

SUPPLEMENT TO



ANTIGUA AND BARBUDA OFFICIAL GAZETTE

OF THURSDAY 22nd April, 2021

Vol. XLI — ISSUE NO. 27

HIGH COURT EDITION



THE ANTIGUA AND BARBUDA OFFICIAL GAZETTE

SUPPLEMENTARY

VOL: XLI

Thursday 22nd April, 2021

No. 27

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Published by the Ministry of Justice & Legal Affairs
Denise Dublin, Editor of the Official Gazette
denise.dublin@ab.gov.ag / antiguagazette@gmail.com
Government Complex, P.O. Box 118, Parliament Drive,
St. John's, Antigua.

Printed at the Government Printing Office,
Antigua and Barbuda, By Noel F. Abraham,
Government Printer.

— By Authority, 2021

[Price \$23.60]

PUBLICATION WITHIN THE OFFICIAL GAZETTE

The Official Gazette, the official newspaper of the Government of Antigua and Barbuda, is published every Thursday either online or in print form at the Government Printery.

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Ms. Denise Dublin
Editor of the Official Gazette
Ministry of Justice & Legal Affairs
Parliament Drive
Queen Elizabeth Highway
P.O. Box 118
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The deadline for submitting notices for publication in the principal edition is midday Monday on every week for all commercial and Government notices, in the week of publication.

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The deadline for cancelling notices in the principal edition is 12.00 midday Wednesday. Please call the Gazette Office immediately to cancel a notice, and confirm by email.

Advertising Rates

Publication Fee \$106.20 Eastern Caribbean Dollars.
Annual Subscription Fee: \$215 Eastern Caribbean Dollars

*Advertising rates are not negotiable.

Antigua and Barbuda Official Gazettes are published directly online at www.gazette.gov.ag

All editions are also available on subscription from the Antigua and Barbuda Government Printery, St. John’s, Antigua (telephone: (268) 562-5168/ (268) 462-0510).

NOTICES



A Compendium Sentencing Guideline of
The Eastern Caribbean Supreme Court

Sexual Offences

Re-Issue
12th April 2021

This Sentencing Guideline is made pursuant to the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019.¹

The previous Sentencing Guideline for Sexual Offences which came into effect on the 1st day of September, 2020 is revoked and replaced by this Sentencing Guideline.

Introduction

This compendium sentencing guideline will deal with the following sexual offences:

- Rape (page 4);
- Unlawful sexual intercourse (page 11);
- Aggravated unlawful sexual intercourse (page 19);
- Indecency (page 26); and
- Incest (page 33).

Applicability of Guideline

In sentencing for these offences, the Chief Justice has issued guidelines² and the court must apply the relevant guidelines and sentence accordingly, unless to do so would not be in the interests of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guideline must be given when passing sentence.

It is expected that every court will follow the steps below, with each relevant step being identified to the offender in public before the sentence is passed. Starting points and ranges apply to all adult offenders³ whether they have pleaded guilty or been convicted after a trial. Credit for a guilty plea is taken into consideration only at Step 3.

Step 1

Consider the seriousness of the offence. Find the starting point by consulting the guideline and the grid below. Then adjust the figure within the range for the aggravating and mitigating factors of the offence.

Step 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

Step 3

Adjust the figure on assessing discount for any plea of guilty, if applicable.

Step 4

Adjust the figure on assessing totality if sentencing for more than one offence.

Step 5

Give credit for time served on remand.

Step 6

Finally, consider ancillary orders, compensation, restraining orders, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

RAPE - Section 1

In the nine member states and territories of the ECSC there are different maximum sentences for the offence of rape.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A rape case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 – Exceptional

- Extreme psychological or physical harm supported by evidence, (this can come from the victim)
- Extreme degradation/humiliation
- Use of a firearm or weapon
- Use of extreme force
- The extreme impact caused by a combination of category 2 factors may elevate to category 1
- Victim is a child under 10 years of age
- Victim is 65 years or over

CONSEQUENCE - Category 2 – High

- Serious psychological or physical harm supported by evidence, (this can come from victim)
- Significant degradation/humiliation
- Significant use of force
- Victim is a child under 13 years of age
- Pregnancy as a consequence of offence
- STI as a consequence of offence

CONSEQUENCE - Category 3 - Significant

- Category 1 and 2 factors not present

SECOND STAGE

The second stage is to assess the seriousness of the offence by reference to a non-exhaustive list of factors to establish the culpability of the offender.

Levels of seriousness may be indicated by one or more of the following:

SERIOUSNESS - Level A - High

- Abuse of position of trust
- Abduction
- Significant degree of planning, including grooming or enticement
- Group or gang attack
- Disparity of age
- Prolonged detention/sustained incident
- History of violence against the victim
- Use or threats of violence to prevent reporting
- Recording of incident, and/or distribution, including uploading it to the internet
- Forced/uninvited entry into victim's home
- Use of drugs or alcohol on victim designed to facilitate the offence
- Offence motivated by hostility to race, religion, disability, or group identity
- Offence motivated by or demonstrating hostility to the victim based on sexual orientation or sexual identity
- Commercial exploitation

SERIOUSNESS - Level B - Lower

- None of the above present

THIRD STAGE

Having determined the category and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'⁴.

Percentages are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness - Level A	Seriousness - Level B
Consequence – Category 1	Starting point 75% x Range 60%–90% x	Starting point 65% x Range 50%–80% x
Consequence – Category 2	Starting point 50% x Range 35%–65% x	Starting point 40% x Range 25%–55% x
Consequence – Category 3	Starting point 40% x Range 25%–55% x	Starting point 25% x Range 20%–30% x

FOURTH STAGE

Having determined the starting point, consider the following list of non-exhaustive aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Victim is particularly vulnerable due to personal circumstances which can include mental or physical disability
- Offence committed in the presence of others (eg relatives, children, or partner of the victim)
- Ejaculation
- Use of drug or alcohol by the offender

MITIGATING FACTORS of the offence

- Some initial consensual sexual activity
- No violence used beyond that inherent in the offence

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for sexual offences
- Relevant convictions for other offences
- Offence committed whilst on bail
- Knowledge of infection with STI

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Youth and/or lack of maturity where it explains offending
- Physical or mental disability or ill-health

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁵.

STEP 6

Finally, consider ancillary orders, compensation, restraining orders, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

UNLAWFUL SEXUAL INTERCOURSE – Section 2

In the nine member states and territories of the ECSC the offence of unlawful sexual intercourse (USI) can be described in different language and have different maximum sentences. These offences span a wide range of criminality. At the lowest end of the sentencing range, non-custodial sentences or diversion from the criminal justice process may be appropriate. This may be particularly the case in consensual relationships between young people.

There are usually two categories of USI, each with different sentencing powers, which in this guideline will be divided between 'USI' and 'aggravated USI'. USI is where the girl is a young person under 16, being usually 14 or 15 (13 in some States/Territories), often attracting a maximum sentence of ten years. Aggravated USI is where the girl is child under 13 (under 14 in some States/Territories), often attracting a maximum sentence of life imprisonment. A court will need to be sensitive to this difference, and in particular to how USI with a girl aged 13 can lead to very different sentences in the Member States and Territories depending on whether a person aged 13 is in the first or second category of USI.

USI WITH A PERSON UNDER 16 (being 15 or 14, or 13 in some States/Territories)**STEP 1**

The first step in constructing a sentence is to establish the starting point for the offence.

A case of unlawful sexual intercourse requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 – Exceptional

- Extreme psychological or physical harm supported by evidence, (this can come from the victim)
- Extreme degradation/humiliation
- The extreme impact caused by a combination of category 2 factors may elevate to category 1

CONSEQUENCE - Category 2 – High

- Significant psychological or physical harm supported by evidence, (this can come from the victim)
- Significant degradation/humiliation
- Significant use of force
- Pregnancy as a consequence of the offence
- STI as a consequence of the offence

CONSEQUENCE - Category 3 – Significant

- Category 1 and 2 factors not present

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of seriousness may be indicated by one or more of the following:

SERIOUSNESS - Level A - High

- Abuse of position of trust, especially in a familial relationship
- Abduction
- Significant degree of planning, including grooming or enticement
- Group or gang attack
- Significant disparity of age
- Prolonged detention/sustained incident
- Violence or threats of violence
- Steps taken to prevent reporting
- History of violence against the victim
- Steps taken to prevent reporting
- Recording of incident, and/or distribution, including uploading it to the internet
- Use of a weapon to frighten or injure
- Forced/uninvited entry into victim's home
- Use of drugs or alcohol on victim designed to facilitate the offence

SERIOUSNESS - Level B - Lesser

- None of the above present

THIRD STAGE

Having determined the category of harm and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'.

