

MONTSERRAT
STATUTORY RULES AND ORDERS
S.R.O. 3 OF 2026

EASTERN CARIBBEAN SUPREME COURT
CRIMINAL PROCEDURE RULES

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EASTERN CARIBBEAN SUPREME COURT
CRIMINAL PROCEDURE RULES

THE EASTERN CARIBBEAN SUPREME COURT CRIMINAL PROCEDURE RULES 2026 MADE BY THE CHIEF JUSTICE AND TWO OTHER JUDGES OF THE SUPREME COURT UNDER SECTION 309 OF THE CRIMINAL PROCEDURE CODE (CAP. 4.01) AND SECTION 17 OF THE SUPREME COURT ORDER (CAP. 2.01).

PART 1 – PRELIMINARY

1.1 Citation and commencement

- (1) These Rules may be cited as the Eastern Caribbean Supreme Court (Criminal Procedure Rules) 2026.
- (2) These Rules shall come into effect on the 2 February, 2026.

1.2 Interpretation

In these Rules unless the context otherwise requires —

“**accused**” means the person against whom a complaint has been made, information has been laid or an indictment has been preferred;

“**bail**” includes —

- (a) bail which is granted in or in connection with proceedings for an offence to a person who is accused or convicted of the offence;
- (b) bail which is granted in connection with an offence to a person who is under arrest for an offence or for whose arrest for the offence a warrant endorsed for bail is issued; or
- (c) bail which is granted under any enactment for the time being in force;

“**child**” means a person as defined in the respective legislation of each Member State or Territory.

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“**clerk**” includes any person —

- (a) employed for any purpose as a clerk;
- (b) employed as a collector of money, including temporarily or part-time;
- (c) employed as a commission agent for the collection or disbursement of money or in any similar capacity;

“**committal proceedings**” mean, where applicable under legislation of a Member State or Territory, a hearing in the Magistrates’ Court either as a preliminary enquiry or a paper committal to decide whether there is a prima facie case to require trial in the High Court by judge and jury or by judge alone;

“**company**” means a body corporate incorporated under the local Companies Act, and includes any partnership or association, whether corporate or unincorporated;

“**complainant**” includes any informant and a person who makes a complaint in relation to an offence;

“**complaint**” includes a charge made not on oath and whether or not reduced into writing;

“**conviction**” includes order, or minute or memorandum thereof;

“**corporation**” includes a corporation sole;

“**Court**” except where specifically stated, means the High Court or a District or Magistrates’ Court as the case may be, in the exercise of its criminal jurisdiction, and includes the judge, master or magistrate;

“**Criminal Division**” means the Criminal Division of the Eastern Caribbean Supreme Court and the Magistrate’s Court;

“**Criminal Division Manager**” means the designated officer in charge of the Criminal Division;

“**deliver**” includes causing a person to receive a thing or permitting a person to take a thing, whether directly or indirectly;

“**Director**” means the Director of the Correctional Facility or other person responsible for the administration of the correctional facility;

“**document**” includes any document in writing whether of a formal or informal character, any disc, tape, soundtrack, or other device on or in which information is recorded or stored by mechanical, electronic or other means;

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“**guardian**” in relation to a child, includes the person who for the time being has charge of, or has control over, such child, whether by legal proceedings or otherwise;

“**indictable offence**” means any offence punishable on indictment under the Criminal Code or any other enactment;

“**information**” means a charge laid on oath and reduced into writing;

“**judge**” means a Judge of the High Court of Justice of the Eastern Caribbean Supreme Court;

“**judicial proceedings**” includes any civil or criminal trial, and any inquiry or investigation held by a judicial officer in pursuance of any duty or authority;

“**juror**” includes an alternate juror;

“**land**” includes any immovable property;

“**law year**” means the period from January to December;

“**master**” means a Master of the Eastern Caribbean Supreme Court;

“**offence**” means an act, attempt or omission punishable by law;

“**officer**” in relation to a company or corporation includes an officer, chairperson, director, trustee, manager, secretary, treasurer, clerk, auditor, accountant or any other person performing any function in respect of the company;

“**order**” includes any conviction;

“**party**” includes both the party to a criminal case and any attorney-at-law on record for that party unless any rule specifies or it is clear from the context that it relates to that party or to the attorney-at-law;

“**person**” whether expressed or implied as in the word “any person who” or otherwise, includes a body of persons whether corporate or unincorporate, and, for the purposes of any provision of legislation relating to defrauding a person or to committing any offence against the property of the person, the local Government, or of any other country or State, is deemed to be a person;

“**proper officer**” includes the Registrar, Clerk of the District or Magistrates’ Court, Sheriff or other officer or person appointed or deputed to perform any particular act or duty;

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“**property**” includes money and all other property, immovable or movable including things in action or other intangible property;

“**public service**” means service in a civil capacity of Government;

“**send**” includes causing, or attempting in any manner to cause a thing to be received by a person;

“**sentence**” includes an order;

“**special defence**” means the defence of alibi, automatism or insanity;

“**sufficiency hearing**” means, where applicable under legislation of a Member State or Territory, a preliminary hearing conducted by a judge or master of the High Court into whether there is a prima facie case to require trial in the High Court by judge and jury or by judge alone;

“**sum adjudged to be paid by order**” includes any compensation or costs adjudged to be paid by the order, the amount of which is fixed by the order;

“**summary offence**” means any offence punishable on summary conviction;

“**trust**” includes the acquiring, holding, receiving, or having control over, or being in any manner entrusted with, any property for or belonging to another person, including property which belonged to a deceased person at the time of his or her death;

“**trustee**”—

(a) means a trustee of an express trust created by any deed, will or instrument in writing, or by parole, or otherwise;

(b) includes —

- (i) the heir or personal representative of a trustee, and any other person on whom the duty of such trust devolves, whether by appointment of a Court or otherwise,
- (ii) an executor or administrator, and an official manager, assignee, liquidator or other like officer acting under any enactment relating to joint stock companies, bankruptcy or insolvency,
- (iii) the person who acquires, holds, receives, or has control over, or is in any manner entrusted with, any property for or belonging to another person, including property which belonged to a deceased person at the time of his or her death;

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“**vehicle**” includes any car, carriage, cart, wagon, wain, truck, barrow, tricycle, bicycle, or other means of conveyance, irrespective of how drawn or propelled;

“**vulnerable person**” includes a child, or a person aged eighteen years and above who is or may be unable to take care of themselves or unable to protect themselves against harm or exploitation by reason of age, illness, trauma or disability or for any other reason;

“**writing**” includes typing, printing, lithography, photography or other mode of representing or reproducing words in a visible form; and

“**young person**” means a person as defined in the respective legislation of each Member State or Territory.

PART 2 – OVERRIDING OBJECTIVE

2.1 Overriding objective

- (1) The overriding objective of these Rules is to enable the Court to deal with criminal cases justly.
- (2) Dealing with a criminal case justly includes:
 - (a) dealing with the case efficiently and expeditiously;
 - (b) dealing with the prosecution and the defence fairly;
 - (c) respecting the interests of witnesses, victims and jurors;
 - (d) ensuring that appropriate information is available to the Court when bail and sentence are considered; and
 - (e) dealing with the case in ways that take into account —
 - (i) the gravity of the offence alleged,
 - (ii) the complexity of what is in issue,
 - (iii) the severity of the consequences for the accused, victim and others affected,
 - (iv) the needs of other cases; and
 - (v) the fundamental rights of individuals established under the Constitution of the Member State or Territory.

2.2 The duty of the parties

Each party must promptly—

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- (a) prepare and conduct the case in accordance with the overriding objective;
- (b) comply with these Rules, practice directions, and directions made by the Court;
- (c) inform the Court and all other parties of any significant failure to take any procedural step required by these Rules, any Practice Direction or any direction of the Court;
- (d) inform the Court and the other party or parties of anything that may affect the date of trial or the progress of the case in any way;
- (e) take every reasonable step to make sure their witnesses will attend Court when needed;
- (f) monitor compliance with directions;
- (g) ensure that each party can be contacted about the case during ordinary business hours, and if needed, at any time;
- (h) act reasonably in response to communications about the case; and
- (i) if an attorney-at-law on record will be unavailable for a scheduled hearing, appoint a substitute attorney-at-law for that purpose and inform the other party or parties.

2.3 The application by the Court of the overriding objective

- (1) The overall objective of these Rules, particularly the timely and efficient disposal of cases in the Criminal Division, cannot be achieved by the Court readily granting adjournments without the party requesting the adjournment showing cause.
- (2) The Court must further the overriding objective in particular when—
 - (a) exercising any power given to it by legislation (including these Rules);
 - (b) applying any practice direction; or
 - (c) interpreting any rule or practice direction.

PART 3 – PRACTICE DIRECTIONS

3.1 Issuance of Practice Directions

- (1) Practice Directions may be issued only by the Chief Justice.

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- (2) A Practice Direction may be issued by the Chief Justice in any case where provision for such a direction is made by these Rules.
- (3) The Chief Justice may issue a Practice Direction providing for mediation in criminal matters.
- (4) Where there is no express provision in these Rules for such a direction, the Chief Justice may give a direction as to the practice and procedure to be followed.

