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Report of

Criminal Justice Advisor

Cayman Islands

January - April 2015

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Executive Summary

Introduction

At the request of Her Excellency, the Governor, Helen Kilpatrick, CPS International Division were asked to second a senior lawyer to work with the DPP of the Cayman Islands (CI), to address specific areas within the criminal justice system. Claire Wetton was deployed to work as a Criminal Justice Adviser (CJA) for three months.

The CI is a British Overseas territory (OT) with a large financial services sector and the fifth largest banking centre in the world.

The improvement in prosecutorial capacity generally but particularly that relating to serious financial crime, money laundering, asset recovery and drug trafficking is of benefit to the government of the CI and the UK. Criminal activity that poses a threat to UK interests and has the potential to have an adverse impact on the financial service industry needs to be addressed effectively.

The aim of the deployment was to identify and deliver sustainable solutions and improvements leading to a more efficient and effective criminal justice system within the (CI). The objective was to enable more effective prosecutions of serious organised crime by improving investigations, prosecution delivery and judicial capacity including giving mentoring advice and expert guidance to advance professional standards.

The deployment identified that there is scope to increase and improve coordinated working within the criminal justice system particularly between the Police service and the Office of the DPP. The CJA provided guidance and practical solutions to improve existing systems and to develop new processes.

In summary, these included:

The establishment of a Criminal Justice Board providing strategic oversight, direction is a significant development in creating an environment where discussions about performance within the justice sector and reform can take place.

The adoption and implementation of proactive, purposeful case management systems as advised by the CJA within the police, prosecution and courts has the potential to reduce delay, improve access to justice for victims and witnesses and assist considerably in the prosecution of serious organised crime and financial crime.

The use of sentencing guidelines and the development of policies on diversion and out of court disposals will lead to better management of resources and increased public confidence in the justice system.

The progress made during the deployment and the changes implemented have already demonstrated the potential of focussed activity aimed at bringing about systemic reforms. Collective effort and ownership is of course needed to make these sustainable and maximise the impact in the longer term. Recommendations designed to assist with this are set out below.

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Summary of recommendations for future intervention

- Implementation of new structure for the Criminal Justice Board.
- Full implementation of the Manual of Guidance including monitoring and training for the police.
- Implementation of an electronic case management system to enable more reliable collection of performance data, the ODPP would benefit from a digital case management system that could interface with the police and the court.
- Development of sentencing guidelines to ensure consistency and transparency.
- Implementation of the Criminal Procedure Practice Direction and case management forms to streamline and expedite the prosecution process, identifying issues for the court to decide.
- Development of a diversion policy/ restorative justice options or other out of court disposals such as cautioning for offences that would receive a nominal or financial penalty.
- Review the summon system¹ to consider warning officers by email; this will require a legislative change.
- Establish a witness care unit which could be staffed by volunteers and ensure that separate waiting areas are available in those cases where the witnesses are vulnerable and require additional support. Consider using the video link facility at the Family Support Unit for witnesses to give evidence in court (in particular child witnesses) to provide a familiar and safe environment to ensure best evidence is obtained.
- Amend the traffic ticket process (as implemented in Turks and Caicos).
- Implement a handover system at the police station to ensure that the investigation continues when the officer in the case is not present.
- At least two Crown Counsel assigned solely to the summary court. (Pending this taking place the CJA recommends that each Crown Counsel remain in the summary court/grand court for a minimum of six months, to enable cases to conclude and minimise duplication of work).
- At least two Crown Counsel specialise in each subject area to ensure adequate specialisms and succession planning.
- Crown Counsel to draft charges and a database of charges to be compiled that can be copied and pasted to reduce the number of charges which are incorrectly drafted at Court. Once the file is received after the charge, the charge sheet should be checked and certified by counsel who provided the ruling.

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Report and analysis

Background

During the first three weeks the CJA held a number of informative meetings with the stakeholders; H.E. The Governor (Helen Kilpatrick), the Director of Public Prosecutions, the Police Commissioner (David Baines), Detective Superintendent, Head of Specialist Support Operations (██████████), the RCIPS Process Department Manager (██████████) and the Deputy Clerk of Court, to name but a few. The CJA had daily communication with the staff at the ODPP.

The CJA viewed a number of prosecution files, DPP policy documents and a significant quantity of the laws of the Cayman Islands. The CJA also attended court sessions and interagency meetings.

The ODPP, at the time of the CJA's arrival consisted of DPP, one Deputy DPP who took up post in the middle of the project, three Senior Crown Counsel, one Crown Counsel (1), six Crown Counsel, two traffic Crown Counsel, one Administrative Assistant, four Administrative Clerks and one office Assistant. The ODPP appears in the Summary Courts, Grand Court and the Court of Appeal (which sits three times a year) on Grand Cayman and a Summary Court on the Island of Cayman Brac, once a month.

In the year 2013, 2504 matters including traffic were submitted for prosecution. In the year 2014, 2759 matters including traffic were submitted for prosecution. Unfortunately, there is no facility to break the figures down further at the ODPP.

The Governor of the CI in consultation with the DPP identified priority areas:

- Case management/trial issues including advocacy and drafting.
- Review of Police and Prosecutor working
- Systems – Listing of trials
- Disclosure in the absence of defence case statements
- Review of the Criminal Procedure rules
- Training of RCIPS
- Building cases for gang membership
- Prosecuting domestic violence cases and witness care
- Child witnesses

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Project Objectives

Case management/trial issues including evidence gathering, advocacy and drafting in the summary Court

The police and prosecution face a number of issues in relation to evidential file build and case management, with both agencies often working in silos. This impacts the court process and causes delay and adjournments. The CJA identified that robust charging is needed and front loading² the file build prior to charge, so that the prosecution are in a position to proceed with the case once at court, reducing the need for an adjournment for key evidence to be obtained. This would allow the case to progress at the first/second hearing.

There were two types of files arriving at the ODDP, advice (ruling) files and charged traffic cases. The Cayman Islands legislation states that in any case where there has been an arrest must be authorised by the ODPP for either no further action or charge. The only instance when the police can make the decision that no further action is to be taken is where there has been no arrest made. The RCIPS can issue traffic tickets to summons defendants to court, in cases such as speeding, using a mobile telephone and parking tickets.

