



**FAO: All Petitioners, Counsel and Legal
Practitioners who deal with Winding Up Petitions**

30 January 2020

Re: Ce-File and Companies Court:

The Judiciary at the Business & Property Courts in Leeds would like to make solicitors aware of defects and irregularities which continue to occur in Companies Court, as well as Ce-File filing irregularities.

Ce-File

Please note it is now compulsory for solicitors to issue Winding Up Petition proceedings (or any other high court proceedings in the Business and Property Courts in Leeds) electronically and use CE-File. No paper filings will be accepted.

Filing of Documents via Ce-File

Solicitors filing Winding Up Petition documentation via Ce-File should take note of the following Filing Subtypes:

Winding Up Petition:

Solicitors wishing to file a Winding Up Petition at the Business and Property Courts in Leeds should use the following categories and subtypes:

Court Selection ▾	
Court*	Leeds ▾
Filing Category*	New Case ▾
New Case ▾	
Case Category*	Companies ▾
Case Type*	Petition ▾
Case Subtype*	Winding Up Petition ▾
Filing Type*	Petition ▾
Filing Subtype*	Winding Up Petition ▾
Save & Next	

Verification of Petition:

Statements verifying the Petition should be uploaded at the same time as the Winding Up Petition as an *associated filing*. To do this after uploading the Petition, click “Save & Next” and select “Add Associated Filing”

Name	Request Confidential	Confidential Reason	Comments
Petition.pdf			

Edit Filing **Add Associated Filing** **Add To Basket**

And then select “Filing Type: Filing, Filing Subtype: Verification of Winding up Petition”

Filing Information

Filing Category New Case

Filing Type* Filing

Filing Subtype* Verification of Winding up Petition

Save & Next

Statements of Service:

“Filing - Witness Statement of Service of Winding Up Petition” should be used for any Certificates or Statements of Service in relation to service of a Winding Up Petition made by a process server.

Existing Case

Case Number* CR-2019-LDS-000001

Filing Type* Filing

Filing Subtype* Witness Statement of Service of Winding Up Peti...

Save & Next

Certificate of Compliance:

“Filing - Compliance of Winding Up Petition” should be used when filing a Certificate of Compliance

Existing Case

Case Number* CR-2019-LDS-000001

Filing Type* Filing

Filing Subtype* Compliance of Winding Up Petition

Save & Next

Notice of Intentions

“Notice - 4.10 List of persons intending to appear on the hearing of the Petition” should be used for the lists of persons intending to appear on the Petition.

Existing Case ▾

Case Number*	<input type="text" value="CR-2019-LDS-000001"/>
Filing Type*	<input type="text" value="Notice"/>
Filing Subtype*	<input type="text" value="4.10 List of persons intending to appear on the..."/>

These are in line with the standard filing subtypes, used by the Rolls Building since the launch of Ce-File in October 2014. If multiple filings are made at the same time, these should be added via “Add Associated Filings” and not as one filing.

Witness Statements with exhibits should be made as one filing where possible.

Issuing a Winding Up Petition

Public Searches

Before issuing a Winding Up Petition, Solicitors will be able to use Ce-File to perform public searches to check if there are any prior Petitions. There is a charge for using this service of £11.00 per 15 minutes, which allows users to make as many searches as desired during this time. The Public Search facility can be found by clicking [here](#) or alternatively you can contact the Central Registry to conduct a search on 0906 754 0043 (Premium Rate Number).

If the Company has recently change its name, Solicitors are advised to search for the previous name in addition to the new name.

The Court requests Solicitors take note of Practice Direction, Insolvency Proceedings 9.2 – “Before presenting a Winding Up Petition, the creditor must conduct a search to ensure that no Petition is pending. Save in exceptional circumstances a second Winding Up Petition should not be presented whilst a prior Petition is pending. A Petitioner who presents a Petition while another Petition is pending does so at risk as to costs”.

