**Presentation to the Supreme Court of the Proposed Civil Procedure Rules**

No justice system can be truly worthy of that name unless it ensures a high standard of justice, timely delivered. Although, there is general consensus that the standard of justice in Cyprus is high, by contrast, where efficiency is concerned, Cyprus has, for a number of years now, been lagging behind most of its European partners. One of the major “culprits” identified by the key stakeholders in the judicial system, lawyers and judges alike, are the Civil Procedural Rules, which have undergone minimal revision since 1958 and are deemed to be in need of a thorough overhaul.

The proposed new rules, the key features of which I will endeavour to outline, are drafted on the basis of the recommendations and guiding drafts prepared by an Expert Group chaired by the Rt. Hon. Lord Dyson. They are a bold and ambitious step whose “*fundamental objective … will be to enable the courts to deal with cases justly, at proportionate cost and more speedily and efficiently than is possible under the existing Rules*”. This objective, known as the “overriding objective” is the fundamental philosophy behind the proposed Rules and finds expression and is articulated in the very first rule which requires the court to seek to give effect to it when exercising any powers given by the rules or interpreting any rules. The term “*Dealing with a case* *justly and proportionately*” is defined with regard to a non-exhaustive list of principles which includes, inter alia, ensuring that the parties are on an equal footing, saving expense and dealing with the case in ways which are proportionate to the amount of money involved, the importance of the case, the complexity of the issues and the financial position of each party.

The parties are required to help the court further the overriding objective and the court is required to further the overriding objective by actively managing cases. In line with the English Civil Procedural Rules, the responsibility for the management of civil litigation under the proposed rules lies with the courts, marking a departure from the current system of party-controlled proceedings. The court will possess a number of managerial powers set out in Part 3, aimed at ensuring procedural efficiency, which may be exercised by the court of its own initiative, without waiting for a party to apply, except where a rule or some other enactment provides otherwise. These include the power to:

* extend or shorten the time for procedural compliance;
* adjourn or bring forward a hearing;
* hold a hearing and receive evidence by using any method of direct oral and visual communication;
* stay the whole or any part of proceedings;
* decide the order in which issues are to be tried;
* exclude an issue from consideration; and
* take any other step or make any other order for the purpose of managing the case and furthering the overriding objective, including taking steps with the aim of helping the parties settle the case.

In addition to any other power under any other law or rule, the court also has power to strike out a statement of case, in whole or in part in particular instances such as where it discloses no reasonable grounds for bringing or defending the claim or it is an abuse of the court's process.

Failure to comply with a rule or order attracts the imposition of sanctions, usually by way of costs, a stay of proceedings or, in more extreme cases, striking out all or part of a claim or defence.

Pre-action protocols have been formulated in regard to pre-action conduct in general, claims for a specific sum of money, road traffic accidents and personal injury claims, which aim at reforming the manner in which parties conduct themselves before formal proceedings are issued. Recently described as a “…highly important part of the litigation architecture" *[[1]](#footnote-1)* pre-action protocols promote cooperation and the settlement of disputes between parties through the exchange of information at an early stage and also encourage mediation. In the event that litigation becomes necessary, the protocols aim to enable proceedings to run efficiently by narrowing the issues in dispute. The court may take into account compliance or non-compliance with a pre-action protocol when giving directions for the management of proceedings and when making orders for costs, thus creating a strong incentive for parties to engage in pre-action communications.

Court proceedings are commenced by the issue of a claim form. Where there is a substantial dispute the procedure is that set out in Part 7 of the proposed rules (standard procedure). The claim form must contain a concise statement of the nature of the claim, specify the remedy which the claimant seeks and contain a statement of the value of the claim. An alternative procedure is provided by Part 8 of the Rules which is intended for cases where there is no substantial factual dispute or where a rule or law specifically provides for the use of this procedure or the claimant seeks the court’s decision on a particular matter articulated in but not confined to the matters set out in Part 8 of the Rules, for example the construction of a contract or a will. Where the standard procedure is used, particulars of claim must be contained in the claim form or filed within 28 days of service of the claim form on the defendant. By contrast, for claims under Part 8 the claimant is required to file his written evidenceat the time of filing his claim form and proceedings are disposed of without the need for particulars of claim.

If a defendant intends to dispute a claim or part of a claim under Part 7, he ought to file an acknowledgment of service in the prescribed form within 14 days of service of particulars of claim, where particulars of claim are not included in the claim form and in every other case (including claims under Part 8) within 14 days of service of the claim form.

