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Civil procedure reform in Cyprus: looking to England and beyond

Nicolas Kyriakides

Faculty of Law, University of Oxford, Oxford, UK

ABSTRACT

The average length of a first instance civil trial in Cyprus is approximately two years. The article identifies the elements of Cypriot civil litigation that contribute to lengthy and costly trials despite the recent amendments to the Cypriot Civil Procedure Rules. It then examines the civil procedure reforms that took place in England and Wales in the last twenty years and examines whether and to what extent they can provide inspiration for a thorough reform in Cyprus law.

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1. Introduction

According to statistics released by the European Union, the average length of a first instance civil trial in Cyprus is almost 600 days.¹ The European Court of Human Rights has ruled that the civil justice system entails such long delays that Cyprus is not in compliance with Article 6.1 of the European Convention on Human Rights.² Moreover, there has been state acknowledgment of prohibitive costs of litigation.³ This article will identify the elements of Cypriot civil litigation that contribute to lengthy and costly trials. It will then turn to the recent civil procedure reforms in England and Wales which were facing similar problems and examine the extent to which the underlying premises and particular procedural mechanisms employed may remedy the issues

CONTACT Nicolas Kyriakides  nicolas.kyriakides@univ.ox.ac.uk.

¹EU Commission, 'The 2014 EU Justice Scoreboard' COM (2014) 155.

²*Mavronichis v Cyprus* App no 28054/95 (ECtHR, 24 April 1998); *Louka v Cyprus* App no 42946/98 (ECtHR, 2 August 2000); *Markass Car Hire v Cyprus* App no 51591/99 (ECtHR, 2 July 2002).

³Ionas Nicolaou, 'Cyprus Minister of Justice speech before the Parliament', (Nicosia, 11 March 2014) <www.mjpo.gov.cy/mjpo/mjpo.nsf/All/1E814526CAB749DAC2257C980047C5B7?OpenDocument&print> accessed 13 November 2016 (in Greek). The President of the Supreme Court and the Justice Minister have both spoken about the need to reform many areas of the justice system, such as the introduction of some e-justice measures and other measures to speed up the process. See Stefanos Evripidou, 'Reforms to justice system are proceeding' Cyprus Mail (Nicosia, 25 July 2014) <cyprus-mail.com/2014/07/25/reforms-to-justice-system-are-proceeding> accessed 13 November 2016.

present in Cyprus. A brief consideration of the German legal system will also be featured throughout, mainly because of the key role of Germany in the European Union, the fact that it is the main representative of civil law jurisdictions, and its admittedly successful system of procedural justice.

Civil Procedure Rules in England and Wales underwent a massive overhaul in the late 1990s in response to grave concerns about the efficacy and integrity of the civil justice system. Following the recognition that the system was not working, Lord Woolf carried out extensive studies and widespread reforms were enacted a few years later in 1998. This change has been met very positively and the reforms have been seen to be an enormously beneficial shift in thinking about civil justice.⁴ In contrast, Cyprus has maintained the old English civil procedure rules that were first enacted in Cyprus in 1954 and remained in place after its independence in 1960. Whilst there have been a few specific amendments and reforms the system has largely stayed the same.

Given the similarities between the system still operating in Cyprus and the system reformed by Lord Woolf, someone could argue that, in considering how to best reform the Cypriot legal system, policy makers should look to England and Wales. Equally, it would be very easy to simplistically claim that because the Woolf reforms are an improvement on the previous system of civil procedure, Cyprus should adopt the English rules as they are now. However, that would be ignoring the fact that Cyprus is its own legal system with significant differences compared to the English justice system, as it is explained in the next section.

Civil procedure has been given comparatively much less attention in Cyprus. Compared to the profuse amount of academic commentary and extensive litigation statistics in England and Wales, there is much less in Cyprus in all areas of law. However, the fact that there is less criticism of the system in Cyprus should not be seen to reflect on the health of the civil justice system.⁵

In this article it will be argued that reform of the Cypriot system of civil justice is essential; that such reform must be wide in scope, taking account of the entire procedure; and that any reform must be preceded by extensive

⁴I think it is fair to say that the result has been the creation of a system that is generally accepted as being far better organised, more proportionate and cost effective, and fair, not only for lawyers, but unrepresented and represented litigants as well.' (Lord Woolf, 'The Tides of Change' in Basil S Markesinis (ed), *The British Contribution to the Europe of the Twenty-First Century* (Hart Publishing 2002) 10).

⁵A joint research project between the University of Cyprus and the Cyprus Bar Association whose results were announced in October 2014 has provided further data to confirm the need for reform. The majority (90%) of the participants (370 jurists including lawyers, trainee lawyers, and judges) said that the time of adjudication in civil cases is unreasonably long to the detriment of the parties and 81% said that the Rules require further amendments in order to remedy this situation. See Cyprus Bar Association and University of Cyprus Law School, 'Press Release on the Presentation of the Results of the Evaluation Survey on Cyprus Judicial System' (Nicosia, 15 October 2014) <www.cyprusbarassociation.org/v1/index.php/el/news/announcements/201-2014-10-15-12-43-55> accessed 13 November 2016 (in Greek); Angelos Anastasiou, 'Justice System in the Spotlight' Cyprus Mail (Nicosia, 29 March 2014) <www.cyprus-mail.com/2014/03/29/justice-system-in-the-spotlight> accessed 13 November 2016.

research and debate. The article will highlight the flaws in the current procedure, as well as the failure of the recent reforms that were not of the nature expected. The article starts with an overview of Cypriot civil procedure, before and after recent amendments, which provides the requisite background knowledge to engage with the analysis offered subsequently.

2. Overview of Cypriot civil procedure

The Republic of Cyprus is a quasi-common law⁶ jurisdiction drawing influence mainly from English and Greek law. In 1960, when Cyprus became independent, practical and wider considerations advocated the preservation of the English legal system in most areas of the law.⁷ When not otherwise provided by applicable statutes, the courts of Cyprus apply the English common law and the principles of equity. Cyprus' private law and criminal law is mostly common law codified in statutes. Procedural law is also purely common law. Its public law, however, derives from the continental tradition and it was largely influenced by Greek law, rendering Cyprus a mixed legal system. Moreover, upon accession to the European Union the Constitution was modified so as to acknowledge the full supremacy of European Union law.⁸

Cyprus presently maintains a two-tier judicial system, one level each of trial and appellate jurisdiction. The primary trial court, i.e. the court of general jurisdiction, is the District Court. Its jurisdiction extends over most civil and criminal matters. There are only five district courts in Cyprus, an indication of the small size of the jurisdiction. There are also specialised courts for family, employment, and rent-control cases. There are no magistrates' courts, or other small-claims jurisdictions. At the apex of the administration of justice system sits the Supreme Court of Cyprus, which serves *inter alia* as an appellate court in civil and criminal matters and as a constitutional court. Until Cyprus became an independent state, there was, under the Judicial Committee Rules 1925, an appeal from a decision of the Supreme Court in its appellate jurisdiction to the Judicial Committee of the Privy Council in England. This right ceased to exist on independence. The unfortunate absence of a third-tier jurisdiction has created obstacles in the smooth development of Cypriot case law.⁹

Under the Constitution, Greek and Turkish replaced English as the official languages of the Republic. After various political developments, the Greek

⁶In this work the term 'common law' is used to denote the legal tradition of English law as distinguished from the codified systems of Continental Europe, referred to as 'civil law'.

⁷Judges Yiannakis Constantinides and Takis Eliades, 'The Administration of Justice in Cyprus' (2005), 1.

⁸See Symeon C Symeonides, 'The Mixed Legal System of the Republic of Cyprus' (2004) 78 *Tulane Law Review* 441; Nikitas E Hatzimihail, 'Cyprus as a mixed legal system' (2013) 6 *Journal of Civil Law Studies* 37.

⁹Andreas Neocleous & Co, *Introduction to Cyprus Law* (1st edn, Yorkhill Law Publishing 2000), [4–12].

language has gradually replaced English as the working language of the courts and litigants. After 1989, all court decisions are published in Greek.

The Cypriot legal profession is not divided into barristers and solicitors like the English profession. It is a fused profession, ie, a person who is admitted to the Bar is allowed to practice both as an advocate and as a solicitor. Law firms range from one-man general practices to forms of two to five lawyers, which is the majority. There are very few firms of more than 20 lawyers in Cyprus.¹⁰ Moreover, the Cypriot legal profession is no longer as tied to England as it was before and shortly after independence. Although many Cypriots continue to study law in England, they are outnumbered by those who study in Greece or at the—recently established—law schools in Cyprus.¹¹

Not unlike common law jurisdictions, judicial appointments come on the basis of a successful career in the legal profession. But the practice of judicial appointments has placed strong emphasis on seniority. It moreover comes close to continental models of a hierarchical, career-based judiciary.¹² To sum up the foregoing and taking into account other unique factors of the Cypriot legal system which will be analysed below, it seems that Cyprus has a different legal tradition compared to the one of England and Wales, something which may well have an impact on its system of civil justice.

Civil procedure in Cyprus is regulated by the 1954 Civil Procedure Rules (hereinafter referred to as the 'Rules'), which have been amended and updated in part. More recently there have been significant amendments to Orders 25 and 30 of the Rules which are explained below. Because the Rules have not been revised in their totality, the English Rules of the Supreme Court of 1883 that were in force in 1960 when Cyprus gained its independence as well as the White Book editions of that period remain pertinent authorities in Cypriot civil procedure.¹³

The process is initiated either by a writ of summons or an originating summons. There is little provision in the Rules for any alternative dispute resolution mechanisms or any other conciliatory pre-action protocol. Following the filing and service of the claim upon the defendant, the defendant must file a note of appearance. The defendant must then file a defence. If any counterclaim on his behalf is made, this should be included in the defence. The plaintiff may file a reply to the defence and if the defendant files a counterclaim in his defence the plaintiff must file his defence thereto. Under Order 30, before its recent amendments, once the pleadings were closed, the plaintiff had to issue a summons for directions whereby he—or any

¹⁰*ibid* [4–16], [4–17].