Case management

When a ruling file is received, the DPP allocates the file to Crown Counsel on a weekly basis, to provide a ruling to the police, with a timescale for advice being 14 days. The criteria used are based on workloads and complexity of the case. Many Crown Counsel have specialisms and files are allocated to specialists where required. Crown Counsel complete a review and return the entire file to the police. There is no requirement to provide a written advice, but to complete a standard form with a small paragraph advising on the case and detailing the charges, although some Crown Counsel complete a written advice in complex cases. During the CJA's deployment the ODPP were receiving between 25 and 30 files weekly.

The CJA reviewed a number of police files and ascertained that there is no standard file format and there is no gatekeeping (supervision) of the file, with files often submitted to the ODPP without any supervisor endorsement or consideration of charge/evidence. This causes delay as files often have to be returned as evidence is missing, building in further delay. Cases are charged, where the six month statute bar is imminent, leading to delay. The CJA proposed that files should not be submitted to the ODPP unless certified by a supervisor to confirm that all evidence was present on the file and the case was ready to be submitted for ruling. The supervisors will act as the Gatekeeper, with the Process Department further gatekeeping cases, prior to submission to the ODPP, reducing the re-work required on the file at the ruling stage.

It was agreed that files would be submitted no later than three months after the offence date to the ODPP for ruling. This would prevent cases being charged where evidence was missing and the statute bar is imminent.

² *Front loading the file build – This is a practice used in England and Wales to gather the evidence and ensure the case is evidentially complete prior to charge. This reduces the number of adjournments requests at Court for additional evidence. It also puts the Court in a strong position to progress the case at the first hearing/second hearing and facilitates case management by the court.*

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The ODPP will implement robust charging, with cases being returned to the police where evidence is missing, reducing the need to re-work cases after ruling, where in some cases the evidence is never received and the case is discontinued. The CJA recommended that cases are discontinued where evidence is missing and re-charged when the evidence is available, taking those cases out of the system which block the Courts.

The CJA also recommend that Crown Counsel should select the correct charge at the outset, only charging appropriate offences and avoiding overcharging. This will reduce defence requests for cases to be reviewed, as they will come to realise that the offence charged will not be changed or altered unless there is a change in circumstances.

Once a ruling is completed, the file is returned to the police process department, for volume crime cases, for the charge sheet to be drafted and lodged at court. The file is then returned to the ODPP, where the Crown Counsel who provided the ruling checks and reviews the case, prior to the first hearing.

More complex cases are assigned to Crown Counsel, but the volume crime and traffic cases are generally not assigned to Crown Counsel.

When a file is assigned to Counsel they have conduct of the case from that point until the case is completed. Counsel send all requests to the Police in respect of all issues on the files, outstanding evidence, witness warnings, etc. Some requests are only sent to the investigating officer, some are additionally sent to a number of senior officers as well. It is Counsel's responsibility to ensure that all requests are chased and completed by the police. They have complete responsibility for the file.

This system resulted in different processes and time frames occurring. For example, some Counsel look at the file very late in the day, which on occasion could risk the case not being ready for trial and placing heavy pressure on those around them to complete the work in a very short timeframe or would lead to adjournments. Another example is that some Counsel telephone their own witnesses to inform them of trial dates, whereas other Counsel instruct the Police to complete that role. It is clear that legal and administrative roles have merged together in certain aspects of the process.

The CJA completed a new DPP Vetting form (Annex D) and Trial Vetting form (Annex E) which will form the basis of the new case review system. The DPP vetting form (based on the UK MG3) will provide the reasoning for decisions and an on-going review. It will also serve as a record for audit purposes to evidence that cases are kept under review. Where a ruling is given, an action plan will be sent detailing all work outstanding and setting clear timescales for completion of the work. If the evidence is not available by the set date, then consideration can be given to discontinuing the case, in consultation with the police.

The trial check form will ensure that cases are reviewed prior to trial and applications made to adjourn administratively where appropriate, reducing the number of ineffective trials/hearings. The ODPP admin section will email the police in every case to advise when a not guilty plea has been entered and a case set for trial, to request an upgraded file. The new Serious Case Manager has been identified by the DPP as the appropriate person to monitor cases, thus reducing the need for Crown Counsel to perform administrative tasks, such as chasing up responses from the police. The forms are due to be piloted. The CJA recommends that the DPP dip sample a number of advices each month to ensure that quality is maintained.

In order to break down silo working practices, the CJA proposed that there is a single point of contact at the Police and the ODPP. Dedicated email addresses were set up for case progression and service of summons to increase the information flow and improve the police/prosecutor working

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relationship, with the aim of creating a 'prosecution team' approach. The new Serious Crime Manager will monitor the email address at the ODPP and the Sergeant at the Process Department will monitor the police email address.

Remand cases

A new process was implemented for the police and ODPP dealing with the timescales for obtaining pre charge advice for custody cases, encouraging early liaison between the police and prosecutors, with the aim of increasing joint working from the outset, by the provision of early investigative advice. There will now be a duty Crown Counsel each day, who will be the SPOC for providing early investigative advice and rulings on custody cases. The rota will be given to the custody sergeants who will contact the ODPP, once there is a custody case where an urgent ruling is required, to provide Crown Counsel with all documentation, a summary of the case and timescales for when a ruling is required.

Advocacy and Drafting

Lawyers in the office of the DPP were provided with training and guidance on case preparation, presentation and advocacy, with specific training being delivered to the most junior Crown Counsel. A mentoring system was recommended by the CJA to support and develop junior Counsel. The CJA also recommended advocacy monitoring of all Crown Counsel on annual ad hoc basis to ensure consistency and quality of the advocacy at the ODPP.

Improving efficiency of delivery of evidence

The RCIPS had been developing a standard set of forms for the evidential file for implementation, based on MG series used in the UK. This was in development for some time and piloted by the officer who designed the forms. However, there was no baseline data obtained from the pilot, or quality assurance measures in place, to measure the pilot. The Process department raised issues in relation to this and the impact of rolling the forms out to the police service in their current format.

