

CAYMAN ISLANDS



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PRACTICE DIRECTION No. 5/2015

**CAYMAN ISLANDS SUMMARY COURT
CRIMINAL CASE MANAGEMENT**



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1. Purpose

- 1.1 The purpose of this Practice Direction is to establish a procedure for case management in criminal proceedings in the Summary Court to reduce delays and improve efficiency.

2. Context

- 2.1 In this Practice Direction:

2.1.1 “**Court**” means the Summary Court.

3. The Overriding Objective

- 3.1 The overriding objective of this Practice Direction is that criminal cases be dealt with justly and expeditiously.
- 3.2 Dealing with a case in furtherance of the overriding objective includes –
- (i) Acquitting the innocent and convicting the guilty;
 - (ii) Dealing with the Prosecution and the Defence fairly;
 - (iii) Recognising the fundamental rights and freedoms protected by the Constitution of the Cayman Islands.
 - (iv) Respecting the interests of witnesses, victims and keeping them informed of the progress of the case;
 - (v) Dealing with the case efficiently and expeditiously;
 - (vi) Dealing with cases in ways that take into account –

- (a) The gravity of the offence alleged;
- (b) The complexity of what is in issue;
- (c) The severity of the consequences for the defendant and others affected; and
- (d) The needs of other cases.

4. The duty of the parties in a criminal case

4.1 Each of the parties, in the conduct of each case, must:

- (i) Prepare and conduct the case in accordance with the overriding objective;
- (ii) Comply with Practice Directions and directions made by the Court including times set within which actions must be taken either under this Practice Direction or by rules of the court; and
- (iii) At once inform the Court and all parties of any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by this Practice Direction or any direction of the Court;

4.2.1 A failure is significant if it might hinder the Court in furthering the overriding objective.

4.2.2 Anyone involved in any way with a criminal case is a participant in its conduct for the purposes of this Practice Direction.

5. The application by the Court of the overriding objective

5.1 The Court must further the overriding objective in particular when exercising any power given to it by legislation, applying any Practice Direction, or interpreting any Practice Direction.

6. The duty of the Court

6.1 The Court must further the overriding objective by actively managing the case. Active case management includes:

- (i) The early identification of the real issues;

- (ii) The early identification of the needs of the witnesses;
 - (iii) Achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;
 - (iv) Monitoring the progress of the case and compliance with directions;
 - (v) Ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;
 - (vi) Discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;
 - (vii) Encouraging the participants to co-operate in the progression of the case; and
 - (viii) Making use of technology as appropriate and available.
- 6.2 The Court must actively manage the case by giving any direction appropriate to the needs of that case as early as possible.

7. The duty of the parties

- 7.1 Each party must actively assist the Court in fulfilling its duty under paragraph 6.1, with or without a direction - and apply for a direction if needed to further the overriding objective.

8. The Court's case management powers

- 8.1 In fulfilling its duty under paragraph 6, the Court may give any direction and take any step to actively manage a case unless that direction or step would be inconsistent with legislation, or this Practice Direction.
- 8.2 In particular the Court may:
- (i) Direct that preliminary issues, such as admissibility of evidence, are determined at a hearing before the trial;
 - (ii) Nominate a Magistrate to manage a case;
 - (iii) Give a direction on its own initiative or on application by a party;
 - (iv) Ask or allow a party to propose a direction;
 - (v) For the purpose of giving directions, the Court will receive applications and representations by letter, by telephone or by any other means of electronic communication, and conduct a hearing by such means;

8.3 Give a direction:

- (i) At a hearing, in public or in private, or
- (ii) Without a hearing
- (iii) Fix, postpone, bring forward, extend, cancel or adjourn a hearing;

8.4 Shorten or extend (even after it has expired) a time limit fixed by a direction;

8.5 Require that issues in the case should be:

- (i) identified in writing,
- (ii) Determined separately, and decide in what order they will be determined; and
- (iii) Specify the consequences of failing to comply with a direction.

8.6 Any power to give a direction under this Practice Direction includes a power to vary or revoke that direction.

8.7 If a party fails to comply with a rule or direction, the Court may:

- (i) Fix, postpone, bring forward, extend, cancel or adjourn a hearing;
- (ii) Exercise its powers to make a costs order; and/or
- (iii) Impose such other sanction as may be appropriate.

