IPA
INSTITUTE OF PUBLIC ADMINISTRATION
AN FORAS RIARACHÁIN

Progress Report

June 2018

Review of the Rules of Civil Procedure of Cyprus

Table of Contents

Appendices

Foreword

This Progress report is the first step in the process of reforming the Cypriot Rules of Civil Procedure. This progress report is *not* intended to be a comprehensive list of all changes that will be made to the rules. Rather this report is intended to facilitate the drafting of guiding drafts, meaning the basic draft of the rules on which the Expert Group and subsequently the Rules Committee will work. The report was initially circulated to the Rules Committee of the Republic of Cyprus (see Appendix D) to facilitate discussion between it and the Expert Group (see Appendix E) at its meeting of the 8th May 2018.

After detailed discussion of this report between the Rules Committee and the Expert Group, it was decided that it would be beneficial to make this report publicly available for the purpose of facilitating wider public consultation. It was agreed that the public consultation would be managed by the Cypriot Rules Committee with the intention that the report be available for a period of three weeks for consultation and comment.

It should be stressed for the avoidance of all doubt that this report is no more than a progress report and sits within a much wider review and reform of the Cypriot Rules of Civil Procedure. This report is the beginning of the process and is intended as a 'steer' for the much more detailed guiding drafts that will subsequently follow it. Ultimately as seen on page 6 of this report, the final set of Rules, in English, will be presented to the Supreme Court on or before 20 May 2019, with a presentation to be held in Cyprus on 28 May 2019 to mark the occasion and the completion of the project. It is within this wider context that this report and any comments arising should be made and considered.

1. Introduction and Background

1.1 Introduction and Summary

This Progress Report represents the first stage in a project to reform the Cypriot Rules of Civil Procedure (CPR). This project is itself part of the efforts of the Government of the Republic of Cyprus, on foot of the Economic Adjustment Programme (EAP) (ended in March 2016), to reorganize and improve the Cypriot judicial system. The Supreme Court of the Republic with the support of the Structural Reform Support Service (SRSS) of the European Commission is undertaking an ambitious program of reforms to improve the Courts System, focusing in particular on four areas: court operations, judicial training, E-Justice and the reform of the CPR.

The CPR are based on the Rules of the Supreme Court in England and Wales as were in force when Cyprus gained independence. There has been minimal revision to the Rules since 1958, with the exception of the 2016 amendments to Order 25 and 30. The Rules have been identified as a major cause of delay and a significant barrier to efficiency in the Cypriot judicial system. The need for radical amendment to these rules has been acknowledged as far back as the Pikis Report in 1989. There have been several attempts at revision, but none have proved entirely successful.

In January 2017, the Supreme Court proposed a full review of the CPR as an important and distinct exercise within the wider reform project. In consultation with the Structural Reform Support Service (SRSS) of the European Commission, a request for technical assistance to support an in-depth review of the Rules was made. The Institute of Public Administration (IPA), Dublin, was appointed to undertake this work. The IPA has recognised and relevant experience and expertise in the provision of advice in the area of governance and public administration reform and development. The IPA has already successfully completed a number of reviews of Cypriot Ministries and Independent Government Organisations and has gained an in-depth knowledge of the Cypriot administrative and court system. Critically, in respect of the reforms concerned, the IPA can provide experts who share and understand the common law system of Cyprus.

Initially a scoping mission took place in the Supreme Court in Nicosia from 3rd - 4th May 2017. The scoping team included:

- The Rt. Hon. Sir Martin Moore-Bick, Retired Appeal Court Judge, England.
- Ms Finola Flanagan, Office of the Attorney General, Ireland.
- Mr Nathy Walsh, IPA, Ireland.
- Eirini Georgiopoulou, Policy Officer, SRSS.

The mission was undertaken to examine the main issues underlying the request to the IPA and to propose terms of reference for a functional review of the CPR. A copy of the scoping mission report is provided in Appendix A.

All the stakeholders consulted during the scoping mission confirmed the urgent need for reform of the existing Rules, which were identified as having a detrimental impact on litigation practice and case management. All stakeholders agreed that the best starting point for any review should be the existing English Civil Procedure Rules, and that these rules should be adapted to take account of local practice, culture and customs.

Following on from the scoping mission, terms of reference for the project were agreed in December 2017. An Expert Group was put in place to undertake the work, comprising:

- The Rt. Hon. Lord Dyson
- Mr David di Mambro
- Ms Finola Flanagan
- Dr Marcos Dracos
- Dr Michael Mulreany
- Mr Nathy Walsh
- Mr Hugh O'Donnell

The Expert Group held its first meeting in Cyprus on 23-25 January 2018 as part of Mission 1, where it agreed to undertake a programme of work leading to the development of this report. Mr George Erotocritou - former Judge of the Supreme Court, has been a key driver of the reform process and provided invaluable assistance to the expert group in arranging a wide programme of consultative meetings for Mission 1. Mr George Erotocritou is furthermore the Cypriot Project Manager for all EU funded Court reform projects, and in the context of stages 1 and 2 of this project, is the Cypriot Liaison Officer. Meetings were held with the Judges of the Supreme Court, Administrative Presidents and Judges of the Administrative and District Courts, including representatives from the Association of Judges, the Chief Registrar and registrars of both jurisdictions, the Bar Association of Cyprus, practitioners and academics. Meetings were also held with the Court Reform Steering Committee, the Court Reform Project Team and representatives of the Ministries of Finance and Justice and Public Order. The purpose of meeting such a wide range of stakeholders was to explore and understand the issues and underlying problems with the CPR as they are applied within the Cypriot Courts system and to ensure there was broad agreement on the areas that should form part of their review. Support (to include technical

expertise) for the review of the Rules from the Supreme Court, Ministry of Justice and Public Order and the Ministry of Finance was also noted.

Mission 1 focussed on a range of high-level policy matters that warranted early feedback (see section 4). This was primarily to enable the drafting to be started sooner rather than later. This Report addressed a number of particular matters and made initial recommendations that were considered and discussed with the Cypriot Rules Committee on the 8th May 2018. The members of the Committee are set out in Appendix D.

It was agreed that the review of the CPR will involve the following three stages:

1. Stage 1 - Expert Review Report.
2. Stage 2 – Guiding and Supporting the Drafting of a Set of Rules of Civil Procedure for Presentation to the Supreme Court.
3. Stage 3 – Implementation (this will be a matter for the Supreme Court and is not a part of this project).

The three stages are developed in more detail in section 1.3 below. This Expert Review Progress Report represents **Stage 1** of the project. It includes background and contextual information from earlier work undertaken in related areas by the IPA as well as a brief overview of the English Civil Procedure Rules.

1.2 Project Purpose

This technical assistance project addresses the review of the CPR. As before, all stakeholders have agreed that, given the close historical legal ties with the UK, the best starting point for any review should be the current version of the English Civil Procedure Rules, which should be adapted to take account of local practice, culture and customs.

It was agreed that the review will be carried out by:

- An analysis of the current English Civil Procedure Rules, with a view to identifying at a high level those elements of the rules that would be appropriate for adoption as General Rules of Procedure for the Supreme Court of Cyprus.
- Guiding and supporting the Rules Committee in drafting a set of Rules of Civil Procedure in English for presentation to the Supreme Court of the Republic of Cyprus.

Targeted issues related to the Rules of Civil Procedure that impact the operations of the courts were also identified as particularly relevant:

i. Strengthening the role of the presiding judge when conducting hearings.
ii. Introducing measures to reduce the abusive use of adjournments by parties.
iii. Reflecting on the functioning of the system of appeals including interim appeals.
iv. Establishing fast track procedures for certain categories of cases.

The review also draws on related best practice in jurisdictions which have adopted the English rules and selected Member States where relevant. Ultimately, the overriding objective of the reform of the CPR is to enable the courts to deal with cases justly and at proportionate cost. This objective will be incorporated at the very beginning of the Rules and, thereby, be given statutory force.

1.3 Stages in the Reform of the Rules of Civil Procedure

As mentioned above the reform of the Rules of Civil Procedure (CPR) involves the following three stages.

Stage 1 - Expert Review Report – Rules 1-89

This stage involves the Expert Group identifying and giving guidance, via a report, on the appropriate changes that might be made to the Rules. The Group will also highlight matters for decision at a policy level by the Rules Committee before proposals can be forwarded to Stage 2, the drafting stage.

A draft of this Progress Report was forwarded to the Rules Committee on 27 April 2018 for consideration and comment. It formed the basis for meetings with the Rules Committee on 8 May 2018 in Cyprus at which matters were further clarified, discussed and agreed. The Rules Committee provided comments on the draft report to the Expert Group on 22 May 2018. On foot of the discussions of 8 May 2018 as well as the formal feedback of the Rules Committee on 22 May 2018, the Expert Group reviewed and amended the draft report for submission to the Rules Committee and public consultation. This Progress Report when approved by the Rules Committee will become the Expert Review Report of Stage 1 and together with the feedback from the consultation process will inform and determine the approach to be adopted in Stage 2, the drafting stage.

Stage 2 – Guiding and Supporting the Drafting of a Set of Rules of Civil Procedure for Presentation to the Supreme Court.

The Expert Group will guide and support the Rules Committee in drafting a set of Rules of Civil Procedure in English for presentation to the Supreme Court of the Republic of Cyprus. This stage will itself have three elements:

1. Preparing "Guiding Drafts" by the Expert Group.
2. Finalising "Guiding Drafts" by the Cypriot Drafting Group.
3. Presenting the "Final Draft" to the Rules Committee.

1. Preparing "Guiding Drafts"

   It is envisaged that the drafting by the Expert Group will proceed along the following lines:

   - When the Rules Committee present their decisions following public consultation on the changes to be made to the Rules, the Expert Group will move to prepare "Guiding Drafts".
   - A plan for the drafting process will be prepared by the Expert Group. It is envisaged that initial guiding drafts will be prepared by a member of the Expert Group. These will be reviewed within the Expert Group under the Chairmanship of Lord Dyson.
   - A specially appointed Drafting Group, based in Cyprus, will be established. This Cypriot Drafting Group will develop and finalise the guiding drafts produced by the Expert Group.
   - It is envisaged that the work will be undertaken in blocks. Drafts for release will be sent to the IPA for comment, formatting, etc., and for forwarding to the Cypriot Drafting Group.

2. Finalising "Guiding Drafts"

   The Expert Group will communicate with and guide the Cypriot Drafting Group. Changes and amendments will be communicated to the Expert Group and reviewed and analysed by them

3. Presenting the "Final Draft" to the Rules Committee.

   As blocks of guiding drafts are finalised and agreed by the Expert Group, they will be presented to the Rules Committee for commentary and observations. A final set of Rules, in English, will be presented to the Rules Committee by the Expert Group. These Rules will

then be presented to the Supreme Court, which is ultimately responsible for their adoption. A provisional plan is outlined below.

Table 1.1 Plan for Revision of the CPR

Block	Guiding Draft Prepared By DDM [David di Mambro]	Guiding Draft Released By Expert Group	Finalised By Cypriot Drafting Group	Reviewed By Expert Group	Reviewed & Approved By Rules Committee
Block 1	15 Sept 2018	15 Oct 2018	15 Nov 2018	30 Nov 2018	31 Jan 2019
Block 2	22 Nov 2018	19 Dec 2018	30 Jan 2019	15 Feb 2019	15 March 2019
Block 3	22 Jan 2019	15 Feb 2019	15 March 2019	30 March 2019	30 April 2019

The final set of Rules, in English, will be presented to the Supreme Court on or before 20 May 2019. A presentation will be held in Cyprus on 28 May 2019 to mark the occasion and the completion of the project.

Stage 3 – Implementation (Not covered by this project)

This stage will involve translating the rules into Greek, the provision of appropriate training and briefing and the implementation of the rules on a transitional basis. Responsibility for this stage rests with the Supreme Court and does not fall within the remit of the work of this current IPA project.

1.4 Structure of this Report

This Progress Report forms part of **Stage 1** of the project. It is structured as follows.

- Chapter 2, after providing some further relevant context and background, articulates the problems that the current rules are causing. This is done through reference to the findings of both the scoping mission described earlier in this chapter and to the IPA Courts Project Report of March 27, 2018. The latter is provided at Appendix B.
- Chapter 3 provides an overview of the English Rules of Civil Procedure, on which the new Cypriot Rules are to be based. This chapter will consider, among other things, how the English Rules are applied, how they affect case management, and what they mean for evidence.
- Chapter 4 lists the topics that were raised during the scoping mission.
- Chapter 5 provides a series of recommendations agreed between the Expert Group and the Rules Committee, linked to the topics listed in Chapter 4, on how to revise the CPR.
- Appendices follow.

2. Background and Context of the Project

2.1 Background[1]

The Cypriot Authorities have expressed their wish to undertake a program of reforms to improve the judicial system in Cyprus and to reduce delays caused by inefficient court procedures and limited capacity. Problems with the judicial system in Cyprus were highlighted by the Country Report 2017 (European semester) first published after the end of the Economic Adjustment Programme in March 2016 and reiterated in the Country Report 2017. A Country Specific Recommendation, adopted by the European Council on the Commission's proposal in 2016, asked Cyprus to "Increase the efficiency and capacity of the court system and reform its civil procedure law".

The EU Justice Scoreboard[2] shows that while Cyprus's perceived judicial independence is higher than in other Member States, efficiency remains a serious challenge. More specifically, the 2016 EU Justice Scoreboard showed that efficiency has deteriorated compared to 2015, particularly in administrative cases. The length of proceedings and backlogs in litigious civil and commercial cases are amongst the highest in the EU.

Lasting inefficiencies in the judicial system in Cyprus have been the subject of national dissatisfaction for some time. Delays up to four years in Courts of First Instance and further delays of up to five years on appeal have led to a situation where the State, on foot of a decision by the European Court of Human Rights, was required to pay damages to citizens impacted by those delays.[3] The inefficiency of the judicial system could also result in a negative perception of Cyprus as a place to do business.

In 2014, the Cypriot government started implementing a certain number of measures aimed at improving the efficiency of the judiciary, including increasing the number of judges, creating an administrative court, modernising some civil procedure rules and promoting mediation. Preliminary steps are being undertaken to introduce ICT in the judicial system, an area that is seriously underdeveloped.

[1] *Extract IPA document 27/6/17*
[2] *The EU Justice Scoreboard is an information tool which is published annually by the European Commission, which provides objective, reliable and comparable data on the quality, independence and efficiency of national justice systems.*
[3] *Case "Mavronichis v. Cyprus, 47/1997.*

Furthermore, a high-level commitment to reforms was endorsed in 2016, with a particular focus on reviewing the operations of the courts. The Supreme Court appointed a committee headed by Mr George Erotocritou, at the time himself a Judge of the Supreme Court, to carry out a report on the operational needs of the courts and other related reform issues. Its report sets out the constitutional framework underpinning the independence of the judiciary and rule of law of Cyprus, the major operational needs of the Courts (Court budget, remuneration of judges, number of judges, ICT, training and other issues) and problems experienced by the judicial system (delays, inefficient court operations and processes). The report was published in June 2016[4] and was provided to the European Commission.

This report resulted in a study visit to Ireland in November 2016, at which the Cypriot authorities sought, by drawing on the Irish courts' expertise and recent experience of reforms, to develop a modernisation plan. A request was then made to the Structural Reform Support Service (SRSS) of the European Commission for technical assistance to support an in-depth review of the courts' operations and the development of reform plans. In December 2016, the European Commission agreed to equip the Supreme Court with:

> … a plan to carry out a comprehensive reform of its judicial and administrative structures, operational process and procedures to provide a more efficient delivery of justice to the benefit of citizens and to better support broad economic and social development.

The Institute of Public Administration (IPA) was selected, with prior agreement of the Supreme Court representatives and the European Commission, to support the Supreme Court of Cyprus to undertake stages 1 and 2 of this reform process. As before, the IPA has already successfully completed a number of reviews of Cypriot Ministries and Independent Government Organisations. The IPA can also provide experts who share and understand the common law system of Cyprus.

In January 2017 Mr George Erotocritou, former Judge of the Supreme Court, was appointed by the Supreme Court as Director of Court Reform and Judicial Training and he further acts as Cypriot Project Manager/Cypriot Liaison Officer for this project.

