EASTERN CARIBBEAN SUPREME COURT

PRACTICE DIRECTION

No. of 202_

COURT-CONNECTED MEDIATION (CRIMINAL DIVISION)

This Practice Direction is made pursuant to Part _ _ _ of the Eastern Caribbean Supreme Court Criminal Procedure Rules 2025 and supplements rule _ _[_].

1. INTRODUCTORY NOTE

1.1 This Practice Direction makes provision for the use of court-connected mediation in certain criminal cases before the courts in all Member States and Territories. The introduction of mediation in criminal matters has as its primary focus the court's overriding objective of dealing with criminal cases justly and is intended to provide parties to a criminal matter with a timely and cost-effective alternative to the conventional process of resolving criminal matters where appropriate. The implementation of mediation in criminal matters is also expected to foster greater utilisation of alternative sentencing and diversion by supporting the increased adoption of the provisions of the Child Justice and Criminal Justice (Alternative Sentencing) Acts (or equivalent legislation) for promoting restorative justice practices in the Member States and Territories.

1.2 This Practice Direction does not apply to cases listed in the Ninth Schedule (Cases Not Permitted) to this Practice Direction and does not provide for court-connected mediation in cases where an offender affirms his/her innocence.

2. DEFINITIONS

In this Practice Direction, unless otherwise provided for or the context otherwise requires -

"acknowledging responsibility" - means an admission of liability for an offence by an offender without a formal admission of guilt[1];

"appropriate adult"– means a person approved by the court, other than a parent, who has attained the age of eighteen years, and who is:

a. a social worker;
b. a welfare officer (probation);
c. an attorney-at-law for the child;
d. any other responsible person, over eighteen years with whom the child is comfortable; and
e. in the case of a child with a disability, the appropriate professional.

"child" – means a person defined as a child under the national legislation of the relevant Member State or Territory;

"child in conflict with the law" – means a child who is alleged to have committed an offence;[2]

"complainant" - means a person who, acting otherwise than in the course of official duty, lays an information, or causes an information to be laid, alleging the commission by the offender of a scheduled offence; or one who has brought a formal complaint against a Mediator under the Third Schedule (Disciplinary Regulations) to this Practice Direction as applicable;

"complaint" - means any information or charge preferred against a person; or a negative report against a Mediator as applicable;

[1] *Child Justice Act, 2018* (Saint Lucia) s 2.
[2] Ibid.

"court" - except where specifically stated, means the High Court of the Eastern Caribbean Supreme Court, a Family Court, a Magistrate's or District Court, a Juvenile Court or a Youth Court as the case may be, in the exercise of its criminal jurisdiction and includes the Judge, Master or Magistrate;

"court-connected mediation services" - means mediation services provided as a result of the referral by the court or by agreement between the parties after commencement of proceedings or case management;

"court office" – refers to:

(a) the place where documents are filed and processed, etc. and includes the Office of the Criminal Division and the Registry of the Magistrate's Court and the High Court; and

(b) members of the court staff who carry out work of a formal or administrative nature under rule 2.6(1) of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 and where applicable the Criminal Procedure Rules of the respective Member States and Territories;

"criminal proceedings" - will be understood in accordance with the criminal law applicable in a Member State or Territory;

"days" – refer to business days;

"diversion" - means the redirecting of cases away from the formal court procedures to restorative justice programmes and procedures;

"ECSC Regional Mediation Coordinator" - means the person appointed by the Judicial and Legal Services Commission to coordinate and monitor the development of court-connected mediation in the Member States and Territories;

"Judicial Education Institute" or "JEI" – means the Judicial Education Institute of the Eastern Caribbean Supreme Court;

"mediation" - means a flexible dispute resolution procedure during criminal proceedings, seeking a negotiated solution between victim and offender, facilitated by a neutral and impartial third party, the Mediator;

"Mediation Coordinator" – means the person appointed by the Chief Justice or his/her nominee to be responsible for the management of court-connected mediation in the High Court and/or Magistrate's/District Court as the case may be, in each of the Member States and Territories;

"mediation office"- will be construed as being a part of the court office;

"Mediation Referral Order" - means an order (prepared by the court office) to attend mediation as a result of a referral by the court;

"mediation session" - refers to a mediation including continuations and adjournments of the same matter held with a Mediator and attended by parties (either in person at a Mediation Centre and/or by use of electronic means) to a permitted case to which this Practice Direction applies;

"Mediator" - means a capable person engaged as a neutral and impartial third party to provide mediation services and whose name appears on the Roster of Mediators (Criminal Matters) for the Eastern Caribbean Supreme Court;

"Member States" – mean:

[1] Antigua and Barbuda;
[2] Commonwealth of Dominica;
[3] Grenada;
[4] Federation of Saint Christopher and Nevis;
[5] Saint Lucia; and
[6] Saint Vincent and the Grenadines

"offender" – means the person against whom a complaint is laid, or a charge is preferred and includes a child in conflict with the law;

"parent" – includes a biological or adoptive parent who has the parental responsibility of the child, a person who has stood in *loco parentis* to a child for a period of not less than one year and who has a continuing relationship with the child or a legal guardian;[3]

[3] Ibid.

"parental responsibility" – means the duties, powers, rights, responsibilities and authority that the parent of a child has in relation to that child under the law;[4]

"party" – includes a victim, the parent(s) or an appropriate adult of a child victim, the offender, the parent(s) or an appropriate adult of a child offender and the complainant, unless any rule specifies otherwise;

"permitted case" - means any criminal case involving an offence listed in the Eighth Schedule to this Practice Direction;

"Restitution Agreement" – means an agreement made between the parties to a criminal mediation containing terms (including written apologies, financial compensation etc.) whereby an injured party is compensated or "made whole" for a loss, damage, or injury he/she has suffered;

"Roster" - means the current list of court-connected Mediators (Criminal Matters) placed at the mediation office and at the office of the Criminal Division and published on the Eastern Caribbean Supreme Court's website;

"Rules" – include the Criminal Procedure Rules of a Member State or Territory and any rules made pursuant to the Supreme Court Order;

"Territories" – mean:

[1] Anguilla;

[2] Montserrat; and

[3] The Territory of the Virgin Island**s**

"victim" - means a natural or legal person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, caused by acts or omissions that are in violation of the criminal law of a Member State or Territory.

[4] Ibid.

3. MEDIATION COMMITTEE (CRIMINAL)

3.1 Court-connected mediation for criminal matters will be managed on a regional and national basis. In each Member State and Territory there will be a national court-connected Mediation Committee (Criminal) appointed by the Chief Justice, comprised of a maximum of ten (10) persons, which will be constituted as follows:

(a) A resident Judge in the Criminal Division appointed by the Chief Justice, who will be the Chairperson;
(b) the Registrar of the High Court or his/her nominee;
(c) the Senior or Chief Magistrate or his/her nominee;
(d) the Regional Mediation Coordinator (ex officio);
(e) the Mediation Coordinator, who will be the Secretary to the Committee;
(f) The Chief Probation Officer or his/her nominee;
(g) Head - Juvenile Justice Department or his/her nominee;
(h) Director of Public Prosecutions or his/her nominee;
(i) Representative of a Religious Council or organisation; and
(j) A certified Mediator or a representative of a Mediators' Association where such a body exists.

3.2 A member of the Mediation Committee (Criminal) may appoint a member of the member's staff of suitable seniority to act as the member's alternate and to attend meetings of the Committee on behalf of the member.

3.3 The term of office for each Committee member will be three (3) years, after which time Committee members will be eligible for reappointment.

3.4 At least three (3) months prior to the end of a term of office, the Chairman will advise the Chief Justice of the members who will be reappointed or will

make recommendations for new members to be appointed to the Mediation Committee (Criminal).

3.5 The Chairman will advise the Chief Justice of any change in membership of the Mediation Committee (Criminal) during the term of office and will make recommendations to the Chief Justice for the replacement of members on the Committee, to ensure the continuity of the Committee's work at any given time.

3.6 The Mediation Committee (Criminal) will be responsible for selecting the persons to be placed on the Roster of Mediators (Criminal Matters) from the list of persons who have completed criminal mediation training and have been certified by:

i. The Judicial Education Institute/the University of the West Indies or

ii. Where a person who holds a criminal/victim-offender mediation training certificate from a programme other than from the Judicial Education Institute/the University of the West Indies and wishes to apply to have his/her name entered on the Roster of Mediators (Criminal Matters), he/she will apply to the Mediation Committee (Criminal) of the respective Member State or Territory, specifically requesting to have the mediation certificate, in respect of which the applicant wishes to be recognised as suitably qualified, examined for the purpose of entry of his/her name on the Roster.

iii. The Mediation Committee (Criminal) will be guided by the Eastern Caribbean Supreme Court Policy for the Placement of Mediators on the Roster, in determining whether the training programme referred

to in paragraph 3.6(ii), may be recognised as suitable, in respect of applications for the placement of Mediators on the court's Roster.

iv. The Committee may consult with any person or body which it deems necessary in order to assess the suitability of a candidate to be selected for the Roster of Mediators (Criminal Matters) and will request as it sees fit any additional information from applicants in general or on a case-by-case basis as necessary. The Committee's recommendations for the appointment of Mediators to be placed on the Roster must be made to the Chief Justice for approval.

3.7 Certified Mediators desiring to be placed on the Roster of Mediators (Criminal Matters) must complete and submit to the Mediation Committee (Criminal) of the Member State or Territory, an Application for Placement on the Roster of Mediators in Form M10 and provide evidence:

(a) of having satisfactorily completed the training for Mediators leading to certification by the Judicial Education Institute/the University of the West Indies or another suitable training programme recognised by the Mediation Committee (Criminal);
(b) that he/she is a fit and proper person;
(c) of good standing, where he/she may previously have been on any of the court's Rosters of Mediators;
(d) that he/she does not have any unspent criminal convictions that may be relevant to his/her role as Mediator and, in particular, any conviction involving fraud or other dishonesty;
(e) that he/she understands trauma and its impact on the victims of crime; and

(f) of a favourable Police Certificate of Character, obtained within six months of the application.

3.8 A Mediator who has been approved for appointment to the Roster of Mediators (Criminal Matters) will be so informed by the Secretary of the Mediation Committee prior to being placed on the Roster.

3.9 Mediators on the Roster may be required to undergo mediation refresher training every three (3) years to be eligible for placement on the Roster.

3.10 If a Mediator has been charged with or convicted of a criminal offence, the Mediator will immediately bring this to the attention of the Mediation Coordinator who in turn will bring the same to the attention of the Mediation Committee (Criminal). The Mediator must show cause why he/she should not be suspended or removed from the Roster of Mediators (Criminal Matters).

