Petty Debts Court Practice

Practice Direction

PD 18/01

This Practice Direction is issued by the Judge of the Petty Debts Court with the consent of the Bailiff pursuant to the provisions of Rule 60 of the Petty Debts Court Rules, 2018, and shall come into force immediately.

9th April 2018

B. L. Shaw
Judge of the Petty Debts Court

Introduction

This document sets out the steps required to be taken by anyone who brings or defends a claim in the Petty Debts Court. Anyone involved in such a claim is expected to follow this guide so that the dispute can be dealt with cost effectively and in an appropriate timeframe.

This guide is intended to supplement the procedural rules of the Petty Debts Court which can be found on the Jersey Legal Information Board website under the Court section at www.jerseylaw.je

These rules apply from 9th April 2018 to all existing and new claims.

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Claims that can be brought in the Petty Debts Court

The following are the most common claims brought in the Petty Debts Court:-

1. Claims for payment of money owed up to £30,000;
2. Claims for damages up to £30,000;
3. Claims for possession of leased property where the annual rent does not exceed £45,000 and for any unpaid rent;
4. Claims for arrears of maintenance and other related orders based on the parties having entered into a marriage or civil partnership;

However this guide applies to any claim issued in the Petty Debts Court

The Petty Debts Court

The Petty Debts Court ("the Court") is located in the Magistrate's Court, Union Street, St Helier.

The Court normally sits every Wednesday at 10.00 a.m. and your dispute will be heard then unless you are notified that you should appear at some other time or date.

The judges of the Court are the Magistrate, the Assistant Magistrate and any other person appointed to sit as a magistrate (known as a Relief Magistrate). They should be addressed as Sir or Madam.

The judges are helped by individuals known as Greffiers. Greffiers are responsible for the day-to-day administration of cases by the Court. Greffiers can provide guidance or assistance on court procedure either in person at the Magistrate's Court or by phone or email.

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Definitions

The following definitions may be relevant to any claim:

- Plaintiff - the person bringing a claim;
- Defendant – the person defending the claim;
- Magistrate – the chief judge of the Petty Debts Court;
- Judge – the Magistrate or another person appointed to act as a judge in the Petty Debts Court
- Greffier – the Court Official assisting the Judge;
- Court – the Petty Debts Court
- Directions - the steps you may be required to take to prepare your case for trial;
- Trial – The final hearing of your case where a decision will be made about the claim;
- Small claims – a claim for less than £5000;
- Mediation - a private meeting between a plaintiff, a defendant and an independent third party to try to resolve a dispute;
- Damages – the amount of money you seek for any loss or injury you have suffered
- Rules – the Petty Debts Court Rules 2018 which set out the Court's procedural rules. The Rules can be viewed at www.jerseylaw.je
- Judgment – an order of the Court requiring a person to pay a sum of money to another person.
- Claim Letter – a letter sent by a plaintiff before bringing a claim to Court

Before a claim comes to Court

Making a claim

Before you bring a claim before the Petty Debts Court you as a plaintiff or your legal adviser must send to the defendant a letter (a **Claim Letter**) containing the following information:-

- Your full name and sufficient other information to enable any defendant to identify who is bringing the claim.
- The full name of each defendant and sufficient other information to enable each defendant to be identified.
- A clear summary of the claim.
- The amount of money claimed.
- If the precise amount of money claimed is not clear then you should provide your best estimate of the amount of money being claimed.
- Any invitation to meet or other proposals to allow parties to discuss settlement.

For all claims under £10,000 you must allow a defendant at least 7 days to reply the Claim Letter.

For all claims for £10,000 or more you must allow a defendant 14 days to reply to the Claim Letter.

Answering a Claim Letter

If you receive a Claim Letter, you are expected to reply setting out:-

- Whether you agree or disagree with the plaintiff's summary.
- If you disagree, your reasons why.
- Any proposals you wish to make to explore settlement.

As far as possible any Claim Letter and any reply should be clear and should describe a party's position in simple language.

Following any exchange of letters the parties must consider whether negotiation or some form of mediation might enable them to settle their dispute without bringing a claim to Court.

A plaintiff must not normally start an action until the time allowed for a defendant to respond has expired.

If a party commences proceedings in the Petty Debts Court without following this guide, the Judge may take this into account in deciding what costs orders to make.

What is the latest time by which a claim must be made to the Court?
Please note that there are time limits by which you have to bring a claim otherwise the Court may not allow you to do so. This is known as *limitation*.

Where your claim is that a defendant has not kept to an agreement, you must bring your claim within 10 years of the defendant's failure to keep to the agreement.