A scoping mission for the main courts project was undertaken by the SRSS and IPA representatives, in the presence of the Directorate-General of Justice (DG JUST) of the European Commission, from 5-8 of February 2017. It sought to examine the main issues underlying the

[4] See "Report of the Supreme Court on the Operational Needs of the Courts and Other Related Issues", June 2016, hereafter referred to as the Erotocritou Report 2016.

request to the IPA and to propose terms of reference of a full functional review and reform plan of the courts' operations. During the course of this visit serious concerns were identified with the Rules of Civil Procedure. The Rules in operation are based largely on the 1958 version of the English Rules of the Supreme Court, with the commentary contained in the 'White Book'. The need for radical amendment to these rules has been acknowledged as far back as the Pikis Report in 1989.

This need to reform the Rules of Civil Procedure as a distinct project became clear at this time and recognized as such by the Supreme Court, the SRSS and the DG JUST of the European Commission, Accordingly, as mentioned in Section 1, the reform of the Rules of Civil Procedure evolved as a separate project to be undertaken by the Cypriot Authorities with the assistance of the SRSS and the IPA.

A scoping mission specifically focused on the Rules of Civil Procedure was undertaken from 3-4 May 2017, terms of reference were agreed in December 2017 and an Expert Group under the leadership of Lord Dyson visited Cyprus in January 2018 as part of Mission 1 of this project.

2.2 Context

Below, based on some of the main findings arising from the Scoping Mission (set out in Appendix A) and the IPA Courts Project report of 27 March 2018 (set out in Appendix B), we provide relevant contextual information on the need to reform the Rules, the challenges involved in doing so, and some of the wider structural and cultural issues that will have a major bearing on the successful implementation of the proposed reforms.

Attempts at Reform

The Rules of the Supreme Court in England and Wales, in the form in which they existed in 1958, and supporting jurisprudence (as published, together with commentary, in the 1958 White Book), provide the basis for the Rules used by the Cypriot courts. The need for radical amendment to these Rules has been acknowledged for a long time. Attempts to reform the Rules have been made, but they have not been particularly successful.

Judge Stavrinaki's recommendations for amendments to the rules, which were based on the 1998 Woolf reforms in the UK, were not acceptable to the Supreme Court. In 2010 the Supreme Court appointed a three-member committee of judges to amend crucial orders. As explained in the Kramvis report (2012), "several sessions were held by the Supreme Court for the drafting and finalisation of the text. However, the results were meagre and these attempts were discontinued".

The increase in the caseload arising from the financial crisis made it very difficult to return to the matter.

In order not to relinquish the attempt completely, the Supreme Court, adopting a recommendation of the current President of the Supreme Court, M. M. Nikolatos, commissioned Judge St. Nathanael to prepare an amendment to Orders 25 and 30. After extensive consultations with the Cypriot Bar Association, the amendments were published in September 2014. However, their implementation was temporarily suspended because of strong reactions from members of the Bar Association. The amendments became fully effective on January 1, 2016. While there is significant support for reform of the rules, the recent experience with orders 30 and 25 demonstrates the challenges that are encountered when it comes to detailed implementation.

Order 30

Order 30 compels procedural steps to be taken at the start of the case (with a consequent front-loading of costs) even in cases almost certain to settle such as bank cases. Order 30 is now being reviewed because, though it was seen as a step forward in case management, the manner of its implementation has resulted in things becoming even more complicated. Registrars consider that the amended Order 30 creates more problems than it solves, particularly in relation to the requirement that costs be paid before reinstatement of an action dismissed when a summons for directions has not been issued. If the defending side refuses to say how much the costs are, the costs cannot be assessed and the action cannot be reinstated. It was suggested that Order 30 itself was not the problem, rather its inconsistent application by District Court judges and lawyers. There are as yet no decisions of the Supreme Court to impose consistency on judges' rulings on the Order. For example, the key obligation for case management to issue a summons for directions depends on the date of completion of pleadings, but there is no consistent judicial approach about when pleadings are "completed". How Order 30 interacts with several other orders presents problems, and there is currently no guidance to assist.

Order 25

In contrast, Order 25, which is a more limited reform, is reported to be working well. Lawyers have accepted it and apply it in relation to amendment of pleadings. Currently, Judges at all levels are overwhelmed with work, spending an inordinate amount of time dealing with procedural matters related to interlocutory applications and matters for mention, etc., (in the range of 40-60 a day), which leaves little time to hear cases (about 1.5 hours a day). These restrictions on judicial time, coupled with an inefficient listing system, frustrate the progress of litigation; dates for

hearings cannot be fixed, cases are not listed to be heard over a continuous period of time, and cases are continuously adjourned after one day's hearing.

The recent amendments to Order 25 and Order 30 have given the judge a more active role in the conduct of the action. They have introduced a simplified and more expeditious procedure for claims under €3,000. The amended procedures eliminated the need for oral testimony in such claims, and the case is decided on the basis of written addresses. However, the expected benefits of those amendments have not been fully realized, due in some part to the inconsistent application of the new rules and the lack of guidelines as to their interpretation. The changes also continue to be resisted by some lawyers.

Reservations have been expressed on various aspects of both new provisions, and a Supreme Court Committee is currently assessing further targeted amendments to these specific orders. It was pointed out that the small firms, in particular sole practitioners, did not have the capacity to deal with the preparation required within the time limit set down in Order 30.

The Need for Change

It was the unanimous view of all the stakeholders consulted that the CPR are a major contributory factor to delay and to inefficient litigation practice and case management, and that there was an urgent need for a complete reform of the rules. The revised Rules must enhance the regulatory role of the judge in the judicial process and provide for the more efficient use of judicial time. There is also a need to have a permanent committee to continually monitor and review the Rules.

In the District Court, participants consulted as part of this review considered that by facilitating interlocutory applications and adjournments the existing rules are a contributory factor in causing delay. The high level of interim applications takes up a significant proportion of court time, requires written judgements, and delays the setting of a hearing date.

Judges see changes to the procedural rules as an important element in the process of reform but admit that such changes have to be accompanied by wider structural, administrative, cultural and behavioural reforms, including changes in judicial practice and the manner in which litigation is conducted. Many believe the Bench and the Bar have to cooperate more in a range of areas, including the rigorous application of the rules, the use of pre-action protocols of the kind introduced in England, allowing wider judicial discretion and reducing the range of originating processes. Many believe that judges need to retake control and adopt a stricter stance in the application of rules and that rules and processes be interpreted and applied uniformly and

consistently. Registrars and administrators see the system as lawyer-led rather than judge-led; they echoed many of the points made by judges.

There is a consensus that the CPR need a thorough overhaul, that they need to empower judges, that they should be simple to apply and that they should restrict opportunities to abuse judicial processes. There was consensus that the Rules should facilitate better case management, reduce the number of interlocutory applications and provide judges with the power to act on their own initiative in certain areas. They should institute pre-action protocols of the kind used in England and pay-as-you-go principles in relation to costs and give the court power to limit the time allowed for cross-examination. They should provide judges with the power to refuse giving approval to consent orders and allow them greater discretion over matters such as the admissibility of evidence and the calling of expert witnesses. Some expressed the view that the right to appeal should be removed in cases where there is no real prospect of success.

Because of the interlinked nature of the Rules there was general consensus that they should be revised *en bloc* rather than piecemeal. Gaining approval and acceptance for revision was acknowledged as likely to be challenging, but it was generally accepted that the need for reform outweighed counter arguments.

Challenges in Reform

The main reason for the lack of success in reforming the Rules is cited in the 2016 Erotocritou Report as the level of legal-technical drafting required to ensure the revised Rules are consistent with other legislation. The Supreme Court, given the constraints of their normal judicial work, does not have the time to provide the necessary expertise.[5] The procedures set out in the rules appear to be fully applied by the registry staff. However, some of these procedures were considered to be outdated, no longer fit for purpose and an impediment to efficiency.

While there is widespread agreement that the Rules of Civil Procedure need radical reform, the current rules do provide the judiciary with certain case management powers. An example of case management powers provided to the judiciary can be found in Order 30 r 9:

> The Court may, in any event, issue any additional directions, as it considers appropriate and just under the circumstances in accordance with the following criteria:

[5] Erotocritou Report 2016

(a) trying the case as soon as possible

(b) securing the equal treatment of parties

(c) saving or mitigating expenses

(d) managing the case according to:

(i) the subject-matter of the dispute

(ii) the importance of the dispute

(iii) the complexity of the issues raised, either of fact or law.

The Rules also give the judge power to dismiss a case for want of prosecution, if no reasonable cause of action is disclosed in pleadings or if the case is vexatious or malicious (Order 27 rule 3).

During our discussions, the problem of inconsistency in the interpretation and application of rules and practice directions by the judiciary was referred to on a number of occasions. In the registries, while staff apply the provisions of the court rules there is also a divergence in the interpretation and application of procedures. There are no standardised written procedures or guidelines to complement the rules of court. While inconsistency in the interpretation, and application, of rules and practice directions can be a feature of any legal system, this is often addressed through ongoing training and seminars.

As pointed out by Kyriakides,[6] the Rules of Civil Procedure in Cyprus require fundamental and systematic attention. Changes to individual rules will not be sufficient, not least because such changes lead to a cascade effect whereby a change to any one rule can affect many others. In the light of our analysis, we draw attention to the following specific issues.

Order 30

The recent amendments to Order 30 include a provision to issue directions for the exchange of evidence in writing in lieu of oral evidence. However, the elimination of oral evidence applies only to cases below €3,000 and does not apply to the large volume of cases initiated prior to the introduction of the revised order.

Consideration could be given to extending the provisions of the amended Order 30 to apply retrospectively to the trial of cases filed prior to the amendment and also potentially to cases in

[6] Civil procedure reform in Cyprus: looking to England and beyond by Nicolas Kyriakides, Oxford University Commonwealth Law Journal 2016 http://dx.doi.org/10.1080/14729342.2016.1276768.

excess of €3,000. Currently O.30 provides that the provisions of rules 5 (1) and (2) can only be applied with the agreement of the parties.

Other Areas to be Considered

The Rules (reference to the relevant order and rule is included as appropriate) might provide that:

- Where a trial date is given it cannot be adjourned, unless there are pertinent and cogent reasons (Order 33).
- The use of ADR to divert cases, particularly small claims, through quicker less costly channels (Order 30).
- The imposition of penalties or sanction on lawyers or parties who do not comply with court orders, contribute to delay in court proceedings, or waste the time of the court (Order 30).
- The introduction of timeframes for the completion of each phase of the case. Order 30 currently contains specific timeframes for certain actions only.
- Introduction of provisions similar to Part 36 of the Rules of Civil Procedure in England and Wales, where parties to a case are given the opportunity to settle a case at the early stages of the process, and a portion of the costs may be awarded against the plaintiff if a settlement is rejected and the award after trial is not greater than the settlement offered (Order 22).
- We noted that there is no reference to European Law in the Rules.

2.3 Potential Impact of the Recommendations of this Review

The recommendations arising from this functional review may lead to a requirement to change certain Rules and should be taken into consideration by the Rules of Civil Procedure project. Particular recommendations that may impact on the rules include:

- The establishment of new arrangements for the hearing of appeals (Order 35).
- Introduction of revised case management arrangements (Orders 30- 33).
- Providing for the expanded use of electronic registers. It was noted that the current rules provide for the maintenance of a register of cases lodged in the Supreme Court in manual form only (Order 2 R 12 and Order 62)
- Expansion of the role of the Registrar or Legal Officer in the case management process (Order 30).
- The introduction of Alternative Dispute Resolution, pre –action or pre-trial (Order 30).

- The introduction of continuous hearings.
- The introduction of Digital Audio Recording of court proceedings.
- Proposed new method for payment of court fees.

The review of the Rules of Civil procedure should take account of the movement towards e-justice. This may require consideration when dealing with matters such as the following: :

- Process of case initiation and filing.
- Case initiation documents.
- The introduction of electronic registers and signatures.
- Method of payment of fees and fines.
- Pre and post court documentation.
- The format of registers and court files.
- The production of court lists.
- The introduction of an electronic seal.

2.4 Conclusion

In sum, there is widespread agreement that the Civil Procedure Rules now require a fundamental review and re-writing so as to deliver a less costly, more accessible and more timely service to parties. Modernisation of the rules themselves will help, but this will also have to be accompanied by wider structural, administrative, cultural and behavioural reforms (including changes in judicial practice and the manner in which litigation is conducted) if reforms are to be truly effective.

This project is focused on devising and providing support to the drafting of a modern set of Civil Procedure Rules suitable for adoption in Cyprus. Once the rules are approved by the Supreme Court in May 2019, measures will then need to be taken regarding their implementation (Stage 3 of the Reform Process). Up to this point rules may continue to evolve. When the Rules are approved, the Supreme Court will need to liaise with the E-Justice project team regarding the development of IT systems to support their implementation. Stage 3 is not part of this current IPA project.

Stage 3 will also be important in addressing many of the wider issues referred to above in relation to training and guidance on the consistent application of the Rules during the process of transition. The next chapter provides an overview of the English Rules of Civil Procedure.

3. The English CPR – A Brief Overview

This brief overview will address the following areas:

3.1: General comment regarding over-prescription
3.2: The Courts of England and Wales their jurisdictions
3.3: Procedure
3.4: Case management
3.5: Evidence
3.6: Costs
3.7: Specific Proceedings / Procedures

3.1 General Comment Re: Over-Prescription

Generally, the English CPR work well but have become far too elaborate and prescriptive. Care must be taken not to follow this policy of over-prescription. Finding all the relevant rule(s) in any given situation can be hard work (even for practitioners who have some acquaintance with the rules). Additionally, there are also normally 2 sets of rule revisions every year and, occasionally, these are extensive.

The larger firms have departments of "practice" lawyers whose function includes ensuring awareness and training of any legal developments. The smaller firms or the sole practitioner have no such luxury and we must have this very much in mind for the future.

The current Cyprus CPR are straightforward and readily understood. This clarity must be preserved when and if drawing from the English CPR. One consideration may be the avoidance of "Guides": in England there is one for each court division (each of many pages) in addition not only to the rules but to the Practice Direction(s) (sometimes several) which accompany each rule. Practice Directions should be avoided unless they fulfil some genuinely helpful and useful purpose.

3.2 The Courts and their Jurisdictions

For the English rules to be fully understood it may be helpful briefly to consider the structure of the courts in England. The civil courts of England and Wales are divided into 2 broad groups; (1) the County Courts and (2) the High Court.

The County Courts are creatures of statute and derive their power and jurisdiction solely from Acts of Parliament. They deal with smaller cases and some specialist proceedings. In the latter event, the claim may relate to a very substantial claim in value terms but unless the claim is very complex it will be heard in the county court. The usual example is a property dispute where the value of the property may be many millions of pounds but it is nevertheless heard in the County Court. It additionally has a number of specialist jurisdictions such as the Technology and Construction Court where building contract disputes, for example, may be heard by a County Court judge who has particular experience and expertise in such disputes. County Courts sit throughout the country and are regarded as local in nature although, technically, there is only one County Court.

The High Court is largely based in London but also sits and has court offices in all large cities. It is partly a creature of statute but also has a substantial jurisdiction, which is described as its "inherent jurisdiction" which dates back many centuries to when the King was the judge. It is divided into various divisions:

- **Queen's Bench**: simply by way of example: cases involving breach of contract, debt, damages for personal injury, defamation, professional negligence, trespass, wrongful seizure of goods etc.
    - In turn that has sub-divisions: these are specialist, for example, judges who sit in the Commercial Court dealing with shipping contracts, disputes relating to aircraft, substantial claims for damages in relation to contracts for the sale of goods, banking.
- There is also an **Administrative Court** dealing with Judicial Review of government (national and local) decisions
- **Admiralty court**: dealing with ownership of and collisions between ships and the like.
- **Chancery Division** where counsel, largely based in Lincoln's Inn, practise. It deals with disputes relating to matters such as: trusts, conveyancing of land, interpretation of leases, rights over land, interpretation and administration of wills, guarantees, mortgages, most company law matters, insolvency and intellectual property. Smaller cases might be transferred down to the County Court.
- **Family Division**: divorce, matrimonial property and children.

3.3 The Procedure

The most significant features of the English CPR are as follows.

The Overriding Objective

1.1 The Overriding Objective

(1) These Rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly and at proportionate cost.

(2) Dealing with a case justly and at proportionate cost includes, so far as is practicable—

(a) ensuring that the parties are on an equal footing;

(b) saving expense;

(c) dealing with the case in ways which are proportionate—

(i) to the amount of money involved;

(ii) to the importance of the case;

(iii) to the complexity of the issues; and

(iv) to the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly;

(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases; and

(f) enforcing compliance with rules, practice directions and orders.