¹¹Symeon C Symeonides, 'The Mixed Legal System of the Republic of Cyprus' (2004) 78 *Tulane Law Review* 441, 452.

¹²Nikitas E Hatzimihail, 'Cyprus as a mixed legal system' (2013) 6 *Journal of Civil Law Studies* 38, 58.

¹³Law Office of the Republic of Cyprus, 'Civil Procedure Overview' <www.law.gov.cy/law/lawoffice.nsf/dm1civilprocedure_gr?dm1civilprocedure_gr?OpenDocument> accessed 13 November 2016.

other party—could ask, *inter alia*, for discovery or inspection of documents. The date of hearing is then set when the plaintiff applies to the registrar to fix a day for trial.

The procedure of day-to-day practice has been subject to domestic criticism.¹⁴ After significant debate with the Cyprus Bar Association, the Supreme Court amended Orders 25 and 30 in an attempt to modernise the system. These came into effect on 1 January 2015. Further protest by the Cyprus Bar Association after the amendments were issued led to the suspension of the amended orders for claims over €10,000 until the end of 2015.¹⁵

The amendments to Order 25 were extensive. The new Order 25 decrees that, after the filing stage and before the service, the plaintiff may amend the pleadings without the permission of the court, but if the pleadings have been served, the pleadings may be amended *only once* without the permission of the court before the summons for directions. After the summons for directions has been issued, the court will only allow an amendment in the case of a good faith omission, or in the face of new circumstances that did not exist during the pleadings stage, criteria which are stricter than the pre-existing Order 25. Finally, the amended Order 30 is broad in scope and covers the procedure for summons for directions, the new provision for a new two-tier track system, and a provision akin to the English ‘overriding objective’,¹⁶ a set of principles found in the very first section of the English Civil Procedure Rules (‘CPR’) which explains the way in which all other provisions should be read.¹⁷

3. Accessibility

A system of justice must be understandable to those who are trying to utilise it or are otherwise involved in it. Some of the reforms enacted post-Woolf in England and Wales were aimed in this direction. The unnecessary complexity

¹⁴Constantina Zantira, ‘The Civil Legal System in Cyprus: The Amendment of Order 30 of the Civil Procedure Rules and its Implications in Current Legal Practice’ (2014).

¹⁵Official Gazette of Republic of Cyprus Annex 2, Part 1, Procedure Rules, No. 4098, 13 May 2015 (Cyprus).

¹⁶Civil Procedure Rules 1.1 states:

- (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.

See Déirdre Dwyer, ‘What is the Meaning of CPR r 1.1(1)?’ in Déirdre Dwyer (ed), *The Civil Procedure Rules Ten Years On* (OUP 2009) 65.

¹⁷See Ayis Georgiades, ‘The recent amendments to Orders 25 & 30 of the Civil Procedure Rules’, Lecture organised by the Paphos Bar Association at Neapolis University (Paphos 25 November 2014) 5.

of the old system was one of the three keys problems noted by Lord Woolf. He wanted to not only make the process of civil justice simpler, but also more understandable to the individual litigant. Part of this effort was the change in terminology from outdated legal terms to more approachable and intuitively understandable terms. For example, the plaintiff became the claimant, relief changed to remedy and all the various forms of writ, summons and originating application became the claim.

Lord Woolf was influenced by the Plain Language Movement, which gained popularity in the US during the 1970s. The use of plain language is an important step in ensuring that legal systems are 'user friendly'. One of the most important consequences of simplifying the terminology is to take some of the control away from lawyers. As David Mellinkoff, a strong critic of legalese and author of many influential texts in the Plain Language movement, wrote: 'What better way of preserving a professional monopoly than by locking up your trade secrets in the safe of an unknown tongue?'¹⁸ A useful example is provided by Géraldine Gadbin-George, who conducted a short study into the Woolf reforms and their effect on legalese.¹⁹ When looking at a statement of claim from 1991 she concluded that '[t]he 1991 extract is one single convoluted sentence. It is unintelligible by the lay litigant and would even require concentration from the trained lawyer.'²⁰

Similarly, the Cypriot Rules are ambiguous, internally inconsistent, and linguistically problematic. The Rules were written in English in 1954 and since then, several amendments have been made in Greek. No official translations have been made, resulting in a set of rules written partially in each language. This is problematic for various reasons. First, it requires any individual wishing to make use of the Rules to have competent levels of English and Greek, despite English not being an official language of the Republic. Second, there are inherent semantic issues with provisions being part written in two different languages, leading to fundamental interpretative obstacles. Moreover, Order 1 of the Rules contains a glossary of English terms such as 'originating summons' and 'personal representative', however no such glossary is found for Greek terms. In other words, complex Greek legalese is not officially defined. All of the above undermine the principle that the law should be clear.

Additionally, the Rules contain terminology that is incongruous with the country's contemporary culture. For example, Order 8 ('proceedings by and against poor persons') makes reference to sums expressed in Cypriot pounds, a currency no longer in use. The unofficial translation into Greek

¹⁸David Mellinkoff, *Language of the Law* (Wipf and Stock Publishers 2004) 28.

¹⁹Géraldine Gadbin-George, 'The Woolf reform of civil procedure: a possible end to legalese?' (2010) 1 *Language for special purposes, professional communication, knowledge management and cognition Journal* 41.

²⁰*ibid* 48.

attempted to remedy this by providing the equivalent sum expressed in euros.

Although there are no statistics for the number of litigants who appear in person before Cypriot courts, this is very rare. Given that not all citizens have a working knowledge of legal English and Greek, it is plausible that the inaccessible nature of the Rules is a cause of the low number of litigants in person. Lord Woolf recognised the need for making litigation easily understandable if litigants were to be encouraged to appear in person.²¹ As a result of Lord Woolf's recommendations the English CPR now utilises terminology which is accessible to a litigant in person. In England and Wales as of 2011, 85% of individual defendants in County Court civil trials and over half of individual High Court defendants were unrepresented at some stage during their cases.²²

The Rules ought to be officially translated in their entirety into Greek. This would be the first step in allowing litigants to access the Rules in person.²³ By updating the language to include terms readily understandable by the lay person, litigants in person would be further encouraged. If the Rules are properly translated and redrafted in simple language they will give the impression that justice is being done, even if it is of little assistance to Greek-speaking lawyers who already use an unofficial but widely accepted translation.

4. Avoiding litigation

Ensuring that a full trial and judgment are a last resort was one of the key aims of the Woolf reforms. The reforms that were enacted have impacted settlement rates in four main ways. Firstly, the court is under a duty to encourage the use of Alternative Dispute Resolution (ADR). Secondly, Part 36 offers aims to increase settlement acceptance. Thirdly, litigants are encouraged to make pre-action attempts at settlement. Finally, most of the reforms aim to ensure that the civil justice system has a less adversarial and more settlement minded culture. Adopting some of these measures would result in significant improvements in Cyprus since its system is entirely without provisions geared towards helping parties avoid litigation.

Increasing the number of disputes that reach a solution without a full trial works theoretically to negate problems of costs and delay. Much of the

²¹One of the core principles identified in the Overview of Lord Woolf's Final Report was that the new system should 'be understandable to those who use it'. See Lord Woolf, *Access to Justice: Final Report*, (Her Majesty's Stationery Office 1996) section 1.

²²Ministry of Justice Research Summary 2/11, 'Litigants in person: a literature review' (June 2011), 3.

²³Although Zuckerman has expressed concern about the potential for delay and miscarriages of justice arising from a self-represented litigant's unfamiliarity with the substantive law. See Adrian AS Zuckerman, 'No justice without lawyers – the myth of an inquisitorial solution' (2014) 33 *Civil Justice Quarterly* 355, 355.

associated costs are usually avoided and a solution is reached in a timelier manner. This contributes to a reduction in backlog of the courts' cases. The parties to the case generally also benefit, making financial, time, and emotional savings. In appropriate disputes, justice is achieved more efficiently through settlement than at full trial.

4.1. ADR

The Woolf reforms lent great legitimacy to ADR procedures in England and Wales. The incentives, however, that Lord Woolf implemented to encourage the use of ADR were not successful in inducing their uptake by parties. As such it was left to the Jackson reforms to further develop the profile of ADR in 2013. Jackson ascribed ADR's lack of prominence to the country's legal culture, which epitomises the courts as the ultimate instrument of justice, feeding on the public's lack of awareness of the availability and benefits of ADR.²⁴

Under the current law in England and Wales the main device through which the civil justice system promotes the use of ADR is the imposition of duties on parties, their counsels, and the courts to conduct their dispute resolution process in a way that furthers the overriding objective; this entails early settlement of cases. Parties' responsibilities are mapped out in a series of 'Pre-action Protocols' and 'Practice Directions', and further guidance concerning their application has been provided by recent case law. There are several types of cases with tailored pre-action protocols (eg personal injury), which require parties to consider or attempt ADR before commencing proceedings.²⁵

Litigation is the most common method of dispute resolution in Cyprus, though ADR is increasing in popularity.²⁶ At an international conference organised by the Cyprus Chamber of Commerce and Industry (CCCI) in 2014, the President of the Republic of Cyprus declared that the new government is 'actively interested' in the 'development and wide use of extra-judicial

²⁴Rupert Jackson, *Review of Civil Litigation Costs: Final Report* (2009) ch 36 [3.5].