9. Case preparation and progression

9.1 At every hearing, if a case cannot be concluded there and then, the Court must give directions so that it can be concluded at the next hearing or as soon as possible after that.

9.2 At every hearing the Court must, where relevant:

- (i) Take the defendant's plea (unless already done) or, if no plea can be taken, find out whether the defendant is likely to plead guilty or not guilty;
- (ii) Set, follow or revise a timetable for the progress of the case, which may include a timetable for any hearing including the trial;
- (iii) Where a direction has not been complied with, find out why, identify who

was responsible, and take appropriate action.

- 9.3 In order to prepare for the trial, the Court must take every reasonable step, to encourage and to facilitate the attendance of witnesses when they are needed; and to facilitate the participation of any person, including the defendant.

10. Conduct of a trial and ancillary proceedings

- 10.1 In order to manage a trial and any ancillary proceedings, such as confiscation, the Court:

- 10.1.1 Must establish, with the active assistance of the parties, what are the disputed issues;

- 10.1.2 Must consider setting a timetable:

- (i) That takes account of those issues and of any timetable proposed by a party; and
- (ii) May limit the duration of any stage of the hearing;

- 10.1.3 May require a party to identify:

- (i) Which witnesses that party wants to give evidence in person;
- (ii) The order in which that party wants those witnesses to give their evidence;
- (iii) Whether that party requires an order compelling attendance of a witness;
- (iv) What arrangements are desirable to facilitate the giving of evidence by a witness;
- (v) What arrangements are desirable to facilitate the participation of any other person, including the defendant;
- (vi) What written evidence that party intends to introduce;
- (vii) What other material, if any, that person intends to make available to the Court in the presentation of the case; and
- (viii) Whether that party intends to raise any point of law that could affect the conduct of the trial or ancillary application; and

- 10.1.4 May limit:

- (i) The examination, cross-examination or re-examination of a witness; and

- (ii) The duration of any stage of the hearing.

10.1.5. The Case Management Form issued with this Practice Directions shall be completed (in the case of a represented defendant) by the Defence and Prosecution counsel and in the case of an unrepresented defendant by the presiding Magistrate with the assistance of the Prosecution Counsel.

11. TIME LIMITS

Note: The directions in this Part set down the maximum time-limits within which it is desirable that every case should be disposed of. Every effort must still be made to dispose of cases as soon as reasonably practicable, which in some cases will result in a substantially quicker disposal. The directions in this part do not apply to proceedings which are before the Drug Treatment Court or other diversionary programmes.

Timeframe for the completion of proceedings: summary matters

- 11.1 (i) Every matter to be tried before the Summary Court should aim to be concluded within a period not exceeding *12 months* from the date of the First Hearing.
- (ii) In the event of conviction, the defendant should be sentenced by the Court before which he was convicted within a period not exceeding *56 days* from the date of conviction, save only in the case of exceptional circumstances.

Custody Cases

- 11.2 In the event that a defendant is remanded to custody, his trial shall be concluded:
 - (i) In the case of a matter triable in the Summary Court, within a period not exceeding *9 months*, unless there are exceptional circumstances, from the date of the first hearing.

12. ADJOURNMENTS

Criteria for Grant of Adjournment

12.1 Adjournments shall be granted only if the Court is satisfied that:

- (i) There is good cause for an adjournment; and
- (ii) An adjournment is necessary in meeting the interests of justice.

- 12.2 (i) Where there have been two or more adjournments for the same reason(s), the Court shall only grant a further adjournment if exceptional circumstances are shown.
- (ii) Case involving defendants in custody and cases in which the trial has already been adjourned must not be adjourned unless exceptional circumstances can be shown to the satisfaction of the Court.
- (iii) Once a trial has been commenced, an adjournment shall only be granted where the grounds for the application could not reasonably have been known at the time the trial started or where there are exceptional reasons for justifying the delay.
- 12.3 Applications for an adjournment should be rigorously scrutinized, in particular, the following factors to be taken into consideration:
- (i) Summary justice should be speedy justice;
- (ii) The more serious the charge, the more the public interest demands that a trial take place;
- (iv) The age of the complainant and any other significant witnesses;
- (v) Whether or not the refusal of an adjournment would compromise the defendant's ability to fully present his defence; and
- (vi) The history of adjournments, at whose request any previous adjournments have been made and the reasons provided.