3.2 Publication and effective date of Practice Directions

- (1) Practice Directions must be—
 - (a) published in the local *Gazette*; and
 - (b) displayed and made available in the office of the Criminal Division.
- (2) A Practice Direction takes effect from the effective date specified in the direction.

3.3 Compliance with Practice Directions

A party must comply with any relevant Practice Direction.

PART 4 – RULES OF GENERAL APPLICATION

4.1 When Court shall hear criminal matters

Judges, masters and magistrates in the Criminal Division shall hear criminal matters between the hours of 9:00 a.m. and 4:00 p.m. Monday to Friday, with the exception of statutory holidays, unless otherwise provided by Practice Direction or unless the Chief Justice, the presiding judge, or a judge, master or magistrate presiding in any criminal proceeding directs that any matter be heard at any other hour or on any other day.

4.2 Opening hours of office of the Criminal Division

- (1) The office of the Criminal Division shall be open to the public for the filing of documents between 9:00 a.m. and 4:00 p.m. every Monday to Friday, except on statutory holidays.
- (2) Notwithstanding sub-rule (1), a document that is filed electronically or otherwise with the Criminal Division—
 - (a) after 4:00 p.m. on any day when the office is open to the public for business;
 - (b) on the weekend or statutory holiday;

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shall be dated and deemed filed on the next business day.

- (3) The office of the Criminal Division shall be open to the public for the receipt of cash and other payments between 9:00 a.m. and 3:00 p.m. every Monday to Friday, except on statutory holidays.

4.3 Criminal Division records to be in electronic form

Criminal Division records shall be created, entered and maintained electronically to the extent possible.

4.4 Verbatim records to be made

Official verbatim records of all Court proceedings shall be made on audio and/or video recording equipment; and the Chief Registrar, Registrar or Chief Magistrate may cause on request the audio recorded proceedings to be made available to, or be reduced into a transcript for the use of, the Court or parties to the court proceedings.

4.5 Courtroom events to be recorded

Courtroom events shall be directly entered through computer terminals in the courtroom and if terminals are not available in the courtroom, the events shall be recorded on other computers or by other means authorised by the presiding judge, judge, master and magistrate, and shall, as soon as possible thereafter, be entered into the computer system.

4.6 Electronic filing

The practice and procedure for the electronic filing of documents shall be governed by the Eastern Caribbean Supreme Court (Electronic Litigation Filing and Service Procedure) Rules (SRO 6/2020); and police officers and other persons authorised by Practice Direction may use the electronic filing program in use in the Criminal Division to electronically submit and file, in the format required by the filing program, complaints and any other documents that are required or which may be filed with the Court.

4.7 Applications for adjournments

- (1) Save in impractical circumstances, a notice of application for adjournment shall be made in writing, giving reasons for the application, not less than seven days prior to the date of the hearing or trial, through the Office of the Criminal Division.
- (2) Applications for adjournments shall be granted only if good cause is shown.

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- (3) Unless the Court orders otherwise, an accused and any witness who is bound over to appear must appear in Court on the date set for the hearing of an application for adjournment.

4.8 Priority trials– time goals

The following cases shall be afforded priority trial—

- (1) Persons remanded in custody; and
(2) Cases involving vulnerable persons.

4.9 Expedited hearing

- (1) The Director of Public Prosecutions or the Attorney General as the case may be or an accused may request an expedited hearing in cases where the virtual complainant, an accused or a witness is not ordinarily resident on-island or is a resident who is imminently to leave the jurisdiction without expectation of return, or where a witness is in imminent danger.
- (2) An expedited hearing should not be granted if it would prejudice the person charged.
- (3) The application for an expedited hearing must be accompanied by a certificate of urgency and may be heard ex parte.

4.10 Power to extend time

In the absence of expressed provision to the contrary in these Rules or a relevant Criminal Code, or any other enactment, the Court may, where it is considered in the interest of justice to do so, extend the time for doing any act under these Rules.

4.11 Trial of persons charged with murder or serious violent offences

As a general rule, trials must be held within one year of an accused being charged for indictable offences and six months for summary offences; during transition to this ideal, trials must be held within two to three years of an accused being charged for indictable offences and twelve months for summary offences.

4.12 Jurisdiction starts with service of summons or arrest

The Court has jurisdiction over a person accused of committing an offence immediately when a summons is served on that person or immediately when the person is arrested either with or without warrant.

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4.13 Electronic transmission of summonses and arrest warrants

- (1) The Court may electronically transmit a summons or warrant of arrest to the police.
- (2) A printed copy of a summons or warrant of arrest transmitted according to sub-rule (1) is a valid copy.

4.14 Transmission of summonses and arrest warrants to the Director of Public Prosecutions or the Attorney General as the case may be

The Court shall transmit a copy of every summons and warrant of arrest to the Director of Public Prosecutions or the Attorney General as the case may be and may transmit them electronically within seventy-two hours of the order being issued by the Court.

PART 5 – COMPLAINTS, SUMMONSES, ARREST

Complaint/Information

5.1 Complaint preceding arrest warrant

The procedure with respect to the making of a complaint or the laying of an information and the issue of a summons shall be in accordance with the provisions of the Magistrates' Code of Procedures Act or other local enactment governing same.

5.2 Complaint or Information made by police officers

- (1) The general rule is that a complaint or information by a police officer shall be in writing and shall be signed by the officer making or laying the same.
- (2) A police officer may file a complaint or information by transmitting the document electronically to the Office of the Criminal Division and the officer's typewritten name on the electronic document shall be deemed to be the officer's handwritten signature if accompanied by an authorised password issued by the Criminal Division Manager.

5.3 One accused per complaint

Where there is more than one accused, a separate complaint shall be filed with respect to each complaint.

Summons

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5.4 Service of summons

- (1) As far as practicable, the summons shall be served within forty-five days after the date of the filing of the complaint.
- (2) The Criminal Division Manager shall transmit the summons to the relevant process server.
- (3) A copy of a summons may be served by the sheriff, a bailiff, or police officer upon the person to whom it is directed, by either delivering it to him or her personally or by leaving it for him or her at his or her last or most usual place of abode where it is not convenient or possible to deliver it to him or her personally.
- (4) An accused in respect of whom a summons has been issued is deemed to be lawfully served if the summons —
 - (a) in the case of the accused being a captain or seaman or person employed in any ship or vessel, is left within the hands of a person employed on board the ship or vessel; or
 - (b) in the case of the accused being a partnership, company, association, or corporation, is left at their ordinary place of business with a partner, director, secretary, manager, or other official thereof, or at the company's registered address, or if the partnership, company association, or corporation is served in the same manner as if the proceedings were in the civil court.
- (5) A body of trustees may be summoned by serving a summons on any one of them resident in the State or on their known legal representative.

5.5 Proof of service of summons

- (1) Service of a summons may be proved by the person who served the summons attending before the Courts at the time and place mentioned therein to depose if necessary to the service thereof or by a certificate or return of service on oath, endorsed on a copy of the summons and signed by the person who served the summons.
- (2) A certificate or return of service shall state —
 - (a) the date and time of service;
 - (b) the full name and address of the person served;
 - (c) the precise place or address at which the summons was served;
 - (d) the precise manner by which the person on whom the summons was served was identified; and
 - (e) the precise manner in which the summons was served.

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- (3) A certificate or return of service shall be filed with the Court promptly after service and in any event before any further action is taken on the matter before the Court.
- (4) Failure to execute or file a certificate of service does not affect the validity of the service.
- (5) The Court may, at any time, allow an amended certificate of service to be filed unless injustice would result.
- (6) The Court may also receive proof of service by affidavit made before a magistrate or justice of the peace.
- (7) A person who serves a summons may file a certificate of service or an affidavit of service electronically.
- (8) A person who serves a summons and files a certificate of service or an affidavit of service electronically, may use a typewritten signature, accompanied by an authorised password registered with and approved by the Court, in lieu of a handwritten signature on the certificate or affidavit.
- (9) A person who serves a summons, shall, where—
 - (a) the person served fails to appear and there is doubt as to service; or
 - (b) on filing a certificate or affidavit of service the service is contested;

attend Court at a time and place specified by the Court, in order, if necessary, to prove the service in the manner specified in these Rules.
- (10) The magistrate before whom the accused ought to appear may, in his or her discretion, not require the appearance of the person who served the summons.

Unexecuted Arrest Warrants

5.6 Report on unexecuted arrest warrants

- (1) The Criminal Division Manager shall prepare detailed quarterly reports on the status of all warrants of arrest, including bench warrants, that were issued during that period.
- (2) Where there are warrants of arrest that are unexecuted for more than thirty days a magistrate or the presiding judge may enquire of the Commissioner of Police as to the status of the unexecuted warrants.

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5.7 Discharge of arrest warrant

The Court may discharge an unexecuted arrest warrant for good cause shown.

5.8 Case inactivation

- (1) Where for any reason a warrant for the arrest of an accused is deemed not to be able to be executed the case will be placed on an inactive list and will be reactivated if and when the warrant is executed.
- (2) The Registrar or the Criminal Division Manager shall create the list of inactive cases at the end of each term.

