

## **Submissions of the Office of the Revenue Commissioners to the Review of the Administration of Civil Justice**

Revenue welcomes the review and makes the following Observations:

**(a) Improving procedures and practices and removal of obsolete, unnecessary or over complex rules of procedure.**

It is Revenue's experience that many delays and increases in costs are caused not by the procedures as set out in the Rules but by the management of the lists. There are incidences of matters being listed and parties being required to attend merely for the purpose of having the matter transferred to another list for the purpose of having a date fixed for a hearing. The parties then have to attend at that list to obtain a hearing date. It is appreciated that there has been an effort to reduce the burden on judges in relation to the listing of cases and that some applications can be made to the registrar but it is submitted that greater efficiencies could be achieved if applications for hearing dates could be made electronically to the relevant court office with only disputed applications being made to the Court.

In the Circuit Court the practise as to the listing of cases varies from circuit to circuit leading to confusion. It is submitted that the practice should be standardised in all circuits and applications for hearing dates should be made electronically to the relevant court office.

It has been the experience of Revenue that notwithstanding the fact that the Court has the power to strike out proceedings for want of prosecution or failure to comply with Court orders the Courts are very reluctant to do so. This reluctance reduces the sanctions against a party who fails to proceed with a case within a reasonable time frame. It is submitted that clearer sanctions should be introduced and enforced for failure to proceed and/or comply with Court orders in order to encourage parties to deal with cases expeditiously.

**(b) Reviewing the law of discovery.**

Revenue notes that, particularly in more complex cases, discovery forms a significant part of the costs of proceedings. It is also is a significant cause of delay in proceedings. There is no clear evidence that wide-ranging discovery leads to a more just outcome for either of the parties. Notwithstanding the introduction of the requirement to identify in writing the precise categories of documents sought and the reason for the same orders for discovery continue to be wide in scope. Discovery continues to be a significant burden on parties to litigation to the extent that it may be a deterrent to less well off litigants and a weapon used by better off litigants. The burden has increased over the years given the number of media which must be searched to ascertain whether there is any discoverable material.

It is submitted that the Rules should be altered to specifically narrow the scope of discovery while providing clear and meaningful sanctions for failure to comply.

**(c) Encouraging alternative methods of dispute resolution.**

Given that the Mediation Act 2017 and the associated Rules of Court have only just commenced it is too early to say whether they will have the desired effect of encouraging parties to resolve disputes without resort to litigation. The new Act creates the climate for a change in behaviour by litigants and practitioners. It is submitted that in awarding costs a Court should take into account the failure of a party to engage in mediation when invited to do so by the Court.

It is considered that mediation may be particularly helpful where one of the parties is a litigant in person. However, such litigants will not have received the advice and information in relation to mediation which a legal practitioner is obliged to give a client under the 2017 Act. It is submitted that in all cases where a party is a litigant in person the Court should advise the parties to consider mediation as a means of resolving the dispute.

**(d) Reviewing the use of electronic communications including e-litigation and possibilities for making court documents (including submissions and proceedings) available or accessible on the internet.**

Revenue is committed to conducting business through electronic means as far as possible. It is submitted that in introducing any electronic platform great care should be taken to ensure its compatibility with the systems of legal practitioners. The Courts Service will also need to undertake an information and education campaign to ensure that practitioners are sufficiently e-literate to use the system.

**(e) Achieving more effective and less costly outcomes for court users, particularly vulnerable court users.**

It is submitted that a reduction in the burden of discovery and the encouragement of mediation would greatly improve the cost effectiveness of all users but particularly vulnerable court users.