Notes:

1. The overriding objective of this Practice Direction is the just and expeditious disposal of cases. This cannot be achieved by the Court readily granting adjournments without good cause being shown. Particular care is required in respect of applications that are made once a trial has been commenced and the general presumption in such cases should always be against an adjournment being granted.
2. This Part applies equally to cases in which a defendant's attorney has failed to attend. An attorney is obliged to notify the Court immediately should they become aware of a conflicting fixture. A defendant is not entitled to repeated adjournments to secure the right to legal representation; *R v Robinson* (1985) 32 WIR 330, PC. The overriding consideration must be the requirements of justice, for both the Prosecution and the defence; *R v De Oliveira* [1997] Crim L.R. 600.

13. PROCEDURAL STAGES and TIMETABLE: SUMMARY COURT

The First Hearing

- 13.1 (i) The First Hearing in each case shall be conducted by a Magistrate.
- (ii) At the First Hearing the following should occur, where practicable and without hampering the disposal of the weekly Mentions List:
- (a) verification of the defendant's identity, current address and contact details;
 - (b) if the defendant is, or intends to be represented, details of representation shall be provided;
 - (c) if the defendant is not represented any intention or request on the part of the defendant that he will be legally represented shall be recorded;
 - (d) an unrepresented defendant should be given an explanation of his or her rights, including, where appropriate, the right to:
 - (i) bail;
 - (ii) silence, save in respect of confirmation of his or her name and contact details;
 - (iii) a trial;
 - (iv) an interpreter; and
 - (e) consideration of bail for unrepresented defendants in custody and any application for represented defendants, shall be taken (or adjourned to next earliest date;
- (iii) oral notification shall be given to the defendant of the date for the next hearing.

Second Hearings

- 13.2 (i) For summary only matters, every defendant shall be required to enter a plea at the second hearing and a trial date shall be set if a not guilty plea is entered.
- (ii) For either way matters, the defendant shall be required to enter a plea at the second hearing if the court determines that it is to be tried summarily.
- (iii) For indictable matters not yet committed for trial in the Grand Court, the defendant shall be asked whether or not he wishes to indicate a plea at the start of every hearing in the Summary Court.

Venue Hearing

- 13.3 (i) A Venue Hearing shall only take place in either way cases.
- (ii) Venue Hearings are to be conducted by a Magistrate and, wherever possible, this should be done at the same time as the First Hearing.
- (iii) The purpose of the Venue Hearing is to determine whether the matter should be tried or sentenced, as appropriate taking into account any plea indication, in the Summary Court or the Grand Court.

Accepting Guilty pleas

- 13.4 (i) Where a defendant is represented, before accepting a plea of guilty to any or all of the charges, the Magistrates must satisfy themselves (either by questioning the defendant personally or by calling upon counsel to confirm the position or to lead the questioning), that the defendant acknowledges guilt; that the plea is entered voluntarily and that it is made with an appropriate understanding of the consequences.
- (ii) Where a defendant is unrepresented, before accepting a plea of guilty to any or all of the charges, the Magistrates must satisfy themselves by enquiring of the defendant that he acknowledges guilt and enters the plea voluntarily with an appropriate understanding of the consequences.
- (iii) A Magistrate may refuse to accept any plea of guilty if he or she is not satisfied that any of the conditions set out in sub-Rule (i) above are not met and/or that it is not in the interests of justice to do so.
- (iv) If a plea of guilty is not accepted, the fact of the guilty plea having been given shall not be admissible as evidence of that person's guilt in any subsequent trial in respect of that alleged offence.
- 13.5 If the defendant is prepared to plead guilty to alternative offences from the one(s) with which he has been charged, he shall inform the Prosecution and the court upon arraignment.
- 13.6 Where the prosecutor requires an adjournment to consult with the Office of the Director of Public Prosecutions before accepting a plea to an alternative offence, the Court shall list the case for a hearing to take place in no later than 28 days.