Percentages are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness - Level A	Seriousness - Level B
Consequence – Category 1	Starting point 65% x Range 50%–80% x	Starting point 45% x Range 30%-60% x
Consequence – Category 2	Starting point 40% x Range 25%–55% x	Starting point 20% x Range 5%-35% x
Consequence – Category 3	Starting point 20% x Range 5%-35% x	Starting point Likely non-custodial

FOURTH STAGE

Having determined the starting point, consider the following list of non-exhaustive aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of offence

- Victim is particularly vulnerable due to personal circumstances which can include mental or physical disability
- Offence in the presence of others, especially children
- Ejaculation

MITIGATING FACTORS of offence

- No violence
- Parties involved in a consensual relationship with little disparity in age

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for sexual offences
- Relevant convictions for other offences
- Offence committed whilst on bail
- Knowledge of infection with STI

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Evidence of genuine attempt to address offending behaviour
- Youth and/or lack of maturity where it explains offending
- Physical or mental disability or ill-health

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁶.

STEP 6

Finally, consider ancillary orders, compensation, restraining orders, etc., if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

AGGRAVATED UNLAWFUL SEXUAL INTERCOURSE – section 3**USI WITH A PERSON UNDER 13 (or under 14 in some States/Territories)****STEP 1**

The first step in constructing a sentence is to establish the starting point for the offence.

A case of unlawful sexual intercourse requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 – Exceptional

- Extreme psychological or physical harm supported by evidence, (this can come from the victim)
- Extreme degradation/humiliation
- The extreme impact caused by a combination of category 2 factors may elevate to category 1
- Victim is a child under 10 years of age

CONSEQUENCE - Category 2 – High

- Serious psychological or physical harm supported by evidence, (this can come from the victim)
- Significant degradation/humiliation
- Significant use of force
- Pregnancy as a consequence of the offence
- STI as a consequence of the offence

CONSEQUENCE - Category 3 – Significant

- Category 1 and 2 factors not present

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of seriousness may be indicated by one or more of the following:

SERIOUSNESS - Level A - High

- Abuse of position of trust, especially in a familial relationship
- Abduction
- Significant degree of planning, including grooming or enticement
- Group or gang attack
- Significant disparity of age
- Prolonged detention/sustained incident

- Violence or threats of violence
- History of violence against the victim
- Steps taken to prevent reporting
- Recording of incident, and/or distribution, including uploading it to the internet
- Use of a weapon to frighten or injure
- Forced/uninvited entry into victim's home
- Use of drugs or alcohol on victim designed to facilitate the offence

SERIOUSNESS - Level B - Lesser

- None of the above present

THIRD STAGE

Having determined the category of harm and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'⁷.

Percentages are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness - Level A	Seriousness - Level B
Consequence – Category 1	Starting point 65% x Range 50%–80% x	Starting point 40% x Range 25%–55% x
Consequence – Category 2	Starting point 40% x Range 25%–55% x	Starting point 20% x Range 5%–35% x
Consequence – Category 3	Starting point 20% x Range 5%–35% x	Starting point 5% x Range non-custodial–15% x

FOURTH STAGE

Having determined the starting point, consider the following list of non-exhaustive aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of offence

- Victim is particularly vulnerable due to personal circumstances which can include mental or physical disability
- Offence in the presence of others, especially children
- Ejaculation

MITIGATING FACTORS of offence

- No violence
- Parties involved in a consensual relationship with little disparity in age

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for sexual offences
- Relevant convictions for other offences
- Offence committed whilst on bail
- Knowledge of infection with STI

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Evidence of genuine attempt to address offending behaviour
- Youth and/or lack of maturity where it explains offending
- Physical or mental disability or ill-health

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁸.

STEP 6

Finally, consider ancillary orders, compensation, restraining orders, etc., if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

INDECENCY – section 4

In the nine member states and territories of the ECSC offences of indecency have different maximum sentences. For the purposes of this guideline, the word 'indecency' will be used to cover all types of offences involving indecent assault, and gross or serious indecency falling short of sexual intercourse.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

An indecency case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 – Exceptional

- Extreme psychological and/or physical harm supported by evidence (this can come from the victim)
- Extreme degradation/humiliation
- Use of extreme force
- Victim is under 10 years of age
- Victim is 65 years and over

CONSEQUENCE - Category 2 - High

- Serious psychological and/or physical harm supported by evidence (this can come from the victim)
- Significant degradation/humiliation
- Use of significant force
- Victim is under 16 years of age
- STI as a consequence of the offence

CONSEQUENCE - Category 3 - Significant

- Category 1 and 2 factors not present

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of seriousness may be demonstrated by one or more of the following:

SERIOUSNESS – Level A - High

- If indecent assault, contact with any genitals; if serious indecency, penetration of the mouth by the penis, of the vagina by anything, and any skin to skin contact of both genitals.
- Abuse of position of trust
- Abduction
- Significant degree of planning, including grooming or enticement
- Substantial duration of offence
- Violence or threats of violence
- Use of weapon to frighten or injure
- Steps taken to prevent reporting
- Recording of incident, and/or distribution, including uploading it to the internet
- Forced/uninvited entry into victim's home
- Use of drugs or alcohol designed to facilitate the offence
- Significant disparity of age
- Offence has been frequently repeated
- Offence motivated by or demonstrating hostility to the victim based on sexual orientation or sexual identity

SERIOUSNESS – Level B - Medium

- Contact between part of the offender's body (other than genitalia) with part of the victim's body (other than genitalia)
- Other cases where characteristics for level A are not present

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'.

Percentages are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness - Level A	Seriousness - Level B
Consequence - Category 1	Starting point 65% x Range 50%-80% x	Starting point 50% x Range 35%-65% x
Consequence - Category 2	Starting point 45% x Range 30%-60% x	Starting point 30% x Range 15%-45% x
Consequence - Category 3	Starting point 20% x Range 5%-35% x	Starting point Likely non-custodial

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Victim is particularly vulnerable due to personal circumstances which can include mental or physical disability or poverty
- Ejaculation
- Offence in the presence of others, especially children

MITIGATING FACTORS of the offence

- Offender and victim are teenagers similar in age

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for sexual offences
- Relevant convictions for other offences
- Offence committed whilst on bail
- Knowledge of infection with STI

MITIGATING FACTORS of offender

- Good character
- Physical or mental disability or ill-health
- Genuine remorse
- Evidence of genuine attempt to address offending behaviour
- Youth and/or lack of maturity where it explains offending

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁹.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

INCEST – section 5

In the nine member states and territories of the ECSC the offence of incest carries different maximum sentences.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

An incest case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 – Exceptional

- Extreme psychological and/or physical harm supported by evidence (this can come from the victim)
- Extreme degradation/humiliation
- The victim is a child under 13 years
- The victim is particularly vulnerable
- Pregnancy results as a consequence of the offence

CONSEQUENCE - Category 2 – High

- Serious psychological and/or physical harm supported by evidence (this can come from the victim)
- Significant degradation/humiliation
- Victim is a child under 16 years of age
- STI results as a consequence of the offence

CONSEQUENCE - Category 3 - Significant

- Category 1 and 2 factors not present

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of seriousness may be demonstrated by one or more of the following:

SERIOUSNESS – Level A - High

- Significant degree of planning, including grooming or enticement
- Abuse of position of trust
- Specifically targeting a vulnerable child
- The offence has been frequently repeated
- Violence or threats of violence
- Use of a weapon to frighten or injure
- Steps taken to prevent reporting
- Significant disparity of age
- More than one family member involved in the commission of the offence
- Offence motivated by hostility to race, religion, disability, or group identity
- Offence motivated by or demonstrating hostility to the victim based on sexual orientation or sexual identity
- Intimidation

SERIOUSNESS – Level B – Lesser

- Any other case

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'¹⁰.

Percentages are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness - Level A	Seriousness - Level B
Consequence - Category 1	Starting point 65% x Range 50%-80% x	Starting point 45% x Range 30%-60% x
Consequence - Category 2	Starting point 50% x Range 35%-65% x	Starting point 35% x Range 20%-50% x
Consequence - Category 3	Starting point 35% x Range 20%-50% x	Starting point 15%x Range non-custodial-30% x

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Act was repeated several times
- Use of threats including blackmail
- Use of alcohol/drugs to facilitate offence
- Significant degree of planning
- Recording of incident, and/or distribution, including uploading it to the internet
- Offence in the presence of others, especially children
- Ejaculation

MITIGATING FACTORS of the offence

- Single incident or short lived series
- Victim a similar age to the defendant
- Willing participation of the victim
- Parties previously unknown to each other
- Parties never lived together in the same household or family unit
- No violence or threat of violence

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for sexual offences
- Relevant convictions for other offences
- Offence committed whilst on bail
- Knowledge of infection with STI

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Physical or mental disability or ill-health
- Evidence of genuine attempt to address offending behaviour'
- Youth and/or lack of maturity where it explains offending

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision¹.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

EFFECTIVE DATE

This Sentencing Guideline will come into effect on the 12th day of April, 2021.

Made this 6th day of April, 2021.

Sgd.

Dame Janice M. Pereira, DBE
Chief Justice

Sgd.

Mde Gertel Thom
Justice of Appeal

Sgd.