²⁵Judges are also subject to a duty under the CPR to further the overriding objective and have a series of incentivising powers they exercise in this capacity. Though Lord Dyson accepted, in *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576 (England & Wales Court of Appeal), that the court had no power to order the parties to engage in ADR, under r. 1.4(1), it may stay proceedings to allow parties to attempt to do so. Alternatively, it may make an order, with the threat of adverse costs sanctions, expressing the court's expectation of serious consideration of ADR. In *PGF II SA v OMFS Company* [2013] EWCA Civ 1288[56], the Court of Appeal extended the principle in *Halsey v Milton Keynes* by indicating that parties must respond to a 'serious invitation' for ADR irrespective of their reasons for not wanting to engage in it. This judgment was meant to act as a warning to litigants, as one of its objectives was to '*encourager les autres*'.

²⁶Nicos G Papaefstathiou and Maria Papaefstathiou, 'Cyprus' in Michael Madden (ed), *Litigation and Dispute Resolution* (Global Legal Group) 68.

dispute resolution²⁷ as it recognises its ‘multi-level importance’.²⁸ This is demonstrative of an existing lack of development, as well as a positive state perception, of ADR.

Arbitration is the most popular form of ADR in Cyprus. The Chapter 4 of the Laws regulates arbitration based on agreements and its practice is increasing throughout Cyprus, though its use is mostly confined to commercial cases. Simultaneously, evidence suggests that judges in Cyprus are becoming more reluctant to proceed with hearing a case involving technical matters or scientific issues requiring specialised knowledge. In such cases there is further mechanism provided by the Courts Law 14/1960 whereby judges may recommend the appointment of an arbitrator.

Mediation is less popular. Cyprus introduced the ‘Certain Aspects of Mediation in Civil Matters Law’ (Law 159(I)/2012) in 2012 in an effort to transpose EU Directive 2008/52/EC. The object of this directive was to ‘facilitate access to ADR’ in an effort to ‘promote amicable settlement of disputes by encouraging mediation’. The 2012 statute encourages the courts to give disputing parties information regarding the use of mediation and grants them the power to invite parties to use mediation or to stay proceedings to allow them to assess it. Mediation, however, remains voluntary, as the courts were not granted coercive power. Interestingly, mediators do not need to be accredited legal experts, though they must register with the Ministry of Justice and undertake the requisite training.

In England it was not enough that the schemes were available, as parties often decided not to use them. As such, the key issue with ADR concerns the implementation of the schemes so as to maximise their acceptance and use. A macroscopic assessment of the use of ADR is detailed in a recent European Union study using a transnational database, where the different approaches employed by Member States to promote mediation were compiled and compared.²⁹ The study also elaborates on the effectiveness of the mandatory application of ADR, given that its success depends on the willingness of the parties to engage in the process. The study suggests that increasing recourse to mediation often involves a change in the legal culture, as people are unaware of the benefits of these lesser-known systems that lack the well-established legitimacy of litigation.

A UK Ministry of Justice report commissioned in 2007 considered that the central issue that needs to be addressed is the limited bottom-up demand for mediation and other alternatives to litigation and it identified several methods

²⁷President Nicos Anastasiades, ‘Address’ (Conference on New Trends ICC Mediation and Arbitration, Nicosia, 29 April 2014) <www.ccci.org.cy/wp-content/uploads/2014/05/Address-of-the-President-of-the-Republic.pdf> accessed 13 November 2016.

²⁸*ibid.*

²⁹European Parliament Committee on Legal Affairs, ‘Rebooting’ the mediation directive: assessing the limited impact of its implementation and proposing measures to increase the number of mediations in the EU (January 2014).

to address this problem.³⁰ Increasing public awareness of the mechanism and benefits of ADR was the primary method mentioned by the study towards increasing recourse to it. Jackson's proposal³¹ in 2010 to introduce an educatory campaign throughout the UK addressing this issue appears to be a necessary step towards improving the public's amenability to ADR.

The second aspect identified in the Ministry of Justice report as needing to be addressed, was the use of pressure to force parties to engage with ADR. Hazel Genn argues that the process of mediation manages to circumvent the rigidity of formal law and procedures by allowing parties to reach agreements that are more flexible and accommodating to their interests.³² However, this transformative process does not ensure the delivery of justice but rather is an arrangement that balances competing interests. Given this state of affairs, forcing parties to engage in compromise when their rights are at stake and in a way denying access to justice is a questionable practice which may even constitute a breach of the right to a fair trial of Article 6 ECHR.³³

There have, however, been instances of successful mandatory ADR schemes. The introduction of mandatory mediation schemes for parties issuing proceedings increased the rate of voluntary mediations in Italy. A study showed that when mediation in Italy was not mandatory, the number of voluntary mediations rested at two thousand per year, but when it was made mandatory, the number escalated to 45 thousand.³⁴ The use of powerful incentives could also help combat the problem that some parties are unwilling to engage in ADR because they fear that their willingness to do so would be misconstrued and be seen to suggest that they doubt the strength of their own case.

It is therefore submitted that the promotion of ADR requires a delicate balance between careful instruction of the public as to the procedures' benefits and the implementation of procedural incentives to encourage the use of ADR. The use of ADR must be given legitimacy, and making it mandatory is one strong way to do that. However, much of its efficacy rests on parties being willing to engage in ADR and there will be lingering doubts that mandatory compromise denies parties access to justice. Thus, a window to litigation must always be left open.

³⁰Ministry of Justice, *Twisting Arms: court referred and court linked mediation under judicial pressure* (Ministry of Justice Research Series 1/07, 2007) 204.

³¹Rupert Jackson, *Review of Civil Litigation Costs: Final Report* (2009) ch 36 [3.6].

³²Hazel Genn, *Judging Civil Justice* (1st edn, CUP 2010) 78–125.

³³See *Halsey* (n 25) [9] (Lord Dyson).

³⁴European Parliament Committee on Legal Affairs, *'Rebooting' the mediation directive: assessing the limited impact of its implementation and proposing measures to increase the number of mediations in the EU* (January 2014) 8.

4.2. Offers to settle

The incentives in England and Wales are such that there is opportunity to settle throughout the trial. Part 36 of the CPR provides for both the claimant and defendant to make offers to settle. If such an offer is rejected and the rejecting party does not receive a more financially advantageous judgment at trial, the rejecting party may have to pay a considerable amount towards the costs of the other party. Nevertheless, after the Jackson reforms, the validity of a Part 36 offer may be challenged and the court may impose additional cost consequences following judgment. This has undermined the rule's predictability and certainty. The importance of certainty here is that it promotes confidence in the rule's operation, which in turn promotes the necessary degree of predictability to encourage litigants to make and consider Part 36 offers.³⁵ In any case, the use of Part 36 has largely been seen as a positive addition to the civil justice system.³⁶

In Cyprus, the old system of payment into court still exists. Under Order 22 the defendant may at any time upon notice to the plaintiff pay into court a sum of money in satisfaction of all or part of the claim. The plaintiff may accept within a certain number of days by giving notice to the defendant. If the plaintiff accepts he can then claim costs incurred up to the time of payment into court. However, there are no associated sanctions with refusing a payment into court except that the judge *may* consider a payment made into court upon deciding costs. Therefore, this system does not operate as much of an incentive to accept a settlement at all; it merely provides the means by which a settlement payment can be made.

4.3. Pre-action stage

Pre-action protocols in England provide a clear roadmap for claims. All claims must be set out in detail and include all evidence. In addition to 13 specific pre-action protocols, the general practice direction on pre-action conduct notes that all required steps are aimed at avoiding court proceedings. All parties are required to exchange sufficient information at the pre-action stage to ensure that a settlement could be reached. The consequence is that parties know the strengths and weaknesses of their opponents' case and are in an early position to make and respond to settlement offers reasonably, and to consider whether ADR methods may better fit the needs of their

³⁵John Sorabji, 'Part 36: a rule in need of reform' (2015) 1 Civil Justice Quarterly 11, 12; Adrian Zuckerman, *Zuckerman on Civil Procedure – Principles of Practice*, (3rd edn, Sweet & Maxwell 2013) [26.7]. Also see Neil Andrews, *Andrews on Civil Processes*, (1st edn, Intersentia 2013) vol 1, 542.

³⁶John Peysner and Mary Seneviratne, *The Management of Civil Case: the Courts and Post-Woolf Landscape* (Department of Constitutional Affairs Research Series 9/05, 2005) ch 3 [4.3].

case.³⁷ A study commissioned by the Law Society and the Civil Justice Council in 2002 notes that the protocols enable settlement negotiations to focus on the important substantive issues of the case.³⁸

The pre-action protocols provide a very clear roadmap for claims. If claims are nonetheless filed, the first question on the allocation questionnaire which must be filled out by all parties before any further steps are taken, is whether the parties wish the proceedings to be stayed for a month in order to allow for an attempt at settlement. Even if the parties do not make such a request, the court can nonetheless stay proceedings if it thinks it is reasonable to do so. Additionally, with the introduction of the multi-track which will be explained below, the more complex a case is the more planning and case management will be dedicated to it and consequently there is much more communication between the parties. This minimises the number of multi-track cases that make it all the way through to trial.³⁹

In Cyprus there are no pre-action protocols or any similar mechanism. The process starts with the commencement and service of proceedings which means that parties cannot easily reach an understanding of their position in the case or assess the best way to proceed. Consequently, offers cannot be made and responded to reasonably or efficiently. No evidence has to be included in the pleadings and it appears that there is not enough exchange of information to realistically promote settlements. In the absence of existing pre-action protocols, implementation of something similar would likely have noticeable effects. In the construction of any protocol, it is important that Cyprus ensure sufficient sanctions and cost-mitigation procedures, in order to avoid some of the problems highlighted above about the English system of pre-action protocols.

