generic overview of the Sentencing Guidelines Council's decision making process. The updated user guide will highlight the fact that there are two different decision-making processes within the MCSG (since the Sentencing Council issued new guidelines for assault offences in March 2011) and provide a brief summary of the Sentencing Council decision-making process as well as the existing Sentencing Guidelines Council process.

The current introduction states that 'in some cases, the ability to commit an offender to the Crown Court for sentence after trial may be limited'. This was drafted with the provisions contained within the Criminal Justice Act 2003 in mind. The Criminal Justice Act 2003 intended to remove the power of the court to commit for sentence once they had accepted the case as suitable for summary trial – (section 41 and Schedule 3, paragraphs 1 and 6). However, these provisions have not been enacted and therefore the statement in the MCSG is misleading.

It is proposed that the revised introduction to the MCSG will therefore remove this wording (i.e. that in some cases, the ability to commit an offender to the Crown Court for sentence after trial may be limited) and encourage less caution about the ability to commit an offender to the Crown Court after trial. The Council notes that magistrates may be cautious about accepting jurisdiction for fear that they may potentially create a legitimate expectation that the defendant will be sentenced in the magistrates' court. However, a legitimate expectation only arises where the offender is able to show, amongst other things, that they have had a clear and unambiguous representation made to them that they will benefit from the practice or policy. The Council considers that no such expectation can arise where a defendant is clearly cautioned by the court when it accepts jurisdiction that all options for sentence remain open to the court, including a later committal to the Crown Court for sentence. The introduction will provide guidance to this effect.

The current provisions on committal for sentence of triable either way offences are largely contained in section 3 of the Power of Criminal Court (Sentencing) Act 2000⁴.

Q4

Do you agree to the amendment proposed to the introduction of the MCSG?

⁴ Section 3 of the Power of Criminal Court (Sentencing) Act 2000 provides that a person convicted (either following a guilty plea or being found guilty at trial) of an either way offence in the magistrates court can be committed for sentence if the court is of the opinion that the offence or combination of the offence and offences associated with it is "so serious that greater punishment should be inflicted for the offence than the court has power to impose" or that in the case of a violent or sexual offence that a custodial sentence for a term longer than the court has power to impose is necessary to protect the public from serious harm from him. There are other provisions on committal for sentence of dangerous offenders and in relation to children/young persons and precluding committal once jurisdiction has been retained in the magistrates' court for an offence of criminal damage.

Section two: Offences Taken Into Consideration

Why offences taken into consideration?

The Council has developed a draft guideline on offences taken into consideration (TICs) because whilst there is well-established practice on the matter, there is no single source of guidance about the approach the courts should take.

Limited data exists on the use of TICs. The Crown Prosecution Service (CPS) has been able to provide the Council with data on the total number of offences taken into consideration, broken down by court type.

Although the CPS data shows the total number of offences taken into consideration, it does not show the number of *cases* in which TICs were relevant. The CPS do not hold this data nor can this be inferred from the data tables below because there may be many offences taken into consideration in a given case.

Financial year 2010-11

Offences taken into consideration by court type⁵

Court Type	Offences
Magistrates' Court (MC)	13,849
Crown Court (CC)	10,006

The Council is grateful to the Sentencing Advisory Panel (SAP) for its advice on *Offences Taken Into Consideration*⁶ and has drawn on the advice in developing the draft guideline. The Council supports the majority of the recommendations made by the SAP but takes a different view on some and seeks views upon the latter particularly.

The Council's aims

Through all of its work on guidelines the Council wishes to promote a clear, fair and consistent approach to sentencing. The number and nature of offences that a court might be asked to take into consideration can vary enormously. The Council therefore feels it is important to set out the general principles, procedure and approach that should be taken to TICs in order to support clarity and consistency. It is not seeking to bring about any change to sentencing practice other than where the application of the guideline might lead to greater consistency of approach. It is also seeking to bring about greater understanding of this area of sentencing and so increase public confidence.

⁵ Source: Crown Prosecution Service. This data is subject to the following caveats:

a) Data in the table provided relates to the number of offences taken into consideration recorded in magistrates' courts and in the Crown Court on the CPS's Case Management System.

b) Offences data are not held by defendant or prosecution outcome. These are offences which reached a first hearing and there is no indication in this data if the original charged offence was the substantive charge at finalisation.

c) This data have been drawn from the CPS's administrative IT system, which, as with any large scale recording system, is subject to possible errors with data entry and processing. The figures are provisional and subject to change as more information is recorded by the CPS.

⁶ Sentencing Advisory Panel (2010) *Advice to the Sentencing Guidelines Council: Offences Taken Into Consideration*.

In preparing this draft the Council has had regard to the purposes of sentencing and to a number of statutory duties set out in annex B of this paper.

TICs and their use

When sentencing, a court can take into account offences for which an offender has not been convicted but which he has admitted in court and are at his request taken into account when sentence is passed for the conviction offence. TICs do not in law constitute a conviction⁷ and therefore the formal legal bar on a subsequent conviction (*autrefois convict*) does not apply.⁸ However, the basis of the practice is the accepted convention that subsequent prosecutions will not be brought for offences that have been taken into account.⁹

The practice of taking offences into consideration is a long-standing convention, recognised and approved by the appellate courts since the early years of the twentieth century.¹⁰ This practice now has statutory footing. Sections 148, 152 and 153 of the Criminal Justice Act 2003 indicate that the presence of “associated offences” can increase the seriousness of the offence and merit a more severe sentence. By virtue of section 161 of the Powers of the Criminal Courts (Sentencing) Act 2000 an offence is associated with another if:

(a) the offender is convicted of it in the proceedings in which he is convicted of the other offence, or (although convicted of it in earlier proceedings) is sentenced for it at the same time as he is sentenced for that offence; or

(b) the offender admits the commission of it in the proceedings in which he is sentenced for the other offence and requests the court to take it into consideration in sentencing him for that offence.

The effect of TICs on sentencing is that the court has a fuller picture of the overall criminality of the offender and will be able to set a sentence that is commensurate with the overall offending behaviour, rather than the single conviction offence.

There are also some practical benefits of TICs. They enable some offences to be brought to justice that might otherwise remain unresolved, either because there is insufficient evidence or because they might not otherwise be brought to the attention of the police. This approach also saves court time and resources, as offences can be dealt with promptly without additional hearings.

For victims, and the wider general public, TICs mean that victims may have the closure that follows from an offender having been brought to justice for the crimes committed. Also in some cases the use of the TIC procedure may enable the court to make a compensation order in favour of victims who otherwise would not have been compensated.

For offenders, TICs offer the opportunity to ‘clear the slate’ so that at the end of their sentence the offender is able to put his past behind him which can play a role in supporting rehabilitation. Although they may receive an increased sentence because of the presence of TICs, the additional penalty will be less severe than if the offences had been prosecuted separately.

General principles

This section contains two key elements. First, the sentence should reflect all the offending behaviour. This principle recognises that the presence of TICs place the conviction offence into a wider context, and assist the court to achieve a just and proportionate sentence by

⁷ R v Howard 1991 92 Cr App R 223

⁸ R v Nicholson [1947] 2 All ER 535

⁹ R v North (1971) RTR 366

¹⁰ Syres (1908) 25 TLR 71

assessing the defendant’s overall criminality and the seriousness of the total offending.

Secondly the sentence should be just and proportionate and should not exceed the statutory maximum for the original offence charged.

These principles are closely aligned to the general principles in the Council’s draft guideline on totality.

Q5

Do you agree with the proposed general principles?

What offences can be taken into consideration?

The draft guideline reinforces that the court has discretion as to whether or not to take TICs into account. It also seeks to summarise the advantages of TICs in the sentencing exercise.