1.3 Duty of the parties

The parties are required to help the court to further the overriding objective.

1.4 Court's duty to manage cases

(1) The court must further the overriding objective by actively managing cases.

(2) Active case management includes—

(a) encouraging the parties to co-operate with each other in the conduct of the proceedings;

(b) identifying the issues at an early stage;

(c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;

(d) deciding the order in which issues are to be resolved;

(e) encouraging the parties to use an Alternative Dispute Resolution procedure if the court considers that appropriate and facilitating the use of such procedure

(f) helping the parties to settle the whole or part of the case;

(g) fixing timetables or otherwise controlling the progress of the case;

(h) considering whether the likely benefits of taking a particular step justify the cost of taking it;

(i) dealing with as many aspects of the case as it can on the same occasion;

(j) dealing with the case without the parties needing to attend at court;

(k) making use of technology; and

(l) giving directions to ensure that the trial of a case proceeds quickly and efficiently.

- **Pre-Action Protocols**: parties (as a matter of habit and culture engendered by the protocols) generally will only litigate after there has been an exchange of detailed information relating to the nature of their case and an appreciable amount of the material upon which they rely. The disadvantage for the practitioner is that the rules require a great deal more preparation prior to and immediately after issue.

  The disadvantage for the litigant is the increase in the costs which he has to pay his lawyer at an early stage. However, the undoubted and considerable advantage is that, in practice, cases do settle more easily.

- **Mediation**: is the norm and courts will punish in costs a failure to mediate unless there is good reason for a party to refuse; The CPR do, however, define mediation in such a way as to include a settlement meeting, neutral evaluation and the like.

- **Starting the claim**: 2 methods depending on the nature of the claim
    - ***Ordinary claim form*** **and** ***particulars of claim***: nearly all claims involving substantial disputes of fact.
    - ***Part 8 claim form***: where the issue is essentially one of law or interpretation of a document and either not involving disputes of fact or not substantial or complex issues of fact.
    - ***Defence***: a bare denial is not permissible: a defendant must specify why an allegation is denied and put forward the defendant's version of events (Cyprus is there already)

- **No excess material**: In either event the court piously urges parties to avoid unnecessary volume of pleading or documents but in practice the practitioner out of abundant caution puts in almost everything conceivably relevant. When the claim or defence is pleaded, although the rules do not require a mountain of fact they require that all material particulars and relevant documents are contained in and served with a pleading; the rules provide various means for enforcing this requirement; (Cyprus is there already but more emphasis might be thought a good thing if it is considered that pleadings are excessive?)

- **Case Management**: the regime encourages the parties to address as much of the case as possible at a case management conference. Multiplicity of case management conferences is strongly discouraged.

- **Disclosure:** This is the process whereby a party discloses to the other parties in the action the existence of documents which the party has or has had in the party's control (CPR 31.8) being documents (CPR 31.6): (1) upon which the party relies; (2) which adversely affect the party's own case; or (3) another party's case; or (4) which support any other party's case.

  In the age of electronic communication and storage, *"document"* embraces anything whereby information is stored including electronically. The electronically stored list of transmitted faxes, in a fax machine, is a document for this purpose but is disclosable only if there is an

issue as to when or if a fax were transmitted. Additionally there is provision for specific disclosure where a party seeks relevant documents from another party or where these documents are referred to in witness statement or pleadings and have not yet been disclosed. (Cyprus has this already)

- The use of **witness statements** at trial: a witness's evidence in chief is given in a witness statement; these are exchanged ***generally after disclosure***. The witness will then be cross-examined at the trial. It will bear a statement of truth and will generally stand as evidence in chief; a few explanatory or "updating" questions may be permitted. The procedure has the merit of putting each party on notice as to the evidence to be adduced at trial and a most considerable amount of time is saved by the evidence in chief not being adduced by question and answer. Once the witness goes into the witness box, he/she will be sworn and (1) asked to verify his signature and (2) asked if his/her evidence is true. At that point the statement becomes his/her sworn testimony and any untruth will be perjury. Additionally, any untrue witness statement bearing a ***statement of truth*** (addressed below) and whether or not its truth is sworn to in court, is perjury.

- **The court's control of evidence**: the court has the power to control the preparation and presentation of evidence. It can limit the number of witnesses, the issues to be addressed and the sequence. And, in particular the role and duty of an expert witness is prescribed in the rules (see below).

- **Part 36 offers:** The mechanism for the *claimant* to make an offer to settle with severe costs consequences if the offer is refused and the claimant achieves at trial a more favourable judgment than his offer. There is a corresponding mechanism for the defendant. **This procedure is of the utmost importance and benefit.**

- **Offers to Settle**: A party may make an offer to settle at any time before the beginning of the trial (CPR 36); a party making an offer in a claim for money may – but is not obliged to – pay money into court (CPR 36); a party may make an offer in any way the party chooses but in order to obtain the benefit of the provisions of CPR 36 it is implicit that the offer must be made in accordance with CPR 36; it must be in writing, state that it is open for acceptance by a specified date and it must be open for acceptance for 21 days (CPR 36). Where the offer is accepted, the claim is stayed (CPR 36). Part 36 applies to an offer to settle made at any time including before proceedings were started. A failure by either party to accept an offer where, at the conclusion of the trial, it transpires that such offer was more favourable than the

judgment will be severely penalized in costs and interest.

- **Costs:** the award and payment of costs as the case proceeds; the costs of any unsuccessful ***interim*** application will be awarded, summarily assessed and then payable within 14 days. In England this factor has concentrated the minds of practitioners most appreciably and has discouraged interim applications where the prospect of success was not high but the risk was once considered worthwhile when any order for costs was some months or even years away and would disappear in a settlement.

- **Costs**: **summary assessment** both at interim hearings and at the end of the trial and, if not, possible then an interim assessment and a payment on account

- **Costs: detailed assessment** after end of trial

- **Costs: wasted costs**: practitioners may be liable personally for wasted costs in the event of misconduct.

- **Further Information**: A party may request further information in relation to any matter in issue between the parties. This may include ***matters of law*** as well as of fact. The Court will, if necessary, order the information to be furnished if it is necessary fairly to dispose of the claim or to save costs.

- **Summary Judgment**: The test as to whether summary judgment should be given is whether there is ***"no real prospect of succeeding***". Moreover, not only may a claimant apply for summary judgment against a defendant but **a defendant may apply for summary judgment against the claimant on the claimant's claim**: CPR Part 24:
  (i) if the court considers that the **claimant** has no real prospect of succeeding on the claim or on an issue then it may give summary judgment for the **defendant** on that claim or issue and
  (ii) if the court considers that the **defendant** has no real prospect of defending the claim or any issue then it may give summary judgment for the claimant on that claim or issue.

3.4 Case Management

Case Management: The Powers

3.1 The court's general powers of management

(1) The list of powers in this rule is in addition to any powers given to the court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.

(2) Except where these Rules provide otherwise, the court may—

(a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired);

(b) adjourn or bring forward a hearing;

(c) require a party or a party's legal representative to attend the court;

(d) hold a hearing and receive evidence by telephone or by using any other method of direct oral communication;

(e) direct that part of any proceedings (such as a COUNTERCLAIM) be dealt with as separate proceedings;

(f) STAY the whole or part of any proceedings or judgment either generally or until a specified date or event;

(g) consolidate proceedings;

(h) try two or more claims on the same occasion;

(i) direct a separate trial of any issue;

(j) decide the order in which issues are to be tried;

(k) exclude an issue from consideration;

(l) dismiss or give judgment on a claim after a decision on a preliminary issue;

(ll) order any party to file and exchange a costs budget;

(m) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective, including hearing an Early Neutral Evaluation with the aim of helping the parties settle the case.

Attention is also drawn to CPR r. 3.3, which provides that "*Except where a rule or some other enactment provides otherwise, the court may exercise its powers on an application or of its own*

initiative". This provision highlights the active case management powers of the court by liberating it from the requirement that a party make an application (which under Cyprus CPR will usually have to be in writing, causing further costs and delay) before an appropriate procedural order is issued.

3.5 Evidence and Expert Evidence

Evidence: Control by Court: by CPR 32: it is provided that the Court may control the evidence to be given at any trial or hearing by giving appropriate directions as to the issues on which it requires evidence and the way in which any matter is to be proved. This power is simply expressed but its significance is both complex and potent.

Witness statements: in simple terms, parties are required to serve on each other witness statements in respect of the witnesses of fact upon whose evidence they intend to rely at trial.

Expert evidence: Part 35: regulates the provision of expert evidence to assist the court. In the rules and in these notes 'expert witness' means an expert who has been instructed to prepare or give evidence for the purpose of court proceedings.

It is the duty both of the court and of parties that expert evidence must be restricted to that which is reasonably required to resolve the proceedings justly. Moreover, it is the overriding duty of an expert witness to help the court impartially on the matters relevant to his or her expertise and this duty overrides any obligation to the person by whom he or she is instructed or paid.

A party may not call an expert witness or put in the report of an expert witness without the court's permission. As a general rule the court's permission is given at a case management conference. When a party applies for permission then that party must name the expert witness and identify the nature of his or her expertise; any permission granted is in relation to that expert witness only.

The oral or written expert witness' evidence may not be called or put in unless the party wishing to call or put in that evidence has served a report of the evidence which the expert witness intends to give. The court must direct by what date the report must be served. The court may direct that

part only of an expert witness' report be disclosed.

Expert evidence is to be given in a written report unless the court directs otherwise (but it should be noted that this requirement is subject to any enactment restricting the use of hearsay evidence). The expert evidence presented to the court must be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the demands of the litigation. An expert witness must provide independent assistance to the court by way of objective, unbiased opinion in relation to matters within the witness' expertise.

An expert witness must state the facts or assumptions upon which his or her opinion is based, and must consider and include any material fact which could detract from his or her conclusion. An expert witness must state, for example, whether a particular matter or issue falls outside his or her expertise. If the opinion of an expert witness is not properly researched then this must be stated with an indication that the opinion is no more than a provisional one.

If an expert witness cannot assert that his or her report contains the truth, the whole truth and nothing but the truth without some qualification, that qualification must be stated in the report. If after service of a report, an expert witness changes his or her opinion on a material matter, that change of opinion must be communicated to all parties.

An expert witness may apply in writing to the court for directions to assist him or her in carrying out his or her functions and duty to the court as an expert witness (an expert witness who makes such an application for directions need not give notice of the application to any party but the court may direct that notice be given).

A party may put written questions to an expert witness instructed by another party or jointly about his or her report (see CPR 35.6).

The Court has the power to direct that expert evidence is to be provided by a single expert. This approach is more commonly taken in claims of lower value where control of costs is relevant or where the particular expert issue is not controversial but nevertheless expert evidence is required to assist the court

If a party has access to information which is not reasonably available to the other party, the court may (but only on the application of a party, and not of its own initiative) order that party –

(a) to arrange for an expert witness to prepare a report on any matter;

(b) if appropriate, to arrange for an examination to be carried out in relation to that matter; and

(c) to file the report and serve a copy on any other party.

There are detailed provisions in relation to the content of the report.

At the end of an expert witness's report there must be a statement that the expert witness

(a) understands his or her duty to the court as set out in the rules;

(b) has complied with that duty;

(c) has included in the report all matters within the expert witness' knowledge and area of expertise relevant to the issue on which the expert evidence is given; and

(d) has given details in the report of any matter which to his or her knowledge might affect the validity of the report.

There must also be attached to an expert witness's report copies of –

(a) all written instructions given to the expert witness;

(b) any supplemental instructions given to the expert witness since the original instructions were given; and

(c) a note of any oral instruction given to the expert witness;

and the expert must certify that no other instruction than those disclosed have been received by him or her from the party instructing the expert, the party's legal practitioner or any other person acting on behalf of the party. If a report refers to photographs, plans, calculations, survey reports or other similar documents, these must be provided to the opposite party at the same time as the service of the report.

Meeting of experts

CPR 35: The court may direct a meeting of expert witnesses of like speciality; the court may specify the issues which the expert witnesses must discuss; the contents of the discussion between the expert witnesses must not be referred to at the trial unless the parties agree; the meeting may take place personally, over the telephone or by any other suitable means; after the meeting, the expert witnesses must prepare for the court a statement of any issue within their expertise on which they:

a. agree; and
b. disagree, with their reasons for disagreeing.

Instead of, or in addition to such statement, the court may direct that the expert witnesses prepare an agreed statement of the basic 'science' which applies to the matters relevant to their expertise.

A party who fails to comply with a direction to disclose an expert witness' report may not use the report at the trial or call the expert witness unless the court gives permission.

3.6 Costs: Summary of the Key Provisions

The main points to note for our present purposes are:

A person may not recover the costs of proceedings from any other party or person except by virtue of:

(a) an agreement between the parties;

(b) an order of the court; or

(c) a provision of these Rules.

The successful party is generally entitled to costs. The court may however order a successful party to pay all or part of the costs of an unsuccessful party or may make no order as to costs.

The court has the power to order a person to pay –

(a) costs from or up to a certain date only;

(b) costs relating only to a certain distinct part of the proceedings; or

(c) only a specified proportion of another person's costs.

However, the court may not make an order under (a) or (b) above unless it is satisfied that an order that only a specified proportion of another person's costs would not be more practicable.

In deciding who should be liable to pay costs the court must have regard to all the circumstances. In particular it must have regard to:

(a) the conduct of the parties both before and during the proceedings;

(b) the manner in which a party has pursued –

  (i) a particular allegation;

  (ii) a particular issue; or

  (iii) the case;

(c) whether a party has succeeded on particular issues, even if the party has not been successful in the whole of the proceedings;

(d) whether it was reasonable for a party to –

  (i) pursue a particular allegation; and/or

  (ii) raise a particular issue; and

(e) whether the claimant gave reasonable notice of intention to issue a claim.

Cyprus

Whatever may be the position as between a practitioner and the client, the fact is that as between the parties costs are not high and the threat of being exposed to a payment of them to the other party does not appear to be much by way of deterrent.

3.7 Specific Proceedings/Procedures

Freezing Orders: the court may freeze the assets of a defendant where there is a risk that the defendant may dissipate them.

Search Orders: order that a defendant (or usually a proposed defendant) permit the entry onto the defendant's property of the claimant's advisors, supervised by an independent lawyer appointed by the court for this purpose, to search and seize evidence where there is good (generally powerful) evidence that the defendant has evidence which he will destroy or conceal.

Rule 62.8: Arbitration Proceedings: the CPR and more particularly the Arbitration Act 1996

provide that, unless an arbitration agreement is void, any proceedings issued in court will be stayed.

4. Organisation of Initial Matters for Consideration at Mission 1

The topics that were considered at Mission 1 are set out below. They have been grouped together logically, and some minor amendment has been made to take account of matters raised at or after the Mission of 22 January 2018. The recommendation chapters that follow use these topics as headings, numbering the recommendations as per the heading number.

1. Making the changes en bloc.
2. Overriding Objective, Consistent Application of the rules, English Case Management (objectives and powers) and Skeleton Arguments
3. Pre-action Protocols: any and, if so, which areas or subjects.
4. Mediation.
5. Statements of truth on pleadings and witness statements (including freezing orders).
6. Cyprus Orders 25 and 30 and Case Management.
7. Different track procedures for different categories of cases.
8. For claims where facts not greatly in dispute: English Part 8 procedure (wider than Cyprus CPR 55) or consider fixed date claim as in Caribbean.
9. Summary judgment test: "real prospect of success" and Available for Defendant against Plaintiff as well as Plaintiff against Defendant, available in respect of any issue in the case.
10. Interlocutory Applications.
11. Expert evidence: control, management experts' duty to court first and statement of truth.
12. Narrower discovery (what either party may rely upon as opposed to anything relevant).
13. Offers to pay rather than payment into court with grave and expensive consequences where the offer is rejected and the offeror does better at trial.
14. Appeals.
15. Pay-As-You-Go Principles.
16. Registrars.
17. Ways of commencing a claim.
18. Service out.
19. Simple updates to rules.

