

CAYMAN ISLANDS



PRACTICE DIRECTION ON LISTINGS AND CUSTODY TIME LIMITS IN CRIMINAL MATTERS

(PD 1 of 2022)

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PRACTICE DIRECTION NO. 1 OF 2022

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Judicial Listing Officers' responsibility and key principles

Much of this Direction is based upon the English Criminal Practice Direction 2015 and it must be read in conjunction with the Criminal Procedure Rules 2019 and Practice Direction No. 5 of 2015 (Criminal Case Management in the Summary Court).

Listing as a judicial responsibility and function

- A1. Listing is both a judicial and administrative function. The purpose is to ensure that all cases are brought to a hearing or trial in accordance with the interests of justice, that the resources available for criminal justice are deployed as effectively as possible, and that cases are heard by an appropriate judicial officer or bench with the minimum of delay.
- (a) The Chief Justice and the Chief Magistrate, in consultation with the Listing Officer and Case Progression Offices respectively of the Grand and the Summary Court (CPO) shall have the overall responsibility for approving the weekly list of all Grand Court and Summary Court matters, respectively. The Chief Justice will assign day to day responsibility to the Head of the Grand Court Criminal Divisions for the listing of criminal cases.
 - (b) The Listing Officer and the CPO respectively of the Grand Court and Summary Courts is responsible for carrying out the day-to-day operation of listing practice under the direction of the Chief Justice and Chief Magistrate. The Listing Officer/CPO has one of the most important functions at the Courts and makes a vital contribution to the efficient running of Court and to the efficient operation of the administration of criminal justice;
 - (c) In the Grand Court, the CPO, subject to the daily supervision of the Judge responsible for the Criminal Division, is responsible for liaising with the Listing Officer to settle the list of Grand Court criminal hearings and trials. To this end the CPO and the Listing Officer shall meet every week on Thursday to settle the List of criminal cases for the ensuing week.
 - (d) In the Summary Courts, the CPO, subject to the supervision of the Chief Magistrate, is responsible for administering the listing practice. The day-to-day setting of that listing practice is the responsibility of the Chief Magistrate in consultation with the Magistrates and with the assistance of the CPO.



Key principles of listing

- A2. When approving the lists, the Chief Justice [or the assigned Judge] and Chief Magistrate respectively will take into account the following principles:
- (a) Ensure the timely trial of cases and resolution of other issues (such as confiscation) so that justice is not delayed. The following factors are relevant:
 - i. In general, each case should be tried within as short a time of its arrival in the Court as is consistent with the interests of justice, the needs of victims and witnesses, and with the proper and timely preparation by the prosecution and defence of their cases in accordance with the directions and timetable set;
 - ii. Priority should be accorded to the trial of young defendants, and cases where there are vulnerable or young witnesses. In *R v Barker* [2010] WWCA Crim 4, the Lord Chief Justice of England and Wales highlighted “the importance to the trial and investigative process of keeping any delay in a case involving a child complainant to an irreducible minimum”;
 - iii. Custody time limits imposed by the Constitution, the Police Act or *habeas corpus* principles should be observed;
 - iv. Every effort must be made to avoid delay including in cases in which the defendant is on bail;
 - (b) Ensure that in the Summary Courts, unless impracticable , non-custody anticipated guilty plea cases are listed no longer than 14 days after a charge is filed with the Court , and non-custody anticipated not guilty pleas are listed no longer than 28 days after a charge is filed [See also in this regard, the provisions of paragraph 13.4 – 13.6 of Practice Direction No. 5 of 2015];
 - (c) Provide, when possible, for certainty and/or as much advance notice as possible, of the trial date; and take all reasonable steps to ensure that the trial date remains fixed:
 - (d) Ensure that a Judge or Magistrate (with any necessary authorization and of appropriate experience) is available to try each case and, wherever desirable and practicable, there is judicial continuity, including in relation to post-trial hearings.
 - (e) Strike an appropriate balance in the use of resources, by taking account of:
 - i. The efficient deployment of the judiciary in the Grand Court and the Summary Courts ;
 - ii. The proper use of the courtrooms available at the courts and in this regard



schedules for allocation of courtrooms will be prepared in consultation with the Court Administrator and published along with the Lists on the weekly basis;

