

COVID – 19 GUIDANCE MASTERS' COURTS

BANKRUPTCY AND COMPANIES

4 FEBRUARY 2021

During the period of the current COVID-19 outbreak, the work of the **Bankruptcy and Companies Master** will continue in accordance with the arrangements and procedures set out below.

This guidance replaces the guidance for Bankruptcy and Companies Masters Courts that was published on 29 January 2021.

KEY CHANGES TO PREVIOUS GUIDANCE

Update to paragraph 10: Supervisors' Petitions and Administrators' Petitions for Winding Up – remote hearings.

NEW BUSINESS

Ordinary Applications, Originating Applications and Applications to Set Aside Statutory Demands

1. As far as it is reasonably practicable to do so, and subject to staff availability, new applications will be allocated a return date upon filing and progressed within normal timescales.
2. The applications will, in general, be considered in the first instance on paper and standard directions given where appropriate. **Parties must not attend Court unless directed to do so.**
3. Parties should collaboratively (where possible) complete and file Form BANKCI1 which is to be filed by secure email to bankruptcyoffice@courtsni.gov.uk at **least 5 days** before the court date. The subject line of the email should state **"Bankruptcy and Companies Master's Court [Administrative] for [insert date]"**. The form should reflect any agreed directions, or submissions in relation to directions not agreed and, if relevant, confirming if and how service has been effected. The form should also be submitted in advance of every review within the timeline prescribed and using the same subject line.
4. The applicant will be responsible for including a copy of this guidance when serving any application on a private individual, together with advice as to how to access online the latest notices and directions from the Office of the Lord Chief Justice in relation to the coronavirus pandemic.

CONTESTED MATTERS

Disposal of Contested applications – on the papers

5. Subject to consideration of any objection by the parties, the Master will continue to deal with straightforward contested applications such as Applications to Set Aside Statutory Demands, Applications for Bankruptcy Restrictions Orders, Applications for Income Payments Orders and similar applications, on the papers. She will also, where appropriate, at the request of or with the agreement of the parties, deal with all or part of more complex applications on the papers. The directions as to the filing of electronic bundles (referred to at Para 8 below) will apply to such applications.

6. In the more complex applications, bundles must include detailed written submissions together with bundles of authorities (subject to any direction by the Master as to the filing of hard copy bundles). In the more straightforward applications, the parties may file short written submissions (authorities will generally not be required). For the purpose of taxation of costs, applications dealt with on the papers, which include counsels' written submissions, will be certified for counsel.

Disposal of Contested applications – Hearing required

7. In the event that the parties cannot agree a position and there is a need for the matter to be resolved by the Court, the Master will (if circumstances and/or IT arrangements permit) facilitate a hearing via one of the following options:

- Remote Hearing (using Sightlink or WebEx)
- Live Hearing
- Hybrid Hearing (partly remote /partly live)
- Telephone Conference.

8. Where the Master determines that a contested application will be dealt with via a remote, live or hybrid hearing or a telephone conference, the party who issued the application will be responsible for providing the Court with case management directions and a complete electronic trial bundle. The electronic document must be numbered in ascending order throughout. Pagination should begin with the first page of the first document and should be continued throughout the entire series of documents. The index page must be hyperlinked to the pages or documents to which it refers.

9. Parties should note that any live hearings will be strictly timetabled and capacity within the Master's Chambers and the Masters Courtroom will be restricted to ensure compliance with social distancing requirements and PHA advice. Parties will be required to carefully complete and submit form HR1 before the Court will list a contested matter.

SUPERVISORS' PETITIONS AND ADMINISTRATORS' PETITIONS FOR WINDING UP

10. Following consultation with the Official Receiver, it was agreed that these petitions could be filed as new business from 1st October 2020. The presentation of the petition must be accompanied by a completed HR1 form which should be emailed to bankruptcyoffice@courtsni.gov.uk. The subject line of the email should state **"Bankruptcy and Companies Master: request for hearing"**. Upon receipt of the form and petition, the Master will allocate a date and time for a remote hearing in the case of a winding up petition or a remote review in the case of a bankruptcy petition. Where a petition is listed for review only, no further action should be taken on it until the Master has given directions to do so.

