CHANCERY BAR

THE CHANCERY BAR ASSOCIATION

RESPONSE TO THE INSOLVENCY SERVICE CONSULTATION PAPER ON REFORM OF THE PROCESS TO APPLY FOR BANKRUPTCY AND COMPULSORY WINDING UP

Introduction

1. The Chancery Bar Association is one of the longest established Bar Associations and represents the interests of over 1,100 barristers. Its members handle the full breadth of Chancery work at all levels of seniority, both in London and throughout England and Wales. It is recognised by the Bar Council as a Specialist Bar Association. Full membership of the Association is restricted to those barristers whose practice consists primarily of Chancery work, but there are also academic and overseas members whose teaching, research or practice consists primarily of Chancery work.

2. Chancery work is that which is traditionally dealt with by the Chancery Division of the High Court of Justice, which sits in London and in regional centres outside London. The Chancery Division attracts high profile, complex and, increasingly, international disputes. In London alone it has a workload of some 4,000 issued claims a year, in addition to the workload of the Bankruptcy Court and the Companies Court. The Companies Court itself deals with some 12,000 cases each year and the Bankruptcy Court some 17,000.

3. Our members offer specialist expertise in advocacy, mediation and advisory work across the whole spectrum of finance, property, and business law. As advocates they litigate in all courts in England and Wales, as well as abroad.

4. This response is the official Response of the Association and has been formally approved by the full committee of the Association. It has been produced by Michael Gibbon QC, Catherine Addy (an elected executive officer of the Association), and Fiona Dewar, all of whom are members of the Association experienced in the field of

insolvency work. In particular, it is worthy of note that all three of the writers have, at one stage or another, regularly appeared in the winding up court on behalf of HMRC. Accordingly, they each have substantial experience of dealing with a very considerable volume of winding up petitions[1] on a regular basis, as well as significant experience of bankruptcy cases. The writers have also directly canvassed the views of many other members, in particular those specialising in the field of insolvency.

5. As requested, we provide answers to the individual questions set out in the Consultation Paper. However, before doing so, we make a number of important general observations concerning the substance of the proposed reforms and **all our answers to the individual questions should be read in light of this detailed narrative statement of our position**.

6. As an Association, we welcome the ongoing efforts of the Insolvency Service and the Ministry of Justice to maximise the effective use of our Courts' services and resources and to ensure that the best possible outcome is obtained for all users. We indicate in the course of our comments below some limited elements of the proposals that we consider might be possible to implement to achieve these important goals. However, these areas would in our view require further consideration and evidence gathering, not least as to whether on their own they would be cost-effective. However, the bulk of the proposals are in our view inappropriate to achieve those goals. We set out in detail the reasons why we would recommend in the strongest possible terms that these elements of the proposals should not be taken forward.

7. We consider it important to emphasise two things at the outset.

    a. The suggestion that there is an existing "*regulatory failure*" (as alleged in the opening section of the Impact Assessment of 20 April 2011) is on proper

[1] The number of HMRC winding up petitions heard on any one day in the weekly winding up court (all of which are dealt with by the same counsel) usually ranges from between 100 to 200. As we explain further below, by way of example, on 23 January 2012 Catherine Addy appeared for HMRC in respect of 213 petitions in the ordinary list.

consideration profoundly misconceived, as will appear from our response set out below.

b. However, in addition, we have no confidence in the data on which the Insolvency Service has concluded that the proposals would result in a saving of money. Very little concrete analysis has been done of the existing system and the notional costing of its existing workload. We attach to this Response at Annexes One and Two data concerning company winding up which we have been able to gather from our direct recent experience. This data in particular demonstrates (a) the great efficiency of the current system in terms of volume of work accommodated, (b) the flexibility of the current system in providing for a wide range of different possible outcomes, and (c) how (contrary to the impression given in the consultation paper) it is only relatively few company winding up petitions lead to an unopposed compulsory order on the first occasion.

8. To summarise our position, we recommend in the strongest possible terms that the proposals as currently drafted should not be proceeded with.

9. We have prepared this Response independently of any other party. However, we note that our conclusions on all points of substance are consistent with the conclusions expressed in the Joint Response of the Bankruptcy and Companies Court Users Committee and the Judges of the Chancery Division of the High Court. To the extent that that Joint Response raises further points of objection not covered herein, it can be taken that the Chancery Bar Association adopts such points.

10. The rest of this Response is divided into the following headed sections:

(A) General statement of the Association's position setting out:

(1) Limited elements of the proposals which we consider it might be possible to implement (subject to detailed consideration of cost-effectiveness) (paragraphs 12 to 14);

(2) Elements of the proposals to which the Association fundamentally objects (paragraphs 15 to 54)

a. The nature of the judicial function in insolvency proceedings (paragraphs 16 to 19)

b. The nature of the orders: collective remedies with profound consequences (paragraphs 20 to 25)

c. The safeguards necessary to protect all interested parties (paragraphs 26 to 51)

i. Jurisdiction (paragraphs 28 to 31)

ii. Petitioner's standing (paragraphs 32 to 34)

iii. Protection and balancing of interests (paragraphs 35 to 51)

d. Summary of the reasons why the above concerns cannot be accommodated within the proposed adjudication system (paragraphs 52 to 54)

(B) Responses to the individual questions, which must be read in light of the full substance of Section (A) (pages 28 to 40)

Annex One: Breakdown of orders made on HMRC petitions heard in the Companies Court on 16 January 2012.

Annex Two: Summary of orders made on all petitions heard in the Companies Court on 23 January 2012.

11. We would also like to make clear that, given the strength and breadth of the concerns expressed below, we would of course be willing to meet with the Insolvency Service to explain our views further if that would be of assistance.

A. GENERAL STATEMENT OF POSITION

(1) Limited elements of the proposals which we consider it might be possible to implement (subject to detailed consideration of cost-effectiveness)

12. At the outset, we wish to make clear that we do not in principle oppose the removal of unopposed *debtor* initiated *bankruptcy* petitions from the court process, provided that appropriate safeguards are incorporated into the replacement process to ensure its procedural regularity and fairness.

13. In addition, we would not in principle oppose the introduction of a new system which allowed certain[2] creditor initiated *bankruptcy* petitions to be dealt with outside the court process provided that:

(1) Such a system only applied to those cases in which the debtor **positively consented** to the making of a bankruptcy order against him and;

(2) Additional appropriate safeguards were incorporated into the process.

14. To ensure that individuals were only made bankrupt under the new process when there was both jurisdiction and proper grounds for an order to be made, the debtor would not only need to consent but would also need to provide satisfactory evidence /confirmation that:

(i) His centre of main interests was in England and Wales or that he had an establishment within the jurisdiction to justify the opening of main or territorial proceedings under the EC Regulation[3];

(ii) The Court had jurisdiction to make the order under the relevant provisions of the Insolvency Act 1986;

(iii) He admitted the debt upon which the petitioner relied for his status as a "creditor" entitled to bring a petition under the Insolvency Act 1986;

[2] We consider that any such process should only be available for private creditor petitions: not petitions brought by government bodies. We concur with paragraph 44 of the Consultation Paper which recognises that it would not be appropriate for any petitions presented by the Secretary of State to be dealt with by way of an adjudication system. However, we consider that it would be equally inappropriate for the petition of any government department to be dealt with by a state-appointed adjudicator. This point is dealt with further below.

[3] This is a point on which the debtor would be required to provide evidence rather than a mere confirmation. The evidence could be elicited by way of a series of questions. We would anticipate that in many cases the situation as evidenced by the responses would be sufficiently clear-cut to enable an adjudicator to proceed: for example if the debtor confirmed that both his principal residence and principal place of business were in England and Wales, in the absence of any evidence to the contrary, the deeming provisions of the Regulation would allow the adjudicator to proceed on the basis that he had jurisdiction and that the proceedings were "main proceedings". However, there will be a significant number of cases in which the debtor's responses do not necessarily engage the deeming provisions. At that stage, a judicial determination of fact in light of the evidence would be required and the matter would need to be referred to the Court for that purpose.

(iv) He admitted that he was unable to pay his debts as they fell due and was therefore insolvent; and

(v) He understood the effect of and consented to the making of a bankruptcy order.

(Similar positive information would need to be elicited from a debtor bringing his own petition before any order could be made by an adjudicator: i.e. the debtor would need to provide satisfactory factual evidence as to the location of his centre of main interests/establishment and as to his insolvency.)

(2) Elements of the proposals to which the Association fundamentally objects

15. However, for the important reasons of principle identified below, we would have grave concerns about any such replacement process being extended to either:

(a) creditor initiated bankruptcy petitions where the debtor has not expressly consented to the making of a bankruptcy order (and provided the necessary information referred to above) or

(b) *any* petitions for the winding up of a company[4].

We feel that it is important to emphasise the strength of our opposition to the above being included in any new adjudication process. Having considered these proposals and their ramifications very carefully, we do not consider that an adjudication system encompassing the above kinds of cases could ever be structured in such a way as to adequately protect the rights of all interested parties and to ensure the procedural regularity and fairness of the orders made. Additionally, we do not believe that a process including these kinds of cases would ultimately prove cost effective given the numerous procedural steps and safeguards that would be required, the number of cases that would need at some stage to be re-transferred to the Court system and the number of cases that would be likely to result in appeals, applications for rescission or requests for review on procedural or human rights grounds.

[4] For the same reasons, we are also of the view that it would be wholly inappropriate to extend the proposed scheme to partnership petitions. However, in the absence of any indication in the Consultation Paper that it is intended to apply the scheme to petitions of this kind we do not deal with the problems of their inclusion in this Response.

(a) The nature of the judicial function in insolvency proceedings

16. The importance of the judicial function in these kinds of cases is discussed in detail below. However, we highlight at this stage the specific features of the judicial function in hearing winding up and bankruptcy petitions that would be lost in an administrative adjudication regime:

(1) **Public**. We consider it of the utmost importance that winding up and bankruptcy cases continue to be determined at public hearings. We do not formally express this by reference to Human Rights legislation, which others will be better able to comment on (though as the principle of open justice is at the heart of Human Rights legislation just as much as it is at the heart of the English legal tradition, we register our great surprise that page 62 of the Consultation Paper suggests that the proposals will have no human rights impact). Public hearings ensure that all interested parties can attend and, if appropriate make representations: e.g. other creditors who oppose or support the petition, the provisional liquidator or supervisor appointed in relation to the company, or the Crown[5]. It also ensures that determinations of the numerous relevant (and often difficult) questions of fact and law are transparent and a matter of record. This is vital to the development of the body of case law and guidance necessary to ensure consistency of approach and predictability of outcome for participants. As discussed below, this is of particular importance in relation to determinations about the interpretation or application of cross-border regulations, which may be relevant to and should be consistent with the approach of courts in other states;

(2) **Independent.** In light of the profound consequences of bankruptcy orders and winding up orders for debtors and third parties, we consider that they should be made (and be seen to be made) by a member of the independent judiciary unless very special circumstances determine otherwise. In particular, we do not

[5] For example in the case of a dissolved company the Crown has an interest as the recipient of *bona vacantia* property and its consent is therefore required to any application for restoration and winding up: what is known as the "usual double-barrelled order".

consider that it would ever be appropriate for a state appointed adjudicator to deal with a petition presented by the Crown. The procedural and human rights implications of allowing a petition or application brought by the Crown to be determined by a state-appointed official are illustrated by the example (and abolition) of General and Special Commissioners as a tribunal determining tax appeals. Given the percentage volume of bankruptcy and winding up petitions that are presented by HMRC, we consider that this factor must raise serious questions about whether an adjudicator system limited to particular kinds of private creditor petitions could ever be cost-effective.

