**INSOLVENCY LISTS AND CASES**

First, we thank all court users (legal representatives, insolvency practitioners, and the OR’s department) for their patience and co-operation with the court over the past two months. We are also very grateful for the constructive feedback and suggestions received from representative groups of court users and individual court users. It helps tremendously with planning and providing the best court service realistically practicable to have an ongoing and open dialogue with both representative groups and individuals with particular interests or concerns. For our part we try to address all views and concerns as fully as we can subject to the prevailing safety requirements and resource limitations.

The Chancellor and Marcus Smith J are in the process of arranging a remote BPC court user meeting in the coming weeks rather than months.

We are aware from your feedback and suggestions that you hold regular specialist group meetings. If you would welcome it, some or all of us would be delighted to attend remote group meetings that you might hold, whether to listen and learn the issues that you are having to confront, or to participate if there are questions to be asked of us.

By way of update and clarification, and response to points raised, we summarise below our working arrangements for insolvency lists and applications, trials, and urgent applications.

Insolvency Petitions

Companies’ petitions will be resumed as fortnightly lists. Bankruptcy petitions issued by creditors will be listed on a case by case basis, as before.

The criteria for listing petitions remain (1) safety of all involved, (2) appropriate resourcing and facilitation of hearings, and (3) listing in adjournment order (first out, first in) with some flexibility for urgency/genuine need for priority.

It is impractical to run companies’ lists in May and June because the notices were issued some time ago for relisting adjourned matters in July, and it would not be a sensible use of court resources to relist for the sake of saving a month or a fortnight.

That does leave court time available for urgent insolvency, or other BPC, matters during the latter part of May and June.

Lists have been made up for July 2020 (7.7.20 and 21.7.20) to clear the backlog (currently 50-60 petitions). Thereafter lists will comprise petitions issued as from 1.4.20.

Petitions have been and are issued on, or as on, the day of receipt and lists will be made up primarily by reference to issue date. Urgent or prioritised petitions may be added.

Lists from 4.8.20 will be for new petitions. Since 1.4.20 nearly 40 petitions have been issued. The list for 4.8.20 is nearly full.

Insolvency lists will be heard by skype with the judge and a clerk in court. Hearings will be in public in the sense that the lists will inform the public and press of a mechanism for being ‘admitted’ to the hearing (ie to have the ability to listen in).

Lists will run from 10.00am to 11.30am/12noon. There will not be timed block listing (15 or 20 minute segments) but petitioners with multiple petitions issued in the relevant period for the particular list will be heard together because they are likely to have common representation. Petitioners with individual petitions will be listed in issue order. The average list will be 30-40 petitions when listed (obviously this will reduce by withdrawals and agreed adjournments where a mention is not required). The court will consider introducing timed block listing if severe delays are caused to court users but, at least initially, the system to be implemented provides the most efficient use of court resources.

The judge will control the list and it will be the responsibility of the party’s representative / party to be available via skype when the petition is called.

For cases not cases on CE file parties should lodge service statements, proof of advertisement etc by email. This should be done by 12 noon the prior working day. The email subject matter should identify the petition number and the list.

Orders on CEfile will be issued by email. Other orders may permit service by email (at the judge’s discretion or if requested and where personal service is not required).

Whenever possible (which may not be always, but always is the aim) the judge will sit in a court to which an interested party may gain access by the means publicised in the list and be heard. HMCTS is reviewing arrangements in accordance with government guidelines in relation to all aspects of access to the Birmingham Civil Justice Centre (‘BCJC’) and its courtrooms.

We ask you also to bear in mind that other jurisdictions have the similar problems. In civil the vast majority of hearings have been adjourned including many fast-track trials and possession cases, and in family there are pressing children and domestic violence cases. HMCTS will liaise with judges to ensure that cases across the jurisdictions are appropriately prioritised and those which need an in court hearing get an in court hearing.

Prioritised and Urgent Matters

The court relies upon the parties to flag up petitions and applications for prioritised or urgent hearing.

With cases on paper files please email the court (BPC email address) marking the subject box with the case number (or name if unissued) and the words ‘priority application’ or ‘urgent application’.

With cases on CE file please mark the filing as ‘priority application’ or ‘urgent application’ (marking the subject box with the case number - or name if unissued - and the words ‘priority application’ or ‘urgent application’).

These steps will ensure that the emailand petition or application are forwarded as swiftly as possible to the reviewing judge.

In all such cases an urgent application form must be sent to the court by email or uploaded onto CE file as applicable.

One BPC District Judge has been nominated as the reviewing / gatekeeper judge for all priority / urgent insolvency petitions and applications. This is to ensure efficiency in processing and listing of applications for urgent attention and consistency of approach at the gateway.

In the immediate future there is scope for listing expedited and urgent petitions and applications on what would otherwise be petition hearing dates. In addition, genuinely urgent applications will be accommodated as soon as possible.

