

North and North Eastern Circuits: Insolvency Court Practice and Procedure during the Coronavirus (COVID-19) Pandemic

By Kelly Bond

A discussion of the provisions introduced by the Temporary Practice Direction Supporting the Insolvency Practice Direction (TIPD) on 6 April 2020 and the variations and guidance note issued by the Vice Chancellor for the North and North Eastern Circuits

Introduction

1. This briefing note summaries the provisions of:
 - (1) TIPD
 - (2) Guidance note for the North and North Eastern Circuits
2. TIPD came into force on 6 April 2020 and will remain in force until 1 October 2020 unless amended or revoked in the meantime (TIPD, para. 2).
3. It applies to all insolvency proceedings throughout the Business and Property Courts, subject to any variations outside London as directed by the relevant supervising judge (TIPD, para. 2).
4. The Vice Chancellor issued a guidance note for the North and North Eastern Circuits (GN). It came into effect on the same date and will remain in force for as long as TIPD is in effect subject to it being superseded by further guidance or variations in the meantime (GN, para. 2).
5. TIPD covers the following matters:
 - para. 3: CE-filing for out-of-court appointments of administrators
 - para. 4: adjournment and re-listing of all matters currently listed before 21 April 2020, save for bankruptcy and winding-up petitions before ICC Judges
 - para. 5: listing urgent hearings before High Court Judges and ICC Judges
 - para. 6: remote hearings
 - para. 7: a Temporary Listing Procedure for bankruptcy and winding-up petitions
 - para. 8: other insolvency hearings
 - para. 9: statutory declarations under Schedule B1 of the Insolvency Act 1986
6. The provisions dealing with out-of-court appointment of administrators are set out in a separate briefing note dealing with the wider issues which have arisen in recent times in connection with out-of-hours filings. There are no local variations on circuit.

Pending applications and petitions (TIPD, para. 4) (GN, para. 3)

7. The TIPD imposes a blanket adjournment of all cases listed prior to 21 April 2020 but that **does not apply** on the North and North Eastern Circuits. Only a limited number of pending claims, applications and petitions have been adjourned by the courts of their own motion.
8. Where an adjourned case is urgent, any party may apply to have it re-listed as an urgent application and should follow the procedure in TIPD, para. 5 as modified (below). Otherwise, the case will be re-listed by the court as soon as is reasonably practicable.

Listing urgent hearings before Section 9 Judges and district judges (TIPD, para. 5) (GN, para. 4)

9. The standard procedure is for a remote hearing and is as follows:
 - (1) the applicant must e-mail the BPC staff for the relevant hearing centre setting out:
 - (a) the nature of the application;
 - (b) why it is urgent;
 - (c) the estimated time for hearing and pre-reading;
 - (d) the number of parties who will need to attend; and
 - (e) confirmation that the hearing can be conducted by Skype for Business, another stated remote communication application or telephone.
 - (2) the hearing will be allocated to the appropriate judge;
 - (3) the court will send a meeting invitation or dial-in details to the parties as appropriate;
 - (4) arrangements will be made for issuing the application and paying the fee;
 - (5) the time and date of the hearing will be endorsed on the application or communicated by e-mail;
 - (6) the applicant must file only those documents which are essential for the hearing, to be sent to the judge's clerk by PDF or as a link to an online data room with confirmation to the pre-reading time required;
 - (7) the judge will join the hearing at the allotted time;
 - (8) the judge will give directions for the filing of a draft minute of order;
 - (9) the approved order will be sealed and returned to the serving party in the usual way.
10. The designated e-mails for BPC staff in each of the relevant centres are:
 - Leeds: BPC.Leeds@justice.gov.uk
 - Liverpool: Insolvency.liverpool.countycourt@justice.gov.uk
 - Manchester: Manchester.chancery@justice.gov.uk
 - Newcastle: NewcastleBPC@justice.gov.uk

11. In addition to matters which are by their nature urgent, the following matters will be presumed to be urgent on the North and North Eastern Circuits unless the court decides otherwise in any particular case (GN para. 5):
- (1) applications for relief from the consequences of Insolvency Act 1986, sections 127 or 284;
 - (2) public interest winding-up petitions;
 - (3) Company Directors' Disqualification Act 1986, section 17 applications for leave to act as a director;.
 - (4) Insolvency Act 1986, section 216 applications to re-use a company name.

Remote hearings (TIPD, para. 6)

12. Unless otherwise ordered, all hearings will be conducted by Skype for Business or such other technology as the court and parties agree in advance
13. If the judge determines that it is inappropriate to continue the hearing, it will be adjourned, re-listed and a notice of adjournment issued.
14. There are no local variations on circuit.

Bankruptcy petitions and winding-up petitions – Temporary Listing Procedure (TIPD, paras. 4 and 7) (GN, para. 7)

15. A new Temporary Listing Procedure (**TLP**) is introduced for the remote hearing of bankruptcy and winding-up petitions.
16. The TLP is as follows:
 - (1) petitions will be grouped together and allocated a time slot for hearing;
 - (2) each time slot will be given a designated meeting link using Skype for Business, BT MeetMe or similar¹;
 - (3) the links will be published on the daily cause list;
 - (4) the onus will be on the parties to ensure they are able to utilise the link provided but in the event that they cannot, they may arrange an alternative with BPC court staff subject to the judge's availability;
 - (5) any persons who intend to appear on the hearing of the petition must provide an e-mail address or telephone number on their notice of intention to appear² for the purposes of being invited to join the hearing remotely.

