



Neutral Citation Number: [2024] EWCA Civ 1436

Case No: CA-2024-000248

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
His Honour Judge Tindal
Order made on 18 January 2024

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Monday 25 November 2024

Before :

LORD JUSTICE PETER JACKSON
LORD JUSTICE SNOWDEN
and
LADY JUSTICE FALK

IN THE MATTER OF A COMPANY
(Number CR-2024-BHM-000012)

Joe Mulhall (a director) appeared on behalf of the **Company/Appellant**
Micheál Murphy (instructed by **Greenhalgh Kerr Solicitors**) for the **Petitioner/Respondent**

Hearing date : 9 October 2024

Approved Judgment

This judgment was handed down remotely at 10.30 a.m. on 25 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

Lord Justice Snowden :

1. The main question raised by this case is deceptively simple: in an era of electronic working, when is a winding up petition presented?
2. Given the importance which the Insolvency Act 1986 (the “1986 Act”) attaches to the date of presentation of a winding up petition, the relevant rules and practice directions should provide a clear and simple answer to this question. Unfortunately that does not turn out to be the case. In particular, the position has been complicated by the variable terminology used in the relevant rules and practice directions, and by the requirement that a petitioner should pay a (refundable) deposit for the fees of the Official Receiver.
3. For the reasons that follow, I consider that a winding up petition is only presented when a petition has been delivered to the court, and the requirements of any statute, rules or practice direction which apply to presentation have been complied with.¹ In the particular context of the instant case, those requirements include the payment of the deposit for the Official Receiver, so that a petition will only be presented when that deposit has been paid.

Background

4. The appellant company (the “Company”) and the respondent petitioner (the “Petitioner”) entered into an agreement in June 2022 for the supply of mobile phones and services. The agreement was terminated in October 2022 by the Petitioner for non-payment of invoices amounting to about £73,000. A statutory demand was served on the Company on 13 December 2023 in the sum of £84,149.69 (including interest and costs).
5. On 3 January 2024 the Company (acting by its director, Mr. Mulhall) submitted an application (the “Application”) by email to the Business and Property Courts (the “BPC”) in Birmingham. The Application was expressed to be made under Rule 7.24(1) of the Insolvency (England and Wales) Rules 2016 (the “2016 Rules”). Rule 7.24(1) provides,

“An application by a company for an injunction restraining a creditor from presenting a petition for the winding up of the company must be made to a court having jurisdiction to wind up the company.”
6. The Application was supported by a witness statement which contended that the amount claimed was subject to a dispute and a counterclaim. The Application sought,

“an injunction ... against the Petitioner from issuing [sic] a winding up petition against the Company ... or other order as the court may deem appropriate”.
7. The BPC office in Birmingham accepted the filing of the Application on 5 January 2024 and returned a sealed copy to the Company on Monday 15 January 2024, giving

¹ This is subject to the proviso to which I refer in footnote 4 below.

a hearing date of Friday 19 January 2024. The Company posted a copy of that Application to the Petitioner's solicitors on 15 January 2024.

8. In the meantime, but unknown to Mr. Mulhall, on Friday 12 January 2024 the Petitioner's solicitors had submitted a winding up petition in respect of the Company (the "Petition") to the BPC in Manchester using the court's electronic CE-File system ("CE-File").
9. On Sunday 14 January 2024, the following notification was transmitted by the BPC office in Manchester to the Petitioner's solicitors by CE-File,

"This is a notice to inform you that the filings filed in Case No. CR-2024-MAN-00053 ... have been accepted by the Clerk on 14-01-2024... You can view this filing using the following link ...Clerk's Comments: Thank you for your Winding Up Petition. You will now need to pay the Official Receiver's deposit of £2,600.00. This can be done either by sending in a cheque made payable to "HMCTS" or, alternatively, you may contact the Court on 0161 240 5307 to make payment by card. Payment of the Official Receiver's Deposit must be made within 5 working days. Until this is received, you will not be able to access the documents. Once the Deposit has been paid, you will be able to upload [sic] sealed copies. I would ask you to monitor CE-File after payment has been made..."

10. Following receipt of that notification, under cover of a letter dated 15 January 2024, the Petitioner's solicitors sent a cheque for the Official Receiver's deposit to the BPC in Manchester by first class post.
11. On 17 January 2024, the Petitioner's solicitors received the copy of the Application by post. Mr. Mulhall also spoke by telephone to the solicitor acting on the case, Ms. Davison, seeking an adjournment of the hearing of the Application due to the ill-health of a member of his family. In the course of that conversation, Ms. Davison told Mr. Mulhall that the hearing of the Application would be too late, because the Petitioner had already presented the Petition in Manchester. Ms. Davison quite properly offered, however, to delay advertising (i.e. giving notice of the petition pursuant to Rule 7.10 of the 2016 Rules) so as to enable the Company to make an application to the BPC in Manchester to prevent such notice being given.
12. After the conversation with Ms. Davison, Mr. Mulhall emailed the BPC office in Manchester to alert them to the fact that he had made the Application which was awaiting a hearing in Birmingham. Later that day, Mr. Mulhall managed to speak by telephone to a court officer in Manchester who confirmed that the Petition had not been sealed or issued by the court office, because no payment of the Official Receiver's deposit had been received.
13. On 17 January 2024 Mr. Mulhall also emailed the BPC office in Birmingham to notify them of the purported presentation of the Petition in Manchester. The matter was then put before His Honour Judge Tindal (the "Judge"), who made an order (the "First Order") in the following terms,

“Before HHJ Tindal at Birmingham Civil Justice Centre ... on 17 January 2024

UPON HHJ Tindal reading the application dated 3rd January 2024 for an injunction to restrain the issue of a winding-up petition and being aware that such a petition (CR-2024-MAN-000054²) was presented on 12th January 2024 but has not yet been issued

AND UPON the applicant’s director currently undergoing a serious situation within his family

IT IS ORDERED THAT

1. Neither [the] Petition (CR-2024-MAN-000054) nor any other petition in relation to the same debt shall be issued pending the hearing in paragraph 2.
2. The application for an injunction restraining issue of the Petition be listed on Wednesday 24th January 2024 at Birmingham BPC at 10.30 t/e 2 hours.”

