



District Court of New Zealand
Te Kōti-ā-Rohe o Aotearoa

Case Review Hearings

Best Practice Guidelines

Pursuant to s24 (3)(i) District Courts Act 2016



TE AO MĀRAMA

Enhancing Justice for All

Background

1. Prior to the Criminal Procedure Act 2011 ("the Act") (which effectively became operational from 1 July 2013), there were three stages in a Judge Alone Trial: plea, trial, and possibly sentencing. The Act introduced case management discussions and case review hearings as a statutory step in the trial process. It also introduced a case management memorandum, to be jointly completed but filed by defence counsel. That filing obligation does not rest with the prosecution, who has the onus of proof. The case management memorandum is meant to capture case management discussions. Those discussions, however, often do not occur.
2. Case review hearings were by statute designed to assist with putting the case into its most efficient state before trial. Resolution would be a welcome outcome, if principled. However, it was not, and is not, the intended focus of the process. Resolution only occurs when one or all, of the parties decide to act to bring about resolution. The judge does not have the ability to bring about resolution. The present challenge is to conduct the case review hearing to achieve its intended statutory purpose – facilitating the case being in its most efficient state for trial. That requires an unflinching focus on the relevant evidence available to the prosecution and identifying evidence that is irrelevant or unnecessary. This all occurs in the context of concentrating discussion on the issues.
3. An improvement to the case review hearing process provides the greatest scope to schedule Judge Alone trials more effectively. That will result in greater certainty for defendants and witnesses, in that the trial will be well prepared and more likely proceed on the day it is scheduled. If that produces increased resolution prior to trial then that will be welcomed, but it is not the focus of these guidelines.

Overview of the Judicial Approach

4. The primary judicial focus will be ensuring the trial will be in its most efficient state for hearing. Collaterally that will benefit prosecutors and defendants. In setting the case down for trial the judge is allocating a valuable resource: court hearing time. Therefore, accurate assessment of that time is important. This cannot be achieved without a proper review of the available evidence and the issues which arise from that. A registrar cannot be fairly asked to make that assessment.
5. Best practice will, therefore, be to:
 - 5.1 Approach case review with a view to advancing the case for trial so that it is in the best position to be heard without delay and without wastage of time.
 - 5.2 Focus from the outset on how the prosecution contend it will prove the charge.
 - 5.3 Strongly discourage the prosecutor reading from the summary of facts. The summary does not disclose how the charge will be proved. Case review will be facilitated by the prosecutor providing in bullet point form the evidence the prosecution has to prove each element of the charge and the source of the evidence. This is discussed further in these guidelines in what is called the memorandum of proof ("MoP").
 - 5.4 Discuss with the parties the witnesses to be called to establish which witnesses are in fact required to give oral evidence.

- 5.5 Focus the case review hearing on the issues. This allows a discussion on what witnesses can be read or what matters can be subject to a statement of agreed facts.
- 5.6 Apply Te Ao Mārama principles, which require the case review hearing to be conducted in a language and in a manner which the defendant can understand.
- 5.7 Confirm what, if any, objections to the admissibility of evidence are raised.
- 5.8 Assess, in complex Judge Alone Trials, whether further judicial case management is required.
- 5.9 Assist the ultimate trial judge by increasing the likelihood of an oral judgment. An oral judgment is invariably more likely when the evidence and therefore the trial is focused on the issue (s).¹

Obligations on the Prosecution and Counsel

- 6. Pursuant to Rule 4.2 of the Criminal Procedure Rules 2012, when a not guilty plea is entered, the proceeding is remanded for a case review hearing. The hearing is to occur within 45 working days where the defendant has elected trial by jury. In all other cases it is to occur within 30 working days. Those time limits can be varied pursuant to Rule 1.7. Any such variance should occur at the point the case review hearing date is set if there is not a date available within the time prescribed by Rule 1.7.

Judge Alone Trials

- 7. Within 10 working days of the not guilty plea being entered, counsel and the prosecutor should agree on the date for case management discussions. Those discussions may be ongoing from that date. The obligation to set the date for case management discussions is mutual. Both the prosecution and counsel should be proactive.
- 8. All parties are reminded of Rule 4.8 of the Criminal Procedures Rules. In particular, Rule 4.8(2)(b) which provides the case management memorandum must include;
details of any expert witness that the prosecutor or the defendant wishes to call; and
and Rule 4.8(4) In every case, the case management memorandum must indicate whether the [Criminal Disclosure Act 2008](#) has been complied with.
- 9. Counsel must file the case management memorandum ("CMM") five working days before the case review hearing (R 4.6). Unless resolution is agreed, the prosecutor should file the MoP at the same time. Reference to the summary of facts will often not achieve this requirement as the summary does not