The draft guideline lists a number of circumstances in which it is undesirable for the TICs to be accepted. These exceptions have been drawn from the SAP recommendations and the relevant case law.

The exceptions proposed are:

- Where the TIC is likely to attract a greater sentence than the conviction offence;
- Where it is in the public interest that the TIC should be the subject of a separate charge;
- Where the offender would avoid a prohibition, ancillary order or similar consequence which it would have been desirable to impose on conviction. For example:
 - Where the TIC attracts mandatory disqualification or endorsement and the offence(s) for which the defendant is to be sentenced do not

- If the TIC constitutes a breach of an earlier sentence¹¹;
- Where the TIC is a specified offence for the purposes of s224 Criminal Justice Act 2003, but the conviction offence is non-specified;
- Where the TIC is not founded on the same facts or evidence or part of a series of offences of the same or similar character (unless the court is satisfied that it is in the interests of justice to do so).

In relation to the final exception the Council notes the SAP recommendation that “when deciding whether it is appropriate for an offence to be taken into consideration, a difference in kind between the conviction offence and the TIC is of less significance than the fact that the TIC is more serious than the offence conviction”.¹² However the Council takes the view that it is generally appropriate that the TIC is founded on the same facts or evidence or part of a series of offences of the same or similar character to assist the sentencer in considering the overall criminality.

Q6

Do you agree with the proposals as to the types of offences that should not be the subject of TICs?

Jurisdiction

This section deals with the requirement for the court to have jurisdiction to take an offence into consideration. The general principle is that a court must have jurisdiction to deal with the offence. Magistrates do not have the power to take into account offences which are indictable only. The Crown Court may take into consideration summary offences which can be joined to the indictment under section 40 Criminal Justice Act 1988, i.e. where they are founded on the same facts or evidence as the indictable charge, or form part of a series of offences of the same or similar character as the indictable conviction offence.

¹¹ R v Webb 1953 37 Cr App 82

¹² Recommendation 4, *Offences Taken Into Consideration*, Sentencing Advisory Panel.

Procedural safeguards

The Council is aware that in the past, local practices have been adopted by criminal justice agencies and occasionally involved the courts.¹³ The Council is keen to ensure that the guideline increases fairness and consistency of approach.

The Council is aware that there is Prosecution Team Guidance which has been developed by ACPO and the CPS. The Council does not intend to interfere with prosecution or police procedures and recognises that these are outside its jurisdiction. However, the draft guideline sets out the minimum procedures, derived from case law, that the court should follow before it agrees to take offences into consideration.

Application

The Council has previously decided that TICs should be listed as an aggravating factor at step two of the new decision-making process.¹⁴ The draft guideline confirms this decision.

Q7

Do you agree with the proposed procedural safeguards?

The Council also considers that there are several advantages to dealing with TICs at step two of the decision-making process.

First, the presence of TICs places the conviction offence into a wider context and helps the court determine the defendant's overall criminality and hence seriousness of the offence. The Court of Appeal in *Miles*¹⁵ accepted that the presence of TICs can be relevant to the sentence, stating:

"...the offences may show a pattern of criminal activity which suggests careful planning or deliberate rather than casual involvement in a crime. They may show an offence or offences

committed on bail, after an earlier arrest. They may show a return to crime immediately after the offence has been before the court..."

Second, the statutory framework is clear that TICs are relevant to the determination of seriousness of the offence and the type of disposal. Sections 148 and 152 Criminal Justice Act 2003 both provide that "associated offences" can be taken into account when deciding whether the offence is sufficiently serious to warrant the imposition of a community or custodial sentence. For the purposes of the Criminal Justice Act 2003 and the Powers of the Criminal Courts (Sentencing) Act 2000 an offence is associated with another if the offender admits the commission of it in the proceedings in which he is sentenced for the other offence and requests the court to take it into consideration in sentencing him for that offence.¹⁶ Similarly, s153 Criminal Justice Act 2003 provides that when determining the length of a custodial sentence it must be for the shortest term (not exceeding the permitted maximum) that:

"in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence **and one or more offences associated with it.**"

The Council therefore believes that it is appropriate for TICs to be included in the assessment of seriousness at the beginning of the decision-making process.

The Council does not believe that TICs should be taken into account at step one of the decision-making process as this places an undue amount of emphasis on them. Step two is the stage in the process where previous convictions are taken into account. The Council believes that it is desirable for TICs to be treated in a similar

¹³ R v Waheed Ali [2009] EWCA Crim 2396

¹⁴ See for example the Sentencing Council: *Assault: definitive guideline*

¹⁵ [2006] EWCA 256 Crim 256

¹⁶ s305(1) Criminal Justice Act 2003 and s161(1)(b) Powers of the Criminal Courts (Sentencing) Act 2000

manner to previous convictions as both involve forming an opinion of the overall criminality of the offender and consequently the seriousness of the offence.

Finally, considering TICs at this stage in the process may help ensure that appropriate weight is attached to TICs and that the sentence is not excessive. By treating TICs at step two of the decision-making process, the sentencer will be encouraged to sentence within the category range. In exceptional circumstances, the presence of a large number of TICs could result in an offender moving into a higher category range.

The Council recognises that most sentencing guidelines do not currently contain its new decision-making structure. Therefore this section in the draft guideline has been drafted so that it can apply to SGC guidelines. The Council proposes that TICs should be treated as an aggravating feature that fall to be considered only after the Court has determined the appropriate starting point. The Council has noted the SAP recommendation that “where offences are taken into consideration, the sentence imposed should not be more severe than the level of sentence commonly imposed for the most serious offence(s) of which the offender has been convicted”.¹⁷ However the Council takes the view that it is more helpful to articulate the impact of TICs as an aggravating feature which can, where appropriate, take the sentence into a higher category range.

The SAP considered whether TICs could be a mitigating factor. It accepted that an early admission of other offences, where the police were unlikely to have solved those offences without the admission, could result in a reduction as it indicates remorse and a willingness to cooperate. But it advised that the overall sentence should still be more severe because of the presence of the associated offences. In *Waheed Ali*¹⁸, the Court of Appeal stated that TICs should only be taken into account as mitigation against the penalty in exceptional circumstances. The Council has reflected this approach by treating TICs as generally aggravating.

Q8

Do you agree with the proposed approach to the application of TICs?

¹⁷ Recommendation 6, *Offences Taken Into Consideration*, Sentencing Advisory Panel.

¹⁸ [2009] EWCA Crim 2396

Section three: Totality

Why totality?

The Sentencing Council has a wide discretion to prepare sentencing guidelines. However the Council is mandated by statute to provide a guideline on totality.

Section 120(3) of the Coroners and Justice Act 2009 states –

‘The Council must prepare –
b) sentencing guidelines about the application of any rule of law as to the totality of sentences.’

The Council understands that this statutory provision arises out of recommendations made by the Sentencing Commission Working Group which state –

‘There is no guidance given, at present, on totality. In the circumstances we are content to encourage the Sentencing Guidelines Council to complete this process. Again, it might assist transparency and consistency and possibly improve predictability. However, as with the treatment of previous convictions, in our opinion, no attempt should be made to quantify the weight to be given as this will vary from case to case. The guidance should be in narrative form.¹⁹’

The Council’s aims

The Council wishes to promote a clear, fair and consistent approach to sentencing. In preparing this draft the Council has had regard to the purposes of sentencing and to a number of statutory duties set out in Annex B of this paper.

The Council is particularly aware that the wealth of statutory provisions and case law surrounding the sentencing of multiple offences can lead to a degree of complexity. The Council has sought to reflect current law and sentencing practice in the guideline in order to set out the general principles and therefore bring greater clarity and transparency to the sentencing process where there are multiple offences. It is not seeking to bring about any change to sentencing practice other than where the application of the guideline might lead to greater consistency of approach. It is also seeking to bring about greater understanding of this area of sentencing and so increase public confidence.

