

Collection Manual

Guidelines to Using The Court Process To Pursue Tax Liabilities

Reviewed: May 2010

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Part 1 Guidelines to using the Court Process to pursue Tax Liabilities

1. Summary

- 1.1 The following is a summary of the main points covered in this guideline which will assist staff in the use of the Court process to secure payment of tax liabilities: -
- 1.2 Solicitor referral is the process by which Revenue commences enforcement action through the Courts. The first step in the process is the referral of a liability to the Solicitor for legal action i.e. Solicitor referral via the ICM System. The first legal option available to Revenue will be to obtain a Court judgment that an amount is due to Revenue by a taxpayer. Arising from this, Revenue can pursue further legal action such as:
- Judgment Mortgage
 - Forced Sale
 - Instalment and Committal Orders,
 - Bankruptcy for individuals
 - Liquidations of companies
- 1.3 Revenue has a contract with six firms of external solicitors to provide the legal services associated with debt collection and the enforcement process. With the exception of liquidation work, which is carried out by the Revenue Solicitor's Office, the legal services associated with Revenue debt collection will be performed by one of these firms of solicitors. These firms have a high level of experience in this area of the law and their personnel will be willing to discuss case options with caseworkers.

All ICM Enforcement Procedures are set out in **Part 2of this O.I.**

It should be noted that when a case is referred to Solicitor the taxpayer is liable for all the costs and fees including those associated with Court proceedings.

2 Introduction

- 2.1 A key aspect of successful case working is early identification of the action most likely to impact on the taxpayer and thus secure payment of the tax debt. The caseworker will initiate appropriate enforcement action when a final demand/estimate fails to result in either full payment of the liabilities or a satisfactory phased payment agreement.
- 2.2 At this stage there are three options available, namely, attachment, sheriff and solicitor. The caseworker will determine the most appropriate enforcement option having regard to all the relevant circumstances of each case, including the previous compliance history.
- 2.3 This Manual outlines all the various possibilities for pursuit action through the Courts. The process is initiated by securing a Court judgment. If this action is not sufficient to secure payment of the tax debt the caseworker will then decide whether further Court action is appropriate.

3 Scope

- 3.1 These guidelines are for all Revenue staff engaged in debt management case working.

4 External Solicitors

- 4.1 Details of the six firms of solicitors who carry out the legal services associated with Revenue debt collection are available as follows:
- [Appendix 1](#) – lists the individual firms and relevant GCD areas;
 - [Appendix 2](#) - provides the solicitor contact details.

5 Considerations prior to a decision to refer to a Solicitor

- 5.1 In general, solicitor enforcement is suitable when attachment and sheriff referral are not appropriate or have previously proved ineffective.
- 5.2 In considering whether it is appropriate to refer liability for solicitor enforcement, caseworkers should have regard to the particular circumstances of each case. In general small one-off liabilities (less than €1,000) should not be referred to solicitor, especially where the liability is in respect of interest only. Caseworkers should consult with their team leader/manager in any particular case where doubt arises.
- 5.3 Solicitor referral can be a very effective means of collection and in the majority of cases does not involve a lengthy legal process. Almost 85% of the tax collected on Solicitor cases is as a result of the solicitor demand letter and prior to the enforcement of judgment stage. Solicitors are focused on getting payment or quickly moving to obtain a Judgment. Registration of judgment will usually have a very serious impact on the financial well-being of a taxpayer by impairing his/her credit rating and therefore, if at all possible, most businesses will try to pay the debt prior to this stage. Where payment is not made at this stage the caseworker should consider the various enforcement of judgment options set out in these guidelines. Alternative enforcement options, e.g. liquidation proceedings in company cases, should also be considered, in consultation with the solicitors and taking account of data available from various sources, i.e. IBI, Land Registry, Customer Notes etc.
- 5.4 In most instances, once it is decided that the liability is to be pursued through the Courts, all outstanding liabilities for that taxpayer should be included in the Solicitor referral. However, in order to obtain a better result for Revenue, there may be occasions when it would be more appropriate to refer part of the liabilities to Solicitor and use an alternative enforcement option, e.g. attachment, to pursue the balance.

