

## Litigation reform in Jersey - what the new Practice Directions mean in... practice

Insights - 12/06/2017

Reform of Jersey's litigation rules came into force on 1 June with the aim of improving the speed and reducing the cost of disputes, while at the same time encouraging the resolution of cases without the need for court proceedings.

The reforms take the form of a set of amendments to Royal Court Rules and 11 new and amended Practice Directions.

### What are the practical implications of this development?

The new and amended Practice Directions that came into force on 1 June 2017 were designed to improve access to justice and reduce the risks and costs associated with litigation, as they provide for disputes to be adjudicated in a manner which is both proportionate to what is at stake and cost effective.

Individually and collectively, they effect changes to improve the effectiveness of the court process for litigants.

They also enable the Royal Court to deal with cases justly and help streamline the civil justice process further by encouraging the resolution of as many cases as possible without resorting to court proceedings.

### What issues do they raise?

There are a combination of eleven new and amended practice directions now in force which cover a variety of practices:-

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## **To what extent are the directions helpful in clarifying the law or improving procedures?**

The litigation process in Jersey remains essentially adversarial and is therefore, at times, criticised as being too expensive, too slow, uncertain in terms of forecasting the costs, uneconomical, difficult to follow for many litigants.

The new and amended practice directions provide certainty in terms of timescale and costs as the nature of a particular case will allow. Further, they provide more robust case management and will ensure cases are dealt with proportionately, expeditiously and fairly.

The Royal Court has made it clear it will be enforcing compliance with the rules, practice directions and orders going forward and there may be sanctions for those who fail to comply without reasonable excuse.

When deciding on costs, the directions also provide that the Royal Court will take into account the efforts made, if any, before and during the proceedings in order to try to resolve the dispute.

## **What are the implications for practitioners? What will they need to be mindful of when working in this area? Any best practice tips?**

The new and amended practice directions give rise to a number of implications for practitioners.

A few suggested tips would be to:

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## **Are there still any grey areas/unresolved issues practitioners will need to watch out for? If so, how can they avoid any possible problems/pitfalls?**

No court has a 'perfect' set of rule and practices - they are only ever in force from time to time and will change when issues arise which call for improvements in procedure.

The new and amended practice directions are however a huge step to improving the effectiveness of the court process for all potential users of the Royal Court and will aid in the application of specific provisions.

In relation to any 'grey' areas, for a practitioner, one of the concerns for me relates to the new disclosure practice direction.

There is now a requirement where the person swearing the affidavit is not the advocate with

overall responsibility for the case or for the discovery process, the affidavit must contain a written endorsement from the advocate with overall responsibility for either the case or the discovery process, that the advocate concerned is satisfied that his or her client's discovery obligations have been met.

In my view, this endorsement can only be given if the client has allowed the advocate full access to his/her files and allowed the advocate to review the discovery. In practice, this does not always happen. Occasionally clients will undertake the disclosure exercise internally due to cost implications/concerns or they will only provide the advocate with the files they 'believe' are relevant. Advocates will therefore need to carefully consider their position when these situations arise and ensure they have thoroughly advised the client (in writing) of their duty of disclosure and reached an appropriate resolution with the client whereby the advocate is comfortable to provide the written endorsement required.

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