EX PARTE PETITIONS UNDER THE ADMINISTRATION OF INSOLVENT ESTATES OF DECEASED PERSONS ORDER (NORTHERN IRELAND) 1991

11. These continue to be dealt with on the papers unless the Master decides otherwise.

PUBLIC AND PRIVATE EXAMINATIONS

12. Applications for Public and Private Examinations will be listed either remotely or for a face to face hearing subject to the availability of a suitable courtroom with Covid-19 precautions.

CONTINUITY ARRANGEMENTS FOR EXISTING BUSINESS

Debtors' petitions

13. These continue to be dealt with on the papers unless the court directs otherwise.

Directors' petitions

14. These continue to be dealt with on the papers unless the court directs otherwise.

Companies' matters

15. **Applications for extension of time to register company charges** continue to be listed for paper determination by the Court. There will be **no appearances** by any party. The Court will order a hearing only where, on considering the application on paper, it considers it necessary to do so. The requirement to produce the original charge is waived in this period and evidence of solvency will be accepted by secure email to bankruptcyoffice@courtsni.gov.uk. The subject line of the email should state **"Bankruptcy and Companies Master's Court [Administrative] for [insert date]"**.

16. **Applications for the restoration of companies to the register** continue to be listed for a paper determination by the Court. There will be **no appearances**. Practitioners will, however, have to include evidence in the application of any prior insolvency of the Company for the purpose of the paper determination. The Court will order a hearing only where, on considering the application on paper, it considers it necessary to do so.

17. **Applications for rectification of the companies register and to extend the term of an administration** will, for the time being, continue to be listed for a paper determination by the Court. There will be **no appearances**. The Court will order a hearing only where, on considering the application on paper, it considers it necessary to do so.

GENERAL

Public Health Guidance

18. Public Health guidance has limited the number of people in Master Kelly's courtroom to a maximum of 5 people. This number includes the Master and the parties. Time and seating allocations must be strictly adhered to. Consultation space may not be available within the Royal Courts of Justice and this must be borne in mind and alternative consultation venues considered.

Forms

19. Practitioners will note the introduction and widespread use of forms. Please note that this is necessary as new ways of conducting court business safely are implemented and court users adapt to them. The forms provide a consistent and structured approach to hearings and reviews, and practitioners should, as far as possible, collaboratively complete and submit them in accordance with the specified timelines.

Case Tracking

20. It is the solicitor's responsibility to track the progress of their case and view court orders via the ICOS Case Tracking Online (ICTO) system. However, it is clear that some practitioners are failing to do so or, alternatively, it is assumed that no order was made if it does not show on ICOS on the same day as the case. It is important to note that due to pressure on staff and resources some orders may not necessarily show on the system on the date they are made. It is therefore essential that parties continue to check for orders beyond that date. Special attention should also be paid to the terms of orders made as some contain a provision that the order is to be served by one party on another

Final Orders

21. Final orders will only be made where the Master is satisfied that either the parties have agreed such an order, or that it is right and just in all the circumstances to do so. If the Master has any concerns whatsoever about prejudice and the fairness of the process she will simply adjourn the case. Solicitors should check ICOS for the status of their case or contact the Bankruptcy Office bankruptcyoffice@courtsni.gov.uk

Affidavits

22. Proceedings should be grounded on sworn affidavits unless the Master directs otherwise. However, the Official Receiver and Insolvency Practitioners may where appropriate file a report instead of an affidavit under Rule 7.12 of the Insolvency Rules (Northern Ireland) 1991 unless the Court orders otherwise. Any report so filed shall be treated as if it were an affidavit. For business continuity purposes, where a grounding affidavit is not currently possible in Directors Disqualification proceedings, either a statement of truth or a report may ground the application and shall be treated as if it were an affidavit.