Header

The header for Winding Up Petitions issued at the Business and Property Courts in Leeds should read:

“IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
INSOLVENCY AND COMPANIES LIST (ChD)”

The address of the Court should be: Business and Property Courts in Leeds, The Courthouse 1 Oxford Row, Leeds West Yorkshire LS1 3BG

Endorsement

Court Staff are unable to manually enter the presentation date, issue date or hearing date onto the Endorsement of Petitions via Ce-File. These will automatically be included beneath the seal in the top right corner of the Petition. Therefore, all solicitors who issue Petitions, should amend their templates so the Endorsement reads as follows:

“This petition having been presented to and issued by the Business and Property Courts in Leeds will be heard at the time and date shown in the endorsement underneath the Court Seal on the first page of this Petition (or as soon thereafter as it can be heard) at the following venue:

Business and Property Courts in Leeds, Leeds Combined Court Centre, The Courthouse, 1 Oxford Row, Leeds, LS1 3BG”

Company Name

Solicitors are advised to check the Company’s name and address on Companies House before issuing. Particular care should be taken to ensure the exact name of the Company (as stated by Companies House) is on the Winding Up Petition. This should include the correct punctuation in names which have initials. Erroneous Company names without the correct punctuation may not be present on Petition searches. Another court could then issue another Winding Up Petition without knowledge of the pre-existing Petition

For example: If the correct Company name was “1.2. Limited” but the Petition erroneously states “12 Limited”, the correct Company name would not be present on Petition searches.

Amending The Petition

If the Petition has not been served, an amended Winding Up Petition may be filed without permission, clearly showing the amendments in red. If the Petition has already been served, a formal application must be made.

Petitions by Non-Creditors

When issuing Petitions by non-Creditors (e.g. by a Shareholder, a Supervisor of the Company’s CVA, or on behalf of the Company by its administrator), a draft order should be filed with the Petition regarding service and advertisement.

Statements of Service

Solicitors are responsible for ensuring the process server’s statement is compliant with the Insolvency Rules 2016. Solicitors are advised to familiarise themselves with Schedule 4.2 of the Insolvency Rules 2016 as the Court is still receiving defective Statements of Service.

Handed to a person

If handed to a person, the statement should clarify whether the person acknowledged being a director, other officer or employee and/or authorised to accept service,

Or whether to the best of the knowledge and belief of the process server the individual served was a director or authorised person of the Company and if so, the statement should clarify how the process server obtained this knowledge.

Handing to an individual who has not confirmed they are a Director, Officer, employee or authorised person so that that individual can pass it onto to the Company is not adequate service. Likewise, service of a Winding Up Petition cannot be effected by handing to non-authorised persons, such as family members, security guards, workmen etc.

Deposited

If the Winding Up Petition is deposited, the Statement of Service must state that it was deposited in the absence of any persons authorised to accept service and must confirm that it was deposited in such a way that it is likely to come to the notice of a person attending at the office.

Furthermore, if the Winding Up Petition was deposited in a contentious way (e.g. left under the shutter of a closed building or posted through the letterbox of a building undergoing demolition etc), the statement should also state how it is likely to come to the notice of a person attending the office. In these circumstances, the level of detail in the Statement of Service must be given careful consideration.

Substituted Service

If for any reason it is not practicable to serve a Petition at a Company's registered office, Schedule 4.2 (3) & (4) dictate that the Petition may be served:

*(a) by leaving it at the Company's last known principal place of business in England and Wales in such a way that it is likely to come to the attention of a person attending there;
or*

(b) on the secretary or a director, manager or principal officer of the Company, wherever that person may be found.

In instances where service at the Companies registered office is not practicable (e.g. the Company is no longer based at the registered office) and it has not been possible to serve the Petition via 4.2 (4), an application may be made for the Petition to be served in such other manner as the court directs.