Mr. Iain Morley
High Court Judge



A Compendium Sentencing Guideline of The Eastern Caribbean Supreme Court

Violence Offences

This Sentencing Guideline is made pursuant to the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019.¹

INTRODUCTION

This compendium sentencing guideline will deal with the following offences of violence:

- Inflicting unlawful violence with intent to cause really serious harm (page 4);
- Unlawful violence without intent to cause really serious harm (page 11); and
- Kidnapping (page 18).

Sections concerning other types of violence may be added in time.

Applicability of Guideline

In sentencing for these offences, the Chief Justice has issued guidelines² and the court must apply the relevant guidelines and sentence accordingly, unless to do so would not be in the interests of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guideline must be given when passing sentence.

It is required that every court will follow the steps below, with each relevant step being identified to the offender in public before the sentence is passed. Starting points and ranges apply to all adult offenders³ whether they have pleaded guilty or been convicted after a trial. Credit for a guilty plea is taken into consideration only at Step 3.

Step 1

Consider the seriousness of the offence. Find the starting point by consulting the guideline and the grid below. Then adjust the figure within the range for the aggravating and mitigating factors of the offence.

Step 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

Step 3

Adjust the figure on assessing discount for any plea of guilty, if applicable.

Step 4

Adjust the figure on assessing totality if sentencing for more than one offence.

Step 5

Give credit for time served on remand.

Step 6

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

INFLECTING UNLAWFUL VIOLENCE WITH INTENT TO CAUSE REALLY SERIOUS HARM

In the nine member states and territories of the ECSC there are different maxima and different articulations for the offence assault leading to 'wounding' or 'causing grievous bodily harm', (meaning really serious harm), 'with intent' to cause such harm. This guideline treats all such offences generically.

CONSTRUCTING THE SENTENCE

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A case concerning inflicting violence with intent to cause really serious harm requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - Highest

- Severe psychological or physical harm (which can be evidence from the victim)
- Severe long-term physical or psychological impact of injury (which can be evidence from the victim)
- Significant degradation/humiliation

CONSEQUENCE - Category 2 – High

- Serious psychological or physical harm

CONSEQUENCE - Category 3 – Lesser

- Lesser harm with no long term impact

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of SERIOUSNESS may be demonstrated by one or more of the following:

SERIOUSNESS – Level A - High

- Planning and premeditation
- Leading role in a group or gang attack
- Offence involves abduction
- Prolonged detention/sustained incident with repeated assault or multiple blows on the same victim
- Violence or threats of violence (beyond that which is inherent in the offence)
- Forced entry into victim's home

- Intention to commit more serious harm than actually resulted from the offence
- Offence committed against those working in the public sector or providing a service to the public
- Use of weapon, or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
- Deliberate targeting of vulnerable person
- Offence motivated by hostility to sexual orientation, race, religion, disability, or group identity

SERIOUSNESS – Level B - Lesser

- None of the above applies

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'⁴.

Percentages are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness - Level A	Seriousness - Level B
Consequence – Category 1	Starting point 75% x Range 60%-90% x	Starting point 50% x Range 35%-65% x
Consequence – Category 2	Starting point 60% x Range 45%-75% x	Starting point 35% x Range 20%-50% x
Consequence – Category 3	Starting point 45% x Range 30%-60% x	Starting point 20% x Range 5%-35% x

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Steps taken to prevent victim reporting or obtaining assistance
- Steps taken to prevent victim from assisting or supporting prosecution
- Offender motivated by revenge
- Attempts to conceal/dispose of evidence
- Blame wrongly placed on others
- Presence of others including relatives, especially children or partner of the victim
- Victim is a child or young person or particularly vulnerable, including through poverty
- Abuse of power and/or position of trust
- Commission of offence whilst under the influence of alcohol or drugs
- Domestic violence

MITIGATING FACTORS of the offence

- Serious medical condition if it helps to explain why the offence occurred
- Subordinate role in group or gang
- Lack of premeditation
- Excessive self-defence
- Significant provocation
- Isolated incident
- Seeking help by calling for medical assistance
- Offender subject to physical or mental abuse from victim

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for violence offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Physical or mental disability or ill-health
- Steps taken to address offending behavior
- Youth and/or lack of maturity where it explains offending

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁶.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

UNLAWFUL VIOLENCE WITHOUT INTENT TO CAUSE REALLY SERIOUS HARM

In the nine member states and territories of the ECSC there are different maxima and different articulations for the offence of assault with basic intent, involving recklessness, sometimes leading to 'wounding' or 'causing grievous bodily harm' (meaning really serious harm), or to 'actual bodily harm', (but where there is no intention to cause really serious harm). This guideline treats all such offences generically.

CONSTRUCTING THE SENTENCE

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A case concerning reckless unlawful violence without intent to cause really serious harm requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - Highest

- Severe psychological or physical harm (which can be evidence from the victim)
- Severe long-term physical or psychological impact of injury (which can be evidence from the victim)
- Significant degradation/humiliation

CONSEQUENCE - Category 2 – High

- Serious psychological or physical harm

CONSEQUENCE - Category 3 – Lesser

- Lesser harm with no long term impact

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of SERIOUSNESS may be demonstrated by one or more of the following:

SERIOUSNESS– Level A - High

- Violence arising in the course of another offence
- Leading role in a group or gang attack
- Offence involves abduction
- Prolonged detention/sustained incident with repeated assault on the same victim
- Violence or threats of violence (beyond that which is inherent in the offence)
- Forced entry into victim's home
- Offence committed against those working in the public sector or providing a service to the public
- Use of weapon, or weapon equivalent (for example, shod foot, head-butting, use of acid, use of animal)
- Deliberate targeting of vulnerable person
- Offence motivated by hostility to sexual orientation, race, religion, disability, or group identity

SERIOUSNESS – Level B - Lesser

- None of the above applies

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'.

Percentages are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness - Level A	Seriousness - Level B
Consequence – Category 1	Starting point 75% x Range 60%-90% x	Starting point 50% x Range 35%-65% x
Consequence – Category 2	Starting point 60% x Range 45%-75% x	Starting point 35% x Range 20%-50% x
Consequence – Category 3	Starting point 45% x Range 30%-60% x	Starting point 20% x Range 5%-35% x

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Steps taken to prevent the victim reporting
- Offender motivated by revenge
- Attempts to conceal/dispose of evidence
- Blame wrongly placed on others
- Presence of others including relatives, especially children or partner of the victim
- Victim is a child or young person or particularly vulnerable, including through poverty
- Abuse of power and/or position of trust
- Commission of offence whilst under the influence of alcohol or drugs
- Domestic violence

MITIGATING FACTORS of the offence

- Subordinate role in group or gang
- Lack of premeditation
- Excessive self-defence
- Significant provocation
- Isolated incident
- Seeking help by calling for medical assistance
- Offender subject to physical or mental abuse from victim

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for violence offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Physical or mental disability or ill-health
- Steps taken to address offending behavior
- Youth and/or lack of maturity where it explains offending

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁶.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

KIDNAPPING

In the nine member states and territories of the ECSC there are different words used to describe kidnapping, (e.g. the words 'false imprisonment' or 'unlawful confinement' are also used), and there are often different maximum sentences. For the purposes of this guideline, the word 'kidnapping' will be used generically to cover all types.

CONSTRUCTING THE SENTENCE**STEP 1**

The first step in constructing a sentence is to establish the starting point for the offence.

A kidnapping case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - Highest

- Severe psychological or physical harm (which can be evidence from the victim)
- Significant degradation/humiliation
- Severe long-term impact of detention

CONSEQUENCE - Category 2 – High

- Serious psychological or physical harm

CONSEQUENCE - Category 3 – Lesser

- Lesser harm with no long-term impact

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of SERIOUSNESS may be demonstrated by one or more of the following:

SERIOUSNESS – Level A - High

- Planning and premeditation
- Leading role in a group or gang
- Prolonged detention
- Abduction for financial gain
- Abduction for sexual offending
- Offence committed to facilitate other serious offending
- Violence or threats of violence
- Forced entry into victim's home
- Offence committed against those working in the public sector or providing a service to the public
- Use of weapon
- Deliberate targeting of vulnerable person
- Offence motivated by hostility to sexual orientation, race, religion, disability, or group identity

LESSER SERIOUSNESS – Level B - Lesser

- None of the above applies
- Involved through coercion, intimidation or exploitation

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'⁷.