The CJA discussed this with the police and suggested that a working group be set up to work on the forms. A pilot should be undertaken, where full training has been given to the officers and the results of the pilot should be assessed. The files submitted during the pilot should be assessed for quality and the results of the pilot should be measured, before the forms are rolled out across the force and discussed by the working group. The police will consider this, although the training department will require significant support to train all officers across the RCIPS. The CJA suggested a staged approach, perhaps by shift, per station, in order that as those officers became familiar with the new forms, they could assist their colleagues as they began to use them.

The CJA did raise the concern that there is a degree of over build in many cases, with work undertaken that was wasted when the case subsequently pleaded guilty. This is something that can be considered following the pilot and the forms can be refined if the need arises.

Traffic Cases

There remains a significant issue in relation to the quality of traffic files submitted to the ODPP. The CJA was advised that the quality of the evidential files has reduced since the traffic unit (which was a successful unit) was disbanded. There is the necessary expertise within the RCIPS, however there is no longer a centralised traffic unit and this has a significant effect on the quality of the files delivered to the ODPP. Traffic prosecutions are a significant proportion of cases heard in the summary court

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and the quality of the files continue to be a reason for adjournments. I do not know why the traffic unit was disbanded and this may have been done for good reasons, but if it were possible to assess the effect this has had on file quality, consideration could be given to whether it needs to be re-established in some format.

Witness preparation/witness care

The ODPP has a policy in relation to victims and witnesses. However, there is little by way of witness care at the court and the police do not have a witness care unit. This was particularly apparent at court, as there is no separate waiting area for victims and witnesses and they often sit in the same waiting area as the defendant and his/her supporters outside of the courtroom. One recommendation is to utilise an interview room at court 5, for the purposes of a witness waiting room in those cases involving child witnesses, domestic violence cases and the most vulnerable witnesses, with the long term plan to establish a dedicated witness waiting area, separate from the defendant waiting area.

The CJA recommends consideration of a volunteer witness care service to provide witness support at court. The officer in the case should also keep in touch with witnesses and ensure they are kept updated as to the progress of the case. Pre-trial visits to the court could be offered to reassure witnesses, prior to their attendance at trial.

Domestic violence prosecutions and those cases involving child witnesses are an area where the lack of witness care and the delay in bringing those cases to court impacts on the progress and subsequent outcome of the case. This issue was raised at the Criminal Justice Board meeting. During that meeting the CJA proposed that a sub-group be set up to consider the issues involved at an operational level. The sub-group membership was agreed and will be responsible for considering victim and witness issues and, amongst other actions. The results of that group will be fed back to the CJB for strategic advice/decisions on the way forward.

The police also agreed to provide twelve months witness availability on a new form to assist the court/ODPP when fixing trial dates. The present system means there are many occasions where trial dates are set without knowing witnesses availability, due to having no information available to Crown Counsel. This resulted in many adjourned and some failed cases.

Disclosure in the absence of defence case statements

There is no consistency in the way unused material is dealt with for volume crime and there is concern that unused material may exist without it being drawn to the attention of the ODPP or the defence. The Police do not routinely provide a list of unused material to the ODPP. An additional form was designed for inclusion in the new forms (Annex H), which specifically addressed unused material. The CJA, police and Crown Counsel developed this form. In relation to serious crime, the system works well and the police work closely with the ODPP to ensure that unused material is dealt with properly. The UK MG series of unused material schedules are used in serious crime cases.

There will need to be a full training program, to be attended by every RCIPS police officer, to ensure that the force is fully aware of the requirements.

The forms should be reviewed yearly to take account of any changes that occur.

At present disclosure of unused material is governed by the Common Law. The CJA recommends consideration is given to introducing legislation along the lines of the Criminal Procedure and Investigations Act 1996, in particular the provisions relating to defence case statements.

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Review of Police and Prosecutor working

The relationship between Prosecutors and Police is of the utmost importance. The establishment of a “prosecution team” has resulted in successful prosecutions and increased performance.

In the Cayman Islands, there is a degree of joint working in the case of serious crime and specialised units, who often contact Crown Counsel direct and work closely on cases, with excellent results and offenders brought to justice.

In respect of volume crime, there was a lack of joint working, with inconsistent working practices and timeliness on both sides. There is a lack of detailed understanding of what each side does. .

There are silo working practices and often the RCIPS are not given feedback on cases, most importantly when milestones are reached such as a not guilty plea, triggering the need for a full file, where charges are discontinued and where trial dates are vacated and witnesses are not de-warned. The new SCM should be the SPOC for ensuring the information flow between the RCIPS and the ODPP. The SPOC email addresses should improve the flow of information and cases should be diarised in an electronic diary to ensure they are trial checked by CC ahead of the trial.

Efficient and timely presentations in the summary court

The CJA recommends that the ODPP are robust when ruling on files, with cases not being charged unless the full code test can be applied, in those cases where the defendant is suitable for bail. This will avoid the re-working of files and the file build should be front loaded prior to authorising charge. Where evidence is missing it should be requested prior to charge and monitored, this should be chased up and by the SCM.

The CJA recommends that cases that are subject to numerous adjournments should be discontinued at an early stage and recharged when the missing evidence is available, reducing the resources used to repair cases.

The CJA designed an adverse outcome form (Annex F) where cases have been discontinued or lost at half time, to ascertain why cases fail, enabling lessons to be learned and performance monitored where weaknesses have been identified.

Systems – listing of trials/case management/ review of the criminal procedure rules

A full review of the Criminal Procedure code was undertaken by the CJA and it was identified that formal Criminal Procedure Rules would transform the summary court, by introducing active case management. The CJA discussed the possibility of introducing rules by way of a Practice Direction; introducing rules along the lines of the UK Criminal Procedure Rules would require a legislative change. The CJA drafted a Practice Direction (PD), which was agreed with the Chief Magistrate and Director of Public Prosecutions, before being introduced at the Criminal Justice Board meeting, where it was received positively.

The CJA met with the Chief Justice and Judges to discuss the PD further and following amendments made at the request of the Chief Justice, the PD is now with the Chief Justice for consideration of implementation. The CJA also designed a case management form that will require the issues in the

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case to be identified, in order that the triable issues can be narrowed, so that only issues in dispute are the subject of the trial, thus reducing the number of live witnesses required and the length of the trial.

