

# Instituting Civil Proceedings in Jersey

## Introduction

Jersey has a legal system which is separate from that of any other jurisdiction. Whilst it is judicially independent, unsurprisingly, it reflects many of the practices and procedures to be found in the courts of England and Wales, but with distinct differences. This Briefing offers a broad overview of the topic of instituting civil proceedings in Jersey.

## Legal System

Judicial independence and political autonomy have shaped Jersey's legal system and made it what it is today. The Duchy of Normandy has played a significant role in history through the centuries and its ancient laws played a vital part in the evolution of Jersey's legal system. Distinct from the jurisdiction of England and Wales, Jersey's legal system evolved from those ancient laws of Normandy. In more recent times, the law of the Island has been shaped by legislation passed by the Island's parliament, known as the States of Jersey, as well as through the decisions of the Island's courts.

In areas such as land law and the law of succession, the law of Jersey still reflects its ancient Norman heritage. In the commercial sphere, it is not surprising to see more modern influences at play. The law of trusts has been heavily influenced by English legal principle although the Island has benefited from having had a model piece of local legislation on the subject. The decisions of the English courts are highly influential and persuasive in other areas such as in the law of torts. English legal authorities are regularly relied on before the courts of Jersey.

Jersey's civil procedure will be familiar to an English practitioner. It is mainly embodied in the Royal Court Rules, 2004 (the "Rules"). The Rules broadly enshrine the English Supreme Court Practice as it was prior to the introduction of the Civil Procedure Rules in 1999.

## The Civil Courts

The Royal Court and the Petty Debts Court are the courts of first instance for civil cases in Jersey.

The Petty Debts Court used to deal only with claims for liquidated damages but it now has jurisdiction to deal with both liquidated and unliquidated claims. The maximum that may be claimed before the Petty Debts Court is £10,000.

Claims exceeding £10,000 are pursued before the Royal Court. The Royal Court is presided over by the Bailiff who is the Island's chief justice, president of the Royal Court and the civil head of the Island. If the Bailiff does not preside at a sitting of the Royal Court, the Deputy Bailiff or an appointed Commissioner will do so. When the Royal Court sits, it usually comprises a judge sitting with two jurats. The role of the jurats is one of the distinct features of Jersey's legal system. They are elected by members of the legal profession and members of the States of Jersey. Whilst they are lay members of the court, they are frequently elected to fulfill the role by virtue of having some particular experience, such as in banking or accountancy. Their function is to determine questions of fact and they also decide on sentencing in criminal cases. A judge may sit without jurats when deciding a question of law or ruling on costs.

The Royal Court is divided into four divisions comprising the Samedi Division, the Family Division, the Probate Division and the Héritage Division. The Héritage Division deals with disputes concerning title to land. The terms Family Division and Probate Division are self-explanatory. All remaining matters fall to be dealt with by the Samedi Division of the Royal Court. The significance of assigning a case to a particular division of the Royal Court is largely procedural for the composition of the members of each is largely the same.

Minor interlocutory applications or procedural hearings frequently take place before the Master of the Royal Court who is a lawyer exercising a similar jurisdiction to that of a Master in the High Court of Justice in England and Wales. Appeal lies from a decision of the Master to the Royal Court. Exercising a similar function in the Family Division of the Royal Court is the Registrar of the Family Division.

## Commencing Proceedings in the Royal Court

There are three main ways of instituting proceedings in Jersey. An action may be commenced by way of Summons in which case it is sometimes referred to as being by way of simple action. An action may also be commenced by way of an Order of Justice or by way of a Representation.

Where the sum claimed is certain in amount, a Summons is used to commence the action. Proceedings for the recovery of a debt are commenced in this way. If a claim is disputed, the claimant will need to file Particulars of Claim to which the defendant will plead by way of an Answer.

