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The Royal Court (Reform) (Guernsey) Law, 2008

by Simon Geall

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At its October 2008 sitting, the States of Guernsey passed a commencement ordinance bringing the Royal Court (Reform) (Guernsey) Law, 2008 into force.

As its name suggests, the purpose of the Law is to make some changes to the way in which the Royal Court conducts its business, primarily in order to help it cope with the increased civil caseload before it.

Some of the most important changes made by the Law are:

- The panel of Jurats is increased from 12 to 16 (without affecting the number required for a quorum in any of the Divisions of the Royal Court). The Jurats are often referred to as a 'professional jury', a peculiar feature of Guernsey's legal system. Prior to the advent of the Law, they were the sole finders of fact in civil proceedings.
- Parties to civil proceedings may now elect that the Bailiff shall sit unaccompanied by Jurats to determine issues of fact or mixed fact and law (and the Bailiff may also direct this). However, all parties to the proceedings may specifically agree that the Jurats should sit alongside the Bailiff.
- If the Bailiff does sit with Jurats, he is no longer required to sum up to them in open court but may simply retire with them.
- Judgments in civil proceedings shall be reasoned. Where the Jurats are sitting, such reasoning shall contain their findings and decisions, plus any dissenting findings and the identity of those dissenting. The judgment shall also include the Bailiff's findings, decisions and directions of law and procedure and the application thereof to the facts. The Bailiff may assist and advise the Jurats at all stages of the process.

Thus, the Jurats retain a crucial role in civil proceedings. However, there is a procedure by which the Bailiff may determine questions of fact, should the parties so elect or the Bailiff direct. One can envisage this procedure being employed in a case with a complex factual matrix, or where the real issues of the case are of law rather than fact.

Litigants are advantaged by flexibility introduced by the Law, which represents another step of reform of the civil process. It will potentially enable cases to be dealt with more quickly and transparently, complementing the overhaul of civil procedure brought about by the Royal Court Civil Rules, 2007, which came into force in February 2008.

Further steps of reform are fast approaching on the horizon; for example the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2008 (by which hearsay is made generally admissible in civil proceedings), and the Magistrate's Court (Guernsey) Law, 2008 (by which inter alia the Magistrate's Court is given the same power to grant remedies as the Royal Court, and its civil jurisdiction extended to disputes not exceeding £10,000).

Once the reform is complete, the Guernsey Courts will be well equipped to deal with the wide range of disputes that come before them.

Simon Geall
Advocate
AFR Advocates