The rule of law of totality

One of the fundamental principles of sentencing is that the sentence should normally be commensurate with the seriousness of the offending behaviour (although there are statutory exceptions to this principle²⁰). The application of this principle is complicated where the court is sentencing an offender for multiple offences.

¹⁹ para 7.13, Gage Report (2008) *Sentencing Commission Working Group: Sentencing Guidelines in England and Wales: An evolutionary approach*, London: Sentencing Commission Working Group.

²⁰ For example sentences which fall to be imposed under s51A(2) of the Firearms Act 1968, under s110 or s111 Powers of Criminal Courts (Sentencing) Act 2000, s29(4) Violent Crime Reduction Act 2006, s225(2) or s226(2) Criminal Justice Act 2003

It has long been recognised that it would be undesirable to adopt a strict arithmetical approach when sentencing for multiple offences. If multiple offences were always aggregated this could mean offenders who serve sentences for numerous low-level offences could have sentence lengths that are longer than for much more serious offences.

The key principle is that the court must impose a sentence that reflects the seriousness of the totality of offending behaviour. The existence of multiple offences generally increases the seriousness of the criminality and so can increase the severity of the sentence.

The following sentencing practices have evolved in the courts to deal with multiple offending and to a large extent have been placed on a statutory footing:

First the court must decide whether to structure the sentences so that they are served concurrently (i.e both sentences will be served at the same time) or consecutively (one after the other) or whether there should be a mixture of concurrent and consecutive sentences.

Second, where sentences are ordered to run concurrently, the court can increase the severity of the sentences to reflect the totality of the offending behaviour.

Third, where the sentences are ordered to run consecutively, the courts should consider the total length of the overall sentence to ensure that it is just and proportionate. If, in the court's opinion, the sentence is not just and proportionate, the sentence should be adjusted as necessary.

Totality is often defined as being the third of these three steps. For example, Archbold describes totality as follows:

“A court which passes a number of consecutive sentences should review the aggregate of the sentences, and consider whether the aggregate sentence is just and appropriate taking the offences as a whole”²¹.

*R v Raza*²² described totality as follows:

“The principle of totality requires a sentencing judge “to consider whether the aggregate of consecutive sentences produces a total term which is disproportionate to the overall criminality of the defendant’s conduct.”

This interpretation would mean that the principle of totality applies as a limiting or mitigating factor. However the Sentencing Council has taken the view that the rule of law as to totality comprises all three of the above principles. The Council has adopted this wide construction as it believes that the fundamental principle of totality is that when sentencing for multiple offences, the overall sentence should be just and proportionate. That means the principle of totality could result in a reduction or an increase to the overall sentence, or to constituent parts of it.

Q9

Do you agree with this definition of totality?

²¹ Archbold 2011 5-342

²² R v Raza [2009] EWCA Crim 1413

Totality within the overall sentencing decision-making process

In the *Assault Definitive Guideline* the Council has set out a step-by-step decision-making process for the sentencing process. This structure is also proposed within the draft drug and burglary offences guidelines.

Consideration of totality is placed towards the end of the decision-making process. The Council believes that it is generally appropriate for the court to firstly consider the seriousness of the individual offences before it goes on to consider the structure and length of the overall sentence. This approach enables the court, having made an initial assessment of the seriousness of the individual offences, to take an informed view as to the justness and proportionality of the overall sentence.

The draft guideline is therefore based on the premise that it will be referred to in the latter steps of the sentencing decision-making process if the court is sentencing for more than one offence or where the offender is already serving a sentence. It is recognised that when concurrent sentences are to be passed the requirement to look at associated offences will require an overall assessment of seriousness of the offences as a whole that may be occurring throughout the step-by-step process. However, the Council still believes that the consideration of totality should be a ‘stand back and look’ test that is applied towards the end of the sentencing decision-making process.

The structure of the guideline

The Council noted the Sentencing Commission Working Group report’s recommendation that this be a narrative guideline²³. It has used narrative in the two main sections of the guideline on general principles and approach. The general approach sets out over two pages the considerations that generally apply to multiple determinate sentences.

However, the Council felt that a tabular format would be more appropriate for the specific applications sections. The tabular format is intended to allow courts to refer quickly to the section relating to the cases before them.

The general principles

The Council has sought to set out within the guideline the two elements that it believes comprise totality.

The first element emphasises the importance of the total sentence reflecting **all** the offending behaviour, regardless of whether a concurrent or consecutive sentence is passed by the court. This element is particularly important to emphasise as the Council believes there may be a sense amongst some victims and the wider public that a concurrent sentence can be a lesser sentence because there is a lack of awareness that the presence of associated offences can aggravate the individual sentences.

The second element recognises that a just and proportionate sentence for multiple offending cannot be determined simply by adding together notional single sentences. It is necessary to address the offending behaviour, together with the factors personal to the offender as a whole. It can be seen as an extension of the central principle in sentencing of proportionality between the offence and the sentence.

It also recognises that totality is an additional consideration of mitigation. Personal mitigation will have been considered in relation to each offence; however, it is important that the court steps back and considers again whether these personal factors may justify some reduction when the offences are considered as a whole. This particularly occurs in relation to age; for example, where for a younger offender facing a first term in prison or a first term of any substantial length the effect of the sentence might be particularly crushing on their prospects of rehabilitation and

²³ Gage Report (2008) *Sentencing Commission Working Group: Sentencing Guidelines in England and Wales: An evolutionary approach*, London: Sentencing Commission Working Group.

future life. It is not however limited to younger offenders²⁴ and can apply in any case where personal mitigating factors are identified as being particularly relevant.

The Council has considered whether it would be appropriate to make these statements of general principle more specific. It has been suggested that ‘the essence of the principle appears to be that the aggregate sentence should not be longer than the upper limit of the normal bracket of the sentences for the category of the case in which the most serious offence committed by the offender would be placed’.²⁵ However, the Council notes that in some cases where the statutory maximum for the offence is the top of or close to the top of the offence range this approach cannot be applied. Therefore it has chosen a broader definition which seeks to recognise the approach that the sentence should bear a recognisable relationship to the gravity of the criminality in total and to the offender without constraining the sentencer.

The Council also wishes to emphasise in the general principle section that whilst the guideline seeks to set out the circumstances in which concurrent sentences will usually be applied there is no inflexible rule. The overriding principle is that the overall sentence must be just and proportionate.

Q10

Do you agree with the proposed general principles of totality?

The application of concurrent or consecutive sentences

The Council’s view is that there is no inflexible rule as to when to apply concurrent or consecutive sentences and the Council does not seek to introduce a formulaic approach. However, the draft guideline seeks to reflect current sentencing practice in relation to circumstances in which concurrent or consecutive sentences will ordinarily be appropriate.

The general approach in current sentencing practice is offences that arise out of the same incident or facts should be served concurrently, whilst offences that arise out of unrelated facts or incidents should be served consecutively.

The Council feels that it would be valuable to set out illustrative examples, drawn from case law, to assist sentencers. The Council’s aim is not to introduce changes to sentencing practice but it does intend to clarify the position, particularly where there is conflicting caselaw.

The Council considers that the general principles of concurrent/consecutive sentencing also apply to weapons/firearms offences. However, the Council is aware that there is a line of judicial authority that the carrying of a firearm should be sentenced consecutively to emphasise it as a separate wrong²⁶. The draft guideline proposes that where the firearm/weapon is separately charged but is integral to the commission of the offence (for example, a robbery carried out by an offender using a weapon), it should generally be treated as an aggravating feature that increases the severity of the sentence for the most serious offence. The sentence should be structured concurrently to avoid double counting. In this example, this is likely to result in an increase to the length of the sentence for the robbery to reflect the fact that the separate sentence for the weapon will run concurrently.