Percentages are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness - Level A	Seriousness - Level B
Consequence – Category 1	Starting point 75% x Range 60%-90% x	Starting point 50% x Range 35%-65% x
Consequence – Category 2	Starting point 50% x Range 35%-65% x	Starting point 25% x Range 10%-40% x
Consequence – Category 3	Starting point 35% x Range 20%-50% x	Starting point 10% x Range non-cusdoial-25% x

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Steps taken to prevent the victim reporting
- Offender motivated by revenge
- Attempts to conceal/dispose of evidence
- Blame wrongly placed on others
- Presence of others including relatives, especially children or partner of the victim
- Abuse of power and/or position of trust
- Victim is a child or young person or particularly vulnerable, including through poverty
- Commission of offence whilst under the influence of alcohol or drugs
- Domestic violence
- Third parties are threatened

MITIGATING FACTORS of the offence

- Subordinate role in group or gang
- Lack of premeditation
- Mental disorder or learning disability, or medical condition, if it helps to explain why the offence occurred

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for kidnapping offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Evidence of genuine attempt to address offending behaviour.
- Youth and/or lack of maturity where it explains offending
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁸.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

EFFECTIVE DATE

This Sentencing Guideline will come into effect on the 12th day of April, 2021.

Made this 6th day of April, 2021.

Sgd.

Dame Janice M. Pereira, DBE
Chief Justice

Sgd.

Mde Gertel Thom
Justice of Appeal

Sgd.

Mr. Iain Morley
High Court Judge

THE EASTERN CARIBBEAN SUPREME COURT

PRACTICE DIRECTION

No. 1 of 2021

EMERGENCY MEASURES

This Practice Direction is made pursuant to Rule 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000,¹ and is applicable to all the Member States and Territories in the jurisdiction of the Eastern Caribbean Supreme Court.

The Covid-19 – Emergency Measures (Re-Issue), Practice Direction No. 5 of 2020 is revoked and substituted by this Practice Direction.

1. Introduction

1.1 This Practice Direction supplements the Rules in that it regulates the practice and procedure of the Court which has been affected by a situation, occurrence or disaster, whether through Acts of God, Force Majeure or other event, deemed by a Member State or Territory of the Court to be an emergency within that Member State or Territory which impacts the operations of the court.

1.2 This Practice Direction –

(a) is intended to facilitate the continuation of court proceedings in the Member States and Territories through the filing, service and disposition, of matters which are not presently available on the E-Litigation Portal of the Court;

(b) to facilitate remote court hearings of matters where necessary; and

(c) applies to all Civil (including Commercial), Criminal², and Family proceedings before the Supreme Court in the Member States and

Territories.

1.3 This Practice Direction will remain in force until the Chief Justice so directs.

1.4 Insofar as the Civil Procedure Rules and any other Rules of Court are inconsistent with this Practice Direction, they are modified by it.

2. Context

In this Practice Direction:

- i. ECSC means Eastern Caribbean Supreme Court;
- ii. ELP means the ECSC E-Litigation Portal;
- iii. Judicial officer means a judge, master or registrar of the court;
- iii Member States mean Antigua and Barbuda, Dominica, Grenada, St. Kitts & Nevis, Saint Lucia and St Vincent & the Grenadines;
- iv Territories mean Anguilla, Montserrat and the Virgin Islands

3. Filing in all Matters not yet Available on the E-Litigation Portal

3.1 Prescribed fees that are due on a document filed by e-mail shall be paid at the time and in the manner specified by this Practice Direction.

3.2 It is the responsibility of every Legal Practitioner (or their firm) to provide an undertaking, as set out in Form 1, to pay all filing fees which are due as a result of the documents which are filed in accordance with this Practice Direction as soon as practicable after the filing has been submitted.

3.3 Only filings in respect of which law firms have provided this undertaking under this Practice Direction shall be accepted and deemed to be filed for processing and determination by the Court.

3.4 Where the Registrar determines that it has become practicable for a legal practitioner or law firm to pay the filing fees pursuant to the undertaking and issues a request for payment, then unless payment is made within 72 hours of the request, the undertaking shall be deemed to have been breached and no subsequent documents shall be accepted for filing from that legal practitioner or law firm. Further, a Judge or Master may take the failure to make payment into account as a factor when making any costs order in respect of any application or hearing.

3.5 Every document which the Rules or the Commercial Court Practice Directions permit or require to be filed in the Registry of the High Court in the Territory of the Virgin Islands shall be filed only electronically:

- (a) by sending that document in PDF format to the appropriate e-mail address for the applicable Registry of the Supreme Court as listed in Schedule 1; and

- (b) by filing a completed E-Filing Application Header form.
- (c) Prior to any hearing, draft orders required to accompany all applications shall be filed electronically in Word format for the use of the Court.

3.6 Where a document is filed by e-mail, the party who has filed the document must also subsequently deposit one (1) hard copy of the document at the High Court Registry in their respective Member State or Territory, within seven (7) calendar days, or where the last calendar day falls on a Saturday, Sunday, public holiday or a day on which the Court Office is closed for business, the next business day, when the Court Office is open for Business.

3.7 When a document is filed, the subject line of the e-mail must contain the following information –

- (a) the title of the case;
- (b) the case number (if available) using a four-digit file number after the year *e.g. DOMHCV2017/0123*;
- (c) the date and time of any hearing to which the e-mail relates; and
- (d) the type of matter/ application being filed.

3.8 The e-mail message must contain the sender's–

- (a) identity;
- (b) telephone number; and
- (c) e-mail address,

and should be in plain text or rich text format rather than HTML.

3.9 Correspondence and documents to be filed must not be sent as text in the body of the e-mail, but rather as attachments to the e-mail in the format stipulated by the Court.

3.10 No single document filed under this paragraph should exceed 5 MB. Every such document should comply with the Rules and Practice Directions and must:

- (a) contain a header with the title of the court:

IN THE HIGH COURT OF JUSTICE**[Country]**

- (b) contain the full title of the proceedings;
- (c) contain a header with the title of the document;
- (d) reflect the name, business address, e-mail address, reference (if any), telephone number and fax number (if any) of the filer;
- (e) be dated;
- (f) be signed by the person filing it (if not an affidavit) and should not be in the name of the firm;
- (g) be signed by the person who deposes (if an affidavit);
- (h) state the name of the party on whose behalf it is filed;
- (i) state the full name of the signatory legibly below the signature;
- (j) state the address of the court; and
- (k) be properly indexed and paginated (if it is a record or bundle of documents being filed).

4. Service of Documents

- 4.1 Notwithstanding the provisions of CPR 3.11(1), every document which is required by CPR 5.6 to be served upon a Legal Practitioner may be served upon that Legal Practitioner by e-mail.
- 4.2 A party who serves a document by e-mail shall copy the court on the e-mail effecting service, using the appropriate e-mail address for the court office as specified in Schedule 1.
- 4.3 The E-mail address at which service may be effected under paragraph 4.1 is the e-mail address:
 - (a) notified in writing by that Legal Practitioner for this purpose; or
 - (b) if an e-mail address has not been notified in writing by that Legal Practitioner, service may be validly effected upon that Legal Practitioner by sending that document to:

- (i) the e-mail address used on the letterhead of that Legal Practitioner or previously used by that Legal Practitioner;
- (ii) the e-mail address given on the website of that Legal Practitioner; or
- (iii) the e-mail address of the general mailbox of the firm to which that Legal Practitioner belongs.

4.4 Notwithstanding the provisions of CPR 5.7 and CPR 6.2, a claim form or other document may be served on a limited company by sending it by e-mail to the registered office or Registered Agent of that limited company.

4.5 The e-mail address under paragraph 4.4 at which service may be effected is the e-mail address:

- (a) notified in writing by that limited company or its Registered Agent for the purposes of paragraph 4.4; or
- (b) if an e-mail address has not been notified in writing by that limited company or its Registered Agent, service may be validly effected upon that limited company by sending the claim form or other document to:
 - (i) the e-mail address used on the letterhead of that limited company or its Registered Agent or previously used by that limited company or its Registered Agent;
 - (ii) the e-mail address given on the website of that limited company or its Registered Agent; or
 - (iii) the e-mail address of the general mailbox of that limited company or its Registered Agent.

4.6 Proof of service of a filed document shall be by way of an affidavit of service, which shall exhibit the following:

- (a) copy of the e-mail under cover of which the document in question was served; and
- (b) a copy of any message tracking, relay or delivery confirmation, including the address to which the e-mail was sent, the date and time the e-mail was sent, and if applicable, a copy of any reply or bounce-back notice of non-delivery or delivery failure.

