

A brief summary of the Royal Court of Guernsey's rules on Civil Procedure

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The Royal Court Civil Rules 2007 ("2007 Rules") govern civil litigation procedure in Guernsey and have now been in place for more than 15 years.

Simon Davies, a member of the committee which was charged with producing the 2007 Rules, summarises below some of the main features. The intention behind the 2007 Rules was to simplify, clarify and streamline Guernsey's civil procedure and to give litigants and judges more modern tools to enable the court to deal with cases justly.

The Process for Commencing a Claim

The plaintiff must table a claim document (a "**Cause**") before the Royal Court containing the material facts relied on and a statement of the relief sought. The plaintiff must give at least two clear days notice of his intention to table the Cause by serving a summons on the defendant. On the first occasion when the Cause is tabled, the defendant must provide an address for service within the Bailiwick of Guernsey and indicate whether or not the matter is to be defended (at this point the action goes onto the pleadings list - the "**Rôle des Causes à Plaider**"). Failure to do this may result in a default judgment being granted against the defendant. If the defendant resides outside Guernsey, leave of the Court to serve outside the jurisdiction must be sought prior to the cause being tabled.

A defendant is required to table his defences to the action 28 days after the action is listed on the Rôle des Causes à Plaider. This period can be varied by agreement between the parties (who can extend it up to a maximum of three months without reference to the Court). When Defences (which do not contain Exceptions - see below) are filed the action is then transferred

to the witness list (the “**Rôle des Causes en Preuve**”).

There is no reason why in many cases the process could not be made more efficient and cost effective (by avoiding the need for a court appearance) by the use of consent orders providing the information and documents necessary for the action to be recorded on the **Rôle des Causes à Plaider** and later the **Rôle des Causes en Preuve**. This is now often the practice.

If a party fails to provide defences, judgment in default of defences may be entered against it.

Exceptions de Fond and Exceptions de Forme

It is still possible for a defendant to plead Exceptions de Fond (being pleas in bar - for example that the claim is prescribed by the lapse of time or that the claim falls outside the jurisdiction of the Guernsey courts) and/or Exceptions de Forme (being requests for further information about a pleading).

Exceptions de Fond may, depending on their nature and the circumstances of each case, be determined as a preliminary issue or at the trial of the main claims.

The continued existence of Exceptions de Forme has been the subject of concern because on occasion they have been pleaded instead of a substantive defence as a tactic to delay the progress of court proceedings. The 2007 Rules minimise this risk and give the court powers to deal expeditiously with Exceptions de Forme. Exceptions de Forme are now deemed to be a request by a defendant for further information. Experience so far is that the Court sets suitably expeditious timetables for the provision of such extra information as are warranted in any particular case.

Rules on Summary Judgment

The 2007 Rules now contain provisions permitting both plaintiffs and defendants to apply for summary judgment. The Court also has the power to strike out a claim on various grounds.

Rules for Interpleader Relief

There are also provisions dealing specifically with interpleader relief. Whilst interpleader relief has always been available from the Royal Court of Guernsey, the manner in which such applications are to be dealt with was not, until the 2007 Rules came into force, dealt with in the Royal Court Civil Rules.

Rules for Representation of Interested Persons

The 2007 Rules make provision for representation of interested persons who cannot be

ascertained. This affects instances where issues before the court concern the estate of a deceased person, a trust or the meaning of a document. The 2007 Rules give considerable flexibility to the Royal Court to appoint an appropriate person to represent the interests of those who, if they could be ascertained, might wish to take part in the proceedings. The 2007 raw procedures dealing with representation of beneficiaries by trustees.

The Court's Case Management Powers

The 2007 Rules are governed by an overriding objective in rule 1 that the Court must manage cases justly, proportionately, fairly, expeditiously and ensuring the appropriate resources are given to the case. With that in mind, a considerable number of case management powers were specifically added in Part VIII of the 2007 Rules. They stipulate that the Royal Court shall actively manage cases and then goes on to provide a non-exhaustive list of 13 examples of active case management, including encouraging the parties to use alternative dispute resolution, setting time limits, controlling the progress of the case and considering whether the likely benefits of taking a particular step will justify its cost.