(3) **Discretionary**. For the reasons set out below, in the kinds of cases under discussion it is extremely important that they continue to be heard by a judge with a wide discretion – to be exercised judicially – in relation to matters such as whether it is appropriate to make the order sought at that hearing, whether it is appropriate to adjourn the petition or whether it is appropriate to waive any procedural defects in the process. We do not consider that this discretionary function could be properly delegated to an adjudicator irrespective of his or her experience or expertise.

(4) **Breadth of jurisdiction**. In addition to the broad discretion that the Court has on hearing a petition, it also has jurisdiction to make a variety of orders on related matters that are often conveniently dealt with at the same time as the petition. It would be inefficient, duplicative and costly if such matters (with which an adjudicator did not have jurisdiction to deal) had to be referred to the Court either by way of subsequent proceedings or by re-transfer of petitions back into the Court system. For example:

(a) When a winding up petition is dismissed because the company has gone into administration, creditors' voluntary liquidation or a creditors' voluntary arrangement has been approved, the Court will often make an order providing for the petitioner's costs to be paid as an expense of the administration, CVL or CVA on terms that the relevant official has liberty to apply for the order to be revoked or varied;

(b) The Court has the power to suspend a petition if the company has been put into administration by a qualifying floating charge holder;

(c) The Court is able simultaneously to restore a company to the register and wind it up. It is not uncommon for a company to be dissolved between presentation and the final hearing of a petition. Under the current system, this can be dealt with by way of permission to amend the petition and a subsequent "double-barrelled order". However if such a petition had commenced under an adjudication system there would inevitably be cost and delay attendant on transfer to the Court system;

(d) The Court is able to make a validation order if it appears convenient to do so on or shortly after the hearing of a petition;

(e) The Court has a power to give directions for the filing of evidence in relation to matters such as the existence of the debt or the conduct of a creditors' meeting; and

(f) It is convenient that rescission or annulment applications are heard by the Court that made the original order, which will be familiar with the relevant facts of the case. There are also cases in which a rescission order is made almost immediately after the winding up order is made: for example where a debtor arrives late to oppose an order or where the petitioner alerts the court to an error not highlighted before the order was made.

(5) Internationally recognised. Finally, we note that the judicial function currently exercised by the Court in relation to bankruptcy and winding up petitions forms part the of definition of insolvency proceedings in cross-border regulations such as the EC Regulation on Insolvency Proceedings (1346/2000/EC). We consider it unlikely that proceedings in which this function has been replaced by adjudication would satisfy the relevant definitions and the courts of other member states would not therefore be required to recognise such proceedings.

17. In support of the above (and particular (3) and (4)), we refer you to Annexes One and Two to this Response. They each contain detailed information about the orders made in relation to petitions heard by the Companies Court on 16 January 2012 (Annex One)

and 23 January 2012 (Annex Two). The information in respect of the 16th was recorded and collated by Fiona Dewar who appeared on behalf of HMRC on all of its petitions that morning. The information in respect of the 23 January 2012 was recorded and collated by Catherine Addy who appeared on behalf of HMRC on that occasion. This sample data from two recent "winding up court" lists is, in our experience, typical of the number and kinds of petitions heard and of the types of orders made.

18. We refer you to this data by way of illustration of the very wide number of different issues that can fall to be considered on the hearing of a winding up petition and the wide variety of different orders that it may be appropriate for the Court to make. It will be seen that the orders made include adjournments for a variety of different purposes and, in a significant number of cases, the discretionary waiver of procedural defects.

19. A significant number of orders were also made on matters related to the application for a winding up order (such as provision for payment of the petitioner's costs as an expense of separate insolvency procedure or an order for the restoration to the register of a dissolved company). The data also demonstrates the very high percentage of such petitions that are presented by HMRC: for example on 16 January over 90% of petitions had been presented by HMRC (236 out of 255) and on 23 January 2012 almost 80% of the petitions had been presented by HMRC (213 out of 269).

(b) <u>The nature of the orders: collective remedies with profound consequences.</u>

20. It is a well-established and fundamental feature of the insolvency jurisdiction that the Court in hearing a winding up or bankruptcy petition is determining whether or not it is appropriate to grant a *collective* remedy for the benefit of all of the debtor's creditors: it is <u>not</u> adjudicating upon a dispute between two parties or providing a debt-collection mechanism:

"A winding up petition is not a [lawsuit between parties[6]] for the benefit of A as against B. It is the invoking by A of a class remedy for the benefit of himself and other members of the class."[7]

21. An application for a winding up order or a bankruptcy order is not "claim" or "counterclaim"[8]. It is the legal process by which creditors can invoke a mechanism of collective execution against the property of an insolvent company or individual. Statute has given the power to invoke this mechanism to creditors as a class. Only one creditor need take steps to invoke it, but in doing so, he is acting on behalf of the creditors as a whole.

22. The purpose of this collective enforcement mechanism is to provide for the fair distribution of an insolvent company or individual's assets amongst its/ his creditors. This is reflected in the statutory provisions that are triggered on the making of a winding up or bankruptcy order. For example:

(1) The provisions for a *pari passu* distribution amongst unsecured creditors;

(2) The insolvency set-off provisions which provide for an account to be taken of what is due from the insolvent debtor and its creditors – each to the other – and for those sums to be set off against one another with the effect that only the balance is payable;

(3) Sections 127 and 284 of the Insolvency Act which provide that any dispositions of property made by the insolvent debtor after the presentation of the winding up or bankruptcy petition are void except to the extent that they are authorised or ratified by the court[9]; and

(4) Section 129 of the Insolvency Act, which provides that a compulsory liquidation will generally take effect from the date of the presentation of the petition: not the date of the order.

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[6] *"Lis inter partes"*

[7] *Re Southbourne Sheet Metal Co Ltd* [1992] BCLC 361 per Harman J at 364

[8] *Best Beat Ltd v Rossall* [2006] EWHC 1494 (Comm)

[9] Accordingly, such dispositions will only be ratified to the extent that the court is persuaded either that they will operate for the benefit of the creditors as a whole or will not prejudice those creditors; see the Practice Note on Validation Orders [2007] BCC 91 and the authorities referred to therein.

23. The collective nature of the remedies and the immediate effect of winding up and bankruptcy orders on third parties are inherent in this kind of insolvency process. Indeed, it is these distinctive features that define insolvency proceedings and distinguish them from ordinary legal proceedings: see for example the way in which insolvency proceedings are defined by Articles 1(1) and 2(a) of the EC Regulation. The application of cross-border insolvency provisions to these types of proceedings reflects the effect of winding up and bankruptcy proceedings on the rights of third parties: whether or not they are resident in the UK and whether or not they have participated in the application for the order that triggers the bankruptcy or compulsory liquidation.

24. The effects of winding up and bankruptcy orders on third parties include:

(1) Both kinds of order result in the loss of creditors' pre-existing rights of action and enforcement against the debtor: legal proceedings cannot be brought without the court's permission; valuable contractual rights are transformed into a right (in common with other unsecured creditors) to share in the net proceeds of sale of the debtor's assets (which is often much less valuable); the protection of statutory and contractual "no set-off provisions" are over-ridden by the insolvency set-off provisions;

(2) Transactions carried out between the company and a third party between presentation of the petition and winding up are rendered void unless they have been validated by the Court;

(3) On the winding up of a company, third party creditors are deprived of the benefit of any attachment, sequestration, distress or execution put in force against the estate or effects of a company after presentation;

(4) In both cases, obligations to provide information and /or make statements and /or attend for public examination are imposed on numerous individuals. Failure to comply with such obligations may result in criminal sanction;

(5) The bankruptcy of an individual may result in his whole family being made homeless if the trustee decides to sell the property;

(6) The compulsory liquidation of a company will generally result in staff losing their jobs and (depending on the nature of the business) may have serious consequences for other individuals such as customers of commercial businesses or service providers or residents of homes and facilities.

25. In addition to the profound consequences of a winding up or bankruptcy order on third parties, such an order also has profound and Draconian consequences for the person against whom/which it is made.

a. In the case of individuals, a bankruptcy order (amongst other things) deprives the debtor of virtually all of his property, imposes on him a wide range of obligations to provide information and documents, prevents him from acting as a director or holding other office without the court's permission, restricts his ability to raise credit, makes him susceptible to a range of additional legal orders and renders him (and others) potentially liable to criminal sanction. It is an event from which it can take many years to recover: financially, commercially and emotionally.

b. The effects of a winding up order on a company are equally profound. As Ward LJ put it in *Re Bayoil SA* [1999] 1 All ER 374[10]:

> *"A winding up order is a Draconian order. If wrongly made, the company has little commercial prospect of reviving itself and recovering its former position."*

(c) <u>The safeguards necessary to protect all interested parties</u>

26. The nature and consequences of winding up and bankruptcy orders mean that appropriate safeguards in each and every case are of paramount importance. Under the current system, they include the following:

(i) Mandatory requirements as to jurisdiction to make an order;

(ii) Mandatory requirements as to a creditor's standing to present a petition; and

[10] At p383

(iii) Statutory provision and judicial discretion exercised to protect and balance the interests of third parties and the debtor.

27. We set out below the reasons why we do not believe that these important safeguards could be adequately accommodated /replicated in an adjudication system that applied to winding up petitions or creditor bankruptcy petitions to which the debtor has not expressly consented.

(i) Jurisdiction

28. Before a winding up or bankruptcy order is made, the Court must be satisfied that it has jurisdiction under both the relevant domestic provisions and under any of the relevant Regulations, Directives and Conventions which allocate the jurisdiction to wind up companies and bankrupt individuals between different countries. The detail of these provisions cannot be covered within the confines of this Response. However, we would respectfully refer the Service to these provisions and highlight the importance of ensuring that an adjudicator's ability to make an order under any new process is strictly limited to situations in which it is clear that there exists the necessary jurisdiction as a matter of domestic and international law. Failure to address these matters is, we consider, a significant flaw in the proposals in the current Consultation Paper.