3.11 Persons who are on the Roster of Mediators (Criminal Matters) for any Member State or Territory are eligible, subject to the laws of that particular Member State or Territory, for selection to perform mediation sessions in any Member State or Territory within the jurisdiction of the Eastern Caribbean Supreme Court.

3.12 The Chief Justice may from time to time review the Eastern Caribbean Supreme Court Policy for the Placement of Mediators on the Roster, whereby persons who have been trained in mediation from other jurisdictions, within and outside of the CARICOM region, are allowed to be placed on the Roster of Mediators (Criminal Matters) for a Member State

or Territory within the jurisdiction of the Eastern Caribbean Supreme Court.

3.13 Where applicable Mediators on the Roster will be paid on a fee basis in accordance with the Eastern Caribbean Supreme Court Schedule of Mediation Fees approved by the Chief Justice. The Mediation Committee (Criminal) will review the rules and fees from time to time and at least once every 3 years make recommendations to the Chief Justice.

3.14 The Roster of Mediators (Criminal Matters) from which a Mediator may be selected will be available at all court offices, at the office of the Mediation Coordinator, and will be published on the Eastern Caribbean Supreme Court's website. The Roster will also be available at the Criminal Division Office and at the Probation and Parole Department.

3.15 The Mediation Committee (Criminal) will be responsible for monitoring the observance of the Code of Ethics, set out in the Second Schedule to this Practice Direction.

3.16 The Mediation Committee (Criminal) will also deal with complaints using the Disciplinary Regulations set out in the Third Schedule to this Practice Direction, assess the effectiveness of the process and make recommendations for changes to the relevant authorities as appropriate or to the Chief Justice when necessary.

3.17 The Mediation Committee (Criminal) will, subject to the provisions of this Practice Direction, conduct its day-to-day activities and submit a report thereon at the end of every calendar year, to the ECSC Regional Mediation Coordinator.

4. REFERRAL TO MEDIATION

4.1 At any stage of the proceedings but preferably at the earliest possible stage, the court may on its own motion or on the recommendation of the prosecutor or the legal practitioner representing the offender, determine that it is appropriate to make an order referring the matter to criminal mediation –

a. having regard to all the circumstances and in particular the factors set out in the First Schedule, paragraph 3.1; and
b. with the agreement of all the parties.

4.2 The parties may also jointly apply to have their matter referred to mediation pursuant to the procedure set out in the First Schedule, paragraph 1.2.

4.3 The procedures for the referral of a permitted case to court-connected mediation are set out in paragraph 1 of the First Schedule to this Practice Direction.

4.4 An offender's consent to participate in the criminal mediation process or to perform any commitments under a Restitution Agreement will not amount to or be treated as a confession or an admission of guilt for the purposes of any criminal proceedings.

5. EXPLANATION TO THE PARTIES

5.1 Before making a Mediation Referral Order, the court will explain to the parties the effect and purpose of the order; the court's power to review the order; the consequences which may follow if the offender fails to comply

with any requirements of the order; and the benefit which may follow if the mediation is successful.

6. CANCELLATION/REVOCATION OF THE MEDIATION REFERRAL ORDER

6.1 Where a Mediation Referral Order is in force in respect of an offender and, on the application of the offender, the complainant/victim or the Mediator, it appears to the court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the court may revoke the order and proceed to the trial which was suspended by the order.

6.2 Where a party has elected to opt out of the mediation process the court will rescind the Mediation Referral Order and the matter will be returned to the court office for case management.

6.3 Because participation in this programme and in the mediation process is voluntary, no offender, complainant, or any other person who declines to participate in mediation, or whose case cannot be settled in mediation, will face any adverse consequences as a result of his or her failure to participate or reach an agreement.

7. CANCELLATION OF THE MEDIATION SESSION BY THE MEDIATOR

7.1 The Mediator will cancel or discontinue a mediation session if, before or during the mediation session –

a. a victim or parent of a child victim has withdrawn his/her agreement to take part in the mediation, and there is no other victim or parent, or

appropriate adult for a suitable victim or parent, who agrees to take part in the mediation;

b. the offender has withdrawn his/her agreement to take part in the mediation; or

c. something has occurred either before or during the mediation session that has rendered the safety and security of the participants untenable.

7.2 Where the Mediator decides to cancel or discontinue the mediation session, the Mediator will give notice of this decision to –

a. each required participant in the mediation; and

b. the Mediation Coordinator.

8. IMMUNITY FOR THE PROVISION OF COURT-CONNECTED MEDIATION SERVICES

8.1 A Mediator will not be liable to any person for any act or omission in connection with the mediation, except to the extent such limitation of liability is prohibited by law.

8.2 A Mediator will not be called as a witness to give evidence of any matter which occurred at any stage of the mediation or any confidential information which came to his/her knowledge during the mediation process.

8.3 The Mediation Committee (Criminal) and any Disciplinary Committee (Criminal) or Appellate Committee (Criminal) established by the Mediation Committee (Criminal), will not be liable to any person for any act or omission in connection with the performance of their duties, except to the extent such limitation of liability is prohibited by law.

9. SELECTION OF MEDIATOR

9.1 The court will select a Mediator by rotation, as outlined in paragraph 8 of the First Schedule to this Practice Direction.

9.2 The selection of a Mediator will be informed by the schedule referred to in paragraph 10.2(b).

10. DUTIES AND RESPONSIBILITIES OF MEDIATION COORDINATOR

10.1 The Mediation Coordinator will be responsible for the scheduling of mediation sessions, which will be conducted utilising facilities (physical or electronic) under the management and control of the court.

10.2 The Mediation Coordinator will maintain:

(a) a list of all Mediators which shows the number of mediations and the number of hours of pro bono mediation sessions (where applicable) conducted by each Mediator in the calendar year; and

(b) a schedule depicting the names, professional designations and place in rotation when each Mediator on the Roster is slated to conduct mediations. The schedule must be updated weekly and lodged at the court office.

10.3 As far as practicable, the Mediation Coordinator will ensure that mediations are conducted by all Mediators on the Roster and that the work is distributed equitably. In determining the availability of Mediators, the Mediation Coordinator will first confirm the availability of the Mediator next on rotation and where he/she is not available the next available

Mediator (on the basis of rotation) will be selected to conduct the mediation session.

10.4 The Mediation Coordinator will be responsible for furnishing to the ECSC Headquarters Statistician, through the ECSC Regional Mediation Coordinator, annual reports which are outlined in the Fourth Schedule to this Practice Direction.

10.5 In addition to the foregoing, the Mediation Coordinator will have the duties and responsibilities outlined in the Fourth Schedule to this Practice Direction.

11. PRE-MEDIATION REQUIREMENTS

11.1 After a permitted case has been referred to mediation, the parties and/or their legal practitioners (where represented) are required to follow the procedures as set out in paragraph 10 of the First Schedule to this Practice Direction.

11.2 Where a party has failed to meet the pre-mediation requirements within the stipulated time, the Mediation Coordinator and the Mediator will follow the procedures as set out in paragraph 10.3 of the First Schedule to this Practice Direction.

12. ATTENDANCE AT MEDIATION SESSION

12.1 All parties to the mediation are required to attend the mediation session.

12.2 If the offender elects to opt out of the mediation session or is unable to attend on the scheduled date, he/she will, as soon as reasonably practicable, inform the Mediation Coordinator and/or Mediator. The Mediation Coordinator will re-schedule or cancel the mediation session as appropriate. The Mediation Coordinator will also inform the court office and the other parties of the cancellation or postponement of the mediation session.

12.3 Where a party fails to attend the mediation session the procedure as set out in paragraph 13 of the First Schedule to this Practice Direction will apply.

12.4 The Mediator may invite any of the following persons to take part in a mediation session –

a. the police officer who has custody of the matter;
b. a parent of the victim or offender;
c. the spouse, other family member or domestic partner of the victim, parent or offender; or
d. anyone else, if –
    i. the victim, offender or parent of the child victim or offender, considers that the person can provide emotional or practical support for the victim, offender or parent of the child victim or offender; or
    ii. the Mediator considers that the participation of the person would be helpful to the mediation process.

12.5 Where a required party asks the Mediator to invite a person mentioned in d. above, to take part in the mediation, the Mediator will not refuse the request unless the Mediator considers, on reasonable grounds, that to invite the participant would be significantly detrimental to the mediation process.

12.6 Legal practitioners representing the parties may attend and provide counsel to the parties in mediation. Legal practitioners may advise clients before, during and after mediation sessions, including monitoring compliance with any agreement reached. A Mediator may excuse a legal practitioner from a mediation session in cases where his/her presence is not helpful to the mediation process and where a party has consented to the removal of his/her legal practitioner. In cases where a legal practitioner's presence is not helpful to the process, but a party does not consent to his/her removal, the Mediator will discontinue the mediation session and submit the Notice of Outcome of Mediation in Form M5 to the Mediation Coordinator.

12.7 The duties of the parties with respect to their attendance at mediation sessions, are set out in the Seventh Schedule to this Practice Direction.

13. COST OF MEDIATION SESSIONS

13.1 The parties to a mediation in a permitted criminal case will not be required to pay fees in relation to the mediation session and for any additional mediation sessions deemed necessary.

13.2 The Mediation Committee (Criminal) in each Member State or Territory may, from time to time, make recommendations for the alteration of any payment schedule for Mediators. Upon approval by the Chief Justice, such payment schedule as altered will operate as the prescribed schedule of fees payable to Mediators until such time as a further alteration is approved.

13.3 A Mediator may be required to provide a number of hours of pro bono service (where applicable) as specified in the Second Schedule to this Practice Direction, Code of Ethics.

14. MEDIATION FUNDS

14.1 The Mediation Account established by the Eastern Caribbean Supreme Court in each Member State and Territory for the operations of the Civil Mediation Programme will be utilised to hold and manage any funds received for the Criminal Mediation Programme. The criminal mediation funds will be used for making payments for conducting criminal mediation sessions (where applicable), for any other charges levied in connection with the provision of criminal mediation services and for the activities set out below:

(a) Conducting public awareness campaigns promoting the use of criminal mediation within the jurisdiction of the ECSC;
(b) Training in the area of criminal mediation within the jurisdiction of the ECSC;
(c) Attendance at conferences and seminars which relate to criminal mediation; and
(d) Such other criminal mediation-related activities or operations as approved by the Chief Justice.

14.2 Remittances for the establishment and maintenance of the criminal mediation fund will be deposited to the Mediation Accounts of the respective Member States and Territories. Strict accounting procedures and practices will be observed and adequate records kept to ensure that transactions related to criminal and civil mediation are well-defined and identifiable.

14.3 The procedures for the operation of the criminal mediation fund will be agreed in a protocol between the ECSC Headquarters and the Court Office of the Member State or Territory.