The PD will also set maximum time limits for cases to be concluded and for pleas to be entered, reducing the number of adjournments currently seen in the summary court.

The CJA also submitted a re-designed plea and directions hearing form (Annex C) at the request of the Chief Justice, for consideration for use in the Grand Court.

Out of court disposals

The Police are not able to authorise charges apart from traffic ticket cases. All charges are authorised by the ODPP and currently the choice is charge or no further action, although there is the option of an informal warning system. There is no formal system for out of court disposals. As result there are a number of cases that are flowing through the court process and which ultimately result in a low level disposal. This has the following impact:

- (a) Some defendants are remanded in custody (due to inability to meet bail conditions)
- (b) The police have to provide a file.
- (c) The ODPP has to review the file.
- (d) There is a court hearing.
- (e) There may be an additional sentence hearing.

An out of court disposal system would reduce the above. Additionally, there is evidence to suggest that an out of court disposal system can improve public confidence and reduce re-offending.

The CJA suggested an alternative disposal for low level offending that would result in a nominal penalty. This would require legislation and there may be already similar legislation in one of the overseas territories that could provide a model for the Cayman Islands. This would in turn reduce the burden on the courts.

Live Prison Links

The Cayman Islands already have the facilities in place to hold hearings by video link to the prison. However, only mention hearings are heard over the video link and this means that a large number of prisoners are transported to prison on a daily basis. The increase in the use of the video link was discussed at the CJB and it was agreed to increase the usage, with the presumption being that all mention hearings should be by way of video link.

The CJA suggested that set times for the defence attorney consultation, half an hour before the hearing may provide a structure that would increase the usage of the video link facility. A recommendation would be to consider reviewing the legislation to extend the number of hearings that can be held over the video link, to include arraignment hearings and bail applications. This would improve the efficiency of the court, by reducing the time taken producing prisoners before the court.

Training of RCIPS

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It was apparent from meetings with the RCIPS, the issue was a lack of resources for training and not the training packages, which the CJA reviewed and found to be of a high standard. The transient nature of the service and the different nationalities mean there is an on-going requirement for training to take place, although the resources/number of available trainers are not presently at the levels to deliver the training required.

In order to improve the quality of the evidence sent to the ODPP, resources will need to be put into training officers, in particular the supervisors who can cascade down to their officers the new practices and take responsibility for performance monitoring of those officers.

The DPP has agreed that Crown Counsel will assist in future training of the RCIPS, which in turn will also increase police/prosecutor working.

Building cases for gang membership

The CJA met with the serious crime taskforce to ascertain the reasons why the gang legislation had never been used to prosecute gang members. The primary problem appears to be that in addition to other criteria that can be satisfied, the police have to evidence the fact that the defendant was a member of a gang within the last three years.

The police are unable to convert the intelligence into evidence and where there is evidence, it is inadmissible if the defendant was acquitted at the previous trial. In order to use the gang legislation, an amendment to the legislation is necessary, as the police have been unable to satisfy the three-year criteria to date. The CJA raised the possibility of using Conspiracy for gang prosecutions, which is widely and successfully used in England and Wales.

Prosecuting domestic violence cases and witness care

The time taken to prosecute domestic violence cases, often means that by the time the case has reached the summary court, the victim wishes to retract and this generates adjournments whilst retraction statements are obtained and the case is reviewed by the DPP. There is a zero tolerance policy in relation to domestic violence and the cases proceed, but can fail once the victim has retracted.

A dedicated domestic violence court where cases can be fast tracked, with the cases being listed within twenty four hours of the complaint would reduce the number of retractions and delay in the process, which can be a number of weeks before the case is charged. The family support unit have a large volume of cases and at present do not have the capacity to take on additional work, although have a great deal of expertise in the unit. However, these cases require dedicated trained officers who can offer support to the witnesses. (See above for witness care measures, which would support the prosecution of domestic violence cases by supporting the witness through the process.)

There have been successes in domestic violence prosecutions in England and Wales, due to effective investigations and prosecuting cases without the victim giving evidence. In addition following the admissibility of hearsay evidence in criminal proceedings set out in sections 114-136 of the Criminal Justice Act 2003. Consideration could be given to adopting part of the legislation to support domestic violence prosecutions.

Child witnesses

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Cases involving child witnesses have a greater chance of a successful prosecution if they are given priority and heard soon after the event, in order that the best evidence can be achieved. There is a need to fast track and prioritise these cases. Allowing children to give evidence by way of video link from the family support unit would mean that children could be supported through the process.

Project outputs/activities and outcomes

The CJA was based within Office of the DPP and worked with Crown Counsel and key stakeholders. The emphasis was on practical guidance and solutions, with new procedures being implemented, supported by new documentation. Mentoring and training was used to embed the new systems and procedures.

- The CJA analysed current practices and procedures relating to the prosecution process and suggested solutions, which will increase joint working practises between the police, courts service and prosecution. This will reduce silo working practices and build relationships, improving casework quality and speeding up progress of cases through the Criminal Justice system.
- A Criminal Justice Board (CJB) was established by the CJA, who organised the first meeting and drafted the agenda. The first meeting took place on the 24th March 2015 and was chaired by the Chief Magistrate (CM). The Court will be the future convenor of meetings. Key stakeholders attended including representatives from the Courts service, Office of the Director of Public Prosecutions (ODPP), Royal Cayman Islands Police Service (RCIPS), Cayman Islands Prison Service and defence Attorneys. The CJB has a strategic aim, with sub groups established to work on priority areas, a domestic violence sub group was established, which will work towards expediting domestic violence and cases involving child witnesses through the prosecution process. The group will consider the feasibility of the establishment of a dedicated domestic violence court.
- Active case management is a key area for improvement if cases are to be expedited through the courts. The CJA drafted a Practice Direction (PD) (Annex A), based on models established in Belize and the Eastern Caribbean. The Chief Justice (CJ) is supportive of implementation of the PD, backed by penalties such as wasted costs and fixed penalties for non-compliance.
- Police/Prosecutor working was improved by the introduction of new systems to improve the timeliness, quality of evidence and working practices, with a single point of contact (SPOC) established utilising dedicated email addresses at the RCIPS and ODPP to facilitate information flow. Supervisors at the RCIPS and the Serious Crime Manager at ODPP are to take on these roles. The ODPP are now updated by email on a daily basis of the summons served on witnesses due to attend court to give evidence at trial, significantly improving the preparation of the case and enabling early applications for adjournments to be made where necessary.
- A system for the early review of cases was implemented at the ODPP, with a rota system established for urgent ruling³ cases, facilitating early liaison between the ODPP and the

³ *Rulings – The Cayman Islands legislation requires that the police must submit all cases to the ODPP to advise on charge, the ODPP will consider the evidence in the case and provide the police with a ‘ruling’ on the case, which will recommend either charge, further investigation or no further action.*

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RCIPS in custody cases, where the time limits for a charging decision are 48 hours. This will enable Crown Counsel to give early investigative advice, improving the quality of the evidential file delivered for the first hearing at court and work towards a 'prosecution team' ethos.