29. We emphasise that these are provisions that must be satisfied in every case: even where there are no "disputes" between the parties to the proceedings. Questions of jurisdiction can be (and often are) grounds on which a petition must be dismissed, even if it is being brought by the debtor himself or if he consenting to it. Indeed it is an important purpose of cross border provisions such as the EC Regulation to prevent individual debtors or companies illegitimately "forum shopping" by choosing to subject themselves to a particular national insolvency regime when they do not have the necessary connection with that jurisdiction. It is very important that this

purpose is not frustrated by an administrative system opening the back door to this kind of abuse in the absence of adequate jurisdictional safeguards.

30. We also emphasise the importance of transparency of determinations on the question of jurisdiction. This is a mixed question of fact and law and transparent decisions are important in ensuring consistency of approach; particularly in relation to cross-border regulations. In particular in relation to the EC Regulation, the transparency of these determinations (domestically and internationally) is key to the development and maintenance of a consistent practice across all the Regulation States.

31. We therefore do not consider that an adjudicator should be empowered to make a winding up or bankruptcy order in any cases other than those where the question of jurisdiction is entirely clear cut. We consider that in respect of the kinds of petition discussed in paragraphs 12 to 14 above, it may in some cases be possible for there to be sufficient certainty: i.e. if the debtor has provided the kind of information discussed above and it is such as to put the matter beyond doubt. However, we do not consider that it would ever be appropriate for an adjudicator to make a winding up or bankruptcy order in any other case:

    (1) In the case of a bankruptcy petition, in the absence of adequate positive evidence on the above matters, the question is one that can only be properly be resolved by judicial inquiry and determination;
    (2) In the case of a winding up petition against a company, there is a far greater degree of legal and factual complexity in relation to questions of jurisdiction. For example, difficult questions arise in relation to overseas and foreign companies, or companies with trading operations in different jurisdictions and /or different parts of the UK. These are questions that can only be properly and consistently determined by public judicial determination. In addition to matters relating strictly to the jurisdiction to make an order, the Court hearing a winding up petition will also often need to grapple with difficult questions about the sufficiency of a company's connection to the jurisdiction as part of the exercise

of its discretion. These are not matters than could ever be adequately determined by an adjudicator.

(ii) Petitioner's standing

32. In order for a petitioner to invoke the collective remedy of a winding up or bankruptcy order, he must satisfy the court that he falls within the class of creditor entitled to make the application. The requirements are set out in the insolvency legislation. Again it is not possible to summarise them within the confines of this response and the Service is respectfully referred to the Insolvency Act 1986 and the Rules for the detailed requirements.

33. Again, we emphasise that the standing requirements apply in every case. The Court cannot proceed with a petition unless it is either satisfied that the petitioner has standing or able to substitute another petitioner with standing to take the petition forward. The legislative provisions that set out the persons who have standing are exhaustive: the Court cannot extend standing to anyone else. Therefore even in cases in which the debtor expressly "consents" to the making of an order (and does not take any point about or is unaware of any deficiency in the petitioner's standing) an order cannot be made unless the Court is satisfied as to the petitioner's standing.

34. Again, we consider that an adjudicator should not be empowered to make an order unless the question of standing is clear beyond doubt. While it may be possible in the kinds of case discussed at paragraphs 12 to 14 above if adequate positive information is provided by the debtor, we do not consider that it is possible in any other case.

(iii) Protection and balancing of interests

35. As above detailed above, the making of a winding up or bankruptcy order has an immediate effect on the private rights of all of the debtor's creditors and may also

affect the rights of other third parties. In a given case other parties such as provisional liquidators, the supervisor of a CVA or the Crown may also have an interest.

36. These different parties may all have conflicting views about whether or not an order should be made. For example, some creditors may feel that their interests would be better served if the debtor were to be given further time to pay his /its debts. Some creditors may consider that they are likely to achieve a better recovery through an insolvency route other than compulsory insolvency: for example by approval of a creditors' voluntary arrangement or individual voluntary arrangement. Others might feel than an order should be made as soon as possible in order to prevent dissipation of assets or in order that a liquidator or trustee is able to investigate the debtor's affairs as a matter of urgency.

37. Petitions therefore cannot be treated as a private matter between petitioner and debtor: and the absence of any dispute between them is insufficient reason to remove them from the ambit of public discretionary judicial determination:

> *"Winding up petitions are a somewhat special class of litigation. There is not a true* lis *in which the petitioning creditor and the company are able to deal with the matter as they see fit. A petition invokes a class right, and the court is concerned at all times with the interest of all members of the relevant class and the interests of the company.*[11]*"*

38. It is therefore a vital function of the Court in hearing a bankruptcy or winding up petition to weigh these different interests and decide on the appropriate order to make. Under the current system there are a number of procedural safeguards in place to facilitate this process. For example:

[11] *Re Pleatfine Ltd* [1983] BCLC 102 at 103 per Harman J.

(1) Provisions requiring the advertisement of winding up petitions in the London Gazette at least 7 days before the hearing of the petition[12];

(2) Provisions entitling creditors to attend and make representations on the hearing of a petition; and

(3) Provisions entitling other creditors to take carriage of the petition or be substituted as petitioner if the original petitioner decides not to pursue the order.

39. In relation to winding up petitions, the advertisement requirements are of particular importance. They not only enable creditors to attend the hearing and make representations, they also ensure that creditors are given at least 7 days to take any other steps they wish to take prior to the making of an order. For example, any creditor entitled to make an administration application could do so before the hearing. This would automatically invoke a moratorium on proceedings against the company under paragraph 44 of Schedule B1 to the Act with the result that the Court could not make a winding up order at the hearing: even if both the petitioner and the debtor company wished it to do so. Other creditors may use the opportunity to investigate with the company alternative insolvency options such as a creditors' voluntary arrangement or a creditors' voluntary liquidation.

40. The Court plays a crucial role in safeguarding third party (particularly creditor) interests; both by policing these procedural safeguards, and by taking proper account of relevant parties' interests in deciding whether and how to exercise its discretion on the hearing of a petition:

> *"The power of winding up [on a creditor's petition] was given for the benefit of a particular class, and is entrusted to the court for their benefit"*[13].

[12] Additional requirements about the information that had to be provided in an advertisement were introduced in 2010. These are clearly designed to maximise the prospects that creditors (including a company's bankers) will become aware of the existence of a petition.

[13] *Re Chapel House Colliery Co* (1883) 24 ChD 259 per Bowen LJ at 270

41. For example, the Court plays an important role in ensuring that the advertisement requirements have been met. If the petition has not been advertised by the second hearing, the Court will generally dismiss the petition. This approach is enshrined in paragraph 2.1 of the *CPR Practice Direction – Insolvency Proceedings* which expressly provides:

"*Insolvency Rule 4.11(2) [the requirement to advertise a petition] is* ***mandatory****, and* ***designed to ensure that the class remedy of winding up by the court is made available to all creditors, and is not used as a means of putting pressure on the company to pay the petitioner's debt****. Failure to comply with the rule, without good reason accepted by the court, may lead to the summary dismissal of the petition on the return date (Insolvency Rule 4.11(5)[[14]]). If the court, in its discretion, grants an adjournment, this will be on condition that the petition is advertised in due time for the adjourned hearing. No further adjournment for the purpose of advertisement will normally be granted*" [our emphasis].

The Court will also generally require re-advertisement of a petition if the advertisement which is first placed in the Gazette does not sufficiently comply with the requirements of the Insolvency Rules.[15] However, in either case, the Court may in its discretion waive any breach of the Rules if it considers that there are good reasons to do so: for example because the petitioner is subject to an injunction restraining advertisement. We do not consider that an adjudicator could adequately carry out this important discretionary function in relation to the waiver of the procedural safeguards designed to protect the interests of third parties.

42. The Court also plays a vital role in protecting creditors' interests by exercising its discretion whether to make the order sought or adjourn or dismiss the petition by reference to their expressed views and perceived interests. In every case, it must

[14] Sic. The *CPR Practice Direction – Insolvency Proceedings* incorrectly refers to IR 4.11(5); it should refer to IR 4.11(6).

[15] As the data which we refer to in section (iv) below shows, a significant number of petitions were adjourned on 23 January 2011 for re-advertisement as the Court, having considered the relevant defect/s, judicially considered that other creditors could potentially be prejudiced by the relevant non-compliance. However, in some cases, the Court was minded to waive different defect/s and to make the order sought.

balance the interests and preferences of the debtor, the petition and the body of creditors as a whole. For example:

(1) The Court may allow adjourn the petition for the purpose of allowing creditors that oppose the petition an opportunity to vote on a creditors' voluntary arrangements;

(2) The Court may dismiss the petition (even if the petitioner is pressing for an order and in principle is entitled to it) because an alternative insolvency procedure is in place: e.g. a creditors' voluntary arrangement; or

(3) The Court may refuse to dismiss the petition (even if both the petitioner and the company wish it to do so) because another creditor wishes to take carriage of the petition or to be substituted as petitioner.

43. In addition to third party interests, the Court also plays a vital role in protecting the debtor's interests. Again, there are certain procedural safeguards that facilitate that function, for example:

(1) The requirement in the rules that the particulars of the debt be clearly spelt out in the petition;

(2) The provisions in relation to service that require that in the first instance an attempt is made to serve the petition personally on the debtor (whether an individual or a company);

(3) Strict requirements as to the way in which the debtor's insolvency must be evidenced; and

(4) The debtor's right to appear and make representations on the hearing of the petition.

44. Again, the Court plays a vital role both in policing these procedural requirements and in taking account of the debtor's views and (in his /its absence) the debtor's apparent interests. For example:

(1) The Court will scrutinise carefully questions such as the adequacy of the particulars of debt and service. Even in the absence of any appearance or

participation by the debtor the Court will decline to make an order if it is not satisfied about these matters;

(2) The Court will give careful consideration to the evidence of insolvency. In particular, it will not make a winding up petition if it is satisfied on the evidence that the debt on which the petition is based is genuinely disputed. It may reach this conclusion with or without evidence from the debtor;

(3) Even where it is satisfied about the above matters, the Court may decline to make an order if it does not consider that it is appropriate to do so in all the circumstances: e.g. if the petition is founded on a judgment debt that is under appeal or if the debtor can show that he /it has a genuine and serious cross-claim that meets or over-tops the debt or if the debtor has gone into IVA /CVA. Crucially, however, these are matters of discretion and cannot be reduced to administratively applicable hard and fast rules: there will be cases in which the Court nonetheless considers it appropriate to make an order notwithstanding that one of the above criteria is met;

(4) The Court may also decline to make an order (even in the absence of opposition from the debtor) if it does not consider that doing so would achieve any proper purpose. Again this is a matter of discretion that cannot be reduced to any hard and fast rules; and

(5) Even if the Court is satisfied that the petitioner is entitled to his order in principle, the Court may accede to a request from the debtor to adjourn the petition to enable the debtor to pay or settle the debt, to seek advice from an insolvency practitioner or because there is some other good reason to do so (e.g. because the sole director of a company is ill or has recently died). Arguably this is one of the most important safeguards offered by judicial discretion, and one which can never be exercised by an adjudicator within a purely administrative process – where the enquiry would stop at the question of entitlement.