15. OUTCOME OF MEDIATION

15.1 Upon the conclusion of the mediation sessions, where there is a Restitution Agreement resolving all of the issues in the permitted case, the procedures as set out in paragraphs 18 and 19 of the First Schedule to this Practice Direction will apply.

15.2 The procedure for the Restitution Agreement referred to in paragraph 15.1 to become an order of the court is set out in paragraph 18 of the First Schedule to this Practice Direction.

15.3 The following cases will be returned to the court office for case management:

(a) Cases where the Mediation Referral Order has been cancelled or revoked by the court;
(b) Cases where the Mediator has cancelled the mediation session;
(c) Cases where there was no agreement arrived at by the parties at the end of the mediation;
(d) Cases where a party has chosen to opt out of mediation;
(e) Cases in which a Certificate of Non-Compliance in Form M3 has been filed; and
(f) Cases in which the mediation sessions have been concluded and a Notice of Outcome of Mediation in Form M5 has been

prepared by the Mediator and lodged with the Mediation Coordinator for submission to the court office.

16. EVALUATION OF MEDIATION SESSION

16.1 The information gathered from the Evaluation Forms is very important to the Eastern Caribbean Supreme Court as it is analysed to identify areas where improvements can be made to the Mediation Programme.

16.2 The Evaluation Form for Parties in Form M7 must be completed by each party who is attending the mediation session and the Evaluation Form for Legal Practitioners in Form M8 must be completed by each legal practitioner attending the mediation session.

16.3 It is the responsibility of the Mediator conducting the mediation session to ensure as far as practicable that each party and his/her legal practitioner present have completed the appropriate Evaluation Forms prior to the conclusion of a mediation session.

16.4 Where a party or his/her legal practitioner refuses to complete Forms M7 or M8, the Mediator will record such refusal in the Certificate of Non-Compliance in Form M3.

17. MEDIATION OFFICE

17.1 The Registrar and the Chief/Senior Magistrate will ensure that an office to manage the mediation activity is established with a Mediation Coordinator and any other staff deemed to be necessary to manage the volume of mediations being conducted in the respective Member State or Territory.

17.2 The Registrar and the Chief/Senior Magistrate will ensure the efficient, effective and coordinated delivery of services to persons referred to the mediation programme.

17.3 The staff in the mediation office in the High Court and the Magistracy will report on mediation of permitted cases to the Mediation Coordinator who in turn will report to the Registrar of the Court or the Chief/Senior Magistrate and to the ECSC Regional Mediation Coordinator.

18. PROCEDURES

18.1 The Procedures to be followed in relation to court-connected mediation of permitted cases are prescribed in the First Schedule to this Practice Direction.

19. PRACTICE FORMS

19.1 The Practice Forms are contained in the Tenth Schedule to this Practice Direction.

20. EFFECTIVE DATE

This Practice Direction will come into effect on the day of 202_.

Made this day of , 202_

Hon.

Chief Justice

FIRST SCHEDULE

PROCEDURES

1. REFERRAL AND ELIGIBILITY FOR MEDIATION

1.1 Where a person is charged with any offence contained in the Eighth Schedule to this Practice Direction, the court will, before commencing the trial of the offence, determine, having regard to all the circumstances, whether the matter can be dealt with by mediation.

1.2 At any time from the first appearance before the court or the first case management conference, the parties may voluntarily agree to submit their case to court-connected mediation by jointly completing an Application for Referral to Mediation by the Parties in Form M1A notifying the Case Manager that they wish to have their case referred to mediation.

1.3 The Case Manager will within 3 days after receiving Form M1A refer the case to the court for the purpose of deciding whether a Mediation Referral Order ought to be made.

1.4 In considering whether to make a Mediation Referral Order, the court will have regard to factors including –

(a) Whether the alleged offence is one which may appropriately be dealt with by mediation;

(b) Whether the victim or parent/appropriate adult of a child victim and the offender or parent/appropriate adult of a child offender have indicated their consent in writing in Forms M1B and M1C;

(c) Whether in the Director of Public Prosecutions' view the matter should be referred to mediation; and

(d) Whether it has been determined that mediation is suitable in all of the circumstances.

1.5 In determining whether mediation is suitable for a victim the court will have regard to the following factors including-

(a) the victim's reasons for taking part in the mediation;
(b) the impact of the offence as perceived by the victim;
(c) whether the victim is capable of agreeing to take part in mediation and has voluntarily agreed to take part in mediation; and
(d) the potential psychological effects which mediation may have on the victim.

1.6 In determining whether mediation is suitable for a parent of a child victim the court will have regard to the following factors including-

(a) the relationship between the parent and the child;
(b) the parent's and child victim's reasons for taking part in mediation; and
(c) the impact of the offence as perceived by the parent and the child victim.

1.7 In deciding whether mediation is suitable for an offender, the court will have regard to the following factors including –

(a) whether the offender has acknowledged responsibility for the offence;
(b) the extent of the offender's remorse for the offence;
(c) the offender's motivation for taking part in mediation;
(d) the impact of the offence as perceived by the offender; and
(e) whether the offender is capable of agreeing to take part in mediation and has voluntarily agreed to take part in mediation.

1.8 A victim is eligible for mediation in a permitted case if the victim is capable of agreeing to take part in mediation.

1.9 Where the victim is a child, the parent or appropriate adult is eligible for mediation in a permitted case if-

(a) the parent or appropriate adult is at least eighteen years old; and
(b) the parent or appropriate adult is capable of agreeing to take part in mediation.

1.10 An offender is eligible for mediation if the offender –
(a) acknowledges responsibility for the commission of the offence; and
(b) is capable of agreeing to take part in mediation.

1.11 Where the offender is a child in conflict with the law (or juvenile as defined by the Juvenile Justice Legislation of a Member State or Territory) the principles and measures relating to the Juvenile Justice System of the Member State or Territory will apply to eligible offenders under this Practice Direction.

1.12 If the court determines that the matter is suitable to be dealt with by mediation, the court will issue a Mediation Referral Order in the form as set out in Form M1.

2. MEDIATION REFERRAL ORDERS

2.1 A Mediation Referral Order will be in the form as set out in Form M1 and will contain provisions including -

(a) the name of the Mediator and alternate selected from the Roster of Mediators (Criminal Matters);
(b) directions in relation to the continuation of the trial of the offence; and
(c) directions on transmitting the subject matter of the charge to the appointed Mediator.

2.2 The Case Manager will within 3 days of the order being made, forward a copy of the Mediation Referral Order together with Form M1A attached (where applicable) to the Mediation Coordinator who will arrange the mediation session in accordance with the procedures set out herein.

3. CRITERIA FOR REFERRAL OF CASES

3.1 In considering whether to refer a permitted case to mediation, the court will take into account all relevant circumstances including the following:

(a) the eligibility of the parties for a referral to mediation;

(b) the relationship between the parties if any and/or whether the parties involved in the dispute have an expectation of a continuing relationship and whether there is an issue underlying their dispute that has not been addressed, and which may create later conflict or require court involvement;

(c) the willingness of the parties to resolve their case by a collaborative process;

(d) opportunities for joint gains not available through trial in the court;

(e) a Social Worker/Probation Officer's report if available;

(f) whether a party is a first-time or repeat offender;

(g) the risk that the offender may pose to the community;

(h) whether there is an immediate risk of revictimization for the victim;

(i) whether there were aggravating factors involved in the commission of the offence;

(j) whether a child in conflict with the law has made an appearance before a Child Justice Board (where applicable) and was afforded a diversion option previously;

(k) whether continuing prosecution is in the best interests of the parties or any non-parties impacted by the dispute;

(l) whether any cross warrants or cross charges have been filed in the case;

(m) whether the case might otherwise be subject to dismissal; and

(n) any other criteria considered appropriate by the court.

4. MULTIPLE CHARGES

4.1 Where there are multiple charges pending in the same court against a single offender or pending against multiple offenders and involving the same complainant or complainants, these may be consolidated for the purpose of holding a single mediation in the matter, where there is agreement by all the parties and all of the pending charges relate to offences permitted under the Eighth Schedule to this Practice Direction (Permitted Cases).

5. TIME FOR CONDUCTING THE MEDIATION SESSION

5.1 Upon referral by the court:

(a) the mediation session will be held within 45 days of the Mediation Referral Order unless otherwise ordered by the court, on application by any party.

(b) The Mediation Coordinator will inform all parties to the permitted case that arrangements are being made for the parties to attend mediation.

6. EXTENSION OF TIME FOR MEDIATION

6.1 The Mediation Coordinator will, 3 days prior to the return date set out in the Mediation Referral Order, submit a Notice of Outcome of Mediation in Form M5 to the court office.

6.2 The court may, with the consent of the parties, extend the deadline for completion of the mediation process on its own motion or on application of either party.

6.3 In considering whether to extend the time within which the mediation is to be conducted the court will, in consultation with the parties, take into account all circumstances, including:

(a) the number of parties and the complexity of the issues in the action;
(b) whether the mediation will be more likely to succeed if it is postponed to allow the parties more time to acquire more information; and
(c) the reasons why the mediation has not yet been concluded.

6.4 No case will remain in mediation for longer than 45 days unless ordered by the court.

7. ROSTER OF MEDIATORS

7.1 The Mediation Coordinator will maintain a Roster of Mediators (Criminal Matters) for that Member State or Territory, as selected by the court-connected Mediation Committee (Criminal).

7.2 The Registrar will ensure that the Roster of Mediators (Criminal Matters) is gazetted annually, exhibited at the Magistrate's and High Court Offices, at the office of the Mediation Coordinator, the Criminal Division and the office of the Probation and Parole Department and submitted for publication on the Eastern Caribbean Supreme Court's website.

7.3 The Headquarters of the Eastern Caribbean Supreme Court will ensure that the Roster of Mediators (Criminal Matters) is posted promptly to the court's website when it is received.

8. SELECTION OF MEDIATOR

8.1 All court-connected mediations will be conducted by a Mediator from the Roster of Mediators (Criminal Matters), who is assigned on a rotation basis by the court.

8.2 A Mediator who is not available for selection due to personal scheduling conflicts or for any other reason, will be replaced by the next available Mediator on rotation.

8.3 The court may select a Mediator outside of the rotation schedule where the circumstances of the case require a Mediator with specific experience and/or expertise or where there is a conflict of interest or other valid reason identified by the parties/legal practitioners indicating why a Mediator should not to be selected.

9. SCHEDULED DATE FOR MEDIATION

9.1 The Mediation Coordinator will:

(a) in consultation with the parties and the Mediator, fix a date for the mediation session; and

(b) serve on every party a Notice of Scheduled Mediation in Form M2 stating the place, date and time of the mediation.