4.4. Less adversarial and more settlement minded culture

Lord Woolf stated in his interim report that the goal of the reforms was 'to try and change the whole culture, the ethos, applying in the field of civil litigation'.⁴⁰ As Loughlin and Gerlis note

[i]n place of the traditional adversarial approach to litigation, there would be an expectation of openness and co-operation between the parties from the outset,

³⁷See Neil Andrews, *The Modern Civil Process: Judicial and Alternative Forms of Dispute Resolution in England* (1st edn, Mohr Siebeck 2008) [3.01].

³⁸Tamara Goriely, Richard Moorhead and Pamela Abrams, *More Civil Justice? The impact of the Woolf reforms on pre-action behaviour* (The Law Society and Civil Justice Council 2002) 385.

³⁹John Peysner and Mary Seneviratne, *The Management of Civil Case: the Courts and Post-Woolf Landscape* (Department of Constitutional Affairs Research Series 9/05 2005) ch 3 [4.1].

⁴⁰Lord Chief Justice and the Vice-Chancellor, *Practice Direction of 24 January 1995* [1995] 1 WLR 262 (England & Wales High Court (EWHC), Queen's Bench Division (QB)), 6.

and a principle that litigation would be a last resort for the resolution of a dispute.⁴¹

The adversarial model of justice promotes the view that the best way to arrive at the truth and the most just result is a competition between the two sides, with an arbiter who decides which version of events is best. This system is so entrenched in the common law tradition that questioning it sounds rather radical to some. Nonetheless, there are benefits of looking to alternatives to full trial, especially in relation to the types of cases that make up the majority of those heard in civil courts in both England and Cyprus. Justice G L Davies indicated that the majority of cases are no more than private disputes. They do not hold profound questions about the law or society's values. The court is in fact acting as a body to resolve private disputes, only in a public forum and at public expense.⁴²

This is not to say that there is no remaining role for the traditional court proceedings. Such trials are definitely still needed but only in the sorts of cases when there is a clear reason for pursuing that process. These sorts of cases are naturally the ones that are less likely to settle anyway. Parties usually settle when they get a more realistic picture of what their chances are. This is less likely to happen when there is a significant debate about how the law should address an issue. Therefore, the bottom line is not that litigation should not be based on the adversarial model, but that a system of civil justice must be built on the understanding that litigation is to be seen as a last resort, rather than the norm.⁴³

One of the most important aspects of improving the efficiency of the civil justice system is promoting settlement. Undoubtedly, there are some cases that are simply not suitable for settlement, however the vast majority of cases are, and as Davies noted, at least in many jurisdictions like England and Wales and Australia, the vast majority of cases end up settling anyway.⁴⁴ Research suggests that 60–80% of cases settle, depending on the particular court.⁴⁵ Settlement of these cases should not be viewed as an anomaly within the wider system geared towards trial and judgment, but as a core method of achieving a just result whilst using up less time, money and court resources. Settling can also be advantageous for the parties, not just the court. As Professor Zuckerman has noted it 'avoids the tension, the uncertainty and the emotional pressure that litigation often entails.'⁴⁶

⁴¹Paula Loughlin and Stephen Gerlis, *Civil Procedure* (2nd edn, Cavendish Publishing 2004) 7.

⁴²G L Davies, 'Civil Justice Reform: Why we need to question some basic assumptions' (2006) 25 *Civil Justice Quarterly* 32, 35.

⁴³Lord Woolf, *Access to Justice: Final Report* (Her Majesty's Stationery Office 1996) section 1.

⁴⁴G L Davies(n 42), 34.

⁴⁵John Peysner and Mary Seneviratne, *The Management of Civil Case: the Courts and Post-Woolf Landscape* (Department of Constitutional Affairs Research Series 9/05 2005) ch 3 [4.1].

⁴⁶Adrian Zuckerman(n 35) [1.125].

The courts and culture of litigation in Cyprus are ostensibly unhelpful in supporting settlement.⁴⁷ This is aggravated by the behaviour of lawyers who will not push for an amicable settlement for their own financial reasons. The entire culture of litigation is too adversarial and confrontational for settlement to play as large a role as it should. Anecdotal evidence suggests, however, that the courts view settlement favourably in light of their 'heavy workload'.⁴⁸ Nevertheless, irrespective of attitudes and practice, the actual procedures and rules are not conducive to encouraging settlement.

A problem faced by the English system is the number of settlements that take place on the day of, or the day before, the trial. This reduces the value of the high percentage of cases that settle. Late settlement is problematic because the benefits of earlier settlements regarding costs, time, and stress are greatly reduced. There are also negative consequences for court listing and efficient allocation of judges. Late settlements will continue to some degree, given the noted catalytic effect of imminence of court proceedings.⁴⁹ However a wider operation of Part 36 may reduce the number. One possible solution is to apply Part 36 sanctions to cases that settle late after an unreasonable rejection of a previous offer.⁵⁰

If Cyprus were to implement a provision akin to this extended Part 36, it would encourage reasonable conduct and settlement throughout the trial process. Consequently, there would be a more realistic chance of settlement, and, importantly, of earlier settlements. The problems caused by late settlements would also be mitigated. This would go some way to reducing cost and time problems in Cyprus.

Two rules deriving from the German cost system encourage settlement and are also interesting to consider. First, the court charges are lower if the parties decide to refrain from litigation. Second, lawyers are rewarded an additional settlement fee, which is a strong incentive to motivate their clients to settle.⁵¹ Moreover, in Germany the first hearing is preceded by a conciliation hearing, or a conciliation attempt is made by the court as part of the first hearing.⁵² Further, the judge will sometimes give an indication

⁴⁷Christos Clerides, 'Civil Procedure' (European University Cyprus, 29 November 2011) <www.clerideslegal.com/files/download/file75.pdf> accessed 13 November 2016.

⁴⁸Christos Melides, Panayiotis Neocleous and Costas Stamiatiou, 'Dispute Resolution 2007/08 Volume 1: Country Q&A – Cyprus' (mondaq, 31 October 2007) <www.mondaq.com/cyprus/x/53534/Commercial/Dispute+Resolution+200708+Volume+1+Country+QA+Cyprus> accessed 13 November 2016.

⁴⁹John Peysner and Mary Seneviratne, *The Management of Civil Case: the Courts and Post-Woolf Landscape* (Department of Constitutional Affairs Research Series 9/05 2005) ch 3 [4.4].

⁵⁰Tamara Goriely, Richard Moorhead and Pamela Abrams, *More Civil Justice? The impact of the Woolf reforms on pre-action behaviour* (The Law Society and Civil Justice Council 2002) 274.

⁵¹Burkhard Hess and Rudolf Huebner, 'National Report for Germany' in Mathias Reimann (ed) *Cost and Fee Allocation in Civil Procedure* (Preliminary Version, Springer 2010) 7.

⁵²Axel Reeg and Matthias Weiß, 'Litigation and enforcement in Germany: Overview' (Thomson Reuters 2014) <uk.practicallaw.com/1-502-0728> accessed 22 Dec 2016.

of the likely outcome of the case,⁵³ thereby allowing parties to know when their case should be abandoned, or when settlement may be most appropriate.

Finally, the Woolf reforms introduced one very interesting new measure to address the issue of vexatious litigants. CPR Part 22 now mandates that parties must submit a statement of truth when they submit their claim form and the particulars of the claim declaring that all stated facts are true. This helps encourage parties to consider the gravity of making a claim in court. They should not bring a claim unless they are willing to guarantee its veracity and thus suffer the consequences if they are found to have brought a disingenuous claim. The consequences of submitting false information can be severe as parties may be found to be in contempt of court.⁵⁴

5. Time of adjudication

'Justice delayed is justice denied' is a well-known legal maxim. Firstly, it is clear why long waiting times would present a problem for the parties: there are the obvious emotional costs as well as the more real financial costs of protracted litigation. Secondly, long delays impact on the overall perception of the quality of the justice system. Finally, there are more material procedural consequences of delayed proceedings such as witnesses being less reliable years down the line or becoming harder to find. One must also bear in mind, as Zuckerman states, that, if giving a judgement takes too long, it may not be applicable anymore in respect to enforcing one's rights and restoring a state of justice.⁵⁵

According to the latest European Union studies Cyprus finds itself amongst the worst performing countries in relation to the length of civil proceedings. In 2010 the average duration of resolving litigious and commercial civil cases at first instance was more than 500 days.⁵⁶ Looking at cases at second instance does not improve the picture. Studies from the European Commission for the Efficiency of Justice estimated the length of a case pending in the appellate court until it is adjudicated upon at 1194 days in 2010, ranking Cyprus in the antepenultimate position out of 45 countries.⁵⁷ By comparison, the median length of time across Europe for a case in 2011 it was only 216 at first instance and 206 days at second instance.⁵⁸

⁵³Paul Ranjard, 'A Comparative study between the Civil Procedures of France, Germany and China' (2011) 22.

⁵⁴See, eg, *Motor Insurers' Bureau v Shikell* [2011] EWHC 527 (QB).

