



3 HARE COURT

The Impact of Coronavirus on Winding Up Petitions

Coronavirus has affected both the functioning of businesses and the Courts. In these unprecedented times, how are the Courts dealing with the hearings of winding up petitions?

The Insolvency and Companies Court, when first faced with the outbreak of coronavirus and the Government's restrictions, considered it was not possible at the time to deal with the Winding Up List remotely. On 25 March 2020, Insolvency and Companies Court Judge Mullen adjourned all of the listed winding up petition hearings.

The following week on 1 April 2020, the Winding Up List was heard remotely for the first time by Chief Insolvency and Companies Court Judge Briggs. The process for the hearing of the winding up petition was as follows:

- The Companies Court Winding Up List was published the day before the hearing as normal, detailing what winding-up petitions were to be heard and in what order.
- HMCTS Court Staff notified the Petitioning Creditor and the Company in advance that the hearing would be proceeding via Skype for Business.
- The morning of the hearing, HMCTS staff emailed the Petitioning Creditor and the Company with the link to access the hearing via Skype for Business. Winding up petitions were listed in batches of 10 to 15 with a specific 30-minute time slot.
- The parties could then connect via the link in the email at the relevant time slot. The parties were instructed to keep their camera off and microphone muted until the hearing of their winding up petition was called by the Judge. Barristers were not required to robe.
- As the winding up petitions were listed in batches, you would hear other parties in the batch make their submissions and vice versa as the list progressed.
- The aspect which remained unchanged was the scrutiny given by the Judge to the legal submissions of the parties concerning the winding up petition. In this regard, the value of representation by Counsel remains unaltered.

The main advantage of the remote hearing of the Winding Up List is that it allows winding up petition hearings to continue and prevents any backlog of winding up petitions from accruing during the pandemic. The process for the hearing of the winding up petition is well-organised. The allocated time slots prevent unnecessary waiting time and delay, and organisation of winding up petitions into batches avoids too many parties being on the Skype for Business call at once. Another advantage of this system is that unrepresented parties, such as directors, can easily join the hearing as no specific software is required. One can join the hearing by clicking on the link provided by HMCTS and use HMCTS' Skype for Business software as a guest.

Receipt of the Skype for Business link the morning of the hearing could be unnerving for some parties; if at all possible, it would be helpful for parties to have the link and slot time the day before the hearing. Also, normally in the Winding Up List, if the hearing of a winding up petition is complex or witness evidence needs to be considered, often the Judge will hear the petition “second time around”; this means that the petition will go to the back of the Winding Up List and the parties will be given more time for submissions. This may be difficult to do when the petitions are listed in batches with specific time slots. Therefore, judges may be amenable to fuller argument “the first time around” provided the case requires it.

For the foreseeable future, the Winding Up List will continue to be heard via Skype for Business. The Temporary Insolvency Practice Direction came into force on 6 April 2020 and will remain in force until 1 October 2020, unless amended or revoked by a further insolvency practice direction in the meantime. Paragraph 7 of the Practice Direction confirms that the Court will continue with remote hearings for winding up petitions. In particular paragraph 7.2 states, *“The Court shall allocate time slots for groups of 2 or more petitions. Each time slot shall be given a designated meeting link using Skype for Business, or such other video conferencing technology as the relevant Court decides, or BT MeetMe, or such other telephone conferencing technology as the relevant Court decides. The links shall be published on the daily cause list.”*

The Practice Direction makes clear that the onus is on the parties to ensure they are able to utilize the link provided. If a party is unable to use the link designated by the Court, they should try to arrange an alternative link via the Court clerks. Importantly, any person who intends to appear on the hearing of the petition must deliver a notice of intention to appear on the petition in accordance with Rule 7.14 of the Insolvency Rules 2016 and provide an email address or telephone number for the purposes of being invited to join the hearing remotely.

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