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[...]

- 5.5 It should also be borne in mind that apart from the various Court actions, there are other possibilities to help secure the tax debt, such as withdrawing a C2, withholding repayments or refusing to issue a tax clearance certificate. Prosecution for non-submission of the returns can also be effective in some cases particularly where the debt is based on estimates.

6. Solicitor Referral to obtain Court Judgment

- 6.1 The first step in the Court process is the referral of the liability to the solicitor in order to obtain a Court judgment. Once a liability has been referred to the solicitors, enquiries from taxpayers in relation to that liability should be directed to the solicitors.

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- 6.2 It should be noted that the taxpayer will be liable for all the costs and fees that arise when a case has been referred to the Solicitor and Court proceedings have been initiated.
- 6.3 There are several possible developments that can result from a solicitor referral. **Appendix 3** covers AIM caseworking outcomes. **Appendix 4** lists the various stages, that can follow on from solicitor referral. It should be noted that it is not possible to amend upwards the amounts on a solicitor referral. In cases where liabilities have increased, e.g. returns replacing estimates, it may be possible to withdraw the original referral and issue a new referral if the solicitor has not commenced proceedings. This should only be done after consultation and agreement with the solicitor. Any change in the liability for the periods referred to Solicitor will be notified to the Solicitor on-line. **Section 3 in Part 2** of this document details the procedure for amending a referral to reduce the liability.
- 6.5 Where it is not appropriate to withdraw an original referral and issue a new referral to reflect increased liabilities the caseworker has the option of issuing a new referral for the additional amounts (excluding any amounts on original referral). The extra liabilities are referred to the solicitor using the Manual Referral facility. **Section 4 in Part 2** of this document details the procedures for issuing a manual referral.

7. Deadlines

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8. Additional liability

- 8.1 Where an additional liability arises following a solicitor referral, the caseworker must check the stage of the earlier referral on AIM. Depending on the current status of the original referral, the various options are explained in Part 2 - Procedures for using the Court Process. The additional liability should only be referred if the caseworker is satisfied that this is the most appropriate enforcement option, having regard to the circumstances of the case and the progress being made in relation to the earlier referral.

9. Obtaining Judgment

- 9.1 A Court judgment is a legal determination that an amount is due by a judgment debtor to a judgment creditor. In the case of Revenue, it is a determination by the Court that a taxpayer owes an amount (tax and/or interest) to Revenue.
- 9.2 The majority of Court judgments can be obtained in two to three months if the liability is not contested. If the taxpayer disputes the liability a full Court hearing may be required and this will inevitably take longer.
- 9.3 The purpose of seeking a Court judgment is to put pressure on the taxpayer to pay the debt. In some cases, the judgment or even the threat of a judgment will be sufficient to achieve the desired outcome.

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- 9.4 In other cases, while it may not be sufficient to induce payment, the judgment will be necessary in order to proceed to stronger enforcement action. Insofar as is possible, at the outset, caseworkers should have a strategic plan of the further action to be taken if the judgment does not obtain the desired result. This should be based on all the information available and may require consultation with the Team Leader/Manager.

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10. Publication of the Judgment

- 10.1 Where obtaining a judgment has not achieved the desired result, the caseworker, in consultation with the solicitor, will decide on the next course of action.
- 10.2 As a first step, it is usually agreed that the judgment should be registered and published. Once it has been confirmed that no payment towards the judgment has been received, the solicitor should be asked to arrange for registration and publication of the judgment.

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- 10.3 Publication/Registration of the judgment has the effect of putting the details of the debt into the public domain, which can cause adverse publicity for the individual. Stubbs Gazette and Experian All Ireland Gazette search the Court records and publish the list of Judgments registered in their respective publications.