If your claim is based on someone causing you injury where you say they were at fault and there was no agreement between you, you have 3 years to bring such a claim from when you first suffered injury.

If you are close to any time limit you should issue your claim as soon as possible.

Limitation is a complex area. If you are unsure about the last date by which you must issue a claim, you should seek legal advice.

Bringing a claim to the Court

How to bring a claim.

To bring a claim you must complete:-

1. a claim summary;
2. a summons;

You must complete all parts of the claim summary and the summons to issue a claim.

Examples of a claim summary and a summons are attached at part A of the Schedule to this guide. These can be downloaded from the JLIB website, the Citizen's Advice or a copy can be obtained at the Petty Debts Court.

The claim summary and summons together with a copy of your Claim Letter must be delivered to the Greffier with a stamped addressed envelope addressed to the defendant and the Court fee to issue the claim.

You must also provide the Greffier with your contact details and any contact details you have for the defendant;

To bring a claim, you have to pay a Court fee. The fee depends on the amount of your claim.

Your Claim Amount	*Court fee*
Up to £100.00	£7.00
£100.01 to £500.00	£15.00
£500.01 to £1,000.00	£30.00
£1,000.01 to £5,000.00	£80.00
£5,000.01 to £10,000.00	£120.00
£10,000.01 to £15,000.00	£150.00
£15,000.01 to £25,000.00	£200.00
£25,000.01 to £30,000.00	£300.00

The Greffier will post the summons to the defendant unless the claim is for eviction. A summons may also be posted by a lawyer.

How to complete the summons and claim summary

The summons and the claim summary should contain the same brief explanation why you are making a claim against the defendant and the amount of money claimed. This is so the Court and the defendant can understand your claim.

You should also insert in the summons any interest you are claiming, including the rate of and the period of time.

Your summons should also claim costs as set out below.

If your claim is not disputed, you can reclaim the Court fee and claim a fixed contribution for your time and effort known as fixed costs.

Your Claim Amount	Fixed Costs
Up to £100.00	£30.00
£100.01 to £500.00	£60.00
£500.01 to £1,000.00	£120.00
£1,000.01 to £2,500.00	£180.00
£2,500.01 to £10,000.00	£240.00
£10,000.01 to £30,000.00	£300.00

If your claim is disputed what costs you may claim is set out in the costs section of this guide.

You should make sure as far as possible that you have the correct name and address for the defendant. This might be the name of an individual or a company.

Even if you have dealt with an individual, you should check if that person was acting for a company. In particular, you should look at any agreements, letters, emails or other documents you have to see whether you were dealing with a company.

Details of a company's name and address can be checked at the Company Registry kept by the Jersey Financial Services Commission at www.jerseyfsc.org/registry .

Getting a date for the first Court appearance

Normally the Court sits to hear new cases on a Wednesday. You should contact the Greffier to obtain a date when your claim will first come to Court.

Unless personal service is required under the Rules, the Greffier will arrange to post the summons to the defendant. A summons may be also posted by a lawyer acting for a plaintiff.

If you are bringing a number of claims against different defendants, whether in your own name or as a Credit Control Agency, or you are bringing eviction proceedings you must liaise with the Greffier to agree the date when your claims will first be heard. If you do not do so, the first hearing of your claim may be postponed.

You will need to attend Court to present your claim or to be represented by a Jersey lawyer.

Serving a defendant outside Jersey

If the defendant who you wish to pursue does not live in Jersey, you need to contact Greffier. This is because you will need to apply for special permission to bring a claim against someone outside Jersey. The Greffier will explain what you will have to do.

Service of a claim through the Viscount's Department

For any claim where you are applying to the Court to evict a tenant or terminate a lease, the summons must be served on the tenant personally. This must be carried out by the Viscount's department. They can be contacted at Morier House, Halkett Place, St Helier. More details are on the gov.je website.

Service through the Viscount's Department is also required for any claims seeking an order for maintenance (but not arrears) or to enforce a maintenance order including a maintenance order made outside Jersey

What if I need help to complete a document?

If you need guidance on how to complete a claim summary or a summons you should contact one of the Greffiers who will assist you. However they cannot advise you on the merits of your claim.

Proceedings relating to leases of residential property including eviction

An action relating to a lease of a residential property is not straightforward. This includes an order to evict a tenant. You may well need to take legal advice, if you can, before starting an action. The Greffiers may also be able to give you some procedural guidance.

Most actions relating to residential leases are now brought under the Residential Tenancy (Jersey) Law 2011. However this law applies only to a lease

- where the annual rent is £45,000 or less and
- the lease was granted after 1st May 2013 or to an older lease that has been varied or renewed after 1st May 2013.