Adjourned and Adjourning Trials

The overarching factor for the court is safety within the precincts of the court. That applies to court users, court staff (HMCTS and agencies ~ security, cleaners, bailiffs etc), and judiciary. Trials will be adjourned until the court is satisfied that they can safely be resumed.

There are four levels of trial : (1) remote with judge at home, (2) remote with judge in court, (3) hybrid, (4) live in court. Hybrid typically refers to a trial with the judge and possibly the advocates and some witnesses in court and some representatives and witnesses giving evidence by skype or other visual / audio platform.

Remote trials are manageable where there are no witnesses but they are demanding for all involved and require very good document economy and organisation.

As a pilot, one BPC hybrid trial is being held at the BCJC in week commencing 18.5.20. This is a ‘hybrid’ with some at court attendance and some remote attendance. However, it has drawn very significantly on resources and safety measures will inevitably significantly reduce the number of functioning courtrooms at the BCJC.

Adjournment / listing witness trials must be considered case by case and by the trial judge. Relevant objective factors, apart from safety, include (1) trial duration, (2) number of parties, (3) number of litigants in person (if any), (4) number of witnesses, (5) size and format of trial bundle, (6) witness management and ensuring integrity of the evidence gathering process (eg administration of the oath, accessibility of trial bundle, nature of the case ~ allegations serious dishonesty likely to be unsuitable for remote or even hybrid trial). Subjective factors include that some judges are more skilled with IT than others and some judges are working from home while others are attending the BCJC.

Before hybrid and ‘live in court’ rather than remote trials can be listed, public areas and court rooms must be safely configured and be safe to attend. This will inevitably mean that there will be significantly fewer functioning courtrooms and both family and civil cases ‘competing’ for access to courtrooms. HMCTS will have responsibility for risk assessment and implementation of all necessary safety measures. For this reason some court centres will be open for hearings including trials before others. As an aside, even in the purpose built modern Rolls Building approximately 1 in 3 courts will be functioning when courts reopen in or around July, the 13 courts will be the largest courtrooms, and the governing principle will be that hybrid / live in court hearings and trials will be reserved for those cases which need to be heard in court. At another court centre the expectation is that 1 in 5 courts will be able to open for hearings / trials. The BCJC is not purpose built and its narrow accessways in the public and court staff / judicial areas present logistical problems.

Practical steps the court can take will include ‘traffic flow’ controls, and staggering hearing and break times, but the main constraint will be safe access at all times.

In response to a request to us for guidance as to gauging whether adjournment is appropriate, and points for discussion between parties’ representatives about whether to apply to adjourn or not, we make the following suggestions : (1) undertake a risk assessment of your own and the opposing side’s representatives, parties and witnesses including (a) health and age, (b) scope for safe travelling to and from the BCJC and journey duration, (c) where and how witnesses will be ‘held’ while waiting to give evidence and during adjournments, (d) whether overnight staying will be required and, if so, whether it is realistically practical, (e) access to efficient remote visual / audio communications, (f) access to and likely abilities with electronic documents, and (g) remote working conditions in the context of the likely duration and complexity of the particular matter; (2) consider whether there is scope for isolating issues for on paper or submissions only determination when weighed against the prospect of delay for a full determination ~ i.e. how best to meet the overriding objective; and (3) bear in mind that the court is likely to err on the side of caution to ensure safety when considering an adjournment and to allocate a courtroom for a hybrid or ‘live in court’ hearing / trial on a need basis.

Realistically trials lasting more than 1 week (including pre-reading) listed for June and July 2020 should probably be adjourned. The sooner the adjournment the sooner a relisting can be arranged.

A further consideration for hybrid / ‘live in court’ trials is the medical condition of the parties and witnesses. Medical evidence is and will continue to be required. For elderly parties and witnesses evidence of birthdate may suffice for the next few months.

Priority or expedition for relisting will always be considered and, where appropriate, a deputy judge at the appropriate level will be engaged either for the trial or to take a full-time judge’s list so that the full-time judge may hear the trial.

Generally

As you will appreciate, much of the above is not specific to only insolvency cases, it is equally applicable to BPC litigation and civil litigation more generally.

In addition to and apart from BPC, civil, and family courts, the BCJC is also a tribunal centre. Behind every judge in court there are teams of HMCTS staff and there will also be some judges not sitting in a courtroom but working at the BCJC. HMCTS has to consider safe working for everyone at all times. This is the critical limiting factor.

We apologise for the length of this note and for labouring some of the points. The aim is to keep all court users as fully informed as possible and to respond fully and openly to the questions asked of us by insolvency court users.

We (the judges, managers and staff) are all grateful for the generous acknowledgment of our efforts and we truly appreciate yours.

Please do continue to raise points and issues with us both at a representative level and in any particular case where a problem arises.

Keep safe and well

Simon Barker Jane Ingram Dot Byrne

HHJ Simon Barker QC District Judge Jane Ingram Delivery Manager

 High Court

20 May 2020