For ease of reference, the following judgments relate to service:

Sterling Hay Corporate Risks Ltd v Wasu [2003] EWHC 748(Ch)

Re Manchester and London Life Assurance and Loan Association [1870]

Hatcham Motor Garage Co Ltd [1916]

Re Unify Assurance Association, 11 W. E. 355

Re London and Westminster Wine Co., 12 W. R. 6.

Re Inventors' Association, 13 W. R. 1015 ; 6 N. E. 349

Advertisement

Solicitors are advised to check the Company's name and address at Companies House before advertising.

If the Company has recently changed name, the Court considers it good practice to include the Company's former name(s).

Care should be also be taken to ensure the advertisement contains the correct Company address.

Common defects with advertisements include:

- The incorrect punctuation in the name of the Company.
- The Petitioner's address not being included.
- The incorrect address of the Company.
- The incorrect address of the Court.
- Incorrectly referring to Rule 4.16 of The Insolvency Rules 1986 rather than Rule 7.14 of The Insolvency Rules 2016

Adjournment for Advertisement

If an adjournment is sought at the hearing for advertisement, Counsel must be able to provide reasons why the Petition has not been advertised.

The Court requests Solicitors and Counsel take note of Practice Direction, Insolvency Proceedings 9.8.1. If the Court, in its discretion does grant an adjournment, it is expected that by the next hearing the Petition shall be advertised and all the formalities must be in order should the Petitioner wish to proceed. No further adjournment to advertise will normally be given and if upon the second occasion the Petition has not been advertised, it will likely be dismissed.

Costs

In cases where the Petitioner receives payment of the debt but not its costs, all the provisions of the Insolvency Rules must be complied with before a costs order will be made, including advertisement of the Petition. Where there is a failure to comply with the Insolvency Rules, the Petition will be dismissed with no order as to costs.

It is a matter for the Petitioner to decide, whether they wish to accept an offer which covers the debt but not costs. If the Petitioner is not prepared to do that and seeks an order for Costs, the Petitioner should go ahead and advertise the Petition in accordance with the Insolvency Rules.

Applications

Applications to Withdraw must be made no later than 5 business days before the hearing.

The Court has no power to give permission to withdraw the Petitions after the first hearing has taken place as Insolvency Rule 7.13 does not apply. Insolvency Rule 7.13 only applies prior to the first hearing of a Petition.

Applications to Withdraw must confirm that the Petition has not been advertised and there are no supporting creditors. Winding Up Petitions which have been advertised or with supporting creditors cannot be withdrawn.

All Applications must be addressed to the Business and Property Courts in Leeds. Applications which are erroneously addressed to the Rolls Building or any other court will be refused.

Hearings

Bundles for Winding Up Petitions

Further to the Guidance Note of the BPC Circuit Judiciary, the District Judges at the BPC in Leeds have confirmed that advocates should have a fully paginated and indexed bundle prepared on all Business and Property Courts cases.

However, for Company Court cases only, the bundle can be brought by the advocate rather than it being filed in advance of the hearing. Advocates are not required to hand the bundles up before the hearing but must have the bundles ready and available to be handed up when required.

These bundles can be paper bundles and do not have to be in Lever Arch folders, a typical bundle need only include: 1. Winding Up Petition 2. Statement of Service 3. Advertisement 4. Certificate of Compliance 5. List of persons intending to appear.

For Winding Up Petitions where the Company has filed evidence in opposition, a full bundle will be required.

Non-legally authorised third parties

Please note, Counsel should only accept instructions from solicitors or direct instructions from parties. Counsel should not accept instructions from non-legally authorised third parties attempting to conduct litigation on the behalf of parties.

Defects Forms

Counsel are required to fill out Defect Forms on all Winding Up Petition where a Winding Up Order is sought. These can be obtained from the Court Clerk on the day.

HHJ Davis-White QC, DJ Goldberg & Daniel Gaunt
Business and Property Courts in Leeds