⁵⁵AAS Zuckerman, 'A Reform of Civil Procedure – Rationing Procedure Rather than Access to Justice' (1995) 22 *Journal of Law and Society* 155, 8.

⁵⁶EU Commission, 'The 2014 EU Justice Scoreboard' COM (2014) 155.

⁵⁷Marco Velicogna, *Study of Council of Europe Member States Appeal and Supreme Courts' Lengths of Proceedings Edition 2015 (2006–2010 data)* (European Commission for the Efficiency of Justice 2013) 116.

⁵⁸Eric Dubois, Christel Schurrer and Marco Velicogna, *The functioning of judicial systems and the situation of the economy in the European Union Member States* (European Commission for the Efficiency of Justice 2013) 82.

One assessment notes that the primary concern Cypriot citizens have when they consider bringing a claim is the length of proceedings.⁵⁹ The long delay also has an impact on the overall confidence in the system. An additional worrying aspect in Cyprus, is that the civil procedure rules do not make any provision for interim cost orders. Interim cost orders allow a claimant who appears to have a strong case to recover some costs from the other side before a decision has been reached. This measure in England and Wales helps indigent claimants afford litigation during the actual process, rather than risking them being priced out by a much stronger opponent. The combination of years of waiting in Cyprus and the lack of interim costs surely make it harder for some litigants.

5.1. Case management

Lord Woolf envisaged a greater role for the judge in guiding a case forward as a means to alleviate some of the problems in the civil justice system. He believed that the unsustainably and disproportionately large costs, amongst other problems, were the result of 'the uncontrolled nature of litigation'.⁶⁰ Furthermore, Lord Woolf believed that active case management would help enable a more efficient use of time. Therefore, the system was to be placed under strict procedures, firstly from the actual rules themselves and secondly by granting a greater role to the judge in supervising and ensuring that these procedures are followed.

According to Lord Woolf, case management would involve identifying the issues in a case, summarily disposing of some of those issues, deciding in which order the remaining issues were to be resolved, fixing the timetable, and limiting disclosure and expert evidence.⁶¹ CPR 1.4 states the court's duty to manage cases and provides a list of specific powers, but Lord Woolf did not want to limit judges to only those powers. Therefore, CPR 3.1 enables the court 'to take any other step or make any further order for the purpose of managing the case and furthering the overriding objective.' Moreover, case management conferences were aimed at replacing interlocutory hearings. These amounted to a very broad power awarded to the court to try to fulfil the aims of case management. Hands-on management by a judge was to be used mostly in the multi-track where it is strictly necessitated by the complexity of the issues involved.

Notable areas of success include the role and control of expert witnesses. Lord Woolf was particularly worried about the role expert witnesses played in

⁵⁹Jean Albert, *Study on the Transparency of costs of civil judicial proceedings in the European Union – Country Report Cyprus* (European Commission Directorate-General for Justice, Freedom and Security, 2007) 22.

⁶⁰Lord Woolf, *Access to Justice: Final Report* (Her Majesty's Stationery Office 1996) s 2 ch 1.

⁶¹*ibid.*

the civil justice system, specifically the obvious lack of independence and the way this drove up overall costs. Under the new rules, Part 35 makes explicit that all expert witnesses owe a duty to the court rather than the instructing party and that all witnesses are subject to the court's case management powers.

Additionally, the increased role played by judges has had a positive impact on the culture of litigation in England and Wales. Practitioners interviewed in Peysner and Seneviratne's study note that there is increased cooperation across the board, between the parties and the court and between the parties themselves, resulting in a less adversarial mindset.⁶² In addition, Booth noted that at the LexisNexis CPR debate, '[t]hree of the four panel members [...] emphasised that active case management meant there was no longer any scope for the time-consuming, old style tactical interlocutory applications, designed to wear parties down.'⁶³ This suggests that case management has been successful in reducing some of the more negative aspects of adversarial proceedings.

However, although case management in the new CPR was able to increase to some degree speed of delivery and quality, this came at the expense of increased costs. Given that reducing costs in order to ensure that everyone has access to justice was one of the key aims of the Woolf reforms, this can hardly be acceptable. Jackson therefore addressed this issue in his Final Report of Civil Litigation Costs. He emphasised that 'the purpose of case management by the court is to progress cases justly, expeditiously and to save costs'.⁶⁴

Rather than changing the operation of case management in any significant way, Jackson instead opted to encourage judges to appreciate the imperatives of timely resolution of disputes and the proportionate use of resources which had not been sufficiently implemented after the CPR was introduced by sending the judiciary a clear message through the revised rules.⁶⁵ An important change was the amendment of CPR 3.9 which now states that if a party seeks relief from any sanction imposed for not following the rules and procedures,

the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need (a) for litigation to be conducted efficiently and at proportionate cost; and (b) to enforce compliance with rules, practice directions and orders.

⁶²John Peysner and Mary Seneviratne, *The Management of Civil Case: the Courts and Post-Woolf Landscape* (Department of Constitutional Affairs Research Series 9/05 2005) ch 3 [2.1]–[2.2].

⁶³Elsa Booth, 'The Cost of Civil Justice: Time for Review or Revolution?' (2011) 161 *New Law Journal*, 4.

⁶⁴Rupert Jackson, *Review of Civil Litigation Costs: Final Report* (2009) ch 39 [5.6].

⁶⁵Kei Takeshita, 'Overcoming Judicial Reluctance to Secure Effective Case Management' [2014] *Civil Justice Quarterly* 281, 281.

By elaborating on the objectives, Jackson tried to communicate that courts 'should be less tolerant than hitherto of unjustified delays and breaches of orders'.⁶⁶

In *Mitchell v News Group Newspapers Ltd*⁶⁷ the claimant filed its costs budget on the day before the first case management conference instead of seven days in advance and the judge imposed an immediate sanction. The defaulting party said that it could not keep to the deadline due to pressure of work from other cases. This was regarded by the court as a bad reason: the solicitor should not have taken on the work if they could not comply with the requirements of the rules. In all the circumstances the court decided against granting relief. The *Mitchell* case instituted a robust approach to non-compliance, and was intended to send a clear message to the profession that rules and orders were made to be complied with.⁶⁸

The principles governing applications for relief from sanctions were restated by *Denton v TH White LTD*⁶⁹ as follows: (a) the first stage is to identify and assess the seriousness or significance of the breach; (b) the second stage is to consider why the default occurred; and (c) the third stage is to consider all the circumstances of the case. The cost of the additional slack granted to defaulting litigants and their lawyers by the Court of Appeal in *Denton* is that it might make it more difficult to instil a culture of compliance with procedural rules and court orders.⁷⁰ Indeed, the *Mitchell* approach as restated in *Denton* is one of limited tolerance of breaches of the rules. It is certainly not a world of zero tolerance. Some people advocate zero tolerance as likely to be more effective, though it would carry with it an inevitably greater risk of injustice in individual cases.⁷¹

⁶⁶Rupert Jackson, *Review of Civil Litigation Costs: Final Report* (2009) ch 39 [8.1]. C H Van Rhee sums up the causes for undue delay in litigation as a combination of factors related to the actors involved in litigation and of factors related to the rules of procedure and the manner in which these rules are applied. Concerning the actors involved he stresses the importance of case management, especially the stance of the judge as well as the existence of a culture in the courts which encourages the parties to cooperate. Largely, when lawyers and not judges have control of the process and there are economic incentives for them to complicate proceedings and increase the amount of work invested in a case, there will be severely negative consequences on the delivery of civil justice. Moreover Van Rhee mentions the dilatory abuse of the rules. See C H Van Rhee, 'The Law's Delay: An Introduction' in C H Van Rhee (ed), *The Law's Delay: Essays on Undue Delay in Civil Litigation* (Intersentia 2004). In this respect the Woolf and Jackson reforms have addressed the issue of delay from the right angle: The overall aim of the Woolf reforms was to create a more productive culture surrounding litigation and Jackson tried to encourage strict compliance with rules and procedures. As Lord Neuberger recently said, like all activities, civil litigation has to be conducted by reference to rules, and those who take part in the activity should expect to abide by the rules, and, particularly importantly for present purposes, those who are responsible for administering the activity should be expected to enforce the rules. See Lord Neuberger, 'Framing a New Procedural Culture' (2015) 34 Civil Justice Quarterly 237, 242.

⁶⁷[2014] 1 WLR 795 (EWCA).

⁶⁸Stuart Sime, *A Practical Approach to Civil Procedure* (OUP 2015) [37.26].

⁶⁹[2014] 1 WLR 3926 (EWCA).

⁷⁰Andrew Higgins, 'CPR 3.9: the Mitchell guidance, the Denton revision, and why coded messages don't make for good case management' (2014) 33 Civil Justice Quarterly 379, 393.

⁷¹Lord Justice Richards, 'The Mitchell/Denton line of cases: securing compliance with rules and court orders' (2015) 34 Civil Justice Quarterly 249, 253.

In Cyprus, judges have enormous caseloads. Moreover, judges do not have clerks and this contributes to their high volume of workload. The large number of interlocutory applications filed in cases in Cyprus prolong the process and increase the cost and delay associated with the courts to a large degree. Interlocutory applications are governed by Order 48, which does not give the courts the same control as courts in England enjoy.

The recent amendments to the Rules tried to tackle the problems of delay in adjudication. The amended Order 30 now regulates the procedure for summons for directions and the powers of the court in giving directions as to the progress of the case. The guidelines that the judge should take into account as indicated in the amended Order 30 include the speedy adjudication of cases, as the overriding objective of Part 1 of the English CPR prescribes. However, although the English provision articulates the aims of the justice system and is intended to guide every Part and Practice Direction of the CPR, the position of the Cypriot provision is such that it might only be considered with regard to summons for directions.