²⁴ R v Koyce (1979) 1 Cr App R (S) 21

²⁵ p.59 Thomas D.A. (1979) *Principles of Sentencing*, London: Heinemann.

²⁶ R v Faulkner (1972) 56 Cr App R 594

Where the firearms or weapon charge is charged separately but is ancillary to the principal offence, it may be appropriate to consider each offence separately and to structure the sentences to run consecutively²⁷.

The Council is mindful of the interaction between statutory minimum and maximum sentences and totality. The draft guideline reminds courts that where one or more offence qualifies for a statutory minimum sentence and concurrent sentences would improperly undermine that minimum, it is appropriate to structure sentences consecutively²⁸. However, the guideline is clear that courts should not structure sentences consecutively in order to evade the statutory maximum penalty.²⁹

Q11

Do you agree with the circumstances in which concurrent and consecutive sentences are likely be passed, recognising there is no inflexible rule?

Ensuring the sentence is just and proportionate

Where the court has decided to impose concurrent sentences the guideline reinforces the principle that the sentence should reflect the overall criminality involved and that the sentences should be appropriately aggravated by the presence of the associated offences. The Council feels that it is not possible to make any further statements about the quantification of the aggravation as this is always specific to the individual circumstances of the case.

Where the court has decided to impose consecutive sentences, it should then consider whether the aggregate length is just and proportionate, set out above.

If the court believes the aggregate sentence is excessive (it is not just and proportionate) it should reduce the length of the aggregate sentence. The statutory power to do this is contained in s166 (3)(b) Criminal Justice Act 2003.

The Council agrees with the Sentencing Commission Working Group report³⁰ that it is not appropriate to take a mathematical approach to the reduction that should be applied to the sentence nor provide strict guidance on how reducing the sentence should be approached. The Council has also noted the advice on multiple offending within the SAP advice on overarching principles. It has considered particularly that in response to the consultation question as to whether it might be possible to define a formula to assist the courts when considering whether a sentence is proportionate to the totality of the offending behaviour, the majority who responded felt there would be no approach that would be helpful given the variety of circumstances in which the totality principle needs to be applied.

However, the Council has sought to aid consistency by providing examples of approaches that can be taken in differing circumstances to reduce the length of the aggregate sentence.

The Council is interested to understand whether the approaches it has proposed fully reflect current practice and to receive views on whether, and how, it might be possible to provide a greater level of guidance on these matters.

Q12

Do you agree with the guidance provided on ensuring the sentence is just and appropriate?

Q13

Should the guideline provide further detail on how sentences are adjusted in relation to totality, and if so how might this be done?

²⁷ R v Poulton and Celaire [2002] EWCA Crim 2487; Attorney General's Reference No 21&22 of 2003 [2003] EWCA Crim 3089

²⁸ R v Raza [2010] 1 Cr App R (S) 56

²⁹ R v Ralphs [2009] EWCA Crim 2555.

³⁰ Gage Report (2008) *Sentencing Commission Working Group: Sentencing Guidelines in England and Wales: An evolutionary approach*, London: Sentencing Commission Working Group.

Specific applications

The Sentencing Council proposes to include guidance on how to structure multiple sentences in a number of specific situations. There are various combinations of sentences and therefore the Council has identified scenarios that are likely to be most common and scenarios where there has been some previous confusion. Scenarios included in the draft guideline are:-

- Determinate sentences where the offender is already a serving prisoner;
- Extended sentences;
- Indeterminate sentences;
- Suspended sentences;
- Multiple fines;
- Fines in combination with other sentences;
- Multiple community orders;
- Disqualifications from driving;
- Compensation orders.

The Council would welcome views on any other areas that could be usefully included in this section.

The 'specific applications' section provides assistance to sentencers on technical statutory provisions. The guidance is based on case law and statutory construction and the Council does not intend to introduce new points of principle. The Council hopes that this guidance will provide assistance to courts by summarising technical legal points and will increase consistency in sentencing.

The Council proposes that the section only be used where the specific scenarios arise and has therefore been separated from the general approach section of the guideline.

At the time of publishing this consultation the government's Legal Aid, Sentencing and Punishment of Offenders Bill has been introduced in Parliament. This bill proposes changes to the sentencing framework which may impact on this section. The Council nevertheless considers that it is worth including this technical support in the guideline. This is because it is unlikely that legislation will be commenced for at least one year.

Q14

Are there further specific considerations that the guideline could usefully cover relating to the sentencing of multiple offences?

Section four: General considerations

Victims

Allocation

When preparing allocation guidelines the Council does not have a specific statutory duty to have regard to the impact of sentencing decisions on victims. However, it has considered matters relating to victims whilst developing the draft.

The Council aims through the guideline (and the associated public guide) to provide greater clarity to the public and victims on whether cases will be heard in the magistrates or Crown Court to aid understanding of the process. In seeking to ensure appropriate cases are heard in the magistrates' court it also seeks to support swift outcomes for victims of less serious offences.

When preparing other guidelines, the Council must have regard to the impact of sentencing decisions on victims³¹ and this applies to both the TICs and totality guidelines.

TICs

The Council aims through the guideline (and the associated public guide) to demystify the TIC process so that there is a greater understanding of how the process works.

The Council recognises that some victims may have a negative view of the TIC procedure as they may perceive that it allows offenders to escape the full punishment they may be due for

their offending behaviour. The draft guideline is clear that the presence of TICs aggravates the conviction offence so that the offender is generally given an additional penalty, albeit the overall penalty is likely to be less severe than if the offender were separately prosecuted.

The Council also considers that, in some cases, TICs can bring benefits to victims. The availability of the TIC process can encourage offenders to admit offences at an early stage which in turn spares victims having to attend court to give evidence. It can also speed up the court process as offences can be dealt with promptly and without additional court hearings. The draft guideline also reminds courts that compensation, confiscation and restitution can be ordered in respect of an offence taken into consideration.

Totality

As with allocation and TICs, by producing a totality guideline (and the associated public guide) the Council aims to provide greater clarity to the public and victims on totality to aid understanding.

The Council recognises that the question of whether concurrent or consecutive sentences will be applied can be a confusing one. In particular it has received feedback that there can be a sense that concurrent sentences are in some way "letting the offender off" by allowing them to serve the sentences in parallel. The

³¹ s. 120(11) (c) Coroners and Justice Act 2009.

guideline therefore makes clear that the court is considering **all** the offending before it and that where concurrent sentences are applied the sentences can be increased by the presence of the associated offences to ensure that this is the case.

Q15

Are there further ways in which you think victims can or should be considered, in relation to:

- (a) allocation?
- (b) offences taken into consideration?
- (c) totality?

Equality and diversity

Alongside this consultation document and the draft guidelines the Council has published an equality impact assessment. This assessment has been informed by a review of the relevant literature and data; however, this is very limited. No equality matters have been identified to date in relation to the development of the guidelines but the Council is keen to hear through the consultation of any matters that should be considered.

Q16

Are there any equality or diversity matters that the Council should consider, in relation to:

- (a) allocation?
- (b) offences taken into consideration?
- (c) totality?

(please provide evidence where possible)

Q17

Are there any further comments you wish to make?

Annex A: Summary of consultation questions

ALLOCATION

- Q1 Do you think that the structure of the guideline provides sufficient guidance to magistrates to assist them in making consistent, appropriate allocation decisions?
- Q2 Do you agree with the approach the guideline takes to assessing the suitability of cases for magistrates' court trial and the emphasis it places on taking a balanced initial view?
- Q3 Are there further matters that the guideline might usefully cover?
- Q4 Do you agree to the amendment proposed to the introduction of the MCSG?