Urgent business

23. The Master will continue to expedite the listing of urgent business where genuine urgency is demonstrated.

Reactivation of Creditors' bankruptcy and winding up petitions adjourned from March 2020 to the end of the Trinity Term

24. In view of the unprecedented challenges arising from the current severe circumstances surrounding the pandemic, general guidance will not issue at this time. However, it has been agreed with the Official Receiver that of these petitions, where a debtor/company wishes to submit to a bankruptcy or winding up order, the petition may be listed for a remote hearing if the Court is provided with the following:

- A fully completed and sworn statement of affairs;
- A written undertaking signed by the individual/ director(s) to co-operate with the Official Receiver (including remotely); and
- Full contact details to include an email address.

25. Parties wishing to reactivate a petition on a consent basis must collaboratively complete and lodge a BANK CI1 form with all of the above attached. If the Court is satisfied as to the information provided it will then allocate a date and time for a remote hearing of the petition. BOTH parties must appear at the remote hearing.

26. Petitions continue to be accepted into the daily list for the purpose of dismissal or withdrawal using the BANK CI 1 form. It is recommended that all practitioners with petitions currently standing adjourned undertake a review of those cases and endeavour to engage with the parties involved to see if resolution is possible. Every effort should be made to do this rather than waiting for guidance to issue. Any failure to do so will be taken into account by the Court in any future hearing.

Creditors' petitions as new business

27. Due to the unprecedented challenges arising from the pandemic, the restriction on the presentation of new creditors' petitions continues and is unlikely to be removed in the short term.

28. It is a matter of concern that despite the clear and consistent guidance about this restriction, practitioners continue to serve statutory demands. Practitioners are reminded that a statutory demand which cannot lead to a petition is nugatory and misleading. Practitioners are advised to be mindful of the statutory wording of the demand and the position regarding the continuing restriction. They are also advised not to expect that statutory demands served in these circumstances, and during this time, will be covered by future guidance removing that restriction. Practitioners are also reminded of the following legal developments of which clients need to be made aware:

(i) The Corporate Insolvency and Governance Act 2020

The statutory restriction on the presentation of winding up petitions has been extended until the end of March 2021 and may be extended further. The Act also provides that statutory demands served after 1st March 2020 are null and void.

(ii) The Finance Act 2020

The Act commenced on 1st December 2020 and re-introduced the concept of Crown Preference. This had previously been abolished by the Enterprise Act 2002. The re-introduction of Crown Preference will likely impact on asset distribution in insolvency so it is essential that clients are properly advised.

(iii) Brexit

The exit of the UK from the EU on 31st December 2020 may require changes to the insolvency legislation which affect future proceedings and standard procedure.

29. Practitioners are again reminded that the Insolvency Court is meant to be a court of last resort. Insolvency processes, being neither litigation nor debt collection proceedings, ought not to be used for debt recovery purposes. They are further reminded that bankruptcy and winding up orders are made only in the exercise of the Court's equitable discretion and not as of right.

30. Long established and effective legal remedies exist for the purpose of debt recovery. Those, and the exploration of alternative methods of debt resolution, are

strongly encouraged at this time. Alternative methods of resolution are possible without offending the principles of insolvency particularly if due diligence is undertaken by a creditor, or where there is legal representation on both sides and/or the involvement of a licensed insolvency practitioner. Every effort should be made to do this rather than waiting for guidance to issue. Any failure to do so will be taken into account by the Court in any future hearing.

31. Practitioners should therefore take great care to ensure that creditor clients are properly advised and that their expectations are judiciously managed. They should also bear in mind (among other things) that bankruptcy and winding up orders necessarily involve expense to the public purse, and that there is therefore legitimate public interest in ensuring that the jurisdiction of the court is invoked only where it is necessary and appropriate to do so.