10. PROCEDURE BEFORE THE MEDIATION SESSION

10.1 The court office will provide a copy of the complaint to the Mediation Coordinator who will forward the complaint to the Mediator at least 3 days before the mediation session.

10.2 Parties are required to sign an Agreement to Mediate in Form M9 and a Confidentiality Agreement in Form M4 before the commencement of the mediation session. The parent/guardian of a child in conflict with the law, or an appropriate adult or guardian appointed by the court, may sign on his/her behalf as well as the child's behalf.

10.3 Where a party has failed to sign the Agreement to Mediate in Form M9 and a Confidentiality Agreement in Form M4 in accordance with paragraph 10.2, the Mediation Coordinator will inform the assigned Mediator. The Mediator will, based on this report, determine whether the mediation session should be cancelled or postponed.

10.4 A Mediator may, if he/she believes it would assist with the mediation process, request a pre-mediation meeting with the parties (and parent(s) or an appropriate adult where applicable). The Mediator and the parties may attend the pre-mediation meeting in person or by use of electronic means. Pre-mediation meetings will be held at the discretion of the Mediator and there will be no fees payable in relation to these meetings.

11. ATTENDANCE AT THE MEDIATION SESSION

11.1 The parties are required to attend a 3-hour mediation session unless the Mediator terminates the session earlier as the parties have reached an agreement, or the Mediator is of the view that an agreement will not be reached on any of the issues. After the first 3 hours, the mediation session may be continued if the parties and the Mediator agree to do so.

11.2 A party who requires another person's approval before reaching an agreement will, before the mediation session, arrange to have ready access to the other person throughout the session.

11.3 Where a party is not a natural person, the person attending on behalf of that party must be authorised to reach an agreement or be in a position to be able to obtain such authority during the mediation.

11.4 With the consent of all parties (including a parent or an appropriate adult where applicable) and the Mediator, a mediation session may be adjourned at any time. In the event of an adjournment, the parties must reschedule the mediation session within the time limits set out in this Practice Direction.

11.5 The parties may request through the Mediation Coordinator that a mediation session be conducted with one party/the parties appearing via electronic means. The Mediation Coordinator will, based on the circumstances of the case and in consultation with the Mediator and the other party/parties, determine whether the mediation should be held by electronic means. If he/she determines that the mediation session should be held electronically, the Mediation Coordinator will inform the Mediator

and make arrangements for the mediation to be conducted via electronic means.

11.6 Where a party appears via electronic means, all required documents will be signed by the party and submitted via electronic means.

11.7 Parties requesting attendance by electronic means must ensure that they have access to all the necessary equipment and facilities including a computer, camera, microphone, scanner and printer, a stable internet connection and access to an email account.

11.8 Legal practitioners/parties/other attendees will inform the court of the location from which they intend to attend a mediation prior to the commencement of the mediation session.

11.9 The Mediator, the parties, legal practitioners and other attendees, will be required to log in or call in to the dedicated facility at least 15 minutes before the stated start time of a mediation being held by electronic means. Parties are to ensure that they are online in time for the prompt commencement of the mediation. If the parties are having any connectivity or other difficulties this should be promptly communicated to the Mediation Coordinator/court office, the Mediator or a legal practitioner representing a party to the case.

11.10 The parties must also adhere to the Remote Mediation Guide for Parties detailed in the Seventh Schedule to this Practice Direction.

12. TREATMENT OF VICTIMS AND OFFENDERS

12.1 During the mediation process, the Mediator will ensure that victims are treated with due respect for the dignity of the individual and the trauma which may have been suffered.

12.2 The Mediator will recognise the rights and legitimate interests of victims and offenders with particular reference to criminal proceedings.

12.3 The Mediator will ensure that victims and offenders are given an equitable opportunity to be heard during the mediation session and that opportunities for restitution are fostered.

12.4 Children in conflict with the law and child victims must be treated by all parties/participants in a manner which takes into account the age, maturity, intellectual development and best interests of the child.

12.5 The Mediator will, in conducting the mediation session, satisfy himself/herself that there is a suitable level of protection for victims, particularly with regard to their safety and privacy during in-person or electronic mediation sessions.

13. FAILURE TO ATTEND

13.1 If a party fails to attend the mediation session within half an hour of the appointed time or attends the mediation session without having authority to reach an agreement on the matter, the Mediator will cancel the session and lodge a Certificate of Non-Compliance in Form M3 with the Mediation Coordinator, for filing at the court office.

14. NON-COMPLIANCE WITH THE MEDIATION REFERRAL ORDER

14.1 When a Certificate of Non-Compliance in Form M3 is filed with the court office, the Criminal Division Manager will refer the matter to the court for further directions where necessary.

15. CONFIDENTIALITY

15.1 In relation to mediation proceedings:

a. evidence of a document, communication or recording, whether delivered or not and any admission made, or information disclosed for the purpose of or produced during mediation proceedings will be treated as confidential and will not be admissible in any proceedings before a court, tribunal or committee.

b. an incriminating statement made during, and as part of mediation, is not admissible in any court against the person making the incriminating statement.

c. no recordings or capture of information by electronic devices will be allowed in any mediation session. There will be no stenographic, audio or video recordings of the mediation process by any participant. This prohibition includes recording either surreptitiously or with the agreement of the parties.

d. no person will be compellable in any such proceedings to disclose information or to produce any document that contains the information shared; and

e. a party to mediation proceedings will be taken to have authorized the provision of related information to the Mediator and his/her staff for the purposes of conducting the mediation proceedings.

16. MEDIATOR'S REPORT

16.1 Within 3 days of the conclusion of the mediation session, the Mediator will complete and lodge the Notice of Outcome of Mediation in Form M5 along with the Certificate of Non-Compliance in Form M3 (where appropriate) with the Mediation Coordinator, for filing at the court office/Criminal Division.

17. NO AGREEMENT

17.1 Where the Mediator is of the belief that a Restitution Agreement cannot be reached between the parties by the return date, he/she will within 3 days of the return date set by the Mediation Referral Order lodge the Notice of Outcome of Mediation in Form M5 with the Mediation Coordinator, who will promptly submit it to the court office/office of the Criminal Division and the matter will be returned to the court for case management.

18. RESTITUTION AGREEMENT

18.1 The Restitution Agreement will be made in writing and signed by –

a. the victim;
b. if a participant, the parent of the child victim/offender;
c. if a participant, an appropriate adult;
d. the offender; and

e. the Mediator

18.2 The Restitution Agreement will set out the commitments the offender agrees to undertake in order to address the harm the offence has caused the victim.

18.3 The Restitution Agreement will provide that once the offender fulfils the commitments referred to in paragraph 18.2, any criminal charges or potential criminal charges against the offender in respect of the offence will be dealt with in accordance with paragraph 19.1 and that no civil action will be taken in respect of the harm referred to in paragraph 18.2.

18.4 If an appropriate adult who participated in the mediation for a child or parent of a child signs the Restitution Agreement –

a. The appropriate adult is taken to sign the Agreement on behalf of the child or parent of the child; and
b. The child or parent of the child is taken to have consented to the Agreement.

18.5 The Restitution Agreement will be fair and, in the opinion of each party to the mediation and the Mediator, reasonably able to be carried out by the offender.

18.6 The Restitution Agreement will not require the offender or anyone else to do anything that would –

a. be unlawful;
b. require the detention of the offender;
c. be degrading or humiliating to the offender or anyone else; or

d. cause undue hardship or place the offender at risk for serious harm or death.

18.7 Where the Restitution Agreement fails to comply with paragraph 18.6 above, it will be rejected by the court and the matter will proceed to trial.

18.8 The Restitution Agreement will be for a term not longer than twelve months, starting on -

a. the date the Restitution Agreement is made; or
b. if a later starting date is stated in the Restitution Agreement, that later date.

18.9 The Restitution Agreement may be signed in counterparts and will be as binding and effectual as one in respect of which all parties have signed as a single document;

18.10 Delivery of an electronically scanned executed counterpart of the Restitution Agreement by facsimile or electronic mail will be equally effective as delivery of a manually executed counterpart of the Restitution Agreement;

18.11 Any party delivering an executed counterpart of the Restitution Agreement by facsimile or electronic mail will also deliver a manually executed counterpart of the Restitution Agreement, but failure to do so will not affect the validity, enforceability, or binding effect of the Restitution Agreement.

18.12 The Mediator will give a copy of the Restitution Agreement to -

a. each party to the mediation; and
b. the Mediation Coordinator

18.13 The Mediation Coordinator will file the Restitution Agreement at the court office/office of the Criminal Division.

18.14 The court will make an Order Subsequent to Restitution Agreement in Form M6-

incorporating the terms of the Restitution Agreement arrived at by the parties, which may include an agreement for restitution, compensation, non-molestation, or such agreement as may be approved by the court.

19. ACTION OF THE COURT AFTER THE END OF A MEDIATION

19.1 Subject to paragraph 19.2, if the court is satisfied that the terms of the Restitution Agreement have been complied with and the purposes of the Mediation Referral Order have been fulfilled, the court will dismiss the charge(s) of the scheduled offence(s) in respect of which the order was made.

19.2 Before the court exercises its power under paragraph 19.1 the factors that the court will have regard to include –

a. the Notice of Outcome of Mediation under Paragraph 16.1;
b. a report in writing from the Probations Department where available; and
c. any evidence whether oral or in writing, being evidence relevant to the question whether the court should exercise its power under paragraph 19.1, which the Mediator, Probations Department, victim, offender or other participant to the mediation may wish to proffer to the court.

19.3 The court will not exercise its power under paragraph 19.1 if in any report or evidence made or proffered to the court under paragraph 19.2, the person making the report or proffering the evidence states that the purposes of the Mediation Referral Order have in that person's opinion not been fulfilled.

19.4 Where paragraph 19.3 applies, the court will proceed to the trial which was suspended by virtue of the Mediation Referral Order unless –

a. the court is satisfied that the power conferred by paragraph 19.1 should still be exercised; or
b. the court is satisfied in the interest of justice and with the consent of the parties that the time to perform the Order Subsequent to Restitution Agreement under paragraph 18.8, should be extended.

20. NON-COMPLIANCE WITH ORDER SUBSEQUENT TO RESTITUTION AGREEMENT

20.1 Where an offender fails to comply with the order of the court subsequent to a Restitution Agreement, or to satisfy all the terms of a Restitution Agreement within the stipulated time, or to comply with any of the conditions upon which diversion was granted, the court will:

a. with the consent of the parties grant additional time for compliance with the order where appropriate; or
b. where the court is satisfied that there is no reasonable prospect of any resolution, the court will proceed to or resume the trial.

SECOND SCHEDULE

CODE OF ETHICS

1. This Code of Ethics will apply to Mediators whose names appear on the Roster of Mediators (Criminal Matters) for each Member State and Territory of the Eastern Caribbean Supreme Court and is intended to assist and guide them in their conduct and to provide a framework within which mediation is conducted and regulated.