- A policy of robust charging decisions being made at the ODPP was recommended, in cases where evidence to meet the full code test is not available; a charging decision will not be forthcoming at that stage in bail cases. The evidence in the case should be available prior to charge, reducing the need for adjournment applications at court where key evidence is outstanding. The CJA emphasised the need to give clear direction in writing to the police from the outset and request evidence in writing. Cases to be kept under constant review and those where evidence is missing are to be discontinued early and re-charged once the evidence is available, freeing up valuable resources, as opposed to attempting to repair cases that are likely to fail.
- A file review system, based on the UK manual of guidance forms was implemented at the ODPP, with written reviews of cases undertaken at the ruling stage (Annex D) and a system of checking the case was trial ready ahead of the trial date (Annex E). This role will be assigned to Crown Counsel and actioned by the admin section, to ensure that out of grade working is kept to a minimum.
- Advocacy workshops were delivered, with an initial workshop by Barnaby Hone, the CPS Asset Recovery Advisor, to a cross section of Crown Counsel and further workshops were delivered by the CJA in relation to trial preparation and advocacy, for junior Crown Counsel.

Future work:

There is much scope for sustainable reform of the Criminal Justice System. I would recommend the following for consideration:

1. Legislative reform.

- (a) **Custody time limits** - There are a significant number of accused held on remand in custody pending trial. There is no limit or designated time frame for the completion of the proceedings. There is a need to consider legislation to create Custody Time Limits (CTLs). Custody time limits would determine the length of time an accused person can be held in custody at each stage of proceedings.
- (b) **Taking offences into consideration** - There is no legislation to deal with prolific offending. For example a defendant who commits thirty burglaries, has to be charged or dealt with by no further action on each of those offences. There is no facility to allow courts to take them into consideration (where admitted) with regards to sentencing without charge. It is recommended that future legislative reform include provision to permit this together with rules or policies to govern its use.

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Disclosure – The disclosure of unused material⁴ is not uniformly undertaken. The Police service do not fully appreciate their duties and responsibilities at common law. Immediate attention is required to address this important issue and the adoption of a legislative framework such as exists in England & Wales under the Criminal Procedure and Investigations Act 1996 should be prioritised.

2. Sentencing Guidelines

The Sentencing⁵ Guidelines in the Cayman Islands are in need of updating to ensure consistency.

Recommendations:

- (a) Sentencing Guidelines are updated for use within the jurisdiction.
- (b) Consideration is given to the Sentencing Guidelines now used in England and Wales to ensure consistency of sentencing.

3. Out of court disposals

At present there are two options for case disposal; Prosecution or no further action. This leads to minor cases being charged, and people unnecessarily acquire criminal records which damage their future, employability and ability to travel overseas. It also increases the volume of cases through the Police, ODPP, and Courts which could have been dealt with in another way.

Recommendation:

- (a) An out of court disposal scheme should be implemented. The use of cautions, conditional cautions (e.g. payment of compensation for minor criminal damage matters and youth cautions. These disposals could be recorded on appropriate registers.

4. Domestic Violence

This is an escalating problem within the Cayman Islands. There are a number of difficulties which exist and which are not dissimilar to many other jurisdictions. There currently exists a zero tolerance policy and virtually every case is charged and many victims retract.

Recommendations:

- (a) Consideration should be given to a fast track court procedure for such cases to reduce delay and speed up the prosecution process.

⁴ *Disclosure of unused material* – Unused material is material which has been obtained during the course of the investigation, but does not form part of the evidential case. This material must be retained and the Police are under a Common Law duty to provide the Prosecutor with all material that has the potential to undermine the prosecution case or assist the defence case. The prosecutor will then apply the Common Law disclosure test, considering if any material might reasonably be considered capable of undermining the case for the prosecution against the accused, or of assisting the case for the accused, and which has not previously been disclosed, to decide if any material is to be disclosed to the defence attorney.

⁵ *Sentencing Guidelines* – The Cayman Islands does have some sentencing guidelines in place, however, they are in need of updating. I understand that this process may have already been started by a committee formed of Judges from the Grand Court.

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- (b) Victimless prosecutions are challenging and often when a victim provides a retraction statement that is the end of the case. Consideration could be given to implementing the legislation used in England and Wales to allow hearsay evidence⁶ to be admitted in cases where the victim no longer supports the case.

5. Technology

The ODPP has access to the JEMS system, however this provides limited information. The ODPP would benefit from a digital case management system that could interface with the courts and the police. This would be the first step towards a digital case file management system.

Recommendation:

- (a) To consider and obtain a digital prosecution case management system.

6. Performance Monitoring

Crown Counsel receive performance appraisals annually. There is no structured performance data or advocacy monitoring. The quality of the files delivered to the ODPP is not monitored and feedback to the police is limited.

Recommendations:

- (a) Monthly performance analysis to be conducted.
- (b) Monthly performance meetings with all levels of staff to be conducted (dip sampling of rulings should be undertaken).
- (c) Yearly monitoring of Crown Counsel advocacy in court, with feedback where appropriate
- (d) Monitoring of the quality of police files received at the ODPP- suggested data to be collected;
 - % of new cases delivered to ODPP on time
 - % of such cases containing correct content
 - % of upgrades delivered to ODPP on time
 - % of such cases containing correct content
 - % of cases where charge matches agreed complaint
 - % of agreed complaints that match conviction
 - Conviction rate in each court
 - No case to answer rate
 - Acquittal rate (all separate for each court and also break down to each Counsel)
 - Time to summary trial
 - Time from conviction to sentence
 - Time spent on remand

⁶ *Criminal Justice Act 2003 – Sections 114-136.*

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These should be used as performance indicators; where performance is not met, it should trigger investigation of that area of business to see if it is operating as it should be.