¹ The current instruction from HMCTS is only to use BT Meet Me for hearings by telephone, and Skype for Business for video-conferencing. Urgent consideration is being given by HMCTS and the senior judiciary to approving the use of other systems.

² TIPD, para. 7.4 refers only to notices of intention to appear served under Insolvency (England and Wales) Rules 2016, rule 7.14 (winding-up) but presumably this also applies to the less commonly encountered equivalent notices served under rule 10.19 (bankruptcy).

Other insolvency hearings (TIPD, para. 8)

17. The new temporary norm is:
- (1) the court will send a proposal to the parties suggesting either (a) a video conference hearing accessed by an invitation or link sent by the court or (b) a telephone hearing to be arranged by either the court or one of the parties at the court's direction³;
 - (2) the parties may file and serve written submissions in support of an alternative proposal by e-mail or CE-File (where available);
 - (3) the court will consider any such submissions and make a determination on the conduct of the hearing and give all other necessary directions;
 - (4) if needed, a short remote case management conference may be fixed in advance of any hearing to allow for directions to be given.
18. There are no local variations on circuit.

Statutory declarations under Schedule B1 to the Insolvency Act 1986 (TIPD, para. 9)

19. The Temporary IPD sets out a procedure for statutory declarations required by Schedule B1 to be administered by video conference:
- (1) the person making the statutory declaration does so by way of video conference with the person authorised to administer the oath;
 - (2) the person authorised to administer the oath attests that the statutory declaration was made in such manner; and
 - (3) the statutory declaration states that it was made in such manner
20. TIPD does not (and could not) declare that a statutory declaration administered remotely under its procedure is valid because practice directions cannot make substantive law. Rather, TIPD expressly recognises that a statutory declaration administered other than in person might be formally defective or irregular as a matter of law.
21. However, TIPD reminds us that the provision governing formal defects and irregularities in insolvency proceedings is found in Insolvency (England and Wales) Rules 2016, rule 12.64 as follows,
- “No insolvency proceedings will be invalidated by any formal defect or any irregularity unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of the court.”*
22. TIPD goes further and provides that, if a statutory declaration is administered in accordance with the TIPD procedure, any defect or irregularity arising solely from the failure to administer the statutory declaration in person is not by itself to be regarded as causing substantial injustice within the meaning of rule 12.64.

³ See FN1.

23. Accordingly, provided that the procedure set out in TIPD is followed for any statutory declaration required by Schedule B1, the fact that the statutory declaration was administered remotely is not in and of itself a ground upon which the relevant insolvency proceedings will be declared invalid.
24. There are no local variations on circuit.

Local Business (GN, paras. 7-10)

25. The guidance note contains additional important provisions with regard to the distribution of Local Business under IPD within the new structure of open, staffed and suspended courts⁴.
26. Local Business is defined in IPD, para. 3.7 as:
- (i) applications to set aside statutory demands;
 - (ii) unopposed creditors' winding up petitions;
 - (iii) unopposed bankruptcy petitions;
 - (iv) applications for income payment orders;
 - (v) applications for and the conduct of public and private examinations;
 - (vi) warrants for arrest in connection with the conduct of public or private examinations;
 - (vii) claims for possession by an office-holder against a bankrupt (whether or not the bankrupt has been discharged);
 - (viii) claims falling under the Trusts of Land and Appointment of Trustees Act 1996 (notwithstanding the application of section 335A of the Act);
 - (ix) claims for the granting or enforcement of charging orders pursuant to section 313 of the Act;
 - (x) unopposed applications by the Official Receiver to suspend discharge from bankruptcy, and if the application transpires to be opposed, any application by the Official Receiver for an interim suspension pending the matter being heard following its transfer pursuant to IPD, para. 3.6; and
 - (xi) applications for debt relief orders under Part 7A of the Act.
27. IPD, paras. 3.6 - 3.9 continue in effect save as follows.

Matters comprising Local Business which are already listed

28. Where these matters are listed in an **open court** or a **staffed court** they shall be heard in accordance with directions given by a judge in that court.
29. Where they are listed in a **suspended court** they will be heard remotely on the date and time fixed unless the court orders otherwise.

⁴ HMCTS has consolidated the work of courts and tribunals into fewer buildings. Information for each court is available at <https://www.gov.uk/guidance/courts-and-tribunals-tracker-list-during-coronavirus-outbreak>. Open courts are staffed and open to the public. Staffed courts are staffed by judges and court staff but are closed to the public. Suspended courts are temporarily closed.

New applications and petitions

30. Any new applications received at an **open or staffed court** will be reviewed by a judge.
31. Where the application is **Local Business**, directions will be issued and may include listing an attended hearing at the nearest open court if the circumstances require it.
32. Any new applications or petitions which would have been issued in a **suspended court** should instead be issued in the nearest open court which has insolvency jurisdiction subject to the following:
 - (a) if a petition is required by the rules to be presented in one of the hearing centres specified in IR r. 10.11(4), it should be entitled with the name of the relevant centre but sent to the nearest open or staffed court with insolvency jurisdiction for issue on behalf of the relevant hearing centre;
 - (b) Applications to set aside statutory demands must be issued out of the nearest hearing centre identified in IR r. 10.48(4) which is open or staffed.

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