OFFENCES TAKEN INTO CONSIDERATION

- Q5 Do you agree with the proposed general principles?
- Q6 Do you agree with the proposals as to the types of offences that should not be the subject of TICs?
- Q7 Do you agree with the proposed procedural safeguards?
- Q8 Do you agree with the proposed approach to the application of TICs?

TOTALITY

Q9

Do you agree with this definition of totality?

Q10

Do you agree with the proposed general principles of totality?

Q11

Do you agree with the circumstances in which concurrent and consecutive sentences are likely to be passed, recognising there is no inflexible rule?

Q12

Do you agree with the guidance provided on ensuring the sentence is just and appropriate?

Q13

Should the guideline provide further detail on how sentences are adjusted in relation to totality, and if so how might this be done?

Q14

Are there further specific considerations that the guideline could usefully cover relating to the sentencing of multiple offences?

GENERAL CONSIDERATIONS

Q15

Are there further ways in which you think victims can or should be considered, in relation to:

- (a) allocation?
- (b) offences taken into consideration?
- (c) totality?

Q16

Are there any equality or diversity matters that the Council should consider, in relation to:

- (a) allocation?
- (b) offences taken into consideration?
- (c) totality?

(please provide evidence where possible)

Q17

Are there any further comments you wish to make?

Annex B:

Background to guidelines

Sentencing Guidelines Council and Sentencing Advisory Panel

The Sentencing Council was created to bring together the functions of the two previous bodies, the Sentencing Guidelines Council (SGC) and Sentencing Advisory Panel (SAP), which were disbanded. In 2003, the SGC and the SAP had been established to work together to produce sentencing guidelines that encouraged consistency in sentencing throughout England and Wales and to support sentencers in their decision-making. The SAP's role was to advise on sentencing guidelines for particular offences and other sentencing issues, and following a period of wide consultation and research if required, the Panel would produce advice for the SGC to consider. The SGC would receive advice from the SAP and use this to formulate sentencing guidelines on the subject. The SGC would publish draft guidelines for consultation and then issue final guidelines for sentencers.

The Sentencing Council is a more streamlined body with a greater remit to take forward work on sentencing not only through improvements to guidelines but also through the development of a robust evidence base and engaging more with the public to improve understanding about sentences. The Council brings together wide experience in sentencing and comprises eight judicial members and six non-judicial members.

Statutory requirements

In producing these draft guidelines, the Council has had regard to a number of statutory requirements.

The purposes of sentencing are stated in section 142 of the Criminal Justice Act 2003:

- the punishment of offenders;
- the reduction of crime (including its reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and,
- the making of reparation by offenders to persons affected by their offences.

The Sentencing Council has also had regard to the statutory duties in the Coroners and Justice Act 2009 which set out requirements for sentencing guidelines as follows:

- guidelines may be general in nature or limited to a particular offence;
- the Council must publish them as draft guidelines;
- the Council must consult the following persons about draft guidelines: the Lord Chancellor, such persons as the Lord Chancellor may direct, the Justice Select Committee of the House of Commons, such other persons as the Council considers appropriate;

- after making appropriate amendments, the Council must issue definitive guidelines;
 - the Council may review the guidelines and may revise them;³²
 - the Council must publish a resource assessment in respect of the guidelines;³³ and,
 - the Council must monitor the operation and effect of its sentencing guidelines.³⁴
- the impact of sentencing decisions on victims of offences;
 - the need to promote public confidence in the criminal justice system;
 - the cost of different sentences and their relative effectiveness in preventing re-offending; and,
 - the results of monitoring the operation and effect of its sentencing guidelines.³⁷

The previous statute, dealing with SGC guidelines provided that courts had to “have regard to any guidelines which are relevant to the offender’s case”³⁵ and give reasons if a sentence fell outside of the range.³⁶

Section 125 (1) (a) of the Coroners and Justice Act 2009 states that:

“Every court -
(a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

Therefore, courts are required to impose a sentence consistent with the guidelines, unless it is contrary to the interests of justice to do so. The Sentencing Council is keen to ensure that the guidelines are as accessible as possible for sentencers.

When preparing sentencing guidelines, the Council must have regard to the following matters:

- the sentences imposed by courts in England and Wales for offences;
- the need to promote consistency in sentencing;

When publishing any draft guidelines, the Council must publish a resource assessment of the likely effect of the guidelines on:

- the resources required for the provision of prison places;
- the resources required for probation provision; and
- the resources required for the provision of youth justice services.³⁸

The Council has had regard to these duties throughout the preparation of this draft guideline and some of the evidence and rationale relating to these statutory duties is set out further in Section Three of this consultation paper. The Council has considered case law, evidence of current sentencing practice and drawn on members’ own experience of sentencing practice. In developing an understanding of the cost and effectiveness of different sentences, the Council has considered the available information and evidence. These are contained in the resource assessment which accompanies this consultation paper but it should be noted that the data available in relation to the topics which are the subject of the current consultation is limited.

³² s. 120 Coroners and Justice Act 2009

³³ s. 127(2) *ibid*

³⁴ s. 128(1) *ibid*

³⁵ s. 172(1) Criminal Justice Act 2003

³⁶ s. 174(2) *ibid*

³⁷ s. 120(11) Coroners and Justice Act 2009

³⁸ s. 127(3) *ibid*

Annex C: Draft Allocation guideline

Applicability of guideline

In accordance with section 122(2) of the Coroners and Justice Act 2009, the Sentencing Council issues this draft guideline. When issued as a definitive guideline, it will apply to all defendants in the magistrates' court (including youths jointly charged with adults). It will not be applicable in the youth court where a separate statutory procedure applies.

Section 125(1) Coroners and Justice Act 2009 provides that when sentencing offences after 6 April 2010:

“Every court -

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender's case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

Statutory framework

In accordance with section 19 of the Magistrates' Courts Act 1980, where a defendant pleads not guilty or has not indicated an intention to plead guilty to an offence triable either way, a magistrates' court must decide whether the offence should be sent to the Crown Court for trial.

When deciding whether an either way offence is more suitable for summary trial or trial on indictment, section 19 of the Magistrates' Courts Act 1980 provides that the court shall give the prosecutor and the accused the opportunity to make representations as to which court is more suitable for the conduct of the trial.³⁹

The court must also have regard to:

- a) the nature of the case;
- b) whether the circumstances make the offence one of a serious character;
- c) whether the punishment which a magistrates' court would have power to inflict for the offence would be adequate; and,
- d) any other circumstances which appear to the court to make the offence more suitable for it to be tried in one way rather than the other.⁴⁰

³⁹ Section 19 (2) Magistrates' Court Act 1980

⁴⁰ Section 19 (1) and (3) Magistrates' Court Act 1980

Guidance

It is important to ensure that all cases are tried at the appropriate level. In general, either way offences should be tried summarily unless it is likely that the court's sentencing powers will be insufficient. Its powers will generally be insufficient if the outcome is likely to result in a sentence in excess of six months for a single offence.

The court should assess the likely sentence in the light of the facts alleged by the prosecution case, taking into account all aspects of the case including those advanced by the defence.

The court should refer to definitive guidelines to assess the likely sentence for the offence.

Committal for sentence

There is ordinarily no statutory restriction on committing an either way case for sentence following conviction. The general power of the magistrates' court to commit to the Crown Court for sentence after a finding that a case is suitable for summary trial and/or conviction continues to be available where the court is of the opinion that the offence (and any associated offences) is so serious that greater punishment should be inflicted than the court has power to impose.⁴¹ Where the Court decides that the case is suitable to be dealt with in the magistrates' court (also known as accepting jurisdiction), it should remind the offender that all sentencing options remain open, including committal to the Crown Court for sentence at the time it informs the offender of this decision.