45. Finally, the Court plays an important role in preventing abuse of the insolvency process: which can operate to the detriment of either or both the general body creditors and the debtor. The purpose of a winding up or bankruptcy order is

categorically not to determine or enforce rights between the petitioner and debtor. If a petitioner wishes to enforce his rights as a debtor against a company or individual his proper remedy is to pursue his claim in ordinary proceedings and /or take appropriate steps to enforce any judgement made in his favour. A petitioner cannot use insolvency proceedings as an alternative to the proper legal routes for debt collection:

> *"It is trite law that the Companies Court is not, and should not be used as (despite the methods in fact often adopted) a debt-collecting court. The proper remedy for debt collection is an execution upon a judgment, a distress, a garnishee order, or some such procedure"*
> (per Harman J in *Re a Company (No 001573 of 1983)* [1983] BCLC 492 at 495)

46. Accordingly, it is an abuse of the court's process to use the threat of the draconian effects of insolvency orders to pressure a payment out of a debtor or to seek payment in preference to other creditors. It is an important part of the Companies and Bankruptcy Courts' function in determining petitions to prevent such abuse. For example:
    (1) A petition will be dismissed if it seeks to compel payment of a genuinely disputed debt and the petitioner will almost always be ordered to pay the debtor's costs on an indemnity basis; see e.g. *Re a Company (0012209 of 1991)* [1991] 1 WLR 351.
    (2) Equally, even if the petitioner and a company or debtor both wish a petition to be adjourned, the Court will decline to adjourn if it considers that the request is an abusive attempt by the petitioner to use the continuing existence of his petition to effect payment of his debt[16]: in this situation the Court will require the petitioner to choose between a winding up /bankruptcy order or dismissal.

47. We would be extremely concerned about the prospect of a new adjudication system that failed to properly safeguard the interests of debtors and third parties and that

[16] E.g. because the petition has already been adjourned to give the debtor a reasonable period of time to pay the debt and the further adjournment is sought to enable payment /negotiations.

opened up the door to abusive misuse of the insolvency provisions for purposes for which they (and the resources allocated their operation) were not intended.

48. It will be apparent from the above that there are many cases in which the Court will decline to make the order sought even in the absence of any opposition or participation from the debtor. This is reflected in the data set out in the attached document: see for example the number of petitions dismissed or adjourned because of procedural defects when the company was not represented. It will also be apparent from the above that whether or not the debtor is represented there are plethora of different issues that may arise and orders that may be appropriate. In our experience, the case of an order being made on the first hearing in the absence of the debtor is far rarer than assumed by the Consultation Paper (particularly in relation to company petitions): for example on 16 January 2012 out of the total of 236 winding up petitions presented by HMRC only 39 proceeded in this way.

49. Finally, it is perhaps convenient at this juncture to note that just as the Court may decline to make an order even when the petition appears to be "undisputed", there will also be cases where it become obvious on the first hearing that an order is appropriate despite pre-issue indications of a dispute: e.g. because the debtor's opposition is withdrawn or it is immediately apparent that the opposition is without merit. The issues arising on a petition often change during the lifetime of the petition: debtors come out of the woodwork at the last minute with a good defence; judicial scrutiny or inquiry of the petitioner reveals that it is not appropriate to make an order even in the absence of any opposition from the debtor; opposition is withdrawn or revealed to be insubstantial; another insolvency event intervenes.

50. Against this reality, while we accept that on the final hearing of many petitions the proper order may be quite clear, trying to effectively "hive off" such cases at the start of the process is an almost impossible task. Petitions that could arguably have been dealt with by an adjudicator would in many cases need to be initiated by way of a court process in light of pre-issue correspondence. Conversely many petitions properly commenced in front of an adjudicator would need to be transferred back into the

Court system in light of subsequent events. We consider that a "two track system" would be likely to result in many petitions taking longer to be finally determined that would be the case at present: with potentially serious consequences for all parties involved.

51. Ultimately it is our view, based on our experience of the way in which the current system functions, that the kinds of petition under discussion can only be properly, legitimately and cost-effectively determined in a way that adequately protects the interests of all parties by a court process in which petitions are publicly determined by a judge with broad discretion and jurisdiction.

(d) <u>Summary of the reasons why the above concerns cannot be accommodated within the proposed adjudication system</u>

52. In summary, the current system fulfils the following important functions:

(1) It provides a **public hearing** of the petition at which all interested parties are entitled to appear. In the case of companies, provisions requiring the advertisement of petitions and the provision of information to creditors play a vital role in empowering them consider and pursue their options between presentation of a petition and the first hearing. In all cases, the hearing provides an opportunity for all interested persons to listen to the issues raised and for those with sufficient interest to make representations to the Court before an order is made;

(2) The Court plays a vital **evidence gathering and assessment role**. Even in the absence of the debtor, the Judge will weigh and test the evidence, make any appropriate inquiries of a petitioner and give directions for further evidence to be provided to the Court if necessary;

(3) The Court makes **determinations of fact and law** based on its assessment of the evidence, its judicial experience of the nature of the issues in dispute, the approach adopted in other cases and any relevant practice directions. These determinations become a matter of public record and can therefore be used to

ensure consistency and predictability between different courts and jurisdictions both domestically and internationally;

(4) The Court exercises a **broad discretion** which enables it properly and judicially to weigh in any given case the relative interests of all relevant parties and to take account of the scheme and purposes of the insolvency regime: e.g. by preventing abuse and by declining to make orders in cases in which there would be no relevant practical purpose to the making of an order. In doing so it fulfils the specific statutory function accorded it under the insolvency legislation and on which the whole scheme of the insolvency provisions is predicated;

(5) The Court has a **wide jurisdiction** both in relation to the orders that it can make on the petition and in relation to other orders. For example it can adjourn the petition to give an opportunity for the debt to be paid or alternative insolvency avenues to be pursued. Or it can make related orders such as costs orders, validation order, restoration order or rescission orders;

(6) The petition is heard by an **independent judge** who is, and can be seen to be, entirely independent of the Executive and manifestly has no connection with any of the parties before him;

(7) The petition is determined within a system that has specific and important **procedural safeguards against dishonesty, error and abuse**. For example, the court has specific statutory powers to review its earlier order (even in the absence of circumstances justifying a true appeal) under section 375 of the Insolvency Act 1986. It also has inherent powers to review, revoke or vary its own orders and to enable interested parties to apply for the same. It has a wide inherent jurisdiction to prevent abuses of its own process and to sanction parties: for example it can make indemnity costs orders or hold a party in contempt.

53. We do not consider that the Court's multi-faceted and vital role can be replicated in or adequately replaced by an adjudication system in cases other than those set out in paragraphs 12 to 14 above. In particular:

(1) We do not consider that it will ever be appropriate for any petition brought by the Crown to be determined any tribunal other than a member of the independent judiciary;

(2) In terms of bankruptcy petitions:

(a) The only time that it will ever be appropriate for a bankruptcy petition to be heard by an adjudicator is where the debtor has **opted in** to the system by bringing his own petition or expressly consenting the a private creditor's petition and providing sufficient information clearly to demonstrate that there is jurisdiction to make an order and that it is appropriate to do so in all the circumstances;

(b) In all other cases, given the Draconian effects of the order, the complex issues that arise and the fact that very many debtors are relatively unsophisticated and act without legal assistance, the petition must be determined by the Court. In all such cases, it is imperative that the debtor has the benefit as of right of judicial scrutiny of and inquiry into the legitimacy and propriety of the petition (even in his absence) and of judicial consideration of the weight and impact of any representations he might wish to make. His interests in such cases cannot be adequately protected within an administrative adjudicative system. The possibility that he might be made bankrupt by such a system in his absence would raise very real public policy and human rights concerns. As would a system in which an adjudicator was tasked with evaluating his representations in the first instance and acting as a filter between him and judicial evaluation of the same;

(3) In terms of company petitions:

(a) First, there is already an adequate mechanism for companies when insolvent to go into voluntary liquidation, namely creditors' voluntary liquidation under the Insolvency Act 1986;

(b) In relation to creditors' voluntary liquidation, the legislature has already struck a balance between (on the one hand) the possible urgent need to put the company into liquidation (which happens on the passing of the resolution to wind-up, by virtue of section 86 of the 1986 Act) and (on the other hand) the

need for the creditors as a body to be made aware of the procedure as fast as is feasible (which is reflected in the requirement that a meeting of creditors be called to take place no later than 14 days after the shareholders' meeting (section 98 of the 1986 Act) – in practice, many creditors' meetings take place on the same day as the shareholders' meetings). An administrative procedure which does not take account of the interests of the creditors as a body is inconsistent with the balance that the legislature has decided to strike in the case of voluntary winding up;

(c) All company winding up petitions therefore must determined by a judge at a public hearing to ensure that creditors and third parties' interests are elicited, considered and protected;

(d) For completeness, we also note that companies winding up petitions raise particularly complex issues in relation to matters such as jurisdiction. We consider this a further important reason why such petitions should be dealt with by way of consistent, transparent, public judicial determination.

54. The above concerns are determinative of our opposition to the extension of the proposals to any cases other than those set out at paragraphs 12 to 14 above. However, we also note the related practical difficulties that we consider would be attendant upon such extension:

(1) In light of the above matters of principle, we would anticipate that any such extension would spawn a significant number of challenges: whether by way of rescission /annulment applications, true appeals (if such be possible) or judicial review;

(2) As emphasised above, a very large number of cases would at some stage need to be transferred back to the Court which is likely to be time-consuming and costly. Equally, numerous applications that can currently be dealt with at the same time as a winding up or bankruptcy petition would need to be brought by way of separate proceedings: e.g. costs application, validation orders or applications to restore companies to the register;

(3) Given the very large number of petitions that would either need to be excluded from the system from the outset (such as Crown petitions and petitions that were opposed) and the number that would need to be subsequently transferred (because of a dispute raised by the debtor or because difficult question of jurisdiction or standing arose) we do not consider it likely that the proposed system would result in any net costs savings or efficiency gains.

B. RESPONSES TO THE INDIVIDUAL QUESTIONS

Q1. Should documents relating to a bankruptcy or winding up case remain with the party who created them, and be open to inspection there by persons so entitled? If not, please explain your answer.

A1. Please see Section A. Subject to those comments, we believe that it is essential that there should continue to be a central and independent depository for relevant documents concerning any insolvency process which has been subject to a determination by the State. It is a fact of life that many insolvency practitioners move firms, move premises and, for a variety of reasons, are often replaced as the relevant office holders by other insolvency practitioners. Furthermore, the contents of such files are often required to be resorted to long after the individual office holder ceases to have day to day conduct of the matter (for example, in subsequent disputed ownership cases, *bona vacantia* claims, late applications for annulment etc). In order to ensure (i) continued access to and (ii) reliability of relevant information, it is important for one comprehensive file to be produced and maintained for each individual insolvency. Whilst we are indifferent as to whether the *Court* continues to be the relevant depository, we consider that it is important for there to continue to be an independent public depository and keeper of such information. In our view it is appropriate for the obligation of maintaining such files to lie with the public sector; the state has legislated for the relevant change of status and it is therefore appropriate for the public sector to be responsible for it.

