



## Petty Debts Process

The Petty Debts Court allows certain types of claim to be decided by the Judge, usually without the need for an Advocate. Should a Plaintiff (any applicant or other person bringing civil proceedings of any sort before the Court) decide to instruct an Advocate to represent them in a Petty Debt case, the Court will rarely grant the costs of instructing an Advocate when making judgment.

There are a number of factors which should be taken into account when deciding whether to pursue a claim through the Petty Debts process.

### **Petty Debt Limit**

A Petty Debt claim is one where the value of the claim is not more than £10,000. A claim cannot be divided into smaller segments if a greater sum is owed, in order to pursue the debt through the Magistrate's Court. For claims that exceed £10,000 the Plaintiff must issue proceedings in the Royal Court.

### **Examples of claims that can be made include (but are not limited to):**

- Claims for debts;
- Claims for faulty goods;
- Claims for unsatisfactory workmanship;
- Claims for damage to your property;
- Claims for arrears of child maintenance;
- Damage to vehicles caused in Road traffic incidents.

### **Excluded claims**

There are cases which may seem to fall into the Petty Debts category but which are excluded. Listed below are some of the most common types of claims that cannot be made using the Petty Debts process:

- Claims for libel or slander;
- Claims concerning the title to land;



- Claims where the matter has been sent to the Royal Court;
- Claims involving a legacy or annuity;
- Claims in relation to the property of a marriage.

There may be other instances when a claim cannot be used or where a Petty Debts claim may only be made with the Judge's permission. If you need further information on excluded claims you should seek advice from an Advocate.

Staff at the Royal Court Client Services Team can help by explaining the Petty Debts process but cannot provide legal advice.

Landlords are advised to read and understand their tenancy agreements, specifically checking for an arbitration clause, before proceeding with any relevant Petty Debt claim.

A Defendant (a 'Defendant' includes any Debtor or Respondent to an application before the Court) will be liable to pay Court fees in respect of proceedings begun by them, for example a counter-claim or counter-application, as if they were a Plaintiff.

## **Considerations before embarking on the Petty Debt Process**

### **Have you tried to settle your claim with the Respondent?**

You may wish to try and settle your claim directly with the Debtor by writing to them outlining your claim initially. If you do this you should keep a copy of your letter and allow them a week or so to reply.

If you do not receive a reply or if the reply you get is not satisfactory it would be reasonable for you to write again advising that you intend to start legal proceedings if your claim is not settled satisfactorily. If you still do not receive a satisfactory response you may then wish to consider Petty Debt proceedings against the Debtor.

### **Has the Respondent had any previous Petty Debt judgments awarded against them?**



You are able to check whether a Respondent has any other Petty Debt judgments against them by reviewing records held in the Strong Room at the Royal Court. The Strong Room is open to the public between 2pm and 4pm Monday to Friday. There is no charge to do this.

### **Is the Respondent over the age of 18?**

Petty Debts can only be taken out against persons over the age of 18.

### **Do you have a local address for the Respondent?**

If the respondent is a private individual, you must ensure that you have details of their local home address, in order that a summons can be served on them there. You will also need to provide their full name.

If the respondent is a limited company you should enter the full name of the company, and the full registered address of the company. Addresses of registered companies can be obtained from the Guernsey Registry.

When claiming against a respondent who trades in a name other than his or her own you should enter the name of the respondent followed by the words 'trading as (e.g.) Mr J Bloggs', trading as ABC Builders, etc.

### **If you are successful in your claim will you be able to recover the money?**

This is perhaps the most important question you should ask yourself before deciding whether to proceed with a Petty Debt claim. Even if you succeed in your claim, if the Respondent has no money to pay the amount of the claim, you may not get your money or be able to recoup the costs of your legal action including any associated Court fees. **The Court does not pay the amount that is awarded; it only decides who is liable.**

The Plaintiff must pay all costs up front including Court fees, and then recover these costs from the Defendant if judgment including costs is granted. More information in respect of costs is available in Annex A and Annex B.

The Office of H.M. Sheriff is part of the Royal Court and Magistrate's Court. Should judgment be granted and you want to request enforcement of that judgment, please see page 12 below. Obtaining judgment does not guarantee payment of the debt; the judgment only



gives H.M. Sheriff the authority to arrest the assets of the Defendant if they have any or it is cost effective to do so.

### **Is there a time period by which judgment should be sought?**

Time limits by which civil action should be brought before the court will depend exactly on the type of action being pursued. H.M. Sheriff cannot provide legal advice and the applicant is advised to seek independent legal advice from an Advocate should they feel the need.