More complex cases require the preparation of an Order of Justice which is a lengthier pleading rather like the Particulars of Claim in English proceedings. Jersey follows English practice and procedure with regard to matters of pleading. Having set out the nature of the claim and the relief sought, the Order of Justice is signed by the advocate acting for the plaintiff before being served personally on the defendant. If the case requires some interim order, such as an interim injunction or an order for disclosure of information, the Order of Justice will contain a provision to this effect and be signed by a judge.

Like the Order of Justice, the Representation is also a detailed form of pleading. It tends to be used as a means of bringing matters before the court in less adversarial or contentious cases. For example, it might be used in a trust application where a trustee is seeking the directions of the court. By way of contrast, if a beneficiary wishes to sue a trustee for breach of trust, the Order of Justice is the appropriate way of proceeding. Once a Representation has been presented to the court, orders are made for it to be served on interested parties who are then convened to a subsequent court hearing.

## Service

### Within Jersey

Service by post is permissible in the case of a simple action commenced by way of Summons. The Rules provide for the amount of notice which is required to be given and when service by post is deemed to have been made.

An Order of Justice must always be served personally upon the defendant and this has to be done by a member of the Viscount's Department of the Royal Court. The Viscount's Department fulfills various functions which include the administration of bankruptcies, the enforcement of court judgments and the service of process. An officer from the Viscount's Department will be instructed by the claimant's lawyer to effect personal service of the Order of Justice by physically delivering it to the person required to be served. In the case of a Jersey registered company, the Order of Justice is served at the registered office of the company.

Where personal service is not practicable, an application can be made to the Master for an order for substituted service whereby service can be effected by taking such necessary steps as the court directs for ensuring that the document to be served is brought to the attention of the person required to be served.

### Outside Jersey

An application for the leave of the court is required before any Jersey proceedings can be served outside the Island. The Service of Process Rules, 1994 govern such applications and set out the various grounds upon which leave may be given to effect service outside the jurisdiction. An affidavit is required to be sworn in support of the application stating that, in the belief of the deponent, the plaintiff has a good cause of action, showing in what place or country the defendant is or is likely to be found and setting out the grounds upon which the application is made. An application of this type is made to a Master. The detail of the Service of Process Rules largely reflects the old Order 11 English practice and procedure in this area.

## Prescription

Claims may be time barred through the expiry of any relevant prescription or limitation period. Those periods differ under Jersey law from those in England and Wales. For example, a claim in contract has a generous prescription period of ten

years. A claim in tort has a far shorter prescription period of three years. There is some quite complex Jersey case law, on which specific advice would need to be taken, concerning whether a prescription period can be suspended through ignorance of the existence of the claim.

## Tabling

One quirk of Jersey legal procedure concerns the tabling of actions for a court sitting that takes place every Friday afternoon. Most new actions first come before the Royal Court at that sitting and the various cases are listed by name on a public document known as the "table". To have a case listed in this way requires the claimant's lawyer to file with the court office, referred to as the Judicial Greffe, proof of service on the defendant and to pay a tabling fee. These formalities have to be attended to the day before the court sitting. If these procedural steps are not taken, the action can only be listed for court by agreement, failing which the action has to be re-served. This can have serious adverse consequences where the expiry of a prescription period is imminent.

## Appearance before the Royal Court

Where proceedings are served on a defendant, he will be served with the originating process (be it an Order of Justice or Representation) and also with a Summons which stipulates a date and time for his attendance before the Royal Court. This will usually be on a Friday afternoon as just described. At that hearing, if the defendant wishes to defend the claim, he may ask the court to place the matter on what is termed the pending list. Thereafter, the defendant has 21 days in which to file an Answer to the claim unless the period is extended by agreement between the parties or on an application being made to the Master. If a defendant fails to appear at the first sitting of the court, or fails to file an Answer in time, the plaintiff may apply for judgment in default.

There is scope within the Rules to enable a party served with proceedings to dispute whether Jersey is the appropriate jurisdiction to hear the case or to challenge the validity of service on him. In such a case, the party disputing jurisdiction may ask the court to place the case on the pending list. He must then apply, within 28 days, to the Bailiff, in chambers, to fix a date for hearing his case. Detailed grounds are required when that application for a hearing date is made and so, in practice, the 28 day period may often prove to be a tight deadline.