14. The cheque in respect of the Official Receiver’s deposit was received by the BPC in Manchester on 18 January 2024, and at 10.18 hours that morning, the BPC office in Manchester uploaded a sealed copy of the Petition to CE-File and sent an electronic notification to the Petitioner’s solicitors. The BPC office also placed details of the Petition on the public list of pending petitions maintained by the court.
15. Later that morning, at about 11.45 hrs, Mr. Mulhall was contacted by a third party who told him that a search of the court’s list of pending petitions had revealed that the Petition had been presented against the Company. He was offered legal services in relation to it by the third party.
16. The First Order was sealed by the BPC office in Birmingham and delivered electronically to the parties at 12.32 hours on 18 January 2024.
17. Upon receipt of the First Order, Mr. Mulhall contacted the BPC office in Manchester to notify it that the First Order had been made the previous day and to protest that the Petition had been issued. He also contacted the BPC office in Birmingham to notify it of the existence of the Petition in Manchester.
18. Either as a result of this communication, or because the Judge decided to reconsider the matter of his own motion, on 18 January 2024 the Judge made a second order (the “Second Order”) in the following form,

“HHJ TINDAL has read the [Application] ... for an injunction to restrain the issue of a winding-up petition and is aware that such a petition (CR-2024-MAN-000054) was presented on 12th January 2024 but has not yet been issued. That means it is too

² The parties’ dealings with the court offices in this case were not assisted by the fact that the number of the Petition was wrongly transcribed in the two orders made in Birmingham. However, no-one suggested that anything turns on that.

late to seek an injunction restraining presentation, as it has already been presented. The next stage in the process is that the petition will be served and then will be advertised 7 days after that. The application for an injunction to restrain the presentation of the petition must therefore fail and there is no purpose in a hearing about it, which [Mr. Mulhall] cannot attend on 19th January anyway owing to family circumstances. But once the petition is served, [Mr. Mulhall] can if he wishes make an application to strike-out the served petition and to stay it (including advertisement if he acts quickly enough) pending the hearing of the application to strike-out. However, he has not made that application - indeed it would be premature until service.

IT IS ORDERED THAT:

1. The [Application] for an injunction be dismissed and the hearing on 19th January vacated.
2. No order for costs.
3. The [First Order] of 18 January 2024 is rescinded.”

The parties were notified of the Second Order at 15.49 hours on 18 January 2024.

19. Following the Judge’s comments in the Second Order, the Company made an application to the BPC in Manchester seeking an injunction to restrain advertisement (notice) of the Petition. HHJ Halliwell made an interim order to that effect in Manchester on 6 February 2024.
20. In addition, on 13 February 2024, the Company sought permission to appeal the Second Order. The Company contended that the Petition had not been presented or issued before the First Order was made, and so the Judge should have left the First Order in place rather than rescinding it by the Second Order. The Company contended that the true position is that the Petition was both presented by the Petitioner and issued by the BPC office in Manchester *after* the First Order was made and in breach of it. The Notice of Appeal seeks an order that the Petition should be struck out or stayed.
21. On 14 February 2024, Asplin LJ gave the Company permission to appeal and stayed advertisement of the Petition. On 16 February 2024, in light of the grant of permission to appeal, HHJ Halliwell made a further order in Manchester staying all proceedings upon the Petition and adjourning the Company’s application to restrain advertisement until after determination of this appeal.

The importance of the date of presentation of a winding up petition

22. Aside from the particular circumstances of the instant case, the insolvency legislation has always provided for significant powers and consequences which refer back, directly or indirectly, to the time or date of presentation of a winding up petition. For example, in the immediate context of pending winding up proceedings, section 126 of

the 1986 Act gives the court power to stay any action or proceedings against the company “at any time after the presentation of a winding up petition”. Further, section 127 provides that if the company is eventually wound up, any disposition of the company’s property after the commencement of the winding up is, unless the court otherwise orders, void: and section 129 provides that (subject to a couple of exceptions where the order is made after other insolvency proceedings), the winding up of a company by the court “is deemed to commence at the time of the presentation of the petition for winding up”. These provisions can have significant immediate effects on a company against which a winding up petition is presented, such as calling into question the validity of payments made into and out of the company’s bank account.

23. There are also further consequences under the 1986 Act which are tied to the date of presentation of the winding up petition via the definition of the commencement of the winding up in section 129. So, for example, under section 240, the “relevant time” for the purposes of calculating the relation-back period for the avoidance provisions of sections 238 (transactions at an undervalue), 239 (preferences) and 245 (avoidance of certain floating charges) is tied to the “onset of insolvency”. In a case where the company goes into compulsory liquidation without a prior administration, that expression is defined in section 240(3)(e) as the date of commencement of the winding up, which again refers back to the date of presentation of the winding up petition.

