

CAYMAN ISLANDS



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PRACTICE DIRECTION No. 11/2014
(GCR O.1, r.12)

**COURT BUNDLES IN FAMILY PROCEEDINGS IN THE FAMILY DIVISION OF THE
GRAND COURT**



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1. Introduction

- 1.1 In *Re X and Y (Bundles)* [2008] 2 FLR 2053, Munby J (as he was then) issued a stern warning in open court to all practitioners, pointing out that far too often the requirements of the 2006 Practice Direction in England and Wales concerning court bundles were not observed and that this was unacceptable. Munby J indicated that orders for costs can be made against either the party in default or against the defaulting lawyers. Furthermore, he warned that in particularly flagrant cases, defaulters may be publicly identified in open court.
- 1.2 Regrettably, the concerns expressed are equally applicable to the Cayman Islands due to frequent non-compliance with Practice Direction No. 2/96. Bundles are often incomplete or not up to date. Bundles often arrive late or not at all. Too often bundles, skeleton arguments and other preliminary documents are handed in on the evening before or on the morning of the hearing.
- 1.3 This Practice Direction is issued to achieve consistency in the preparation of court bundles and in respect of other related matters heard in the Family Division of the Grand Court. The Practice Direction sets out very prescriptive requirements as to the content and format of the ‘preliminary documents’ which are to be included in every bundle. This will enable the judge to embark upon the necessary pre-reading in a structured and focused way and thereby, at the outset of the hearing, allowing the parties to proceed immediately to the heart of the matter, without the need for any substantial opening and with the parties focusing upon previously identified issues. The practice direction will also ensure that the bundles are paginated, in an organized form and encourage careful consideration to what documents should actually be included in the bundle. The objective is to shorten the length of hearings and to ensure that litigants who comply with practice directions do not suffer delay and prejudice as a result of the default or poor preparation of others.

2. Application of the practice direction

- 2.1 The following practice applies to all hearings in the Family Division of the Grand Court except for;

- (a) cases listed for one hour or less; and
- (b) the hearing of any urgent application where and to the extent that it is impracticable to comply with the practice.

3. Responsibility for the Preparation of the bundle

- 3.1 A bundle for the use of the court at the hearing shall be provided by the party in the position of applicant at the hearing (or, if there are cross-applications, by the party whose application was first in time) or, if that person is a litigant in person, by the first listed respondent who is not a litigant in person.
- 3.2 The party preparing the bundle shall paginate it. If possible the contents of the bundle shall be agreed by all parties.

3. Contents of the bundle

- 4.1 The bundle shall contain copies of all documents relevant to the hearing, in chronological order from the front of the bundle, paginated and indexed, and divided into separate sections (each section being separately paginated) as follows:
 - (a) preliminary documents (see paragraph 4.2) and any other case management documents required by any other practice direction;
 - (b) applications and orders;
 - (c) statements and affidavits (which must be dated in the top right corner of the front page);
 - (d) care plans (where appropriate);
 - (e) experts' reports and other reports (including those of a social worker or children's guardian ad litem); and
 - (f) other documents, divided into further sections as may be appropriate.
- 4.2 At the commencement of the bundle there shall be inserted the following documents (the preliminary documents):
 - (a) an up to date summary of the background to the hearing confined to those matters which are relevant to the hearing and the management of the case and limited, if practicable, to one A4 page¹;

¹ Note that GCR Order 66 r.1 provides that unless impracticable, every document prepared by a party for use in the Court must be on letter sized paper and suggests that A4 paper should only be used where unavoidable.

- (b) a statement of the issue or issues to be determined (1) at that hearing and (2) at the final hearing;
 - (c) a position statement by each party including a summary of the order or directions sought by that party (1) at that hearing and (2) at the final hearing;
 - (d) an up to date chronology, if it is a final hearing or if the summary under 4.2(a) is insufficient;
 - (e) skeleton arguments, if appropriate, with copies of all authorities relied on; and
 - (f) a list of essential reading for that hearing.
- 4.3 Each of the preliminary documents shall state on the front page immediately below the heading the date when it was prepared and the date of the hearing for which it was prepared.
- 4.4 The summary of the background, statement of issues, chronology, position statement and any skeleton arguments shall be cross-referenced to the relevant pages of the bundle.
- 4.5 The summary of the background, statement of issues, chronology and reading list shall in the case of a final hearing, and shall so far as practicable in the case of any other hearing, each consist of a single document in a form agreed by all parties. Where the parties disagree as to the content the fact of their disagreement and their differing contentions shall be set out at the appropriate places in the document.
- 4.6 Where the nature of the hearing is such that a complete bundle of all documents is unnecessary, the bundle (which need not be repaginated) may comprise only those documents necessary for the hearing, but
- (a) the summary (paragraph 4.2(a)) must commence with a statement that the bundle is limited or incomplete; and
 - (b) the bundle shall if reasonably practicable be in a form agreed by all parties.
- 4.7 Where the bundle is re-lodged in accordance with paragraph 8.2, before it is re-lodged:
- (a) the bundle shall be updated as appropriate; and
 - (b) all superseded documents (and in particular all outdated summaries, statements of issues, chronologies, skeleton arguments and similar documents) shall be removed from the bundle.