PART 6 – BAIL

6.1 Bail set when arrest warrant issued

- (1) Subject to any enactment in any Member State or Territory, at the time of issuing an arrest warrant, the judge, master, magistrate or justice of the peace, as the case may be, may set terms and conditions of bail, unless bail is denied pending the Initial Hearing provided for in rule 7.4.
- (2) The terms and conditions referred to in sub-rule (1) shall be endorsed on the warrant and the officer in charge of the police station to which the accused is taken shall arrange for the accused's release on bail in accordance with those terms and conditions.

6.2 Application for bail in the High Court

- (1) Subject to any enactment in a Member State or Territory, an application to the High Court for bail shall be governed by the Eastern Caribbean Supreme Court (Bail) Rules 2023 which are deemed to be incorporated into these Rules.
- (2) An application to oppose bail, or to revoke, or impose or vary a condition of bail shall be made in writing in Form 1 in the Schedule to the Bail Rules.

6.3 Considerations for the grant of bail

Subject to any enactment in any Member State or Territory dealing with bail, a Court granting bail shall consider all the facts and the circumstances of the particular case and have regard to principles including—

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- (a) whether there are substantial grounds for believing that the accused will abscond if granted bail;
- (b) whether there are substantial grounds for believing that the accused will commit an offence while on bail;
- (c) whether there are substantial grounds for believing that the accused will interfere with witnesses or otherwise obstruct the course of justice, whether in relation to themselves or any other person; and
- (d) whether there are substantial grounds for believing that the accused should be kept in custody for their own protection or, if they are a child, for their own welfare.

6.4 Review of bail conditions of persons remanded in custody

- (1) The Criminal Division Manager shall prepare at the end of each term a list of all persons who are remanded in custody because they are unable to satisfy the conditions of bail.
- (2) The list referred to in sub-rule (1) shall contain for each person listed, the date of their remand, their bail conditions, and a brief summary of their bail applications made.
- (3) The presiding judge shall cause the list referred to in sub-rule (1) to be reviewed by a judge or master who may, with or without application being made by or on behalf of the accused, vary the conditions of bail, but no such variation shall impose more onerous conditions.
- (4) Where the judge or master is minded to vary the conditions of bail, the prosecution shall be afforded an opportunity to be heard.

6.5 Application for review of a decision of a magistrate

- (1) An application to review a decision of a magistrate must be in Form 1 in the Schedule to the Eastern Caribbean Supreme Court (Bail) Rules (SRO 32/2023).
- (2) If the applicant is in custody and is not represented by an attorney-at-law, the application must be lodged with the Director.
- (3) The Director must forthwith file the application at the office of the Criminal Division.
- (4) If the applicant is—
 - (a) not in custody; or
 - (b) represented by an attorney-at-law;

the applicant must file the application at the office of the Criminal Division.

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- (5) The office of the Criminal Division must immediately –
- (a) send a copy of the application to the Director of Public Prosecutions or the Attorney General as the case may be;
 - (b) fix a date, time and place to hear the application being no more than seventy-two hours from the filing of the application; and
 - (c) give notice of the date, time and place to—
 - (i) the applicant;
 - (ii) the Director of Public Prosecutions or the Attorney General as the case may be; and
 - (iii) (if the applicant is in custody) the Director.

6.6 Hearing of application for review of a decision

- (1) The Court may confirm, modify or reverse the decision of the magistrate.
- (2) The office of the Criminal Division must serve a copy of any order on the –
- (a) Senior or Chief magistrate if any;
 - (b) Director; and
 - (c) magistrate, or clerk of the Court of the magistrate who made the decision under review.
 - (d) the Director of Public Prosecutions or the Attorney General as the case may be.

**PART 7 – PROCEEDINGS IN THE MAGISTRATES’
COURT OF THE CRIMINAL DIVISION**

7.1 Stages in Proceedings

- (1) The major stages in the proceedings of summary cases before the Magistrates’ Court of the Criminal Division are—
- (a) Initial Hearing;
 - (b) Pre-trial Case Management;
 - (c) Omnibus Conference if necessary; and
 - (d) Trial.
- (2) The major stages in the proceedings of indictable cases before the Magistrates’ Court in the Criminal Division are—
- (a) Initial Hearing;

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- (b) Sufficiency Hearing where applicable;
- (c) Committal to the High Court, or discharge.

7.2 Access to police evidence

- (1) Without prejudice to rule 13, the prosecution must serve a written summary of the evidence on which the case will be based, on the Court's office and on the accused or if represented, his or her attorney-at-law, as soon as practicable, but in any event, no later than the commencement of the Initial Hearing.
- (2) Within twenty-one days, the prosecution must serve on the Court's office and on the accused or if represented his or her attorney-at-law:
 - (a) any documentary evidence or extract on which the case will be based;
 - (b) where the case is serious or complex, the witness statements on which the prosecution intends to rely.¹

7.3 Initial Hearing list

- (1) The Criminal Division Manager of the Magistrates' Court shall prepare in advance a list of cases scheduled for each Initial Hearing.
- (2) A copy of the list shall be sent in hard copy or electronically to the Director of Public Prosecutions or the Attorney General as the case may be, the Police Prosecution Unit, the Superintendent of Prisons for the accused, or his attorney-at-law, and to other interested persons who request a copy.

7.4 Initial Hearing in the Magistrates' Court

- (1) The Magistrate shall conduct an Initial Hearing.
- (2) The Initial Hearing in the Magistrates' Court in any matter, whether summary or indictable shall include—
 - (a) verification of the accused's identity and contact information;
 - (b) the accused's rights as in rule 7.6;
 - (c) hearing and review of any applications made by the prosecution or the accused;
 - (d) notifying the accused of the next Court date at which his or her appearance is required;

¹ Franklyn Vincent v R (1998) 42WIR 262

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- (e)* cross-checking an accused's name against the Court's warrant and criminal history file; and
 - (f)* acquainting an accused with Court procedures.
- (3)** Where the accused is charged with an offence triable only summarily, the magistrate shall explain the plea process to the accused, including —
 - (a)* that the accused has the option to plead either guilty or not guilty;
 - (b)* that if the accused offers a plea of guilty to a summary offence, and the plea is accepted by the magistrate, he or she will not receive a trial and will be sentenced by the magistrate; and
 - (c)* that if the accused pleads not guilty, the case will be set down for case management or trial as the case may be, and that a scheduling order in the prescribed form that includes a projected trial date will be entered.
- (4)** At the Initial Hearing in summary matters, the magistrate may —
 - (a)* conduct a trial at once if the accused or prosecutor requests an immediate trial and the accused or prosecutor as the case may be consents; or
 - (b)* make a scheduling order that establishes a schedule of pre-trial events and a projected trial date in accordance with these Rules;
 - (c)* make an order that copies of any documentary evidence or extract on which the case will be based, be made available to the accused by a specified time.
- (5)** At the Initial Hearing in matters triable only on indictment, the magistrate shall make a scheduling order fixing dates —
 - (a)* for the Sufficiency Hearing and or committal proceedings where applicable;
 - (b)* by which the accused must retain counsel or seek the appointment of counsel at the expense of the Member State or Territory where applicable;
 - (c)* by which the accused's application for appointment of counsel must be determined; and
 - (d)* by which counsel, whether retained or appointed, must file a Notice of Acting with the Court, if a Notice of Acting has not been filed.

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7.5 Scheduling Orders

The Criminal Division shall cause scheduling orders made at the Initial Hearing to be served within seven days of the making of the order on—

- (a) the accused;
- (b) the attorney-at-law for the accused; and
- (c) the Director of Public Prosecutions or the Attorney General as the case may be.

7.6 Explanation of rights

At the Initial Hearing in the Magistrate’s Court, the magistrate shall inform the accused of—

- (a) the offence charged by reading or causing the charge to be read to the accused in a language that he or she understands;
- (b) the right to bail, if any;
- (c) the right to retain legal representation, including the right to request an adjournment to retain legal representation;
- (d) the right to have legal representation appointed at the expense of the Member State or Territory where applicable;
- (e) the right to remain silent, except as to plea and the right to know that any statement made may be used against him or her;
- (f) the right to enter a plea to the charges;
- (g) the right to trial, if a not guilty plea is entered;
- (h) the right to an interpreter if necessary; and
- (i) the right to request a sentence indication.

7.7 Accepting a guilty plea

(1) Before accepting a plea of guilty, the magistrate must assure himself or herself, by questioning the accused either personally or at the discretion of the magistrate by calling upon the attorney-at-law for the accused to lead the questioning, that—

- (a) the accused committed the offence;
- (b) the plea of guilty is voluntarily made, (and not as a result of any threats or inducements not disclosed on the record); and

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- (c) the plea of guilty is made with an understanding of the consequences of the plea.
- (2) A magistrate may refuse to accept a plea of guilty if he or she believes it is not in the interest of justice to do so.
- (3) If a plea of guilty is rejected, no admission made by the accused at that stage of the proceedings shall be admissible in evidence against the accused at trial.
- (4) Where the accused enters a guilty plea, the magistrate may order a pre-sentence report.