### **How to begin the Petty Debts process**

#### **Petty Debts Claim Form**

A Petty Debts claim form is available on the Royal Court website. This form is also available in hard copy from the Royal Court public counter. A copy of this form is available at Annex C.

#### **Completion of the Petty Debts Claim form**

##### **i) Plaintiff (Applicant)**

These are the details of the individual(s) or company issuing the Petty Debt claim.

##### **ii) Defendant (Respondent / Debtor)**

These are the details of the individual(s) or company the summons will be served upon. Please ensure they are as accurate as possible and do not include addresses of employment.

If the Defendant is a private individual, their local home address must be supplied, in order that a summons can be served on them there; in addition to this their full name must be detailed.

If the Defendant is a limited company the full name of the company and the full registered address of the company must be supplied. Addresses of registered companies can be obtained from the Guernsey Registry.



When claiming against a Defendant who trades in a name other than his or her own, the name of the respondent followed by the words 'trading as (e.g.) Mr J Bloggs', trading as ABC Builders, etc. should be entered

### iii) Details of Claim

In the 'Total 'Due' section, the total amount of the debt owed must be detailed; this must not exceed £10,000.

In the 'Extra Information' section, the fact should be clearly set out, as an example;

- When did the claim arise
- What goods or services were provided
- When were the goods / services purchased or when was property damaged
- What happened to cause the claim
- Has there been any communication between the Plaintiff and Defendant in relation to the claim prior to the submission of the Petty Debts claim

If more space is required to explain circumstances in addition to that which is on the form, a separate page can be used for continuation.

**When a claim form is submitted please do not submit additional paperwork to support the claim;** if the Defendant attends the Petty Debt Hearing and wishes to contest the claim, instructions will then be given by the Judge with regards to supplying copies of supporting documents.

### Submission of the Petty Debts Form

The completed Petty Debts Claims Form can be submitted as follows;

- 1) Submitted at the Royal Court public counter, together with the appropriate fee;
- 2) Posted to the Client Services Team at the Royal Court, with a cheque for the appropriate fee, or alternatively payment can be made over the phone
- 3) E-mailed to the Client Services Team at the Royal Court, on [pettydebts@guernseyroyalcourt.gg](mailto:pettydebts@guernseyroyalcourt.gg), payment will need to be made over the phone

Cheques must be made payable to 'The States of Guernsey'.



A receipt will be issued and you will be advised of the date the case will be heard in the Magistrate's Court; this will be sent out via the same method as the form was submitted. The Plaintiff must ensure they keep a copy of the Petty Debts claim form as they will be required to bring a copy of it on the day of the hearing.

**Please note that a copy of the completed Petty Debts Claim Form will be submitted to the Defendant along with the Summons.**

### Service of a Summons

A formal summons with the details of the claim is created. The Office of H.M Sheriff and H.M. Sergeant will attempt to secure the highest level of service for the summons on the individual or company concerned.

There are three different levels of Service a summons can achieve:

- **"A Service"**

The summons is handed directly to the defendant

- **"B Service"**

The summons is handed to a responsible adult who undertakes to pass the summons to the defendant

- **"C Service"**

After attempts to achieve an "A" or "B" service have not succeeded, the summons is left in an envelope at the address concerned.

The Office of H.M. Sheriff and H.M. Sergeant have up to 2 clear days prior to the Petty Debts Court to serve the summons. Only an "A service" or "B service" will allow a case to be heard in Court. If a "C" service has been achieved, the Plaintiff will be informed ahead of the Court hearing but they have the right to take the matter into Court and ask for it to be adjourned for better service on the Defendant.



## **Following Service of a Summons**

When a Defendant has been served with a Summons, they have various choices available to them;

- They can settle the claim directly with the Plaintiff in which case the Plaintiff must notify the Client Services team at the Royal Court, on (01481) 725277 in order that the matter can be withdrawn (proof will be sought to confirm the Plaintiff's identity)
- They can attend Court and admit liability for the claim, in which case judgment with consent will be entered against them
- They can attend Court and advise that they wish to dispute the claim, in which case it will proceed to a contested hearing
- They may wish to enter a counter-claim; in this instance it would be preferable that the counter claim could be heard at the date of any arranged hearing
- They can ignore the summons, in which case the Plaintiff should take steps to take the matter into Court. If good service has been achieved and the Defendant doesn't attend Court, the Judge is likely to award Judgment with costs in the Plaintiff's favour in their absence.