Overall, it could be argued that Cyprus could benefit from an increase in the role of judges in all stages of litigation in order to allow them to take on procedural initiatives towards speeding up the process. Case management conferences could replace interlocutory hearings; this will allow courts to deal with the interlocutory matters whilst at the same time giving instructions on how best for the case to proceed. Moreover, appropriate safeguards must ensure strict compliance with procedural rules.

Finally, the declaration of the overriding objective in the very first section of the CPR gives the message that the guiding principles of civil justice are to be complied with at all stages of the process. Dealing with cases 'justly' whilst also keeping in mind the principle of proportionality, including that cases should be dealt with expeditiously, indicates to all actors involved — and mainly judges — how the system should operate. At last, after the CPR were introduced, there is some unification, purpose, and systemic quality which was not present in the pre-CPR system. Such purpose has created a need, not felt previously, to tailor any new procedural tool to make it 'fit' the system.⁷²

In contrast to this approach, the civil procedure rules in Cyprus operate without a guiding set of principles. This omission was not rectified by adding a set of rules in Order 30, a provision found in the middle of the statute, even if the 'adjudication of the case the soonest possible' was placed at the top of the list of factors that the judge should take into account during the directions stage. A clear articulation of the philosophy

⁷²Carla Crifó, 'Civil Procedure in the European Order: An Overview of the Latest Developments' in Déirdre Dwyer (ed), *The Civil Procedure Rules Ten Years On* (OUP 2009) 361.

of fast adjudication of cases at the outset of the statute is necessary to change the culture in this respect.

5.2. Tracks

Another mechanism utilised by the CPR to reduce delays was tracks. Under the CPR, cases are allocated to a track based on the responses to an allocation questionnaire. The small claims track deals with cases of value up to £5,000. This track provides the swiftest decision, uses entirely standard procedures, no legal aid is available, and costs are not recoverable. Cases of value between £5,000 and £25,000 are usually dealt with in the fast track. A case in the fast track is given a fixed trial date within 30 weeks and much effort is made to ensure that the timing, costs, and amount of work completed are proportionate to the value of the case. As such, the actual trial rarely exceeds one day and standard procedures are often used, limiting excessive disclosure, using joint witnesses and experts. The multi-track is followed for cases exceeding £25,000 or cases that are too complex for the small or fast tracks. Despite this measure, as recently as 2010 the UK was held to have violated Article 6.1 in relation to the length of civil proceedings in the case of *Richard Anderson v UK*.⁷³ Furthermore, when the average length of proceedings in English courts is compared with the overall European median we can see that the figures in England are higher than they ought to be. According to Ministry of Justice figures published in March 2014,⁷⁴ the average time of adjudication for a claim less than £10,000 from first lodging a claim until judgment is 31 weeks (217 days). For claims over £10,000 that figure rises to 56 weeks (392 days). When this is compared with the median duration of a case across the European Union in 2011, which stood at only 156 days,⁷⁵ it can be seen that even the supposedly fast small claims track is not performing as well as might be hoped.⁷⁶ Undoubtedly, the categorisation of cases in an appropriate track system enables efficient handling of different types of cases. It is unlikely to be efficient to apply a one-size-fits-all procedure to all cases. Proportionate resources and procedures must be applied after careful categorisation of cases.

⁷³[2010] ECHR 145.

⁷⁴Ministry of Justice, 'Open Justice: The Truth About Civil Cases' <www.open.justice.gov.uk/courts/civil-cases> accessed 14 November 2016.

⁷⁵Eric Dubois, Christel Schurrer and Marco Velicogna, *The functioning of judicial systems and the situation of the economy in the European Union Member States* (European Commission for the Efficiency of Justice 2013) 82.

⁷⁶Moreover, it is worth addressing the skepticism for the value of the fast track. Michael Zander QC considers that in evaluating time reduction, it is the time from the date the solicitor is first instructed that is relevant. He argues that although post-issue time is reduced, solicitors have to put in considerable time before lodging the claim in order to meet fixed trial dates, resulting in no real delay reductions (See Michael Zander, 'Zander on Woolf' (2009) 159 *New Law Journal*). There is still value, however, in the unaffected reduction in court-time, as backlogs are such a problem in both England and Cyprus.

The amended Order 30 in the Cypriot Rules has now introduced a multi-tier track system into Cypriot civil litigation. The process implemented in Cyprus is different than the English system. Order 30 provides for two different tracks, i.e. the 'Fast Adjudication' track for disputes not exceeding €3,000 or for disputes with no financial claim, and the 'Hearing Adjudication' track for the remaining disputes.

One issue with the recently introduced track system is the lack of consideration of the impact that Order 30 has on other orders. The track system brings important changes that affect other provisions such as Order 33 which regulates the hearing process and Order 38 dealing with trial evidence. Although Order 30 provides that these orders are to be 'read in light of the present Order', to increase clarity and avoid confusion it would be preferable for these orders to be rewritten in light of Order 30.

Considerable time and thought must be given to the reconstruction and implementation of the Cypriot track system. Tracks are difficult to get right as evidenced by the vast difference in the model that was initially proposed by Lord Woolf in 1995 and the model that now exists in England and Wales. Thus, a wider consideration of the procedural and substantive impacts is necessary in addressing the problems with the current Cypriot tracks.

5.3. The German model

The German civil procedural law provides two tracks for asserting one's claims. The first one is a debt collection procedure, which is very simple, fast, and cheap. It applies to claims of a purely pecuniary nature and is conducted solely in written form. The plaintiff must state the relief sought, but neither the grounds for seeking them nor any evidence.⁷⁷ All other cases go through the 'ordinary' procedure, which can be divided in two stages: the preparatory phase and the trial.

To initiate the procedure, the plaintiff has to submit a written request (*Klageschrift*), laying out the relief sought and the statement of claim. The plaintiff also has to indicate whether an attempt to mediate or to use any other ADR has taken place, or if there are any grounds hindering the use of an alternative procedure.⁷⁸ Generally, ADR has to be promoted during the entire procedure. The court then decides whether a preliminary hearing or a preliminary written procedure will be conducted. The latter means that the defendant is served with the claim and ordered to indicate within two weeks whether he wants to submit a statement of defence.⁷⁹

⁷⁷§ 688f German Code of Civil Procedure (Zivilprozessordnung (ZPO)).

⁷⁸§ 253 ZPO.

⁷⁹§ 276 ZPO.

If the judge decides on a preliminary hearing, the defendant immediately has to fix a date for the first oral hearing, which may directly be followed by the final judgment in case all relevant facts have already been established.⁸⁰ It is completely at the discretion of the judge whether the preliminary phase will be conducted in written or in oral form. In practice, however, they will usually choose the written procedure. Their decision is based on the facts they have been given in the plaintiff's written request and they will only decide on a preliminary hearing if the case seems simple and is likely to be resolved quickly. In any case, the judge makes an initial attempt to achieve a settlement between the parties during this stage (*Güteverhandlung*).⁸¹

Unless an amicable settlement can be achieved, the preliminary procedure is followed by the trial, starting with the main hearing (*Haupttermin*). The judge's decision may solely be based on facts given by the parties.⁸² This principle is called dictum of negotiation (*Verhandlungsmaxime*) and relies on the obligation to tell the truth. The parties will be sanctioned for stating false facts.⁸³

Judges have an undeniably strong role in leading the proceedings. They may, for instance, set appropriate time limits for certain actions before the court in case they are not already provided by the law. Since non-compliance with the rules regarding deadlines may result in the party being unable to exercise the right in question, undue delay is greatly reduced.⁸⁴ Generally, Germany seems to combat delay quite efficiently. According to latest European Union studies the average time to resolve civil and commercial cases in first instance is less than 200 days.⁸⁵

Based on this overview, it is clear that there are some close similarities with the new case management powers granted to English judges after the Woolf

⁸⁰§ 275 ZPO.

⁸¹§ 278 ZPO.

⁸²The rule '*iura novit curia; da mihi facta, dabo tibi ius*' (the court knows the law; give me the facts and I shall give you the law) is characteristic of the whole litigation process.

⁸³If the parties do not follow his advice, the judge is not allowed to introduce facts *ex officio*. However, the judge has the power to hear evidence which is expected to clarify substantial facts. To this end he may order public authorities to produce official documents, an on-site investigation, the report of an expert witness who will be selected by the judge from a list of officially appointed experts, or the interrogation of witnesses (See §§ 144, 273(2), 448, 404 ZPO). The examination of witnesses is undertaken first by the judge, but with the permission of the judge, however, the parties are also allowed to interrogate the witnesses (See § 397 ZPO).

⁸⁴§ 139 ZPO.

⁸⁵EU Commission, 'The 2014 EU Justice Scoreboard' COM (2014) 155. Professor Burkhard Hess sees the main reason for these speedy resolutions as the organisation of the judiciary and the court-driven case management. The time of adjudication for a case is largely governed by the judges' discretion. It is their task to set dates for hearings as well as time limits for the parties' pleadings and briefs. They also decide whether proceedings should be split or joint and choose the most efficient structure of oral hearings, two aspects that help accelerate the proceedings. Moreover, the preliminary stage allows the judge to set up the hearings adequately, as he is already informed about the legal positions of the parties. See Burkhard Hess, *Practical ways of combating delays in the justice system, excessive workloads of judges and case backlogs: German Report* (European Commission for the Efficiency of Justice 2005) 28f.

and Jackson reforms. However, the English system of management has failed to completely address the issues of time and costs. Therefore it is interesting to consider why case management in one country is obviously more successful than a similar regime in another country and to consider the costs system in Germany, especially as it presents interesting similarities to the system of costs in Cyprus.