However, we consider that it may be appropriate for a levy to be charged upon each insolvent estate by way of contribution to such costs.

Q2. **Do you think that a debtor should be able to pay instalments within a specified period of time after submission of his/her application, or that there should be no such time constraints but only when fully payment has been made would a debtor be able to complete and submit an application form?**

A2. Please see Section A. Subject to those comments, we note with concern that at page 27 the Consultation Paper reports that in 2007, of debtors consulted who had petitioned for their own bankruptcy, some 50% had received the benefit of fee remission. Since we understand that such fee remission would have been at the discretion of the court, we believe that there must have been good reason for the same. We would therefore be very concerned about any scheme which effectively prevented an insolvent individual from petitioning for his own bankruptcy by reason of his inability to pay the requisite fee.

We also consider it to be axiomatic that any admittedly insolvent debtor should be adjudicated bankrupt at the earliest opportunity; any delay caused by the payment of instalments is likely to disadvantage the debtor's creditors. Accordingly, the commencement of bankruptcy should not be delayed by awaiting receipt of instalment payments.

In any event, as any payment by the debtor inevitably operates to reduce the value of the estate otherwise available for subsequent distribution to the creditors, we would suggest that any unpaid bankruptcy fees owed by the debtor are simply recouped by the state from the estate in bankruptcy as a new form of preferential debt. In our view, there is no reason why this option should not be made available in every case.

Q3. **If you favour a limit on the period of time during which instalments could be paid, what do you think should be the maximum period? Less than 3 months? 3 months? Or more than 3 months?**

A3. We repeat our answer A2 above. We advocate the creation of a corresponding preferential debt.

Q4. **Should instalment payments be non-refundable?**

A4. We do not comment on this question, save to note that under our proposal in A2 this issue would not arise.

Q5. **If not, how should the administrative costs of handling the refund be recouped?**

A5. We do not comment on this question, save to note that under our proposal in A2 this issue would not arise.

Q6. **Should there be any additional requirements for registration in order to deter abuse? If yes, please outline what you think those requirements should be.**

A6. We do not comment on this question, save to note that under our proposal in A2 this issue would not arise and to note that we think that the quantum involved is such that would be extremely unlikely that any refundable instalment payments process would be used for money laundering purposes.

Q7. **Do you think it would be useful for the Post Office Ltd (or another business provides a similar service) to offer a "check and send" service?**

A7. We do not comment on this question.

Q8. Do you think that there should be a fully electronic process for third parties who submit applications for individuals' bankruptcy or for companies to be wound up? If you think not, can you explain why not?

A8. No. Please see Section A. Further, we would refer the Insolvency Service to the ongoing difficulties being experienced by the Court and by HMRC in seeking to introduce a fully electronic process for winding up petitions being dealt with by the Royal Courts of Justice. The pilot programme had to be abandoned due to technical difficulties, which had adverse costs consequences for the public pursue, and the attempts to design and create a fully functioning electronic scheme are proving to be a surprisingly complex and presently unworkable task.

We would also be concerned to ensure that no-one would be deprived, through lack of electronic access or skills, of the ability to seek remedies to which they were otherwise entitled as a matter of law.

Q9. Do you think that there should be different pricing according to whether an application is submitted by a third party in paper form or electronically? Please explain your answer.

A9. No. Please see Section A. We do not consider that applicants should be discriminated against if they are unable through lack of access or skills to submit an application electronically. Moreover, given the difficulties encountered to date in seeking to introduce an electronic filing system for winding up petitions being heard in the Royal Courts of Justice (we refer to A8 above), we anticipate that the costs of submitting an application electronically are likely to be greater than those relating to paper submissions.

Q10. Do you think that third parties should only be able to pay application fees electronically? If no, can you say why not and suggest alternative or additional means of payment?

A10. We refer to A8 and A9 above. In addition, it is notable that the Banking sector has recently abandoned its intention to withdraw cheque payments. This would seem to be clear evidence that there is a strong public desire for a continuing ability to make payments other than electronically.

Q11. Do you think that there is scope for a pre-action process to encourage greater settlement of debt claims before a creditor resorts to bankruptcy or compulsory liquidation?

A11. No. Please see Section A. To consider whether a pre-action process would encourage greater settlement of debt claims before a creditor resorts to a bankruptcy or winding up petition is to misunderstand the nature of insolvency proceedings. They are not a debt collection process; they are a *collective* remedy used by creditors by means of a last resort.

The service of statutory demands as a pre-cursor to the presentation of a bankruptcy petition serves a useful function in providing debtors with a 21-day window in which to either (a) convince the 'creditor' that his debt is disputed on reasonable grounds, such that a bankruptcy petition would be inappropriate or (b) or to make a reasonable offer to secure or compound for the debt and if such an accommodation cannot be reached, then it is appropriate for the creditor to proceed to present a petition without delay.

Q12. Is 21 days an adequate time period within which debtors can respond to a pre-action notice? If not, please suggest a more suitable period and explain your reasoning.

A12. We repeat A11 above.

The 21-day period for responding to statutory demands continues to be an appropriate period provided that such period remains subject to judicial discretion. It is imperative that, in appropriate cases of urgency, the Court has the ability to judicially shorten the period.

Q13. Can you suggest any additional matters that you think ought to be included in the pre-action process? Is there anything listed that should not be included? Please give reasons for your answer.

A13. Please see A11-A12 above.

Q14. Do you think that the pre-action process should be mandatory or discretionary?

A13. Please see A11-A12 above; we do not think that any such pre-action process should apply however, as noted above, in our view, given the nature of the collective remedy, it is imperative that any prescribed pre-action process does not preclude the ability of the Court to judicially determine that non-compliance in a particular case is not fatal and/or that, in appropriate cases of urgency, it can judicially shorten the period.

Q15. Do you think that there should be sanctions for a creditor who indicates it has complied with the pre-action process when it has not? Do you think those sanctions should be civil (such as costs or more onerous requirements for filing future applications) or criminal or do you think there should be the option of both?

A15. We can envisage that there will be difficulties in identifying whether any particular non-disclosure or statement was dishonest or merely inept, particularly if an electronic filing system is introduced. However, where any statement or non-disclosure amounts to dishonesty there should be scope for criminal sanction.

Q16. Do you think that these questions would be helpful to applicants in deciding whether they are entitled to make an application on the grounds of a debtor's COMI?

A16. Yes, as guidance. However, for the reasons we have identified in Section A above, this is ultimately a mixed question of fact and law in each case upon which a judicial determination is required.

Q17. Can you suggest any other matters that the guidance could usefully cover to further help applicants?

A17. Please see Section A. Subject to those comments, given the difficulties we have identified above in relation to the potential categorisation of 'unopposed' or 'undisputed' cases, clear guidance as to which cases would be considered to fall within these categories would be appropriate.

Q18. How likely is it that a third party such as a creditor will know, or be able to find out with reasonable accuracy, a debtor's email address and/or mobile telephone number?

A18. We cannot answer this question. If the Insolvency Service needs the answer to this question, the only proper course is to undertake a detailed survey of a wide range of creditors.

Q19. Is it reasonable to require a creditor to re-serve a statutory demand if more than 4 months have elapsed between service of the demand and making the application?

A19. Please see Section A. Subject to those comments, this question further demonstrates the need for judicial discretion: In some cases it will be reasonable whereas in other cases, requiring such re-service will detrimentally affect the interests of the creditors as a whole. The Court presently has a judicial discretion to

allow reliance upon a statutory demand which has been served more than 4 months previously; such judicial discretion serves a valid and appropriate purpose and should remain. The inflexibility of an automatic rule in place of the current judicial discretion would be disadvantageous for both creditor and debtor; in particular, in many cases time to pay arrangements are negotiated in the 4 month period and in HMRC cases late Returns are often submitted for consideration during this period. If the 4-month rule was automatic in its effect, creditors might make applications sooner than necessary in order to avoid the additional costs and time delay of re-service, thus prejudicing the prospects of amicable resolution, and HMRC might, as a matter of any policy requiring late returns to be considered first, be put to such additional costs and time delay by reason of the submission of such returns at the very last minute.

Q20. Who do you think should be responsible for sending a copy of the bankruptcy application to the debtor and eliciting his/her response?

A20. Please see Section A. Subject to those comments, it is our firm view that service should continue to be effected by the creditor; and in the case of bankruptcy such service should be personal service (subject to the exercise of judicial discretion as to the use of substituted service when warranted by the individual facts of the case) and in the case of companies, such service should continue to be by physical delivery to the registered office address or personal service upon an officer. The present requirements for service underline the very serious nature of the order sought; it is imperative that everything reasonably possible is done to bring it to the attention of the debtor.

Moreover, it would be wholly inappropriate for the adjudicator to play any active role in a process upon which he is to then adjudicate. If he is to determine, as he must, that service has been effected properly, he cannot have been the one (either personally or through his agents) to have taken such steps to effect service.

Q21. Do you think that a prompt by text message (which would only be sent if a debtor consents to the use of his/her mobile telephone number in this way) would be an effective mechanism to help alert the debtor to the imminent arrival of further information by post and/or email? Please explain your answer.

A21. We do not comment on this question.

Q22. Do you agree that the only dialogue between the debtor and the Adjudicator should be to confirm correct contact details, and to establish whether the criteria for making a bankruptcy order are met, e.g. whether the application process has been complied with by the creditor; whether there is a debt that exceeds the bankruptcy level; and whether the jurisdiction criteria are satisfied. If not, can you suggest what other dialogue might need to take place and why?

A22. We repeat the contents of A20 above. Moreover, no dialogue should take place with the debtor (other than in the context of a debtor initiated bankruptcy petition) that is not open to the creditor applicant/petitioner.

Q23. Is there any other way in which a dispute might be resolved before the court becomes involved? Or do you think that it is appropriate that a judicial decision is given at this stage in the proceedings?

A23. For the reasons we have clearly identified in section A above, it is axiomatic that all disputes must be resolved by judicial decision.

Q24. Do you agree with the way we suggest that applications to which there is neither consent nor opposition should be handled? If not, can you explain why not and suggest an alternative solution?

A24. No, we do not agree. We refer to and repeat the contents of section A above.

Q25. What period of time would it be appropriate to allow the debtor to communicate his/her response to the Adjudicator? 14 days? Less? Or more?

A25. We repeat A22 above.

Q26. Do you think a third party applicant should be able to request to withdraw its application at any time up to the point at which it is determined?

A26. Yes, unless an individual debtor has already actively consented in the circumstances we identify in Section A above; in such circumstances, the application should only be withdrawn with the debtor's consent. There should not be any definitive time frame. It should be open to the creditor and debtor to agree that the application should be withdrawn at any point prior to it being adjudicated upon.