The legislative regime

24. In order fully to understand the current regime, and in particular the origins of the terminology and the requirement for payment of a deposit for the Official Receiver’s fees, it is necessary to engage in a little legal archaeology.

Early history

25. The first consolidated process by which creditors or contributories could apply to wind up a company was set out in section 69 of the Joint Stock Companies Act 1856 (the “1856 Act”), which provided,

“Application for winding-up to be by Petition.

Any Application for the winding-up of a Company shall be by Petition, and there shall be filed or lodged at the Time when such Petition is presented an Affidavit verifying the same: Such Petition may, in Cases where the Company is unable to pay its Debts, be presented either by a Creditor or a Contributory, but where any other Ground is alleged for winding-up the Company a Contributory alone is entitled to present the Petition.”

26. That provision was repealed and replaced by a provision in similar form in section 82 of the Companies Act 1862. That was successively re-enacted with only minor linguistic changes by section 137 of the Companies (Consolidation) Act 1908, section 170(1) of the Companies Act 1929 and section 224(1) of the Companies Act 1948.

27. Throughout this period, further detail of the process for dealing with winding up petitions was included in rules of court or secondary legislation. So, for example, the Companies (Winding-up) Rules 1909 (the “1909 Rules”) dealt with the presentation of a petition in rule 26 as follows,

“A petition shall be presented at the office or chambers of the Registrar, who shall appoint the time and place at which the petition is to be heard. Notice of the time and place appointed for hearing the petition shall be written on the petition and sealed copies thereof...”.

28. Prior to 1986, there was no requirement that a petitioner should pay a deposit for the fees of the Official Receiver. Instead, Rule 203 of the 1909 Rules simply provided that where a company against which a winding up order had been made had no available assets, the Official Receiver was not required to incur any expense in relation to the winding up without the express directions of the Board of Trade.
29. The position set out in Rules 26 and 203 of the 1909 Rules remained unchanged in Rules 27 and 212 of The Companies (Winding-up) Rules 1949 (the “1949 Rules”).

The 1986 regime

30. The UK’s insolvency regime was substantially revised in 1986 following the report of the Cork Committee on Insolvency Law and Practice (Cmnd 8558). However, the essential features of the process for the winding up of insolvent companies by the court remained unchanged in the primary legislation. In that regard, section 124(1) of the 1986 Act replicated in modern form the same wording that had first appeared in 1862. It provided,

“Subject to the provisions of this section, an application to the court for the winding up of a company shall be by petition presented either by the company, or the directors, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributory.”

31. The 1949 Rules were significantly rewritten in the Insolvency Rules 1986 (the “1986 Rules”). As enacted, Rule 4.7 of the 1986 Rules provided,

“Presentation and filing of petition

(1) The petition, verified by affidavit in accordance with Rule 4.12 below, shall be filed in court.

(2) No petition shall be filed unless there is produced on presentation of the petition a receipt for the deposit payable on presentation.

(3) If the petitioner is other than the company itself, there shall be delivered with the petition—

(a) one copy for service on the company, and

(b) one copy to be exhibited to the affidavit verifying service.

...

(5) Each of the copies delivered shall have applied to it the seal of the court, and shall be issued to the petitioner.

(6) The court shall fix a venue for the hearing of the petition; and this shall be endorsed on any copy issued to the petitioner under paragraph (5).”

32. Importantly, Rule 13.13 of the 1986 Rules defined “File in court” as meaning “deliver to the court for filing”, and Rule 7.30(1) required the court to open and maintain a file for each insolvency proceeding and to place all documents relating to such proceedings on the relevant file.

33. The reference in Rule 4.7(2) to the production on presentation of the petition of a receipt for the deposit payable on presentation was new in 1986. The requirement to provide a (refundable) deposit for the fees of the Official Receiver followed consideration by the Cork Committee of the role and financing of the Official Receiver.

34. The “deposit payable on presentation” referred to in Rule 4.7(2) was not defined in the 1986 Rules, but was provided for by Articles 7 to 11 of the Insolvency Fees Order 1986 (“the 1986 Fees Order”). Those Articles made it clear that the deposit for the Official Receiver was in fact required to be paid by a petitioner *before* the petitioner was entitled to present a winding-up petition. Article 8(1) provided,

“8.(1) Before a winding-up or bankruptcy petition can be presented the appropriate deposit [for the Official Receiver] must be paid to the court in which the petition is to be presented....”

35. It is also relevant to note that, as had been the case in the 1949 Rules, the 1986 Rules contained a number of prescribed forms for use in insolvency proceedings. These included a prescribed form for a winding up petition that included a box for an endorsement to be completed by the court that stated,

“Endorsement

This petition having been presented to the court on _____ will be heard at [venue] on [date] [time] (or as soon thereafter as the petition can be heard).”

36. Under the 1986 Rules, the court was thus required to identify the date of presentation of the petition and to endorse it on the face of the petition. This was helpful, because under the 1986 Rules, the date of presentation of the petition was required to be included by the petitioner in the advertisement of the petition (Rule 4.11(4)(d)) and in the certificate of compliance for the hearing of the petition (Rule 4.14(2)(a)).