2. In this Code –

"Conflict of interest" means direct or indirect financial and/or personal interests in the outcome of the dispute or an existing or past financial, business, professional, family or social relationship which is likely to affect the impartiality or reasonably create an appearance of partiality or bias;

"Impartiality" means freedom from favoritism and bias either by words, action or by appearance and implies a commitment to serve all parties as opposed to a single party in moving towards or reaching settlement.

3. General Responsibilities

Mediators will –

(a) conduct themselves in a manner which will instill confidence in the mediation process, confidence in their integrity, and confidence that disputes entrusted to them are handled in accordance with the highest ethical standards;

(b) be responsible to the parties, to the profession, to the public and to themselves, and accordingly will be honest and unbiased, act in good faith, be diligent, and not seek to advance their own interests, but rather the needs and interests of the parties;

(c) act fairly in dealing with the parties, have no personal interests in the terms of the agreement, show no bias towards individuals or parties involved in the case and be certain that the parties are informed of the process in which they are involved; and

(d) comply with the duties and obligations of Mediators set out under this Practice Direction.

Ethical Standards

4. (1) The primary role of the Mediator is to assist the parties in their attempt to achieve a resolution of their case, with the parties in ultimate control of the decision to resolve the case and the terms of the Restitution Agreement.

(2) The primary responsibility for the resolution of the case and the shaping of a Restitution Agreement rests with the parties.

(3) A Mediator will recognise that mediation is based on the principle of self-determination by the parties and upon the ability of the parties to reach a voluntary uncoerced agreement.

(4) A Mediator will request and encourage self-determination by the parties in their decision whether, and on what terms, to resolve their case, will refrain from being directive or judgmental regarding the issues in the case and will identify options for reaching an agreement.

(5) A Mediator will encourage mutual respect between/amongst the parties, and will take reasonable steps, subject to the principle of self-determination, to limit abuse of the mediation process.

(6) A Mediator will make the parties aware, where appropriate, of the option and importance of consulting other professionals to assist the parties in making informed decisions.

(7) When a Mediator believes a party does not understand or appreciate how a Restitution Agreement may adversely affect legal rights or obligations, the Mediator will advise the parties to seek independent professional advice.

(8) While a Mediator may point out possible outcomes of a case, the Mediator will not offer a personal or professional opinion as to how the court in which the case has been filed will resolve the matter.

(9) A Mediator will not use during the mediation process any title or honorific to which he/she may be entitled.

5. (1) A Mediator will mediate only when the Mediator has the necessary qualifications, training and experience to enable him/her to satisfy the reasonable expectation of the parties.

(2) A Mediator will acquire and maintain professional competence in mediation and will at all times strive to improve his/her professional skills and abilities by participating in relevant continuing education programmes.

(3) A Mediator will have information regarding his/her relevant training, education and experience available to the parties.

6. (1) A Mediator will provide mediation services only for those cases in which he/she can be impartial with respect to all the parties and the subject matter of the case.

(2) A Mediator will in words and actions, maintain impartiality towards the parties and where his/her impartiality is in question, will decline to serve or will withdraw from serving as a Mediator.

(3) Where at any time prior to, or during, the mediation process the Mediator is unable to conduct the mediation process in an impartial manner, the Mediator will so inform the parties and will withdraw from providing services, even if the parties express no objection to the continuation of the Mediator's services.

7. (1) A Mediator will discuss issues of confidentiality with the parties before beginning the mediation process including limitations on the scope of

confidentiality and the extent of confidentiality provided in any private session that the Mediator holds with a party.

(2) All proceedings will be confidential and the Mediator will not voluntarily disclose to anyone who is not a party, any information obtained through the mediation process except, with the written consent of the parties, or when the information discloses an actual or potential threat to human life or safety.

(3) In the cases referred to in paragraph 7(2), the Mediator will advise the parties, when appropriate, that the confidentiality of the mediation proceedings cannot necessarily be guaranteed.

8. (1) A Mediator will structure the mediation process so that the parties make decisions based on sufficient information and knowledge.

(2) The Mediator has an obligation to ensure that all parties understand the nature of the process, the procedures, the particular role of the Mediator and the parties' relationship to the Mediator.

(3) Where at any time the Mediator believes that any party is unable to understand the mediation process or participate fully in it, whether because of mental impairment, emotional disturbance, intoxication, language barriers or other reasons, the Mediator will limit the scope of the mediation process in a manner consistent with the party's ability to participate, and/or recommend that the party obtain appropriate assistance in order to continue with the mediation process, or will terminate the mediation process.

9. (1) A Mediator will disclose any actual or potential conflict of interest known to him/her and thereafter will withdraw from the mediation, if any party objects to him/her continuing as Mediator.

(2) Where the Mediator determines that the conflict is so significant as to cast doubt on the integrity of the mediation process, the Mediator will withdraw from the

process even if the parties express no objection to the continuation of the Mediator's services.

(3) Save with the consent of the parties, and for a reasonable time under the particular circumstances, a Mediator who also practices in another profession will not establish a professional relationship in that other profession with one of the parties, or any person or entity, in a substantially factually related matter.

(4) A Mediator will limit himself/herself solely to the role of Mediator and will refrain from giving legal or therapeutic information or advice and otherwise engaging during mediation in counselling or advocacy.

(5) The duty to disclose a conflict of interest will be a continuing obligation throughout the mediation process.

10. Where one of the parties is a child, the Mediator has a responsibility to promote the parties'/participants' consideration of the best interests of that child in relation to the issues being mediated. The Mediator also has a duty to assist the parties to examine, apart from their own desires, the separate and individual needs of the child. The Mediator also has a responsibility to give due regard to the dignity of the complainant who may be a victim in the case and to take all reasonable steps to ensure that he/she is assured of the integrity of the mediation process.

11. A Mediator will not enter into a fee agreement which is contingent upon the results of the mediation or the amount of the Restitution Agreement but may; however, where applicable, specify in advance a minimum charge for a mediation session without violating this provision.

12. A Mediator who is asked to conduct a pro bono mediation session (where applicable) will not be required to do more than 12 hours in any calendar year.

13. (1) A Mediator will not make untruthful or exaggerated claims about the mediation process, its costs and benefits, its outcomes or the Mediator's qualifications and abilities.

(2) All advertising will honestly represent the services to be rendered and no claims of specific results or promises which apply to one party over another party should be made for the purpose of obtaining business.

(3) No commission, rebates, or other similar forms of remuneration will be given to or received by a Mediator for the referral of clients.

14. Where a rostered Mediator is found to be in breach of the Code of Ethics that person will be subject to sanctions pursuant to Section 8 of the Third Schedule - Disciplinary Regulations.

THIRD SCHEDULE
DISCIPLINARY REGULATIONS

1. (1) These Disciplinary Regulations apply to complaints against any person placed on the Roster of Mediators (Criminal Matters) in accordance with paragraph 3.16 of this Practice Direction**.**

(2) Where a person is registered as a Mediator on the Roster of Mediators (Criminal Matters) such registration may be revoked for cause in accordance with these provisions.

2. (1) The Mediation Committee (Criminal) will appoint a Disciplinary Committee (Criminal) consisting 3 members which will be a standing committee, to hear and determine complaints against Mediators.

(2) The Disciplinary Committee (Criminal) will consist of a legal practitioner of at least 7 years' standing, 1 Mediator from the Roster of Mediators who has served for a period of at least 3 years and 1 lay person of good character. The members of the Disciplinary Committee (Criminal) will not be members of the Mediation Committee (Criminal) in any of the Member States or Territories.

3. (1) A complaint against a Mediator hereafter called the Mediator/Respondent will be in writing using the form in Appendix 1, signed by the complainant, and will include the complainant's name, address and telephone number.

(2) The complaint referred to in paragraph 3(1), will be mailed or delivered to the Mediation Committee (Criminal) at its address and will -

(a) identify the Mediator/Respondent; and

(b) make a short and plain statement of the conduct forming the basis of the complaint.

(3) A complaint founded on matters relating to a mediation session, will not be brought against a Mediator after a period of 30 days following a mediation session,

except that the Mediation Committee (Criminal) may extend the time, upon representations being made to it of the reasons for the delay in bringing the complaint.

(4) The Disciplinary Committee (Criminal) will review the complaint to determine whether the allegations, if true, constitute a violation of the Code of Ethics.

(5) If the allegations made in the complaint would not constitute a violation of the Code of Ethics, the complaint will be dismissed and the complainant and the Mediator/Respondent will be notified in writing.

(6) Where the Disciplinary Committee (Criminal) concludes that the allegations of the complaint if true, constitute a violation of the Code of Ethics, the Disciplinary Committee (Criminal) will hear and determine the complaint and in all such cases, the Disciplinary Committee (Criminal) will serve on the Mediator/Respondent, by personal service or by registered mail, a copy of the complaint and a request for a written response to the allegations and to any specific questions posed by the Disciplinary Committee (Criminal).

(7) It will not be considered a violation of paragraph 7 of the Code of Ethics, for the Mediator/Respondent to disclose information acquired in a mediation session if that information falls within paragraph 7(2) of the Code of Ethics and except for good cause shown. If the Mediator/Respondent fails to respond to the complaint in writing within 30 days of receipt of the complaint, the allegations will be deemed admitted.

4. (1) The Disciplinary Committee (Criminal) may, in its discretion, refer the complainant and the Mediator/Respondent to mediation conducted by a volunteer Mediator to resolve the issues raised by the complainant.

(2) If the issues raised by the complainant are resolved through mediation, the Disciplinary Committee (Criminal) will dismiss the complaint, unless the resolution includes sanctions to be imposed by the Disciplinary Committee

(Criminal) in which case the Disciplinary Committee (Criminal) will impose the appropriate sanction as set out in paragraph 8 below.

(3) Where no agreement is reached in mediation, the Disciplinary Committee (Criminal) will hear and determine the complaint.

5. (1) At the hearing the parties may be represented by legal practitioners, but while the rules of evidence will not be strictly applied, the principles of natural justice will apply.

(2) The Disciplinary Committee (Criminal) may, at its own initiative, or at the request of the parties, request the attendance of witnesses and the production of documents and other evidentiary matters.

6. (1) A party may appeal the Disciplinary Committee's decision to an Appellate Committee (Criminal) consisting not less than 3 members of the court-connected Mediation Committee (Criminal).

(2) An appeal must be filed within 45 days from the date of the decision.

7. (1) Where it comes to the attention of the Disciplinary Committee (Criminal) that a Mediator on the Roster of Mediators (Criminal Matters) has been convicted of a criminal offence, the Committee may call upon such Mediator to show cause why he/she should not be removed from the Roster.

