

COLLAS DAY | DISPUTE RESOLUTION

Who's afraid of the Big Bad Woolf?

Royal Court Civil Rules, 2007
come into force in Guernsey.

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On 4 February 2008, the Royal Court Civil Rules, 2007 ("the Rules") came into force in Guernsey. The Rules are considerably more detailed than the previous rules (which dated back to 1989) and include a number of significant changes.

Many of the new rules are based on the English Civil Procedure Rules ("CPR") albeit adapted to suit the needs of Guernsey. Perhaps the clearest examples of these "Woolf reforms" are the introduction of an overriding objective and active case-management powers. The main changes are as follows.

Overriding Objective

The overriding objective of the Rules is "to enable the Court to deal with cases justly". The Court is to do this by:

- ensuring that the parties are on an equal footing;
- saving expense where possible;
- dealing with cases in a way that is proportionate to the sums involved, the importance of the case, the complexity of the issues and the financial position of each party;
- dealing with cases expeditiously and fairly; and
- allotting an appropriate share of the Court's resources to a case.

The Court must seek to give effect to the overriding objective whenever it exercises a power given to it by the Rules or interprets any of the Rules and the parties are required to help the Court to further it.

These provisions are similar to the equivalent provisions in the CPR.

Automatic time limits for filing defences

Under the old rules, it was for the plaintiff to summons a defendant to file defences. This added an additional procedural step - with accompanying costs - and often resulted in a situation where proceedings were issued by plaintiffs but then not diligently prosecuted, which clogged up the system.

The Rules remove the requirement to issue a summons for defences and introduce a time limit for filing defences of 28 days. Time limits are also introduced for the filing of a defence to a counter-claim. Extensions of up to 3 months may be agreed by the parties without the Court's approval.

Active Case Management by the Court

The Rules give the Court significant new case management powers. The most important are to: encourage the parties to co-operate with each other in the conduct of proceedings; identify the issues at an early stage and dispose summarily of the others; encourage the parties to use alternative dispute resolution ("ADR"); set time limits or otherwise control the progress of the case; deal with matters without requiring the parties to attend Court; and use technology to limit costs and ensure trials proceed quickly and efficiently.

These measures provide the Court with a great deal of flexibility that should help the Court streamline the litigation process and ensure that the parties comply with the overriding objective. This should, in turn, help reduce costs and speed up the administration of justice.

The Rules also introduce a requirement for case management conferences and pre-trial reviews, where appropriate. The Court has held directions hearings in the past but they are now placed on a more formal footing with clear rules.

Disclosure

What was known as 'discovery' (the process whereby parties exchanged lists of relevant documents that are in their possession, power or custody) under the previous rules is now known as 'disclosure', as it is under the CPR. The rules governing disclosure are much more comprehensive than previously and, probably most significantly, the test for what must be disclosed is now more focused.

Previously, parties to litigation were required to disclose all "documents which are or have been in [their] possession, custody or power relating to any matter in question between them in the proceedings". This requirement was very wide and often resulting in very significant costs being incurred in completing the discovery exercise with little discernible benefit. In most cases, a party is now only obliged to disclose the documents on which he relies; the documents which adversely affect his own case; the documents which adversely affect another party's case or support another party's case; and the documents which he is required to disclose by a relevant practice direction. This is referred to as 'standard disclosure'. The duty is limited to documents which are or have been in the party's control (the definition of 'control' equates to the previous terms 'possession', 'custody' or 'power').

Interim Assessment of Costs

The Rules also give the Court new powers to order a party to pay the costs of an interim application or hearing (of less than one day only) at the conclusion of that hearing, and to assess such costs summarily. These are significant new powers and promise to be powerful new tools in ensuring the administration of justice.

In particular, this power should help focus the parties' (and their lawyers') minds when considering whether or not an interim application is really necessary and appropriate. The overuse of interim applications has long been a feature of litigation in Guernsey and has often resulted in cases becoming drawn out over a number of years.

Conclusion and Comment

The Rules introduce a number of Lord Woolf's key reforms but they are not a wholesale adoption of the CPR, nor were they expected to be as that would not have been appropriate for Guernsey. However, some have argued that they do not go anywhere near as far as they should have done. For example, many straightforward procedural steps still require an advocate to appear before the Court whereas in England and Wales they are regarded as administrative and may be completed by post/fax/email or over the Court's counter. The Rules do, however, undoubtedly modernise Guernsey's civil procedure and significantly increase the Court's involvement in the active management of cases.

It will be very interesting to see how the transition from the old rules to the Rules proceeds and how robust the Court will be in its application of its new powers. No doubt Guernsey will benefit from being able to look at how the CPR were embraced by practitioners and Courts in England and Wales nearly 9 years ago and thus avoid some of the difficulties faced there.

For further details on the new rules, or for any advice or guidance on how to bring or react to proceedings in the Royal Court please contact Christian Hay or Gareth Bell.

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