5. Remote Hearings

- 5.1 The objective is to undertake as many hearings as possible remotely so as to minimise the risk of transmission of Covid-19, other disease, or the exposure of parties and court users to the effects of the emergency affecting the Member State or Territory.
- 5.2 Legal practitioners, parties and court users are required to familiarize themselves with the ECSC Protocol for Video Conferencing and Remote Hearings, published by the Court on 5th May, 2020 and incorporated in this Practice Direction as Schedule 3. This section however provides basic guidance as to the conduct of remote hearings.
- 5.3 The Chief Justice through a published Notice has directed that the location from which a Judge, Master, or Registrar conducts a remote hearing pursuant to this Practice Direction shall be declared a Court for the purpose of the conduct of Court proceedings.
- 5.4 A hearing conducted in accordance with this Practice Direction must be treated as a hearing in accordance with the Rules of Court. Nothing in this Practice Direction derogates from the judicial officer's duty to determine all issues that arise in the case judicially and in accordance with normal principles.
- 5.5 All in-person appearances are discouraged. Hearings will be conducted on the date and in the manner specified by the judicial officer and will utilize digital technology including audio, web, video or teleconference where the judicial officer deems it appropriate.
- 5.6 The method by which all hearings, including remote hearings, are conducted is always a matter for the judicial officer(s), operating in accordance with applicable law, Rules and Practice Directions. In determining the method by which a hearing or trial should be conducted, a judicial officer must:
- (a) have regard to the interest of public health and the ability to maintain appropriate physical distancing while in attendance in courtrooms; and
 - (b) give directions as to the venue from which a litigant or witness is to be present.
- 5.7 Where a judicial officer deems it fit for a hearing to be conducted in person and this is possible given the emergency affecting the Member State or Territory, attendance should be limited to attorneys, parties, and necessary witnesses only.

5.8 It is good practice for the judicial officer and court office staff to consider as far ahead as possible how future hearings should best be undertaken.

5.9 Where a hearing proceeds remotely:

- (a) the court may, if deemed necessary, fix a remote case management conference in advance of the fixed hearing date to allow for directions to be made in relation to the conduct of the hearing, the technology to be used, and/or any other relevant matters;
- (b) Legal practitioners shall inform the Court of the location from which they intend to attend a hearing prior to the commencement of the hearing;
- (c) the court, and the parties, will be required to log in or call in to the dedicated facility at least 15 minutes before the stated start time of the remote hearing. Parties are to ensure that they are online in time for the prompt commencement of the hearing. If the parties are having any connectivity or other difficulties this should be promptly communicated to the court office;
- (d) it is the responsibility of a Legal Practitioner who is not physically present in the Member State or Territory at the time of the hearing to identify an appropriate video conferencing facility which they will utilize and to connect to the facility of the Court;
- (e) at the commencement of that hearing, a Legal Practitioner representing each party shall identify every person present with him or her;
- (f) no party or his/ her Legal Practitioner is entitled to be physically present before the Court unless the Court gives permission;
- (g) the hearing will be recorded by the court office in accordance with the measures put in place for the recording of court matters;
- (h) the parties and their legal representatives are not permitted to record the hearing; and
- (i) requests for copies of the audio recordings are to be done in accordance with this Practice Direction.

- 5.10 The first hearing of a Fixed Date Claim Form shall not be treated as a hearing at which the evidence of any witness is to be given, unless the Court has given a direction to that effect.
- 5.11 Where a hearing is conducted remotely, details of the manner in which the public shall have access to the live stream/ of the hearing will be published on the court's website.

6. Bundles for Hearings

- 6.1 The parties must prepare an electronic bundle of documents and an electronic bundle of authorities for each remote hearing. Each electronic bundle should be indexed and paginated in accordance with the guidelines in Schedule 2 of this Practice Direction and should be provided to the court office and to all other parties via email or via the Electronic Litigation Portal should the matter be available there. The electronic bundles must be available well in advance of the hearing.
- 6.2 Parties should, as far as possible, agree on the documents to be included in the electronic bundle rather than each party filing separate hearing bundles. The same approach should be adopted in respect of Authorities Bundles. This avoids unnecessary duplication and facilitates ease of viewing which leads to a smoother hearing process.
- 6.3 The filing of documents at the last minute and more so on the day of hearing is strongly discouraged and may result in the court not taking account of these documents.
- 6.4 Electronic bundles should contain only documents and authorities that are essential to the remote hearing. Single large electronic files should be avoided as these can be slow to transmit and unwieldy to use.
- 6.5 Electronic bundles can be prepared in Portable Document Format (.pdf) and must be filed in accordance with the measures put in place for filing by the court office.
- 6.6 Legal practitioners must ensure that the documents which form part of an electronic bundle are scanned in a quality which makes the contents clearly visible and legible. Legal Practitioners must also ensure that scanned documents are presented in the electronic bundle in an upward manner, whether in portrait or landscape orientation, so that the document can be easily read. The court should not have to rotate any page in a document in order to read it.

- 6.7 The party responsible for preparing the bundles for any hearing under the Rules shall, where possible and within the periods prescribed:
- (a) deliver one (1) hard copy of the bundle to the Registrar of the High Court within seven days or as soon as the Court Office is open to receive documents whichever occurs later; and
 - (b) deliver a bookmarked electronic copy of that bundle by e-mail to every other party.
- 6.8 The Court reserves the right to request additional hard copies of any bundles from the party who has filed by e-mail.
- 6.9 The bundle should be clearly labelled as a hearing bundle and must bear the date of the hearing.
- 6.10 Bundles provided in hard copy must be a replica of the electronically filed bundles paginated in similar form accompanied by an Index cover describing the documents contained in the bundle and referencing the page number within the bundle of the document.
7. Applications for admission as a Legal Practitioner (For Member States without the ELP)
- 7.1 An application for admission as a Legal Practitioner in a matter shall be filed by e-mail in accordance with this Practice Direction.
- 7.2 The hearing of an application for the admission as a Legal Practitioner shall be by personal appearance using video conference facilities, except where the Court otherwise directs.
- 7.3 Where the Court is satisfied that it is appropriate to admit such a person as a Legal Practitioner:
- (a) the Registrar shall enter the name of that person onto the Court Roll;
 - (b) the Court may accept such undertakings as appears to it appropriate:
 - (i) as to the production of the originals, or certified copies of the originals of the documents produced at that hearing;
 - (ii) as to the signing of the Roll (or a facsimile of it); and
 - (iii) as to the receipt of payments;

- (c) payment of any fees prescribed shall be paid at the relevant High Court Registry, at least 2 clear days prior to the application for admission once the Court Office is open to receive such payments.

8. STATUS HEARING UPDATE FORMS – HIGH COURT

- 8.1 For matters in the High Court, all parties are to complete the status hearing update form (FORM 2) attached to this Practice Direction.
- 8.2 The status hearing update form must be returned to the Registrar via e-mail to the address specified in Schedule 1 no less than 7 days prior to the date of hearing.
- 8.3 Parties are asked to submit joint or agreed forms as much as possible.
- 8.4 Where there is no agreement, parties are asked to submit separate forms and state that there is no agreement.

9. CASE MANAGEMENT CONFERENCE REMOTE HEARING FORMS- COURT OF APPEAL

- 9.1 In the case of appeals, all parties will be required to complete the case management conference remote hearing form (FORM 3) attached to this practice direction.
- 9.2 The case management form must be completed in full, including and in particular the section designated for the listing of all the documents which have been filed in the matter.
- 9.3 The Legal Practitioner must return the completed form to the Chief Registrar or Deputy Chief Registrar, and copied to the Court of Appeal Registry at the email address specified in Schedule 1, no less than 3 days before the case management conference.
- 9.4 As much as possible, parties in any given matter are encouraged to return a jointly completed form to the Court.
- 9.5 Where there is no agreement, parties may submit separate forms, indicate that there is disagreement and note the areas of disagreement.

10. COURT FEES

- 10.1 The Eastern Caribbean Supreme Court (Court Proceedings Fees) Rules and the Commercial Claims Fees Order 2011 shall continue to apply.

10.2 An administrative fee may be applied for the following services in accordance with any such Notice published by the Registrar:

- (a) e-filing
- (b) printing and copies
- (c) transcripts/audio file retrieval
- (d) video-link
- (e) teleconference

10.3 The administrative fee in paragraph 9.2 shall be due to be paid by the party filing or requesting as part of the undertaking provided in Section 3.2.

11. Recording of Court Proceedings

11.1 At any hearing of the Court, the proceedings will be recorded by the court by such recording equipment as approved by the Chief Justice.

11.2 No party or member of the public may use unofficial recording equipment or device at any hearing or in any court or judge's chambers without the prior authorization of the presiding judge.

11.3 Any person who engages in the unauthorized recording of a court proceeding may be liable to being sanctioned by the court.

11.4 The court recording, whether in written, audio or other digital form, shall be the official transcript of the proceedings.

12. Preparation of Transcripts

12.1 A party may request from the Registrar by using Form 4 provided in this Practice Direction, a transcript or transcripts of the recording of any hearing in which they are involved.

12.2 Further to a party's request, a transcript will be provided upon payment of the charges authorized by any scheme in force in any Member State or Territory for the making of the recording or the transcript.

12.3 If a person who is not a party to the proceedings requires a transcript, or if the hearing or any part of it was held in private under CPR rule 2.7, a transcript may only be provided if the Court so orders.

13. Provision of Transcripts

- 13.1 A party or a person approved under paragraph 12.3 may request a copy of the transcript of proceedings to be provided either by electronic means or hard copy.
- 13.2 The fee payable will be in accordance with the scheme in force as aforesaid for the making of transcripts and will be based on the type of transcript requested.
- 13.3 Where a transcript is requested in the form of an audio file where this is available, the fee payable shall be \$100.00 per day or part thereof of the recorded proceedings.