A copy of the Residential Tenancy (Jersey) Law 2011 can also be found at www.jerseylaw.je

For other leases, different laws apply to give notice or to cancel a lease.

Where a landlord seeks to evict a tenant or where a tenant whose lease has been terminated seeks an order to remain in the property, in addition to the general guidance for issuing proceedings to issue a summons in relation to a lease, you must set out the following information in your summons:-

- Describe the lease;
- If the lease has been terminated, when it was terminated;
- Why the lease was terminated;
- What terms of the lease have been breached
- Landlords should also set out what orders they are seeking, including when they want possession, the amount of any rent arrears and any claims for repairs to the property;

Eviction proceedings under the Residential Tenancy (Jersey) Law 2011 have to be served personally through the Viscount's Department. The Viscount's Department will provide a record of service as proof that the tenant has been served.

On the Monday before the summons is due to come to Court, the landlord should provide the Court with the record of service from the Viscount's department.

Tenants who are served with a summons should set out in writing for the Court and the landlord

- Whether they dispute that the lease has been terminated and if so the reasons why
- If they do not want to leave the property how long they wish to remain in the property and their reasons why.

This statement should be supported by any evidence the tenant wishes to rely on. A copy should be provided to the Landlord and the Court.

If the premises are or become uninhabitable and this is not due to the tenant, under Article 9 of the Residential Tenancy (Jersey) Law 2011, a tenant can apply to cancel the lease. A tenant can also apply to reduce the rent payable for so long as the property is uninhabitable.

Copies of the claims summary and the form of summons for the most common applications under the Residential Tenancy (Jersey) Law 2011 are attached at part B of the Schedule to this guide.

Steps to be taken before the first Court appearance

Where a summons has been served personally through the Viscount's department or by post by a lawyer, a record of service must be provided to the Greffier before 1.00 p.m. on the Monday before the Wednesday when a defendant is required to appear.

The record of service is a written record stating:-

- who carried out service;
- how it was carried out; and
- where and when it was carried out.

For any claim requiring personal service the Viscount will provide a record of service to a plaintiff. This has to be provided by the plaintiff to the Greffier.

If the case is settled before 1.00 p.m. on the Monday before the case is first due to be heard, the plaintiff needs to contact the Greffier to withdraw the action and to recover the Court fee paid. There is then no need for anyone to appear.

If the case settles after 1.00 p.m. on the Monday you must still contact the Greffier to withdraw the case but you cannot recover the Court fee. The action will appear on the Court list but normally neither party will need to appear.

In either situation the plaintiff must inform the defendant in good time that the claim has been withdrawn.

The First Court Appearance

Whether you are a plaintiff or a defendant you must either attend Court in person on the Wednesday when the claim is due to be heard or you must find a Jersey lawyer to attend on your behalf. You can also be accompanied by a friend to translate what is being said, if you might not understand what is happening.

If you are a defendant and you or your lawyer do not appear, the Judge is likely to make an order requiring you to pay the plaintiff's claim. This is known as granting judgment. A judgment is a public record of what money the Court orders you owe a plaintiff. A judgment can be enforced against your earnings, your bank accounts or anything else you own of value to pay what is due and may affect your credit worthiness.

If you do not dispute a plaintiff's claim but need time to pay, you are encouraged to try to agree a timeframe for payment with the plaintiff. If such agreement is reached the Judge may postpone the action to allow you time to pay what you owe.

If you dispute a claim the Judge will want to know why and may ask you brief questions. Once the Judge has heard from the parties the Judge may:-

- postpone the action to another date to allow the parties time to discuss the claim with each other with a view to resolving any dispute;
- refer both parties to a mediation hearing; the Court will fix a convenient time and date for the mediation and so you must tell the Judge or the Greffier if there are dates when you cannot attend;
- make orders requiring each party to provide a written summary of their case or defence (*see the section of this guide called 'pleadings'*);
- make any other orders that are necessary to enable a mediation to take place;

Mediation

Mediation is a free service arranged by the Court to allow you to sit down with the other party and an independent mediator, a Relief Magistrate, to try to find a solution.

The mediation will usually take place within two to three weeks after you first come to Court.

If you are a plaintiff and you do not attend the mediation at the correct time, the mediator may dismiss your claim.

If you are a defendant and do not attend the mediation at the correct time, the mediator may give judgment against you for the claim.

Before the mediation

Seven days before the mediation you should provide the Court and the other party a written statement about the dispute attaching a copy of any documents you want to refer to at mediation.

In more complex disputes you may be required to carry out certain steps before the mediation takes place.

At your mediation appointment

At the mediation, any discussions that take place are confidential and cannot be referred to at any time in Court. The mediation process also does not affect your right to argue a case in Court should the matter not settle.