5. Recommendations

In its response to the initial draft report and recommendations, the Rules Committee made the important point that in drafting a new set of rules, sight should not be lost of the conditions pertaining in Cyprus, its culture and customs and in particular its legal profession. The Rules Committee stressed that any adaptation of or drawing from the current version of the English CPR, which form the starting point for the review of the CPR, should take into account that the legal profession in Cyprus is fused and comprises both a number of large firms, large by Cypriot standards, and very many small firms and sole practitioners. These considerations underline the importance for clear and simple rules which can be readily comprehended and are straightforward in their application.

The Rules Committee agreed in principle with the Expert Group's recommendations and made some comments and observations. By way of general comment, it noted that several aspects of the proposed changes can only be fully assessed once the guiding drafts are delivered and that the implementation of some of the recommendations made in the Report will require legislative change.

(1) Making the Changes en Bloc

Given the inter-linked nature of the Rules and length of time since they were revised, it is proposed they be reviewed and changed en bloc. There was unanimous support for adopting the changes en bloc, as opposed to the piecemeal, approach on both the scoping and first mission.

Recommendation 1

It is recommended that the changes to the rules be made en bloc.

The Rules Committee accepted recommendation 1.

Consideration should be given by the Rules Committee to the use of working parties and subcommittees, where this is feasible. Alternatively, the Committee may wish to call on groups of experts in specific areas. Expert groups could, for example, be constituted separately for each of the following:

- Commencement, case management, challenging jurisdiction, use of witness statements at trial, interim applications, disclosure, conduct of the trial and court orders at trial.
- Enforcement (always remembering that enforcement is generally statute law. It is sensitive in the sense that the rule must be consistent with statute and any change of procedure may require an amendment to statute).
- European procedures.
- Proceedings involving the State.
- Particular proceedings such as claims in relation to land.
- Intellectual property.
- Proceedings in relation to contempt of court.
- Wills, estates and trusts.
- Appeals.

(2) Overriding Objective, Consistent Application of the rules, English Case Management (objectives and powers) and Skeleton Arguments

The *overriding objective* of the English CPR is to enable "the court to deal with cases justly and at proportionate cost". The key principles and terms pertaining to this overriding objective are explicitly defined in the rules and have been set out in §3.3, above. They include dealing with a case fairly, expeditiously, proportionately to its importance and complexity, saving expense, enforcing compliance with rules and orders, and, considering the overwhelming number of cases filed, "*allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases*". This articulation of the overriding objective is a fundamental touchstone for applying the Rules, and for all future revisions, and for direction and guidelines that may be developed relating to their application.

When the CPR came into force in England judges were not only given major and numerous powers; the Rules made case management a *duty* of the court (see §3.3, above). Such provisions (although modestly different) have also been enacted in Eastern Caribbean (which comprises some 11 States or Territories), Trinidad and Barbados.

Recommendation 2
It is recommended that the overriding objective and case management provisions of the English CPR (set out in §3.3 above) be incorporated into the Cyprus CPR.

The Rules Committee accepted recommendation 2.

These overriding objective and case management provisions provide the judge with the necessary tools to actively manage a case, and to impose restrictions where necessary on parties' wasteful litigation tactics.

We note that provisions akin to the English overriding objective can be found in O. 30, r. 9 of the Cyprus CPR, albeit narrower in scope. From the scoping mission, we understood that O. 30, r. 9 has passed largely unnoticed. We consider that O. 30, r. 9 should be expanded to achieve the central status of an overriding objective. The overriding objective will be supported by the further case management powers set out in §3.3 above. Training of the judges and legal practitioners will be required on the significance of the overriding objective and on the new case management powers, which are intended to bring about a wholesale change in culture and attitude towards litigation.

Skeleton Arguments

In England, the Caribbean, Australia, New Zealand, Canada and the United States, courts require skeleton arguments or briefs (the term used in New Zealand) to be filed and served in advance of any hearing (including trials) or application. The length of skeleton arguments is restricted by the Rules. The judge knows the arguments in detail before an advocate even steps into court. Judicial reading time before a hearing commences is formally part of the hearing planning and arrangements, to obtain maximum benefit from the oral hearing.

Experience has shown that this practice *very considerably* reduces court time. The advocacy in court is concerned with addressing the arguments, not with setting out and explaining the arguments for the first time. In England, these requirements appear in Practice Direction and in Court Guides. For Cyprus, it is recommended that they be incorporated into the case management rules.

(3) Pre-Action Protocols: Areas and Costs for Breach

Pre-action protocols serve a valuable function in England and other CPR jurisdictions by keeping a case outside of the court system until the parties have given proper and due consideration to their case, and the other party's case, and revealed at least some of their arguments and evidence supporting them. Such protocols have proven valuable and popular in England, and they have been expanding to cover more and more areas. They discourage a culture of "shoot first, think later" or (which we understand is not infrequent in Cyprus) claimants commencing a claim but then not progressing it swiftly or at all for long periods of time. Pre-action protocols can also encourage mediation and other ADR procedures prior to the commencement of a claim. In the Caribbean, the system seems to survive happily on two pre-action protocols: personal injury claims (particularly where an insurer is involved) and debt.

The Rules Committee should be aware that there are a number of pre-action protocols in England. These are outlined below:

- personal injury claims
- clinical disputes (medical negligence claims)
- construction and engineering disputes
- claims in defamation
- claims involving professional negligence
- applications for judicial review
- disease and illness claims (personal injury resulting in disease or illness)
- housing disrepair claims
- possession claims for mortgage arrears (for this protocol see para CPR 55 PRO 2)
- possession claims by social landlords (for this protocol see para CPR 55 PRO 3)
- claims for dilapidation of commercial property
- low value personal injury claims in road traffic accidents ("RTA")
- low value personal injury (employers' liability and public liability) claims
- debt claims.

The Rules Committee will have to decide how many it wishes to emulate, if any. We would recommend, in the first instance, that three pre-action protocols be adopted:

Recommendation 3.1

It is recommended that there be three pre-action protocols: (1) a general pre-action protocol governing all proceedings not covered by their own specific protocol, (2) a personal injury protocol and (3) a pre-action protocol on debt.

The Rules Committee agreed with Recommendation 3.1 and the need for the three pre-action protocols. However, the Rules Committee stated that the detail of the draft pre-action protocols will be an important factor in deciding whether to adopt all or some of them and to what extent. It was made clear at the meeting between the Expert Group and the Rules Committee that the proposed pre-action protocols would be in a more simplified form than those currently in force in England.

The Rules Committee also drew the Expert Group's attention to the Central Bank's protocols in relation to debt and that these would be relevant when it came to the drafting of any pre-action protocol on debt.

Litigants in England and other CPR jurisdictions who fail to adhere to the protocols will typically face substantial costs sanctions. A significant problem in ensuring compliance with the current Rules in Cyprus is that that the costs for failing to comply, when compared to the above-mentioned jurisdictions, are not especially substantial. In short, parties may not be deterred from breaking with the protocols by the threat of costs or penalties.

Consideration should be given, with due regard to the interests of all parties, as to what costs/penalties for failure to comply with protocols are appropriate. It is the view of this report that the severity of any penalty for breach of protocols is in fact less important than ensuring that costs and penalties are swiftly imposed and collected, for example by adopting the English "pay as you go" approach (the "pay as you go" approach is explained in §5(15), below). Proceedings may also be stayed until parties have complied with their pre-action protocol obligations.

Recommendation 3.2

It is recommended that penalties be imposed for breach of the pre-action protocols. Consideration should be given to the costs imposed when pre-action protocols are not adhered to. Certainty in relation to penalties, and their efficient imposition and collection, are very valuable in increasing adherence to the protocols.

The Rules Committee accepted recommendation 3.2.

An Example of a Pre-Action Protocol

A practice direction is set out below. Note that it is not a general pre-action protocol but rather a practice direction of 'pre-action conduct and protocols.' It may assist a reader unfamiliar with Pre-Action Protocols.

Practice Direction – Pre-Action Conduct and Protocols

The Practice Direction—Pre-Action Conduct and Protocols was revised by the 79th Update to Practice Directions, and came into force on 6 April 2015.

Introduction

1. Pre-action protocols explain the conduct and set out the steps the court would normally expect parties to take before commencing proceedings for particular types of civil claims. They are approved by the Master of the Rolls and are annexed to the Civil Procedure Rules (CPR). (The current pre-action protocols are listed in paragraph 18.)
2. This Practice Direction applies to disputes where no pre-action protocol approved by the Master of the Rolls applies.

Objectives of Pre-Action Conduct and Protocols

3. Before commencing proceedings, the court will expect the parties to have exchanged sufficient information to—
   (a) understand each other's position;
   (b) make decisions about how to proceed;
   (c) try to settle the issues without proceedings;
   (d) consider a form of Alternative Dispute Resolution (ADR) to assist with settlement;
   (e) support the efficient management of those proceedings; and
   (f) reduce the costs of resolving the dispute.

Proportionality

4. A pre-action protocol or this Practice Direction must not be used by a party as a tactical device to secure an unfair advantage over another party. Only reasonable

and proportionate steps should be taken by the parties to identify, narrow and resolve the legal, factual or expert issues.

5. The costs incurred in complying with a pre-action protocol or this Practice Direction should be proportionate (CPR 44.3(5)). Where parties incur disproportionate costs in complying with any pre-action protocol or this Practice Direction, those costs will not be recoverable as part of the costs of the proceedings.

Steps Before Issuing a Claim at Court

6. Where there is a relevant pre-action protocol, the parties should comply with that protocol before commencing proceedings. Where there is no relevant pre-action protocol, the parties should exchange correspondence and information to comply with the objectives in paragraph 3, bearing in mind that compliance should be proportionate. The steps will usually include—

   (a) the claimant writing to the defendant with concise details of the claim. The letter should include the basis on which the claim is made, a summary of the facts, what the claimant wants from the defendant, and if money, how the amount is calculated;

   (b) the defendant responding within a reasonable time – 14 days in a straight forward case and no more than 3 months in a very complex one. The reply should include confirmation as to whether the claim is accepted and, if it is not accepted, the reasons why, together with an explanation as to which facts and parts of the claim are disputed and whether the defendant is making a counterclaim as well as providing details of any counterclaim; and

   (c) the parties disclosing key documents relevant to the issues in dispute.

Experts

7. Parties should be aware that the court must give permission before expert evidence can be relied upon (see CPR 35.4(1)) and that the court may limit the fees recoverable. Many disputes can be resolved without expert advice or evidence. If it is necessary to obtain expert evidence, particularly in low value claims, the parties should consider using a single expert, jointly instructed by the parties, with the costs shared equally.

Settlement and ADR

8. Litigation should be a last resort. As part of a relevant pre-action protocol or this Practice Direction, the parties should consider whether negotiation or some other form of ADR might enable them to settle their dispute without commencing proceedings.

9. Parties should continue to consider the possibility of reaching a settlement at all times, including after proceedings have been started. Part 36 offers may be made before proceedings are issued.

10. Parties may negotiate to settle a dispute or may use a form of ADR including—

(a) mediation, a third party facilitating a resolution;

(b) arbitration, a third party deciding the dispute;

(c) early neutral evaluation, a third party giving an informed opinion on the dispute; and

(d) Ombudsmen schemes.

(Information on mediation and other forms of ADR is available in the Jackson ADR Handbook (available from Oxford University Press) or at—

www.civilmediation.justice.gov.uk/

www.adviceguide.org.uk/england/law_e/law_legal_system_e/law_taking_legal_action_e/alternatives_to_court.htm)

11. If proceedings are issued, the parties may be required by the court to provide evidence that ADR has been considered. A party's silence in response to an invitation to participate or a refusal to participate in ADR might be considered unreasonable by the court and could lead to the court ordering that party to pay additional court costs.

Stocktake and List of Issues

12. Where a dispute has not been resolved after the parties have followed a pre-action protocol or this Practice Direction, they should review their respective positions. They should consider the papers and the evidence to see if proceedings can be avoided and at least seek to narrow the issues in dispute before the claimant issues proceedings.

Compliance with this Practice Direction and the Protocols

13. If a dispute proceeds to litigation, the court will expect the parties to have complied with a relevant pre-action protocol or this Practice Direction. The court will take into account non-compliance when giving directions for the management of proceedings (see CPR 3.1(4) to (6)) and when making orders for costs (see CPR 44.3(5)(a)). The court will consider whether all parties have complied in substance with the terms of the relevant pre-action protocol or this Practice Direction and is not likely to be concerned with minor or technical infringements, especially when the matter is urgent (for example an application for an injunction).

14. The court may decide that there has been a failure of compliance when a party has—

(a) not provided sufficient information to enable the objectives in paragraph 3 to be met;

(b) not acted within a time limit set out in a relevant protocol, or within a reasonable period; or

(c) unreasonably refused to use a form of ADR, or failed to respond at all to an invitation to do so.

15. Where there has been non-compliance with a pre-action protocol or this Practice Direction, the court may order that:

(a) the parties are relieved of the obligation to comply or further comply with the pre-action protocol or this Practice Direction;

(b) the proceedings are stayed while particular steps are taken to comply with the pre-action protocol or this Practice Direction;

(c) sanctions are to be applied.

16. The court will consider the effect of any non-compliance when deciding whether to impose any sanctions which may include—

(a) an order that the party at fault pays the costs of the proceedings, or part of the costs of the other party or parties;

(b) an order that the party at fault pay those costs on an indemnity basis;

(c) if the party at fault is a claimant who has been awarded a sum of money, an order depriving that party of interest on that sum for a specified period, and/or awarding interest at a lower rate than would otherwise have been awarded;

(d) if the party at fault is a defendant, and the claimant has been awarded a sum of money, an order awarding interest on that sum for a specified period at a higher rate, (not exceeding 10% above base rate), than the rate which would otherwise have been awarded.

Limitation

17. This Practice Direction and the pre-action protocols do not alter the statutory time limits for starting court proceedings. If a claim is issued after the relevant limitation period has expired, the defendant will be entitled to use that as a defence to the claim. If proceedings are started to comply with the statutory time limit before the parties have followed the procedures in this Practice Direction or the relevant pre-action protocol, the parties should apply to the court for a stay of the proceedings while they so comply.

(4) Mediation

The reader should refer to The Certain Aspects of Mediation in Civil Matters Law 2012.

Alternative Dispute Resolution (ADR) is not well developed in Cyprus. Recourse to the courts is often regarded as the primary mechanism for settling legal disputes. Despite this, relatively few civil applications proceed to full trial, leading to the conclusion that many civil disputes could be settled outside the courts system. This fact, and the success of the ADR mechanisms in other countries, makes a compelling case for the introduction and promotion of ADR mechanisms in Cyprus.

Despite the fact that ADR is widely regarded as an important tool, it remains underdeveloped as a dispute resolution mechanism in the courts systems of many jurisdictions. This is also the case in Cyprus, notwithstanding the establishment of a framework for the use of ADR pursuant to the Certain Aspects of Mediation in Civil Law of 2012 Act and the registration of more than 300 mediators with the Department of Justice and Public Order. The courts often end up acting as de facto conciliators in an attempt to resolve disputes that do not need a full trial, with all the expenses that ensue. As a consequence, much valuable court time is wasted doing work that could more appropriately be managed by an ADR professional.

In England, mediation will typically be considered by the court at the Case Management Conference (**"CMC"** i.e. the procedural hearing which takes place immediately after exchange of the parties' statements of case) stage but the pre-action protocols encourage it as early as possible. At the CMC, at the same time as the court provides for procedural directions—e.g. for disclosure, exchange of witness statements, etc., it will also make provision for time for the parties to mediate typically using a standardised procedural direction. A window for mediation is then incorporated into the procedural order issued by the court. The court, as explained in the extract below, does not compel mediation, but it will penalise in costs a party who unreasonably refused to mediate.

The appropriate costs order here could follow the English case of *Halsey v Milton Keynes General NHS Trust*[7] in which it was held that even if the court has a power to compel parties to participate in ADR, it should not exercise it. Rather, the court should encourage the participation in ADR in appropriate cases and make clear the possible costs and consequences of refusal to participate in

[7] [2004] EWCA Civ 576, [2004] 4 All ER 920, [2004] 1 WLR 3002

an appropriate case. Dyson L.J. gave the judgment in this case. Below is an extract from this judgment. While lengthy, it provides very useful guidance on how the courts can encourage, rather than compel, mediation through costs sanctions.