If, notwithstanding the objections of principle identified in Section A above, the scheme is extended to companies, no application should be permitted to be withdrawn without first addressing the position of other creditors.

Q27. Should any appeal against the decision of the Adjudicator be made in the first instance to the county court, or is there a benefit in retaining the existing provision that allows an appeal to be made in the first instance, in certain circumstances, to the High Court?

A27. Please see Section A. Subject to those comments, this question is indicative of what we regard as a central problem in the proposals, namely that on the one hand it is proposed that disputes should be referred to Court, but on the other it is acknowledged that the proposed adjudicator should take decisions in relation to matters which are in contention. Moreover, we consider the language in which the question is couched is inappropriate: a challenge to an administrative disposal is not in our view an appeal properly so called, because there is no judicial determination against which the appeal can lie.

A28. and A29.

Questions 28 and 29 relate to Scotland and accordingly we make no comment.

Q30. Do you think that the Adjudicator's role should be limited to determining the applications for winding up on the grounds that the company is unable to pay its

debts or where the company has passed a valid special resolution that it be wound up? If not, would you explain your reasoning.

A30. For the reasons explained in detail in Section A above, the proposed adjudicator should have no role in relation to winding up companies.

Q31. Are you able to suggest the proportion of petitions that are currently presented to the courts on grounds other than the company's inability to pay its debts; the company having passed a valid special resolution that it will be wound up; and that winding up is just and equitable?

A31. We believe that leaving aside petitions presented by a public authority on public interest grounds, such petitions account for virtually all winding up petitions. However, we suggest that the Insolvency Service makes such enquiries of the Court to ascertain the volume and nature of petitions listed outside the Monday Companies Court winding up list (which is only for creditors and companies' own winding up petitions founded upon the company's insolvency). We would add that a claim for winding up on the just and equitable ground is a standard feature of a very high proportion of petitions, put in the alternative to any money claim. In particular, as far as we are aware it is claimed on every single HMRC company winding-up petition. Although it rarely needs to be expressly relied on, the mere fact of its presence in the documentation is indicative (a) of the essentially discretionary nature of the Court's insolvency jurisdiction, and therefore (b) of its inappropriateness to be turned into an administrative process.

Q32. Who do you think should be responsible for communicating notice of the winding up application to the company and eliciting its response to the proceedings?

A32. The applicant. We repeat A20 and A22 above.

Q33. Who should send notice to specified interested parties?

A33. The applicant. We repeat A20 and A22 above.

Q34: When should notice be sent to these interested parties?

A34. We repeat A20 and A22 above. Such notice should be given in good time to enable interested parties to take an active role in the proceedings. For the reasons explained in Section A above, if any other parties wish to take an active role in the proceedings the matter should only be dealt with by the Court and not by the Adjudicator. In any event, the persons to whom and by what method the necessary notice should be sent should be governed by appropriate legislation as is currently the case in relation to proceedings before the court (which are governed by the detailed notice provisions contained in the Insolvency Rules).

Q35. Do you think that a winding up application should be advertised under these new proposals? If yes, please provide reasons for your answer.

A35. We repeat section A above. Whilst we do not consider that the proposals should apply to companies, we are firmly of the view winding up petitions must always be advertised for the reasons we have identified.

Q.36 Can you foresee any circumstances in which it would be appropriate for the Adjudicator to seek further information from the applicant? If yes, please provide details and suggest how frequently this might occur.

A36. If the applicant is a creditor, then no. If the applicant is a debtor, then the proposed adjudicator could seek further information from the debtor limited to the matters noted in Section A above. However, if any other further information is needed by the proposed adjudicator from the applicant it should not be dealt with by the proposed adjudicator but should be referred to the Court. The proposed adjudicator should not play any active role in the proceedings.

Q37. What period of time should be sufficient for a company to communicate to the Adjudicator its opposition? 14 days? More? Or less?

A37. We repeat the contents of Section A above. Since we do not consider that the adjudicator should deal with such cases for fundamental objections of principle we do not comment further upon this question.

Q38. Do you think that a creditor should be able to request to withdraw its application at any time up to the time that it is determined?

A38. We repeat A26 above.

Q39. Should any appeal against the decision of the adjudicator be made in the first instance to the county court, or is there a benefit in retaining the existing provision which allows an appeal to be made in the first instance, in certain circumstances, to the High Court?

A39. We repeat Section A and A27 above.

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Annex One:

BREAKDOWN OF ORDERS MADE ON HMRC PETITIONS HEARD IN THE COMPANIES COURT ON 16 JANUARY 2012

The following sample data was recorded during the course of the weekly winding up list heard by the Companies Court on 16 January 2012. In the week that the sample was taken there were a total of 255 winding up petitions listed. Of those 236 were petitions that had been presented by HMRC.

The vast majority were petitions against companies, but 16 were petitions against partnerships and 1 was against a limited liability partnership.

The table below sets out the total number of times a particular type of order was made on an HMRC petition during the course of the list. It should be noted that many of the orders are not mutually exclusive and therefore more than one may have been made on a single petition. For example, the Registrar on more than one occasion waived a procedural defect and made the usual compulsory order on an undertaking by the petitioner to correct a more serious defect by 4.30pm that day.

The table does not include every feature of the orders made. For example, some adjournments were marked “final” by the Registrar: an express indication by the Registrar that the Court would be relatively unlikely to exercise its discretion to adjourn on the next occasion.

The table also does not include certain types of order which are commonly made but which were not made on the sample day. For example, an order that the company be restored to the register and wound up; or an order substituting a supporting creditor as petitioner. Examples of these orders can be found in Annex 2.

The table is also limited to those petitions presented by HMRC. Other petitions heard that morning raised other issues. For example, in one case directions were given for evidence to be filed by creditors and a contributory in opposition to a petition against a company that had been placed into creditors’ voluntary liquidation.

Finally, it is noted that the table does not give any indication of the history of the petitions. In some cases the petition was being heard for the first time. In other cases there had been previous adjournments. In one case, the petition had been restored to the list after a successful rescission application and in another following the company’s failure to file evidence in accordance with directions.

DISMISSED due to procedural/technical defect(s) in petition /process; company not represented	2
DISMISSED due to procedural/technical defect(s) in petition /process; company represented	1
DISMISSED at petitioner's request on adjourned hearing	14
DISMISSED at petitioner's request on first hearing	27
DISMISSED WITH COSTS at petitioner's request on adjourned hearing	7
DISMISSED WITH COSTS at petitioner's request on first hearing	2
DISMISSED WITH COSTS at company's request	1
DISMISSED WITH COSTS in CVA	2
DISMISSED WITH COSTS in CVL	14
DISMISSED with directions for evidence re costs	1
SUSPENDED	6
ADJOURNED at company's request without opposition from HMRC	22
ADJOURNED at company's request without opposition in principle by HMRC but of greater length than agreed	3
ADJOURNED at company's request with opposition from HMRC	21
ADJOURNED at HMRC's request at adjourned hearing	5
ADJOURNED at HMRC's request at first hearing	20
ADJOURNED for correction of procedural/technical defect(s) in petition /process	16
USUAL COMPULSORY ORDER at first hearing at petitioner's request with company's expressed agreement	1
USUAL COMPULSORY ORDER at first hearing without attendance by company and no prior contact	39
USUAL COMPULSORY ORDER at first hearing without attendance by company despite previously indicating in correspondence an intention to oppose and /or seek more time	3
USUAL COMPULSORY ORDER at adjourned hearing without attendance from company at this or any previous hearings	2
USUAL COMPULSORY ORDER at adjourned hearing without attendance from company at this hearing, company having previously been represented	8
USUAL COMPULSORY ORDER at adjourned hearing with opposition from company	16
USUAL COMPULSORY ORDER on undertaking to correct procedural defect by 4.30pm	3
DIRECTIONS for evidence in relation to disputed debt	1
WAIVER of procedural of procedural/technical defect(s) in petition /process	17
DISPENSE WITH ADVERTISEMENT OF DISMISSAL	33

Annex Two:

Key to Orders made in the Winding Up Court on 23 January 2012 as noted on the following copy Daily Cause Llist:

- Yellow highlighting denotes an petition which was either presented or supported by HMRC
- Pink highlighting denotes a petition on which creditors other than the Petitioning Creditor appeared and/or had given notice of their intention to appear
- An underlined petition number denotes a partnership petition

UCO	Usual Compulsory Order (meaning company is to be wound up pursuant to the Insolvency Act 1986 and the Petitioner's costs are to be paid out of the assets of the company)
UDBO	Usual double-barrelled Order (meaning the dissolved company is first restored to the register of a companies and then a UCO is made)
D	Petition dismissed with no order as to costs
DWC	Dismissed with Costs (meaning the petition is dismissed and the company is ordered to pay the petitioner's costs)
DWC in CVL	Dismissed with the Petitioners' Costs to be paid as an expense of the creditors voluntary liquidation ("CVL")
DWC in CVA	Dismissed with the Petitioners' Costs to be paid as an expense of the creditors voluntary arrangement ("CVA")
DWC in Admin	Dismissed with the Petitioners' Costs to be paid as an expense of the Administration
..... +DWA	[other order made] and, having considered the relevant factual circumstances, the court judicially dispensed with advertisement of the dismissal of the petition pursuant to IR 4.21
Suspend [+ costs in Admin]	Petition suspended pursuant to the mandatory provisions in the Rules as the company is administration pursuant to an appointment made by a qualifying floating charge-holder [with an order that the Petitioners' costs be paid as an expense of the administration].
DIRECTIONS	Directions given in relation to the Petition (to be heard as a disputed debt petition)

SO for	Stood over to a particular date for .....
SO for sm	Stood over for settlement (i.e. for the company/partnership to discharge the debt)
SO for Returns	Stood over for the company/partnership to file late tax returns in relation to debt based on assessment/s.
SO for appeal	Stood over for the company to lodge a relevant appeal against the debt (e.g. against a tax assessment/default Judgment)
SO for s98 MOC (CVL)	Stood over for a section 98 meeting of creditors ("MOC") for the purposes of considering Creditors' Voluntary Liquidation ("CVL")
SO for CVA proposals	Stood over for a proposal for a voluntary arrangement to be drafted and put to a duly convened meeting of creditors.
SO to put papers in order	Stood over for the Petitioner to file missing documents and/or complete other necessary procedural steps
SO for re-advertisement	Stood over for the Petition to be re-advertised because the Court determined that the previous advertisement failed to comply with the requirements of the Rules in a manner which could not justifiably be waived by the Court bearing in mind the purposes of advertisement being for the protection of other creditors.
UCO on Undertaking	UCO made against a particular Undertaking to the Court having been given by the Petitioner
Insurance co in PL	A winding up petition in respect of an insurance company in provisional liquidation, the progress of which is being monitored by the Court
*.....**	Denotes a particular procedural defect was considered and judicially waived by the court