(2) A Certificate of Conviction issued by the court will be sufficient evidence of the Mediator's conviction for an offence.

8. The Disciplinary Committee (Criminal) or the Appellate Committee (Criminal) may impose sanctions, including but not limited to -

(a) the issue of a private reprimand;

(b) the designation of corrective action necessary for the Mediator/Respondent to remain on the Roster;

(c) notifying any approved mediation agency with which the Mediator is affiliated of the complaint and the result of its disposition; and

(d) the removal of the Mediator/Respondent from the Roster, with conditions for reinstatement, if any.

9. (1) All files, records, and proceedings of the Disciplinary Committee (Criminal) and the Appellate Committee (Criminal) that relate to or arise out of any complaint will be confidential, except –

(a) as between the Mediation Committee (Criminal), members of the Disciplinary Committee (Criminal), the Appellate Committee (Criminal) and staff; and

(b) as otherwise required or permitted by rule or statute; and to the extent that the complainant and the Mediator/Respondent waive confidentiality.

(2) Where sanctions are imposed against the Mediator/Respondent pursuant to paragraphs *(b)* to *(d)* of paragraph 8 such sanctions will be a public record, but the files of the Disciplinary Committee (Criminal) and the Appellate Committee (Criminal) will remain confidential.

Appendix 1

IN THE EASTERN CARIBBEAN SUPREME COURT

PRACTICE DIRECTION No. of 202_

COURT-CONNECTED MEDIATION (CRIMINAL DIVISION)

COMPLAINT FORM

Mediator's Name: ….....

Case No: / .....
Names of the Parties

Date of Mediation Session: .....

Nature of Complaint:

Dated: .....

Name: .....

Signature of Complainant: .....

To: The Mediation Committee (Criminal) (via the mediation office)
(Name, address, telephone number, email)

FOURTH SCHEDULE

ADDITIONAL DUTIES OF THE MEDIATION COORDINATOR

1. Duties of the Mediation Coordinator to Include:

a. Keeping a register containing an accurate record of all cases referred to mediation;
b. Keeping an accurate record of all Restitution Agreements reached and of all cases which are not settled;
c. Keeping an accurate record of the number of mediations performed by each Mediator in a calendar year;
d. Ensuring that the electronic case management systems are properly kept up to date to capture the information in relation to matters which are referred to mediation;
e. Providing a list of Mediators who are eligible to be selected for mediation based on the process of rotation;
f. Submitting to the court office on a weekly basis, an up-to-date Schedule depicting the names, professional designations, dates and times when each Mediator on the Roster is available to conduct mediations;
g. Keeping an accurate record of all criminal mediation funds received and disbursements paid out in respect of the Mediation Account; and
h. Submitting to the Financial Controller at the ECSC Headquarters through the ECSC Regional Mediation Coordinator, quarterly accounts of all receipts and expenditure on the Mediation Account for the period and projected expenditure for the upcoming quarter for prior approval.

2. Annual Reports to be Submitted to ECSC Headquarters

a. A listing of all cases where the mediation is not complete at the beginning of a year;

b. A listing of all cases mediated during the year and who performed the mediation clearly indicating whether the Mediator is a legal practitioner or not;
c. A listing of the results of the cases mediated, that is, whether the parties to the cases reached an agreement or did not reach an agreement, or the case is set for further mediation, or where either or both of the parties have not complied with the Mediation Referral Order;
d. An updated list of the number of mediations performed by each Mediator in the calendar year together with the number of hours of pro bono service (where applicable) that each Mediator has given; and
e. Copies of all Form M7 (Evaluation Form for Parties) and Form M8 (Evaluation Form for Legal Practitioners) completed during the quarter, where they were not completed electronically.

FIFTH SCHEDULE

ROLE OF THE LEGAL PRACTITIONER IN MEDIATION

1. The role of the legal practitioner may include:

   a. advising the client about the mediation process and programme;
   b. preparing the client for effective participation in the mediation session whether the session is being held in-person or remotely;
   c. working with the client to develop opening statements and a representation plan;
   d. explaining the best options of the case to the client and if/when these should be activated;
   e. attending the mediation as an observer in support of the reconciliation of the parties where practicable and the efforts of the Mediator and the parties toward resolution; and
   f. being readily available to provide guidance and independent legal advice if called upon by his/her client to do so, in cases where he/she does not attend the mediation session.

2. Preparation of Clients for Mediation

   2.1 Legal practitioners are aware that the parties participate directly and actively in mediation. To prepare a party for mediation, the legal practitioner will:

   a. describe the mediation process and what will happen at the session;
   b. explain what is expected of the client;
   c. remind the client that the objective of the mediation is not to "win", but to reach a mutually agreed resolution;
   d. discuss the costs, risks and benefits of not reaching a Restitution Agreement;
   e. ensure that the client is conversant with the facts and issues of the case;
   f. explore the client's position, goals and interests;

g. assist the client in identifying any common goals or interests towards the resolution of the case;
h. advise the client on how to best put forward his or her interests; and
i. discuss with the client prior to attending the mediation session where possible, or during caucus where necessary, the other party's position, goals and interests, toward resolution of the case.

3. When in attendance at mediation sessions, legal practitioners will:

a. refrain from actively participating in the mediation session;
b. refrain from addressing the Mediator directly except where he/she is so permitted by the Mediator;
c. provide guidance on matters of the law where specifically requested by the Mediator to do so;
d. where permitted by the Mediator, assist in cases where the parties for any reason are unable to adequately speak for themselves;
e. recuse themselves from the mediation where the other party is unrepresented unless permitted by an unrepresented party to remain in support of the mediation process; and
f. sign the Confidentiality Agreement and may attest to the Restitution Agreement where one is reached.

SIXTH SCHEDULE

ROLE OF THIRD-PARTY STAKEHOLDERS IN MEDIATION

Third party stakeholders may include social workers, probation officers, child-care officers, representatives of non-governmental organizations discharging social work functions or relatives of a party.

1. The role of the Third Party Stakeholder may include:

   a. advising a party about the mediation process and programme;
   b. clarifying technical issues and language relating to the mediation;
   c. preparing a party for effective participation in the mediation session;
   d. providing support for persons who are differently abled;
   e. providing interpretation services as required; and
   f. providing moral support.

2. At the Mediation Session Third Party Stakeholders will not:

   i. participate in the mediation session except if called upon to assist the Mediator in respect of the matters listed at a. to f. above;
   ii. disclose details of the mediation session to parties external to the mediation;
   iii. take over the mediation session and lecture the parties on technical issues as the case may be, but if called upon to explain a principle in mutual interest of the parties, he/she should adhere; and
   iv. request a caucus.

In the event that a Third Party Stakeholder attends the mediation session, it is expected that he/she will not actively participate in the mediation session, nor will he/she address the Mediator directly except where he/she is so permitted by the Mediator or unless his/her input is specifically requested by the Mediator, or if the parties for any reason are unable to adequately speak for themselves. If in attendance, Third Party Stakeholders will sign the Confidentiality Agreement and may attest to the Restitution Agreement where one is reached.

SEVENTH SCHEDULE

DUTIES OF THE PARTIES

1. The Parties

It is the duty of each party to act and participate in the mediation session in good faith and to use their best efforts to co-operate with each other and with the Mediator to enable the mediation to proceed smoothly in order to resolve the case.

2. Parties should:

(a) be prepared to treat all participants in the mediation session with courtesy and respect;

(b) have considered the issues which have priority for them and the possible options for their resolution;

(c) have a clear view on what the best outcome would be from the mediation session and the extent to which they would be prepared to compromise;

(d) complete all required mediation forms at the commencement and conclusion of the mediation session; and

(e) comply with any Restitution Agreement reached during the mediation session.

3. Remote Mediation Guide for Parties:

Remote mediation services will be available with the consent of the parties and the Mediator subject to the following guidelines:

<u>Remote Platform</u>

Remote mediation sessions will be conducted via a video conferencing platform under the management and control of the court.

<u>Technical Requirements</u>

Parties are required to provide a reliable computer, tablet, or smartphone with the following features:

- Camera;
- Microphone;
- Scanner
- Printer
- Strong, secured (password protected) internet connection (DO NOT USE PUBLIC WIFI); and
- A private, quiet space with a simple background and adequate lighting.

Confidentiality

To ensure confidentiality throughout the mediation session parties will abide by the following:

• Stay in a private space throughout the mediation session;

• Do not allow third parties to be present in the room with you without the consent of the Mediator and all parties. Any permitted third parties must sign the court's Confidentiality Agreement in Form M4;

• Use a private, secured internet connection; and

• Recording mediation sessions is strictly prohibited.

Prior to the Mediation

Once the mediation has been scheduled, the Mediation Cordinator will send you and/or your legal practitioner a link to access the mediation, which will include a meeting ID and a password.

Please plan on joining the mediation at least 15 minutes prior to the start time to ensure that you are able to join the meeting with your device.

To join the mediation you will click on the link that was e-mailed to you and/or your legal practitioner. After clicking on the link, you may be prompted to download the video conferencing platform if you have not already done so. Please download the application where necessary. (NOTE: If you are on a smartphone, you may be prompted to download the free video conference app. Please do this at least one day prior to the mediation session.)

Prior to entering the mediation you will be asked to enter the Meeting ID and Password which is listed in the e-mail from the Mediation Cordinator. Please ensure that you sign in with your first and last names. Upon arrival you may be placed in a virtual "waiting room." The Mediator or Mediation Coordinator will then admit you into the online meeting. When you are admitted, please be sure to click join with computer audio when prompted. Please also mute your audio once audio has been connected, until you are permitted to speak by the Mediator. Put your camera on when the mediation session commences.

<u>Virtual Break-Out Rooms</u>

During the remote mediation session, the Mediator may wish to meet with each party and their legal practitioner privately. In order to do so, the Mediator will place you in a private virtual break-out room.

When you are in a virtual break-out room, you will not be able to see or hear anyone who is not present in your virtual break-out room. Anyone who is not in your virtual break-out room cannot hear or see you, including the Mediator.

The Mediator may go back and forth between the break-out rooms and the joint conference room.

Screen Sharing

During the mediation it will be possible to share your screen in order to share documents, photographs, or information with the Mediator and/or the other party/parties. Please feel free to ask the Mediator about this feature.

In the Event of Technical Difficulty

In the event you have technical difficulties during the mediation session please try the following:

1) Exit the video conferencing platform and try to re-enter the mediation via the link sent to you and/or your legal practitioner by the Mediation Coordinator; and

2) If you are unable to re-enter, please contact the Mediation Coordinator/ court office, the Mediator or your legal practitioner immediately, to report your technical difficulties.