PART 8 – CASE MANAGEMENT

8.1 Case management: General

- (1) This Part applies both to the Magistrates’ Court and to the High Court.
- (2) The Court shall actively manage cases and this includes —

 - (a) the early identification of real issues, including the defence and any legal arguments;
 - (b) the early identification of the needs of witnesses;
 - (c) achieving certainty as to what must be done, by whom, and when;
 - (d) the early setting of a timetable for the progress of a case;
 - (e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;
 - (f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;
 - (g) encouraging the participants to co-operate in the progress of the case;
 - (h) making use of technology; and
 - (i) giving any direction appropriate to the needs of a case as early as possible.

8.2 The Court’s case management powers

- (1) The Court shall give any direction and take any step to actively manage a case, unless that direction or step would be inconsistent with any enactment, including these Rules.
- (2) In particular, the Court may —

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- (a) assign a master or case manager to manage cases or to conduct Omnibus Conferences;
 - (b) give a direction on its own initiative or on application by a party;
 - (c) ask or allow a party to propose a direction;
 - (d) for the purpose of giving directions, receive applications and representations by letter, by telephone or by any other means of electronic communication, and conduct a hearing by such means;
 - (e) give a direction without a hearing;
 - (f) fix, postpone, bring forward, extend or cancel a hearing;
 - (g) shorten or extend, even after it has expired a time limit fixed by a direction;
 - (h) require that issues in the case should be determined separately, and decide in what order they will be determined; and
 - (i) specify the consequences of failing to comply with a direction.
- (3) If arising under domestic legislation, a Court hearing summary offences may give a direction that applies in the High Court if the case is to continue there.
- (4) If arising under domestic legislation, the High Court may give a direction that applies in a Court hearing summary offences, if the case is to continue there.
- (5) Any power to give a direction under this Part includes a power to vary or revoke the direction.

8.3 Case preparation and progression

- (1) At every hearing, if a case cannot be concluded the Court must give directions so that it can be concluded at the next hearing or as soon as possible after that.
- (2) At every hearing the Court must, where relevant—
- (a) if the accused is absent, decide whether or not to proceed subject to local legislation²;
 - (b) take the accused's plea (unless already done) or if no plea can be taken then find out whether the accused is likely to plead guilty or not guilty;

² *Darryl Frett v Commissioner of Police BVI MRCP 2022/0002*

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- (c)* set, follow or revise a timetable for the progress of the case, which may include a timetable for any hearing including the trial;
 - (d)* in giving directions, ensure continuity in relation to the Court and to the attorneys-at-law where that is appropriate and practicable; and
 - (e)* where a direction has not been complied with, find out why, identify who was responsible, and take appropriate action.
- (3)** In order to prepare for the trial, the Court must take every reasonable step—
 - (a)* to encourage and to facilitate the attendance of witnesses when they are needed; and
 - (b)* to facilitate the participation of any person, including the accused.

- (4)** In order to manage a trial the Court—
 - (a)* must establish, with the active assistance of the parties, what are the disputed issues, including the defence and any legal arguments;
 - (b)* must consider setting a timetable that—
 - (i)* 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;
 - (c)* 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 accused,
 - (vi)* what written evidence that party intends to introduce,

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- (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; and
- (d) may limit—
- (i) the examination, cross-examination or re-examination of a witness, and
 - (ii) the duration of any stage of the hearing.

**PART 9 – SUMMARY CASE MANAGEMENT FROM
INITIAL HEARING TO TRIAL**

9.1 Scheduling Order and Case Management Conference

- (1) A Scheduling Order required by these Rules to be made at an initial hearing shall be made by a magistrate and shall set out the date—
- (a) by which the prosecution must make disclosure;
 - (b) by which the defence must disclose alibi or other special defences;
 - (c) by which any pre-trial motions must be filed;
 - (d) of the Omnibus Conference; and
 - (e) the projected trial date.
- (2) The Court may hold Case Management Conferences as required.

9.2 Monitoring and follow-up of Scheduling Orders and other cases

The Court, through a designated person, shall actively monitor and follow-up on Scheduling Orders in order to keep cases moving on a timely basis and it shall cause to be reviewed on a regular basis all pending cases, to ensure that proper notifications have been given, and other necessary action taken.

9.3 Omnibus Conference – Summary Matters

- (1) The Omnibus Conference serves the following purposes —
- (a) to review the status of disclosure;
 - (b) to discuss trial readiness issues and action to be taken to cure any defects in readiness;
 - (c) to set out issues to be resolved at trial;

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- (d) to arrange for mediation or restitution discussions when appropriate;
 - (e) to review an accused's sentence exposure and sentence options;
 - (f) to discuss plea and sentence reduction possibilities still available in consideration of guilty plea;
 - (g) to discuss witness lists and the need to subpoena witnesses;
 - (h) to identify possible scheduling conflicts and ways to resolve such conflicts;
 - (i) to determine whether an interpreter is needed at trial;
 - (j) to set a firm trial date;
 - (k) to set down for hearing by a magistrate any legal issues that must be resolved prior to trial;
 - (l) to set a hearing date before a magistrate for an accused who so desires to withdraw his or her plea of not guilty and enter a plea of guilty instead;
 - (m) to consider and address the needs of witnesses, including logistical, safety, and emotional support requirements, to ensure their effective participation in the trial process.
- (2) Unless the Court orders otherwise, an Omnibus Conference shall be held on the date specified in the Scheduling Order.
- (3) The conference shall be conducted by a magistrate.
- (4) The attorney-at-law for the accused, and the prosecutor shall attend the conference.

9.4 Failure to prosecute

The Court may dismiss any summary matter or matter that can be disposed of summarily if—

- (a) the charge has been pending for more than one hundred and eighty days; and
- (b) the trial has not commenced and the delay is not attributable to the accused.
- (c) the prosecution shall be given an opportunity to be heard before an Order dismissing a complaint is made.

PART 10 – HYBRID CASES

10.1 Procedure

Where an indictable offence is authorised to be dealt with summarily and the Court deals with the offence summarily, the same procedure shall apply as if the offence were a summary offence and not an indictable offence and the provisions of these Rules shall apply accordingly, so that —

- (a) the evidence taken of any witness, before the Court exercised its power to try the offence summarily, need not be taken again, but every witness shall, if the accused so requires it, be recalled for the purpose of cross-examination;
- (b) where the Court deals with the case summarily, and dismisses the complaint, it shall, if required, deliver to the person charged a copy of the order of dismissal duly certified under the hand of the magistrate; and
- (c) subject to domestic legislation, where a child or young person is convicted, the conviction shall contain a statement as to the consent of his or her parent or guardian, or that of the young person as the case may be.

10.2 Applicability of provisions

The provisions of these Rules shall apply so that —

- (a) the evidence taken of any witness, before the Court exercised its power to try the offence summarily, need not be taken again, but every witness shall, if the accused so requires it, be recalled for the purpose of cross-examination;
- (b) where the Court deals with the case summarily, and dismisses the complaint, it shall, if required, deliver to the person charged a copy of the order of dismissal duly certified under the hand of the magistrate; and
- (c) subject to domestic legislation, where a child or young person is convicted, the conviction shall contain a statement as to the consent of his or her parent or guardian, or that of the young person as the case may be.

PART 11 – CASE PROGRESSION IN THE HIGH COURT

Indictable Case Cause List

11.1 Provision of court documents to the High Court

- (1) The Magistrate’s Court shall, upon transmittal or committal of a case in accordance with rule 11.6, provide the High Court with the court documents which shall include the transmittal or committal bundle and details of the bail conditions for accused who are remanded on bail.
- (2) Where the case is not complex, within fourteen days of the transmittal or committal of a case from the Magistrate’s Court to the High Court, the prosecution must file and serve on the accused or the attorney-at-law of the accused the indictment in the case and a transmittal or committal bundle where this has not previously been filed and served.
- (3) Where the case is complex, (for example a major fraud case, a case involving multiple young complainants or extensive forensic evidence), within twenty-one days of the transmittal or committal of the case from the Magistrates’ Court to the High Court, the prosecution must file and serve on the accused or the attorney-at-law of the accused, the indictment in the case and a transmittal or committal bundle where this has not previously been filed and served.
- (4) Upon the application of the prosecution and representations as to complexity (with notice to the accused or the attorney-at-law of the accused), a Court may extend the time period referred to in paragraph (3) and give directions as to an alternative time frame for filing and service.
- (5) The arraignment shall take place within twenty-one days or as soon as practicable after the service of the indictment.

11.2 Hearing questionnaire

Before the date set for the first Case Management Hearing, counsel on record for each defendant, and the prosecutor assigned to conduct the prosecution, shall each complete and sign a copy of the Case Management Hearing Questionnaire in Form 1 in the Schedule and ensure that the questionnaire is filed and served in accordance with any directions of the court.