You are expected to attend the mediation yourself but you may be accompanied by a legal adviser or may, with the permission of the mediator, be assisted at the mediation by a friend. This includes someone translating for you. However, if you attend with a lawyer, this is at your own expense.

At the mediation you will be expected to speak personally about the case, as the

mediator will want to hear your account of the dispute.
The mediator will inquire into the nature of the dispute and may ask questions. The mediator is there to assist the parties to the proceedings to reach an agreement to settle the claim. The mediator will not decide or rule on the merits of the dispute or express a view as to who is right or wrong.

If an agreement to settle the dispute is reached then the Greffier will record the terms in writing. The parties and the mediator will each sign this agreement and each party will receive a copy. If the settlement involves the payment of a sum of money then the payment date will be set out.

Any agreement reached at mediation to resolve a dispute is a private agreement and does not result in any Court judgment. However it is a legal contract to resolve a dispute. Each party is giving up the right to pursue or defend the original claim by agreeing a settlement.

After mediation
The Court will automatically cancel the action 28 days after the last payment is due unless an application is made that the agreement has not been kept.

If a party does not keep to the terms of the agreement, the other party can bring the case back to the Court to ask for a judgment for any amount due under the agreement.

When no agreement is reached at mediation
If no agreement to resolve the dispute is reached the mediator will issue both parties with directions to prepare pleadings to begin getting the case ready for a trial. The mediator will then take no further part in the proceedings.

Petty Debts Court Process

Send a 'claim letter' to the defendant and wait 7 or 14 days.

Complete and provide to the Court:

- Summons
- Claim summary
- Copy of the 'claim letter'
- Stamped envelope addressed to the defendant
- Court fee

The Court will post the summons to the defendant (the 'Posting Date').

Attend Court at 10 a.m. on the specified Court date.

If the defendant does not attend you may request judgment in their absence.

Come back to the Greffe on the following Monday to collect your Judgment.

Attend the Viscount's Department with your Judgment for it to be enforced (further fees will be payable to the Viscount's Department).

If the defendant appears and contests the action, mediation will be organised.

Bring your claim statement & relevant documents to the Greffe 7 days before your mediation appointment.

Attend mediation.

Pleadings

General

What are pleadings?

Pleadings are the documents produced by each party containing their claim or their answer to a claim. The Court will require each party to produce a pleading so that it is satisfied that a claim is disputed and a trial is needed to resolve the dispute.

Every pleading must set out all the events that make up the dispute usually in date order. This is to explain why you are bringing or defending a claim. The next section gives more guidance on how to do this.

Your pleading will allow the Court and the other parties to understand the dispute. This will assist the Court in deciding the best way to adjudicate on the dispute between you. It will also assist you in deciding whether you wish to try to resolve your dispute through discussion with the other party.

Types of pleadings

The types of pleadings that have to be produced are as follows:-

- Statement of Claim – this is a full explanation of the claim a plaintiff is bringing against a defendant;
- Answer – this is a defendant's response to a plaintiff's claim;
- A Counterclaim – this is where a defendant, as well as disputing a plaintiff's claim, has a claim against the plaintiff. Any such claim should be set out in the defendant's answer;
- An Answer to a Counterclaim – this is the plaintiff's response to any counterclaim made by a defendant.

A standard template for a Statement of Claim, an Answer and an Answer with a Counterclaim is attached at part C of the Schedule to this guide.

When are pleadings required?

Pleadings have to be produced:

- after mediation, if the matter does not settle or
- as the next step after the first Court appearance of the parties.

The Court will issue a timetable for each party to produce its pleading.

Normally a plaintiff is given **14 days** to prepare a statement of claim, and a defendant is given **14 days** to prepare an answer and any counterclaim. **14 days** is also given to produce any answer to a counterclaim.

When the Court sets a timetable requiring you to file pleadings, you will also normally be given a date to come back to Court. This hearing is for the Court to make orders to make a case ready for trial.

In more complex cases you may be given a date for a mediation to take place after all parties have filed their pleadings but before coming back to Court.

The contents of any pleading are dealt with in the next section.

Who is a pleading sent to?

Any pleading you prepare must be sent to the other party and to the Court. This can be done in person, by post or by email where the parties have agreed to correspond by email about the dispute or have been regularly doing so.

Small claims – an additional requirement.

For all claims for £5,000 or less, known as small claims you must also attach to your pleading any document

- you refer to in your pleading or
- you wish to rely on at trial.

Contents of a pleading

There are two main types of claim that the Court has to decide. The first are those based on some form of agreement. The second is where there is no agreement. This section deals with what you are expected to include in any pleading to set out your case and the key facts.