> **29**. The court's encouragement may take different forms. The stronger the encouragement, the easier it will be for the unsuccessful party to discharge the burden of showing that the successful party's refusal was unreasonable.
>
> **30**. An ADR order made in the Admiralty and Commercial Court in the form set out in Appendix 7 to the Guide is the strongest form of encouragement. It requires the parties to exchange lists of neutral individuals who are available to conduct "ADR procedures", to endeavour in good faith to agree a neutral individual or panel and to take 'such serious steps as they may be advised to resolve their disputes by ADR procedures before the neutral individual or panel so chosen'. The order also provides that if the case is not settled, 'the parties shall inform the court what steps towards ADR have been taken and (without prejudice to matters of privilege) why such steps have failed'. It is to be noted, however, that this form of order stops short of actually compelling the parties to undertake an ADR.
>
> **31**. Nevertheless, a party who, despite such an order, simply refuses to embark on the ADR process at all would run the risk that *for that reason alone* his refusal to agree to ADR would be held to have been unreasonable, and that he should therefore be penalised in costs. It is to be assumed that the court would not make such an order unless it was of the opinion that the dispute was suitable for ADR.
>
> **32**. A less strong form of encouragement is mentioned in the other Court Guides to which we have referred at para 6 above. A particularly valuable example is the standard form of order now widely used in clinical negligence cases, and which was devised by Master Ungley. The material parts of this order provide:
>
> > "The parties shall consider whether the case is capable of resolution by ADR. If any party considers that the case is unsuitable for resolution by ADR, that party shall be prepared to justify that decision at the conclusion of the trial, should the judge consider that such means of resolution were appropriate, when he is considering the appropriate costs order to make.
> >
> > The party considering the case unsuitable for ADR shall, not less than 28 days before the commencement of the trial, file with the court a witness statement without prejudice save as to costs, giving reasons upon which they rely for saying that the case was unsuitable."

33. This form of order has the merit that (a) it recognises the importance of encouraging the parties to *consider* whether the case is suitable for ADR, and (b) it is calculated to bring home to them that, if they refuse even to consider that question, they may be at risk on costs even if they are ultimately held by the court to be the successful party. We can see no reason why such an order should not also routinely be made at least in general personal injury litigation, and perhaps in other litigation too. A party who refuses even to consider whether a case is suitable for ADR is always at risk of an adverse finding at the costs stage of litigation, and particularly so where the court has made an order requiring the parties to consider ADR.'

There is no presumption in favour of mediation. As was held in *Halsey,* a party who refuses mediation and who wins in court should not be deprived of costs unless the unsuccessful party shows that the winner acted unreasonably in refusing to take part in alternative dispute resolution. Relevant considerations include:

- the nature of the dispute
- the merits of the case
- the extent to which other settlement methods have been attempted
- whether the costs of ADR would have been disproportionately high
- whether any delay in setting up and attending ADR would have been prejudicial
- whether the ADR should result in a costs penalty.

We recommend that similar practices be adopted in Cyprus.

Recommendation 4
It is recommended that strong encouragement to mediate across all cases should be given by the judiciary, with possible costs sanctions occurring for failure to heed the encouragement.

The Rules Committee agreed with recommendation 4 and further stressed that the draft rules should regulate the consequences of unreasonably refusing to mediate or where a participant acts in bad faith.

(5) Statements of Truth on Pleadings and Witness Statements

In Cyprus, pleadings are signed by the advocate only and do not contain a "statement of truth," *i.e.* a statement confirming that the litigant on whose behalf the pleading is served confirms the truth of the pleaded allegations. The statement of truth is typically signed by the litigant himself (not the advocate), but there is also available an alternative form whereby the advocate can, if he or she so wishes, confirm on behalf of the litigant. In England, pleadings must now be supported by statements of truth. The use of statements of truth on pleadings has had a positive and substantial impact in England. Practitioners have taken care to ensure that their clients have read the pleading and understand the meaning of the statement. More particularly, the party understands that any dishonesty or inaccuracy in the pleading will have a heightened adverse impact compared with an inaccuracy or dishonesty in a pleading with no such statement of truth.

Other benefits of statements of truth are:

- They make it harder for parties to amend their pleading to change their factual case in a way which contradicts their previous pleaded case on the facts.
- They force a party to pay more careful consideration to their case at an earlier stage, rather than plead it, and only come to face the seriousness of the allegations at the witness statements stage.
- They reduce the ability of a party to advance conflicting allegations of fact in a pleading.

Such statements of truth are also used in witness statements. They are used where the statement is to be used in relation to an application to the court or at trial. This obviates the need for an affidavit and the inconvenience of its being sworn (particularly in relation to a deponent who is overseas). It will also release time for registry staff to deal with other matters. If untrue, it is a contempt of court (as opposed to perjury) and will be dealt with by the court in which the hearing took place rather than by a separate criminal process.

The Rules Committee informed the Expert Group that the judgment of the European Court of Human Rights in the case of ***Kyprianou v Cyprus***[8], section 44 of the Courts of Justice Law of 1960 (N.14/60) was amended in 2009 so that a contempt in the face of the court can no longer be dealt with by the judge himself.

[8] (2007) 44 EHRR 27 (App.No.73797/01)

Recommendation 5.1

It is recommended that statements of truth and witness statements be adopted. Consideration by the Rules Committee should be given to whether it is necessary to retain the use of affidavits for any purpose e.g. in England affidavits are only used in relation to search orders, freezing orders and summary judgment against a State.

The Rules Committee accepted recommendation 5.1.

The Expert Group also understands that at present, affidavits can be sworn only at the court registry. This causes substantial inconvenience, expenses and loss of time of court staff, lawyers, litigants and witnesses. In England, affidavits can be sworn before other persons as well, for example solicitors, barristers and notaries. We would recommend adopting a similar practice in Cyprus.

Recommendation 5.2

If affidavits will be retained, it is recommended that the Supreme Court end the practice that all affidavits must be sworn before the Registrar, and allow such swearing to take place before other persons, for example practising lawyers.

The Rules Committee accepted recommendation 5.2 and stated that affidavits should not be retained except for very limited circumstances, and that statements of truth be required.

(6) Cyprus Orders 25 and 30 and Case Management

Order 25

The recommendation is that Order 25 be retained, with the principles for allowing amendment of pleadings being subsumed with those of the overriding objective (since the overriding objective governs the exercise of the court's discretion, and amendment is at the discretion of the court).

Order 30

The recent amendments to Order 30 include a provision for directions for the exchange of evidence in writing in lieu of oral evidence. However, the elimination of oral evidence applies only to cases below €3,000 and does not apply to the large volume of cases initiated prior to the introduction of the revised order.

Consideration could be given to extending the small claims provisions of the amended Order 30 to apply to the trial of cases over €3000. Currently O.30 provides that the provisions of rules 5 (1) and (2) can only be applied with the agreement of the parties.

As we understand, Order 30 (in its present form) aims to encourage case management at an early stage and to reduce the opportunity for piecemeal applications on various issues (disclosure, further and better particulars, security for costs). We agree with that approach.

Recommendation 6.1

It is recommended to retain the principles underlying Orders 25 and 30 but with modifications to subsume them within the ambit of the overriding objective. Orders 25 and 30 should be subsumed into the case management rules.

Recommendation 6.2

Moreover, in conjunction with the new case management powers of the court, it is recommended that the first appearance before the court after the summons for directions be designated as a Case Management Conference (CMC). This is a central part of the English procedural system, and it is usually the principal occasion when the court will exercise its case management powers.

The Rules Committee broadly accepted Recommendations 6.1 and 6.2; however, the Committee stressed that the detail of the proposed rules would have to be examined before final agreement.

The Rules Committee noted the importance of the filing and hearing of interim applications also being scheduled at the CMC stage.

Some characteristics of English CMCs are as follows:

- It is required that advocates with knowledge of the case must attend. If an advocate without sufficient knowledge of the case attends, the court may adjourn the hearing and order costs against the advocate personally. This ensures that a meaningful CMC takes place.
- At the CMC, the court will generally give procedural directions for all steps prior to the hearing, including disclosure, exchange of witness statements (usually weeks or months in advance of the trial), expert evidence, and trial preparation. The court will also determine the trial length. Depending on the listing arrangements of each country, the trial dates may be fixed at that stage (if fixed by the judge) or soon thereafter (if fixed by the registry). The trial dates are invariably on consecutive days.
- Advocates are required to liaise in advance with a view to agreeing as many procedural directions as possible. Such directions will then be subject to the court's approval. Matters which remain in disagreement will be resolved by the court at the CMC.
- Advocates are required to lodge documents in advance to assist the court to deal with the issues. These include a summary of the facts and issues in dispute, a short chronology, skeleton arguments identifying the procedural directions not agreed, and submissions in support of the disputed procedural directions requested by each party.

We consider that the fixing of a realistic hearing date, to take place on consecutive days, of cardinal importance to proper case management and efficient allocation of court resources. All users of the system will then have to understand that such hearing dates will not be adjourned or changed save in truly exceptional circumstances and as a last resort. Ultimately, such a system should prove beneficial to the courts, the practitioners (who can plan their diaries well in advance, in the knowledge that hearings dates will actually take place), and litigants (who can also plan their schedule and commitments accordingly). The trial dates fixed at the CMC may be 12 or more months away, depending on the complexity of the case and the court (and counsel) availability.

In England, save in the most complex of cases, after the CMC and once the procedural directions up to and including trial have been fixed, only one further directions hearing is usually required. This is the Pre-Trial Review, which takes place shortly before the trial is due to commence and

aims to resolve any outstanding issues. Such a system also minimises directions hearings/mentions, which we understand from feedback received during our scoping mission take up a considerable amount of judicial time.

Recommendation 6.3

It is recommended that a similar system as above be adopted for CMCs, with suitable modifications to suit local needs.

The Rules Committee accepted recommendation 6.3.

We note that there is presently a large backlog of cases that (if it remains in place) will prevent the proposed new rules from working effectively. The backlog of cases constitutes a separate issue, which we have been informed will be addressed through a separate action.

(7) Different Track Procedures for Different Categories of Case

A fundamental principle in developing and applying Rules of Civil Procedure is the principle of proportionality. Dealing with a case justly and at proportionate cost includes, so far as is practicable:

(a) ensuring that the parties are on an equal footing;
(b) saving expense;
(c) dealing with the case in ways which are proportionate—
  (i) to the amount of money involved;
  (ii) to the importance of the case;
  (iii) to the complexity of the issues; and
  (iv) to the financial position of each party;
(d) ensuring that it is dealt with expeditiously and fairly;
(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases

Related to achieving this objective is the need to devise appropriate arrangements and rules for different categories of cases.

Recommendation 7

It is recommended that there be 3 tracks:

(1) Low value claims: less than €3,000: the procedure will have a very simple claim form, no expert evidence or, if so, a court appointed expert, and perhaps dealt with on paper. Costs should follow the event and be subject to a cap of a specific sum, for example €200 (subject to the court's discretion to rule otherwise). There should be no right of appeal.

(2) Intermediate claims: €3,000 to €25,000: use procedure borrowed from English CPR Fast Track claims: see English CPR Part 28.

(3) All other claims.

On case management, the court may transfer the claim to whatever track it considers appropriate irrespective of the amount of the claim.

The Rules Committee stated that its decision on the number of tracks and the claims for which each track will be applicable will be reserved until after the draft rules are released to it. The Rules Committee considered that the general rule as to costs should also apply for low value claims, i.e.

costs follow the event and are assessed according to the costs scale of the claim, subject to the court's discretion to rule otherwise.

(8) For Claims Where Facts not Greatly in Dispute: English Part 8 Procedure (wider than Cyprus CPR 55) or consider Fixed Date claim as in Caribbean

If the facts of a case are not greatly in dispute, then necessarily there should be far less evidence, and certainly far less oral evidence. The case can be allocated a hearing date on issue.

1. The procedure lends itself to cases coming on more quickly, which is of particular benefit where the claim relates to possession of a dwelling or a mortgage claim, for example.
2. It may well benefit high value claims where the issue relates to, for example, the interpretation of a statute or a document such that the case relates to argument rather than fact.

This is a more streamlined version of the old Originating Summons. It only occupies 2 pages.

Recommendation 8

The adoption of the English Part 8 procedure is recommended.

The Rules Committee accepted recommendation 8 and indicated that the English Part 8 procedure will apply (a) where the claimant seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact and (b) to other specified types of proceedings; however, the Rules Committee indicated that the latter situation cannot be decided at this stage and a final decision can only be made following receipt of the draft rules.

(9) Summary Judgment Test: "real prospect of success" and Available for Defendant against Plaintiff as well as Plaintiff against Defendant, available in respect of any issue in the case.

Summary judgment is a very valuable tool for the early disposal of wasteful cases. The impression we have formed is that it is rarely used in Cyprus, certainly much more rarely than in England. However, with one reservation, the test for summary judgment in Cyprus appears to be essentially the same as in England; it is the attitude to the test which is not the same. The problem regarding summary judgement seems to be one of culture and application and not in fact a substantive problem of the rules.

In England summary judgment is available to defendants as well as claimants. We see no reason why summary judgment should be available only to claimants. We recommend that summary judgment be made available to defendants as well, in those situations that they believe that the claim filed has no real prospect of success or for some other reason the case should not be disposed of at trial.

Recommendation 9

It is recommended that summary judgment be made available to Defendants as well as Claimants.

The Rules Committee accepted recommendation 9.

(10) Interlocutory Applications; a distinct separate set of rules in relation to pre-action applications such as injunctions and pre-action disclosure (see English CPR PART 25); Freezing orders having specific rules and likewise Search orders.

We understand that Cypriot courts are already familiar to some extent with pre-action disclosure through the Norwich Pharmacal jurisdiction. Part 25 lays down rules for such applications and also provides for inspection of property.

In respect of these interlocutory orders consideration must be given as to whether any amendment to any statute is necessary. In England there is specific provision and so there is in most Caribbean countries.

In relation to **Freezing Orders and Search Orders:** we believe it is necessary to make specific rules and, more particularly, to create precedent Orders e.g. a precedent Commercial Court order. Experience suggests that at any hearing the judge then only has to consider the wording where it digresses and fill in the blanks.

Some participants in the scoping mission expressed the view that there was a need for specific rules to deal with other kinds of heavy applications (originating or interlocutory) which are common in Cyprus, such as Norwich Pharmacal applications, minority oppression (unfair prejudice) and arbitration applications. This is a matter for the Rules Committee to consider.

Some participants in the scoping mission noted the need for a more detailed set of rules to govern interim applications, for example the need to make default provisions, at the outset, for the exchange of evidence (in opposition and in reply) to simplify the process (and avoid disputes as to how many rounds of evidence there should be with supplemental evidence). We believe that providing more detailed default rules for dealing with interlocutory applications, akin to CPR r. 23 would assist.

Recommendation 10

It is recommended to adopt rules which emulate English CPR Parts 23 and 25, adopt precedent orders for standard complex applications. Consideration should also be given to the adoption of specific rules for particular kind of applications which are common and may require such special rules.

The Rules Committee accepted recommendation 10. The Rules Committee further commented that the "heavy" applications such as Norwich Pharmacal applications should be included. If this is not feasible, the Rules Committee considers that specific rules should be adopted.

(11) Expert Evidence: Control, Management, Experts' Duty to Court First and Statement of Truth

The English Rules (Part 35) were considered in some length at Section 3: Brief Overview of English CPR. The aim is to control the use of expert evidence, and assist the judge and lawyers involved to comprehend the expert evidence. In England, it has proven a valuable tool for the saving of expense and time.

Recommendation 11

It is recommended that there be a similar rule in Cyprus closely reflecting the English Part 35.

The Rules Committee accepted this in principle, but stressed that in order for such a rule to be functional and effective in Cyprus, it must be in a simplified form compared to the English Part 35.

This Report generally discourages the use of Practice Directions and prefers the Rules to be self-contained. There are, in relation to the English CPR Part 35, both a Practice Direction and a document entitled "Guidance for the Instruction of Experts in Civil Claims". It is recommended that, in some form or another, this material be reflected in the new Cypriot rule.

(12) Narrower Discovery/Disclosure

The current rule requires that all parties must disclose any relevant document: *The Peruvian Guano Test.* As set out in Section 3 Brief Overview of English CPR, in relation to disclosure, a party discloses to the other parties in the action the existence of documents which the party has or has had in the party's control (CPR 31.8) being documents (CPR 31.6): (1) upon which the party relies; (2) which adversely affect the party's own case; or (3) another party's case; or (4) which support any other party's case. In the age of electronic communication and storage, *"document"* embraces anything whereby information is stored including electronically. For example, the electronically stored list of transmitted faxes, in a fax machine, is a document for this purpose but only disclosable if there is an issue as to when or if a fax were transmitted. Additionally, there is provision for specific disclosure where a party seeks relevant documents from another party or where these documents are referred to in witness statement or pleadings and have not yet been disclosed.