## **What happens if the Petty Debts claim is settled?**

If the Defendant and Plaintiff settle the claim, the Plaintiff needs to withdraw the application, and in order to do so, must inform the Client Services Team at the Royal Court, on (01481) 725277; preferably notification of the Plaintiff's wish to withdraw the Petty Debt is made in writing or in person (proof will be sought to confirm the Plaintiff's identity).

Any settlement of the debt by the Defendant should include the summons fee. If the Defendant is unwilling to pay this fee and the Plaintiff wants it back, they can continue with the Petty Debts Claim to recover this.

## **What happens next if the claim is not settled before the Court date?**

If the Petty Debts Claim is not settled by the Defendant before midday on the day of the Petty Debts Court (Thursday) then the Plaintiff should attend at the Royal Court public counter before 2:15PM to pay the Court fee in order to have the matter presented before the Court.



## **What happens in Petty Debts Court?**

Petty debt claims are usually heard in Court 2 at 2.30 p.m. on the notified Thursday afternoon.

Having paid the Court fee at the Royal Court public counter the Plaintiff should await the calling of their case in the public gallery of the Court.

The Deputy Greffier will call the case, naming the Plaintiff and the Defendant. At this point the Plaintiff (and Defendant if present) should enter into the Court where they will be guided to a position to represent their claims to the Judge.

The Judge will invite the Plaintiff to state what they wish to claim. If the Defendant does not appear and an "A" or "B" service has been achieved on the summons, it is usual for the Plaintiff to ask for "judgment with costs" which will usually be granted. The Plaintiff will then be free to leave the Court.

## **Is it possible for cases to be adjourned?**

It is possible to adjourn the case to another day (e.g. if some agreement or settlement is likely). The following are scenarios when cases are likely to be adjourned;

If good service has not been achieved, i.e. only "C" service was possible, the Plaintiff will be informed ahead of the court hearing date and can either choose to withdraw the claim, or 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 i.e. an "A" or "B" service. The Plaintiff will have paid the Court fee on that day prior to going into Court and a further £32.00 will be payable by the Plaintiff immediately prior to the next Court hearing.

A further option available to the Plaintiff is whereby they agree with the Defendant to 'sign over' the debt. In this instance the Defendant signs an agreement to pay a mutually agreed amount in instalments and agrees that the case can be re-instated in the Court without a further summons if he or she does not meet the agreed payment plan. An example of a 'Sign Over' Agreement is at Annex D.





If the case is adjourned sine die (indefinitely) and the Plaintiff wishes to re-instate the case then another summons will need to be served on the Defendant for which another service and Court fee will need to be paid. The Plaintiff can however, if good service is eventually achieved and the case proceeds to Court, re-coup the initial summons and Court fees. Such an instance is likely if it transpires that a Defendant is out of the Island for an extended period of time.

### **What happens if the Defendant appears in Court and advises they wish to contest the case?**

If the case is to be contested by the Defendant then the Judge will usually ask on what basis this is. Having considered that a further hearing is necessary, the Judge will order a mutually convenient date for the hearing. This may be some time ahead due to pressure on Court time with earlier cases.

The Judge will inform both the Plaintiff and the Defendant that if they have any documents or correspondence on which their case relies that copies should be made available for the Judge and the Deputy Greffier (court). The Parties should retain the original copies of the documents upon which they will rely on and remember to bring such documents into Court. The Judge will give direction as to the dates by which copies of the documents need to be exchanged between Parties and submitted to the Court if copies are not provided to the other party/parties or to the Court, there is a risk that the case will be further adjourned and an order that the party, who is late submitting Documents, pay the costs of the adjournment. Equally, if any witnesses are to be called, it is the responsibility of either side to ask the witnesses to attend. If either side believes that a witness would not attend willingly, it is possible to have the witness summoned to attend the Court. Guidance on how to do this can be obtained from the Client Services Team.

### **Contested Hearing Procedure**

If a claim has been disputed and / or a counterclaim has been issued both the Plaintiff and Defendant should have exchanged documented evidence at least 7 days before the hearing and should have provided two copies to the Court (one for the Judge and one for the Deputy Greffier). Both the Plaintiff and the Defendant should appear in Court at the time notified at



the initial hearing. No further formal notification will be made and so it is the responsibility of each party to attend. At a contested case it is possible to be represented by an Advocate, or with the permission of the Judge, assisted by a "friend" (who can 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 they must be represented by the Company Director or the Company Secretary.