14. Special Directions

- 14.1 In the event that the court office in any particular Member State or Territory gives Notice of closure of the Court Office or where the Government of any particular Member State or Territory issues a Notice of Closure or lock down of all services within the Member State or Territory as a result of the emergency affecting that Member State or Territory:

(a) time under the provisions of the Civil Procedure Rules 2000 and the Criminal Procedure Rules (where applicable) for the filing of any documents shall cease to run for the period stipulated in such Notice of Closure or until the publication of a further Notice advising that the Closure Notice has ceased to have effect.

(b) time for compliance with any Rule, Practice Direction or procedural court order shall cease to run. This would include the time for service of filed documents for matters where service other than by electronic means is required or available;

PROVIDED THAT where the Registrar or Chief Registrar in respect of appeals gives Notice that the period of suspension of time hereunder has ended, time shall begin or continue to run as from the effective date of the termination of the suspension as contained in the Notice of Closure.

- 14.2 Where, in support of any application under these Rules it is not practicable to produce sworn evidence on affidavit, then the application may be supported by evidence given by witness statement and, as soon as practicable thereafter to produce the evidence by affidavit.

14.3 The Registrar may, on the direction of the Chief Justice, give special instructions by way of Notices, for the filing of documents by electronic means to meet the requirements of particular cases or by way of experiment.

14.4 Section 14.3 would include any instructions which are given by the Registrar, on the direction of the Chief Justice, for the transfer of matters from the manual filing environment to the Electronic Litigation Portal, where the system is available.

15. Effective Date

This Practice Direction shall come into effect in a Member State or Territory on the 21st day of April, 2021.

Dated the 20th day of April, 2021.



Dame Janice M. Pereira, DBE
Chief Justice

Schedule 1

1. BVI High Court
2. Anguilla High Court
3. St. Kitts and Nevis High Court
4. Antigua and Barbuda High Court
5. Montserrat High Court
6. Commonwealth of Dominica High Court
7. Saint Lucia High Court
8. St. Vincent and the Grenadines High Court
9. Grenada High Court

Where a document is being filed for a matter before the Court of Appeal, the e-mail with the Portable Document Format (.pdf) document should also be copied to the e-mail address:

registry@eccourts.org

SCHEDULE 2

Guidelines on Preparation of Electronic Hearing Bundles / Trial Bundles

The following instructions have been developed to ensure that Hearing Bundles / Trial Bundles are prepared in a standard format to facilitate quick access to the relevant information by judges and Masters of the High Court and the Court of Appeal during the conduct of the hearing or trial.

1. A suitably labelled cover page should be prepared and printed which provides the case number, country, and other general information associated with a filing being uploaded to the portal. This cover page is necessary to ensure that the stamp can be placed on the filing which is being submitted.
2. The documents to be placed in the bundle should all be printed and placed in the order in which they are to be submitted to the Court. A volume size should not exceed the 100 MB file size limit of the portal for uploading as a pdf document. Therefore, only in cases where the volume size exceeds the allowed size on the portal should additional volumes be filed.
3. Where the bundle is being submitted in multiple volumes, each volume should have a suitable worded cover page clearly indicating Volume 1, Volume 2, etc. in order to comply with Step 1.
4. The cover page together with the documents which are part of the volume should then be scanned and saved as a ".pdf". This should be repeated for each volume to be uploaded to the portal. At the end of this step there should be an individual ".pdf" file for each volume which is to be submitted and filed on to the portal.
5. A document index (or table of contents) must then be created prior to submission of the bundle on the portal. In order to create the index the legal practitioner should open the respective ".pdf" volume and identify the submissions with the ".pdf" page numbers as it appears within the ".pdf" document volume. Once this information is obtained please include it in the MS Word version of the index which is being prepared. For example, the Notice of Appeal which is in Volume 1 starts on page 4 so the index should state this. If the Transcript in Volume 1 starts on page 18 in the ".pdf" document, then this should be so stated in the index document.
6. Once the index is completed in MS Word where it clearly specifies the volume, name of the submission, and the page number where each submission starts in the ".pdf" volume, it should then be printed and scanned as a separate ".pdf" document. Please note that the index should be prepared chronologically starting with Volume 1, page 1 to 100 for a 100-page ".pdf" document volume. Then it would provide Volume 2, if a 2nd volume exists, commencing from page 1 to 300 for a 300-page document, and so on. Also, please note that the first page of a ".pdf" Hearing Bundle or Trial Bundle volume will always be the cover page which was referred to in Steps 1 and 3 above.

7. During the conduct of the trial, the judge/judges will then be able to open the index and the volume being referred to by counsel during the hearing directly from the portal. Once referred to the volume and page number on the index this will allow the judge/judges to quickly navigate to the correct document in the volume.
8. Legal practitioners should always refer to their index and the actual ".pdf" page numbers in the ".pdf" document during the course of their presentation to the Court. It would therefore be useful to have a laptop or other smart device with the ".pdf" file open so that the legal practitioner can direct the court to specific pages in the document to which they wish to refer.

Additional Guidance For Matters on the Portal

9. Once the index is accurately created and you have completed step 6 you are now ready to file the Hearing Bundle or Trial Bundle on the portal. There will be one ".pdf" file for the index and a separate individual ".pdf" file for each volume which is being submitted.
10. The first volume of the Hearing Bundle or Trial Bundle can be submitted as the first filing which will attract the full filing fee and the \$2 Administration Fee. Each subsequent volume should be filed as "Additional Volume" so that only the \$2 Administration Fee has to be paid.
11. The last document to be filed should be the index which should also be filed as an "Additional Volume" so that only the \$2 Administration Fee is paid.
12. Where necessary legal practitioners may use the "pack and go" feature to download all the documents from the portal so that they can access it during the actual hearing or trial if there is no internet or slow connection for directly accessing the portal.

Form 1

[On Letterhead of Law Firm or Chambers]

The Registrar

High Court of Justice

[Member State / Territory]

Dear

In order to facilitate the filing of documents as provided for in Practice Direction, PD 1 of 2021 - EMERGENCY MEASURES, I _____ representing the law firm of _____ in the Member State [or Territory] of _____ hereby undertake to pay to the Government of

_____ any filing fees which are due to be paid by way of stamps
due for the filings which are made while this Practice Direction remains in effect.

[Print Name of Legal Practitioner]

Signature of Legal Practitioner

[Print Name of Witness]

Signature of Witness

FORM 2

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

CLAIM NO:

BETWEEN:

[X]

and

[Y]

STATUS UPDATE [ON BEHALF OF [PARTY]]

1. Current listing date:
2. Nature of application (or listed as a trial):
3. Time estimate:
4. Any reasons why a video or telephone hearing would not be appropriate, and if not, what form of hearing is required:
5. Is it essential that this hearing date is maintained:
6. If not, what are the requested dates for an alternative listing?
7. Reasons for prioritising this hearing in a re-constituted Court list:
8. Which, if any, of the above responses are agreed between the parties:
9. Any other comments:

Dated

[Name of Legal Practitioner]

[Name of Firm]

Legal Practitioners for the [Claimant/Defendant/ Applicant/Respondent]

Dated

[Name of Legal Practitioner]

[Name of Firm]

Legal Practitioners for the [Claimant/Defendant/ Applicant/Respondent]

FORM 3



**Eastern Caribbean Supreme Court
Court of Appeal**

**Case Management Conference
Remote Hearing Form**

1. Case Name:
2. Appeal Number:
3. Is this form being submitted jointly by the parties?:
4. Name of Legal Practitioner:
5. Name of Party who you Represent:
6. Are any of the parties in this matter unrepresented, if yes, please indicate the name of the unrepresented party:
7. Is this an application/motion:
8. Nature of application/appeal:
9. Is this an Interlocutory Appeal:
10. Is this matter ready to proceed:
11. Estimated length of time of hearing of the application/appeal for your party:
12. Is this matter suitable for hearing by videoconference (please consider urgency, complexity, length of arguments):
13. Are you able to access Zoom or related video conferencing applications from a remote location suitable to participate in a Court hearing and with a reliable internet connection:
14. Can this matter be dealt with on paper:
15. If your matter is not filed on the E-Litigation Portal of the Court, are you able to provide this Court with electronic copies of all filed documents in this matter: Yes ☐ No ☐
 - a. If you will provide electronic copies of the filed documents, please provide the date by which all electronic documents will be transmitted to the Court:

16. Documents filed³:**A. Interlocutory Appeal:**

	Name of Document	Date of filing	Electronic Copy Available (Yes or No)
1	Notice of Appeal		
2	Written submissions <ul style="list-style-type: none"> • Applicant /Appellant (s) • Respondent(s) 		
3	Judgment or Order being Appealed		
4	Affidavits, witness statements or exhibits relevant to the question at issue on the appeal which were put in evidence before the court below		
5	Written admissions or requests for information and replies		
6	Judge's notes of any submissions made (if any)		
7	Any other relevant document applicable to the appeal		
8	Has a hearing bundle been prepared		

Please provide details of documents in 4, 5 and 7 if applicable, including the name of each document, the date of filing of each document and whether each document is available electronically:

B. Civil and Criminal Appeals

	Name of Document	Date of filing	Electronic Copy Available (Yes or No)
1	Notice of Appeal		
2	Record of Appeal (including order or judgment being appealed)		
3	Written Submissions <ul style="list-style-type: none"> • Appellant(s) • Respondent(s) 		
4	Any other documents as required by the rules or other enactment		
5	Any other relevant document applicable to the appeal		

Please provide details of documents in 4 to 5 if applicable, including the name of each document, date of filing of each document and whether each document is available electronically:

17. Further Applications / Filings

- a. Do you intend to make any further application in this matter:
- b. Nature of application:
- c. Date by which application will be filed:
- d. Do you intend to file any further documents in this matter:

18. Any other matter which should be brought to the attention of the Court (please provide details below):

FORM 4



REQUEST FOR TRANSCRIPT OF PROCEEDINGS

Date: _____

Name of Requesting Party:

Name of Transcriptionist:

Proceeding (trial, appeal etc.)