The defence must give full details of what parts of the claim the defendant admits, what parts he denies (giving full reasons) or wishes the claimant to prove. The defendant must state any different version of events he relies upon.

The documents in which the parties state their case are referred to as “statements of case”, a term which includes, inter alia, a claim form, particulars of claim when these are not included in a claim form and a defence. A statement of case is required to be verified by a statement of truth. This is a statement that the party submitting the document believes the facts stated in the document are true and that he understands that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth. The statement of truth is signed by the claimant or the defendant as the case may be, or, in certain cases by his advocate. The main reason for the requirement for a statement of truth “is to eliminate claims in which a party has no honest belief and to discourage the pleading of claims unsupported by evidence and which are put forward in the hope that something may turn up on disclosure or at trial”*[[2]](#footnote-2)*. Parties will have to carefully consider their case before pleading as it will be more difficult for them to amend their factual case in a way that contradicts their previous pleaded case on the facts. A further reason is to enable a statement of truth, which obviates the need for an affidavit, to be used as evidence in certain interim proceedings..

A non-exhaustive list of the interim remedies that a court may grant is set out in Part 25 of the proposed Rules, which governs the procedure for applying for interim remedies. Specimens of some of the most complicated frequently applied for orders are appended to this Part, including an order for the appointment of a receiver.

At what is known as the case management preliminary stage, the court directs whether a claim is to proceed as a small claim (claims for €10.000 or less) or a standard claim (claims in excess of €10.000). However, the court, having regard to the overriding objective may at any time direct that a claim which it had directed should proceed as a small claim, should thereafter proceed as a standard claim or vice versa.

On the allocation of a claim as a standard claim, the court will fix a date for a case management conference (CMC), which is an integral part of the system created by the new rules. It is at the CMC, which is intended to ensure that the real issues between the parties are identified, that the judge “actively” manages the case in conference with the parties. CMCs are therefore a means of saving more court time. As a corollary, there is a requirement that if the CMC is attended by an advocate on behalf of a party, the advocate must be familiar with the case and have sufficient authority to deal with any issues that are likely to arise. It is the duty of the parties to ensure that all interim matters are dealt with at the CMC. The court, at the CMC will give directions for the future conduct of the proceedings up to trial and will fix a timetable for the steps which need to be taken in order to deal with the case expeditiously. It will also specify the date by which the parties must file a pre-trial checklist (also known as a listing questionnaire), which is used to ascertain whether earlier directions have been complied with and whether any further directions are required, as well as to assist the court, inter alia, in gauging how long the trial will take.

There is an obligation on the parties to seek to agree on all the appropriate directions before the case management conference. Advocates, therefore, must liaise in advance with a view to agreeing on the procedural directions, which must set out a timetable by reference to calendar days for the taking of steps for the preparation of the case and include a date when it is proposed that the trial take place as well as provisions regarding the disclosure of documents and factual and expert evidence. It is important to repeat here what is stated in the Expert Group’s Review of the Rules of Civil Procedure of Cyprus, June 2018, that the fixing of a realistic hearing date, to take place on consecutive days is “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”.

At the same time as giving procedural directions, the court, in furthering the overriding objective, will encourage the parties to use an alternative dispute resolution procedure if it considers this appropriate and will facilitate the use of such procedure.

Where a party fails to comply with a direction of the court the other party may apply for an order that the first party must do so or for a sanction to be imposed or both of these. Shortly before the trial and after the court has received the parties’ pre-trial checklists, the court may decide to hold a pre-trial review in order to resolve any outstanding issues.

Special rules apply to small claims, that is claims for a sum of €10.000 or less. The procedure relating to small claims, set out in Part 28 of the proposed rules, is intended to be fast, cheap and relatively informal. To this end, there is a very restricted application to small claims of Part 25 (interim remedies), Part 31 (disclosure), Part 32 (evidence), Part 19 (further information) and Part 37 (hearings). Furthermore, expert evidence in such cases is only given by one expert unless the court permits otherwise. Once a claim has been directed by the court to proceed as a small claim, the court has various options on how the claim will be dealt with until it is finally disposed of, inter alia, to give directions following the case management preliminary stage and fix a date for final hearing or, if all parties agree, to deal with the small claim without a hearing.