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11. Collector General's Dedicated Enforcement Unit

The role of the Dedicated Enforcement Unit (DEU) **formerly known as Specialised Enforcement Unit** is two fold

- A. To use exemplary enforcement measures to pursue and conclude collection activity in cases of serious debt and non-compliance where standard enforcement collection measures have proved unsuccessful.**

The main exemplary enforcement measures are: -

- Bankruptcy
- Forced sale
- Committal Order /Committal to Prison

Cases are acquired through referrals from Debt Management Units and Revenue Regions. Debt Management HEO's should refer cases to DEU where any of above enforcement options is considered suitable.

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B. Prosecution Programme for VAT 3 and P35 and Imposition of Penalties

Dedicated Enforcement Unit initiates criminal prosecution proceedings in cases to deal with the non-filing of VAT 3 and P35 returns. Prosecution is contingent on evidence that there is serious non-compliance and/or a definite expectation that a substantial liability will be quantified on receipt of the relevant returns. DEU also imposes civil penalties under Section 987 of TCA 1997. Click on the following link: **[Non-Filing Of Returns - Prosecution And Penalty Programmes](#)**.

12. Commonality Checks

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13 Judgment Mortgage/Forced Sale

- 13.1 Once a Court judgment has been obtained it is possible to register the judgment as a mortgage against the taxpayer's property. If the property is subsequently disposed of, either in the normal course or as a result of a forced sale, the Revenue debt must be paid out of the net proceeds of sale (net proceeds of sale is the amount realised for the property less the costs of the sale and any earlier mortgages or judgments registered against the property).
- 13.2 Registering a judgment mortgage against the taxpayer's property is a useful step in putting pressure on the taxpayer for payment of the tax debt. However, in many instances the judgment mortgage will not become immediately relevant unless the taxpayer wishes to dispose of or re-mortgage the property. Once a judgment mortgage is registered on a taxpayer's property, consideration should be given to seeking Court approval for permission to sell the property without the taxpayer's consent. This is called a forced sale or a mortgage suite.

14 Considerations prior to proceeding to judgment mortgage

- 14.1 The key aspect in deciding whether to obtain a Judgment Mortgage is to identify a suitable property owned by the Taxpayer. It is important to remember that registering a judgment mortgage will affect the title to a property so care needs to be taken to ensure that the property identified is registered to the taxpayer in question. Pay particular attention if the taxpayer's name is a common one or if the taxpayer has a son/daughter with the same name. If in doubt about the ownership issue discuss with the solicitors. It is also necessary to check prior to judgment stage if there are other charges on the property.

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15 Discharging a Judgment Mortgage

- 15.1 Where the tax debt is paid after a judgment mortgage has been registered against the taxpayer's property, arrangements must be made for discharge of the judgment mortgage.
- 15.2 In some instances the taxpayer will propose that the tax debt be paid out of the proceeds of the sale of the property and request that Revenue lift the judgment mortgage in advance so that a sale can proceed. In these instances the judgment mortgage can be removed provided a mechanism is put in place to ensure that Revenue will get paid from the proceeds of sale. The usual mechanism is a **letter of unconditional and irrevocable undertaking** from the taxpayer's solicitor confirming that **Revenue will be paid from the proceeds of the sale of the property within an agreed timeframe**. As with any undertaking, the caseworker needs to ensure that the arrangement is watertight and approval to accept the undertaking must be obtained at case manager level. If in doubt about the wording of the undertaking, legal advice

should be sought (usually from the solicitors dealing with the case for Revenue, or otherwise, from the Revenue Solicitor's Office).

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15.3 If Revenue decides to accept a Letter of Undertaking and the CG signs the necessary Satisfaction Papers, it would in effect be a legal acknowledgement that the amounts due on foot of the Judgments are no longer outstanding. This could lead to a potentially difficult situation if the taxpayer was subsequently unable to raise finance by selling the property. Therefore it is extremely important to ensure that the Letter of Undertaking is in line with Revenue Procedures.

16 Instalment Order

16.1 Once a court judgment has been obtained, Revenue can apply to the Court seeking an examination of the taxpayer's means and an Instalment Order for payment of the tax debt based on the taxpayer's ability to pay.