Names of Legal Practitioners

Case Name (in full):

Location where matter was heard
(including court room):

Judge (s):

Appearances (if different to Legal Practitioners):

Date of Trial/Hearing:

Turnaround time for transcript:

Comments

SCHEDULE 3



Eastern Caribbean Supreme Court

**PROTOCOL FOR
VIDEO CONFERENCING
AND
REMOTE HEARINGS**

INTRODUCTION

Video conferencing has become an integral part of the operations of many organizations today including the Eastern Caribbean Supreme Court (ECSC). There is already experience of remote hearings and cross-examination of distant witnesses by video in the Court. The principal system currently being used by the ECSC is Zoom but where necessary and possible other systems such as Skype for Business will also be considered.

This guide concentrates on the way in which advocates can most efficiently deploy their professional skills in communication and persuasion in the new working environment. It aims to distil existing experience into a set of principles that we hope will enable everyone to approach a remote hearing with confidence and do their job effectively. It is, of course, acknowledged that not everyone will have all the technical devices or the best private home office facility during a 'lockdown' situation and advocates may therefore need to adapt this advice to best fit their circumstances.

Similar to face-to-face hearings, there are protocols that should be observed so that hearings can be carried out successfully and efficiently. Below are some key practices that should be observed for video conference hearings.

The ECSC gratefully acknowledges the support from the Governors of the Inns of Court College of Advocacy for their permission in allowing the ECSC to adopt learnings from their policy in creating this policy for the ECSC court users. The ECSC also acknowledges the guide on video conferencing etiquette published by CAJO which has also been useful in informing this Policy.

1.0 LIAISE IN ADVANCE

- 1.1 Confirm with the court which software is to be used. Confirm the scheduling, special arrangements and any other special hearing protocols.
- 1.2 Confirm that you will be able to attend the conference at the scheduled time. Doing this will ensure the hearing is not delayed by waiting on participants that do not plan to attend.
- 1.3 It is essential to agree to a trial or hearing bundle in advance and check it in advance with all parties.
- 1.4 Ensure that the court has your up-to-date contact address and number.

2.0 UNDERSTAND THE TECHNOLOGY

- 2.1 Test the technology prior to the hearing, including the camera, microphone and sound settings. Know how to turn the camera on and off, how to mute the microphone and how to adjust the volume.
- 2.2 Ensure that the camera is positioned properly in order to capture the person speaking as though they are face-to-face with others in the meeting.
- 2.3 Be aware that sometimes the camera/video will be turned off and the sound muted by default when you join a hearing electronically.

- 2.4 Decide how many screens you intend to use during the hearing. This would depend on the facility being used particularly if there may be more than one person present, e.g. an attorney and their client.
- 2.5 Join the hearing in good time, at least 15 minutes before it is due to start to resolve any technological issues.
- 2.6 In the event of a breakdown in communication, a protocol should be in place for anyone affected, including witnesses and third parties, to contact the court by additional means to alert them to the problem, e.g. telephone, text, email or WhatsApp chat.
- 2.7 If something does go wrong (a critical participant drops offline, for instance, or some connection fails) pause until it is sorted out. There are some distractions, like people joining and leaving calls, that you may have to ignore. But you should not be afraid, if that happens, to go back and repeat a point or a question.
- 2.8 Should the technological problem concern the internet or Wi-Fi connection, it is helpful to have an alternative method of communication which is not reliant on either.
- 2.9 If there is a technical failure that cannot be fixed, then the hearing may have to be adjourned. The hearing must always be a fair hearing.

3.0 MAKE SURE ALL PARTIES CAN BE SEEN AND HEARD

- 3.1 As far as possible the online hearing should emulate a traditional hearing. This advice applies to attorneys and witnesses alike.
- 3.2 Establish a speaking protocol at the outset. This may involve participants, when introduced, acknowledging the introduction by raising their hand rather than speaking. This is preferable to a brief nod which may not be visible on small thumbnail videos.
- 3.3 You must not record a court hearing but be prepared to remind the judge to record the hearing.
- 3.4 When not speaking, mute your microphone. All participants should do this when not speaking.
- 3.5 When it is your turn to speak, remember to unmute your microphone. Speak directly into the microphone.
- 3.6 Identify yourself before you begin speaking. This is especially important if the device being used for the video conference does not include a camera.
- 3.7 Where multiple devices are in use, all should be muted and only one unmuted when required.
- 3.8 Attorneys should avoid using headsets (combined over-ear headphones and microphone), since online hearings should emulate in-person hearings as closely as possible. However, the use of discreet in-ear headphones is usually permissible and can assist with preserving the confidentiality of proceedings. When in doubt, seek the guidance of the court in advance.
- 3.9 Avoid setting your device to the highest volume, since this is likely to cause feedback when you are speaking.

- 3.10 Encourage participants to raise their hand when wishing to interrupt a speaker, or otherwise use a facility to do this on the software provided. If necessary, wait for a pause or an opening in the discussion before addressing the Court. As far as possible only one person should speak at a time.
- 3.11 Prepare witnesses for the taking of the oath or affirmation. Email the form of words to witnesses in advance of the hearing and make sure they have any book they require to take an oath.
- 3.12 Third parties, such as interpreters, or intermediaries may be required to assist witnesses. During the Coronavirus (COVID-19) pandemic, third parties are likely to be remote from those they are assisting. Issues regarding discreet and separate channels of communication between them will need to be resolved by the court in advance of the hearing.
- 3.13 When third parties are used to assist witnesses, this adds to the risk of participants speaking over one another. Third parties should be reminded of speaking protocols where necessary.
- 3.14 It is imperative that all participants have good audio and visual contact including defendants attending online while in custody.
- 3.15 Maintain eye contact with the camera. This will ensure you appear to be looking at your audience. The thumbnail image of the person you are speaking to may be at the bottom of the screen, when the camera on your device is above the screen. If this is so, it will give the appearance that you are looking down or away from your audience.
- 3.16 Ensure that you are clearly visible by maintaining a reasonable distance from the camera, to show your head and upper body. If you are too close your image may blur and fill the screen. If you are too far you will appear distant and detached from the hearing.
- 3.17 Remember that your camera is on. Therefore, act as though you are always being seen by everyone in the hearing. Participants sometimes forget that the camera is on, especially when distracted by reading emails or trying to multi-task during a video conference call. Avoid distractions and making inappropriate actions while on Camera. Some cameras zoom in and out depending on the movement of the subject. This should be avoided.
- 3.18 If you are using the camera on your laptop, typing when you are visible is liable to cause the camera (and your image) to shake. Try to use a separate keyboard or a separate camera mounted away from the laptop.
- 3.19 Remember that others are watching even if you cannot see them. In cases involving multiple participants, thumbnail video images may appear on screen, but these thumbnails often move off screen to allow participants to see the face of the person talking, or the document being shared. Observers may also be present. As such, often there are people present at the hearing who are not visible.
- 3.20 Ensure that you are well lit by natural or artificial light. Avoid sitting with your back to a window or other light source. This can result in only your silhouette appearing on screen.

- 3.21 Ensure that your background is appropriate for a hearing. A neutral background is best. Avoid revealing personal or distracting items, such as photographs, ornaments and paintings. Having bookshelves and office-friendly paintings and photographs on the wall is acceptable. The background should not be untidy and distracting. The camera may show more of the room than you expect. Some devices allow for computer generated backgrounds. If using one of these please ensure that the background is neutral and not distracting.
- 3.22 Close the door to the room in which you are appearing. This will prevent unwanted visitors, sights and sounds from interfering with the hearing. This and the use of the mute button will suppress the noise of coughs, sneezes, doorbells, coffee machines, dishwashers, dogs barking, typing, rustling of papers etc.
- 3.23 Dress professionally, but not in robes unless specifically asked to do so and appear as if attending the court in person. Wear clothing suitable for court appearances. Additionally, it is not sufficient to wear a work top and a casual bottom as sometimes you may be required to get up suddenly.
- 3.24 Most hearings take place with parties seated. If in doubt, check with the court. If you prefer to stand, adjust your camera accordingly.
- 3.25 Limit yourself to a glass of water as you would when appearing in an actual court.
- 3.26 If the hearing is by audio only, ensure that all videos are turned off, except where the court gives the direction for a video to be on.