Given the complexity of the current English rules on disclosure, which are under scrutiny in England, the Rules Committee, in drafting Part 31 on disclosure, decided to adopt the approach of the International Bar Association (IBA) in relation to the taking of evidence. Lawyer members of the Rules Committee who have considerable experience of the IBA rules, have found them to be less complex and problematical in their application than the English rules and have successfully used them in the field of international commercial arbitration. In contrast to the English approach which requires that all parties must disclose any relevant document, the proposed rules require parties to disclose documents on which they intend to rely (characterised as “general disclosure”). However, a party may request the other party to disclose specific documents or categories of documents which are believed to be in the possession, custody or control of the requested party and which are relevant to the case and material to its outcome.

Part 34 of the proposed rules regulates the provision of expert evidence to assist the court. 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. The Court has the power to direct that expert evidence is to be provided by a single expert. Expert evidence is to be given in a written report unless the court directs otherwise and must 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’s expertise. A party may put written questions to an expert witness instructed by another party or jointly about his report.

Parties are also encouraged to settle their dispute by a mechanism laid down in Part 35 of the proposed rules, intituled “Offer to settle”, whereby there are costs consequences if an offer to settle is unreasonably refused. For example, where a defendant’s offer to settle is refused and the case proceeds to trial, if the court – which must not be informed of the offer until the case has been decided - adjudges a sum in favour of the claimant that is less than that offered by the defendant in settlement, the claimant can expect to pay the defendant’s costs incurred after the last date when the offer was open for acceptance. In a corresponding fashion, where the claimant makes an offer to the defendant, agreeing to accept less than his total claim, which the defendant refuses, the court may in the exercise of its discretion as to interest, take into account the defendant’s failure to accept the claimant’s offer.

The proposed rules contain three “Working Drafts” of rules, namely, Parts 41,42 and 43 concerning the Appeal Court, the Commercial Court and the Admiralty Court as the necessary underlying primary legislation is not yet in place. Although it is true that the Admiralty Jurisdiction of the Supreme Court is exercised on the basis of the English Administration of Justice Act 1956, this Act has long been superseded in England by the Senior Courts Act 1981. The proposed Admiralty Rules have been drafted on the premise that new legislation will be introduced, similar to that which is currently in force in England, but are modernised in other respects also, by the incorporation, for instance, of provisions necessitated by the Republic’s ratification of certain international conventions such as the Convention on Limitation of Liability for Maritime Claims of 1976 and of other provisions with a view to bringing the rules in line with modern reality and demands in this area of the law. The proposed rules in regard to the Appeal and Commercial Courts are also based on the current English rules, in line with the Expert Group’s mandate that the current English rules should be the starting point for the review of the Civil Procedure Rules.

In order to facilitate the courts and practitioners, the rules pertaining to European Procedures – that is, the European Payment Order Procedure, European Small Claims Procedure and Mediation Cross-border Disputes - have been updated and are also incorporated in the proposed rules as Part 45, together with all the relevant forms.

A number of the existing rules have been retained and feature, mainly, in the latter Parts of the proposed rules, either because the Expert Group or the Rules Committee considered that there was no need for amendment or because the problems identified in a particular area were not associated with the specifics of the rules themselves but rather with the underlying primary legislation, as in the case of the rules on execution.

The new rules are in line with the aims set by the key stakeholders at the commencement of the project - they are clear, simple and simply expressed; they can be readily comprehended and are straightforward in their application and, if properly applied, should enable the court to administer justice quickly and efficiently. It is to be expected that the proposed new rules will generate a range of views, discussion and even debate. There is an immediate need, therefore, for the Rules Committee’s mandate to be extended or for a Standing Committee to be established to consider recommendations on the part of the key stakeholders and to consult such persons as it considers appropriate with a view to making any necessary improvements or modifications before the Rules are implemented as well as to consider recommendations after their implementation.

This project could not completed without the hard work, dedication, commitment and determination of the members of the Rules Committee and its subcommittee. Words of gratitude are not enough to express my appreciation, as President of the Committee, for this and their congenial cooperation.

Special thanks are also due to Mr Erotocritou, the director, manager and driving force of this project, a paragon of energetic support and encouragement during the various and sometimes seemingly insurmountable stages of this vast and demanding work.

1. Jet2 Holidays Ltd v Hughes [2019] EWCA Civ 1858 [↑](#footnote-ref-1)
2. Blackstone’s Civil Practice 2016, para.24.5. [↑](#footnote-ref-2)