Recommendation 12

It is recommended that this rule be adopted; it is to be noted, however, that in England, the whole issue of Disclosure is under scrutiny. More probably this will only affect very complex and high value claims. Disclosure in such claims in Cyprus can be regulated by the court by making bespoke directions under the rules on disclosure themselves and under its case management powers.

The Rules Committee agreed in principle with the International Bar Association approach in relation to the taking of evidence (2010).[9] In summary, such an approach would require parties to disclose documents on which they intend to rely. The other party may then request specific documents (or well-defined categories of documents) which have not been disclosed and are in the possession, custody or control of its counterparty explaining why they are "relevant to the case and material to its outcome".[10] The IBA Rules have been successfully used for many years in the field of international commercial arbitration. However, this narrower disclosure test means that a case is not scrutinised as thoroughly and closely as the wider disclosure test might allow.

[9] https://www.ibanet.org/Document/Default.aspx?DocumentUid=68336C49-4106-46BF-A1C6-A8F0880444DC.
[10] Article 3 of the IBA Rules on the taking of evidence (2010).

(13) English Part 36: Offers to pay rather than payment into court with grave and expensive consequences where the offer is rejected and the offeror does better at trial

Part 36 provides the mechanism for the **claimant** to make an offer to settle with severe costs consequences if the offer is refused and the claimant achieves at trial a more favourable judgment than his offer. The claimant will recover enhanced interest and enhanced costs. The other party is punished quite significantly. There is a corresponding mechanism for the defendant reflecting the established benefits of making a payment into court, although an actual payment is no longer required—just the making of the offer in a particular way. A claimant who refuses an offer to settle will face significant costs consequences if it does not do better than the defendant's offer.

The rule certainly works very well in England save that the rule has become unnecessarily elaborate.

Recommendation 13.1
It is recommended that much of the English Part 36 rule be followed but in a considerably simplified form.

A potential problem in Cyprus may be the question of the sanction. Costs alone may not deter a party from refusing an offer because costs are not a significant factor. In England, a litigant is always very exercised by the potential costs. A solution may be:

1. In relation to a claimant's offer: to uplift the costs recoverable by the claimant for the period after the offer is made - but refused - by a factor of 2x or 3x, etc.
2. In relation to a defendant's offer*:* to deprive the claimant of a substantial proportion of his pre-offer costs and/or to reduce the amount recovered by the claimant at judgment by some substantial percentage.

The possible sanctions are for the Rules Committee to consider. This Report would recommend that the sanctions can be (a) costs (b) increasing (or decreasing) the rate of interest awarded on any sums awarded by the court. The implementation of further, more severe, sanctions may then be considered if these sanctions prove inadequate.

The Rules Committee accepted recommendation 13.1. The Rules Committee was of the view that sanctions should be in costs.

Payment into court does not have as its purpose to provide security for costs, the purpose is to settle the case. The issue of payment into court is not relevant to the purpose of settlement. As such payment into court as seen below should be abolished and replaced by the English Part 36.

Recommendation 13.2
It is recommended that the current rule which requires a payment into a court (Order 22) be abolished.

For the avoidance of doubt, the abolition of payment in to court relates only to such a payment in connection with an offer to settle. A payment into court remains in being in relation to, for example, security ordered by the court.

The Rules Committee accepted recommendation 13.2.

For comparison, the Barbados CPR Part 35 which, although modelled on the English Part 36 is far simpler. It is included at Appendix C.

(14) Appeals

In the Functional Review of the Courts System of Cyprus, a recommendation was made that a new Court of Appeal be established in Cyprus. The expert group were informed that this is unlikely to happen until 2019/2020. This will undoubtedly have a great impact on appeals within the jurisdiction. It would therefore be premature to make a recommendation on appeals at this stage.

Recommendation 14

It is recommended that a requirement for leave to appeal should be considered in relation to appeals to the 'new' Supreme Court, when the new Court of Appeal comes into existence.

The Rules Committee accepted recommendation 14.

(15) Pay-As-You-Go Principles

Under the older English rules, it was always a possibility, but not a likelihood, that an unsuccessful party at any application or interim hearing would imminently be obliged to pay costs to the successful party. Generally, the unsuccessful might have an order for costs against the party but the assessment and payment would wait until the end of the case. Consequently, it was customary that a party who was not optimistic, or who considered making the application or resisting it to be tactically desirable, would take a chance at such a hearing. When the CPR came into force this culture immediately changed.

Where the substantive hearing of an application will last one day or less, then a party who may wish to claim costs if successful will serve prior to the hearing a schedule of costs. If successful, and if a costs order is obtained, then the judge will assess them at the end of that hearing and order their payment within 14 days.

If it is not practicable for some reason to assess them, or if the court is not content on some aspect of the schedule, then it is likely to award a payment on account to be payable within 14 days (in practice, this is the most usual Order).

Pay-as-you-go has had a significant impact on litigation culture in England and reduced unnecessary applications. Several participants in the scoping mission highlighted unnecessary applications as a major source of delay in Cyprus. Whilst the impact of pay-as-you-go is unlikely to be the same in Cyprus (on account of the lower costs scales), it should still have an appreciable impact on unnecessary applications. Additionally, summary assessment saves valuable registry time, the swift assessment and payment of costs is likely to prove popular with practitioners, will reward reasonable litigants, and will discourage and punish unreasonable litigants.

The costs award is enforceable like any other money judgment. In effect, the money owed is a debt like any other debt, and, thus, it is extremely unlikely that someone will be stopped from bringing their case because of an unpaid debt, save in the most extreme cases where this may be appropriate. The purpose of the pay-as-you-go practice is to bring forward the costs order and make a litigant face the consequences of its unreasonable conduct sooner rather than later.

Recommendation 15

It is recommended that the English pay-as-you-go principles be adopted in relation to interim hearings and applications.

In principle, the Rules Committee accepted recommendation 15. The Committee noted that execution of court orders is a big problem in Cyprus. The Rules Committee noted that Rule 3.4(2)(c) of the English CPR gives the court an unqualified discretion to strike out a claim or defence where a party has failed to comply with a rule, a practice direction or court order and that this rule also applies to exceptional cases of non-compliance with costs orders.[11]

The Rules Committee considered that it is important that the court have the power to ensure compliance in the above instances and that a rule closely emulating the English Rule 3.4 (2)(c) should be considered for adoption in Cyprus.

[11] See, inter alia, Crystal Decisions (UK) Ltd & Ors v Vedatech Corporation & Anor [2008] EWCA Civ 848 and Peak Hotels, Oil & Minerals Development Corp v Sajjad, 4 April 2002, unrep. (Gibbs J), Resorts Ltd v Tarek Investments Ltd & Ors [2016] EWHC 690 and Ford v Labrador [2003] UKPC 41 (breach of constitutional right of access to the court).

(16) Registrars

It was clear from the scoping mission that those Registrars that possess legal qualifications, could be used more effectively.

Recommendation 16

It is recommended that more tasks are delegated to registrars to release judicial time, such as dealing with default judgment applications, granting extensions and disposing of proceedings by consent.

Further clarification of the responsibilities of Registrars is needed by the Rules Committee, but we consider that the following tasks may conveniently be assigned to registrars to release judicial time: (a) issuing judgments in default (with or without proof required) coupled with an increase in the times provided for exchange of pleadings (which, at present, are, we understand, unrealistically short and are in practice never complied with; (b) delegation of granting extensions of time which are not disputed and do not affect the hearing date; (c) withdrawing proceedings where there is no dispute as to costs; and (d) sealing consent orders. Consideration should also be given to providing the necessary legal framework so as to give registrars the jurisdiction to hear small claims on consent.

The Rules Committee indicated that it is not ready at this stage to specify the tasks to be assigned to registrars; however, it stated that this should not hinder the preparation of a draft rule and in principle there was agreement that further powers should be delegated to Registrars. It was further stated by the Rules Committee that changes to legislation and/or possible constitutional amendment may be necessary to implement this recommendation.

(17) Ways of Commencing a Claim

Some stakeholders noted the need to regulate this in CPR, noting that there is no clear procedure for originating summonses to start many kinds of claims/applications. For example, we understand, there is no certainty how an unfair prejudice corporate petition (which we understand in Cyprus is called minority oppression petition) is to be conducted, and there are no specific rules (like there are, for example, in England) for claims relating to arbitration.

We consider that there should be 3 ways of starting a claim using a claim form:

1. By claim form (which may contain or be accompanied by) full particulars of the claim.
2. By claim form with a brief description of the claim but with the detailed particulars of claim to follow within 14 days (or such other period as may be deemed appropriate).
3. Part 8 Claim Form:

These are the standard ways provided for under the English CPR, and have proven successful and practical in practice. The usual process is CPR Part 7, which provides for the issuing of a claim form, with a general description of the claim (which, we understand, broadly corresponds to the Cypriot "general indorsement"). Particulars of claim are either attached or follow within 14 days. No particular significance is attached to whether Particulars of Claim are served at the same time, or after the claim form for purposes of summary judgment.

This alternative procedure to commencing proceedings by claim form under CPR Part 8 is generally intended for use where:

- the court's decision is sought on a question which is unlikely to involve a substantial dispute of fact: CPR 8.1(2); or
- a rule or Practice Direction requires or permits the use of this procedure for commencing proceedings of a specified type: or specified types of proceedings.

The principal characteristics of Part 8 claims are: (a) pleadings are not used unless the case requires them, the parties use the Part 8 Claim form (which is brief and focuses on the issue brought before the court) and witness statements which, in particular, exhibit all documents relied upon thereby possibly dispensing with disclosure. (b) The claimant **must** file any written evidence on which the claimant intends to rely with the claim form: (CPR 8.5(1)) The defendant **must** file an acknowledgment of service no later than 14 days after service of the claim form. (c)

The defendant does **not file a defence** but must serve with the defendant's acknowledgment any written evidence upon which the defendant intends to rely: (therefore within 14 days of service of the part 8 Claim form). (d) A claimant may not obtain default judgment. (e) The court may at any stage, either on application or on its own initiative, order the claim to continue as if the proceedings had been commenced under Part 7. Where the court takes this course it will allocate the claim to a track and will give such directions as it considers appropriate.

Practice Direction 8A para 6.1 provides that the court may give directions either on its own initiative or on the application of a party immediately that the claim form under CPR Part 8 is issued. In any event, the court will give directions for the disposal of the claim as soon as practicable after the defendant has acknowledged service.

Classic examples of Part 8 claims are:

- approval of court in relation to the settlement of an infant's claim for damages
- interpretation of a trust
- interpretation of a lease or a contract
- appointment of trustee where no particular issue of fact
- dispute between co-owners of land
- interpretation of a statute.

The Rules Committee should consider and specify: (1) the types of proceedings for which this procedure should be used and (2) any specific proceedings where this procedure might save resources, particularly those of the court itself. In this regard, a Practice Direction would greatly assist the practitioner.

Where appropriate, rules can be made to provide for modifications to these three methods to cater for specific types of applications such as arbitration claims (which in England are provided for under CPR, Rule 62), claims for enforcement of foreign judgments etc. We would welcome suggestions from the Rules Committee as to which types of claims may require special provisions. Participants in the scoping missions suggested: (a) Proceedings relating to arbitration; (b) minority oppression claims; and (c) proceedings to enforce foreign judgments. We would welcome the Rules Committee's views on these matters.

Recommendation 17

It is recommended that there be three basic methods for commencing a claim under the CPR: claim form (with and without particulars) and the equivalent of a Part 8 Claim Form. Moreover, special provisions should be made for special claims where that would be of benefit, e.g. claims relating to arbitration.

The Rules Committee accepted recommendation 17, subject to the comments made in recommendation 8 of this report.

(18) Service Out of the Jurisdiction

We understand that the rules relating to service out of the jurisdiction are old. Two particulars issues are of note: (a) the CPR rules have not been amended to incorporate the provisions of the jurisdictional regulation (previously 44/2001/EC and now replaced by 1215/2012/EC) and (b) the jurisdictional gateways in O. 6, r. 1 have not been updated to keep up to date with modern requirements. For example, O. 6, r. 1 provides for eight jurisdictional gateways. By comparison, the jurisdictional gateways provided under the English CPR, Practice Direction 6B are 21. We consider that Cypriot jurisdictional gateways should be expanded to mirror those of the CPR.

Thus, we believe that the Cyprus rules on service out of the jurisdiction require very substantial amendment to make them consistent with EU law and modern commercial requirements. We propose to address this issue in the draft rules. For a detailed indication of what will be involved, please refer to Civil Procedure (The White Book) 2018 rules 6.20 to 6.43 and Practice Direction 6B).

Recommendation 18

It is recommended that the civil procedure rules relating to service out of the jurisdiction be amended to incorporate the provisions of EU legislation, and to be expanded to bring them broadly in line with the jurisdictional rules found in the English CPR.

The Rules Committee accepted recommendation 18, and further stated that the rules on service within the jurisdiction would be retained as they currently stand.

The Rules Committee noted that provisions in the current Cypriot CPR regarding service out of the jurisdiction on a non-Cypriot defendant of notice of the writ and not the writ itself, are based on considerations of international comity. This is because the writ of summons is in the form of a command addressed to the defendant. The Rules Committee stated their understanding that since the proposed claim form will not contain a command, service of notice, as opposed to the actual claim form itself, will no longer be necessary.

(19) Simple Updates to Rules

Some stakeholders noted the need to update CPR in light of changes in the law, e.g. provisions dealing with hearsay (abolished by law), claims relating to statutes which have been abolished, etc. This should be uncontroversial and will be addressed at the Guiding Draft Stage (see Table 1.1).

6. Acknowledgements

The Expert Group would like to express our gratitude for the time and support given to the group to date in the project and to acknowledge the contribution of all who participated in and/or made submissions to the review of the Rules of Civil Procedures so far. The group would in particular like to thank Cypriot Project Manager/Cypriot Liaison Officer, Mr George Erotocritou, former Judge of the Supreme Court, and Director of Court Reform and Judicial Training for the invaluable assistance that he has provided to the Expert Group and his dedication to the reform process.

Appendix A – Scoping Mission Report

1. Judicial System of the Republic of Cyprus

Until it became an independent republic in 1960 Cyprus was a British colony and retains the principles of the British legal system.

The legal system of Cyprus is founded on the following:

- The Constitution of Cyprus.
- The Laws which have been retained by virtue of the Constitution.
- The principles of Common Law and Equity
- The Laws enacted by Parliament, after 1960.
- Rules of procedure and evidence

Following the accession of The Republic of Cyprus to the European Union in 2004, the Constitution was amended so that European law had supremacy over the Constitution and national legislation.

Under the articles of the 1960 Constitution, two Superior Courts were established:

- The Supreme Constitutional Court, and
- The High Court of Justice

In 1964 the two Courts were merged into the present Supreme Court of Cyprus which has all the powers and jurisdiction of both Courts. The current judicial system has two jurisdictions - the Supreme Court and the Subordinate Courts.

As identified in various EU reports and the Erotocritou Report 2016 on behalf of the Supreme Court, the current judicial system is facing challenges in the following areas:

- Delay
- Outdated rules and procedures
- Low level of fees to access courts
- Inefficient procedures,
- Insufficient use of information and communication technologies in courts,
- Staff resources
- Insufficient number of judges
- Low level of use of Alternative Dispute Resolution methods,
- The level of funding and resources allocated to the courts system.

In recent years the Supreme Court has taken a number of measures to address and improve efficiency and reduce delay.

- Extra Judges have been appointed,
- An Administrative Court was established and commenced operation in 2016
- Orders 25 and 30 of the Civil Procedure Rules were revised by the Supreme Court
- Legislation is pending aimed at reducing the number of appeals and achieving improvements in the enforcement of Court orders
- A draft tender for the provision of an e-justice system is at an advanced stage.

Despite these interventions the Courts are still faced with delay, backlogs of cases awaiting hearing and a growing discontent among Judiciary, staff, lawyers and the business community that the situation shows no sign of improvement.

One key area which has been identified as a significant barrier to efficiency is the Rules of Civil Procedure currently in use in the Cypriot Judicial System. Another is the approach of the courts and practitioners to conducting and managing litigation. Nonetheless, many including judges recognise that there is a problem in judicial failure to impose a discipline on legal proceedings which is already within their power should they choose to exercise it.