7. Remands

There are no time scales or monitoring of those accused on remand. It is a financial drain on the public purse and, for those who are innocent, a considerable extended restriction of their liberty.

Recommendations:

- (a) The whole process requires in depth analysis, across all the organizations involved. An agreed multi agency protocol then needs to be implemented.
- (b) There needs to be a fixed time scale for remand cases.
- (c) Remand cases need to be monitored through the system.
- (d) Remand cases should be expedited through the system.

8. Court Liaison

The Magistrates Court lists at present are a mix of first hearings, sentencing with reports and trials. This leads to delay, adjournments and late starts for trials causing a number of cases to go part heard.⁷ Sentencing often runs over several hearings. Court listing arrangements need to be changed to enable court business to be dealt with more efficiently and to better meet the needs of victims and witnesses.

Recommendation:

- (a) Arrange court user group meetings to sit regularly to deal with listing arrangements and with issues when they arise.
- (b) The ODPP case progression manager to have weekly meeting with the court in relation to the trial readiness for the week ahead.

9. Court Case Management

At present there is virtually no court intervention in respect of identifying the issues to be tried in the case or the witness requirements of each party. As a result trials are often longer than necessary and there is often the element of ambush on the day of the hearing, generating an adjournment of the case. The courts appear content to adjourn cases for less than satisfactory reasons (e.g. Advocates saying they need to read their papers). There are far too many unnecessary adjournments.

Recommendations:

- (a) Implement the suggested case management forms in the summary court and the Practice Direction.

Criminal Procedure Rules are needed to cover the court process. This will provide one source of rules for all parties to work with.

⁷ Part heard – This means that the case will not be completed within the time allocated and will therefore have to be adjourned to another day, which can sometimes be many months later.

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Looking ahead

The CJA's deployment to the Cayman Islands has identified that real progress can be made in a short time if the parameters and objectives are clearly set and closely monitored. There is much more that may be done in the Cayman Islands, and I hope my report and recommendations for future work assists others' consideration of this going forward.

It is axiomatic that work done to strengthen investigations and prosecutions should improve justice and security because organised criminals are more likely thereby to be apprehended and successfully prosecuted. The work commenced in the Cayman Islands provides a basis for further criminal justice reform, how this should be developed and whether it may be part of a wider approach encompassing other Overseas Territories is of course a matter for others.

The Crown Prosecution Service International Division has been pleased to undertake this short term deployment through its Criminal Justice Adviser. Further advice on criminal justice engagement and reform can be obtained from CPS International Division

Claire Wetton

Crown Prosecution Service International Division

Dated: June 2015

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Annex A – Draft Practice Direction

NOTICE

PRACTICE DIRECTION No /2015

CAYMAN ISLANDS SUMMARY COURT

CRIMINAL CASE MANAGEMENT

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 jurors 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;

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- (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 participants in a criminal case

4.1 Each participant, 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;

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- (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 5.1, 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, including 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:

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- (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.
- (iv) The legal representative, administrator, police officer or other person responsible for the failure may to be summoned to Court to explain the default.

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;

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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 the 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 Direction shall be completed by the parties and then approved by the Presiding Magistrate at the hearing when the trial date is fixed.

11. TIME LIMITS

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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.

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 aim to 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) Priority cases, 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;

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- (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:
- (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) The 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

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- (e) consideration of bail shall take place;
- (iii) oral notification shall be given to the Defendant of the date for the next hearing.

Second Hearing

- 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.
- (iii) 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, 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) Before accepting a plea of guilty to any or all of the charges the Magistrate must satisfy themselves, either by questioning the Defendant personally or by calling upon counsel 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) 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.
- (iii) If a plea of guilty is not accepted, the fact of the guilty plea having been given shall not be admissible as evidence 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.

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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 20[]

Dated this day of 20[]

The Hon. Anthony Smeille Q.C.

Chief Justice

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Annex B – Case Management form

Summary Court Case Management Form

Case Number

--

Date NG Plea entered

--

Trial date

--

Trial estimate

--

This form is to be completed by the parties for the acceptance of the Court in all cases when a Not Guilty plea is entered in the Summary Court. Copies are to be provided to all parties.

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 or a costs order.

1. Offence Details

<u>CC</u> Charge(s)	
Date of offence	

2. Contact Details

Defendant(s)

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

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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? D1
Yes No
If yes, please provide name and contact details for attorney: D2
Yes No
Yes No D3

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

What evidence will the prosecution rely upon at trial: witness / search evidence

Tick/delete as appropriate 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?

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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

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

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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:

.....
Crown Counsel

Date:

.....
Defence

Date:

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.....
Magistrate

Date:

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Annex C – Draft Plea and Directions hearing form

A copy of this form is to be provided to all parties at the conclusion of the Arraignment hearing.

PART 1

Prosecution Details

FOR COMPLETION BY THE PROSECUTION

Regina - v -

Case No:

Contact Details

Name	
Telephone No.	
Email	

Readiness for Arraignment

Is an adjournment being sought?

Yes No

If yes, please give details inc. of previous adjournments:

--

Has disclosure been made?

Yes No

If not, indicate the date disclosure can be made by:

--

Do the police intend to gather more evidence?

Yes No

If yes, give brief details:

--

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Indictment

Has a signed indictment been lodged with the Court?

Yes No

If not, please give details:

Is any amendment of the indictment required?

Yes No

Guilty Pleas

Would a guilty plea to any alternative offences be acceptable to the Prosecution? Yes No

If yes, give brief details:

In case of conviction, does the Prosecution intend to apply for any ancillary orders?

Pre-sentence report Forfeiture/Destruction Pecuniary penalty Order
Compensation

If other, please specify:

Trial Issues

Please indicate if there are any legal arguments that the Prosecution wish to raise:

Can these issues be decided before a jury is sworn?