A. Claims based on an agreement

Agreements cover many different situations. They may relate to

- Your employment or where you work;
- building works;
- repairs to property you own or live in;
- repairs to other possessions you own;
- buying or selling goods;
- for medical treatment where you pay for the treatment;
- services you have provided or received.

The Statement of Claim for a claim based on an agreement

If you have a claim based on an agreement, you must set out:

- The details of your agreement with the defendant;
- Whether the agreement was in writing was oral or a mixture of the two ;
- If the agreement was in writing you should identify all written documents which you say contained the agreement;
- If the agreement was oral, you should set out when any conversation took place, who that conversation was with and what was said.

A document may contain all or part of an agreement even though it was not signed by anyone. Letters, emails or texts can all form part of or amount to an agreement in writing.

Once you have set out what agreement you have with the defendant, you must then set out why you say the defendant failed to keep to that agreement. You should set out what happened and anything that the defendant either did incorrectly or didn't do. This includes

not paying you money you are owed. It is normally best to set out what happened in date order.

You must also set out what financial loss or damage you have suffered. If you do not know the precise amount of the loss or damage you have suffered, you should describe the type of loss or damage and give your best estimate of what you are seeking.

The Answer to a claim based on an agreement

In preparing an answer to a claim for breach of an agreement as a defendant you must in your answer do the following:-

- Set out which parts of the plaintiff's case, you agree with and which parts you dispute and why;
- You should say if you dispute that you had an agreement with a plaintiff
- Where a plaintiff says that you failed to do something or did something in breach of an agreement you should explain which part of the plaintiff's allegations you dispute, again setting out the reasons why;
- You should also set out whether you dispute the amount of money that is being claimed and the reasons why.

A Counterclaim based on an agreement

If you have an agreement with a plaintiff who is bringing a claim against you and you wish to bring a claim that it is the plaintiff who failed to keep to an agreement with you, you are normally allowed to do so. This is called a counterclaim.

This is a claim by you against the plaintiff which will usually be heard at the same time as the plaintiff's claim against you. The counterclaim should be included in the answer to the plaintiff's claim.

If you bring a counterclaim based on an agreement you must set out:-

- The agreement you reached with the plaintiff;
- Why you say the plaintiff breached that agreement; and
- What loss that has caused you.

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An Answer to a Counterclaim based on an agreement

Where a counterclaim is made by a defendant against the plaintiff, the plaintiff's response is called an answer to the counterclaim. This is where a plaintiff sets out what part of the counterclaim is disputed. You should therefore set out:-

- Whether you dispute the defendant's version of the events about your agreement;
- Whether you dispute any allegation you breached the agreement; and
- Whether you dispute any loss or damage claimed.

You should set out in your answer to the counterclaim the reasons why you dispute any part of the counterclaim.

B. Claims where there is no agreement

There are many cases where a party claims to have suffered loss or damage caused by another party even though there is no agreement between them. Most commonly these are claims based on a party not behaving as they should and where the Court can require such a party to pay damages. Examples are claims following road accidents, breaches of health and safety rules, accidents on someone else's property or claims relating to medical treatment.

The S*tatement of Claim* by a plaintiff must set out:-

- Why the defendant is legally responsible for what happened;
- How the defendant breached any legal responsibility; and
- What loss you have suffered as a result of the defendant's failings.

You should set out the key events that form the basis of your claim, and what you say the defendant did incorrectly or failed to do. If you do not know the precise amount of the loss you have suffered, you should describe the type of loss and give your best estimate of what you are seeking.

If you are a defendant preparing an *Answer* to a statement of claim you should set out:-

- Whether you accept that you are legally responsible for your conduct in relation to the plaintiff, including responding to the reasons why the plaintiff says that is so;
- Whether you accept or dispute whether you have met that obligation and the reasons why; and
- Whether you accept or dispute any losses claimed by the plaintiff.

Small Claims

(I.e. claims for £5,000 or less)

For all claims where £5,000 or less is being claimed the following simpler procedure will apply unless the Court considers the case to be too complex.

Pleadings and small claims

For small claims, if the matter does not settle at mediation (see pages 14-15 above) each party will have to file a pleading - (see pages 16-21 above).

In addition, **you must attach to your pleading any document you refer to or wish to rely on in support of your claim**. **You must also identify any witnesses you intend to bring to trial**

The Court will inform you of the date by which you have to file your pleading. The Court will also inform you when you next have to come to Court, after filing a pleading.

Other steps the Court may require you to take

Once both parties have filed their pleadings you may be required at the next hearing to -

- explain in more detail a particular part of your case;
- provide additional documents; or
- do anything else the Court requires.

