

## Changes to Jersey Civil Procedure

Insights - 07/07/2017

On 1 June 2017 a set of amendments to the Royal Court Rules (the Rules), together with 11 new Practice Directions, came into force in Jersey. These welcomed changes will provide more certainty in terms of timescales and costs in the dispute resolution process, resulting in cases being dealt with more expeditiously and proportionately. Furthermore, the amendments to the Rules and Practice Directions will encourage the early resolution of cases to avoid the need to resort to court proceedings.

The principal amendments to the Rules and new Practice Directions are addressed below.

### Overriding Objection

The amended Rules introduce an explicit overriding objective of the Court to deal with cases "*justly and at proportionate cost*", and a requirement that the parties must assist the Court to further is overriding objective. This Rule is expressed not to apply to criminal or quasi-criminal proceedings.

### Pre Action Communication

The encouragement of early resolution of cases is illustrated in the new pre-action communication Practice Direction. Its purpose is to encourage parties to exchange material information and to allow parties an opportunity to settle the claim prior to the commencement of proceedings. Non-compliance may result in an adverse costs order.

### Placing Cases on the Pending List and Adjournment by Consent Prior to Pleadings

Where following service an action is tabled before the Court, the parties can now agree to an adjournment for a period of up to four weeks without leave of the Court.

### Applications for Summary Judgment

Changes have been made to the test to be applied for summary judgment applications under Part 7

of the Rules. The amendments include the introduction of a "no real prospect" of success test and provisions enabling a defendant to seek summary judgment against a plaintiff.

## **Requests for Information**

A new Practice Direction provides guidance on Rule 6/15 and the power permitting the Court to require any party to either clarify any matter which is in dispute in the proceedings or to give additional information in relation to any such matter, whether or not the matter is contained or referred to in a pleading. Such a request must be concise and only relate to matters that are reasonably necessary and proportionate.

## **Directions Hearing**

A new Practice Direction introduces a new process in relation to the scheduling of the directions hearing, whereby the Court may now notify the parties of the date when such a hearing is to take place after the matter has been placed on the pending list. The Practice Direction also provides guidance as to what the parties should consider in an application for directions. It imposes a duty on the parties to (i) consider what directions are required, (ii) endeavour to agree appropriate directions for case management, and (iii) submit agreed directions to the Court for approval). If directions are not agreed the parties are now required to set out the directions they require and give a summary of the reasons why such direction is required with supporting material.

## **Budgets**

Where the value of the claim, including any counterclaims, is less than £500,000, a costs budget must be filed by all parties within seven days prior to the hearing of the first summons for directions.

## **Discovery - Hard Copy and Electronic**

A new Practice Direction provides guidance on the parties' approach to the obligation to produce documents relevant to the dispute. In particular, that obligation may now be dispensed with or limited by the Court. The result is that discovery may now be limited to what is reasonable and proportionate.

A further Practice Direction has been introduced which deals with documents held in electronic form (previously documents in electronic and hard copy form were not distinguished). This new Practice Direction codifies the general principles and process for making discovery of electronic documents in a proportionate and cost effective manner. It emphasises the need for the parties to discuss cooperatively the approach to electronic discovery and agree the process to be followed using appropriate technology (as far as possible in advance of the first directions hearing). The Practice Direction also imposes obligations on parties to ensure electronic documents are preserved from the time when litigation is contemplated.

## Expert Evidence

A new Practice Direction provides guidance on the approach to applications to adduce expert evidence under Rule 6/20. In particular, it limits the number of expert witnesses that may be called and it requires, where possible, that the parties endeavour to instruct the same expert where the claim involves more than one plaintiff or defendant. Thus the parties are encouraged to explore instructing a single joint expert in light of the overriding objective to deal with cases fairly and expeditiously.

## Offers to Settle

New rules have been introduced to encourage parties to put forward a proposal to settle a matter. If such an offer is declined, it may be taken into account when the Court addresses the question of costs.

## Summary assessment of costs

A new process has been introduced pursuant to which the costs of interlocutory hearings (other than in respect of a summons for directions) of less than a day can be summarily assessed.

## Comment

The changes to the Rules and the introduction of the new Practice Directions mark a sea change in civil procedure in Jersey, which to date has largely followed the practice provided for in the Supreme Court Practice as applied in England and Wales in 1999. Whilst much of that practice will remain, the changes will bring Jersey process more into line with the principles of and approach to case management that underlay the introduction of the Civil Procedure Rules in England and Wales at that time.

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