However, where the court proceeds to the summary trial of certain offences relating to criminal damage, upon conviction there is no power to commit to Crown Court for sentence.⁴²

Linked cases

Where a youth and an adult are jointly charged, the youth must be tried summarily unless the court considers it is in the interests of justice for both the youth and the adult to be committed to the Crown Court for trial. Examples of factors that should be considered when deciding whether to separate the youth and adult defendants include:

- whether separate trials can take place without causing undue inconvenience to witnesses or injustice to the case as a whole;
- the young age of the defendant, particularly where the age gap between the adult and youth offender is substantial;
- the immaturity of the youth;
- the relative culpability of the youth compared with the adult and whether or not the role played by the youth was minor;
- lack of previous convictions on the part of the youth.

⁴¹ Section 3 Powers of Criminal Courts (Sentencing) Act 2000

⁴² Schedule 2 and section 33 Magistrates' Courts Act 1980

Annex D:

Draft Offences Taken Into Consideration guideline

Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this draft guideline. When issued as a definitive guideline, it will apply to all offenders.

Section 125(1) Coroners and Justice Act 2009 provides that when sentencing offences after 6 April 2010:

“Every court -

(a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and

(b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

This guideline applies where an offender admits the commission of other offences in the course of sentencing proceedings and requests those other offences to be taken into consideration.⁴³

General principles

When sentencing an offender who requests offences to be taken into consideration, courts should pass a total sentence which reflects **all** the offending behaviour. The sentence must be just and proportionate and must not exceed the statutory maximum for the conviction offence.

What offences can be Taken Into Consideration

The court has discretion as to whether or not to take TICs into account. In exercising its discretion the court should take into account that TICs are capable of reflecting the offender’s overall criminality; assisting the police; avoiding the need for further proceedings; and demonstrating a determination by the offender to wipe the slate clean.⁴⁴

It is generally undesirable for the TICs to be accepted in the following circumstances:

- Where the TIC is likely to attract a greater sentence than the conviction offence;
- Where it is in the public interest that the TIC should be the subject of a separate charge;

⁴³ Section 305 Criminal Justice Act 2003 and s161(1) Powers of the Criminal Court (Sentencing) Act 2000

⁴⁴ R v Miles [2006] EWCA 256 Crim 256

- Where the offender would avoid a prohibition, ancillary order or similar consequence which it would have been desirable to impose on conviction. For example:
 - Where the TIC attracts mandatory disqualification or endorsement and the offence(s) for which the defendant is to be sentenced do not (including, for example, monetary values of items) and any other brief details that the court should be aware of;
- A copy of the TIC Schedule must be provided to the defendant and his representative before the sentence hearing. The defendant should sign the TIC Schedule to provisionally admit the offences;
- At the sentence hearing, the court should ask the defendant in open court whether he admits each of the offences on the TIC Schedule and whether he wishes them to have the matter taken into consideration⁴⁷;
- If there is any doubt about the admission of a particular offence, it should not be accepted as a TIC;
- If the defendant is committed to the Crown Court for sentence, this procedure must take place again at the Crown Court even if the defendant has agreed to the schedule in the Magistrates' Court.
- If the TIC constitutes a breach of an earlier sentence⁴⁵;
- Where the TIC is a specified offence for the purposes of s224 Criminal Justice Act 2003, but the conviction offence is non-specified;
- Where the TIC is not founded on the same facts or evidence or part of a series of offences of the same or similar character (unless the court is satisfied that it is in the interests of justice to do so).

Jurisdiction

The magistrates' court cannot take into consideration an indictable only offence.

The Crown Court can take into account summary only offences provided the TICs are founded on the same facts or evidence as the indictable charge, or is part of a series of offences of the same or similar character as the indictable conviction offence.⁴⁶

Procedural safeguards

A court should generally only take offences into consideration if the following procedural provisions have been satisfied:

- The police or prosecuting authorities have prepared a schedule of offences (TIC Schedule) that they consider suitable to be taken into consideration. The TIC Schedule should set out the nature of each offence, the date of offence, relevant detail

Application

The sentence imposed on an offender should, in most circumstances, be increased to reflect the fact that other offences have been taken into consideration. The court should:

1. Determine the sentencing *starting point* for the conviction offence, referring to the relevant definitive sentencing guidelines. No regard should be had to the presence of TICs at this stage.
2. Consider whether there are any aggravating or mitigating factors that justify an upward or downward adjustment from the *starting point*. The presence of TICs should be treated as an aggravating feature that generally justifies an upward adjustment from the *starting point*. Where there are a large

⁴⁵ R v Webb 1953 37 Cr App 82

⁴⁶ Section 40 Criminal Justice Act 1988

⁴⁷ Anderson v DPP [1978] AC 964

number of TICs it may be appropriate to move outside the *category range*, although this must be considered in the context of the case and subject to the principle of totality. The court is limited to the statutory maximum for the conviction offence.

3. Continue through the sentencing process including:
 - Any reduction for a guilty plea should be applied to the overall sentence;
 - The principle of totality;
 - When considering ancillary orders these can be considered in relation to any or all of the TICs, specifically:
 - o compensation orders⁴⁸ - in the magistrate's court the total compensation cannot exceed the limit for the conviction offence;
 - o restitution orders;⁴⁹

⁴⁸ S131(2) Powers of the Criminal Courts (Sentencing) Act 2000

⁴⁹ S148 Powers of the Criminal Courts (Sentencing) Act 2000

Annex E:

Draft Totality guideline

Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this draft guideline. When issued as a definitive guideline, it will apply to all offenders.

Section 125(1) Coroners and Justice Act 2009 provides that when sentencing offences after 6 April 2010:

“Every court -

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

This guideline applies when sentencing an offender for multiple offences or when sentencing an offender who is already serving an existing sentence. In these situations the courts should apply the principle of totality.

General principles

The concept 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 with a just and proportionate sentence. This is so whether the sentences are structured as concurrent or consecutive sentences. Concurrent sentences will therefore ordinarily be longer than a single sentence for a single offence would be.
2. It is usually impossible to arrive at a just and proportionate sentence for multiple offending simply by adding together notional single sentences. It is necessary to address the offending behaviour, together with the factors personal to the offender as a whole.

Concurrent/consecutive sentences

There is no inflexible rule governing whether sentences should be structured as concurrent or consecutive components. The overriding principle is that the overall sentence must be just and proportionate.

General Approach (as applied to Determinate Custodial Sentences)

1. Consider the sentence for each individual offence, referring to the relevant sentencing guidelines.
2. Determine whether the case calls for concurrent or consecutive sentences.

Concurrent sentences will ordinarily be appropriate where:

Offences arise out of the same incident or facts.

Examples include:

- a single incident of dangerous driving resulting in injuries to multiple victims⁵⁰;
- robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it⁵¹;
- fraud and associated forgery;
- separate counts of supplying different types of drugs of the same class as part of the same transaction.

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

Examples include:

- repetitive small thefts from the same person, such as by an employee;
- repetitive benefit frauds of the same kind, committed in each payment period.

Where concurrent sentences are to be passed the sentence should reflect the overall criminality involved. The sentence should be appropriately aggravated by the presence of the associated offences.