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11.3 Case Managers and their duties

- (1) By the first case management hearing in the High Court, each party must, unless the Court otherwise directs —
 - (a) specify a person responsible for progressing that case; and
 - (b) inform other parties and the Court who that person is and how to contact that person.
- (2) In fulfilling its duty the Court may, where appropriate —
 - (a) nominate a court officer responsible for progressing the case; and
 - (b) ensure the parties know who that person is and how to contact that person.
- (3) A person nominated under this rule is a case manager.
- (4) A case manager must —
 - (a) monitor compliance with directions and orders;
 - (b) ensure that the Court is kept informed of events that may affect the progress of that case;
 - (c) ensure that the case manager can be contacted promptly about the case during ordinary business hours;
 - (d) act promptly and reasonably in response to communications about the case; and
 - (e) if the case manager will be unavailable, appoint a substitute to fulfil the case manager's duties and inform the other case managers.
- (5) Upon a final trial timetable and arrangements being set by the Court, the case manager shall prepare and issue the final trial timetable and arrangements using Form 2 in the Schedule.

11.4 Sufficiency Hearing

- (1) Where any enactment in a Member State or Territory provides for a Sufficiency Hearing, that hearing shall be conducted in accordance with that enactment.
- (2) Except where an enactment in a Member State or Territory provides otherwise—
 - (a) Within one hundred and twenty days of the Initial Hearing, or such other reasonable time fixed by order of the Court, a Sufficiency Hearing shall be held before a judge or master or magistrate as applicable to determine if the prosecution has disclosed sufficient evidence to meet the burden of

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- going forward with the criminal prosecution and thereby to require the accused to stand trial before a judge and jury;
- (b) At the Sufficiency Hearing, a judge or master or magistrate shall examine only such documentary evidence as the prosecutor may submit including, but not limited to, the complaint, police investigation reports, and victim and witness statements;
 - (c) The prosecution shall provide to the accused, not less than seven days before the date of the Sufficiency Hearing, copies of all documents he or she intends to use at the Sufficiency Hearing;
 - (d) The documentary evidence submitted by the prosecution must disclose *prima facie* evidence that an indictable offence has been committed and that the accused has committed it;
 - (e) The probative value of the documentary evidence submitted by the prosecution must be sufficient for the Court to find as a matter of law that a jury or judge where provided for, taking the evidence in the light most favourable to the prosecution, could return a verdict of guilty against the accused;
 - (f) Where an accused does not have legal representation at a Sufficiency Hearing, the Court shall cause all documentary evidence submitted by the prosecutor to be tendered by being read out aloud, except where the Court directs otherwise;
 - (g) The Sufficiency Hearing shall be attended by the prosecutor, police investigators, the accused, and the attorney-at-law for the defence, if any;
 - (h) At the conclusion of the Sufficiency Hearing the attorneys-at-law representing the parties may make submissions;
 - (i) Sufficiency Hearings shall be held in open Court unless—
 - (i) a provision of the Criminal Code or these Rules provide otherwise, or
 - (ii) the circumstances require confidentiality as to certain charges,in which case the proceedings shall be held in chambers; and
 - (j) If the Court finds that the prosecution has met its burden, it shall commit the accused to stand trial, and if it finds that the prosecution has not met its burden, it shall discharge the accused.

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11.5 Written statements at Sufficiency Hearing or Committal Proceedings

- (1) Witness Statements submitted to the Court and used in Sufficiency Hearings or Committal Proceedings shall, if the conditions mentioned in sub-rule (2) are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person at trial but the judge may exclude such evidence if he or she is of the opinion that such evidence ought to be excluded in the interest of justice.
- (2) The conditions referred to in sub-rule (1) are that —
 - (a) the statement purports to be signed by the person who made it;
 - (b) the statement contains a declaration by that person to the effect that it is true to the best of his or her knowledge and belief and that he or she made the statement knowing that, if it were tendered in evidence, he or she would be liable to prosecution if he or she willfully stated in it anything which he or she knew to be false or did not believe to be true;
 - (c) before the statement is tendered in evidence a copy of the statement is given by or on behalf of the prosecutor to each of the other parties to the proceedings; and
 - (d) prior to the Sufficiency Hearing the Court and other parties to the proceedings were informed of the intention to seek to have the witness statements submitted in evidence at the trial and none of the other parties, before the statement is tendered in evidence at the Sufficiency Hearing, objects to the statement being tendered under this rule.
- (3) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this rule shall be treated as if it had been produced as an exhibit and identified by the maker of the statement.
- (4) The parties to the proceedings may cross-examine witnesses during the Sufficiency Hearing or Committal Proceedings only where the judge or master or magistrate so permits.

11.6 Committal Proceedings

- (1) In this rule “Committal Proceedings” refers to paper committals or preliminary enquiries in the Magistrates’ Court.
- (2) Committal Proceedings shall be conducted in accordance with these Rules, subject to any enactment in force in the Member States and Territories.

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- (3) Committal Proceedings shall commence, within one hundred and twenty days after the prosecution has filed documents instituting committal proceedings.
- (4) The Director of Public Prosecutions shall, as soon as practicable and in any case no more than fourteen days after the filing of the documents referred to in sub-rule (3) cause the documents to be served on the accused person.
- (5) Subject to public interest immunity considerations, the Director of Public Prosecutions shall, in addition to the documents outlined at sub-rule (3), make full disclosure of unused material in the possession of the prosecution.
- (6) After the documents referred to in sub-rule (3) have been served on the accused, the accused person may file, within such time as specified by the magistrate, which shall not exceed twenty-eight days—
 - (a) his or her own statement, and any statement of his or her own witnesses; and
 - (b) a list of exhibits, if there are any exhibits which the accused person intends to introduce in connection with the proceedings.
- (7) The magistrate may, upon application by the prosecution or the accused, allow either party to file other documents in addition to the documents referred to in sub-rules (3) and (6) within such period as may be specified by the magistrate but which shall not exceed twenty-eight days.
- (8) The magistrate shall schedule an Initial Hearing within sixty days after service of the documents referred to in sub-rule (3) on the accused.
- (9) At the Initial Hearing the magistrate shall set a date for the Committal Proceedings which shall commence within sixty days of the Initial Hearing.
- (10) Where the magistrate commits an accused person for trial, the magistrate shall forward the Committal documents to the Registrar of the High Court immediately after the conclusion of the Committal Proceedings and in any event no later than fourteen days thereafter.

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Indictment

11.7 Director of Public Prosecutions or the Attorney General as the case may be, may prefer or decline to prefer indictment

- (1) If the Court commits an accused to stand trial, the Director of Public Prosecutions or the Attorney General as the case may be, may prefer an indictment or may decline to prefer an indictment.
- (2) If the Director of Public Prosecutions or the Attorney General as the case may be, declines to prefer an indictment, he or she shall enter a *nolle prosequi* or give written notice to the presiding judge and the accused.
- (3) Where the case is not complex, within fourteen days of the transmittal or committal of a case from the Magistrates' Court to the High Court, the prosecution must file the indictment in the case and a transmittal or committal bundle where this has not previously been filed and served.
- (4) Where the case is complex, (for example a major fraud case, a case involving multiple young complainants or extensive forensic evidence), within twenty-one days of the transmittal or committal of the case from the Magistrates' Court to the High Court, the prosecution must file the indictment in the case and a transmittal or committal bundle where this has not previously been filed and served.
- (5) Upon the application of the prosecution and representations as to complexity (with notice to the accused or the attorney-at-law of the accused), a Court may extend the time period referred to in sub-rule (3) and give directions as to an alternative time frame for filing and service.
- (6) Arraignment shall take place within twenty-one days of receipt of indictment and the transmittal or committal bundle.

11.8 Dismissal for delay

- (1) If the indictment is not filed within one hundred and eighty days of the transmittal or committal of a case from the Magistrates' Court to the High Court or the date the accused is committed to stand trial on the conclusion of a sufficiency hearing, the presiding judge may order a stay of the proceedings for abuse of process on his or her own motion or that of the accused.
- (2) The Director of Public Prosecutions or the Attorney General as the case may be shall be given notice and an opportunity to be heard before an order staying proceedings is made.

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11.9 Signing of indictments

- (1) Subject to the provisions of sub-rules (2) and (3), all indictments shall be signed by the Director of Public Prosecutions or the Attorney General as the case may be or his or her designee, and a statement on the indictment stating that the designee is acting for the Director of Public Prosecutions is sufficient evidence of that fact.
- (2) Where under any enactment any injured party or complainant is entitled to prosecute privately, the indictment shall be signed by that party or an attorney-at-law acting on his or her behalf but not by the Director of Public Prosecutions or the Attorney General as the case may be.
- (3) The Criminal Division shall not receive an indictment from any private prosecutor unless —
 - (a) the indictment has been endorsed by a certificate of the Director of Public Prosecutions or the Attorney General as the case may be to the effect that he or she has seen such indictment and declines to prosecute at the public instance the offence set out in the indictment; and
 - (b) the private prosecutor has given the required security to prosecute the indictment to conclusion at the time at which the accused shall be required to appear and has paid such costs as may be ordered by the Court in exceptional circumstances.

PART 12 – ARRAIGNMENT

12.1 Arraignment and Scheduling Order

- (1) On the filing of an indictment, a judge or a master shall arraign the accused and, where the plea has been not guilty, enter a Scheduling Order setting forth the next steps in the process, including—
 - (a) the date by which the prosecution and defence (if applicable) must make required disclosure;
 - (b) the date by which pre-trial applications must be filed;
 - (c) the date of the Omnibus Conference;
 - (d) the projected trial date; andand the Court may hold a scheduling conference to establish a plan for the case.