- iii. The provision in long and/or complex cases for adequate reading and judgment writing time for the judiciary; [See in this regard Practice Direction No.1 of 2012]
 - iv. The facilities in the available courtrooms including the security needs (such as secure dock), size and equipment, such as video and live link facilities;
 - v. The proper use of the facilities by those who attend the Courts as jurors;
 - vi. The availability of and need for certified interpreters in the Courts;
 - vii. The need to return those remanded or sentenced to custody as soon as possible after the remand is made or sentence is passed, and to facilitate the efficient operation of the prison services;
- (f) Provide where practicable and within available legal aid resources:
- i. the defendant with the advocate of their choice where this does not result in any delay to the trial of the case.
- (g) Meet the need, in consultation with the Head of Security (and where appropriate the RCIPS and Prison Services), for special security measures for high-risk defendants;
- (h) Ensure that proper time (including judicial reading time) is afforded to hearings in which the court is exercising powers that impact on the rights of individuals, such as applications for investigative orders, bail hearings or warrants'
- (i) Consider the significance of ancillary proceedings, such as confiscation hearings, and the need to deal with such hearings promptly and, where possible, for such hearings to be conducted by the trial judge.
- A3 Although the listing practice for each Court will take these principles into account the listing practice adopted may vary depending particularly on the number of courtrooms and the facilities available, the workload, its volume and type.

Discharge of judicial responsibilities

A4. The Presiding Judicial Officer of each court is responsible for:

- i. ensuring that good practice is implemented throughout the Court, such that all



hearings commence on time;

- ii. ensuring that the cause of trials that do not proceed on the date originally fixed are examined to see if there is any systematic issue;
- iii. monitoring the general performance of the Court and the listing practices;
- iv. monitoring the timeliness of cases and reporting any cases of serious concern to the Chief Justice or Chief Magistrate (as the case might be).

B Listing of trials, Custody Time Limits and transfer of cases [Custody Time Limits have been the subject of consultation with the Criminal Justice Reform Committee (CJRC) and the Attorney General]

Estimates of trial length

- B1. Under the regime set out in the **Criminal Procedure Rules**, the parties will be expected to provide an accurate estimate of the length of trial at the hearing where the case is to be managed (CMH 1) based on a detailed estimate of the time to be taken with each witness to be called, and accurate information about the availability of witnesses.
- B2. At the hearing the Court will ask the prosecution to clarify any custody time limit (“CTL”) dates which may be applicable. Once the CTL is clarified and approved by the Court, the Court must direct the court clerk to ensure the CTL date is marked clearly on the court file or electronic file. When a case is subject to a CTL all efforts must be made at the first hearing to list the case within the CTL and the Judge or Magistrate should seek to ensure this. Further guidance on listing CTL cases can be found below.

Cases that should usually have fixed trial dates

- B3. The cases where fixtures should be given should usually include the following:
 - i. Cases involving persons in custody;
 - ii. Cases involving serious indictable offences;
 - iii. Cases involving protected, vulnerable and intimidated witnesses (including domestic violence cases), whether or not special measures have been ordered by the court;
 - iv. Cases where the witnesses are under 18 or have to come from overseas;
 - v. Cases estimated to last more than a certain time – the period chosen will depend on



the availability of judicial officers, counsel (defence and prosecution) and courtrooms;

- vi. Cases where a previous hearing has not been effective;
- vii. Re-trials; and
- viii. Cases involving expert witnesses.

Custody Time Limits

- B4. Unlike in England and Wales¹, in the Cayman Islands there are no specific custody time limits imposed by statute other than those which control police powers to keep persons in custody pending investigations under section 65 of the Police Act.

To help to address this deficit, by Rule 9 of the Criminal Procedure Rules 2019 (CPR) timeframes for the taking of arraignments and the fixing of trial dates are imposed. Also, by paragraph 11 of Practice Direction 5 of 2015 timeframes for conclusion of criminal proceedings in the Summary Courts are identified.

The Directions which follow below are intended to reaffirm and clarify the responsibility of the Courts and the parties to ensure that cases are disposed of as soon as reasonably practicable and in so doing to ensure also that custody time limits (CTLs) are strictly observed.

It must be emphasized that in keeping with section 7(1) of the Constitutional Bill of Rights, everyone has the right to a fair and public hearing in the determination of his or her legal rights and obligations by an independent and impartial court within a reasonable time. This right becomes even more compelling when a person is in custody awaiting trial.