The Trial of a Small Claim.

Once the Court is satisfied that all necessary information has been filed by both parties the Court will fix a date for a trial of the claim. This will last no more than one day.

At the trial you should bring with you the original of any document you wish to rely on. This includes any communication or pictures stored on an electronic device.

You should also bring with you any person who is a witness to your claim.

At the hearing, the Judge will decide how the trial is to take place. The Judge will proceed on the basis that is considered to be fair to all parties. The Judge may in particular:-

- ask questions of any or all witnesses before anyone else does;
- require all witnesses to tell their stories before any witness is questioned;
- limit questioning of a witness to a fixed time, or to a particular topic.

The hearing will generally be in public, unless the Court orders otherwise, and will be recorded.

The Judge will inform the parties of his or her decision either at the end of a hearing or as soon as possible after the hearing. The Judge will give reasons for the decision.

Directions hearings and fixing a trial date

A directions hearing

A directions hearing is a hearing where the Court makes orders so that a trial of a case can take place. Only when the Court's orders have been carried out can a trial occur.

This section concerns cases which:-

- are not dealt with under the Small Claims Procedure; and
- have not settled at mediation.

The usual type of orders the Court will make at a directions hearing cover the following:-

- Either party may be required to clarify or explain part of their pleading;
- Both parties will be required to produce any document they have which is either referred to in any pleading, or which a party wishes to rely on;
- Both parties will be required to produce a sworn statement from you and anyone you wish to call to give evidence in support of your case;
- In some cases the Court may permit you to call evidence from an expert.

At the directions hearing, you should be prepared to explain how long you need to produce the documents you have, how long it will take you to produce sworn statements from you and any witness and whether you need expert evidence.

Any orders made by the Court will set a date by which you have to comply.

If you do not comply with the orders made by the Court your case will not be ready to proceed to trial.

If you persistently fail to comply with a Court order then your claim may be dismissed if you are a plaintiff, or judgment may be given against you if you are a defendant.

What documents do I have to produce?

Both parties will be required to produce any document they have which is either referred to in any pleading, or which a party wishes to rely on.

Documents cover any written communication, any email, text or similar message, or any documents electronically stored on a computer. Documents also cover photographs, plans, sketches or drawings.

Normally you will provide the other party with any copies of any documents you have to produce.

If the other party disputes that any document is genuine, they are allowed to see the original document.

If there is a dispute whether a document is genuine the Court will decide whether the document is genuine. This may be at trial or at a separate directions hearing.

You do not have to produce any document that contains any legal advice you have received relating to the dispute.

Witnesses

If you wish to call someone to give evidence on your behalf you must produce a witness statement from them setting out their evidence. That evidence must be directly relevant to the claim or any defence to the claim.

The statement of any witness must set out in detail and in writing their recollection of any event they were involved in. Normally it is helpful if the statement is a chronological account of what the witness remembers.

If a witness will not agree to come to Court voluntarily, you can ask the Court to order a witness to attend as long as you can show the Court the evidence of the witness is relevant.

Experts

The Court will permit expert evidence where it considers such evidence will help the Court to decide the case. The evidence of experts is used where the Court does not have sufficient knowledge or experience of a particular subject.

Examples of expert evidence allowed by the Court may relate to a road traffic accident, whether or not the treatment by a doctor met the appropriate standard of care, the nature of the injury you may have suffered, or the value of any property or possession affected by the claim.

If you consider that the Court should permit you to rely on evidence from an expert you should at the directions hearing identify which category of expert you require and why such evidence will help the Court to decide the case.

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Fixing a trial date

Once the parties have complied with all orders necessary for a trial to take place, the Greffier will liaise with the parties to fix a date for trial.

Trial fee

The Plaintiff will have to pay a Court fee to fix a date for the trial.

If the claim is for £3,000 or more, the plaintiff will also have to pay a trial fee (£300 per day or part of a day). This fee must be paid no later than seven days before the trial date.

Should mediation not be successful,

the case will proceed to trial

Directions will be given for the parties to state their position in writing (pleadings).

Usually the plaintiff will have **14 days** to file a Statement of Claim, i.e. a written document detailing the material facts in a logical and chronological sequence. Attach any documents you rely on as evidence.

The defendant will then have **14 days** to file an Answer, i.e. a document which addresses all the issues raised in the Statement of Claim. Attach any documents you rely on as evidence. The defendant can also lodge a counterclaim.

The parties attend Court as specified in the directions to see if the case is ready for a trial, identify witnesses and fix a date for the trial. Further directions for trial will be given in court on that day.