EIGHTH SCHEDULE

PERMITTED CASES

The following categories of offences may be subject to the mediation process provided that the maximum penalty for the types of offences listed below does not exceed 3 years imprisonment:

i. Offences against the person, including but not limited to: assault, assault occasioning actual bodily harm, battery, false imprisonment, unlawful wounding, harassment, stalking;
ii. Offences under the Trespass to Property Legislation of a Member State or Territory and related to the damage to property;
iii. Offences related to the preservation of public peace and good order (e.g. fighting, drunk/disorderly behaviour);
iv. Theft / Stealing (including of animals) and praedial larceny;
v. Other offences not specifically listed where the penalty does not exceed 3 years imprisonment;
vi. Any other offence that the Judicial Officer in his or her discretion determines is suitable for criminal mediation excluding offences listed under the Ninth Schedule.

NINTH SCHEDULE

CASES NOT PERMITTED

The following categories of offences will not be subject to the mediation process:

i. Murder;
ii. Terrorism including terrorist financing;
iii. Treason;
iv. Offences under the Sexual Offences Act;
v. Kidnapping, illegal restraint and hostage-taking;
vi. Trafficking in persons and migrant smuggling;
vii. Grievous bodily harm;
viii. Extortion;
ix. Participation in an organised criminal group and racketeering;
x. Piracy;
xi. Illicit arms and ammunition trafficking;
xii. Offences involving: police officers, customs officers and officers of the Port Authority in the course of the performance of their duties and officers of the court as victims or as defendants in cross-charges;
xiii. Offences involving the possession or use of a dangerous instrument, a dangerous or deadly weapon, a firearm or an imitation firearm;
xiv. Offences under the Dangerous Drugs and Drugs Misuse Acts and other similar enactments;
xv. Aggravated offences;
xvi. Offences against the Administration of Justice; and
xvii. Cases where public policy militates against mediation.

TENTH SCHEDULE

PRACTICE FORMS

Form M1: Mediation Referral Order

[*First Schedule paragraphs 1.13, 2.1*]

The Eastern Caribbean Supreme Court

In the High Court of Justice

OR

In the Magistrate's Court

District:

[State/Territory]

Case No.

Between

A.B.	**Complainant**
and	
C.D.	**Defendant (Offender)**

Mediation Referral Order

Made the day of 20 …

Upon this matter coming on before:

The Hon. Justice/Master/Magistrate

[And Upon Hearing

[And Upon the Complainant and/or Offender being present]

AND UPON THE COURT being of the opinion that the parties should try to resolve this criminal matter by way of mediation;

AND THE PARTIES having agreed that the matter be referred to mediation by signing the relevant Consent Forms;

IT IS ORDERED THAT:

(1) The parties to these proceedings are required to attend a mediation session with a Mediator from the Roster of Mediators (Criminal Matters) within 45 days from today's date. The court has ordered that the mediation will be conducted by [Mediator].

(2) These proceedings are stayed pending the outcome of mediation.

(3) The parties are required to sign an Agreement to Mediate and a Confidentiality Agreement at the commencement of the mediation session.

(4) The case will be listed on the [insert date] for [case management directions/trial directions/trial] unless;

(a) an agreement has been reached and the Mediator advises the court of the Restitution Agreement, or

(b) the parties request in writing no later than 3 days before the hearing for an extension of time for the mediation to be held/continued and the court grants it.

By the Court

[SEAL]

Registrar/Clerk of Court

Form M1A: Application for Referral to Mediation by the Parties

[*First Schedule paragraphs 1.2, 1.3, 2.2]*

Heading: *same as in Form M 1*

APPLICATION FOR REFERRAL TO MEDIATION BY THE PARTIES

TAKE NOTICE that:

1. We the undersigned herein, apply for referral to mediation of the criminal case.

2. Particulars of the above Parties:

Surname ----------

First Name ----------

Company Name ----------

Residential address ----------

Business address ----------

Postal address ----------

Telephone ----------

Mobile Phone ----------

E-Mail Address ----------

Surname ----------

First Name ----------

Company Name ----------

Residential address ----------

Business address ----------

Postal address ----------

Telephone ----------

Mobile Phone ----------

E-Mail Address ----------

Signed: ---------- Party/Legal Practitioner
(Name, address, telephone number, email)
(Attach copies of relevant documents)

---------- Parent/Appropriate Adult
(Name, address, telephone number, email)
(Attach copies of relevant documents)

---------- Party/Legal Practitioner
(Name, address, telephone number, email)
(Attach copies of relevant documents)

---------- Parent/Appropriate Adult
(Name, address, telephone number, email)
(Attach copies of relevant documents)

To: The Case Manager and the Mediation Coordinator

Form M1B: Offender or Alleged Offender Consent Form

[*First Schedule paragraph 1.4 (b)*]

Heading: *same as in Form M 1*

OFFENDER OR ALLEDGED OFFENDER CONSENT FORM

Consent of Person *[Parent/Appropriate Adult] charged with a Permitted Offence to be Referred to Mediation

I _____ of

_____(*address*)

having been arrested and charged with the offence of

_____ do hereby signify my consent to be referred to a criminal mediation process.

…….. ……

Signature of person charged Date

…….. ……

Signature of parent/appropriate adult Date

***Delete the option which does not apply.**

To: The Case Manager and the Mediation Coordinator

Form M1C: Victim Consent Form

[*First Schedule paragraph 1.4 (b)*]

Heading: *same as in Form M 1*

VICTIM CONSENT FORM

Consent of Victim *[Parent/Appropriate Adult] impacted by a Permitted Offence to be Referred to Mediation.

I _____ of

_____(address)

having been impacted by an offence of

_____ do hereby signify my consent to participate in a criminal mediation process.

…….. ……

Signature of victim Date

…….. ……

Signature of parent/appropriate adult Date

***Delete the option which does not apply.**

To: The Case Manager and the Mediation Coordinator

Form M2: Notice of Scheduled Mediation

[First Schedule *paragraph 9.1(b)*]

Heading: same as in Form M 1

Notice of Scheduled Mediation

TAKE NOTICE that the court has selected *(Name of Mediator)* from the Roster of Mediators (Criminal Matters). The mediation is scheduled to take place on the……day of …… *(date)* from ……. to …… *(time)* at the court office/office of the Mediation Coordinator at ……... *(address)* or by electronic means to be announced.

You are required to attend up to a 3-hour mediation session. If you have a legal practitioner representing you in this proceeding, he/she may attend.

When you attend the mediation session, you should bring with you any documents that you consider of central importance to your case. You should plan to remain throughout the scheduled time.

Dated:

Signed: ----------

Mediation Coordinator

(Name, address, telephone number, email)

To: The Mediator

(Name, address, telephone number, email)

And To: Victim/Victim's Legal Practitioner (and Parent/Appropriate Adult)

(Name, address, telephone number, email)

And To: Offender/Offender's Legal Practitioner (and Parent/Appropriate Adult)

(Name, address, telephone number, email)

Form M3: Certificate of Non-Compliance

[*Substantive Practice Direction paragraphs 15.3(e), 16.4,*]

[*First Schedule paragraphs 13.1, 14.1, 16.1*]

Heading: *same as in Form M 1*

Certificate of Non-Compliance

TAKE NOTICE that:

- ☐ The victim (and parent/appropriate adult) failed to attend the mediation session.
- ☐ The offender (and parent/appropriate adult) failed to attend the mediation session.
- ☐ The victim (and parent/appropriate adult) attended the mediation but did not complete Form M7.
- ☐ The offender (and parent/appropriate adult) attended the mediation but did not complete Form M7.
- ☐ The victim's legal practitioner attended the mediation but did not complete Form M8.
- ☐ The offender's legal practitioner attended the mediation but did not complete Form M8.
- ☐ The victim opted out of the mediation session after it started.
- ☐ The offender opted out of the mediation session after it started.
- ☐ Other instances of non-compliance. Please provide brief details below without compromising the requirement of confidentiality.

Additional Notes by Mediator

TAKE NOTICE that:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Dated: ----------

Signed: ----------

Mediator

(Name, address, telephone number, email)

To: Mediation Coordinator

(Name, address, telephone number, email)

And to: The Registrar/Clerk of Court

(Name, address, telephone number, email)

Form M4: Confidentiality Agreement

[*First Schedule paragraphs 10.2, 10.3*]

Heading: *same as in Form M 1*

Confidentiality Agreement

The parties will participate in a mediation session to be conducted in accordance with the Practice Direction regarding Court-Connected Mediation (Criminal Division). The parties agree that:

1) statements made and documents produced in a mediation session and not otherwise discoverable are not subject to disclosure through discovery or any other process and are not admissible into evidence for any purpose, including impeaching credibility;
2) the notes, records and recollections of the Mediator conducting the session are confidential and protected from disclosure for all purposes;
3) where a mediation has been finalised, all notes taken at any session in respect of the mediation will be destroyed in the presence of the parties;
4) where a mediation is held by using electronic means the parties will ensure that only persons authorized by the Mediator to attend are present. Should a party breach this provision of the Confidentiality Agreement, the Mediator may terminate the session and inform the court of the reasons for the termination.
5) no recordings or capture of information by electronic devices will be allowed in any mediation session;
6) at no time will any party summon, subpoena or call the Mediator as a witness to testify as to the fact of the mediation or as to any oral or written communication made at any stage of the mediation;
7) this Agreement when signed in counterparts will be as binding and effectual as one in respect of which all parties have signed as a single document;
8) delivery of an electronically scanned executed counterpart of this Agreement by facsimile or electronic mail will be equally effective as delivery of a manually executed counterpart of this Agreement; and
9) any party delivering an executed counterpart of this Agreement by facsimile or electronic mail will also deliver a manually executed counterpart of this Agreement, but failure to do so will not affect the validity, enforceability, or binding effect of this Agreement.

Each of the parties and their legal practitioners (and their parents/appropriate adults) have read this Agreement and agree to proceed with the mediation on the terms contained herein.

Dated:

…….
Victim

……
Legal Practitioner for the Victim

……
Parent/Appropriate Adult

……
Complainant

……
Legal Practitioner for the Complainant

……
Offender

……..
Legal Practitioner for the Offender

……
Parent/Appropriate Adult

……
Third Party A

……..
Third Party B

To: The Mediation Coordinator

(Name, address, telephone number, email)

Form M5: Notice of Outcome of Mediation

[Substantive Practice Direction paragraphs 12.6, 15.3(f)]

[First Schedule paragraphs 6.1, 16.1, 17.1]

Heading: *same as in Form M 1*

Notice of Outcome of Mediation

TAKE NOTICE that a mediation session was scheduled/conducted in this proceeding on the ……... day of ……., 20……. *(Date).*

- ☐ The parties reached agreement prior to the mediation session.
- ☐ The parties reached agreement as a result of the mediation session. The terms of the Restitution Agreement on all issues are hereto annexed.
- ☐ The parties did not reach an agreement.
- ☐ A party/the parties did not attend the mediation session.
- ☐ The mediation session was terminated by the Mediator. Reasons are attached.
- ☐ The parties require more time to mediate. A further session has been scheduled for …….
- ☐ The Mediator and the parties agreed that a Restitution Agreement could not be reached at the mediation session.