6. Costs

Litigation funding is an essential feature of any effective justice system.⁸⁶ The failure to reduce costs, and the suggestion that costs may have increased in recent years, has traditionally been seen as the greatest failure of the Woolf reforms. Therefore, it is not surprising that some ten years after Woolf, the Master of the Rolls commissioned a new report led by Lord Justice Jackson focusing specifically on the issue of costs. Reforms from the Jackson report only came in effect in April 2013. It is nonetheless interesting to consider the changes in light of both the pre-existing problems in England and also in comparison with other suggestions for reform. This is also the area in which the Cypriot system has seen the most reform and differs drastically from the pre-Woolf English landscape.

As mentioned above, Woolf believed that the key reason behind the extortionate level of costs was the 'uncontrolled nature of litigation'.⁸⁷ The solutions he proposed were firstly increased rule control through standard procedures and secondly greater judicial case management. The principle of proportionality was always meant to be at the heart of all the reforms; costs should be proportionate to the matter litigated and judges should have greater powers to make costs reductions if they are not considered proportionate.

The actual effects of the Woolf reforms on costs were far less positive than hoped. The new CPR led to a burdensome front-loading of costs. Costs of a trial were more limited and the faster process meant that these were on the whole slightly decreased, though still substantial.⁸⁸ However, costs of the process running up to the trial were significantly increased. The pre-action protocols required a large amount of work early in the process, where previously this work had only been necessary later during the actual trial.⁸⁹ The practical effect of this has been that almost all cases rack up costs early.⁹⁰

⁸⁶John Sorabji and Robert Musgrove, 'Litigation, Cost, Funding, and the Future' in Déirdre Dwyer (ed), *The Civil Procedure Rules Ten Years On* (OUP 2009) 231.

⁸⁷Lord Woolf, *Access to Justice: Final Report* (Her Majesty's Stationery Office 1996) section 2 ch 1.

⁸⁸Rupert Jackson, *Review of Civil Litigation Costs: Preliminary Report* (2009) vol 2 ch 44.

⁸⁹See Elsa Booth, 'The Cost of Civil Justice: Time for Review or Revolution?' (2011) 161 *New Law Journal*, 6.

⁹⁰Rupert Jackson, *Review of Civil Litigation Costs: Preliminary Report* (2009) vol 2 ch 44.

After extensive review Jackson agreed with the critics that whilst case management had been successful in cutting delay, it had a negative effect on costs.⁹¹ The introduction and amendment of various fee arrangements, such as conditional fee arrangements (CFAs), no win, no fee damages based agreements (DBAs), and qualified one-way cost shifting (QOCS) aimed at walking a thin line between reducing the amount of recoverable costs in the hopes of driving down costs overall and also ensuring that parties have enough options to be able to finance their claims or defences.

With regard to case management, the new costs management programme begins to operate from the outset of a case. Though under the pre-Jackson CPR the court had some costs management powers, the consensus amongst practitioners is that it is fair to say that these costs case management powers were infrequently used.⁹² Therefore, Jackson tried to bolster the judicial powers of case management.

Controlling costs in advance means one of two things: either a scheme of fixed costs or scale costs; or costs management.⁹³ In 2013, the costs management regime was introduced. The essential elements of costs management, which is provided by CPR 3.12ff, are that in multi-track cases the parties prepare and exchange litigation budgets at an early stage, the court states the extent to which those budgets are approved, and the court manages the case so that it proceeds within the approved budgets. This has the added advantage of trying to stem costs before they have been incurred. At the end of the litigation, the recoverable costs of the winning party are assessed in accordance with the approved budget.⁹⁴ The objective of costs management is to ensure that costs do not run out of control and that the parties can have an early indication of what the potential financial consequences of the process will be.⁹⁵

Another measure to prevent high and unpredictable costs is costs capping orders, which are now regulated by CPR 3.19ff. A costs capping order is an order limiting the amount of future costs which a party may recover pursuant to an order for costs subsequently made. The object of the order is to encourage parties to plan the case in advance so as to ensure that costs are proportionate. Costs capping orders are usually drafted to avoid an inflexible cap, while enabling the court to retain control over the amount of costs at any time.⁹⁶ It must be noted that the cap is a limit upon recoverable costs; it does not prohibit the capped party from incurring costs above that cap but

⁹¹ *ibid* ch 4 [3.28].

⁹² Van Tonder, 'Judicial Management of Costs Post-Jackson' (*New Square Chambers legal update*, April 2013) <www.newsquarechambers.co.uk/ImageLibrary/pb79_Legal_Update_-_April_2013.pdf>.

⁹³ Lord Justice Jackson, 'Fixing and funding the costs of civil litigation' (2015) 34 *Civil Justice Quarterly* 260, 260.

⁹⁴ Stuart Sime, *A Practical Approach to Civil Procedure* (OUP 2015) [16.01ff].

⁹⁵ Adrian Zuckerman (n 35) [27.393].

⁹⁶ Stuart Sime and Derek French (eds), *Blackstone's Civil Practice 2013* (OUP 2012) [66.53].

such excess costs will not be recoverable.⁹⁷ The discretion of the court in granting a costs capping order is not open ended. The applicant must show evidence that there is a real risk that without such an order costs will be disproportionately incurred, and that this risk may not be managed by conventional case management and a detailed assessment of costs.

Moreover, Jackson revisited the issue of proportionality. In 2002 the Court of Appeal decided in *Lownds v Home Office*⁹⁸ that proportionality should be assessed in a two-stage test. Firstly, before assessing the bill the court should ask whether the global costs claimed in the bill are proportionate by considering a variety of issues such as the conduct of the parties, the amount the claim was for at the outset, the importance of the matter to the parties, the complexity of the matter, the skill, specialised knowledge, and responsibility involved, the time spent on the case and so forth. If these are assessed to be proportionate then the court should assess the individual items on the bill using the standard method, looking at whether the costs are reasonable. Jackson recognised that this test was not useful as it institutionalised costs by measuring what is usual in the current climate of litigation.⁹⁹ He tried to address this issue by explicitly repealing the *Lownds* decision and introducing a new test for proportionality.¹⁰⁰ The principle of proportionality should prevail over any question of reasonableness or necessity, and if parties want to pursue litigation at a disproportionate cost they must do so at their own expense. This is now provided by CPR 44.3(2).

With regard to the reforms aiming to increase court management of costs, it is submitted that the success of these reforms rests almost entirely on the extent judges will utilise the management tools granted to them. These reforms have the potential to help by addressing costs before they are incurred. As a more general observation, however, it should be noted that whilst case management has had success in some areas, costs has never been one of those areas. Therefore, merely giving more teeth to a system that is not working could prove to be an inefficient way to address the problem.

An alternative solution put forward by some commentators is to adopt a system of fully fixed recoverable costs for all tracks. Currently, in the small claims track, the court will rarely award costs outside the fixed costs listed. In the fast track, a regime of fixed costs has been introduced but for personal injury cases only.¹⁰¹ As Booth asserted, since proportionality, transparency, and predictability are all lacking where costs are concerned and since the

⁹⁷Neil Andrews, *The Three Paths of Justice: Court Proceedings, Arbitration, and Mediation in England* (Springer Science & Business Media, 2011) 127.

⁹⁸[2002] EWCA Civ 365.

⁹⁹Lord Justice Jackson, *Review of Civil Litigation Costs: Final Report* (2009) ch 3 [4.5].

¹⁰⁰*ibid* [4.5]–[4.8].

¹⁰¹Fixed costs are laid down by CPR Part 45.

problem of spiralling costs flows from other deficiencies it could be argued that it is time for an expansion of the fixed costs regime.¹⁰² In fact, Lord Justice Jackson has recently suggested that the fixed costs regime should embrace all claims up to £250,000, giving the example of the Enterprise Court which in 2010 successfully adopted a scheme of scale costs and fixed costs for claims up to a value of £500,000.¹⁰³

One theme in much of the academic literature is that for reforms to effectively tackle the issue of disproportionate costs, they need to directly address the cause of those high costs. Professor Zuckerman makes a compelling argument that the real cause of the high costs does not lie in the uncontrolled nature of litigation as argued by Lords Woolf and Jackson. He argues that the root cause of high costs is not the complexity of the process or the lack of control, but the fact that the system still operates in such a way that gives economic incentives to lawyers, such as the hourly rate, to complicate the process.¹⁰⁴

Cyprus has a very different system of costs. All cases are placed on a scale in which the case has to be ranked for the purpose of costs.¹⁰⁵ The place on the scale is determined by the value of the claim as asserted by the parties in the pleadings or set by the court. The usual rule is that the successful litigant is entitled to recover costs based on the scale the case is placed in, though under Order 59 of the Rules the court retains ultimate discretion.¹⁰⁶

Costs are awarded following a set procedure. Firstly, the court must make a decision as to who should have to pay the costs of the trial. The court registrar then assesses the costs, looking at each item individually, after the successful litigant has prepared and submitted to the court a bill of costs. The registrar should allow all costs which appear to him to have been necessary or proper for the attainment of justice. Once deemed acceptable, the registrar will certify the amount of the costs the party is entitled to and the bill of costs can then be executed as if an order of the court.

All costs are specifically set out separately for all the different judicial activities that might be undertaken before the court. Parties are remunerated for every single action that has been taken, such as the preparation of writs,

¹⁰²Elsa Booth, 'The Cost of Civil Justice: Time for Review or Revolution?' (2011) 161 *New Law Journal*, 10.