For claims above £5,000.00

The parties must file sworn Affidavits of evidence and a bundle of relevant documents relied upon by the date ordered.in the directions.

Trial

The witnesses will give their evidence and may be asked questions by both parties and the Magistrate. Having heard the evidence, the Magistrate will hear submissions before making a decision.

The Trial

(For claims over £5000)

Preparation in advance of a trial

In advance of a trial each party should prepare a bundle containing one copy of:-

- all documents relating to the dispute they rely on;
- their witness statements;
- their expert evidence;
- Any laws or cases they wish to rely on in Court.

You must provide to the Court 2 copies of the bundle 2 working days before the date fixed for trial. At the same time you must provide 1 copy of the bundle for the other side and keep 1 copy for yourself.

Each bundle must be identical. All pages need to be numbered. The bundle must have an index setting out the contents of the bundle.

Each party should also prepare a list of its witnesses and expert witnesses including their full name, and, if known, their date of birth.

If any witness will not attend voluntarily you should ask the Court to make an order requiring the witness to attend. You should do this as soon as you know someone will not attend voluntarily. The Court will make such an order as long as you can show the Court that the evidence of the witness is relevant.

The trial itself

Before giving their evidence, each party and every witness who is to give evidence will be sworn-in. This means that the parties and all witnesses will take an oath or an affirmation and promise to tell the truth.

If you are the plaintiff you will be asked to give a brief summary of what the case is about, and what evidence you intend to rely on.

The plaintiff and then his or her witnesses will give their evidence as follows:-

- They may clarify anything contained in their witness statement;
- The Judge may ask the witness questions to clarify anything contained in their witness statement;
- The other party may then question the witness. This is known as cross-examination;
- Experts will normally be heard after all other witnesses for each party.

Once the plaintiff and the plaintiff's witnesses have given evidence and have been questioned, the defendant then outlines his or her case, gives their evidence and then calls his or her witnesses in the same way as the plaintiff.

After both sides have given their evidence, each party will summarise its final position. This is where each party sets out its arguments in support of its case.

If a party wishes to rely on any cases or laws to support its argument, it should draw the Court's attention to any authorities or laws the party is relying on.

After the Court has heard all the evidence and anything any party wishes to say, the Court will give its decision and its reasons.

The decision may be given that day or the Judge may decide that he or she wants to think about everything he or she has heard before reaching a decision. This is known as *reserving a decision*. If this happened you will be notified of a time and date when you should attend Court for the Court to give its decision.

Cases without merit

The Court may dismiss all or part of a claim or a defence to a claim without a trial.

The Court can do this in the following ways:-

- It can *Strike Out* a claim or defence. This usually occurs where Jersey law does not permit the claim or defence to be brought;
- A claim can also be *Struck Out* where a party is acting vexatiously or where the issue has already been decided in an earlier case;
- The Court can also be asked to dismiss a claim or defence on the basis that a party has no real prospect of succeeding; this power is used for weak, improbable or fanciful cases.

If you bring such an application it is up to you to persuade the Court that a trial is not necessary.

It is only if it is clear or obvious that a claim or defence to a claim will not succeed will the Court decide a matter without a trial.

If there are arguments on both sides then the Court will require a trial to take place. This is so even if one argument may appear stronger than the other.

If you consider that you wish to bring such an application, you should speak to the Greffier about the detail of the procedure involved.

Costs

This section deals with what costs you may claim in the Petty Debts Court. Generally as a successful party you can only claim fixed costs unless the Judge makes a different order.

This section applies to all claims started after 9th April 2018. For claims issued prior to this date, the Judge may either award fixed costs in accordance with this guide or may award standard or indemnity costs.

Where an order is made requiring fixed costs to be paid you can claim the same amount whether or not you retain a lawyer.

Where a claim is not disputed

If you issue proceedings as a plaintiff and obtain a judgment from the Court, you will be entitled to fixed costs.

Where the claim:

- does not exceed £100 you will be awarded £30;
- exceeds £100 but does not exceed £500 you will be awarded £60;
- exceeds £500 but does not exceed £1,000 you will be awarded £120;
- exceeds £1,000 but does not exceed £2,500 you will be awarded £180;
- exceeds £2,500 but does not exceed £10,000 you will be awarded £240;
- exceeds £10,000 but does not exceed £30,000 you will be awarded £300.

together with the court fee you have paid to issue the claim and any fees paid to the Viscount's department to serve a defendant.

The Court will allow you to recover these costs automatically when you ask for a default judgment unless the Court makes a different order. This includes a judgment where a defendant accepts that it owes some money but disputes the amount.

Where a claim is disputed

Where all or part of a claim has been disputed, generally a successful party can only ask for the fixed costs set out below unless the Court makes a different order.