### **On the Day of the Hearing**

- Both sides must remember to bring in their own copies/originals of any documented evidence already exchanged and provided to the Court.
- Both sides should ensure all relevant witnesses are present.
- You cannot rely on a report or a letter from a witness. Unless the other party agrees, the same witness who has written a letter or report must be physically present at Court.
- 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 of events is correct. If, having heard the evidence the Judge is not satisfied on this point then the claim will fail. The level of proof in a Civil case is on the balance of probability.

### **How are Costs Awarded?**

The power to award costs to the successful party is very limited and is restricted to the costs of getting the case to Court or for 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 if you use one.



## **Appeals**

A dissatisfied party can appeal a decision, to the Royal Court, but this must be in writing. Advice on this can be obtained from the Court Services Team. It is recommended that legal advice be taken in such eventuality. Notice must be given within 7 days of the decision being appealed, having been made.

## **If a Petty Debt Claim succeeds**

At the conclusion of a Court hearing, an Act of Court will be produced detailing the particulars of the Judgment granted.

## **What is an Act of Court?**

An Act of Court is an official record of the decision or judgment of the Court (Royal or Magistrate's Court) and is produced in a number of different formats on conclusion of a Court hearing. The document usually contains the following information:

- The Plaintiff's details
- The Defendant's details
- Date of Court hearing
- Brief outline of the case
- Judgment awarded

It is the Act of Court that gives H.M. Sheriff the authority to commence enforcement action on behalf of a Plaintiff, should they so wish.

When submitting a request for enforcement only the original Acts of Court will be accepted by H.M. Sheriff. The original Act of Court will be returned to the Plaintiff with a final report on completion of investigations.

## **Is there a period of time in which an Act of Court must be rendered for enforcement?**

Acts of Court should be rendered for enforcement within a set period of time, called the prescription period. The time limits are generally as follows:

- Judgment by consent or following a contested hearing – 6 years
- Judgment by default – 3 years



If the Act of Court is passed to H.M. Sheriff for enforcement outside the prescription period then H.M. Sheriff is unable to act and the Plaintiff will need to obtain a renewed judgment.

### **Re-payment of a Judgment Debt**

The Plaintiff can seek repayment of the Judgment Debt from the Defendant themselves, or through the Office of H.M. Sheriff.

### **Plaintiff seeks re-payment of Judgment Debt**

The Plaintiff can seek payment of the Judgment Debt from the Defendant without involving H.M. Sheriff's Office. Should they wish to take this option, they should either attend at the public counter in the Royal Court building immediately after the hearing to advise that this is their wish, or failing that a member of the Client Services Team will call them the day after the hearing to confirm whether they do wish to seek payment themselves, or not.

If a Plaintiff does want to seek payment themselves, the Act of Court from the Petty Debt hearing will be sent out in the post no later than 5 working days after the hearing.

Should the defendant not be willing to pay when approached by the Plaintiff, or payment isn't received in full from them, then the Plaintiff still has the option of bringing the Act of Court in to the Office of H.M. Sheriff to have the Judgment Debt enforced within the prescribed period.

### **Enforcement of Judgment Debt through the Office of H.M. Sheriff**

The Plaintiff can request enforcement of the Judgment Debt through the Office of H.M. Sheriff as soon as they leave Court, or at any time thereafter, as long as it falls within the prescribed period.

If the Plaintiff attends at the public counter in the Royal Court immediately after the Court hearing to request enforcement, they must pay the relevant Court fee and the Act of Court will be passed to the Office of H.M. Sheriff for enforcement (as opposed to being sent to the Plaintiff).



If a Plaintiff has been successful in their Petty Debt claim and not requested enforcement of the Act of Court immediately after Court, a member of the Client Services Team will call them the following day to ascertain whether they want enforcement action undertaken at that stage.

The range of enforcement measures and fees should be discussed with H.M. Sheriff's Team. It should be remembered that although a Plaintiff may have won their case in Court and obtained a judgment in their favour, it does not guarantee that the monies owed are paid quickly. Each case is different and repayment of the debt will depend on the individual circumstances of the Defendant.

Link to: -

- [Court, Summons and Enforcement Fees doc \(Annex A\)](#)
- [H.M. Sheriff and H.M. Sergeant fees \(Annex B\)](#)
- [Petty Debt Claims form \(Annex C\)](#)
- [Sign over document \(Annex D\)](#)
- [Information for Defendants \(Annex E\)](#)