¹⁰³Lord Justice Jackson, 'Fixing and funding the costs of civil litigation' (2015) 34 *Civil Justice Quarterly* 260, 261. Also notable is the fact the reforms have not been focused on the issue of front-loading. Jackson did address the problem in his final report (See Lord Justice Jackson, *Review of Civil Litigation Costs: Final Report* (2009) ch 35, paras [4.8]–[4.12]), but he proposed only modest reforms in this area, suggesting that whilst pre-action costs are in principle recoverable, he would recommend that in so far as a party has gone beyond the requirements of the protocol, the costs of those excessive labours shall not be recoverable.

¹⁰⁴AAS Zuckerman, 'Lord Woolf's Access to Justice: *plus ça change ...*' (1996) 59 *Modern Law Review* 773.

¹⁰⁵See Jean Albert, *Study on the Transparency of costs of civil judicial proceedings in the European Union – Country Report Cyprus* (European Commission Directorate-General for Justice, Freedom and Security, 2007) 13.

¹⁰⁶The costs are listed in detail in Appendix B of the Rules.

filing an appearance, the defence, filing interim applications, or filing a counterclaim. The specific amount of money for every activity is not the matter in question. Instead one of the main considerations is whether the parties have been unnecessarily complicating matters and including more elements in the case preparation than strictly needed. One would argue that the same incentive to complicate matters noted by Professor Zuckerman applies here as well.

There are many criticisms of costs in Cyprus. The system can get very expensive,¹⁰⁷ largely because of the complicated nature of proceedings and the length of time a case takes. In addition, there is no legal aid in Cyprus for civil cases unless they involve the infringement of a human right.¹⁰⁸ Moreover, contingency fee arrangements are not common in Cyprus, removing another option for indigent litigants.

Within the area of costs management, Germany is certainly perceived to be one of the most efficient models within the European Union. Additionally, their system is an interesting point of comparison as they work off a system of fixed costs that is somehow similar to the system in Cyprus and yet significantly more successful. It stands in stark contrast to the English model but it has nonetheless garnered strong support from leading English academics.¹⁰⁹

Both the court's and the lawyer's fees¹¹⁰ are set in a table of fixed costs, contingent on the amount in controversy.¹¹¹ In case the parties are not entirely successful in their claim or defence, the losing party will only have to cover a portion of the costs, including fees for expert and other witnesses.¹¹² Contingency fees are only allowed on the condition that the party would otherwise be deprived from access to justice due to their economic situation.¹¹³ The final decision on the allocation of costs is made by the judge and usually constitutes the last part of the judgment (*Kostengrundscheidung*).¹¹⁴ The final amount of the costs to be paid is set by a judicial officer and enforced by a payment order (*Kostenfestsetzungsbeschluss*).¹¹⁵

The strictly regulated cost system in Germany provides a high level of transparency and predictability of costs and litigation risks. Solving problems

¹⁰⁷Christos Clerides, 'Civil Procedure' (European University Cyprus, 29 November 2011) <www.clerideslegal.com/files/download/file75.pdf> accessed 14 November 2016 (in Greek).

¹⁰⁸Procedural Regulation (No 1) of 2003 on Legal Aid. Legal aid for civil cases in England and Wales has also been drastically cut by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and is now completely unavailable for many types of civil disputes as well as being unavailable as a rule in the small claims track.

¹⁰⁹AAS Zuckerman(n 104).

¹¹⁰The litigation costs in Germany are governed by the Court Charges Act (*Gerichtskostengesetz* (GKG)) (Germany) and the Attorneys Remuneration Act (*Rechtsanwaltsvergütungsgesetz* (RVG)) (Germany), which, apart from a few exceptions, are generally applied to all civil proceedings.

¹¹¹§§ 39–65 GKG; §§ 2–9 ZPO.

¹¹²§§ 91 (1), 92 (1) ZPO.

¹¹³§ 4a RVG.

¹¹⁴Burkhard Hess and Rudolf Huebner, 'Cost and Fee Allocation in Civil Procedure: National Report for Germany' (International Academy of Comparative Law, 18th World Congress Washington DC, July 2010) 9.

¹¹⁵§§ 103–107 ZPO.

by governing them through explicit rules 'is deeply rooted in Germany's legal culture and tradition'¹¹⁶ and this is probably one of the reasons for the success of their system.

Unlike Cyprus, in Germany, the courts do not charge activities undertaken before the court separately, but the costs for the trial altogether.¹¹⁷ The remuneration for attorneys is regulated in a very similar way. Instead of charging every single action, the lawyer is paid for defending the case as a whole. The attorneys receive a flat fee for carrying out the representation and an additional fee for attending court appointments as well as meetings outside the court, such as consultations with the client.¹¹⁸ Of course a German lawyer can also enter into a written agreement with his client for an hourly rate or a settled fee, however, if the fee in the agreement exceeds the regulated fee, the exceeding amount has to be paid by the client himself.

Consequently, incentives for lawyers to complicate the proceedings do not emerge in Germany, since the costs are fixed, predictable, and proportionate. Therefore, a flat fee system to work against this concomitant phenomenon should be considered as a potential option when reforming the legal system in Cyprus.

Moreover, it can be said that not only the way court fees are regulated but also the amount of the costs contributes to an efficient system. The court fees to bring a claim in Cyprus are relatively low and therefore parties are inclined to file weak claims before the court since they do not face a high financial risk. On the other hand, if the costs are too high, some people may not be able to afford a trial at all. The German costs system has managed to avoid unnecessary proceedings and to promote early settlement, but at the same time proceedings are still affordable. Germany has found the right balance between sustaining access to justice and making it not too easy to file a claim.

7. Conclusions

In 1994 the Master of the Rolls commissioned Lord Woolf to look into the problems with the existing procedure. In his interim and final Access to Justice Reports published in 1995 and 1996 respectively, Lord Woolf highlighted the main problems: the system was too complex, too adversarial, and entailed excessive and unpredictable cost and delay. All of these issues had wider consequences for access to justice. Costs were prohibitive, the delays left people in limbo and added to the expense, people could not understand the system and therefore could not work their way through it—at least not without

¹¹⁶Burkhard Hess and Rudolf Huebner (n 114) 9.

¹¹⁷Annex 1 to § 3(2) GKG.

¹¹⁸Annex 1 to § 2(2) RVG.

paying huge amounts for lawyers—, and the adversarial nature of the proceedings only exacerbated these factors.

Cyprus now faces similar problems. Thus, the first conclusion is that Cyprus needs to reform its civil justice system. Despite the recent amendments to the Rules, it is argued that the system is still unduly complicated and failing. The reforms must cover the whole spectrum of litigation, from the pre-action stage through all the steps once a claim has been made. The encompassing nature of the reforms must be established by introducing an overriding objective in the very first section of the rules, to be complied with at all stages of the civil justice system. This will mark a decisive effort to affecting a shift in the culture surrounding civil litigation in Cyprus. It is not enough that some individual rules change. The problems are so endemic that changes to a few individual rules could not be sufficient and therefore the solution needs to be something more drastic. There is therefore a pressing need for *extensive* reform of the *entire* Civil Procedure Rules in Cyprus.

But the crucial question remains *how* to reform the system. The key to this question firstly lies in clearly articulating the overall aims of the system and understanding how the culture of litigation influences all aspects of civil justice. The guiding principles of the Cypriot civil justice, which could be the just adjudication of disputes, the parties being on an equal footing, and dealing with cases in a proportionate way in terms of time and costs, must be set in the outset of the civil procedure rules. Only once those 'big picture' issues have been decided upon can we begin to look to individual aspects of the system and see what changes have to be made.

Of course these are fundamentally questions for Cyprus to answer and it should be remembered that, as explained above, Cyprus is a unique jurisdiction in many ways given its mixed civil and common law aspects. However, comparative research is very important and useful when it comes to these questions. The English system is the obvious place to look given the huge similarities between pre-Woolf English civil procedure and the system operating in Cyprus, the drastic nature of the reforms that have since been enacted in England and Wales, and the profuse and highly useful commentary on civil procedure available there. This is not, of course, to say that the English reforms have been entirely successful.

It has been argued that the most important and successful aspect of the English reforms was Lord Woolf's recognition that the culture of litigation had to change. When considering reforms, Cyprus could benefit from recognising this and pursue a more settlement minded culture.

The English reforms were enacted in the late 1990s when the European Union played a less significant role in matters of justice and countries could be less concerned by the global compatibility of their systems.¹¹⁹ And yet

¹¹⁹While this work is being drafted, the United Kingdom is still a Member State of the European Union.

even at that time Lord Woolf was influenced by civil jurisdictions in mainland Europe and turned to them for inspiration.¹²⁰ This crossover is both inevitable, given the increased role of the European Union and the wider trends in globalisation, as well as desirable. There is so much that Cyprus can learn from looking beyond its Anglo-Saxon tradition. In reforming its procedural rules, Cyprus must take into account both the principles of the Union as well as those of individual Member States such as Germany that has succeeded in reducing judicial delays and costs.

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Notes on contributors

The author is a DPhil candidate at the University of Oxford.

¹²⁰This fact was noted by Lord Woolf, himself:

[w]hile the CPR are designed to provide a comprehensive code of procedure for the English and Welsh courts, they were heavily influenced by the practices in jurisdictions on the mainland of Europe. They have been described as being positioned mid-channel.

See Lord Woolf, 'The Tides of Change' in Basil S Markesinis (ed), *The British Contribution to the Europe of the Twenty-First Century* (Hart Publishing 2002) 10.