Examples include:

- a single incident of dangerous driving resulting in injuries to multiple victims where there are separate charges relating to each victim. The sentences should generally be passed concurrently, but each sentence should be aggravated to take into account the harm caused;
- repetitive fraud or theft, where charged as a series of small frauds/thefts, would be properly considered in relation to the total amount of money obtained and the period of time over which the offending took place. The sentences should generally be passed concurrently, each one reflecting the overall seriousness;
- robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it. The principal sentence for the robbery should properly reflect the presence of the weapon. The Court must avoid double-counting and may deem it preferable for the possession of the weapon's offence to run concurrently to avoid the appearance of under-sentencing in respect of the robbery.⁵²

Consecutive sentences will ordinarily be appropriate where:

Offences arise out of unrelated facts or incidents.

Examples include:

- where the offender commits a theft on one occasion and a common assault against a different victim on a separate occasion;
- an attempt to pervert the course of justice in respect of another offence also charged⁵³;
- a Bail Act offence⁵⁴;

⁵⁰ R v Lawrence (1989) 11 Cr App R (S) 580

⁵¹ R v Poulton and Celaire [2002] EWCA Crim 2487; Attorney General's Reference No 21 & 22 of 2003 [2003] EWCA Crim 3089

⁵² Attorney General's Reference No 21 & 22 of 2003

⁵³ Attorney General's Reference No 1 of 1990 (1990) 12 Cr App R (S) 245

⁵⁴ R v Millen (1980) 2 Cr App R (S) 357

- offences that are unrelated because whilst they were committed simultaneously they are distinct and there is an aggravating element that requires separate recognition, for example:
 - an assault on a constable committed to try to evade arrest for another offence also charged⁵⁵;
 - where the defendant is convicted of drug dealing and possession of a firearms offence. The firearms offence is not the essence or the intrinsic part of the drugs offence and requires separate recognition⁵⁶;
 - where the defendant is convicted of threats to kill in the context of an indecent assault on the same occasion, the threats to kill could be distinguished as a separate element⁵⁷;

Offences that are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences.

- where offences committed against different people, such as repeated thefts involving attacks on several different shop assistants⁵⁸

Where one or more offence qualifies for a statutory minimum sentence and concurrent sentences would improperly undermine that minimum⁵⁹.

It is, however, not permissible to impose consecutive sentences for offences committed at the same time in order to evade the statutory maximum penalty⁶⁰.

Where consecutive sentences are to be passed:

Add up the sentences for each offence and consider if the aggregate length is just and proportionate.

If the aggregate length is not just and proportionate the court should consider how to reach a just and proportionate sentence. There are a number of ways in which this can be achieved.

Examples include:

- When sentencing for similar offence types or offences of a similar level of severity the court can consider:
 - whether all of the offences can be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively;
 - whether, despite their similarity, a most serious principal offence can be identified and the other sentences can all be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively in order that the sentence for the lead offence can be clearly identified.

⁵⁵ R v Kastercum (1972) 56 Cr App R 298

⁵⁶ R v Poulton and Celuire [2002] EWCA Crim 2487; Attorney General's Reference No 21&22 of 2003 [2003] EWCA Crim 3089

⁵⁷ R v Fletcher [2002] 2 CAR (S) 127

⁵⁸ R v Jamieson & Jamieson [2008] EWCA Crim 2761

⁵⁹ R v Raza [2010] 1 Cr App R (S) 56

⁶⁰ R v Ralphs [2009] EWCA Crim 2555

- When sentencing for two or more offences of differing levels of seriousness the court can consider:
 - o whether some offences are of such low seriousness in the context of the most serious offence/s that they can be recorded as ‘no separate penalty’ (for example technical breaches or minor driving offences not involving mandatory disqualification);
 - o whether some of the offences are of lesser seriousness and are unrelated to the most serious offence/s, that they can be ordered to run concurrently so that the sentence for the most serious offence/s can be clearly identified.
3. **Test the overall sentence(s) against the requirement that they be just and proportionate.**
 4. **Consider whether the structure of the sentence is such as will best be understood by all concerned with it.**

Specific applications – Custodial sentences

EXISTING DETERMINATE SENTENCE, WHERE DETERMINATE SENTENCE TO BE PASSED	
Circumstance	Approach
Offender serving a determinate sentence (offence/s committed before original sentence imposed)	Consider what the sentence length would have been if the court had dealt with the offences at the same time and ensure that the totality of the sentence is just and proportionate in all the circumstances. If it is not, an adjustment should be made to the sentence imposed for the latest offence.
Offender serving a determinate sentence (offence/s committed after original sentence imposed)	Generally the sentence will be consecutive as it will have arisen out of an unrelated incident. The court must have regard to the totality of the offender's criminality when passing the second sentence, to ensure that the total sentence to be served is just and proportionate. Where a prisoner commits acts of violence in prison custody, any reduction for totality is likely to be minimal. ⁶¹
Offender serving a determinate sentence but released from custody	The new sentence should start on the day it is imposed: s 265 Criminal Justice Act 2003 prohibits a sentence of imprisonment running consecutively to a sentence from which a prisoner has been released. The sentence for the new offence will take into account the aggravating feature that it was committed on licence. It must however be commensurate with the new offence and cannot be artificially inflated with a view to ensuring that the offender serves a period in custody additional to the recall period (which will be an unknown quantity in most cases) ⁶² ; this is so even if the new sentence will in consequence add nothing to the period actually served.
Offender subject to a s116 return to custody The powers under s116 Powers Criminal Court (Sentencing) Act 2000 remain available where the offender: <ul style="list-style-type: none"> • has been released from a sentence of less than 12 months⁶³; • committed his offence before 4 April 2005 and is released from a sentence of less than 4 years⁶⁴; • committed his offence before 4 April 2005 and is released from a sentence of over 4 years following a Parole Board recommendation, or after serving two-thirds of his sentence under section 33(b) Criminal Justice Act 1991⁶⁵. 	The period of return under s116 can either be ordered to be served before or concurrently with the sentence for the new offence. In either case the period of return shall be disregarded in determining the appropriate length of the new sentence.
Offender sentenced to a determinate term and subject to an existing suspended sentence order	Where an offender commits an additional offence during the operational period of a suspended sentence and the court orders the suspended sentence to take effect, the additional sentence will generally be consecutive to the activated suspended sentence, as it will arise out of unrelated facts.

⁶¹ R. v Ali [1998] 2 Cr App R 123

⁶² Costello [2010] EWCA Crim 371

⁶³ s116 of the PCC(S)A 2000 was repealed by s.332 of the Criminal Justice Act 2003 and Part 7 of Schedule 37. However, the effect of the saving in paragraph 29 of Schedule 2 to the Commencement No.8 and Transitional and Savings Provisions Order 2005 was that s.116 continued to apply where the earlier sentence was imposed for an offence committed before 4 April 2005, or was for a term of less than 12 months

⁶⁴ *ibid*

⁶⁵ *Ibid*. The Criminal Justice & Immigration Act 2008 contains a further transitional provision. Paragraph 4 of Schedule 26 inserts an exclusion into s116 which prevents prisoners released under s33(1A) of the 1991 Act (i.e eligible discretionary conditional release prisoners, who are released automatically at ½ point of their sentence, rather than on a recommendation from the Parole Board) from being returned to prison under s116

EXTENDED SENTENCES FOR PUBLIC PROTECTION	
Circumstance	Approach
Extended sentences – using multiple offences to calculate the requisite determinate term	<p>In the case of Criminal Justice Act 2003 extended sentences, providing there is at least one specified offence, the threshold requirement under s227 (2B) Criminal Justice Act 2003 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.⁶⁶</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 offences⁶⁷. The extension period must not exceed five years (or eight for sexual offence). The whole aggregate term must not exceed the statutory maximum.</p> <p>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 fall to be adjusted.</p>

⁶⁶ Pinnell (2010)

⁶⁷ R v Cornelius (2002)

