



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

26 July 2023

Re: Companies Court at the Business and Property Courts in Leeds

Service of winding-up petitions on companies registered in England and Wales

The Judiciary of the Companies Court in Leeds have noted an increase in issues arising with service of winding-up petitions and wish to draw attention to the following matters.

Service by handing to a prescribed individual

The primary obligation is to serve the petition at the company's registered office on one of the persons specified in the **Insolvency (England and Wales) Rules 2016 ('IR 2016')**, **sch. 4, para. 2(1)** namely:

A person at the registered office who:

- (a) at the time of service acknowledges being a director, other officer or employee of the company;
- (b) is, to the best of the knowledge and belief of the person serving the petition, a director, other officer or employee of the company; or
- (c) acknowledges being authorised to accept service of documents on a company's behalf.

Service by depositing at the registered office

If, **but only if**, there is no one of the kind mentioned in (a)-(c) above at the registered office, **IR 2016, sch. 4, para. 2(2)** permits service of the petition, "*by depositing it at or about the registered office in such a way that it is likely to come to the notice of a person attending the office*".

Handing the petition to a person who is *not* within (a)-(c) above (e.g. a receptionist in a multi-occupancy building not employed by the company) and who states that they will forward the documents on to the company does not constitute good service by depositing: *Sterling Hay Corporate Risks Limited v Wasu* [2003] EWHC 748 (Ch).

Conversely, leaving the petition on the reception desk of the registered office in the presence of such a person is good service, provided that it is left in such a way that it is likely to come to the notice of a person attending the office.

Note that in the case of multi-occupancy buildings care must be taken to identify with precision the registered office of the company. If it is the building as a whole (e.g. 'Neptune House') then the petition may be left on the main reception desk if it is done in such a way that it is likely to come to the notice of a person attending the building. If it is a suite or unit within the building (e.g. Suite 7, Neptune House') then the petition must be deposited at or about the specific suite or unit and leaving it on the main reception desk of the building will probably not be sufficient: *Re Southbourne Trading Co Ltd v HMRC* [2018] B.C.C. 604.

If access to the interior of the registered office cannot be gained, service by posting through the letterbox is good service: *In the Matter of Jaynash Limited (4051 of 2000)* (unrep, 1 March 2001).

If access to the interior of the registered office cannot be gained, and there is no letterbox, service may be effected by securely affixing the petition to an external door, shutter etc. in a waterproof envelope.

It will not ordinarily be sufficient for the petition to be pushed under a door or shutter given the possibility that it may be slipped under a mat or carpet on the other side and not be visible. If the door is a glass door and the petition can clearly be seen on the other side by the process server, that is likely to be sufficient.

Where there is evidence that the company does not occupy or has vacated the registered office

Provided that the requirements of **IR 2016, sch. 4, para. 2(1) or (2)** are met, good service of the petition will be effected, whether or not the company occupies or has ever occupied the registered office: *Re Oakwood Storage Services Ltd* [2003] EWHC 2807 (Ch); [2004] 2 B.C.L.C. 404; *Re Virgo Systems Ltd* [1990] BCLC 34.

However, if the evidence is such that it appears to the court that the petition is unlikely to come to the attention of the company because, for example, it no longer trades from the premises, the court is likely, in its discretion, to require the petitioner to take reasonable steps to bring the petition to the notice of the company.

Ordinarily, the court will be satisfied that reasonable steps have been taken if:

- (a) the petitioner leaves the petition at a trading address or other place of business in England and Wales for the company in such a way that it is likely to come to the attention of a person attending there; or
- (b) serves the secretary or a director, manager or principal officer of the company wherever such person may be found; or
- (c) there is evidence that the petitioner has tried to identify a trading address or other place of business in England and Wales for the company, and to locate the secretary or a director, manager or principal officer of the company, and has been unable to do so.

Reasonable steps include basic Companies House and internet searches, and attempts to locate the company or relevant individuals using known or discovered telephone or email addresses, but petitioners are not usually expected to carry out extensive enquiries or instruct tracing agents.

It is commonly the case that the company's registered office is not a trading address of the company but the address of a provider of registered office services, a mail forwarder or an accountant. In those circumstances, provided that the petition is served in accordance with **IR 2016, sch. 4, para. 2(1) or (2)**, the court is unlikely to require the petitioner to take any additional steps to bring the petition to the notice of the company, it being readily inferred that the company has put in place arrangements for documents deposited at that address to come to its notice.

Where service at the registered office is not practicable or if the company has no registered office

Service at the registered office will not be practicable if, for example, the registered office is found not to exist, or the building has been demolished.

In such a case the petition should be served in accordance with **IR 2016, sch.4, para. 2(4)** or, if that is impracticable, an application for substituted service should be made in accordance with **IR 2016, sch. 4 para. 1(5)**.

Certificate of service

IR 2016, sch. 4, para. 6(2) sets out the prescribed contents of a certificate of service.

In any case where the petition relies on depositing the petition under **IR 2016, sch. 4, para. 2(2)** it is vital that the certificate of service expressly confirms that, at the time of service, there was no director, other officer or employee of the company or any other person authorised to accept service of documents on the company's behalf at the registered office. The court requires this because it is only in the absence of any such person that a petitioner is entitled to rely on **para. 2(2)**.

When relying upon **para. 2(2)** the certificate of service must set out a sufficient level of detail to enable the court to be satisfied that the manner of service used is likely to bring the petition to the notice of a person attending the registered office. In particular:

- (a) if access cannot be gained to the interior of the registered office, this should be expressly stated;
- (b) if the petition is left in a letterbox in a multi-occupancy building the evidence of service should specify where the letterbox is, whether it is communal or belongs to the company and, if there is any ambiguity about it, why it is believed that the petition will come to the notice of a person attending at the registered office if it is left in that letterbox;
- (c) if the petition is affixed to a door or similar the evidence should explain why no other manner of service was available and should specifically describe how it was affixed, including that it was in a waterproof envelope and that it was securely affixed and by what means.

District Judge Bond

Business and Property Courts in Leeds