Accordingly the following timeframes and CTLs should be observed and paragraph 11 of Practice Direction 5 of 2015 must be read as if amended by implication:

- i. Every case involving a defendant in custody to be tried before the Summary Court should aim to be concluded, save only in exceptional circumstances, within 3 months from the date of first hearing;
- ii. Every case involving a defendant in custody before the Summary Court to be committed for trial in the Grand Court² should aim to be committed, save only in exceptional circumstances, within 6 weeks from the date of first appearance in the

¹ Section 22 of the Prosecution of Offences Act 1985 enables the Secretary of State by regulations to set time limits in relation to preliminary stages of criminal proceeding. This is done by way of the Prosecution of Offences Custody Time Limit Regulations 1987 which set time limits for cases to be brought to arraignment.

² Pursuant to section 88 of the Criminal Procedure Code (2019 Revision)



Summary Court.

- iii. Every case involving a defendant in custody to be tried before the Grand Court should aim to be concluded, save only in exceptional circumstances, within 9 months from the date of first appearance in the Grand Court and in keeping with Rule 9(4) of the CPR, a date for trial shall be fixed within 6 months of arraignment.
- iv. Accordingly and in keeping with Rule 9(3) of the CPR, arraignments should ordinarily proceed no later than 28 days following committal or transmittal of a case to the Grand Court except where there are outstanding experts' reports as to fitness to plead or the Court is satisfied that the case is complex or involved.

In furtherance of the foregoing, at the first hearing, the prosecution will inform the court of any applicable CTL when the CTL lapses and the CTL will be endorsed on the case file.

- i. All efforts must be made to list the case within the CTL.
 - ii. If suitable, the case should be given priority and listed on a date not less than 2 weeks before the CTL expires, and the case may be placed in a warned list.
 - iii. The CTL must be kept under continual review by the parties (the Defence and ODPP), HMPS and the presiding judicial officer.
 - iv. If the CTL is at risk of being exceeded, an additional hearing should take place and should be listed before the trial judge or other judge nominated by the Chief Justice or Chief Magistrate (as the case may be).
 - v. Where courtroom or judge availability is an issue, the court must itself list the case to consider the extension of any CTL.
 - vi. Where courtroom or judge availability is not in issue, but all parties and the court agree that the case will not be ready for trial before the expiration of the CTL, a date may be fixed outside the CTL. This may be done without prejudice to any application to extend the CTLs or with the express consent of the defence; and this must be noted on the case file.
- B5. As legal argument may delay the swearing in of a jury, it is desirable to extend the CTL to a date later than the first day of the trial.

Re-trials ordered by the Court of Appeal and Grand Court

- B6. The Court must comply with the directions of the Court of Appeal and cannot vary directions for retrials without reference to the Court of Appeal.
- B7. In cases where a re-trial is ordered by the Court of Appeal without a time-frame being



directed, the CTL will be 90 days starting from the date that the new indictment is preferred i.e. from the date that the indictment is delivered to the Grand Court. In cases where a re-trial is ordered of a charge before the Summary Court, whether by the Court of Appeal or the Grand Court, the CTL will be 56 days from the date that the new charge is preferred i.e. from the date that the charge is delivered to the Summary Court. The Courts shall notify the HMPS of this.

Changes to the date of fixed cases

- B8. Once a trial date or window is fixed, it should not be vacated or moved without good reason. Under the Criminal Procedure Rules, parties are expected to be ready by the trial date.
- B9. The Listing Officer or CPO may, in circumstances determined by the presiding judicial officer, agree to the movement of the trial to a date to which the defence and prosecution both consent, provided the timely hearing of the case is not delayed. The prosecution will be expected to have consulted the witnesses before agreeing to any change. For indictments changes to trial dates should only be made on approval of Head of Grand Court Criminal Division or the Judge who has conduct of the case. The Listing Officer or CPO may in circumstances determined by the Head of the Grand Court Criminal Division, agree to changes of other listings. For example, changes in dates for sentencing where SIRs and VIRs are not ready.
- B10. In all other circumstances, requests to adjourn or vacate fixtures or trial windows must be referred to the Assigned Judge or Magistrate for his or her personal attention.