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- (2) If the accused 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 at the Arraignment hearing.
- (3) Where the prosecutor requires an adjournment to consult with the Office of the Director of Public Prosecutions or the Attorney General as the case may be, before accepting the plea to an alternative offence, the Court shall list the case for hearing to take place no later than fourteen days after.

12.2 Explanation of rights and plea process at arraignment

- (1) At arraignment, the judge or master shall inform the accused of—
 - (a) the offence with which he or she is charged by reading or causing the indictment to be read;
 - (b) the right to enter a plea to the charge;
 - (c) if necessary, the right to bail;
 - (d) the right to receive an indication of the applicable range of sentences or options for sentencing prior to entering a plea, where appropriate;
 - (e) the right to an interpreter, if necessary;
 - (f) whether the offence is one which must be tried by judge alone or trial by jury pursuant to any enactment in any Member State or Territory if a not guilty plea is entered; and
 - (g) the right to know the maximum penalty and any mandatory minimum penalty provided by law for the offence charged.
- (2) The judge or master shall explain the plea process to the accused, including —
 - (a) that the accused has the option to plead either guilty or not guilty or to plead any of the special pleas permitted by law;
 - (b) that if the accused pleads not guilty, the case will be scheduled for trial;
 - (c) that sentence may be reduced if there is an early guilty plea; and
 - (d) that sentence reduction will be less for an accused who pleads guilty at a later stage.

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Plea to the Indictment at Arraignment

12.3 Plea of guilty

- (1) Before accepting a plea of guilty to an indictment, the judge or master must assure himself or herself, either by questioning the accused personally, or, at the judge or master's discretion, by calling upon the attorney-at-law for the defence to lead the questioning, that—
 - (a) the accused committed the offence;
 - (b) the plea of guilty is voluntarily made; and
 - (c) the plea of guilty is made with an understanding of the consequences of the plea.
- (2) A judge or master may refuse to accept a plea of guilty if he or she believes it is not in the interest of justice so to do.
- (3) If a plea of guilty is rejected, an admission made by the accused during the proceedings in which the guilty plea was made shall not be admissible in evidence against the accused at trial.

12.4 Plea - Sentence indication and reduction in sentence

- (1) Except in cases where a minimum sentence is mandated by law, a judge may give an accused who pleads guilty at arraignment credit for an early plea of guilty, reducing the sentence that would have been imposed had the accused been convicted at trial.
- (2) Where the accused who intends to plead guilty to an offence alleged in a charge, or any other specified offence, makes an application for a sentence indication in Form 3 in the Schedule, the judge may give such an indication.
- (3) The Chief Justice shall, by practice direction, authorise the procedure for sentence indication on an early guilty plea.

12.5 Plea of not guilty

Where the accused pleads not guilty at arraignment, the Court may schedule a case management conference to develop a plan for the case and take such other action as may be necessary to streamline and expedite the case for trial.

PART 13 – DISCLOSURE

13.1 Disclosure by prosecution

- (1) The following rules apply both in the High Court and the Magistrates' Court and are grounded in the principle that the prosecutor's duty of disclosure is a continuing one until the conclusion of the case.
- (2) The prosecutor must disclose to the accused evidence on which the charge or charges are based, within fourteen days of the preferment of the indictment.
- (3) The prosecution must disclose to the accused material in its possession not proposed to be used but which might reasonably be considered capable of undermining the prosecution's case or assisting the defence, unless the judge excludes such material in the public interest.
- (4) The prosecution shall disclose material under rule 13.1(3) unless the judge, master or magistrate excludes such material in the public interest.
- (5) An application for an order under rule 13.1(4) may be made with or without notice to the accused depending on the sensitivity of the material concerned subject to directions of the Court.
- (6) An accused or his or her attorney-at-law may make an application to the Court to permit the accused to inspect and copy relevant prosecution material if it cannot be made available under sub-rules (2) or (3).
- (7) Disclosure may be by hardcopy or digitally.

Notices of additional evidence

- (8) The prosecution shall be at liberty to file and serve any additional evidence which may come into its possession and on which it intends to rely at any time prior to the close of the prosecution case.
- (9) In the event that such additional evidence is made, the Court may either of its own volition or upon application made by or on behalf of the accused, if the material is admissible, adjourn the matter to provide adequate time for the proper consideration of any such evidence.

13.2 Disclosure by defence

- (1) Where the accused intends to plead and give evidence of a special defence, he or she shall give notice of such defence to the Court and to the prosecutor by the date fixed in the Scheduling Order, or

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at such time as is practicable, and shall make available to the prosecutor, on the date set by the Court, any information which might be of material assistance, including—

- (a)* the name and address of any witness the accused believes is able to give evidence in support of the special defence if the name and address are known to the accused when the statement is given; and
 - (b)* any information in the accused's possession which might be of material assistance in finding any such witness, if his or her name and address are not given.
- (2) Subject to domestic legislation where applicable, if the accused intends to rely on an alibi, he or she shall give notice of such defence to the Court and to the prosecutor by the date fixed in the scheduling order and shall make available to the prosecutor, on the date set by the Court, information as to the particulars of time and place and of the witnesses by whom he or she proposes to prove the alibi.
- (3) Where the accused intends to rely on any other defence, he or she shall give notice of such defence in a defence statement in Form 4, signed by the accused to the Court and to the prosecutor by the date fixed in the Scheduling Order and shall make available to the prosecutor, on the date set by the Court, any information which might be of material assistance³.
- (4) Subject to domestic legislation, failure to comply with this section may allow adverse inference to be drawn as to the truth of the defence, subject to judicial discretion and direction.

PART 14 – CASE MANAGEMENT CONFERENCE

14.1 Case management conference

- (1) Immediately following the arraignment of the accused or at such other time as may be fixed by the judge, the judge may make case management orders, as required
- (2) At the case management conference, the judge shall make an order scheduling further events in the case, including:
 - (a)* the date by which the Director of Public Prosecutions or the Attorney General as the case may be must disclose to the

³ *Kaim Sexius v The Attorney General* (2017) UKPC26

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- accused any prosecution material which has not previously been disclosed;
- (b) the date by which the accused must plead an alibi or any other special defence;
- (c) the date by which the accused must give the defence statements required by law, if applicable;
- (d) the date for the filing of any pre-trial motions;
- (e) the date for any subsequent case management conference that may be required; and
- (f) the projected trial date.

14.2 Omnibus Conference - Indictable offences

- (1) An Omnibus Conference serves the following purposes—
 - (a) to review the status of disclosure;
 - (b) to discuss trial readiness issues and action to be taken to cure any defects in readiness;
 - (c) to set out issues to be resolved at trial;
 - (d) to arrange for mediation or restitution discussions when appropriate;
 - (e) to discuss witness lists and the need to subpoena witnesses;
 - (f) to identify possible scheduling conflicts and ways to resolve them;
 - (g) to determine whether an interpreter will be needed at trial;
 - (h) to set a firm trial date;
 - (i) to set down for hearing any legal issues that must be resolved prior to trial; and
 - (j) to set a hearing date for an accused who so desires to withdraw his or her plea of not guilty and enter a plea of guilty instead.
- (2) Unless the Court orders otherwise, an Omnibus Conference shall be held on the date specified in the Scheduling Order.
- (3) The conference shall be conducted by a judge or a master if directed by the presiding judge.
- (4) An accused, defence attorney-at-law and the prosecutor shall attend the conference.

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14.3 Trial management

In order to manage the trial, the Court may require a party to identify —

- (a) which witnesses the party intends to call to give oral evidence;
- (b) the order in which the party intends that those witnesses will give their evidence;
- (c) whether the party requires an order compelling the attendance of a witness;
- (d) what arrangements, if any, the party proposes to facilitate the giving of evidence by a witness;
- (e) what arrangements, if any, the party proposes to facilitate the participation of any other person, including the accused;
- (f) what written evidence the party intends to introduce;
- (g) what other material, if any, the party intends to make available to the Court in the presentation of the case;
- (h) whether the party intends to raise any point of law that could affect the conduct of the trial;
- (i) what timetable the party proposes and expects to follow.

14.4 Case management forms and records

- (1) The prescribed case management forms contained in the schedule to these rules or prescribed by any Practice Direction must be used.
- (2) Where there is no form no specific formality is required.
- (3) The Court must make available to the parties a record of case management orders given.

**PART 15 – TRIAL AND SENTENCE IN THE HIGH COURT
AND MAGISTRATES’ COURT**

When this Part applies

15.1 Application

This Part applies where —

- (a) the Court tries a case; or

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- (b) the accused —
 - (i) is found guilty; or
 - (ii) pleads guilty.

15.2 Procedure for hearing of case

The general rule is that the hearing must be in public subject to the discretion of the Court to hold a hearing in private pursuant to relevant local legislation.