The 2016 Regime

37. In 2016, no changes were made to section 124(1) of the 1986 Act. However, the 1986 Rules were repealed and replaced by the 2016 Rules, and the provisions for payment of a deposit to the Official Receiver were set out in a new Insolvency Proceedings (Fees) Order 2016 (the “2016 Fees Order”).
38. So far as material, Rule 7.7 of the 2016 Rules now provides,
- “7.7. Petition: presentation and filing
- (1) The petition must be filed with the court.
- (2) A petition may not be filed unless -
- (a) a receipt for the deposit payable to the official receiver is produced on presentation of the petition; or
- (b) the Secretary of State has given notice to the court that the petitioner has made suitable alternative arrangements for the payment of the deposit and that notice has not been revoked.
- ...
- (4) The court must fix a venue for hearing the petition, and this must be endorsed on the petition and the copies.
- (5) Each copy of the petition must have the seal of the court applied to it, and must be delivered to the petitioner.”
39. By Rule 1.2(2) of the 2016 Rules, “file with the court” is defined to mean “deliver to the court for filing”. Rule 12.39 further provides that where documents are filed with the court under the 1986 Act or the 2016 Rules, the court must open and maintain a court file for the proceedings and place those documents on the file.
40. Article 4 of the 2016 Fees Order now provides, in relevant part,
- “(2) On the presentation of a bankruptcy petition or a winding-up petition, the petitioner will pay a deposit to the court as security for the payment of the official receiver’s administration fee.
- (3) Where a deposit is paid to the court, the court will transmit the deposit paid to the official receiver attached to the court.”
41. The 2016 Rules dispensed with the prescribed forms that had been a feature of the 1986 Rules. Instead, they adopted the approach of listing the required contents of particular documents in the Rules themselves. Rule 7.5(1) of the 2016 Rules does not require a petition to contain a statement of the date upon which it was presented, and Rule 7.5(2) merely requires a petition to contain a blank box for the court to complete with the details of the venue for the hearing of the petition.

42. In the absence of any prescribed forms, the Government has published on its website a suggested form of winding up petition. The template includes a box for an endorsement by the court, but instead of referring to the date of “presentation” of the petition, it refers to the date upon which the petition was “issued” by the court.³
43. The reason for the Government template referring to the date of “issue” of a winding up petition is not immediately obvious. Neither the 1986 Act nor the 2016 Rules or 2016 Fees Order contain any reference whatsoever to a petition being “issued”. Moreover, although Rule 4.7(5) and (6) of the 1986 Rules referred to sealed copies of the petition being “issued” by the court to the petitioner, that language was not carried forward into Rule 7.7(5) of the 2016 Rules, which instead refers to a sealed copy of the petition being “delivered” by the court to the petitioner. The explanation might, however, be found in the regime for electronic working by the courts, to which I now turn.

Electronic Working

44. The Electronic Working Pilot Scheme (“Electronic Working”) was introduced by CPR Practice Direction 51O (“PD51O”) in 2015 and was operative in the regional BPC court centres from February 2019 until April 2024, when it was extended for a further period (now until November 2025). Paragraph 1.1(2) of PD51O specifically identifies Electronic Working as a permitted means of electronic delivery of documents to the court for the purposes of the 2016 Rules.
45. Paragraph 2 of PD51O indicates that Electronic Working may be used to “start” insolvency proceedings and paragraph 5 contains general rules about how documents are submitted, accepted and filed. Although the use of the expression “filing” in PD51O is not altogether consistent, in general terms it is clear from paragraph 5.3 that the process envisaged is that a document will be electronically “submitted” by a litigant (which generates an automatic acknowledgment by the system). The document will then be reviewed by a court officer and either rejected or “Accepted”.
46. Paragraph 5.4 of PD51O further indicates that if a document is Accepted it will then be “issued” (if it is “a claim form or other originating process”) or “filed” (if it is any “other document”). Although a petition is not a claim form for the purposes of the CPR, it is an originating process. This may provide some explanation for the endorsement of the date of “issue” of the petition by the court on the template winding up petition published by the Government.
47. Paragraph 5.4 of PD51O also contains provisions as to when documents which are required to be accompanied by payment of a court fee will be treated as filed or issued. In particular, paragraph 5.4(2) provides that the date and time of payment will be the date and time of issue for all claim forms or other originating processes.
48. Paragraph 6 of PD51O makes further provision in relation to the payment of fees. In relation to insolvency proceedings, paragraph 6.1(3) provides,

³ The Petition in the instant case was in the template form and the BPC in Manchester completed the endorsement, stating that the date of issue of the Petition was the date shown on the court seal (18 January 2024).

“In proceedings where payment under the [2016 Rules] is required to be made in a manner that precludes online payment (such as the official receiver’s deposit for a winding up petition, which must be paid by cheque), parties will be able to use Electronic Working to initiate those proceedings, but must post or deliver payment to the Court within seven calendar days of submitting the originating application document(s). Failure to do so may result in the originating application failing Acceptance or the petition being struck out.”

The Insolvency Practice Direction

49. The 2016 Rules and PD51O are supplemented by *The Practice Direction on Insolvency Proceedings* [2020] BCC 698, [2020] BPIR 1211, which was made on 3 July 2020 by the then Chancellor of the High Court, Sir Geoffrey Vos (the “IPD”).

50. Significantly for the instant case, paragraph 9.3 of the IPD provides that,

9.3 Payment of the fee and deposit

9.3.1 Unless the petition is one in respect of which rule 7.7(2)(b) of the [2016 Rules] applies, a winding up petition will not be treated as having been presented until the Court fee and official receiver’s deposit have been paid.

9.3.2 A petition filed electronically without payment of the deposit will be marked “private” and will not be available for inspection until the deposit has been paid. The date of presentation of the petition will accord with the date on which the deposit has been paid. If the official receiver’s deposit is not paid within 7 calendar days after filing the petition, the petition will not be accepted, in accordance with paragraph 5.3 of [PD51O]. If a petition is not accepted, a new petition will have to be filed if the petitioner wishes to wind up a company.