5. Format of the bundle²

- 5.1 The bundle shall be contained in one or more A4 size ring binders (each ring binder being limited to no more than 350 pages). Bundles not exceeding 50 pages in length may be firmly stapled in the top left hand corner and shall be punched with a hole for filing.
- 5.2 All ring binders shall have clearly marked on the front and the spine:
- (a) the title and number of the action;
 - (b) the court where the case has been listed;
 - (c) the hearing date and time;
 - (d) if known, the name of the judge hearing the case; and
 - (e) a description or index of the documents contained therein; and
 - (f) where there is more than one ring binder, a distinguishing letter (A, B, C etc).

6. Timetable for preparing and lodging the bundle

- 6.1 The party preparing the bundle shall, whether or not the bundle has been agreed, provide a paginated index to all other parties not less than 5 working days before the hearing.
- 6.2 The bundle (with the exception of the preliminary documents if and insofar as they are not then available) shall be lodged with the court not less than 3 working days before the hearing, or at such other time as may be specified by the judge.
- 6.3 The preliminary documents shall be lodged with the court no later than 9.30 am on the day before the hearing and if the name of the judge is known, shall at the same time be sent by email to the judge's personal assistant.

Lodging the bundle

- 7.1 Unless the judge has given some other direction as to where the bundle in any particular case is to be lodged (for example a direction that the bundle is to be lodged with the judge's personal assistant) the bundle shall be lodged at the office of the Family Proceedings Unit at the Grand Court.
- 7.2 Any bundle sent to the court by post or courier shall be clearly addressed to the appropriate office and shall show the date and place of the hearing on the outside of any packaging as well as on the bundle itself.

² See GCR Order 66 r.5

7.3 Parties shall:

- (a) if the bundle or preliminary documents are delivered personally, ensure that they obtain a receipt from the clerk/court officer accepting it or them;
- (b) if the bundle or preliminary documents are sent by post, ensure that they obtain proof of posting or dispatch; and
- (c) if the bundle or preliminary documents are sent by courier obtain proof of delivery.

The receipt (or proof of posting, dispatch or delivery, as the case may be) shall be brought to court on the day of the hearing and must be produced to the court if requested. If the receipt (or proof of posting dispatch or delivery) cannot be produced to the court the judge may:

- (i) treat the bundle as having not been lodged; and
- (ii) take the steps referred to in paragraph 11.

7.4 Bundles or preliminary documents delivered after 9.30 am on the day before the hearing will not be accepted by the Family Proceedings Unit and shall be delivered directly to the judge's personal assistant.

8. Removing and re-lodging the bundle

8.1 Following completion of the hearing the party responsible for the bundle shall retrieve it from the court immediately or, if that is not practicable, (for instance, if needed by the judge for writing a ruling or judgment), shall collect it from the court within 5 working days. Bundles which are not collected in due time may be destroyed.

8.2 The bundle shall be re-lodged for the next and any further hearings in accordance with the provisions of this practice direction and in a form which complies with paragraph 4.7.

9. Time Estimates

9.1 In every case a time estimate (which shall be inserted at the front of the bundle) shall be prepared which shall so far as practicable be agreed by all parties and shall:

- (a) specify separately:
 - (i) the time estimated to be required for judicial pre-reading; and
 - (ii) the time required for hearing all evidence and submissions; and

- (b) be prepared on the basis that before they give evidence all witnesses will have read all relevant filed statements and reports.
- 9.2 Once a case has been listed, any change in time estimates shall be notified immediately by telephone (and then immediately confirmed in writing) to the Listing Office.

10. Taking cases out of the list

- 10.1 As soon as it becomes known that a hearing will no longer be required, whether as a result of the parties reaching agreement or for any other reason, the parties and their representatives shall immediately notify the court by telephone and by letter. The letter, which shall wherever possible be a joint letter sent on behalf of all parties with their signatures applied or appended, shall include:
- (a) short background summary of the case;
 - (b) the written consent of each party who consents and, where a party does not consent, details of the steps which have been taken to obtain that party's consent and, where known, an explanation of why that consent has not been given;
 - (c) a draft of the order being sought; and
 - (d) enough information to enable the court to decide:
 - (i) whether to take the case out of the list; and
 - (ii) whether to make the proposed order.

11. Penalties for failure to comply with the practice direction

- 11.1 Failure to comply with any part of this practice direction may result in the judge removing the case from the list or putting the case further back in the list and may also result in a "wasted costs" order or some other adverse costs order.

DATED this 2nd day of May 2014

The Hon. Anthony Smellie, QC
Chief Justice