The amount of costs you can claim as a successful party or be ordered to pay as an unsuccessful party will depend on the amount of damages awarded at any trial or which you have agreed should be paid.

Fixed costs for small claims

For small claims i.e. those for £5,000 or less, the costs the successful party may recover are:-

- fixed costs as for an undisputed claim
- £250 for preparing your pleading; and
- £250 where you have to attend trial

Fixed costs for claims between £5,000 and £10,000

For claims between £5,000 and £10,000 a successful party can claim the following:-

- £240 for issuing the proceedings - (plaintiff only).
- £400 for preparing pleadings.
- £400 for producing documents.
- £400 for producing witness statements from factual witnesses or the time spent to instruct an expert.
- £600 for trial preparation once a trial date has been fixed.
- £600 for each day you attend at trial up to a maximum of two days.

Fixed costs for claims over £10,000

For claims over £10,000 a successful party can claim the following:-

- £300 for issuing the proceedings - (plaintiff only).
- £900 for preparing pleadings.
- £900 for producing documents.
- £900 for producing witness statements from factual witnesses or the time spent to instruct an expert.
- 1200 for trial preparation once a trial date has been fixed.

- £1200 for each day you attend at trial up to a maximum of three days.

Witness expenses and expert fees

For all disputes a successful party may also claim necessary costs for any witness to attend at trial and the fees of any expert evidence if the Court has ordered expert evidence.

The Court will decide the amount of costs or fees that you may recover. In making its decision the Court will have regard to UK's Legal Aid Agency's "Guidance on the Remuneration of Expert Witnesses" from time to time and may also cap the amount of fees you may claim. You will not be awarded expert fees in excess of £2,000.

Fixed costs in proceedings concerning a residential lease

Where an eviction order is made the fixed costs a landlord may claim are:-

a. £300
b. The Court fee payable for issuing proceedings, and
c. Any fees payable to the Viscount's department for serving the proceedings on the tenant

Where a landlord's application for an eviction order is refused by the Court the tenant may claim fixed costs of £300.

If the Court orders a variation to a lease of premises it finds are uninhabitable under Article 9 of the Residential Tenancy (Jersey) Law, a tenant can claim:-

a. £300
b. The Court fee payable for issuing proceedings

Where a tenant's claim under Article 9 is refused by the Court the landlord may claim fixed costs of £300.

Other costs orders the Court may make

There are two circumstances where the Judge may make a different costs order as follows

1. Where a plaintiff is awarded at trial a sum of money less than a previous offer to settle the claim, or

2. Where a party's conduct means that it should pay more than a successful party's fixed costs

1. If the award is less than a previous offer

If you are a plaintiff and you recover less at trial than a previous offer to settle your claim which offer can be shown to the trial judge, the Court will only allow you to claim fixed costs up to the date you could have accepted the offer.

After that date a defendant can claim against a plaintiff fixed costs representing the defendant's costs of continuing to defend the claim.

The Court will also set off these two figures against each other.

2. *An order for more than fixed costs*

The Court may order the party who loses at trial to pay more than fixed costs if

- there were no reasonable grounds to bring or defend the proceedings, or
- the proceedings were an abuse of the Court's process by one party, or
- the conduct of one party obstructed the just disposal of the proceedings.

When the Court makes such an order the successful party will normally recover standard or indemnity costs not fixed costs.

Standard costs is compensation for the costs the Court considers you needed to incur.

If you are awarded indemnity costs you will recover any cost you have incurred as long as they are not unreasonable.

Calculation of standard and indemnity costs

If the Court makes an order that the other party is to pay standard or indemnity costs, the Greffier will assess the amount of cost you can recover.

If you have appointed a lawyer you will be able to recover a standard amount per hour for the lawyer you have retained. The rate is set by the Court.

If you have acted without legal advice, you will be able to recover an hourly rate representing your actual financial loss if you have evidence showing such a loss. Otherwise you will recover an hourly rate of between £15 and £25 per hour for the time spent by you in defending the case.

Schedule

Forms to be used in the Petty Debts Court

Part A –All claims apart from eviction claims

1. a claim summary
2. a summons to start an action

Part B – Eviction claims

3. a claim summary and summons to apply to vary or cancel a tenancy including rent for uninhabitable premises.
4. a claim summary and summons to apply to evict a tenant where a valid notice of termination has been given
5. a claim summary and summons to apply to evict a tenant for breaching a tenancy
6. a claim summary and summons to apply for a stay of execution
7. a claim summary and summons to apply to vary or extend a stay of execution

Part C - Template pleadings

8. a statement of claim
9. an answer
10. an answer including a counterclaim