9.3.3 The deposit will be taken by the Court and forwarded to the official receiver. In the Royal Courts of Justice the petition fee and deposit should be paid by cheque, or by debit or credit card over the phone. The Court will record the receipt and will impress two entries on the original petition, one in respect of the Court fee and the other in respect of the deposit. In a District Registry or a County Court hearing centre, the petition fee and deposit should be paid to the staff of the duly authorised officer of the Court, who will record its receipt.

9.3.4 If payment is made by cheque, it should be made payable to ‘HM Courts and Tribunals Service’ or ‘HMCTS’. For the purposes of paragraph 9.3 of this IPD, the deposit will be treated as paid when the cheque is received by the Court.”

The arguments on appeal

51. On appeal, Mr. Mulhall, who made his submissions on behalf of the Company with commendable efficiency, contended that the First Order amounted to an injunction to restrain presentation of a petition by the Petitioner. He said that this order was effective when made, because, the cheque in payment of the Official Receiver's deposit had not by then been received by the BPC in Manchester, and so, applying paragraphs 9.3.1 and 9.3.4 of the IPD, the Petition was not to be treated as having been presented.
52. Alternatively, in response to a suggestion made in the course of argument that the First Order might not have been an injunction against "presentation" of a petition, but a direction by the Judge that the BPC office in Manchester should not "issue" the Petition, Mr. Mulhall's contention was that the First Order was still effective, because at the time it was made by the Judge on 17 January 2024, the BPC in Manchester had not issued a sealed copy of the Petition.
53. Either way, Mr. Mulhall contended that the First Order was effective when made, and so the Judge should have left it in place rather than rescind it by the Second Order. Mr. Mulhall further contended that since the Petition was either presented or issued in contravention of the First Order, it should be struck out.
54. In response, Mr. Murphy, who presented the case with admirable clarity for the Petitioner, drew attention to the fact that the First Order was made in response to the Application which was expressed to be for an injunction and was made under Rule 7.24(1) of the 2016 Rules. He contended that there were thus two possibilities.
55. First, if the First Order was intended to be an injunction restraining the "issue" of the Petition, then it was misconceived and of no effect because only the court can "issue" a petition and the court cannot injunct itself.
56. Alternatively, Mr. Murphy contended that if the First Order was intended to be an injunction restraining the Petitioner from presenting a petition, then the Judge came to the right conclusion in the Second Order that the First Order had been made too late to have any effect. This is because, Mr. Murphy submitted, the Petition had been presented when the original submission was made via CE-File to the BPC in Manchester on 12 January 2024, which was several days before the First Order was made.
57. In that respect, Mr. Murphy submitted that according to the ordinary and natural meaning of the word, the "presentation" of a winding up petition occurs when the document is delivered by the petitioner to the court. In support of that submission he drew attention to the decision of HHJ Norris QC (as he then was) in Blights Builders Limited [2006] EWHC 3549 (Ch) at [5]-[6] where the judge had equated presentation with delivery and had observed that this reflected the former practice under RSC Ord. 9 rule 3 which provided that (other than in a district registry) "a petition must be presented by leaving it at Chancery Chambers".
58. Mr. Murphy contended that this meaning of presentation of a winding up petition is consistent with Rule 7.7(1) of the 2016 Rules, and there is nothing in the remaining provisions of Rule 7.7 to suggest otherwise. In particular, Mr. Murphy submitted that Rules 7.7(2) to 7.7(5) are irrelevant because they merely relate to steps required to be done by the court after presentation, e.g. placing the petition on the court file, fixing a

date for the hearing and endorsing it on the petition and copies, and delivering sealed copies back to the petitioner for service.

59. Mr. Murphy further submitted that paragraph 6.1(3) of PD51O permits parties to “initiate” winding up proceedings by submitting a petition using Electronic Working. He contended that although paragraph 6.1(3) refers to the requirement for payment of the Official Receiver’s deposit, it does not say that “initiation” should be postponed where payment is only made by cheque after submission of the document.
60. Mr. Murphy also argued that if presentation of a petition did not occur when the petitioner delivered the document to the court, but was instead made dependent on the happening of some later event outside its control, such as receipt in the post of a cheque for the Official Receiver’s deposit, it would be impossible in practice for a petitioner to be certain when the petition had been presented, so as to be able to state that in the notice (advertisement) as required by Rule 7.10(2)(d) or in the certificate of compliance as required by Rule 7.12(2)(a) of the 2016 Rules.
61. Taking his submissions to their logical conclusion, Mr. Murphy contended that the provisions of paragraph 9.3 of the IPD, deeming presentation of a petition only to take place once payment of the deposit for the Official Receiver has been received by the court, and indicating that this could be up to seven calendar days after the submission of the petition to the court, are *ultra vires*, because they are inconsistent with the 1986 Act, the 2016 Rules, and PD51O.
62. Pulling the threads together, Mr. Murphy submitted that whichever way one looked at the First Order, the Judge was right to think that it had no practical or legal effect. Accordingly, he contended that the Judge was entitled to exercise his power under Rule 12.59 of the 2016 Rules to review the First Order and make the Second Order, rescinding the First Order and dismissing the Company’s Application.