THE DAILY LIST
COMPANIES COURT

Court 3

First Floor
The Rolls Building

Monday 23rd January 2012

Before

MR REGISTRAR NICHOLLS

ROBED

At 10.30am

1.	4519	/2001	World Marine And General Insurances Pty Ltd - *insurance co in PL*
2.	4520	/2001	HIH Casualty And General Insurance Ltd - *insurance co in PL*
3.	4521	/2001	FAI General Insurance Company Ltd - *insurance co in PL*
4.	4522	/2001	FAI Insurances Ltd - *insurance co in PL*
5.	2045	/2011	C A S Nationwide LTD - **SO for CVA proposals**
6.	4375	/2011	Sher Halal Foods Ltd – **SO for sm**
7.	4635	/2011	Vjil Consulting Limited - **UCO in face of opposition**
8.	5298	/2011	Foundations Finance Ltd – **SO for sm marked "final"**
9.	5370	/2011	Charedi Foods Limited - **D**
10.	6732	/2011	Sarisa Limited - **UDBO**
11.	6887	/2011	Wells Transport Services Limited - **DWC**
12.	6963	/2011	Your Track Solutions Limited – **SO for sm marked "final"**
13.	6974	/2011	Freedex Limited - **DWC**
14.	7015	/2011	M.O Azuike Limited - **SO 42d for CVA proposals**
15.	7323	/2011	Nemarch Limited - **SO 56d for discussions**
16.	7455	/2011	Melbourne Ardenlea Hotel – **SO for Voluntary Arrangement proposals**
17.	7470	/2011	Millbank Tower Services Ltd - **UCO**
18.	7482	/2011	U.K. Import Corporation Limited – **D + DWA**
19.	7530	/2011	Wealth Management (UK) Limited – **D + DWA**
20.	7539	/2011	Anavive Care Ltd - **SO for sm**
21.	7561	/2011	Bromcom Computers PLC – **SO for sm**
22.	7610	/2011	Someplace Else London LLP – **SO for sm marked "final"**
23.	7615	/2011	London Motor Museum CIC – **SO for sm**
24.	7943	/2011	Webster Dixon LLP - **D + DWA**
25.	7972	/2011	B & B Steelworks Limited - **D + DWA**
26.	8095	/2011	Silverbourne Developments Limited – **UCO**
27.	8233	/2011	Premier Corporate Brokers Ltd - **UCO**
28.	8243	/2011	Fast Staff Sussex Ltd – **D + DWA**
29.	8301	/2011	Ventura Health and Fitness Clubs Limited – **DWC in CVL + DWA**

30. 8326 /2011 High Profile Security Ltd – **Suspend + costs in Admin**
31. 8374 /2011 Mayfair Cars Ltd – **DWC in CVL + DWA**
32. 8385 /2011 Classic Hotels (London) Limited - **D + DWA**
33. 8397 /2011 M & M Investments (UK) Limited - **D + DWA**
34. 8420 /2011 Today Retail Limited - **D + DWA**
35. 8421 /2011 Wintech Solutions Limited – **SO for s98 MOC (CVL)**
36. 8423 /2011 The 8000 Group International Limited – **SO 42d process Returns**
37. 8429 /2011 Smart Hotels Limited - **D + DWA**
38. 8431 /2011 Lapgate Properties Limited - **D + DWA**
39. 8436 /2011 Assure Contractors Limited - **UCO**
40. 8439 /2011 Maintec Ltd - **D + DWA**
41. 8458 /2011 Thatched Cottage Catering Company Limited – **SO for sm**
42. 8499 /2011 Ameeco Accountancy Limited – **SO for sm marked "final"**
43. 8520 /2011 Highcrest Roofing Ltd – **SO for sm marked "final"**
44. 8545 /2011 Gordian Knot Consultants Limited - **UCO**
45. 8550 /2011 Simply By Design Ltd – **SO for further evidence re service**
46. 8569 /2011 Carbon Harvesting Corporation Limited- **DIRECTIONS**
47. 8586 /2011 Worldexpand Projects Limited - **D**
48. 8601 /2011 Limes Glass Limited - **SO for CVA proposals**
49. 8603 /2011 Forest Industries Limited - **SO for CVA proposals**
50. 8620 /2011 Octagon Personnel Limited - **DWC**
51. 8631 /2011 S&S Infotech and Software UK Ltd – **SO for late Returns and sm**
52. 8640 /2011 MHT (Balham) Limited – **DWC in CVL + DWA**
53. 8647 /2011 Bond Street Capital Ltd – **SO for sm**
54. 8663 /2011 Davden Ltd - **UCO**
55. 8666 /2011 Teton Homes Europe Limited - **UCO**
56. 8670 /2011 Glenn Associates Limited - **UCO**
57. 8672 /2011 Barcon Services Ltd - **SO for CVA proposals**
58. 8695 /2011 Autoreservation.Com - **D**
59. 8697 /2011 Chaste -**SO for Voluntary Arrangement proposals ***
60. 8704 /2011 Sumlock Electronics (North East) Limited - **DIRECTIONS**
61. 8733 /2011 Clearway Waste Recycling Ltd – **D + DWA**
62. 8735 /2011 Leyton Engineering Services Ltd – **DWC in CVL + DWA**
63. 8750 /2011 J B Corporation Ltd – **SO for re-advertisement**
64. 8752 /2011 Acre & Bourne Limited - **D**
65. 8760 /2011 Mcgrath Bros (Engineering) Limited – **DWC in Administration**
66. 8761 /2011 Alliance Care Options Limited – **DWC in CVL + DWA**
67. 8762 /2011 Thai Chiang Mai – **SO for further evidence re service**
68. 8765 /2011 Easylet Offices Limited – **D + DWA**
69. 8794 /2011 Wilkes & Co Limited - **UCO**
70. 8796 /2011 Clarity Healthcare Limited –**D + DWA**

Not before 11.00am

71. 10021 /2011 Grangefield Ltd - **SO for sm**
72. 10023 /2011 Express Plastics Limited - **UCO**
73. 10025 /2011 Morton House Developments Ltd - **UCO**
74. 10031 /2011 Dave Pollard Transport Limited – **D + DWA**

75. 10032 /2011 Syntech UK Limited – **UCO on Petitioner's Undertaking**
76. 10033 /2011 CJB Software Support Limited - **UCO**
77. 10034 /2011 Cellensis Ltd - **UCO**
78. 10035 /2011 Brick & Stone Doctors–**UCO ***
79. 10036 /2011 Scarman Trust – **UCO ***
80. 10037 /2011 DFI Services Limited – **SO for sm/adv**
81. 10038 /2011 Edge Live Limited – **Co in CVL, D + DWA**
82. 10040 /2011 Interior Project Development Limited - **D + DWA**
83. 10041 /2011 Tropez Finance Limited - **UCO**
84. 10042 /2011 The Yard Arm (Plymouth) Limited – **DWC in CVL + DWA**
85. 10043 /2011 Interbanc Limited – **SO for sm**
86. 10045 /2011 Sah Systems Ltd - **UCO**
87. 10046 /2011 Hussey Electrical Limited - **SO for sm/adv**
88. 10047 /2011 A.S.C. Timber Supplies Limited - **D + DWA**
89. 10048 /2011 Magnieus Limited - **UCO**
90. 10049 /2011 Rehncy Shaheen & Co - **SO for discussions**
91. 10051 /2011 Zijderlaan Forwarding Ltd - **UCO**
92. 10052 /2011 A Glass and a Half Limited – **DWC in CVL**
93. 10054 /2011 Vendito Limited - - **UCO**
94. 10055 /2011 Curtis Consulting & Trade Ltd – **SO for re-service and re-advert**
95. 10059 /2011 Wheelie Bin Direct Limited - **D+DWA**
96. 10060 /2011 Creme Hair and Beauty Limited - **D+DWA**
97. 10064 /2011 Universal Steels (Scotland) Limited - **UCO**
98. 10065 /2011 Abbeylands Transport – **SO for sm ***
99. 10066 /2011 John Flook, Pauline Flook, Dean Flook, Sarah Davey & Theresa Flook – **SO for sm ***
100. 10067 /2011 Trust-It Services Limited - **DWC**
101. 10069 /2011 Transform Business IT Solutions Limited - **UCO**
102. 10070 /2011 Jackco 157 Limited - **D**
103. 10079 /2011 Direct Scaffolding Limited - **UCO**
104. 10082 /2011 DWB Quantity Surveying Consultancy Limited - **UCO**
105. 10083 /2011 Slate Consultancy Limited - **UCO**
106. 10084 /2011 Some Bizarre Limited – **SO for sm**
107. 10086 /2011 Cloud Nine Productions Limited – **DWC in CVL +DWA**
108. 10087 /2011 The North Western Limited - **UCO**
109. 10088 /2011 Bourdice London Limited- **SO for re-advertisement**
110. 10089 /2011 Cre8atsea Limited – **SO for advert**
111. 10090 /2011 Acm Scaffolding Services – **SO for further evidence re service**
112. 10091 /2011 M I S Materials Ltd – **DWC in CVL + DWA**
113. 10092 /2011 1st Plaice Limited – **UCO**
114. 10093 /2011 C. Hemelaer UK Ltd – **D + DWA**
115. 10094 /2011 E-1 Textiles Ltd - **UCO**
116. 10095 /2011 TST Recruitment Limited – **SO for s98 MOC (CVL)**
117. 10096 /2011 Baileys Asset Finance Limited – **SO for put papers in order/sm**
118. 10097 /2011 Higham Manor Properties Limited - **UCO**
119. 10098 /2011 Lionheart (North West) Limited - **UCO**
120. 10099 /2011 Elite Video Systems Limited - **D + DWA**
121. 10103 /2011 IPG (UK) Limited - **UCO**
122. 10105 /2011 J.M. Whitty Limited - **UCO**

123. 10107 /2011 Edmar Construction Limited – **UCO**
124. 10109 /2011 Brookson (5805K) Limited – **UCO**
125. 10111 /2011 JJD Property Development Limited – **D + DWA**
126. 10112 /2011 Implants International Limited - **D**
127. 10114 /2011 Cardiff Carpets Limited - **UCO**
128. 10115 /2011 Andrew Cunningham (Plant Hire) Limited – **D + DWA**
129. 10116 /2011 Collector Care Limited **– D + DWA**
130. 10117 /2011 Thurston 881 Ltd - **UCO**
131. 10119 /2011 premier Developments (London) Limited – **SO for petitioner to amend docs**
132. 10120 /2011 Margintest Limited – **SO for re-advertisement**
133. 10122 /2011 Highscore Associates Limited – **UCO**
134. 10124 /2011 Lineside Rail Limited- **D**
135. 10129 /2011 Flowmade Enterprie Limited – **D**
136. 10130 /2011 Lux Managment & Investments Limited **- D**
137. 10131 /2011 Noura Brasseries Limited – **D**
138. 10132 /2011 Sport For Life Limited – **DWC**
139. 10139 /2011 GMK Group Limited –**SO for petitioner to correct papers**
140. 10142 /2011 Widney Sports Limited **– SO for re-service**

