

FIVE TOP TIPS FOR APPLYING ON PAPER FOR
AN EXTENSION OF AN ADMINISTRATION

By Her Honour Judge Claire Jackson

A regular application made to the Business & Property Courts at Leeds is an application for an extension of an administration order (pursuant to paragraph 76 of Schedule B1 to the Insolvency Act 1986). When applications are presented parties can invite the Court to deal with the application on paper and the Court is sympathetic to such requests as there can be a costs saving in the administration. Frequently, however, we are unable to deal with applications on paper. We are often asked why.

This article sets out my five top tips which, if followed, can increase the prospects of your application being dealt with on paper:

1. Make the application on the proper form. The Insolvency Application Notice (Form IAA) was introduced in 2017. Despite this we continue to see applications presented on Ordinary Application forms. Whilst a period of adjustment was expected for precedent forms to be updated that time is now well past and applications must be made on the correct form. Note Insolvency Rule 3.54(2) requires that the application must state the reason why the extension is being sought;
2. Present the application with at least one month of the administration remaining (see paragraph 8.3 of the Practice Direction: Insolvency Proceedings). Timeous presentation also provides an opportunity for any questions the Judge may have to be dealt with in writing, without a hearing. Applications made inside the one month period are likely to be penalised

in costs, even if dealt with on paper;

3. Your witness statement needs to be clear. It should set out all the relevant facts the Court needs and exhibit the relevant documentation. This does not mean that it needs to set out all the facts of the administration or exhibit all the administration documentation. The witness statement should at least contain the following information:

- a) when the administration commenced and how;
- b) what the purpose of the administration is (exhibiting the Proposals if this has not already been filed at Court or exhibited to a prior application for an extension);
- c) what has been done since the start of the administration in narrative form not by cross reference to exhibits (but exhibiting any progress reports which are not already before the Court);
- d) what remains to be done at the date of the application, not the date of the last progress report as that could be 5 or 6 months ago;
- e) why this has not already been completed;
- f) what is the time estimate needed to complete the administration with an explanation for the period of extension sought;
- g) a contrast between an extension of the administration and alternative options for the Company;
- h) If there is/are (a) secured creditor(s), whether consent has been sought from the secured creditor(s) to the extension of the administration – particularly if the administration is being pursued for the third statutory objective and, if so, whether consent has been given (exhibiting proof of the consent).

The Court understands that there are times when it is not desirable to put in evidence before the Court commercially sensitive information. Examples of this may include where

negotiations continue for the sale of a substantial asset, litigation is envisaged in the administration and/or there is a litigation funding agreement. When this is the case you can file a second witness statement with the application with a request that the second statement be marked as confidential on the court file and you can ask for an order to be made preventing its disclosure to third parties without a court order. This is preferable to filing an application with a generalised and unspecific witness statement. If this option is followed, take care when filing the statement on CE file to ensure it is marked confidential and ensure that the application notice seeks all necessary orders from the Court.

4. The application should be accompanied by a skeleton argument by an advocate with higher rights of audience, which complies with Appendix X of the Chancery Guide. The skeleton argument should cross refer to the evidence highlighting what needs to be done in the administration and setting out the tests which have been established in case law for an extension. The skeleton argument should then apply the facts to the test. It is not necessary at this stage to file an authorities bundle.

5. The application must be accompanied by a draft order which should be filed in Word format.

Even if all the above tips are followed, not all applications are suitable to be dealt with on paper and the Court retains a discretion to refuse to deal with the matter on paper and to list the application for a hearing.

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