2. Rules of Civil Procedure of the Republic of Cyprus

The Rules of the Supreme Court in England and Wales in the form in which they existed in 1958 and supporting jurisprudence (as published, together with commentary, in the 1958 White Book) provide the basis for the rules used by the Cypriot courts. The need for radical amendment to these rules has been acknowledged as far back as the Pikis Report in 1989. Since then, there have been several attempts at revision but without success.

Judge Stavrinaki's recommendations for amendments to the rules, which were based on the 1998 Woolf reforms in the UK, were not acceptable to the Supreme Court.
In 2010 the Supreme Court appointed a 3-member committee of judges to amend crucial orders. As explained in the Kramvis report (2012), "several sessions were held by the Supreme Court for the drafting and finalisation of the text. However, the results were meagre and these attempts

were discontinued". The increase in the caseload arising from the financial crisis made it very difficult to return to the matter.

In order not to relinquish the attempt completely, the Supreme Court, adopting a recommendation of the current President of the Supreme Court, M. M. Nikolatos, commissioned Judge St. Nathanael, to prepare an amendment to the important Orders 25 and 30. After extensive consultations with the Cypriot Bar Association, the amendments were published in September 2014, but their implementation was temporarily suspended because of strong reactions from members of the Bar Association. Finally, amendments became fully effective on January 1, 2016.

Reservations have been expressed on various aspects of the new provisions and a Supreme Court Committee is currently considering targeted amendments to Order 30, where necessary.

3. Main outcomes of the scoping visit

A wide range of perspectives were communicated and many areas of possible focus were discussed with a view to establishing agreement on what the next steps in terms of technical support might involve. There was a need for clarity to be established on what could realistically be delivered upon within the proposed time frame of one year and within limited budgets.

All the stakeholders consulted confirmed the urgent need for reform of the existing rules. The existing rules were identified as having a detrimental impact on litigation practice and case management. All stakeholders agreed that the best starting point for any review should be the existing English Civil Procedure Rules and that these rules should be adapted to take account of local practice, culture and customs.

There was unanimous agreement amongst Judges at all levels, the Bar Council, practitioners and the Registry staff that the existing rules are a major contributory factor to delay and in need of significant reform. With the exception of the recent revisions to Orders 25 and 30 they are largely based on the English rules of 1958. Modernisation of the rules will help but it will also have to be accompanied by changes in the wider legal environment and the way the rules are applied in practice. It is also acknowledged that securing stakeholder agreement will be challenging.

Members of the Bar Council and practitioners are frustrated by the rules and see them as clogging up the system. Many suggested the rules facilitate "delaying tactics" which allow advantage to be taken of the system through unnecessary interlocutory applications, including repeated

applications for adjournments etc. Judges are susceptible to entrapment by the system, particularly in a close knit legal environment, where agreements amongst parties are easily obtained and time limits and penalties are largely ignored or proving to be ineffective.

The way in which litigation is allowed to be conducted ensures that delay has become built into procedures and all participants appear resigned to cases taking years longer than in other legal systems. Interlocutory proceedings and adjournments are used tactically by the parties to stop cases progressing to completion and this is factored into decision making with costs never assessed until the end of the case. This allows lawyers, many of whom are sole practitioners, to hold on to all their work without any pressure to hand over. Cases are thus protracted by interlocutory procedures and are not resolved by either settlement or judgment. Cases become unnecessarily complex, difficult to manage and ultimately frustrate the interests of justice.

While there is significant support for reform of the rules, the recent experience with orders 30 and 25 demonstrates the challenges that are encountered when it comes to detailed implementation.

Order 30 compels procedural steps to be taken at the start of the case (with a consequent front-loading of costs) even in cases almost certain to settle such as bank cases. Order 30 is now being reviewed because, though it was seen as a step forward in case management, it was picked apart and the way in which it has been implemented has resulted in things becoming even more complicated. Registrars considered that for them Order 30 created more problems than it solved particularly in relation to the requirement that costs be paid before reinstatement of an action dismissed when a summons for directions has not been issued. If the defending side refuses to say how much the costs are they cannot be assessed and the action reinstated. It was suggested that Order 30 itself was not the problem, rather its inconsistent application by District Court judges and lawyers. There are as yet no decisions of the Supreme Court to impose consistency on judges' rulings on the Order. For example, the key obligation for case management to issue a summons for directions depends on the date of completion of pleadings – however there is no consistent judicial approach about when pleadings are "completed". How Order 30 interacts with several other orders presents problems and there is currently no guidance to assist.

In contrast, Order 25, which is a more limited reform, is reported to be working well and lawyers have accepted it and apply it in relation to amendment of pleadings.
Currently, Judges at all levels are overwhelmed with work, spending an inordinate amount of time dealing with procedural matters related to interlocutory applications and matters for mention

etc. (in the range of 40-60 a day) which leaves little time to hear cases (about 1.5 hours a day). These restrictions on judicial time coupled with an inefficient listing system frustrate the progress of litigation; dates for hearings cannot be fixed; cases are not listed to be heard over a continuous period of time and are continuously adjourned after one day's hearing.

Judges see changes to the procedural rules as an important element in the process of reform but admit it has to be accompanied by wider structural, administrative, cultural and behavioural reforms, including changes in judicial practice and the manner in which litigation is conducted. Many believe the Bench and the Bar have to cooperate more in a range of areas including; e.g. the rigorous application of the rules, the use of pre-action protocols of the kind introduced in England, allowing wider judicial discretion and reducing the range of originating processes. Many believe judges need to retake control and adopt a stricter stance in the application of rules and that rules and processes be interpreted and applied uniformly and consistently. Registrars and administrators see the system as lawyer-led rather than judge-led and echoed many of the points made by judges.

There is a consensus that the rules need a thorough overhaul and that they need to empower judges, be simple to apply and restrict opportunities to abuse judicial processes.

There was consensus that the rules should facilitate better case management, reduce the number of interlocutory applications and provide judges with the power to act on their own initiative in certain areas. They should institute pre-action protocols of the kind used in England and pay-as-you-go principles in relation to costs and give the court power to limit the time allowed for cross-examination. They should provide judges with the power to refuse giving approval to consent orders and allow them greater discretion over matters such as the admissibility of evidence and the calling of expert witnesses. Some expressed the view that the right to appeal should be removed in cases where there is no real prospect of success.

Because of the interlinked nature of the rules there was general consensus that they should be revised en bloc as opposed to making piecemeal amendments. Gaining approval and acceptance was acknowledged as likely to be challenging but it was generally accepted that the need for reform outweighed counter arguments to moving forward with the project.

The need for local expertise and input was deemed to be of paramount importance. As mentioned above all stakeholders agreed that given the close historical legal ties with the UK, the best

starting point for any review should be the current version of the English Civil Procedure Rules, which should be adapted to take account of local practice, culture and customs.

Appendix B – IPA Courts Project 27/3/2018 (Extract) – Relevant Information in relation to the Rules of Civil Procedure

The Supreme Court of Cyprus, supported by the Structural Reform Support Service (SRSS) of the European Commission, published a Functional Review of the Courts System in Cyprus on 27 March 2018. Relevant extracts on the Rules of Civil Procedure from the Functional Review of the Courts System of Cyprus are outlined below:

"2.2.5 Rules of Civil Procedure

As noted earlier, while the review of the Rules of Civil Procedure (CPR) is the subject of a separate Technical Assistance project, we here draw attention to some of the issues that arose in the context of discussions regarding the efficiency and effectiveness of the courts system. In Chapter 4 we also draw attention to some specific changes that might be considered in the context of the Review of Rules of Civil Procedure.

2.2.5.1 Background

Rules of Court for different types of business define the procedure and conduct that applies when litigating a case before the court. The Rules of Civil Procedure in Cyprus are based on the Rules of the Supreme Court in England and Wales as were in force in 1960 when Cyprus gained independence. There has been minimal revision to the Rules since 1958, with the exception of recent amendments to Order 25 and 30. The rules were originally written in English but the above and other recent amendments were made in Greek, resulting in a set of rules available only partly in each language.

Under the Constitution of the Republic of Cyprus the authority to make rules is vested in the Supreme Court.

> The Supreme Constitutional Court shall make Rules of Court for regulating the practice and procedure of the Court in the exercise of jurisdiction conferred upon it by this Constitution, for prescribing forms and fees in respect of proceedings in the Court and for prescribing and regulating the composition of its registry and the powers and the duties of the officers thereof.[12]

[12] Constitution of the Republic of Cyprus, art. 135

2.2.5.2 Current situation

It has been acknowledged for many years that there is a need for radical amendment of the Rules of Civil Procedure in order to expedite the administration of justice.[13] Since 1989 the Supreme Court have made a number of attempts to revise the rules, but it was not possible to reach agreement on the proposed changes. The main reason for the lack of success in this regard is cited in the 2016 Erotocritou Report as the level of legal-technical drafting required to ensure the revised rules are consistent with other legislation. The Supreme Court, given the constraints of their normal judicial work, do not have the time to provide this input of expertise.[14]

More recently, the Supreme Court, following discussions within the court itself and with the Cyprus Bar Association, agreed the text of an amended O.25 and 0.30, and these came into force on 1st January 2016. These rules are aimed at dealing with civil cases justly and at proportionate costs. Reservations have been expressed on various aspects of the new provisions, and a Supreme Court Committee is currently assessing further targeted amendments to these specific orders. It was pointed out to us that the small firms, in particular sole practitioners, did not have the capacity to deal with the preparation required within the time limit set down in Order 30.

At the meeting in May 2017 it was said that O.30 forces front-loading even when, e.g. bank cases, are almost certain to be settled. GE wondered if the Bar was really ready for strict rules even though they said they were.

The Supreme Court itself, in the 2016 report,[15] recommended a full review of the Rules of Civil Procedure as a means of expediting the conclusion of proceedings. As noted earlier, this is now the subject of a separate EU technical assistance project

2.2.5.3 Views Expressed during Review Missions

It was the unanimous view of all the stakeholders consulted that the Rules of Civil Procedure are a major contributory factor to delay and to inefficient litigation practice and case management, and that there was an urgent need for a complete reform of the rules. The revised rules must enhance the regulatory role of the judge in the judicial process and provide for the more efficient

[13] Pikis report
[14] Erotocritou Report 2016
[15] At page 37

use of judicial time. There is also a need to have a permanent committee to continually monitor and review the Rules of Court.

In the District Court, participants consulted as part of this review considered that by facilitating interlocutory applications and adjournments, the existing rules are a contributory factor in causing delay. The high level of interim applications takes up a significant proportion of court time, requires written judgements, and delays the setting of a hearing date.

The procedures as set out in the rules appear to be fully applied by the registry staff. However, some of these procedures were considered to be outdated, no longer fit for purpose and an impediment to efficiency. Staff were unable to cite any particular examples of rule changes that would make an immediate difference, but they were of the opinion that fundamental reform was required.

The judges attached to the first instance courts were also of the view that a full review of the rules was required as a matter of priority.

2.2.5.4 Current Rules as an aid to effective case management or efficiency

While there is widespread agreement that the Rules of Civil Procedure need radical reform, the current rules do provide the judiciary with certain case management powers. An example of case management powers provided to the judiciary can be found in Order 30 r 9:

The Court may, in any event, issue any additional directions, as it considers appropriate and just under the circumstances in accordance with the following criteria:

(a) trying the case as soon as possible

(b) securing the equal treatment of parties(c) saving or mitigating expenses

(d) managing the case according to:

(i) the subject-matter of the dispute

(ii) the importance of the dispute

(iii) the complexity of the issues raised, either of fact or law.

The Rules also give the judge power to dismiss a case for want of prosecution, if no reasonable cause of action is disclosed in pleadings or if the case is vexatious or malicious (Order 27 rule 3).

The recent amendments to Order 25 and Order 30 have strengthened these powers by giving the judge a more active role in the conduct of the action. They have introduced a simplified and more

expeditious procedure for claims under €3,000. The amended procedures eliminated the need for oral testimony in such claims, and the case is decided on the basis of written addresses. However, the expected benefits of those amendments have not been fully realized, due in some part to the inconsistent application of the new rules and the lack of guidelines as to their interpretation. The changes also continue to be resisted by some lawyers.

During our discussions, the problem of inconsistency in the interpretation and application of rules and practice directions by the judiciary was referred to on a number of occasions. In the registries, while staff apply the provisions of the court rules, there is also a divergence in the interpretation and application of procedures. There are no standardised written procedures or guidelines to complement the rules of court. While inconsistency in the interpretation, and application, of rules and practice directions can be a feature of any legal system, this is often addressed through ongoing training and seminars.

2.2.5.5 Revisions to the Rules

While the full review of the Rules of Civil Procedure will be the subject of a separate project, taking account of some of the issues identified as part of this functional review, and some of the changes that may be required in the context of implementing recommendations from this report, further discussion of this issue is to be found at Chapter 4, where certain points are brought to attention."

"4.3 The Rules of Civil Procedure

As noted at 2.2.5, a separate project has been established, with the support of EC SRSS, to undertake a comprehensive review and reform of the Rules of Civil Procedure. While a comprehensive review of the rules of court was not within the purview of this functional review, it was agreed that targeted issues relating to the Rules and relevant to the public administration of the courts would be identified.

As pointed out by Kyriakides,[16] the Rules of Civil Procedure in Cyprus require fundamental and systematic attention. Changes to individual rules will not be sufficient, not least because such changes lead to a cascade effect whereby a change to any one rule can affect many others. Therefore, we welcome the review of the Rules that is now the subject of a separate TA project. The comments that follow are made on the understanding that a comprehensive review of the

[16] Civil procedure reform in Cyprus: looking to England and beyond by Nicolas Kyriakides, Oxford University Commonwealth Law Journal 2016 http://dx.doi.org/10.1080/14729342.2016.1276768.

rules will now take place and are not to suggest that piecemeal changes to individual rules will be sufficient.

The Review Team met formally with members of the IPA team carrying out the aforementioned technical assistance project on the revision of the Civil Procedure Rules, which was just commencing as the current functional review was concluding. The purpose of the meeting was to brief the team members from the Rules project on the functional review and to draw attention to specific aspects of the Rules that, in the view of the Review Team, would merit attention insofar as they impact on the current and future efficiency of the management and administration of the courts, and would therefore contribute to the Rules project. In the light of our analysis we draw attention to the following specific issues.

Order 30

The recent amendments to Order 30 include a provision to issue directions for the exchange of evidence in writing in lieu of oral evidence. However, the elimination of oral evidence applies only to cases below €3,000 and does not apply to the large volume of cases initiated prior to the introduction of the revised order.

Consideration could be given to extending the provisions of the amended Order 30 to apply retrospectively to the trial of cases filed prior to the amendment and also potentially to cases in excess of €3,000. Currently O.30 provides that the provisions of rules 5 (1) and (2) can only be applied with the agreement of the parties.

Other Areas to be Considered

The rules (reference to the relevant order and rule is included as appropriate) could provide for:

- Where a trial date is given it cannot be adjourned, unless there are pertinent and cogent reasons (Order 33).
- The use of ADR to divert cases, particularly small claims, through quicker less costly channels (Order 30).
- The imposition of penalties or sanction on lawyers or parties who do not comply with court orders, contribute to delay in court proceedings, or waste the time of the court (Order 30).
- The introduction of timeframes for the completion of each phase of the case. Order 30 currently contains specific timeframes for certain actions only.

- Introduction of provisions similar to part 36 of the Rules of Civil Procedure in England and Wales, where parties to a case are given the opportunity to settle a case at the early stages of the process, and a portion of the costs may be awarded against the plaintiff if a settlement is rejected and the award after trial is not greater than the settlement offered (Order 22).
- We noted that there appears to be no reference to European Law in the rules.

Potential Impact of the Recommendations of this Review

The recommendations arising from this functional review may lead to a requirement to change the provision of certain rules and should be taken into consideration by the Rules of Civil Procedure project. Particular recommendations that may impact on the rules include:

- The establishment of new arrangements for the hearing of appeals (Order 35).
- Introduction of revised Case Management arrangements (Orders 30- 33).
- Providing for the expanded use of electronic registers. It was noted that the current rules provide for the maintenance of a register of cases lodged in the Supreme Court in manual form only (Order 2 R 12 and Order 62)
- Expansion of the role of the Registrar or Legal Officer in the case management process (Order 30).
- The introduction of Alternative Dispute Resolution, pre –action or pre-trial (Order 30).
- The introduction of continuous hearings.
- The introduction of Digital Audio Recording of court proceedings.
- Proposed new method for payment of court fees.