16.2 This procedure is relatively inexpensive as proceedings are taken in the local District Court where the debtor normally resides.

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17 Committal Order

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17.3 If a taxpayer fails to honour an Instalment Order, Revenue will need to be in a position to prove that non-compliance with the Order is due to wilful refusal or culpable neglect to ensure a Committal Order Hearing. The court hearing will consist of Revenue testifying as to non-compliance with the original Instalment Order by the taxpayer.

17.4 Revenue's evidence proving wilful refusal or culpable neglect will need to be watertight as otherwise the Court may treat the Committal proceedings as Variation proceedings, possibly resulting in a reduction in the amounts payable under the initial Instalment Order. However, in the absence of any reasonable explanation by the taxpayer, the Court may grant a Committal Order for imprisonment if the judge is satisfied that the creditor (Revenue) has established that:

- The failure to pay the sum in respect of which the debtor has made a default is not due to mere inability to pay, but is due to their wilful refusal or culpable neglect and
- The debtor has no goods that could be taken in execution under any process of the Court by which the Judgment Order or Decree for the debt was given.

- 17.5 Once a Committal Order has been granted by the Court, Revenue Solicitors, on the instruction of Revenue, will arrange for the issue of an arrest warrant to the Gardaí with the intention of committing the taxpayer to prison. In these circumstances, imprisonment of the debtor is for a period not exceeding 3 months.

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18 Bankruptcy

- 18.1 Where a person is not in a financial position to settle their debts, a creditor may apply to the Court to have the person adjudged a bankrupt under the 1988 Bankruptcy Act. As a precursor to seeking bankruptcy it is necessary to have obtained a Court judgment for the outstanding liability and to have the judgment executed.
- 18.2 Once a person is adjudged a bankrupt, the person's assets, (with certain exceptions such as the articles of clothing, furniture and tools of the individual's trade), are taken over by a Court appointed official (Official Assignee) and used to pay off creditors in a predetermined order.

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19 Arrangements Under Control of Court

- 19.1 Section 87 of the Bankruptcy Act 1988 allows a person experiencing financial difficulties to present a petition to the Court setting out the reason(s) for their inability to pay their debts and requesting that their property be protected until further Order from any other action or other process.
- 19.2 When this protection is granted, the caseworker will usually be informed by the agent or the taxpayer and must immediately cease collection of any outstanding liabilities. At this stage, Insolvency and Management Services Unit of the Collector General's Division will take over the case.

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- 19.3 Having granted the Protection Order, the Court may renew the protection from time to time as it thinks fit.
- 19.4 On granting an Order for Protection, the Court directs the debtor to call a preliminary meeting of his/her creditors to a private sitting for the purpose of considering the debtor's proposal for dealing with his/her debts.

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20 Conveyancing Act 1634

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21 Liquidation

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[...]

Part 2 - Procedures for using the Court Process to pursue Tax Liabilities

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Appendices

Appendix 1 Solicitor Schedule

Referrals to Solicitor are made according to the following schedule. In determining the appropriate firm for each referral, the relevant address should be the registered office of a company or the postal address of an individual or partnership.

The relevant Solicitor for a case will be selected based on the GCD.

FIRM	ALLOCATION
Holmes O'Malley Sexton	GCD 5 Fingal GCD 21 Galway County GCD 40 Tipperary GCD 63 Limerick GCD 65 Kerry GCD 66 South West 1 GCD 67 South West 2 CGD 80-85 80-Construction Property Mining Energy 81-Drink Tobacco and Multiples 82-Food Industry 83-Financial Services (Banking) 84-Financial Services (Insurance) 85-Financial Services (Pension Schemes)
Ivor Fitzpatrick & Co.	GCD 2 Dublin South City GCD 25 Westmeath & Offaly GCD 45 Kildare GCD 61 North West cork & West Cork City
Lavelle Coleman (New Firm of Solicitors)	GCD 4 South Dublin GCD 23 Sligo, Leitrim & Longford GCD 24 Donegal GCD 26 Louth GCD 27 Cavan & Monaghan GCD 46 Meath
Mason Hayes & Curran	GCD 3 Dublin North City GCD 41 Kilkenny, Carlow & Laois GCD 43 Wexford GCD 44 Wicklow GCD 64 Clare
Matheson Ormsby Prentice	GCD 1 Dublin City Centre & Foreign GCD 20 Galway City & Roscommon GCD 22 Mayo GCD 42 Waterford