¹ The identification of the issue and a focus by the parties on the issue increases this likelihood in a number of ways: it shortens the trial, the trial is less cluttered by irrelevant evidence, legal issues can be researched by the judge ahead of trial and a framework for the oral judgment can be prepared. The preceding list is not exhaustive. It is rightly an imperative for the case review judge to focus on increasing the likelihood of a colleague being able to give an oral judgment. Reserved judgments are the greatest cause of workplace stress for judges. Time spent on reserved judgments often occurs outside reasonable working hours. Time spent on reserved judgments while "rostered out" for judgment writing is time not spent in court hearing and deciding cases. Reserved decisions and the attendant delay create added stress for defendants and complainants waiting to know the outcome of the case.

necessarily contain the evidence, nor the source of the evidence, relied on to support the charge. The MoP may be included in the CMM. While the source of the proof might sometimes be self-evident, the process will be more effective if universal and consistent. The MoP need not be filed where it is known the trial will resolve either by way of a guilty plea and/or dismissal/withdrawal of the charge.

10. Where it appears to the prosecutor that there is evidence that is unlikely to be contested, and the need for a witness to attend to give that evidence is better dealt with by an admission under s9 of the Evidence Act 2006 ("s9 Agreed Fact"), the prosecutor should provide a draft of that statement of agreed fact to counsel as part of the case management discussions.
11. A case review hearing is not to be adjourned administratively by a registrar to another case review hearing. An adjournment request should be referred to the appropriate Liaison Judge. Further, where a registrar considers the requirements of s57(4) of the Act have been met, the proceeding is to be called before a judge for a trial date to be set and a case management conference.² For all case review hearings the registry should provide the file to the presiding judge at least 2 working days before the hearing.
12. When the proceeding is called before the judge, if and only if the proceeding has been resolved, either counsel or the prosecutor can address the court first to advise that resolution has occurred.
13. However, on confirmation a Judge Alone Trial is required, the prosecutor will be asked to advise if amendment of the charge/s is sought or if the prosecution proposes to add a charge/s (ss 56(1)(b)-(c), CPA). This is based on known information and does not prevent subsequent application for the court's leave to amend the charge/s.
14. The prosecutor will commence by addressing the court to confirm, amend, or supplement the information in the MoP. The MoP has no evidential value and does not in any way bind the prosecution. If the prosecution relies on an inculpatory statement made by the defendant, that should be brought to the court's attention.
15. Once the prosecutor has confirmed, amended, or supplemented the MoP, the judge will invite the prosecutor to confirm the witnesses that will be called. That should be done witness by witness. This may be done in conjunction with the discussion of the MoP. The judge will specifically note the file or the CRH checklist with the witnesses required to give oral evidence.
16. Where counsel advise a witness statement can be read by consent, the judge will enquire if that evidence can more appropriately be dealt with by admitted facts.
17. The judge need not complete the checklist if the proceeding has resolved.

² Whilst s57(4) provides for the registrar to adjourn the case in certain circumstances, the registrar is in the absence of a judicial direction not authorised by the CDCJ to set a fixture for the trial. Whilst as a matter of law, there are those circumstances where the registrar is to adjourn the Case Review Hearing, the nature of the trial and the witnesses to be called need to be discussed before a judge at a Case Management Conference. That is so an accurate estimate of time required for the trial can be made and a fixture set by the judge. The most convenient time for that to occur is the time that has already been reserved for the Case Review Hearing. In practice only 50% of Case Management memoranda are filed on time. In addition to the 50% of CMMs that are either filed late or not at all, it is impossible for the court to discern if the requirements of s57(4) have been met. Many CMMs contain nothing other than counsel's signature.

Crown Prosecutions Including Trial by Jury

18. Where the prosecution has become a Crown prosecution³ the parties should as far as reasonably possible give effect to the intent of these guidelines.
19. The guidelines acknowledge that for progression of trial by jury, there are statutory steps that are not required to occur until after case review. Importantly, two such steps are the filing of formal written statements and the filing of the Crown charge notice. However, in cases which are straight forward and where the police prosecution service or another prosecuting agency of the state retains carriage of the file at the case review stage, prosecutors and counsel should meet the intent of these guidelines. The fact of an election to trial by jury does not absolve the prosecution, nor the defendant of their responsibilities to hold case management discussions and be in the position to meaningfully advance the trial at case review.
20. At a case review hearing, for a Judge Alone trial which is a Crown prosecution, the judge should determine the likely complexity of the trial before determining procedural directions. The Judge should in any event set a trial date, and any appropriate case management conferences which should occur ahead of trial.
21. A MoP is not required if the defendant has elected trial by jury, but the prosecutor, at the case review hearing should be able to articulate why the defendant has been charged.⁴



Heemi Taumaunu
Chief District Court Judge

Date	28 April 2025
Signed by	Chief District Court Judge Heemi Taumaunu
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³ As defined by the Criminal Procedures Act 2011 and the Crown Prosecution Regulations 2013.

⁴ In other words, the prosecutor should be able to point to the evidence that the prosecution has which justified the defendant being charged and the prosecution process put in train. Such an articulation will likely be fundamental to how the case is to be advanced in any timetabling directions that may be appropriate to provide.