

Document number	<b>01/23</b>
Date	<b>23 January 2022</b>
Response to	<b>Sentencing Council consultation: Revisions to the Totality Guideline Consultation</b>
Issued by	<b>Sentencing Council</b>
Link to consultation	<a href="https://www.sentencingcouncil.org.uk/wp-content/uploads/Totality-consultation-FINAL.pdf">https://www.sentencingcouncil.org.uk/wp-content/uploads/Totality-consultation-FINAL.pdf</a>
Notes	<b>For more information, please contact Samira Ali on <a href="mailto:samira.ali@magistrates-association.org.uk">samira.ali@magistrates-association.org.uk</a></b>

---

### **About the Magistrates Association**

The Magistrates Association is an independent charity and the membership body for the magistracy. We work to promote the sound administration of the law, including by providing guidance, training and support for our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the courts and the broader justice system. With over 14,000 members across England and Wales, we are a unique source of information and insight and the only independent voice of the magistracy.

### **Question 4: Do you have any comments on the proposed changes to the General principles section? We are interested in your views on the content and presentation of the section.**

The presentation is clear and the content helpful. We would suggest that a sentence be inserted to advise that the box on the right-hand side can be used to navigate directly to the desired sections of the guideline.

We question whether the approach to reaching a decision about totality should be limited to sentencing multiple offences. The principles of achieving a just and proportionate sentence should also be applied to a single offence when considering means to determine the level of fine, compensation, surcharge and costs.

### **Question 5: Do you have any comments on the proposed changes to the General approach section? We are interested in your views on the content and presentation of the section.**

We would suggest that the heading should be General Approach to concurrent/consecutive sentencing (as applied to determinate custodial sentences). The drop-down examples are useful.

### **Question 6: Do you have any comments on the proposed new 'Reaching a just and proportionate sentence' section? We are interested in your views on the content and presentation of the section.**

We are happy with the layout and wording in this section. Since it applies to both custodial and non-custodial sentences, we think this should form part of the General Principles section, or follow straight on from it before the General Approach section.

Please see the comments to question 9 for a more detailed explanation of our concerns.

**Question 7: Do you have any comments on the proposed changes to the ‘Specific applications – custodial sentences’ section? We are interested in your views on the content and presentation of the section.**

The guidance is helpful.

**Question 8: Do you have any comments on the proposed changes to the ‘Specific applications – non-custodial sentences’ section? We are interested in your views on the content and presentation of the section.**

We are generally happy with the examples that are given. It would be useful to also cover totality in relation to different elements of a financial penalty for a single offence, not just multiple fines. The explanatory materials cover the priority of surcharge, cost, compensation etc. and the proportionality of payment within 12 months, but this is also an issue of totality, where means will not allow all elements to be paid within a reasonable timeframe. It would be helpful if those points were brought into the totality guidelines or links inserted to the relevant passages in the explanatory materials.

The information on disqualification is useful but it would also be helpful to include here that points on licence should be applied to the offence carrying the highest number of points and licence endorsed with no additional points for other driving offences. Traffic offences guidelines step 5 should then say ‘If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline which also provides the approach to be used for points or disqualification for multiple traffic offences.’ Alternatively, the information could be in Explanatory Materials with a link from this guideline and the traffic offences guidelines.

**Question 9: Do you have comments on the overall structure and format of the guideline?**

Our main concern is that information we need frequently should be easily found. In the magistrates’ court, very many issues of totality do not involve custody and even with the introduction of dropdown sections, it is necessary to move quite a way down the guidelines to find the information on non-custodial sentences.

The section “Reaching a just and proportionate sentence” is relevant to custodial and non-custodial sentencing but is sandwiched between two sections covering custodial sentencing and could easily be missed. It would be better placed nearer the top.

We note there is the ability to skip to sections via the panel on the right on the screen, but we found it was easy to miss that. It would be better to have the link to non-custodial sentencing directly within the main text body, just before the section “Concurrent/consecutive sentences”.

**Question 10: Do you have views on the impact the proposed revisions may have on sentence outcomes?**

No.

**Question 11: Do you have any comment on the proposed change in the reference to the Equal Treatment Bench Book at the beginning of the Totality guideline?**

No.

**Question 12: Are there any aspects of the Totality guideline that you feel may cause or increase disparity in sentencing?**

No.

**Question 13: Are there any existing disparities in sentencing that you are aware of which the Totality guideline could and should address?**

No.

**Question 14: Are there any other matters relating to equality and diversity that you consider we ought to be aware of and/or that we could and should address in the Totality guideline?**

No.

**Question 15: Do you have any other comments on the proposals that have not been covered elsewhere?**

No.