15.3 Procedure on plea of not guilty

- (1) This rule applies if the accused has —
 - (a) entered a plea of not guilty; or
 - (b) not entered a plea.
- (2) At the conclusion of the case for the prosecution, on the application of the accused or on the Court's own initiative, the Court —
 - (a) may stop the case;
 - (b) may direct an acquittal, discontinue the proceedings, or discharge the jury in accordance with domestic legislation, but must not do so unless the prosecution has had an opportunity to make representations; and
 - (c) must inform the accused (if unrepresented) of the accused's right to address the court, as appropriate, at the commencement or conclusion of the accused's case.
- (3) The court must explain —
 - (a) in terms the accused, if unrepresented can understand, with help, if necessary of the right to give evidence; and
 - (b) that the accused, if unrepresented may introduce evidence.
- (4) Where the High Court in a trial by judge alone or a Magistrates' Court convicts or acquits the accused, the Court must give sufficient reasons for its decision within fourteen days subject to domestic legislation in force in any Member State or Territory.

15.4 Evidence of a witness in person

- (1) This rule applies where a party wants to introduce evidence by calling a witness to give that evidence in person.
- (2) Unless the Court otherwise directs —
 - (a) a witness waiting to give evidence must not wait in the courtroom, unless that witness—

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- (i) is a party,
 - (ii) is an expert witness, or
 - (iii) has both parties' consent to wait in the courtroom;
- (b) a witness who gives evidence in the courtroom must do so from the place provided for that purpose or in some other place as directed by the Court; and
- (c) a witness's address must not be given in public unless it is relevant to an issue in the case.
- (3) Unless any written law otherwise provides, before giving evidence, a witness must take an oath or affirm.
- (4) The examination of a witness must be done in the following sequence —
- (a) the party who calls a witness must ask questions in examination-in-chief;
 - (b) every other party may ask questions in cross-examination;
 - (c) the party who called the witness may ask questions in re-examination.
- (5) Notwithstanding sub-rule (4), the Court may allow questions outside of the sequence referred to under that paragraph.
- (6) The Court may ask such questions as it considers necessary in keeping with settled common law principles.
- (7) Jury questions may be permitted for clarification but should first be submitted to the Judge, who after consulting with Counsel, will determine whether to permit the questions.

15.5 Evidence of a witness in writing

- (1) This rule applies where a party wants to introduce in evidence the written statement of a witness in accordance with the particular domestic legislation of the Member State or Territory.
- (2) If the Court admits such evidence, a written statement of a witness may not contain the address of the witness and —
- (a) each relevant part of the statement must be read or summarised aloud by the party introducing the evidence; or
 - (b) the Court may direct that the statement be read aloud.

15.6 Application to withdraw a guilty plea

- (1) This rule applies where the accused wants to withdraw a guilty plea.

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- (2) An accused must apply to do so—
 - (a) as soon as practicable after becoming aware of the reasons for doing so; and
 - (b) before sentence.
- (3) The application must (unless the Court otherwise directs) be in writing and where the application is in writing, the accused must serve the application on —
 - (a) the court office; and
 - (b) the prosecutor.
- (4) The application must explain why it would be unjust not to allow the accused to withdraw the guilty plea.
- (5) The Court shall consider the matters stated under sub-rule (4) and may in its discretion, grant or refuse an application made in accordance with this rule, as the justice of the case requires.
- (6) The Court may, for the purposes of sub-rule (5) —
 - (a) list the case for directions;
 - (b) ensure that the accused understands where necessary, the import of waiving privilege; and
 - (c) give direction for the application to be sent to the previous attorney-at-law (together with a confirmation that privilege has been waived), for the detailed comments of the previous attorney-at-law to be incorporated in a witness statement.

15.7 Procedure if the Court convicts

- (1) This rule applies if the Court convicts the accused or the accused is convicted by the decision of a jury.
- (2) The Court may, where appropriate, exercise its power to require —
 - (a) a statement of the accused’s financial circumstances;
 - (b) a pre-sentence or Social Inquiry Report
 - (c) a Victim Impact Report; and
 - (d) any other type of report considered appropriate in the Court’s discretion.
- (3) The prosecution must —
 - (a) provide information relevant to sentence, including any statement of the effect of the offence on the victim, the victim’s family or persons connected to the victim or the offence;

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- (b) where it is likely to assist the Court, identify any other matter relevant to sentence, including —
 - (i) aggravating and mitigating factors;
 - (ii) the legislation applicable; and
 - (iii) any sentencing guidelines, or guideline cases.
- (4) The inmate must provide details of financial circumstances —
 - (a) in any form required by the Court; and
 - (b) by any date directed by the Court.
- (5) Where an accused pleads guilty but wants to be sentenced on a different basis to that disclosed by the prosecution —
 - (a) the Court may require an accused to set out that basis in writing, identifying what is in dispute;
 - (b) the Court may invite the parties to make representations about whether the dispute is material to the sentence to be imposed on the accused; and
 - (c) if the Court decides that the dispute is a material dispute, the Court must—
 - (i) invite such further representations or evidence as the Court may require; and
 - (ii) decide the dispute.
- (6) Before the Court passes sentence —
 - (a) the Court may receive evidence from the victim;
 - (b) the Court must—
 - (i) give the prisoner an opportunity to make representations and introduce evidence relevant to sentence; and
 - (ii) where the prisoner is under eighteen years, give the parents of the accused, guardian and other supporting adults, if present, such an opportunity as well; and
 - (c) the Court may elicit any further information relevant to sentence that it may deem necessary.
- (7) If the Court requires more information, it may exercise its power to adjourn the hearing for not more than sixty days at a time.
- (8) When the Court has taken into account all the evidence, information and any report available, the Court must —
 - (a) as a general rule, pass sentence there and then;

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- (b) when passing sentence, explain the reasons for deciding on that sentence;
- (c) in circumstances where there is a power to review the sentence (such as one for probation), explain to the accused its effect;
- (d) give any such explanation in terms the accused, if present, can understand (with help, if necessary);
- (e) consider exercising any power the Court has to make an order as to costs, compensation or any other order; and
- (f) when passing sentence, explain to the accused its effect and the consequences of failing to comply with any order or payment of any fine.

15.8 Jury administration

- (1) The Criminal Division Manager shall be appointed by the Registrar to carry out the functions and duties concerning jury administration required under these Rules.
- (2) A computer program and database developed in compliance with the relevant domestic legislation concerning jurors lists, approved by the Chief Justice for the purpose, may be used in lieu of the Juror's Book for the selection, summoning and empanelling of jurors and for the calculation of fees to be paid to jurors.

15.9 Trial to be by judge and jury or judge alone

Every indictable case shall be tried and decided by a judge and jury or by a judge alone constituted in accordance with the provisions of local legislation.

15.10 Notice of right to appeal

On conviction, the Court shall notify the convicted person of his or her right to appeal and explain how and when a notice of appeal may be filed.

PART 16 – MISCELLANEOUS

16.1 Pending matters

- (1) Any matter pending on the date of commencement of these Rules shall be dealt with as if it were commenced under these Rules and for this purpose all documents forming part of the record of the proceedings shall be read with all necessary adaptations.

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- (2) The provisions of these Rules shall not affect the execution or enforcement of any decision given in respect of an application or matter prior to the commencement of these Rules.

16.2 Practice Directions

Any practice direction made under a rule repealed by these Rules shall not be invalidated by the repeal of that rule but shall remain in full force and shall have effect as if made under these Rules.

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SCHEDULE

Forms

Form 1 - CASE MANAGEMENT HEARING QUESTIONNAIRE

Form 2 - FINAL TRIAL TIMETABLE

Form 3- APPLICATION FOR SENTENCE INDICATION

Form 4 - DEFENCE STATEMENT

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Form 1: CASE MANAGEMENT HEARING QUESTIONNAIRE

Rule 11.2

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

[STATE/TERRITORY]

CASE NO.

THE KING

v

DEFENDANT NAME

Defendant

CASE MANAGEMENT HEARING QUESTIONNAIRE

Before the date set for the first Case Management Hearing, counsel on record for each defendant, and the Prosecutor assigned to conduct the prosecution, shall each complete and sign a copy of this Case Management Hearing Questionnaire and ensure that the questionnaire is filed and served in accordance with any directions of the court.

Where a party finds that insufficient space is provided to complete a response to a particular question, the answer may be given on a separate sheet of paper attached to the back of this form. The fact that the response is provided and attached on a separate sheet is to be indicated in the space provided on the form.

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PRELIMINARY INFORMATION:

Name of Case:

Court

Report prepared by:

Prosecution

Defence

Counsel for

[Insert name of Defendant (s)]

Has Counsel discussed the issues raised in this form with the Defendant?

Yes No

CASE/BAIL HISTORY:

Date(s) of Offence(s):

Date of Arrest:

Date and nature of any orders made by the court (if any):

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Date Indictment filed:

Is the accused remanded in custody on this/these charges? Yes No

If yes, how long has the accused spent in custody?

Is the accused remanded in custody on any other charges? Yes No

Is this matter a re-trial? Yes No

Are notes of evidence from the previous trial available? Yes No

If yes, give details of why retrial ordered:

PLEA DISCUSSIONS:

Are the actual/proposed not guilty pleas definitely to be maintained through to a trial?

Yes No

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Has the Defence counsel advised his client of the appropriate reduction for guilty plea?