4.0 KNOW HOW TO HANDLE THE DOCUMENTS

- 4.1 Prepare your hearing or trial bundles in accordance with the guidelines established by the ECSC.
- 4.2 It would be useful to have an application, such as Acrobat DC or PDF Expert, which allows you to mark up your bundles.
- 4.3 Save and keep all your work (including preparation material and bundles) in a location where it can be accessed while in Court. It is very important to store documents systematically so you can find them easily.
- 4.4 Keep a clean duplicate of your bundle, so that you have one clean bundle and one that is marked up. This way, if the judge asks for a document to be handed up, you have a clean copy to submit. Ensure that page numbers are clearly visible.
- 4.5 Use an agreed indexed electronic bundle of documents which can be referred to between relevant parties by section, page and paragraph number without the need to share the document on the screen or to hold up physical documents. Be familiar with page references in the electronic bundle so that they can be easily located by the judge and other parties. This saves time and avoids having to resort to the hard copy which may not be readily available and avoids the noise of rustling papers.
- 4.6 Minimize the size of the hearing bundle. It is tempting, since the bundle is electronic, to include anything at all that might conceivably be relevant. Resist that temptation. Big files are harder to handle and can cause all sorts of other problems (e.g. rejection by email filters). That goes for authorities, too, of course.

- 4.7 Make sure you can find documents you need quickly. Advocates are advised to have a list of key documents, or a hyperlinked index. Bookmark critical documents. Make sure all references in your notes are absolutely accurate and precise and that references in the skeleton argument are to the pages in the electronic bundle, not some historic paper version.
- 4.8 You must be able to provide, without delay, the reference to the documents to which you want to refer. Always give the reference, not just the description, and give others time to find the document.
- 4.9 Make sure you can access two documents simultaneously (e.g. on different devices or two windows). You will often need both to follow a document that someone else is referring to and find another document for your own purposes.
- 4.10 Do not let the difficulty in handling documents deflect you from using documents effectively. In civil cases, documents are often very important. If you have a point to make about a document you nearly always need to make sure that you, the witness, and the judge all have that document in front of them. Summaries are never as effective.
- 4.11 If you unexpectedly need to share a document with the court which is not in the electronic bundle, but which cannot be made visible to all observers by sharing on screen, agreement must be reached as to the appropriate channel of communication to be used, e.g. sending the document to the court and the other party or parties by email.

5.0 MAKE THE BEST USE OF WRITTEN ARGUMENT

- 5.1 Be aware that it is likely that rather more weight will fall on the written argument than it does in typical hearings.
- 5.2 Use the written argument to provide a clear roadmap of the key issues and how you expect to approach them.
- 5.3 Use the written argument to provide a way of finding any key document, especially if you are dealing with a complex body of evidence. Recognise that it is harder to follow a remote presentation, and that the judge may well need an aide memoire that can be consulted before and after the hearing.
- 5.4 Do not, however, be tempted to shoehorn a mass of material of secondary importance into the written argument. If anything, this is even worse when the oral hearing is compressed, because it is likely to leave your written argument disconnected from your oral presentation.
- 5.5 Give careful thought to which parts of the argument will require oral presentation or expansion, and how you are going to do that.

6.0 BE PREPARED, THEN BE BRIEF AND TO THE POINT

- 6.1 Your preparation needs to be more meticulous than it would be for a normal hearing. In a remote hearing, time is at a premium. Remote communication has less impact and less subtlety than face-to-face communication. Much of what follows is general good advice for advocacy, but the requirement is heightened for remote hearings.
- 6.2 Write a more detailed script for submissions and cross-examination questions than you usually would.

- 6.3 Anticipate questions that the judge is likely to raise, or points that your opponent may develop orally, and discuss them with your team in advance.
- 6.4 For witness handling, make sure that your cross-examination is highly focused on the main issues. Have clear objectives, and plan to achieve just those objectives. Expect the pace to be slower than you are used to. Do not rely on any cross-examination technique that depends on high pace or pressure.
- 6.5 When questioning a witness, keep questions short, make sure each is a single question, and use clear questioning cues to show when a question is finished. Avoid multiple questions. Avoid questions which are simply statements and depend on inflection.
- 6.6 Witnesses must feel enabled to give their best evidence. Provided that the technology functions properly and witnesses are given the same advice as other parties about presentation, sound and lighting, there is no empirical research to support the contention that vulnerable witnesses and children are less effective 'online' as opposed to being 'seen' by the court.
- 6.7 Attorneys must ensure that all witnesses are as comfortable as possible when giving evidence.
- 6.8 Simplify your arguments as much as you possibly can, remembering that if you "lose the judge" you are less likely to notice that you have done so than when you are in court.
- 6.9 A lot of non-verbal communication (and aspects of "style") are lost when working remotely. Concentrate on the substance.
- 6.10 Brevity and precision are key. In the event that either sound or video quality is interrupted during a question or submission, repetition may be required.
- 6.11 This is a process far easier to complete with succinct questions or submissions. Aim to present your case in a low-key courteous and measured way. Be careful not to have too much mental overload during a hearing.
- 6.12 Be prepared for the fact that remotely conducted hearings are more taxing than a conventional hearing. Do not be shy of asking for breaks.

7.0 AVOID OVER SPEAKING

- 7.1 In a remote hearing, a brief delay typically occurs between the video image of the person speaking and their voice being heard by the court and witness. This connection delay may lead participants to believe a person has finished speaking before they have, in fact, done so and is liable to result in participants inadvertently speaking over one another.
- 7.2 Do not interrupt. Let a speaker finish before speaking. Be especially careful not to interrupt a witness's answer or a judge's question.
- 7.3 When you are speaking, allow pauses for judicial questions. You may even want to invite them.
- 7.4 If you are speaking and become aware that someone else is trying to speak, pause to allow them to do so.
- 7.5 Do not fill pauses. Gaps between speakers (e.g. while waiting for a witness to answer) are more common with remote communication than when you are together in court.
- 7.6 If you feel compelled to interrupt and 'get to your feet', you may want to raise your hand to the court as an indication of wanting to do so.

8.0 MAINTAIN CONFIDENTIALITY

- 8.1 Organise your workspace carefully in advance. Clear it of anything that is not related to the hearing. As far as you can, turn off or close any communications channels that are not related to the hearing you are conducting (email, SMS, WhatsApp, etc.).
- 8.2 If you share your screen, be careful. When you share your screen, everything is visible online, including pop-up notifications, screensaver photographs etc. For safety's sake, ensure your screen is clear and that notifications are disabled. Documents can be shared without sharing your screen or better to be referred to in an agreed bundle.
- 8.3 You will probably want to communicate with your own team but consider how this is best done. Receiving a steady stream of emails and WhatsApp messages from many different people is not helpful. Agree how your team will communicate but ask for communication to be limited to what is really necessary and consider channeling all communications through a single team member who can act as a filter.
- 8.4 Taking instructions during an on-line hearing can create a serious technical problem. In the Magistrates Court, where resources are limited, taking instructions from a client in custody at any stage can be a serious problem. Even when the client is not in custody the handling of taking instructions is messy. It may be that some link, external to the on-line contact – perhaps by (secure) telephone or e-mail – needs to be utilized.
- 8.5 Be careful about private meetings. Some software allows the user to leave the main hearing and enter a separate virtual meeting 'room' to have a conference with, for example, a professional or lay client. You will have to be especially confident in using the software to exploit such breakout facilities securely and confidentially.
- 8.6 You may prefer, with the agreement of the court to conduct a separate private meeting by temporarily leaving the hearing and physically moving to another room to conduct a private conversation and / or muting your microphone and turning off your camera.
- 8.7 If you are calling a witness, make sure that someone has checked in advance that the witness knows how to operate the software, and to find documents.
- 8.8 Remember that witnesses must not be communicating with third parties while they are giving evidence and must not be consulting documents other than the agreed bundle without the Court's knowledge and permission. It is common to ask a witness to identify anyone who is in the room with them and to show a "wide shot" of the room at the beginning of their evidence to verify who is present.

REVIEW OF POLICY

The fast-changing nature of information technology, particularly as it relates to electronic communication incorporating aspects such as social media, requires that policies and procedures be regularly updated. The *Information Technology Manager and Information Services Manager* shall be responsible for coordinating the review of this policy on a semi-annual basis or as the need arises to ensure that it continues to meet the necessary legal and technological requirements and reflects current best practices.

Made this 5th day of May 2020.

Sgd.

Dame Janice M. Pereira, DBE

Chief Justice