Yes No

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

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--

Please indicate if any special equipment will be needed for the trial (such as screens or a laptop):

--

Would the presentation of the case be helped by a diagram, sketch map or photos? Yes No

Is a site visit needed? Yes No

The Prosecution will rely on the following witness evidence:

Name	Description of Evidence	Dates to Avoid	Time in Examination

Signature of Prosecutor:

PART 2

Defence Details

FOR COMPLETION BY OR ON BEHALF OF THE DEFENDANT

Contact Details

Name of Defendant	
-------------------	--

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Date of Birth	
Identity Verified By <i>(e.g. social security no.)</i>	
Telephone No.	
Email	

Representation is: none capital case legal aid
private

Name of attorney	
Telephone No.	
Email	

Plea

Does the Defendant understand that he will receive credit for a Guilty plea? Yes
 No

Does the Defendant want to request a sentence indication hearing? Yes
 No

Does the Defendant want to plead guilty to all, or any offences? Yes
 No

Does the Defendant want to plead guilty, but to a different offence? Yes
 No

If yes, give brief details:

--

Are there any issues with regards to the Defendant's fitness to plead or stand trial? Yes
 No

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If yes, give brief details:

Trial Issues

The Defendant shall not be compelled to provide this information, but it will help the Court find out what is in dispute and give appropriate directions for trial. Any information may be used in evidence.

The Defendant will raise the following issue of fact at trial:

If the Defendant is raising an alibi defence, please provide particulars:

The Defendant will raise the following legal arguments / challenge the admissibility of the following evidence:

The Defendant requires the following Prosecution witnesses to attend trial:

Name	What is disputed/material issue in case that makes it necessary for witness to attend? (Rule 10.1)	Time in Examination

The following Prosecution witnesses / facts can be admitted as agreed evidence:

The Defendant intends to call the following witnesses at trial:

Name	Description of Evidence	Dates to Avoid	Time in Examination
------	-------------------------	----------------	---------------------

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Signature of / on behalf of Defendant:

PART 3

Court Directions

FOR COMPLETION BY THE JUDGE

Regina - v -

Case No:

Judge:

Priority Case?

Yes No

Trial Date:

Length:

Order	By	Extension	Notes
Assignment of Counsel			
Prosecution (additional) Evidence			
Prosecution (further) Disclosure			
Case Management Hearing			
List of Prosecution Witnesses			
Admissions / Agreed Witness Statements			
Special Measures Hearing			
Particulars of Defence Alibi Witnesses			
Prosecution Expert Evidence			
Defence Expert Evidence			
Agreed Report post-Meeting of Experts			
Defence Application for Disclosure			
Pre-Trial Legal Issues Hearing			
Skeleton on Legal Submissions			
Response to Legal Submissions			
Police Interview Transcript / Summary			
Defence edits to Transcript / Summary			

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Agreement to Jury Bundles			
CCTV / DVD: format compatible and tested			
Custody Time Limits Expire			

Signature of Judge making the Directions:

Court Enforcement

It is the responsibility of the opposing party to identify any failure to comply with a direction made. The Judge will decide whether to grant an extension of time or list a Case Management Hearing.

A failure to comply may result in one or more of the following sanctions:

- (1) The Court refusing leave to the party in default
*(For example, by refusing to allow evidence to be adduced or a submission out of time)***
- (2) The lawyer, administrator, police officer or other person responsible for the failure to be summoned to Court to explain the default.**
- (3) A wasted costs order.**

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Annex D – ODPP ruling form

ODPP Ruling Form

Defendant name:	PCN:
-----------------	------

Evidential Test	Facts	
	Issues	
	Law	
	Rationale	
	Conclusion	
Public Interest Test		
Bill of Rights Issues		
Proceeds of Crime		
Witness Issues/Special Measure		
Proposed Charges		
Further Action	1. 2. 3.	

Counsels name:	Date:
----------------	-------

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Annex E – Trial check form

Trial Check Form

Defendant name:	PCN:
-----------------	------

Indicate Witnesses to be Called (C) Summoned (S) Agreed (A) Tendered (T)	
OIC/SPOC notified of trial date by email - Y/N	
Anticipated Trial Issues	
Any points of law	
Any Special measures required – application made	
Any Proceeds of Crime application	
Trial ready - Y/N? Application to vacate	
Disclosure (unused material) – have all items been disclosed – any further items requested	
Further evidence still outstanding	
Actions for admin	

Counsels name:	Date:
----------------	-------

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Annex F – Adverse outcome form

Director of Public Prosecutions Office Adverse outcome form

Case name

LRN

Department

Threshold test (Custody case) Y/N

Full Code test (bail case) Y/N

Ruling decision	Threshold/FCT
Was there a realistic prospect of conviction at ruling stage on basis of evidence available or likely to become available as disclosed on police file	
Was it in public interest to charge	
Was there an appropriate action plan sent to the Police	
Did police deliver on action plan	
Did the ODPP chase a response	
Was there evidence missing ?	
If case failed for witness reasons, could more have been done by police or ODPP – would an earlier trial date have helped?	
Could the ODPP have done more to avoid this outcome eg more effective case progression eg more effective review	
Why did the case fail?	
What was done?	

Signed

Crown Counsel

Dated

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Annex G – Criminal Justice Board agenda

The Cayman Islands Criminal Justice Board Meeting

Agenda - 24th March 2015

Court 5 – 4.30pm

1. Chief Magistrate's welcome
2. Introductions
3. Terms of Reference and constitution

'The role of the CJB is to improve co-operation between the criminal justice agencies in order to deliver the best possible criminal justice service to the Cayman Islands community.'