An important new development is that when a matter is placed on the witness list (the *Rôle des Causes en Preuve*) the plaintiff is obliged to apply for a date to be set for a case management conference within 14 days.

In the majority (but not all) of civil cases a case management conference takes place. At a case management conference the court is obliged to give directions as to:

- disclosure and inspection of documents (if any),
- provision of experts reports,
- exchange of witness statements; and the provision of agreed statements of fact, issues and law, as may be appropriate to the particular case. The directions given will generally allow a case to be taken to trial with very limited involvement by the Court.

The ability of the Court to order the exchange of witness statements is an important development which saves court time (by limiting examination in chief) and focuses the parties on areas of factual dispute before the commencement of trial. Previously there was no provision for witness statements to be exchanged.

Who will decide the case at trial?

All civil cases were previously heard by a single judge sitting with a panel of at least two (but normally three) Jurats (who are members of Guernsey professional lay jury). Under the 2007 Rules, the court must direct whether the trial is to be heard by a single judge sitting alone or by a judge sitting with Jurats. In addition, a pre-trial review will take place in most cases. Under

the Law Reform (Guernsey) Law 2008, the Bailiff or his deputy can direct that he will hear and decide on issues of fact without jurors.

Offers to Settle

The 2007 Rules dictate that any party to an action may at any time make a payment into court in satisfaction of any claim against him or offer to settle the whole or any part of any claim made by or against him in the action.

This is Guernsey's equivalent to Part 36 of the English Civil Procedure Rules. Any such offer must stipulate:

- whether the offer relates to the whole or part of any claim;
- whether it takes into account any counterclaim,
- whether it includes interest and costs.

It is noteworthy that costs consequences may flow from the making of an offer to settle. The position on costs in Guernsey differs from that in England (where a party is at risk of suffering an order for indemnity costs if he fails to beat the offer made should the matter go to trial). In Guernsey, the court is now obliged to take the fact, date and acceptance, or non-acceptance of a payment into court or an offer to settle into account when considering the question of costs. Any offer made under rule 62 must be contemporaneously disclosed to the court offices and likewise any acceptance of that offer. The provisions of rule 62 do not preclude parties from making Calderbank offers to settle proceedings.

Disclosure of Documents

Until February 2008, the scope of disclosure in Guernsey was very broad and was similar to that required under the English Rules of the Supreme Court before the Civil Procedure Rules were brought into force. That wide range in discovery is often known as "Peruvian Guano" or "chain of inquiry" discovery and was replaced by standard disclosure under the English Civil Procedure Rules.

For the first time, Guernsey has adopted a very wide definition of "document", which will mean anything which information of any description is recorded and provides that in most cases disclosure of documents will be limited to "standard disclosure". In standard disclosure, it is necessary to disclose only documents on which a party relies, documents which adversely affect his own case, adversely affect another party's case or support another party's case; and documents which a party is required to disclose by a relevant practice direction.

A duty to make a reasonable search is also imposed upon parties to litigation. The duty of

disclosure remains a continuing one. Documents protected by privilege are not disclosable.

Costs

In addition, the court may now at the conclusion of a hearing or application at any interim stage order a party to pay to another party the costs of that hearing or application. Where such an order is made, a summary assessment of costs may take place and the sum assessed will be payable forthwith. The Court also has the power to order security for costs.

Conclusion

Since the 2007 Rules came in to effect, litigation in Guernsey has become a more streamlined, cost effective and expeditious process. Practice directions have been produced to deal with the finer points of civil procedure and, together with the 2007 Rules, should enable cases to be dealt with the Court in line with the overriding objective of the 2007 Rules.

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