

Annex E

PETTY DEBTS PROCEDURE (OUTLINE)

This is an outline and cannot be regarded as a definitive statement of the Law. In case of any query or doubt please consult an Advocate. HM Sheriff and HM Greffier cannot offer any legal advice.

JURISDICTION AND BASIC PROCEDURE

The limit at present is £10,000. You cannot split a single claim for over £10,000 into smaller segments to get it in the Petty Debts Court – it must go to the Royal Court.

The person making the claim is called the "Plaintiff"; the person claimed against is the "Defendant". The Plaintiff must complete a Petty Debts Claim Form and submit this to HM Sheriff's Office to raise a summons upon the Defendant to come to the Court. Fixed fees are payable to HM Sheriff for service of the summons and to the Petty Debts Court. It is very helpful if the Plaintiff includes a brief statement to the Petty Debts Claim Form explaining what the case is about so that the Defendant and Petty Debts Court are made aware. A simple example might be "arrears of rent for three months at £600 per month, total £1,800"; or "damage to boundary wall caused by defendant hitting it with car: £500"; or "arrears of maintenance under Court Order 1st June, 2002 to 1st September, 2002 at £50 per week, total £700", etc. The Plaintiff will be advised of the scheduled date of their hearing upon submitting their Petty Debts Claim Form.

On the day of the hearing, which is fixed in the Magistrate's Court at 2.30p.m. on Thursdays, the Plaintiff is required to bring a copy of their Petty Debt Claim Form and any supporting documentation they may have and make payment for the court hearing no later than 2:15PM. If the case is contested it normally will not be heard then. The Judge will order a mutually convenient date for a hearing. This may be some time ahead due to pressure on Court time with earlier cases. If the matter is contested the Defendant or an Advocate has to come along to say that this is so.

If the summons has been successfully served on the Defendant ("A" or "B" Service) and the Defendant does not attend it is possible to ask for "judgment in default with costs". This can cover the fees of HM Sheriff and Court only. It is very rare for interest to be awarded. It is also possible to adjourn the case to another day (e.g. if some agreement or settlement is likely). If good service has not been achieved the Plaintiff will have been informed ahead of the court hearing date and can withdraw the claim, alternatively they can take the matter into court where it will be adjourned to another Thursday to enable a better level of service to be achieved.

At a contested case it is possible to be represented by an Advocate or (with the permission of the Judge) a "friend" (who can quietly offer advice, but not take over the conduct of the case). Quite often both sides represent themselves. If a company is one of the parties in a case either a Director or the Secretary should represent it, or someone authorised in writing by the company to represent it may appear.

PROCEDURE AT A CONTESTED HEARING

Both sides should ensure all the relevant witnesses are present. If a relevant witness will not voluntarily attend it is possible to ask the Greffe for a witness summons, for which a fee of £57 is applicable. The Plaintiff begins and evidence is called. The Defendant can then ask questions of the witnesses in cross-examination. This is not the time for the Defendant to tell their side of the case, that part comes later on. The Defendant's case is then heard with any witnesses being called and then cross-examined by the Plaintiff. At the end the Defendant sums up, followed last of all by the Plaintiff.

The Judge then having considered the information provided will deliver a decision. It is important to note that the Plaintiff has to prove the case in order to succeed. Hence the Judge has to be satisfied that the Plaintiff's version is of events is correct. If, having heard the evidence the Judge is not satisfied on this point then the claim will fail.

The power to award costs to a successful party is very limited and restricted to loss of earnings for witnesses

plus a very limited power to award travelling expenses and costs for expert witnesses. Whether or not costs are awarded is a matter for the Judge. You cannot recover costs for your Advocate's fees.

A dissatisfied party can appeal to the Royal Court, but written Notice must be given (obtained from the Greffe). It is recommended that legal advice be taken in such an eventuality. Notice must be given within seven days of the decision appealed against.

If a defendant wishes to contest however they cannot make the initial date they should contact Client Services (Petty Debts) by telephone: 01481 725277 or email: pettydebts@guernseyroyalcourt.gg .

WHO'S WHO

In the Court the person presiding is the Judge. The Judge is appointed by the Royal Court and is legally qualified. The person seated below the Judge is the Clerk of the Court, a Deputy Greffier, who is responsible for calling cases in and procedural details. A representative from the Office of HM Sheriff is likely to be sat next to the Clerk of the Court and there is also a Court Security Officer who assists with the witnesses. Hearings are open to the public and media.

COMMON PROBLEMS

Some pit-falls and problems are avoidable, but others are not. Please note the following to avoid inconvenience to everyone:

It is normal for documents (i.e. letters, accounts, bills etc.) to be referred to at a hearing. In order not to waste time in copying and familiarisation please copy one set for your use, one for the other side, one for the Judge, and submit to the Court and the other party one week before the hearing – the Court normally retains originals.

It is not possible to produce a letter or note from someone to prove something unless that person is a witness; you cannot prove a disputed fact by a letter or by what someone not called as a witness may have said ("hearsay"). So if you want, for example, to prove the other side's conversation with your spouse, secretary or a work colleague they have to come to give evidence about it.

Cases are often agreed (settled) in the period before the hearing date. Court time is scarce so please notify the Greffe as soon as possible.

It is rarely possible to adjourn a case when a date has been fixed for a hearing unless the other side consents.

Once a decision has been reached in favour of the Plaintiff by the sitting Judge the Plaintiff may leave the Court. The Plaintiff should receive the Act of Court by post 10 – 14 days after the Court hearing. This will also apply to contested hearings.

Should the Plaintiff wish he may then apply to the office of H.M Sheriff with his Act of Court to enable enforcement of the Order.

The guidance offered is for assistance only and does not purport to cover every eventuality. Circumstances can and do vary a great deal depending on the facts of each individual case.