Pierse & Fitzgibbon	GCD 6 Dun Laoghaire/Rathdown GCD 60 Cork East & North Cork City GCD 62 Cork South West GCD 86-90 86-ICT 87-High Wealth Individuals 88-Oil Industry & Motor Distribution 89-Services Media & Leisure 90-Healthcare & General Manufacturing
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Appendix 2 Solicitor Contact List

<p>Holmes O'Malley Sexton. Bishopsgate, Henry Street Limerick. P.O. Box 146</p> <p>Telephone 061-313222 Fax: 061-310414 E-Mail – jacci.fox@homs.ie</p> <p>Contact: Jacci Fox</p>	<p>Mason Hayes & Curran. South Bank House, Barrow Street, Dublin 4</p> <p>Telephone 01-6145000 Fax: 01-6145001 E-Mail – mkehoe@mhc.ie</p> <p>Contact: Marianne Kehoe</p>
<p>Ivor Fitzpatrick & Co. 44-45 St. Stephens Green Dublin 2.</p> <p>Telephone 01-6787000 Fax: 01-6785424 E-Mail: c.farrell@ivorfitzpatrick.ie Contact: Colm Farrell</p>	<p>Matheson Ormsby Prentice. 70 Sir John Rogerson's Quay Dublin 2.</p> <p>Telephone 01-2322000 Fax: 01-2323333 E-Mail – oonagh.hartley@mop.ie caroline.murphy@mop.ie david.walsh@mop.ie aoife.murphy@mop.ie</p> <p>Contact: Oonagh Hartley, - 01-2322163 Caroline Murphy – 01-2322165 David Walsh – 01-2322167 Aoife Murphy - 01-7751924</p>
<p>Lavelle Coleman Solicitors 20 On Hatch Lower Hatch Street Dublin 2</p> <p>Telephone: 01-6445800 Fax: 01-6614581 E-Mail: www.lavellecoleman.ie</p> <p>Contact: Jennifer Weafer: 01-6445830 E-Mail jweafer@lavellecoleman.ie</p> <p>Contact Deborah Ray 01-6445818 E-Mail dray@lavellecoleman.ie</p> <p>Dealing with caseworkers and invoices for the contested matters –</p> <p>Contact: Grainne Dever 01-6445815 E-Mail gdever@lavellecoleman.ie</p>	<p>Pierse & Fitzgibbon. Market Street, Listowel, Co. Kerry.</p> <p>Telephone 068-50900 Fax 068-21692</p> <p>E-Mail – anna@pierfitz.ie yvonne@pierfitz.ie joanne@pierfitz.ie martina@pierfitz.ie eileen@pierfitz.ie</p> <p>Contact: Anna Lynch – 068-50917 Yvonne Young - 068-50912 Joanne O'Connell – 068-50935 Eileen Stack - 068-50945</p> <p>Eileen Stack is Martina Larkin's Secretary – Martina deals with complicated Debt cases.</p>

George V. Maloney & Co.
6 Farnham Street,
Cavan,
Co. Cavan.

Telephone 049-4331444
Fax 049-4332237
E-Mail – dympna@gvmaloney.ie

Contact: Dympna Tierney

Appendix 3 AIM Outcomes

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Appendix 4 Referral Stages

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Appendix 5 Checklist for Judgment Mortgage Affidavits, Satisfaction Pieces and Discharges

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Appendix 6 Judgment Mortgage Affidavit

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Appendix 7 Electronic Access Service

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