Note: when accepting a guilty plea, the court must enquire whether that plea was offered by the defendant at an earlier stage in the proceedings. If so, the Prosecution must explain why it was not reasonable for that offer to have been accepted before.

Preliminary Inquiries

- 13.7 (i) The defence shall notify the Prosecution if the Preliminary Inquiry is to be contested at least *7 days* before it is due to be heard;

14. Effective Date

- 14.1 This Practice Direction shall come into effect on the 1st day of September 2015.

Dated this 29th day of July 2015

**The Hon. Anthony Smellie
Chief Justice**

Summary Court

Case Management Form

Case Number

Date NG Plea entered

Trial date

Trial estimate

This form is to be completed by counsel for the Prosecution and for the Defence in all cases when a Not Guilty plea is entered in the Summary Court by a defendant who is represented. Copies are to be provided to the Court in advance of the first Case Management Hearing.

Where a defendant is unrepresented, the form will be completed by the Court with the assistance of the Prosecution.

Any information that is unavailable at the First Hearing should be entered as soon as possible or at the Case Management Hearing.

Failure to provide accurate information may lead to case dismissal (in the case of the Prosecution) or a costs order.

1. Offence Details

Charge(s)	
Date of offence	

2. Contact Details

Defendant(s)

Name(s)		Date(s) of Birth	
D1		D1	
D2		D2	
D3		D3	
Status			
D1	<input type="checkbox"/> Bail	Conditions:	<input type="checkbox"/> Custody
D2	<input type="checkbox"/> Bail	Conditions:	<input type="checkbox"/> Custody :
D3	<input type="checkbox"/> Bail	Conditions:	<input type="checkbox"/> Custody

Will the Defendant be legally represented at trial?

If yes, please provide name and contact details for attorney

D1 ☐ Yes ☐ No
D2 ☐ Yes ☐ No
D3 ☐ Yes ☐ No

Prosecution

Name		Email	
Address		Fax	

3. Trial Management

Case Management Hearing listed for:

Has the case file been received by Prosecution Branch?

☐ Yes ☐ No

If not, court directs that case file be submitted by:

Has disclosure been provided to Defendant?

☐ Yes ☐ No

If not, court directs that disclosure be provided by:

Is any further evidence expected from the prosecution?

☐ Yes ☐ No

If yes, court directs that any additional evidence be disclosed by:

Is an adjournment being sought?

☐ Yes ☐ No

If yes, give brief details, including details of any previous adjournments granted:

What evidence will the prosecution rely upon at trial:

Tick/delete as appropriate

witness/search evidence

☐

caution statement/admission

☐

firearm/drug/DNA/expert evidence

☐

hearsay

☐

CCTV

☐

If electronic evidence is to be used, please indicate what equipment is needed for trial:

What will be the disputed issues of fact at trial?

The Defendant shall not be compelled to provide this information, but it will help the court to set appropriate directions for trial. Any information provided may be used in evidence.

Please indicate if there are any issues of evidence admissibility / law that will need to be determined:

Court directs that a pre-trial hearing to determine these issues is listed for:

Please indicate what, if any, expert evidence will be relied upon at trial (including firearms, drugs, DNA etc.)

Court directs that a meeting between experts, if appropriate, take place by:

4. Witness List

The court must be informed of any changes to the witness list immediately and in advance of the trial

Name of Witness	Pros or Def	Agreed?	If no, material/disputed evidence	Time for Evidence

Can any part of the witness statements, which are not in dispute, be recorded into a written admission? ☐ Yes ☐ No

If yes, court directs that written admissions be filed with the court by:

Please indicate if any of the witnesses require special or other measures (including an interpreter):

5. Ancillary Orders

Failure to complete this Part will not bind the prosecution from applying for an ancillary order in the case of a conviction

In case of a conviction, does the prosecution intend to apply for:

Pre-sentence report ☐

Destruction ☐

Compensation ☐

Forfeiture ☐

Pecuniary penalty order ☐

Other ☐

If other, please specify:

6. Signatures

First Hearing:

.....
Magistrate

Date:

Case Management Hearing:

.....
Magistrate

Date: