

**COVID - 19 GUIDANCE
MASTERS' COURTS**

BANKRUPTCY AND COMPANIES

9 DECEMBER 2020

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 composite guidance for Masters Courts that was published on 12 November 2020

EXPLANATION COURT (15 December 2020)

The Master undertook to complete a **review** of all **Ordinary Applications, Applications to set Aside Statutory Demands and Originating Applications** previously listed for hearing or review between 20 March and the end of the Trinity Term, and automatically adjourned in the absence of any request for directions.

Legal representatives were required to complete and lodge form **BANKCI1** by email with bankruptcyoffice@courtsni.gov.uk no later than 4.00pm on 20th August 2020. However, in a significant number of cases, legal representatives have failed to comply with that instruction. Those cases have been adjourned for consideration at an **Explanation Court** on **Tuesday 15 December 2020** thereby providing parties with a final opportunity to submit form BANKCI1 or an explanation in writing setting out the reasons for non-compliance.

A list of the cases which fall into that category was issued through the Law Society and the Bar Council. Parties must **not** attend court on 15 December 2020; the Master will deal with cases **administratively** (on the papers / written submissions). Where a form BANKCI1 or a written explanation is not submitted by email to the Bankruptcy Office by 4.00pm on **4 December 2020**, the Master may in the absence of good cause make whatever order she sees fit. This may include a final order on foot of the application. Where only one party responds, the Master may proceed on the basis of that party's proposals.

NEW BUSINESS

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

New Ordinary/ Originating Applications and Set Aside Applications will now be accepted as new business and issued without the need for prior approval by the

Master. 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.

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.**

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 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. **Failure to submit Form BANKCI1 in the manner and timeline prescribed and in advance of each review, may result in the application being struck out or any other order that the Master sees fit. This also applies to reviews of existing applications, which have been restored to the daily list.**

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

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 will apply to such applications.

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

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.

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.

Parties should note that any live hearings will be strictly timetabled and capacity within the Masters 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

Following consultation with the Official Receiver, it has been agreed that these petitions may be filed as new business from 1st October 2020. The presentation of the petition must be accompanied by a completed HR1 form in order to obtain a listing allocation which will be for initial directions only as to the conduct of the hearing of the petition. The form should then be emailed to bankruptcyoffice@courtsni.gov.uk , the subject line of the email should state “**Bankruptcy and Companies Master: request for hearing**”.

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

These are now accepted as new business and will be dealt with on the papers unless the Master decides otherwise.

PUBLIC AND PRIVATE EXAMINATIONS

Applications for Public and Private Examinations will now be accepted and listed for a face to face hearing subject to the availability of a suitable courtroom with

Covid-19 precautions. The applicant will be required to complete and submit a form HR1 before any Examination is listed. The form must be submitted by secure email to bankruptcyoffice@courtsni.gov.uk. The subject line of the email should state **“Bankruptcy and Companies Master: Application to fix a date for a Public/Private Examination.”**

CONTINUITY ARRANGEMENTS FOR EXISTING BUSINESS

Debtors’ petitions

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

Directors’ petitions

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

Companies’ matters

Applications for extension of time to register company charges will 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]”**.

Applications for the restoration of companies to the register will 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.

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.

LEGAL UPDATE

Practitioners are advised to familiarise themselves with the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Schedule 8) (Early Termination of Certain Temporary Provisions) Regulations (Northern Ireland) 2020]. These Regulations provide that certain provisions in Part 2 of Schedule 8 to the Act cease to have effect from 14th October 2020.

GENERAL

Public Health Guidance

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. It is unlikely that consultation space will be available within the Royal Courts of Justice and this must be borne in mind and alternative consultation venues considered.

Forms

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 we all 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.

Final Orders

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

Proceedings should be grounded on sworn affidavits unless the Master directs otherwise.

Urgent business

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

To be the subject of further and separate guidance.

Creditors' petitions as new business

Priority must first be given to the hearing of petitions adjourned from March 2020 to the end of the Trinity Term before new creditors' petitions can be presented. At present there is a large volume of petitions currently adjourned from this period and the Court will only be able to hear them strictly timetabled and in very small numbers. This is a process which will inevitably be lengthier, more complex and very different to the process which existed prior to the pandemic. It is therefore likely to take considerable time. It also means that new petitions cannot be presented

until the Court has acquired adequate capacity to accommodate them. It is not therefore anticipated that guidance on new creditors' petitions will issue in the short term.

Practitioners are also reminded that the Insolvency Court is meant to be a court of last resort. Insolvency proceedings, 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.

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.

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.