Analysis

The date of presentation of a petition

63. The concept of presentation of a winding up petition has been a feature of the insolvency legislation for over 150 years. In particular, section 124(1) and the other relevant provisions of the 1986 Act have been in place for nearly 40 years. By its very nature, however, the presentation of a petition is connected to the procedural law which applies in the courts. Accordingly, whilst the expression must not be construed to mean something conceptually different from what Parliament must be taken to have intended when enacting the primary legislation, an “updating construction” must be applied so as to allow for changes in court procedure and technological developments from time to time: see *Bennion, Bailey and Norbury on Statutory Interpretation*, 8th ed. at sections 14.1 and 14.2. This allows the concept of presentation of a winding up petition in the 1986 Act to accommodate the 2016 Rules and Electronic Working.
64. At first blush, there is an attractive simplicity to Mr. Murphy’s submission that presentation of a winding up petition is, and always has been, synonymous with mere delivery of the relevant document to the court, and nothing more is required. However, I do not think that things are quite that simple.

65. I accept that delivery of the document comprising the petition to the court is the core element of the concept of presentation of a petition. In earlier days that could only have been done physically, but since the advent of Electronic Working, delivery of a winding up petition to the court can be done electronically. However, in my judgment, it is, and always has been, implicit that presentation means *valid* presentation. As a matter of principle, this must require the delivery of the petition to the court to be done in compliance with any statute, rule or practice direction which applies to presentation. That must apply not only to the mode of delivery of a petition, but also to fulfilment of any conditions attached to the delivery.⁴
66. So, for example, as long ago as 1856, section 69 of the 1856 Act required that an affidavit verifying the petition should be “filed or lodged *at the time when* such petition is presented” (my emphasis). If, in 1856, a verifying affidavit was not “filed or lodged” together with the petition, it seems to me that the court officer would have been required to reject the petition. It therefore could not be said to have been presented. Moreover, if, in such a case, the petitioner had returned to the court the next day with the petition and the necessary affidavit, I hardly think that it would be held that he had presented the petition the day before.⁵
67. I do not think that the provisions of the old RSC Ord. 9 rule 3 or the decision in Blights Builders Limited require a different approach. In indicating that (other than in a district registry) a petition should be presented by leaving it at Chancery Chambers, RSC Ord. 9 rule 3 was simply setting out how and where a petitioner should effect delivery of a petition to which RSC Ord. 9 applied. It was not purporting to set out a definition of “presentation” for the purposes of the insolvency legislation.⁶
68. Likewise, in Blights Builders, HHJ Norris QC (as he then was) was required to consider whether there was a distinction between the date of “presentation” and the date of “issue” of a petition for the purposes of deciding whether the appointment of an administrator was valid or not. He referred to RSC Ord. 9 rule 3 only in passing to support his conclusion that “presentation” involved the delivery of the petition by the petitioner to the court, as distinct from “issue”, which involved the sealing and return of the sealed copy of the petition by the court to the petitioner under Rule 4.7(5) of the 1986 Rules. The judge was simply not required to engage with the question which arises in the instant case.
69. In my judgment, the meaning of “presentation” that I have outlined above is consistent with the way in which the matter was dealt with under the 1986 regime,

⁴ This general proposition must be subject to Rule 12.64 of the 2016 Rules that provides that no insolvency proceeding will be invalidated by any formal defect or irregularity unless the court considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court. In the instant case, it is difficult to see how not paying the deposit could be said to be merely a “formal defect or irregularity”, and it was not suggested to us that Rule 12.64 had any application.

⁵ Although not cited to us, my decision in re Saint Benedict’s Land Trust Limited [2019] EWHC 3370 (Ch) is distinguishable. I held that the absence of a signature on a separate witness statement verifying a winding up petition did not render the petition void *ab initio*, because Rule 7.6 of the 2016 Rules does not require such witness statement to be filed at any particular time or stage of the proceedings (though obviously no winding up order could be made if such witness statement was still missing when the petition was heard). The only requirement is in paragraph 9.6 of the IPD which is that the witness statement must not be made more than 10 business days before the date of issue [sic] of the petition.

⁶ Indeed, the commentary in the 1999 White Book at 9/0/2 pointed out that because the 1986 Rules made specific provision for winding up petitions, RSC Ord. 9 rule 3 did not apply to winding up petitions at all.

and with the way in which it is now dealt with under Rule 7.7 of the 2016 Rules and Article 4 of the 2016 Fees Order.

70. As a preliminary matter, in construing Rule 7.7, the definition of “file with the court” from Rule 1.2(2) must be read into Rule 7.7(1). That has the result that Rule 7.7(1) provides that a petition must be “delivered to the court *for* filing” (my emphasis). It is thus evident that it is for the petitioner to make the delivery, but the filing is to be done by the court. It follows that the prohibition in Rule 7.7(2), that a petition must not be filed unless a receipt is produced for the Official Receiver’s deposit, is directed at the court and not at the petitioner. That makes sense given that the only “file” referred to in the 2016 Rules is the one that Rule 12.39 requires the court to open and maintain for documents relating to the proceedings. I think it is also clear that the responsibility for obtaining a receipt and producing it on presentation of the petition must lie with the petitioner.⁷
71. In other words, I consider that the relevant parts of Rules 7.7(1) and (2) should be read as follows,
- “(1) The petition must be delivered (by the petitioner) to the court for filing (by the court).
 - (2) A petition may not be filed (by the court) unless -
 - (a) a receipt for the deposit payable to the official receiver is produced (by the petitioner) on presentation of the petition ...”
72. In my view, the requirement in Rule 7.7(2) that a *receipt* for payment of the deposit be produced on presentation signifies that payment must be made on or before presentation. By its very nature, a receipt is only given *on* payment, or *after* payment has been made: it is nonsensical to speak of a receipt being given *before* payment. That was plainly the assumption under the 1986 regime, because, as I have indicated, the 1986 Fees Order expressly required payment of the deposit to be made *before* presentation of a petition.
73. Although Article 4(2) of the 2016 Fees Order is now drafted as a requirement for payment of the deposit “on the presentation of a petition”, the retention of the requirement in Rule 7.7(2) of the 1986 Rules for a receipt be produced on presentation suggests that the regime that applied under the 1986 Rules is intended to continue. In my view, the 2016 Rules still envisage that presentation of a petition can only occur on or after payment of the Official Receiver’s deposit.⁸
74. An interpretation of Rule 7.7 which makes presentation of a petition dependent upon payment of the deposit being made, has the considerable advantage that it is in line with the general approach in paragraph 5.4(2) of PD51O, under which originating processes requiring payment of a court fee will be deemed to have been issued when payment is made.

