

**COVID - 19 GUIDANCE
MASTERS' COURTS**

BANKRUPTCY AND COMPANIES

16 April 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 4th February 2021.

KEY CHANGES TO PREVIOUS GUIDANCE

- **Form BANKCI1** has been updated, the revised version can be accessed [here](#).
- **Sworn affidavits** should be filed unless the Master directs otherwise.

NEW BUSINESS

Applications

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. 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 moving party **must**, in the interests of justice, include a copy of this guidance as well as 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 when serving any application or other statutory process on a private individual. For the sake of clarity, this requirement extends to the service of statutory demands

notwithstanding the current restriction on the presentation of petitions (see PETITIONS).

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.

PETITIONS

(i) Creditors' bankruptcy and winding up petitions as new business

10. The restriction on the presentation of new creditors' petitions continues and is unlikely to be removed in the short term. It is also to be noted that the moratorium contained within the provisions of the Corporate Insolvency & Governance Act 2020 has been further extended.

11. It remains a matter of concern to the Court that despite the clear and consistent guidance about this restriction, some practitioners continue to serve statutory demands regardless. Those practitioners are reminded that the principal purpose of the service of a statutory demand is to ground a petition. Therefore, a statutory demand which cannot lead to a petition is nugatory and misleading. Practitioners are also reminded that a party being served will not necessarily understand that a statutory demand is not legal proceedings and that it does not issue from the Court. The party may also not know or understand that only a petition can lead to bankruptcy or liquidation. However, as the presentation of new petitions is not currently permitted (other than in the circumstances set out below), practitioners who proceed to serve statutory demands regardless of the restrictions in place **must** ensure that they comply with the requirement at point 4. of this guidance.

12. Practitioners are again advised not to assume, or expect, that statutory demands served during the period of the pandemic will be covered by future guidance addressing the removal of the restriction on the presentation of petitions. Therefore, creditors who continue to serve statutory demands in the knowledge that they cannot lead to a petition, and without ensuring that the party being served is on notice of that, should expect that any applications arising therefrom will be treated swiftly and robustly by the Court - particularly where the jurisdiction of the Court is being invoked as a first resort rather than as a last resort.

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

13. In view of the unprecedented challenges arising from the current severe circumstances surrounding the pandemic, general guidance will not issue with regard to these petitions at this time. However, 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.

14. 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.

15. 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 on reactivation to issue. Any failure to do so will be taken into account by the Court in any future hearing.

Debtors' petitions

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

Directors' petitions

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

Supervisors' petitions and Administrators' petitions for winding up

18. 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

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

PUBLIC AND PRIVATE EXAMINATIONS

20. 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.

Companies' matters

21. **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]**".

22. **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.

23. **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

24. 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

25. Please note that the BANK CI 1 form has been updated. Practitioners should, as far as possible, collaboratively complete and submit forms in accordance with the specified timelines. The form should also be used to vacate a matter which has been allocated a time slot for a remote hearing which subsequently is not required. In that event, the office should be notified as soon as possible.

Case Tracking

26. 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. In some cases, it is also being assumed that no order was made if it is not reflected 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 that 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

27. 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

28. Sworn affidavits should be filed unless the Master directs otherwise.

Urgent business

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