Not before 11.30am

141. 10150 /2011 G K Properties And Developments Limited **(HMRC a supporting creditor. SO for adv)**
142. 10154 /2011 Bestwater Consulting Limited **– Company's own petition. UCO after inquiry by registrar as to material facts**
143. 10155 /2011 The Waterside Hotel And Galleon Leisure Club Limited – **Suspend + Costs in Admin**
144. 10156 /2011 Angel Assured Tenancy Limited - **D**
145. 10157 /2011 Funvalley Assured Tenancy Limited – **D**
146. 10158 /2011 Befit Assured Tenancy Limited **– D**
147. 10159 /2011 Bennett Decorating Services Limited – **UCO**
148. 10160 /2011 C L Technical Services Ltd - **UCO**
149. 10162 /2011 Firstpast Limited - **SO for re-advertisement**
150. 10163 /2011 Atlantic Bakeries Limited - **UCO**
151. 10164 /2011 Oakway Limited - **DWC**
152. 10166 /2011 Conister Consultants Limited – **SO for Returns and sm**
153. 10168 /2011 Asian Interactive Media International Limited – **UCO**
154. 10170 /2011 Trace South West Limited – **UCO**
155. 10171 /2011 Orabas Consultants Limited – **SO for MOC**
156. 10173 /2011 Frying Fisherman Ltd - **UCO**
157. 10177 /2011 Cardiff Landscaping & Maintenance Services Limited – **SO for sm/CVA**
158. 10178 /2011 T2 Legal Services Limited - **UCO**
159. 10179 /2011 Khazanah Services Limited – **UCO on Petitioner's Undertaking**
160. 10180 /2011 At One Security Services Limited **– SO for appeal against Petition Debt**
161. 10182 /2011 RDM Cleaning Limited – **UCO**
162. 10184 /2011 Mantech Sealant Services Limited – **UCO**
163. 10185 /2011 Squares Estate Agents Limited – **SO for sm/adv ***
164. 10187 /2011 Direct Business Interiors Limited – **DWC in CLV + DWA**
165. 10188 /2011 Fartex Finance Limited – **D + DWA**
166. 10189 /2011 Wood Developments Limited – **D**

167. 10192 /2011 Lanternwood Limited – **UCO**
168. 10193 /2011 Gold & Stone (GB) Limited – **DWC in CVL + DWA**
169. 10194 /2011 Kensai Trading Ltd - **SO for re-advertisement**
170. 10195 /2011 Waterton Tyre Services Limited – **SO for papers to be put in order**
171. 10196 /2011 Pagefield Properties Limited – **D + DWA**
172. 10198 /2011 Jassal Building Services Ltd – **SO for papers to be put in order**
173. 10201 /2011 Green Homes Global Ltd - **DIRECTIONS**
174. 10205 /2011 Global Business Associates Limited - **SO for advertisement + eos**
175. 10206 /2011 Metropolitan Scaffolding Ltd – **UCO**
176. 10207 /2011 Manusmriti Ventures Limited - **UDBO**
177. 10208 /2011 Simon Butler Skiing Limited - **D**
178. 10209 /2011 Gobbitt & Kirby Property Services Limited – **SO for sm/adv**
179. 10211 /2011 Linkside Electrical Limited – **Defect in adv waived + UCO ***
180. 10212 /2011 Joygold Limited **– SO for eos + advertisement**
181. 10213 /2011 Dunster Holdings Limited – **SO for CVA proposals**
182. 10214 /2011 Millennium Nurses Limited – **UCO**
183. 10219 /2011 EDHR Solutions Limited – **UCO**
184. 10220 /2011 Frimshaw Limited – **DWC in CVL + DWA**
185. 10222 /2011 Sewpaul Stores Limited – **UCO**
186. 10223 /2011 Health to Happiness Limited – **UCO on Petitioner's Undertaking**
187. 10224 /2011 Core Utilities Limited - - **UCO**
188. 10226 /2011 Arbiter Property Limited – **Suspend Petition + Costs in Admin**
189. 10227 /2011 Abbey Motor Centre Limited – **UCO**
190. 10229 /2011 Shelfside Developments Ltd **– D + DWA**
191. 10237 /2011 Blakeshields Limited **– D + DWA**
192. 10246 /2011 New Hunslet Rugby League Football Company Limited **– D + DWA**
193. 10247 /2011 Northbeach Ltd - **UCO**
194. 10250 /2011 Haz International Ltd **– D + DWA**
195. 10251 /2011 Tacit Properties Limited **– SO to put papers in order**
196. 10252 /2011 Market Optimising Limited - **UCO**
197. 10253 /2011 In Re A Company **– D + DWA**
198. 10254 /2011 SC Services (UK) Limited – **SO for re-advertisement**
199. 10255 /2011 Romasave (Property Services) Limited - **DIRECTIONS**
200. 10257 /2011 The Force Group of Companies Limited **– Suspend Petition + Costs in Admin**
201. 10258 /2011 Oldham Rugby League Football Club (1997) Limited - **D**
202. 10259 /2011 Neath Rugby Limited **– SO for sm**
203. 10261 /2011 Nsquared Creations Limited - **UCO**
204. 10263 /2011 Four Valleys Groundworks Limited - **UCO**
205. 10267 /2011 Alpha Beta Fund Management LLP – *Contributories' Petition adjourned out of creditors list.*
206. 10271 /2011 Birkdale Projects Limited **– D + DWA**
207. 10272 /2011 D G Plastic Solutions Limited - **D**
208. 10273 /2011 Red Setter Services Limited – **SO for sm**
209. 10275 /2011 Eganblue Technology Limited - **DIRECTIONS**

Not before 12.00pm

210. 10276 /2011 Aspect Project Management Ltd - **UCO**
211. 10277 /2011 Digital Communication Installations Limited – **UCO**

212. 10279 /2011 Westgrove Investments Limited – **SO for sm + advertisement**
213. 10280 /2011 Noah's Ark Day Nurseries Limited - **D**
214. 10281 /2011 KRL Property Management Ltd – **UCO**
215. 10282 /2011 Global Training & Development Limited – **D + DWA**
216. 10283 /2011 Albert Hill Skip Hire Limited – **SO for CVA proposals**
217. 10285 /2011 Able Electrical & Mechanical Services Limited - - **UCO**
218. 10286 /2011 Tangreen Ltd – **SO for re-advertisement**
219. 10287 /2011 Family Planning Association (The) - – **D + DWA**
220. 10288 /2011 Anglia Personnel & Training Company Limited – **SO for re-advertisement**
221. 10289 /2011 Grovehome Residential Limited - **DWC**
222. 10291 /2011 Zephania Mbugua Driving Services Limited – **eos accepted + UCO**
223. 10292 /2011 Jas (Leisure) Limited – **SO for sm**
224. 10293 /2011 Knight Communications Limited - **a supporting creditor substituted**
225. 10294 /2011 McGregor InternationL Limited – **SO for petition to be amended**
226. 10296 /2011 Nolita Restaurants Limited – **D +DWA**
227. 10298 /2011 M W Cleaning Services Limited - **UCO**
228. 10299 /2011 Eagle Roofing Ltd - **UCO**
229. 10301 /2011 Jagmost Ltd - **UCO**
230. 10303 /2011 The Oak Frame Company (UK) Limited – **Co in CVL; D + DWA**
231. 10304 /2011 Hilltop Associates Limited – **SO for s98 MOC (CVL)**
232. 10312 /2011 Wad Fabrications Limited – **SO for s98 MOC (CVL); Leave to amend**
233. 10313 /2011 Hamilton Brady Limited – **DWC in CVA + DWA**
234. 10314 /2011 Lake Discount Stores – **SO to come into line with bankruptcy petitions * ***
235. 10315 /2011 Property Protection GRP (UK) Ltd – **Suspend + costs in Admin**
236. 10316 /2011 Vista Data Services Limited – **SO for sm**
237. 10317 /2011 ABCOM Services Limited – **DWC in CVL + DWA**
238. 10319 /2011 Border Utilities Limited - **D**
239. 10320 /2011 C. Edmondson Limited – **SO s 98 MOC (CVL)**
240. 10323 /2011 Caterers Friend Limited – **D + DWA**
241. 10324 /2011 Brookson (5212) Limited – **D + DWA**
242. 10325 /2011 Centair Limited - **UCO**
243. 10326 /2011 Cloudrise Limited – **SO for re-advertisement**
244. 10327 /2011 R J Webb Electrical Limited - **UCO**
245. 10328 /2011 Finger Print Management Limited – **DWC in CVL + DWA**
246. 10332 /2011 Robert Mulholland and Company Limited – **SO for sm**
247. 10333 /2011 Invermore Ltd - **UCO**
248. 10334 /2011 In re a company - **?**
249. 10335 /2011 Circular Properties Limited - **D**
250. 10336 /2011 General Staffing Services Coventry Limited – **SO for service and advert**
251. 10337 /2011 Global Telecomms Limited - **DIRECTIONS**
252. 10338 /2011 Libra Graphics International Limited - **DIRECTIONS**
253. 10339 /2011 Blada Limited – **SO for CVA proposals**
254. 10340 /2011 Jambo Services Limited – **SO for sm/CVA proposals**
255. 10342 /2011 Libra Tech Limited – **SO for CVA proposals**
256. 10343 /2011 The Archiving House Limited – **D + DWA**
257. 10348 /2011 Atlas Scaffolding Services Limited – **SO for sm**
258. 10355 /2011 Oliver Bond Limited – **SO for sm**
259. 10356 /2011 Nathanael Eurl Limited - **UDBO**

260. 10360 /2011 New Ejaz Tandori Limited - **UCO**
261. 10365 /2011 Nationwide Solar Limited **– DWC + DWA**
262. 10366 /2011 The Joinery Shop (Surrey) Limited - **D**
263. 10367 /2011 Allied Guarding & Patrols Limited – **DWC in CVL + DWA**
264. 10368 /2011 N.M.G. Northern Limited – **UCO**
265. 10369 /2011 Platinum Vehicle Hire Limited – **UCO**
266. 10370 /2011 Beaver Management Services Limited - **SO for sm/advert**
267. 10371 /2011 Pelsis Europe Limited - **SO for sm**
268. 10372 /2011 PRO Flooring Services Limited - **UCO**
269. 10373 /2011 Notebook Express Limited - **DIRECTIONS**

Ordinary Applications

270. 3841 /2011 Sealand Salvage Ltd **- Rescission application SO 14 days**
271. 9690 /2011 Contract Transport (Holdings) Limited - **UCO amended under slip rule (CPR 40.12)**

At 3pm in Hearing Room 9

272. 745 /2011 Bramley Holdings Limited - **UCO**
273. 1232 /2011 Anlaby House Estates Limited - **UCO**