4. Report on deployment of criminal justice adviser – January-April 2015 – Claire Wetton – progress so far and next steps.
5. Practice Direction – Case Management
 - a. In order to provide a framework for better management of criminal cases in the summary court, a draft practice direction is being prepared for consideration by the Chief Justice.
 - b. Derived from equivalent documents developed in Belize and the Eastern Caribbean, both of which take account of the criminal procedure rules in England and Wales, this Practice Direction seeks to set out the responsibilities of the different participants and to set out more clearly ways in which criminal cases can be managed that improves efficiency but maintains a high standard of justice.
 - c. The Practice Direction is at an early stage of development but it would be good to hear views on what should be aimed for and potential difficulties.
6. Domestic violence court and prosecutions involving child witnesses
 - a. The domestic violence problem solving court remains an informal court but provides a means for resolving the underlying issues that lead to domestic violence.
 - b. A continuing problem is the gap between complaint and court appearance which has the effect of delaying cases, when retraction statements are made and cases then need to be reviewed.
 - c. Proposals under consideration include a dedicated domestic violence court, fast-tracking cases so that defendants appear before the court quickly after charge.
7. Use of the video-link between the court and the prison and increasing the use of the video-link for hearings.

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8. Date for next meeting and future dates
 - a. To be successful, meetings of this type need to be held sufficiently often to keep momentum, but not so often that there is so little to report that key participants lose the incentive to attend.
 - b. It is proposed that meetings are bi-monthly with the next date for the meeting to be the 26th May 2015.

9. Any other business

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Annex H – MG form – unused material

This document is for internal use only. It should be regarded as a memorandum between the Police and Legal. It may well contain confidential information and therefore must not be disclosed to the defence.

If your response requires further explanation, include it within the “Important Notes for Prosecutor” box below.

Is the investigation complete? Choose an item.
If No, list what further enquiries are required and likely dates of completion.

Have all defendants been charged? Choose an item.
If NO, please specify why.

Are there others charged / cautioned whose details do not appear on this file? Choose an item.
If YES, please specify.

Victim / Witnesses:

Has the victim expressed views concerning defendant’s bail conditions / decision to prosecute?
If YES, provide details.

Could any witness be classed as intimidated? Choose an item.
If YES, complete form MG2 – check box when attached: <input type="checkbox"/>

Could any witness be classed as vulnerable? Choose an item.
If YES, complete form MG2 – check box when attached: <input type="checkbox"/>

Are there any key witness statements still to be obtained? Choose an item.
If YES, provide details of the evidence they can give which is vital to prove the prosecution case and identify the strengths or weaknesses of evidence and / or the witness.

Has any witness refused to make a statement? Choose an item.
If YES, provide details of the witness and the evidence they could give.

Is there any praiseworthy conduct / mitigating factors which should be brought to the attention of the

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If YES, provide details.

Police Certification re Disclosure of UNUSED Material.

The Common Law:

It is the Common Law duty of RCIPS officers conducting investigations to pursue all reasonable lines of enquiry whether these point towards or away from the suspect.

Police Obligations under Common Law:

The Officer in Charge (OIC) of an investigation OR the appointed “Disclosure Officer” has the responsibility of reviewing the case and making the certification regarding the existence of unused material.

“Unused Material”, Definition:

Material which has been produced or obtained during the course of the investigation, that may be relevant to the investigation, but which does not form part of the evidential case against the accused.

“Material relevant to the investigation”, Definition:

Anything that appears to an officer involved in an investigation, or to the officer in charge of an investigation, to have some bearing on any offence under investigation or any person being investigated or on the surrounding circumstances, unless it is incapable of having any impact on the case.

Unused material that MUST be provided under Common Law for LEGAL RULING:

- Any material which weakens/ undermines the Prosecution case or assists the defence case the case against the accused (regardless of there being evidence to counter the material).
- Any material which could assist the accused with his defence or a bail application.
- Any material which might assist the accused to make an application for proceedings to be stayed as an abuse of process.
- Any material which might reduce the seriousness of any charge.
- Material which could impact the credibility of a witness.

Disclosure of UNUSED Material:

Copies of officers’ notebooks have been inspected and do not undermine the prosecution case or assist the defence case.	
Choose an item.	Copy attached <input type="checkbox"/>

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Custody record(s) have been inspected and do not undermine the prosecution case or assist the defence case.

Choose an item. Copy attached

Previous Conviction checks have been conducted for the victim/complainant AND key witnesses and the results do not impact on their credibility. (E.g. No Serious convictions OR offences involving dishonesty)

Choose an item. Copy attached

Where the victim is the only witness, include any previous complaints made by them and details of disposal where this may undermine their credibility. (E.g. Witness previously found to have lied or disbelieved at trial)

Choose an item. Details attached

The RMS incident report has been inspected and does not undermine the prosecution case or assist the defence case.

Choose an item. Copy attached

Are there any communications between Police and the victim, complainant or Key witness that undermines the prosecution case or assists the defence case?

Choose an item. Details attached

Has the victim, complaint or Key witness attempted to withdraw their complaint or change their evidence?

Choose an item. Copy attached

Has ALL CCTV been seized?

Choose an item.

Has ALL seized CCTV been viewed?

Choose an item.

Is unused CCTV considered irrelevant?

Choose an item.

Does any material suggest someone other than the accused may have committed the offence? (E.g. fingerprints/DNA found at the scene of someone other than the accused or someone with legitimate access.)

Choose an item. Details attached

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Disclosure of UNUSED Material cont:

The 911 Audio Phone Call Log has been requested.	
Choose an item.	Details attached <input type="checkbox"/>

The 911 Audio Call Log has been reviewed and it doesn't undermine the prosecution case or assist the defence case.	
Choose an item.	Details attached <input type="checkbox"/>

Important Notes for Prosecutor

I the OIC / Disclosure Officer certify that at the time of submission of this case file for **LEGAL RULING**, all of the unused material has been considered and does not undermine the Prosecution case or assist the defence case.

Name		Rank	
Date		Signature	

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Annex I – Court endorsement form

Date	
MAGISTRATE/JUDGE	
DEFENDANT PRESENT – [if two or more which one?]	
TYPE OF HEARING	
CROWN COUNSEL	
DEFENCE ATTORNEY	
COURT ORDER DEADLINE [and for What?]	
STATUS OF DEFENDANT	
BAIL CONDITIONS or if remanded – Why remanded?	
OUTCOME OF HEARING-[What happened, Who said What?]	
NEXT COURT DATE	
OFFICE ACTION REQUIRED -[<i>If Summonses, Who is to be summoned?</i>] Trial Prep?	
INTERNAL REVIEW/TO SCC/DPP- WHY	
ENTERED BY SUPPORT STAFF TO CENTRAL HEARING DIARY	