

## **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 local guidance notes and protocols*

### **INTRODUCTION**

1. This briefing note summaries the provisions of:
  - (1) TIPD
  - (2) Protocol for Insolvency and Company Work at Central London
2. A separate briefing note deals with the TIPD as it has been applied on the North and North Eastern Circuits.

### **TIPD**

3. 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).
4. 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). Any local variations will be published in guidance notes on the Insolvency List web page for the relevant hearing centre(s) (<https://www.judiciary.uk/you-and-the-judiciary/going-to-court/high-court/courts-of-the-chancery-division/insolvency-and-companies-courts/>).
5. The 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.

#### Pending applications and petitions (para. 4)

7. All applications, petitions and claim forms listed for hearing **prior to 21 April 2020** are adjourned save for bankruptcy petitions and winding-up petitions before ICC Judges, which are immediately subject to the Temporary Listing Procedure (below)
8. The supervising judge for each hearing centre of the Business and Property Courts will issue guidance notes notifying the procedure for re-listing the adjourned matters in that centre.
9. Where an adjourned case is urgent, any party may apply to have it re-listed as an urgent application. TIPD only makes provision for listing urgent hearings before ICC Judges and High Court Judges (below). It is anticipated that the arrangements for urgent applications in the other hearing centres of the Business and Property Courts will be addressed in local guidance notes.

#### Listing urgent hearings before High Court Judges and ICC Judges (para. 5)

10. The standard procedure is for a remote hearing and is as follows:
  - (1) the applicant must e-mail the ICC Judges' clerks at [Rolls.ICL.Hearings1@justice.gov.uk](mailto:Rolls.ICL.Hearings1@justice.gov.uk) or the relevant High Court Judge clerk and set 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 a 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.

#### Remote hearings (para. 6)

11. Unless otherwise ordered, all hearings will be conducted by Skype for Business or such other technology as the court and parties agree in advance
12. If the judge determines that it is inappropriate to continue the hearing, it will be adjourned, re-listed and a notice of adjournment issued.

#### Bankruptcy petitions and winding-up petitions – Temporary Listing Procedure (paras. 4 and 7)

13. A new Temporary Listing Procedure (**TLP**) is introduced for the remote hearing of bankruptcy and winding-up petitions which comes into operation as follows:
  - **Insolvency and Companies Court in the Rolls Building:** the TLP applies immediately to all currently listed hearings.
  - **All other Business and Property Court hearing centres:** the TLP will be brought into effect by a further guidance note issued by the relevant supervising judges.
14. 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 similar<sup>1</sup>;
  - (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 the court clerks 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 appear<sup>2</sup> for the purposes of being invited to join the hearing remotely.

#### Other insolvency hearings (para. 8)

15. 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 direction<sup>3</sup>;

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<sup>1</sup> 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.

<sup>2</sup> 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).

<sup>3</sup> See FN1.

- (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.

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

16. 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
17. 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.
18. 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.”*
19. 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.
20. 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.

**PROTOCOL FOR INSOLVENCY AND COMPANY WORK AT CENTRAL LONDON**

21. The protocol was introduced on 24 March 2020 and as such predates TIPD. It is available at <https://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance/#civilguidance>
22. It deals with the bulk lists heard by Business and Property District Judges.

HMRC bankruptcy petitions (para. 2)

23. Under a standing arrangement with HMRC, no bankruptcy order will be made on HMRC petitions currently listed for hearing. Save for cases in which the debt has been paid, on the hearing date the judge will re-list the hearing after 12 weeks on paper. **The parties should not attend.** The re-listed date will be sent to HMRC, who will notify the debtor and any supporting or opposing creditors.
24. Where the petition debt has been paid, HMRC will seek dismissal or withdrawal on paper.

Other bankruptcy petitions (para. 3)

25. The same approach will be taken to other bankruptcy petitions unless a request for a remote hearing is made by email to [RCJBankCLCCDJHearings@justice.gov.uk](mailto:RCJBankCLCCDJHearings@justice.gov.uk).

Applications in bankruptcy proceedings (para. 4)

26. These applications will be dealt with on paper in the first instance. If the judge directs a hearing, it will be a remote hearing.

Public examinations (para. 5)

27. The appointments will remain in the list but **the parties should not attend.** The judge will adjourn the examination unless there is a request for rescission, conclusion or a suspension of discharge from bankruptcy. Any such request should be made by e-mail to [RCJBankCLCCDJHearings@justice.gov.uk](mailto:RCJBankCLCCDJHearings@justice.gov.uk) and will be considered on paper.

Claims for an extension of time to register a company charge (para. 6)

28. These claims will remain listed but **the parties should not attend.** Claims will be considered on paper. The requirement to produce the original charge is waived and evidence of solvency will be accepted by email to [RCJCompGenCLCC@justice.gov.uk](mailto:RCJCompGenCLCC@justice.gov.uk).

Claims for restoration of companies to the register (para. 7)

29. These claims will remain listed but **the parties should not attend.** Claims will be considered on paper.

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