⁷ The same points apply to the equivalent provisions in Rules 4.7, 7.30(1) and 13.13 of the 1986 Rules.

⁸ It is difficult to envisage how both payment and production of a receipt for payment can actually occur simultaneously unless that is done by electronic means. But that does not detract from the essential proposition that presentation of a petition does not occur until payment is made.

75. Such an interpretation is also clearly the basis upon which paragraph 9.3 of the IPD is drafted. Paragraph 9.3.1 of the IPD provides that a petition will not be treated as having been presented until the Official Receiver's deposit has been paid; and paragraph 9.3.4 provides that in the case of payment by cheque this will be when the cheque is received by the court. The second half of paragraph 9.3.2 of the IPD also makes it clear that if a petition has been submitted⁹ without payment, it will not be "accepted" by the court for the purposes of Electronic Working until payment has been made. There is also a long-stop provision that if payment (by whatever means) has not been made within seven days, the petition will be rejected.
76. As indicated above, however, Mr. Murphy submitted that a conclusion that a petition is only presented when payment of the deposit is made, would not be consistent with paragraph 6.1(3) of PD51O that provides,

"In proceedings where payment under the [2016 Rules] is required to be made in a manner that precludes online payment (such as the official receiver's deposit for a winding up petition, which must be paid by cheque), parties will be able to use Electronic Working to initiate those proceedings, but must post or deliver payment to the Court within seven calendar days of submitting the originating application document(s). Failure to do so may result in the originating application failing Acceptance or the petition being struck out."

Mr. Murphy submitted that this paragraph envisages that a winding up petition will be treated as having been validly presented so as to "initiate" winding up proceedings if it is submitted using Electronic Working before payment by cheque is made. He also suggested that a petition could not be "struck out" for non-payment unless it had been validly presented in the first place.

77. The reason given in paragraph 6.1(3) of PD51O as to why winding up petitions are dealt with separately from other originating processes is because payment of the deposit for the Official Receiver's cannot be made online but has to be made by cheque. So far as I can tell, that is not in fact correct. There is no requirement to that effect in the 2016 Rules or the 2016 Fees Order, and as paragraph 9.3 of the IPD makes clear, larger court centres now accept payment of the deposit for the Official Receiver by credit or debit card over the telephone.
78. I also consider that it is entirely possible to read the first sentence of the paragraph as meaning that a party will be able to initiate proceedings using Electronic Working if (but only if) they make payment of the deposit. I agree that reference to a petition being "struck out" if payment is not made implies that before striking out it would have been an active proceeding with a court file. But that is not consistent with Rule 7.7(2), and the specific provision of the 2016 Rules must prevail. In my view, the last sentence of paragraph 6.1(3) should have dealt with a petition in the same way as any other originating process, namely that if the deposit is not paid then the document will fail "Acceptance". As I have indicated, that is the way in which the matter is dealt with in paragraph 9.3.2 of the IPD.

⁹ Paragraph 9.3.2 of the IPD refers to a petition which has been "filed electronically without payment of the deposit", and warns that if payment is not made in the time permitted, "a new petition will have to be filed". More accurately, given the terminology of PD51O, the references to "filed" should be read as "submitted".

79. As set out above, Mr. Murphy also argued that such an interpretation of Rule 7.7 would not permit a petitioner to know with certainty when their petition had been presented if they had chosen to pay the Official Receiver's deposit by sending a cheque in the post. I do not consider that argument is of sufficient weight to overcome the clear wording of the 2016 Rules.
80. I note, first, that the alleged uncertainty would only relate to the very limited circumstance in which a petitioner decided to post a cheque to the court. There would be no uncertainty over the date of payment if the petitioner delivered a cheque to the court in person, or paid by debit or credit card in person or over the telephone. Even if the cheque is sent by post, in practice the petitioner will likely know when it has been received, because, as appears to have occurred in the instant case, the court office will seal the petition and deliver a sealed copy back to the petitioner promptly following such receipt.
81. But in any event, any practical difficulty for petitioners in that regard could (and in my view should) be resolved if the court reverted to the practice under the 1986 Rules and endorsed the date of presentation on the sealed copy of the petition rather than the date of issue. The Government's template petition could be amended accordingly. Court staff could be instructed in accordance with paragraph 9.3 of the IPD that if payment of the deposit for the Official Receiver had not been made before, or when the petition was submitted to the court, the date of presentation would be the later date upon which payment was made.
82. I also consider that Mr. Murphy's argument would, if correct, create far greater practical problems and uncertainties than those which he asserted. On his interpretation of Rule 7.7, a petitioner could submit a petition to the court, whereupon it would be deemed to have been presented, with all the potential consequences that flow from that under the 1986 Act as outlined above, but the petitioner could delay making payment of the Official Receiver's deposit for an indefinite period. Moreover, because of the terms of Rule 7.7(2), the court would not be obliged to create a file relating to the petition from which the company or anyone else could ascertain the position. That cannot be what the legislation envisages.