Yes No

Is the Prosecution open to a plea to a lesser count? (where applicable)

Yes No

Will the prosecution accept part guilty or alternative pleas? (where applicable)

Yes.... No....

Is the accused going to make an application for a Goodyear/Sentence Indication Hearing?

Yes No

Has a basis of plea been agreed in writing?

Yes No

TIME TABLE:

Mode of Trial Jury Judge Alone

How long is the trial likely to take?

PRELIMINARY MATTERS:

Prosecution's Case:

Has the Indictment been prepared and served?

Yes No

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If not when will this be done?

Has the trial bundle been prepared and served? Yes ... No ...

If not when will this be done?

Has the Prosecution reviewed and disclosed all unused material in this case?

Yes ... No ...

If not when will this be done?

Does the Prosecution intend to serve more evidence in the case or is there any outstanding investigation or inquiry?

Yes.... No ...

If so when will this be done?

Will the Prosecution serve an opening note or case statement (if appropriate)?

Yes ... No ...

If so, when??

Will there be an agreed exhibit bundle? Yes ... No ...

If so, when will it be filed and served?

Will the prosecution be relying on any of the following expert evidence at trial?

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- | | | |
|-------|-------------------------|----------------|
| i. | Video evidence | Yes ... No ... |
| ii. | DNA evidence | Yes ... No ... |
| iii. | Fingerprint evidence | Yes ... No ... |
| iv. | Phone evidence | Yes ... No ... |
| v. | Medical evidence | Yes ... No ... |
| vi. | Psychiatric evidence | Yes ... No ... |
| vii. | Forensic video analysis | Yes ... No ... |
| viii. | Scene of crime analysis | Yes ... No ... |
| ix. | Other forensic evidence | Yes... No... |

What equipment if any, will the Prosecution require in the courtroom at trial?

Does the Prosecution intend to make a Public Interest Immunity Application?

Yes.... No....

Does the Prosecution intend to make a special measures application?

Yes.... No

Are there Prosecution witnesses who are out of the jurisdiction in respect of which an application is to be made for their evidence to be taken by live link?

Yes.... No

Does the Defence object to these witnesses giving evidence by live link?

Yes.... No

Are there any witnesses in the trial bundle that the prosecution does not intend to call/rely upon?

Yes....No....

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Are there any prosecution witnesses in the trial bundle that are required but are or may not be available on the trial date for any reason?

Yes No

DEFENCE:

Have the disclosure issues been resolved?

Yes No

If not, what is outstanding?

Is there likely to be an application to the court for Order(s), in relation to Disclosure?

Yes No

Has a Defence Statement been filed and served?

Yes No

If not, do you intend to make an application for time to file the Defence Statement?

Yes No

Has the Defence Disclosure narrowed the Core issues?

Yes No

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If so, which issues have been narrowed?

Yes No

THIRD PARTY DISCLOSURE:

Is it believed that any Third Party holds relevant material?

Yes No

If so, which Third Party holds this material?

Is a Court order or subpoena required?

Yes No

For what material?

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CORE ISSUES IN CASE:

What are the core issues in this case?

APPLICATIONS:

The Prosecution/Defence intends to make any of the following applications:

Amendment	Yes	No....
Joinder	Yes....	No...
Severance	Yes	No....
Application to Quash Indictment	Yes	No....
Application to Stay Proceedings	Yes	No....
Abuse of Process	Yes	No....
Fitness to Plead	Yes	No....
Mental Health Issues – Psychiatric Evaluation/Report	Yes	No....
Application for leave to adduce hearsay evidence	Yes	No....
Fresh Evidence (if a retrial)	Yes	No....
Bad Character	Yes	No....
To admit Written Statements	Yes	No....
To admit Video Recordings	Yes	No....
Breach of Constitutional Rights	Yes....	No....
Application to exclude electronically recorded interview/caution statement	Yes	No....
To exclude specific pieces of evidence	Yes	No....
Social Inquiry Report	Yes....	No....
Special measures	Yes	No....
Other	Yes....	No....

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If you have ticked “yes” to any of the above-mentioned applications, please specify in writing to the court on a separate page if the space provided below is insufficient the following information:

- (1) The specific application(s) to be made.
- (2) The *Jurisdiction (Common Law/Statute)* under which the Application is being made.
- (3) Whether there is anything precluding the court from ruling on these Applications at the Case Management Hearing.

Do you propose to make any other application to the court not mentioned above?

Yes No

If yes, please specify,

ADMISSIONS:

Have the parties discussed the possibility of agreeing non-contentious evidence?

Yes No

If yes, please indicate areas that may be admitted:

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If no, are you prepared to consider agreeing evidence that is not in dispute?

Yes No

Are there witness statements which can be read.

Yes No

What statements are these?

ORAL/WRITTEN STATEMENTS OF THE ACCUSED:

Is the Prosecution relying upon a written/oral statement of the accused?

Yes No

Is the accused challenging the statement?

Yes No

If yes, please specify grounds:

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If no, is the Defence making any allegation of improper conduct on the part of any police officer or other official in relation to any oral or written statement?

Yes No

Has the Prosecution been informed of the grounds of objection or allegation of improper conduct?

Yes No

STATEMENT/ AUDIO/VIDEO RECORDED INTERVIEW:

Have the parties agreed as to any edits to be made to a statement or transcript of interview with accused? Yes No

If not, when will this be done?

If the Parties have not agreed, will there be any application to edit a statement of the accused or transcript of interview? Yes No

SPECIAL DEFENCE ISSUES:

Is the Defence relying on an alibi? Yes No....

Has notice been given to the Prosecution in accordance with the Law?

Yes No....

Does the Defence intend to give notice of an alibi? Yes No....

Does the accused intend to call any witnesses? Yes No....

If yes, please indicate the number:

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Does the Defence need any special equipment, e.g., video/projectors, etc.

Yes ... No ...

Does the Defence intend to call any expert witnesses?

Yes ... No ...

If so, has the expert report been served?

Yes ... No ...

If not, when will the expert report be served?

SPECIAL ADMINISTRATIVE MATTERS:

Are there any special security concerns for the court to consider? Yes ... No....

If yes, identify these concerns

Is there any need for an interpreter?

Yes ... No....

If yes, how many interpreters are needed for which witnesses, at what stage and which languages?

Is there likely to be any application to visit the locus?

Yes ... No ...

ANY OTHER CONCERNS OR ISSUES:

Please specify:

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Date:

Signature of Prosecutor/Legal Practitioner:

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FORM 2: FINAL TRIAL TIMETABLE

Rule 11.3(5)

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

[STATE /TERRITORY]

CASE NO.

THE KING

v.

DEFENDANT NAME

I. Disclosure and Prosecution Preparation

Action	Party Responsible	Deadline Date	Notes
Plea and Trial Preparation Hearing (PTPH)	All Parties		
Unused Material Disclosure (Initial/Primary)	Prosecution		

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Defence Statement	Defence		
Notice of Intention to Call Defence Witnesses	Defence		
Further Disclosure Request Deadline	Defence		
Final Decision on Further Disclosure	Prosecution		

II. Preliminary Applications and Pre-Trial Issues

Action	Party Responsible	Deadline Date	Notes
Submission of Legal Authorities	All Parties		
Notice of Application to Exclude Evidence	Defence		
Notice of Hearsay or Bad character Applications	Prosecution/Defence		
Date for Preliminary Applications Hearing (Voir Dire/Legal Argument)	Court		
Agreed List of Issues/Facts	All Parties		

III. Trial Listing

Item	Detail	Notes
Estimated Trial Length		
Listing Status	[e.g. Fixed, back-up]	
Location of Trial	[e.g. Court 1, Court 2]	

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Acknowledgement of Directions

We confirm that we have received and understood these directions and deadlines:

Counsel for Prosecution	Signature	Date
Counsel for the Defence	Signature	Date
Defendant	Signature	Date

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FORM 3: APPLICATION FOR SENTENCE INDICATION

Rule 12.4(2)

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

[STATE /TERRITORY]

CASE NO.

THE KING

v.

DEFENDANT NAME

Defendant

APPLICATION FOR SENTENCE INDICATION

This application is made by _____ for the Court

to indicate:

DEFENDANT NAME

- The maximum sentence that the court will impose if a plea were to be entered at this stage
- a sentence of a particular type
- a sentence of a particular quantum
- a combination of sentences

Include:

1. Summary of the facts on which the sentence indication is granted, as agreed by the Prosecution and the Defence; and
2. Information as to any previous conviction of the Defendant.
3. A pre-sentence report if necessary.

Dated:

Signed:

DEFENDANT

Montserrat
Eastern Caribbean Supreme Court
Criminal Procedure Rules
S.R.O. 3 of 2026

Made this 22nd day of January, 2026.

(Sgd.) Mde. Margaret Price Findlay
Chief Justice (Ag.)

(Sgd.) Mr. Trevor Ward
Justice of Appeal

(Sgd.) Mr. Ian Morley
High Court Judge

Published by exhibition by the Cabinet Secretary at the Office of the Legislature,
Farara Plaza, Brades, MSR1110, this 22nd day of January, 2026.

(Sgd.) Alasdair Bain
CABINET SECRETARY