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.</p> <p>If any offence is a serious and specified one and it appears that the defendant is dangerous within the meaning of the dangerousness provisions of Criminal Justice Act 2003 then:-</p> <ul style="list-style-type: none"> a) first assess the notional determinate term for all offences (serious, specified or otherwise), adjusting for totality in the usual way⁶⁸; b) ascertain whether the total determinate term would be four years or more, or the offender has previously been convicted of a Schedule 15A offence; if so an indeterminate sentence may be passed; and c) the indeterminate sentence should generally be passed concurrently on all serious specific offences, 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 serving an existing determinate sentence)	<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 imposition⁶⁹. The Court should instead order the sentence to run concurrently but can adjust the minimum term for the new offence to reflect half of any period still remaining to be served under the existing sentence (to take account of the early release provisions for determinate sentences). The court should then review the minimum term to ensure that the total of the sentences is just and proportionate.</p>
Indeterminate sentence (where the offender is already serving an existing indeterminate sentence)	<p>It is generally undesirable to order an indeterminate sentence to be served consecutively to any other period of imprisonment on the basis that indeterminate sentences should start on their imposition. However, where necessary the court can order an indeterminate sentence to run consecutively to an indeterminate sentence passed on an earlier occasion.⁷⁰ 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.⁷¹ The court should consider the length of the aggregate minimum terms that must be served before the offender will be eligible for consideration by the Parole Board. If this is not just and proportionate, the court can adjust the minimum term.</p>
Ordering a determinate sentence to run consecutively to an indeterminate sentence	<p>The court can order a determinate sentence to run consecutively to an indeterminate sentence. The determinate sentence will commence on the expiry of the minimum term of the indeterminate sentence and the offender will become eligible for a parole review after serving half of the determinate term.⁷²</p> <p>The court should consider the totality of the whole term that the offender will serve before becoming eligible for consideration for release. If this is not just and proportionate the court can reduce the length of the determinate term, or alternatively can order the second sentence to be served concurrently.</p>

⁶⁸ R v Rahuel Delucca [2010] EWCA Crim 710

⁶⁹ O'Brien v R [2006] EWCA Crim 1741

⁷⁰ R v Hills [2008] EWCA Crim 1871; R v Ashes [2007] EWCA Crim 1848

⁷¹ s. 28(1B) Crime (Sentences) Act 1997

⁷² s.28 Crime (Sentences) Act 1997

Specific applications - Non-Custodial sentences

MULTIPLE FINES FOR NON-IMPRISONABLE OFFENCES	
Circumstance	Approach
<p>Offender convicted of more than one offence where a fine is appropriate</p>	<p>The total is inevitably cumulative.</p> <p>The court should determine the fine for each individual offence based on the seriousness of the offence⁷³ and taking into account the circumstances of the case including, among other things, the financial circumstances of the offender so far as they are known, or appear, to the court.⁷⁴</p> <p>The court should add up the fines for each offence and consider if they are just and proportionate.</p> <p>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><i>For example:</i></p> <ul style="list-style-type: none"> • where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. ‘No separate penalty’ should be imposed for the other offences; • where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the court should consider whether all of the fines can be proportionately reduced. Separate fines should then be passed. <p>Where separate fines are passed, the court must be careful to ensure that there is no double counting.⁷⁵</p> <p>Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.</p>
<p>Multiple offences attracting fines - crossing the community threshold</p>	<p>If the offences being dealt with are all imprisonable, then the community threshold can be crossed by reason of multiple offending, when it would not be crossed for a single offence⁷⁶. However, if the offences are non-imprisonable (e.g. driving without insurance) the threshold cannot be crossed⁷⁷.</p>

⁷³ s. 164 (2) CJA 2003

⁷⁴ s. 164 (3) CJA 2003

⁷⁵ Pointon [2008] EWCA Crim 513

⁷⁶ s. 148 CJA 2003 (1)

⁷⁷ Section 150A CJA 2003 (in force since the 14 July 2008) restricts the power to make a community order by limiting it to cases where the offence is punishable with imprisonment.

FINES IN COMBINATION WITH OTHER SENTENCES	
Circumstance	Approach
A fine may be imposed in addition to any other penalty for the same offence except:	<ul style="list-style-type: none"> • a hospital order ⁷⁸; • a discharge ⁷⁹; • a sentence fixed by law ⁸⁰(minimum sentences, EPP, IPP); • a minimum term imposed under s 110(2) or s 111(2) of the Powers of Criminal Courts (Sentencing) Act 2000⁸¹; • a life sentence imposed under section 225 (2) Criminal Justice Act 2003 or a sentence of detention for life for an offender under 18 under section 226 (2) Criminal Justice Act 2003⁸².
Fines and determinate custodial sentences	<p>A fine should not generally be imposed in combination with a custodial sentence because of the effect of imprisonment on the means of the defendant. However, exceptionally, it may be appropriate to impose a fine in addition to a custodial sentence where:</p> <ul style="list-style-type: none"> • the sentence is suspended; • a confiscation order is not contemplated; and • there is no obvious victim to whom compensation can be awarded; and • the offender has, or will have, resources from which a fine can be paid.⁸³

⁷⁸ s.37(8) Mental Health Act 1983

⁷⁹ McClelland [1951] 1 All ER 557

⁸⁰ s.163 Criminal Justice Act 2003

⁸¹ *ibid*

⁸² *ibid*

⁸³ This guidance is also provided at p. 12 of SGC Guideline: *Sentencing for Fraud – Statutory Offences (2009)*

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. ⁸⁴ 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 guidance at section 2 of this guideline for multiple determinate sentences.
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	<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.</p> <p>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>
Offender convicted of an offence while serving a community order	<p>The power to deal with the offender depends on his being convicted whilst the order is still in force⁸⁵; it does not arise where the order has expired, even if the additional offence committed whilst it was still current.</p> <p>If an offender in respect of whom a community order made by a magistrates' court is in force is convicted by a magistrates' court of an additional offence, the magistrates' court should ordinarily revoke the previous community order and sentence afresh for both the original and the additional offence.</p> <p>Where an offender in respect of whom a community order made by a 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 and the additional offence.</p> <p>The sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence. The court should consider whether the combination of associated offences is sufficiently serious to justify a custodial sentence.</p> <p>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>

⁸⁴ s. 148 CJA 2003 (1)

⁸⁵ Paragraphs 21-23 of Schedule 8 Criminal Justice Act 2003

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 offender⁸⁶.</p> <p>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.</p> <p>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> <p>a) discretionary disqualification and obligatory endorsement from driving, or b) obligatory disqualification but the court for special reasons does not disqualify the offender and the penalty points to be taken into account number 12 or more (s28 and 35 Road Traffic Offender Act 1988)</p>	<p>Where an offender is convicted on the same occasion of more than one offence to which section 35(1) Road Traffic Offender Act 1988 applies, only one disqualification shall be imposed on him.⁸⁷ 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 offences⁸⁸.</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>

⁸⁶ s34 (1) Road Traffic Offender Act 1998

⁸⁷ s34 (3) Ibid

⁸⁸ Ibid

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 ⁸⁹ . Where there are competing claims for limited funds, the total compensation available should normally be apportioned on a pro rata basis. ⁹⁰
The court may combine a compensation order with any other form of order.	
Compensation orders and fines	Priority is given to the imposition of a compensation order over a fine. ⁹¹ 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. ⁹²
Compensation orders and community sentences	A compensation order can be combined with a community sentence.
Compensation orders and suspended sentence orders	A compensation order can be combined with a suspended sentence order. ⁹³
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.

⁸⁹ Warton [1976] Crim LR 520

⁹⁰ Miller [1976] rim LR 694

⁹¹ s. 130 (12) PCC (S) A 2000

⁹² R v Mitchell [2001] Crim LR 239

⁹³ s. 118 (5) PCC(S)A 2000