## Setting Down

### Discovery, witness statements and expert reports

The Rules provide for the orderly filing of pleadings in any case as well as a host of other interlocutory applications that might be made at the same time. These might include an application to seek further particulars of a pleading which is considered to be too vague or unspecific. Applications might be made to amend a pleading or to strike out a case or part of it. Once the pleadings phase is complete, the action will be set down for hearing and a date will be fixed for trial. This is done by way of an application made by the plaintiff to the Master which must be issued within one month of the close of pleadings. If the plaintiff does not issue a summons for directions within that time, the defendant or any other party to the action may do so. If a summons for directions is not issued within two months after the time limited for filing pleadings, the court may give notice of 28 days and then dismiss the action.

Assuming that a summons for directions has been issued, the Master will usually make an order for discovery. Discovery procedure requires the listing of all relevant documents by the parties to an action and each list must be verified by an affidavit sworn by the party concerned. The summons for directions will frequently result in an order being made for the exchange of witness statements and experts' reports prior to trial.

### Trial Dates

Once the parties have complied with their discovery obligations, a date for trial can be fixed with the Bailiff's secretary. In practice, unless the trial is very lengthy, obtaining a reasonably early trial date tends not to be a problem as there are more than adequate courts available. For a particularly big or complex case, it is common to assign it to a particular Commissioner with relevant expertise. This is often done at a relatively early stage so that he can case manage the action and hear any of the interlocutory applications that require to be made.

## Costs

The award of costs is in the discretion of the court and it is a matter determined by the judge sitting alone. As a rule of thumb, the principle that costs follow the event applies so that the successful party ought to obtain an order for his costs to be paid by the unsuccessful party. The award of costs may be either on the standard basis or the more generous indemnity basis. Orders for indemnity costs tend to be made against a party who is considered by the judge to have

been responsible for some form of litigation misconduct. Otherwise, it is normal to receive an order for standard costs only. If the amount of costs to be paid cannot be agreed between the parties, there is provision in the Rules for costs to be taxed by the Judicial Greffe. In the case of an indemnity award, any doubt as to whether an item of costs should be allowed or not is to be resolved in favour of the receiving party. This results in the shortfall between costs incurred with one's own lawyer, and costs recovered from the unsuccessful party, being less than would be the case with an award of costs on the standard basis.

## Security for Costs

Where a claimant does not reside in Jersey, a defendant has the ability to seek an order for security for costs to be lodged with the court. A detailed estimated bill of costs will need to be provided to the Master in order to support an application for the provision of security for costs. The costs, once ordered to be provided, are held by the Judicial Greffe. It is common for more than one application for security for costs to be made at different stages of the action.

## Payment into Court

A party may protect his position in costs by making a payment into court. The amount of the payment into court reflects that party's view as to how much the claimant would be likely to recover at trial. If the claimant accepts the payment into court, he will usually be entitled, in addition, to payment of his costs up to the time of acceptance of the payment into court. If the payment into court is not accepted in satisfaction of the claim, the action proceeds in the normal way. If, at trial, the claimant recovers less than the amount of the payment into court, he will be likely have to pay not only his own, but also the other party's, costs incurred from the date of payment in. In some cases, it is not possible to meet a claim by way of payment of a specified sum in which event protection in costs may be afforded by making a settlement offer in correspondence which is marked "without prejudice save as to costs". Such a letter cannot be referred to in court until the case is determined but it is admissible in any argument on costs.

## Enforcement of Judgments

In Jersey, a court judgment usually carries with it permission to distrain upon the assets of the judgment debtor together with an arrest on wages, if appropriate. Enforcement within the Island is effected through the offices of the Viscount.

Enforcement of Jersey judgments is available outside the jurisdiction, reciprocally, in England and Wales, Scotland, Northern Ireland, the Isle of Man and Guernsey.

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