The E-Justice project must also be integrated and co-ordinated with the forthcoming review of the rules of court. It is likely that there will be significant rule change required as a result of business process reengineering linked to this project. While changes arising must be discussed with the E-Justice project team, based on the Irish experience it is likely that there will be changes to the:

- Process of case initiation and filing.
- Case initiation documents.
- The introduction of electronic registers and signatures.
- Method of payment of fees and fines.
- Pre and post court documentation.

- The format of registers and court files.
- The production of court lists.
- The introduction of an electronic seal.

There is widespread agreement that the Civil Procedure Rules now require a fundamental review and re-writing so as to deliver a less costly, more accessible, and more timely service to parties. This comprehensive review is now taking place. Consideration should be given to the production of standardised written procedures or guidelines to complement the Civil Procedure Rules. Introducing a level of consistency in the interpretation and application of those rules will be fundamental to addressing the problems of inefficiency in the courts."

Appendix C – Barbados Part 35 Offers to Settle

BARBADOS

Part 35 Offers to settle

35.1 Scope of this Part

(1) This Part contains rules relating to

(a) offers to settle which a party may make to another party; and

(b) the consequences of those offers.

(2) This Part does not limit a party's right to make an offer to settle otherwise than in accordance with this Part.

(3) The rules in this Part are subject to rule 23.12 (compromise etc., by or on behalf of a minor or patient).

Part 36 deals with payments into court.

35.2 Introductory

(1) An offer to settle may be made in any proceedings whether or nor there is a claim for money.

(2) The party who makes the offer is called the 'offeror'.

(3) The party to whom the offer is made is called the 'offeree'.

(4) An offer to settle is made when it is served on the offeree.

BARB CPR 35.3

35.3 Making offer to settle

(1) A party may make an offer to another party which is expressed to be 'without prejudice' but in which the offeror reserves the right to make the terms of the offer known to the court after judgement is given with regard to

(a) the allocation of the costs of the proceedings; and

(b) the question of interest on damages.

(2) The offer may relate to the whole of the proceedings or to part of them or to any issue that arises in them.

35.4 Time when offer to settle may be made

A party may make an offer to settle under this Part at any time before the beginning of the trial.

BARB CPR 35.5

35.5 Procedure for making offer to settle

(1) An offer to settle under this Part must be in writing.

(2) The offeror must serve the offer on the offeree and a copy on all other parties.

(3) Neither the fact nor the amount of the offer or of any payment into court in support of the offer may be communicated to the court until after all questions relating to liability and the amount of money to be awarded, other than costs and interest, have been decided.

(4) Sub-rule (3) does not apply to

(a) an offer which has been accepted; or

(b) any defence of tender before claim which has been pleaded.

35.6 Extent to which offer to settle includes interest, costs or counterclaim

(1) An offer to settle a claim for damages under this Part must state whether or not the amount offered includes

(a) interest; or

(b) costs.

(2) Where the offer includes interest or costs or both it must state any amount which is included for each.

(3) Where there is a counterclaim as well as a claim, the offer must state

(a) in the case of an offer by the claimant to accept a settlement of his claim, whether or not it takes into account the counterclaim; or

(b) in the case of an offer by the defendant to settle the claimant's claim, whether or not it takes into account the counterclaim,

and in each case what provision it makes with respect thereto.

35.7 Offer to settle made after interim payment

If an interim payment has been made, whether voluntarily or under an order under Part 17, any subsequent offer to settle under this Part must state whether it is in addition to the interim payment or whether it is intended that the interim payment will be deducted from any amount paid under the settlement.

35.8 Offer to settle part of a claim

(1) An offer to settle under this Part must state whether or not it relates to the whole or part of the claim.

(2) Where it does not clearly state otherwise, it is to be taken to relate to the whole claim.

(3) Where the offer relates only to part or parts of the claim it must

(a) identify the part or parts of the claim in respect of which it is made; and

(b) where there is more than one part, state what is offered in respect of each part to which the offer relates.

35.9 Time limit for accepting an offer to settle

(1) The offeror may state in the offer that it is open for acceptance until a specified date.

(2) For the purposes of this Part, the offer shall have no effect on any decision that the court makes as to the consequences of the offer unless it is open for acceptance for at least 21 days.

(3) Acceptance of the offer after the beginning of the trial shall have no effect on any decision that the court makes as to the consequences of such acceptance.

35.10 Procedure for acceptance

(1) To accept an offer for the purposes of this Part, a party must

(a) serve written notice of acceptance on the offeror; and

(b) send a copy of the notice to any other party.

(2) The offeree accepts the offer when notice of acceptance is served on the offeror.

(3) Where an offer or payment into court under Part 36 is made in proceedings to which rule 23.12 applies,

(a) the offer or payment may be accepted only subject to the permission of the court; and

(b) no payment out of any sum paid into court may be made without a court order.

Rule 23.12 deals with compromises etc. by or on behalf of a minor or patient.

35.11 Effect of acceptance – generally

(1) Where the offeree accepts an offer which is not limited in accordance with rule 35.8, the claim is stayed upon the terms of the offer.

(2) Where the offer relates to a claim and a counterclaim, both the claim and the counterclaim are stayed on the terms of the offer.

(3) In any other case, the proceedings are stayed to the extent that they are covered by the terms of the offer.

(4) Where the approval of the court is required for the settlement of the proceedings, any stay arising on the acceptance of the offer has effect only if and when the court gives its approval.

Rule 23.12 deals with the settlement of proceedings involving minors and patients.

(5) A stay arising on the acceptance of an offer does not affect proceedings to deal with any question of costs relating to the proceedings which have been stayed and which have not been dealt with by the offer.

(6) Where money has been paid into court in support of an offer, a stay arising out of the acceptance of the offer does not affect proceedings to obtain payment out of court.

Part 36 deals with payments into court.

(7) Where an offer is accepted but its terms are not complied with, either party may apply to the court for an order

(a) removing the stay under this paragraph to enable the proceedings to be determined;

(b) enforcing the terms of the settlement agreement; or

(c) granting such other relief as may be appropriate.

(8) Where a party claims damages for breach of contract arising from an alleged failure of another party to carry out the terms of an accepted offer, that party may do so by applying to the court without the need to commence new proceedings unless the court orders otherwise.

35.12 Costs where offer not accepted – general rules

(1) Where the defendant makes an offer to settle that is not accepted and

(a) in the case of an offer to settle a claim for damages, the court awards less than the full amount of the defendant's offer; or

(b) in any other case, the court considers that the claimant acted unreasonably in not accepting the defendant's offer,

the claimant must pay any costs incurred by the defendant after the latest date on which the offer could have been accepted in accordance with its terms.

(2) Where a claimant makes an offer to settle that is not accepted and

(a) in the case of an offer to settle a claim for damages, the court awards an amount which is equal to or more than the amount of the offer; or

(b) in any other case, the court considers that the defendant acted unreasonably in not accepting the claimant's offer,

the court may, in exercising its discretion as to interest, take into account the failure of the defendant to accept the claimant's offer.

(3) The court may decide that the general rule under sub-rule (1) is not to apply in a particular case.

(4) In deciding whether the general rule should not apply and in considering the exercise of its discretion under sub-rule (2), the court may take into account

(a) the terms of any offer;

(b) the stage in the proceedings at which the offer was made;

(c) the information available to the offeror and the offeree at the time that the offeror made the offer; and

(d) the conduct of the offeror and the offeree with regard to giving or refusing information for the purposes of enabling the offer to be made or evaluated.

(5) This rule applies to offers to settle at any time, including before proceedings were started.

Appendix D – Members of the Cypriot Committee for the Rules of Civil Procedure

- Mrs Persefoni Panayi, Justice, Supreme Court, President
- Mr Yiasemis Yiasemi, Justice, Supreme Court, Member
- Mr Nicolas Santis, President, District Court and President, Judges Association of Cyprus, Member
- Mrs Marina Papadopoulou, Senior District Judge, Member
- Mrs Georgia Korfioti, District Judge, Member
- Mrs Marina Eleftheriou, Senior Registrar, Member
- Dr Achilles Emilianides, Advocate, Dean, School of Law, University of Nicosia, Member
- Mr Agis Georgiades, Advocate, Member
- Mr Nicos Makrides, Advocate, Member

Appendix E - The IPA Expert Group

The Rt. Hon. Lord Dyson

Lord Dyson was Master of the Rolls (President of the Court of Appeal of England and Wales and Head of Civil Justice) for four years until he retired in October 2016. He was a Justice of the Supreme Court of the United Kingdom from April 2010 until October 2012. He was a Lord Justice of the Court of Appeal of England and Wales from 2001 until 2010 (and Deputy Head of Civil Justice from 2003 until 2006). He was a judge of the High Court of England and Wales from 1993 until 2001 and the judge in charge of the Technology and Construction Court from 1998 until 2001. He was a Recorder from 1986 until 1993.

He was called to the Bar by the Middle Temple in 1968 and was awarded a Harmsworth Scholarship. He will be Treasurer of the Inn in 2017.

He practised in Keating Chambers from 1968 and was appointed QC in 1982. In 1986 he accepted an invitation by 39 Essex Chambers to become Head of Chambers, a position he held until 1993 when he was appointed to the High Court.

In his long judicial career, he decided many cases across the whole range of civil law, including contract, construction and commercial law, general common law, international law, and public and human rights law. Many of his judgments are reported in the Law Reports and are frequently cited as precedents.

At the Bar, whilst at Keating Chambers he practised mainly (but not exclusively) in the field of construction law. At 39 Essex Chambers, he had a more diversified practice including in the field of general common law, commercial law and sports law. He acted in many high profile cases. He also appeared as counsel in many arbitrations and was appointed as arbitrator on various occasions.

He has lectured extensively on a wide range of subjects in the UK and abroad, including in Hong Kong, Singapore, Malaysia, US, Australia and New Zealand. He has given lectures to the Chartered Institute of Arbitrators on mediation and arbitration. He gave the Mustill lecture in 2013 on Arbitration and the Brussels 1 Reform.

He has participated in legal exchanges with judges and lawyers from other jurisdictions, such as US, Canada, Singapore, Hong Kong, South Africa, Israel, France and judges of the Court of Justice of the European Union and has contributed papers on these occasions.

He is an Honorary Fellow of Wadham College, Oxford, the Institute of Advanced Legal Studies and the Hebrew University, Jerusalem. He is a Visiting Professor at Queen Mary, London. He has honorary doctorates from University College, London and the Universities of Leeds and Essex.

Mr David di Mambro

David read law at King's College, University of London and was called to the Bar of England and Wales in 1973 and practises in Commercial Law and Property Law. He has since been admitted to the Bar of both The British Virgin Islands and the Bar of Saint Vincent and The Grenadine

He is a Chartered Arbitrator, a Member of the Presidential Panel for Property Dispute Cases (CIArb), and a Member of the Panel of Mediators of the Chartered Institute of Arbitrators. He is a Specialist Editor of Hill and Redman's Law of Landlord and Tenant, the Senior Contributing Editor to the Civil Court Practice, Editor in Chief of Bloomsbury's Law of Limitation and the Editor-in-Chief of Butterworths' The Caribbean Civil Court Practice.

David is a Fellow of the Society for Advanced Legal Studies and was appointed to the Civil Procedure Rule Committee September 2004 and re-appointed by the Lord Chancellor for a further 3 year term with effect from September 2007; co-opted 2010 to 2013. Between 2011 to 2014; David was the consultant and sole draftsman for the Commonwealth of Bahamas: new CPR. In St Lucia in July 2009 David was involved with the revision of the ECSC CPR and drafting of new Practice Directions. He has lectured extensively on procedure in England and throughout the Caribbean including Bar and Bench and the Judicial Education Institute of the Eastern Caribbean Supreme Court.

Ms Finola Flanagan

Ms Finola Flanagan studied at Trinity College Dublin graduating with a BA (Moderatorship) degree in Legal Science in 1976. She received her Bachelor of Laws from the Kings Inns in 1977 and practised as a barrister for seven years. She joined the Office of the Attorney General in 1985 and was its Director General from 1999-2009. She then was appointed as a Law Reform Commissioner in the Irish Law Reform Commission for a period of four years in 2012.

Ms Flanagan completed an MSc (Strategic Management) degree from Trinity College Dublin. Ms Flanagan was the Irish Member of the Venice Commission for Democracy through Law from 2002 to 2012 and was rapporteur in many opinions of the Commission. She is currently working as Advisory Counsel in the Office of the Attorney General.

Dr Marcos Dracos

Marcos has in-depth knowledge of both English and Cypriot law. He undertakes a broad range of commercial work, with emphasis on international arbitration and civil fraud. He has extensive experience appearing as counsel in international arbitration disputes (on his own or as part of a team), and he also sits as an arbitrator. He has full rights of audience in England and Cyprus and, in addition to his arbitration work, he frequently appears before courts in both jurisdictions.

Marcos has a PhD from the University of Cambridge where he also taught contract law. Presently he is a visiting lecturer at the law department of the University of Cyprus, lecturing on Cypriot Civil Procedure and Evidence.

Dr Michael Mulreany

Dr Michael Mulreany is Assistant Director General & Registrar at the Institute of Public Administration (IPA). He is also Head of the Whitaker School of Government and Management at the IPA, where he manages the creation and delivery of undergraduate and postgraduate qualifications across several fields of public management, including economics, governance, law, policy analysis, financial management, and statistics. He holds MA and PhD degrees in economics from University College Dublin and has published widely on public sector efficiency, economics, the EU, taxation and regulation. Among his publications are Cost Benefit Analysis (IPA, Dublin, 2002); Economic Development 50 Years On (editor) (IPA, Dublin, 2009); Serving the State: The Public Sector in Ireland (editor) (IPA, Dublin, 2009); and Lord of the Files: An Anthology (editor) (IPA, Dublin, 2011).

Mr Nathy Walsh

Mr Nathy Walsh will be responsible for the overall project steering as well as the operative implementation of the project.

Mr Nathy Walsh is a qualified accountant; Nathy is a fellowship member of the Institute of Chartered Accountants in Ireland. (ACA) He holds an MBA from Heriot Watt University in Edinburgh and a Post Graduate Diploma in Critical Management from Lancaster University. He graduated from University College Galway with a Bachelor of Commerce (Honours) degree.

Nathy is a senior lecturer and manager in the Education and Research directorate at the Institute of Public Administration specialising in Governance, Audit and Assurance, Public Sector Financial Management and related Accounting and Finance fields. Formerly a technical co-ordinator for the Final Admittance examinations of the Institute of Chartered Accountants in Ireland, he has been an external examiner for a wide range of academic and professional programmes over the years. He has worked on development programmes overseas for both the Irish and British Governments and has undertaken project work for the World Bank and European Commission.

Nathy has supervised a wide array of dissertations in the fields of Public Sector Financial Management and Audit and Assurance over the years, both nationally and internationally. These have covered themes related to Corporate Governance, Performance Management, Risk Management, PPP's, Audit and Assurance, Programme Evaluation and VFM studies across a range of different areas in the public sector.

Mr Hugh O'Donnell

Hugh O'Donnell holds a Bachelor of Civil Law (European) from University College Dublin where he graduated with first class honors. Hugh received an MA in EU International Relations and Diplomacy Studies from the College of Europe-Bruges in 2015 where he was also awarded a full European Neighbourhood Policy Scholarship. He is currently a candidate for the Barrister-at-Law Degree in the Honorable Society of the Kings Inns and is a Lecturer in Law, Politics and Public Administration in the Whitaker School of Government and Management in the IPA.

Hugh lectures in subjects ranging from Government and Politics, Business and Company Law, the European Union to Crime & Society. He has coordinated courses for An Garda Síochána (The Irish Police force), the Irish Defence Forces, Civil Servants from across the Irish Civil Service, as well as postgraduate students from Ireland, the Seychelles and The United States of America. Since 2015, Hugh has annually written and edited the article on 'Political Developments' in the Administration journal.

Appendix F – Director of Court Reform and Judicial Training

Mr George Erotocritou, Former Judge of the Supreme Court, Director of Reform and Training is the Cypriot Project Manager for all EU funded Court reform projects and in the context of stages 1 and 2 of this project is the Cypriot Liaison Officer.