(**Please check the applicable box**)

Additional Notes by Mediator

TAKE NOTICE that:

_____

_____

_____

_____

_____

Dated: ----------

Signed: ----------

The Mediator
(name, address, telephone number, email)

Signed: ----------

The Mediation Coordinator

To: The Registrar/Clerk of Court/Criminal Division Manager
(Name, address, telephone number, email)

Form M6: Order Subsequent to Restitution Agreement

[First Schedule paragraph 18.14]

Heading: *same as in Form M 1*

Order Subsequent to Restitution Agreement

Made the day of 20 …

Upon this matter coming on before:

The Hon. Justice/Master/Magistrate

[And Upon Hearing

[And Upon Reading

[And Upon the Victim and the Offender being present]

Upon this matter having been referred to mediation

And upon the parties having agreed to the terms set out in the signed Restitution Agreement annexed hereto;

IT IS ORDERED THAT
□The offender will comply with all of the commitments set forth in the signed Restitution Agreement.
□The case will be listed on the [insert date] for [case management directions/trial directions/trial] unless;
(a) the parties request in writing, no later than 3 days before the return date, an extension of time for the performance of the terms of the Restitution Agreement and the court grants it.
□The court will make a final order in relation to the charges against the offender on the return date.
□All further proceedings on issues where agreement has been reached during the mediation process in this matter are deemed to be concluded except for the purpose of carrying into effect the terms of the said Restitution Agreement.

For that purpose, the parties have permission to apply to the Court.

BY THE COURT

REGISTRAR/CLERK OF COURT

Form M7: Evaluation Form for Parties

[Substantive Practice Direction 16.2, 16.4]

EVALUATION FORM FOR PARTIES

Please fill out this form after the mediation session and return it to the Mediation Coordinator. All responses to this questionnaire are strictly confidential.

Name of the Mediator_____

Date of the Mediation: _____

Are you the: Î Victim Î Offender Î Parent/Appropriate Adult of the Victim/Offender Î Other (Please Specify)

Age Group

a. ☐18 – 25
b. ☐26 – 35
c. ☐36 – 45
d. ☐46 – 55
e. ☐56+

Gender

a. ☐Male
b. ☐Female

Have you participated in a criminal mediation process before?

a. ☐Yes
b. ☐No

Did you have a legal practitioner represent you in this case? Î yes Î no

If NOT, did you have any difficulty representing yourself? Î yes Î no

Did you reach an agreement in your case? Î yes Î no

If YES,

(a) Are you satisfied with the terms of the Restitution Agreement? Î yes Î no
(b) In your opinion will this resolve the case? Î yes Î no
(c) Do you believe the other party will live up to the terms of the Restitution Agreement? Î yes Î no

If NO,

Do you think that the Mediator did everything he/she could to facilitate a Restitution Agreement? Î yes Î no

Were you satisfied with the mediation facilities and surroundings? Î yes Î no Î N.A.

If NO, please identify any areas of dissatisfaction:

_____

_____

_____

_____

Please circle the number, which best reflects how you feel about each of the following statements.

	1-disagree	2-not sure	3-agree
1. The Mediator explained the mediation process clearly so that I knew what to expect during the mediation session.	1	2	3
2. The Mediator allowed me/my legal practitioner to fully present my case.	1	2	3
3. The Mediator carefully listened to my side of the case.	1	2	3
4. The Mediator asked appropriate questions to determine the facts in the case.	1	2	3
5. The Mediator helped me/my legal practitioner to generate options for reaching agreement.	1	2	3
6. The Mediator treated all parties equally.	1	2	3

7.	Overall, I was satisfied with the mediation session itself.	1	2	3
8.	Overall, I was satisfied with the way the Mediator handled the session.	1	2	3
9.	If I become a party in the future I would try mediation again.	1	2	3

Please provide any comments you wish to make regarding the Mediator or the mediation process on this form. Add any improvement you would suggest.

Thank you.

Form M8: Evaluation Form for Legal Practitioners

[Substantive Practice Direction 16.2, 16.4]

EVALUATION FORM FOR LEGAL PRACTITIONERS

Please fill out this form after the mediation session and return it to the Mediation Coordinator on completion of the mediation session. All responses to this questionnaire are strictly confidential.

Name of the Mediator _____

Are you the □ Victim's Legal Practitioner □ Offender's Legal Practitioner □ Other's Legal Practitioner

Date of Mediation_____

Outcome: ☐ ***Restitution Agreement Reached*** ☐ ***No Restitution Agreement Reached***

Mediator's level of participation: ***None*** ***Low*** ***Medium*** ***High***

Your comments are important, particularly in instances of a "poor" ranking. We would appreciate you elaborating as much as possible.

	1 – poor	**2 – satisfactory**	**3 – very good**
1. During the introductory statement, how well did the Mediator explain the mediation process to all the parties?	1	2	3
2. Were you satisfied that your client was allowed to fully present his/her case?	1	2	3
3. How well did the Mediator understand the issues involved in the case?	1	2	3
4. How well did the Mediator ask			

appropriate questions to determine the facts of the case?	1	2	3
5. How well did the Mediator clarify the key issues and interests of each party?	1	2	3
6. How well did the Mediator help the parties generate realistic options to resolve the case?	1	2	3
7. How well was the Mediator able to resolve or facilitate impasses between the parties?	1	2	3
8. Overall, how satisfied were you that the Mediator was impartial and treated both sides equally?	1	2	3
9. Overall, how satisfied were you with the PROCESS of the mediation?	1	2	3
10. Overall, how satisfied were you with the OUTCOME of the mediation?	1	2	3
11. Overall, how satisfied were you with the Mediator?	1	2	3

12. Did you think the assignment of this case to mediation facilitated (or will facilitate) its early resolution? ☐ *yes* ☐*no*

13. Do you think mediation was appropriate in this case? ☐*yes* ☐*no*

14. Were you satisfied with the way the Mediation Coordinator performed his/her duties? ☐*yes* ☐*no*

If NOT, why not:

Additional comments *(Add any improvement you would suggest):*

Form M9: Agreement to Mediate

[First Schedule paragraphs 10.2, 10.3]

The Eastern Caribbean Supreme Court

In the High Court of Justice

In the Magistrate's Court

District:

[State/Territory]

Case No.:

Between

A.B.	**Victim/ Party A**
and	
C.D.	**Offender/ Party B**

AGREEMENT TO MEDIATE

A.B. _____and C.D. _____

agree to participate in mediation to resolve the following case (set out case name and number)

We also agree to the following:

1. Information

   We will provide full accurate disclosure to the other party of all information that the Mediator and/or the other party requests if the Mediator finds

disclosure is pertinent to the mediation process and may aid in reaching agreement.

2. Confidentiality

We agree to abide by the Confidentiality Agreement set out in Form M4 of the Practice Direction on Court-Connected Mediation (Criminal Division) (PD No. of 202_).

3. Mediator's Duty

We understand and agree that the Mediator does not represent any of the parties. The Mediator has no duty to provide advice or information to either party or to ensure that we understand the consequences of our actions. The Mediator's function is to promote and facilitate voluntary resolution of the matter and the Mediator has no responsibility regarding the fairness or legality of the resolution.

4. Waiver of Rights

By our participation in court-connected mediation we, the parties, hereby waive our rights to make any claim against the Mediator, for any matter reasonably connected with or in relation to the:

(a) case between the parties;
(b) mediation; and
(c) services provided by the Mediator.

5. Evaluation of Mediation Session

We agree that upon completion of the mediation session and before leaving the mediation office or electronic platform as the case may be, we will

complete the Evaluation Form for Parties in Form M7 and ask that our legal practitioners (when in attendance) complete the Evaluation Form for legal practitioners in Form M8.

6. Execution of Agreement to Mediate

We also agree that this Agreement when signed in counterparts will be as binding and effectual as one in respect of which all parties have signed as a single document.

Delivery of an electronically scanned executed counterpart of this Agreement by facsimile or electronic mail will be equally effective as delivery of a manually executed counterpart of this Agreement.

Any party delivering an executed counterpart of this Agreement by facsimile or electronic mail will also deliver a manually executed counterpart of this Agreement, but failure to do so will not affect the validity, enforceability, or binding effect of this Agreement.

Dated: ----------

…….

Victim

……

Parent/Appropriate Adult for Victim

……

Offender

……

Parent/Appropriate Adult for the Offender

To: The Mediation Coordinator

(Name, address, telephone number, email)

□ I certify that I have had this document read out to me and I understand the contents herein.

Mark of the Victim/Offender (Parent/Appropriate Adult)

in the presence of: _____

Form M10: Application for Placement on the Roster of Mediators

[Substantive Practice Direction paragraph 3.7]

APPLICATION FOR PLACEMENT ON THE ROSTER OF MEDIATORS

Member State or Territory:

Please print clearly:

PART ONE: PERSONAL INFORMATION

Name:----------
Surname First name Middle initial

Mailing Address:----------

Telephone number Fax number E-mail address

PART TWO: BRIEF BIOGRAPHY
Please provide a brief biography (indicate any experience as a Mediator, your educational background and familiarity with the Criminal Justice System):

PART THREE: DECLARATION:

1. I the undersigned, having provided evidence that I:

i. have satisfactorily completed the training for Mediators leading to certification by the Judicial Education Institute of the Eastern Caribbean Supreme Court/the University of the West Indies or another suitable body/institution as recognised by the Mediation Committee;
ii. am a fit and proper person;
iii. am of good standing, where previously on any of the court's Rosters;
iv. do not have any unspent criminal convictions that may be relevant to my role as Mediator and, in particular, any conviction involving fraud or other dishonesty;
v. possess a favourable Police Certificate of Character, not more than six months old; and
vi. have submitted 3 references, an up-to-date copy of my resume and a copy of valid picture identification.

2. Do hereby apply to be considered for placement on the Roster of Mediators (Criminal Matters) of ---------- [Member State or Territory]

3. I also acknowledge that if I am selected for placement on the Roster of Mediators (Criminal Matters), I will be required to pay the Mediator's fee prior to being placed on the Roster and every anniversary year thereafter.

By signing and submitting this application, I consent to the Mediation Committee requesting and obtaining further information from me and such information from third parties, for the purpose of verifying the information I have submitted.

Signed: ---------- **Dated: ----------**

To: The Mediation Committee