Listing of hearings other than trials

- C.1. In addition to trials, the court's listing practice will have to provide court time for shorter matters, such as those listed below at C3. These hearings are important, often either for setting the necessary case management framework for the proper and efficient preparation of cases for trial, or for determining matters that affect the rights of individuals. They must be afforded the appropriate level of resource that they require to be considered properly, and this may include judicial reading and judgment writing time, as well as an appropriate length of hearing.
- C.2. The applicant is responsible for notifying the court, and the other party if appropriate, and ensuring that the papers are served in good time, including a time estimate for judicial reading time and for the hearing. The applicant must endeavor to complete the application within the time estimate provided unless there are exceptional circumstances.
- C.3. Hearings other than trials include the following:



- i. Applications for search warrants and Production Orders, sufficient reading time must be provided, see C.8. below;
 - ii. Bail applications;
 - iii. Applications to vacate or adjourn hearings;
 - iv. Applications for dismissal of charges;
 - v. Preparation for trial hearings, plea and trial preparation hearings, and other pre-trial case management hearings;
 - vi. Applications for disclosure by the Crown of further unused material;
 - vii. Case progression or case management hearings (CMHs);
 - viii. Applications in respect of sentence indications not sought at the CMH;
 - ix. Sentences;
 - x. Applications under the Criminal Procedure Code or Evidence Act;
 - xi. Appeals from the Summary Courts: it is essential in all cases where witnesses are likely to be needed on the appeal to check availability before a date is fixed;
 - xii. Appeals from the Youth Court: a directions hearing will be required to consider special measures, ground rules and appropriate adjustments for the hearing of a re-trial.
- C.4. Short hearings should not generally be listed before a judge such that they may delay the start or continuation of a trial at the Grand Court. It is envisaged that any such short hearing will be completed by 10:30am or start after 4:30pm.
- C.5. Each Court equipped with a video link with the prisons or RCIPS Detention Center must have in place arrangements for the conduct of remand hearings, pre-trial hearings and sentencing hearings.

Notifying sureties of hearing dates

- C.6. Where a surety has entered into a recognizance in the Summary Court in respect of a case allocated or sent to the Grand Court and where the bail order or recognizance refers to attendance at the first hearing in the Grand Court, the defendant should be reminded by the presiding Magistrate (or by the CPO or Court Clerk acting upon the direction of the presiding Magistrate) that the surety should attend the first hearing in the Grand Court in



order to provide further recognizance if ordered by the Grand Court.

If attendance is not arranged, the defendant may be remanded in custody pending the recognizance being provided.

- C.7. The Court should also notify sureties of the dates of the hearing at the Grand Court at which the defendant is ordered to appear as far in advance as possible: see the observations of Parker LJ in *R v Crown Court at Reading ex p. Bello* [1992] 3 All ER 353. See also the Criminal Procedure Rules, rule 8 by which the Grand Court may impose new bail conditions and require new bail forms to be completed.

Application for Production Orders and Search Warrants

- C.8. The use of production orders and search warrants involve the use of intrusive state powers that affect the rights and liberties of individuals. It is the responsibility of the court to ensure that those powers are not abused. To do so, the court must be presented with a properly completed application, on the appropriate form, which includes a summary of the investigation to provide the context for the order, a clear explanation of how the statutory requirements are fulfilled, and full and frank disclosure of anything that might undermine the basis of the application. Further directions on the proper making and consideration of such applications will be provided by Practice Direction. However, the complexity of the application must be taken into account in listing it such that the judge is afforded appropriate reading time and the hearing is given sufficient time for the issues to be considered thoroughly, and a short judgment given.

Confiscation and Related Hearings

- C.9. By virtue of section 44 of the Proceeds of Crime Act (2020 Revision) (POCA), applications for restraint orders should be determined by a Judge of the Grand Court.
- C.10. In order to prevent possible dissipation of assets of significant value, applications under the POCA should be considered urgent when lists are being fixed. In order to prevent potential prejudice, applications for the variation and discharge of orders, for the appointment of receivers, and applications to punish alleged breaches of orders as a contempt of court should similarly be treated as urgent and listed expeditiously.

Confiscation Hearings

- C.11. It is important that confiscation hearings take place in good time after the defendant is convicted or sentenced.



Publication of Lists

The Listing Officer or CPO of the Grand Court and Summary Court, will, in consultation with the Chief Justice and Chief Magistrate respectively continue to publish weekly lists of hearings in those Courts. Lists will show the courtrooms which are respectively allocated to each Court on the weekly basis. The Registrar of the Court of Appeal will continue to publish lists in advance for each session in consultation with the President of the Court of Appeal.

Effective Date

This Practice Direction shall come into effect on 14th April 2022

Dated this 7th day of April 2022

Hon. Anthony Smellie, Q.C.
Chief Justice