A petition should not be “accepted” unless payment of the deposit has been made

83. In passing, I would record that a further aspect of this matter which is unsatisfactory relates to the manner in which the BPC in Manchester dealt with the Petition on 14 January 2024.
84. According to the first sentence of paragraph 9.3.2 of the IPD, if a petition is “filed”¹⁰ electronically without payment of the deposit it will be marked “private” and will not be available for inspection until the deposit has been paid.¹¹ What paragraph 9.3.2 of the IPD does not say is that a petition marked as “private” in this way will be accepted. Indeed, the remainder of paragraph 9.3.2 of the IPD makes it crystal clear that a petition will not be accepted unless and until payment is made.
85. What occurred in this case, however, was that the BPC in Manchester notified the Petitioner on 14 February 2024 that the “filings” in the case had been accepted. In my view this should not have occurred.¹² The BPC office should instead have notified the Petitioner that although the Petition had been submitted, it would be marked as “private”, and would not be accepted or sealed until the deposit had been paid, and that the date of payment would be treated as the date upon which the petition was presented.

The meaning of the First Order

86. At this stage, having examined the legislative regime in some detail, I should consider the meaning and effect of the First Order. As indicated above, that order was as follows,

“Before HHJ Tindal at Birmingham Civil Justice Centre ... on
17 January 2024

UPON HHJ Tindal reading the application dated 3rd January
2024 for an injunction to restrain the issue of a winding-up
petition and being aware that such a petition (CR-2024-MAN-
000054) was presented on 12th January 2024 but has not yet
been issued

AND UPON the applicant’s director currently undergoing a
serious situation within his family

IT IS ORDERED THAT

1. Neither [the] Petition (CR-2024-MAN-000054) nor any other petition in relation to the same debt shall be issued pending the hearing in paragraph 2.

¹⁰ Which again should be read as “submitted”.

¹¹ It is unclear where this practice of marking a document as “private” comes from. It may be an adaptation of the practice in relation to confidential documents in paragraph 5.2A of PD51O.

¹² Mr. Murphy (rightly) did not suggest that this communication could provide an independent basis for a finding as to when the Petition had been presented.

2. The application for an injunction restraining issue of the Petition be listed on Wednesday 24th January 2024 at Birmingham BPC at 10.30 t/e 2 hours.”

87. In my view, the key feature of this order is that the Judge drew a clear distinction between the Petition being “presented” and “issued”. He recorded that the Petition had been presented, but that it had not been issued. In my view the former was wrong, because the Official Receiver’s deposit had not been paid (which the Judge may or may not have known), but the latter was correct. The Petition had not been “issued” by the court in the sense in which that term is used in PD51O. I also note that the First Order was not couched as an injunction or prohibition directed at the Petitioner. It was neutrally framed as an order that the Petition should not be issued pending the hearing of the Application.
88. It seems to me that the Judge cannot have intended that the First Order should be an injunction against the Petitioner from presenting the Petition, because he recorded that presentation had already occurred and his order did not take the form of an injunction. The Judge must also have been well aware that he could not grant an injunction against the BPC court office in Manchester. But he plainly intended to make some valid order putting the Petition in Manchester on hold until after the Application had been heard in Birmingham.
89. Accordingly, the only logical conclusion is that the Judge intended the First Order to be a direction that the BPC office in Manchester should not issue a sealed copy of the Petition to the Petitioner until after the hearing of the Application in Birmingham. Understood in that way, it seems to me that the First Order was a valid and effective order.

The meaning of the Second Order

90. By the time that the Judge made the Second Order, the Petition had, on any view, been presented, because the cheque for payment of the Official Receiver’s deposit had been received in Manchester on the morning of 18 January 2024. As a consequence, the BPC office in Manchester had sealed the Petition and electronically issued/delivered it to the Petitioner at 10.18 hours.
91. Against this background, the Second Order appears to represent something of a rethink by the Judge. As indicated above, the Second Order stated,

“HHJ TINDAL has read the [Application] ... for an injunction to restrain the issue of a winding-up petition and is aware that such a petition (CR-2024-MAN-000054) was presented on 12th January 2024 but has not yet been issued. That means it is too late to seek an injunction restraining presentation, as it has already been presented. The next stage in the process is that the petition will be served and then will be advertised 7 days after that. The application for an injunction to restrain the presentation of the petition must therefore fail and there is no purpose in a hearing about it, which [Mr. Mulhall] cannot attend on 19th January anyway owing to family circumstances. But once the petition is served, [Mr. Mulhall] can if he wishes

make an application to strike-out the served petition and to stay it (including advertisement if he acts quickly enough) pending the hearing of the application to strike-out.”

92. Although the terminology used in the Second Order is rather confused, the Judge’s general view is clear enough. He plainly considered that notwithstanding his earlier effort to close the stable door, the horse had bolted, and there was no purpose left in either the Application or the First Order.

Was the Judge right to make the Second Order?

93. Although I think that one part of the Judge’s reasoning was wrong, in my view the result that he reached was correct, and the Second Order was one that he was entitled to make in the exercise of his power to review his First Order under Rule 12.59 of the 2016 Rules.
94. For reasons that I have already explained, I think that the Judge was wrong in his view that the Petition had been presented on 12 January 2024. The Petition was only presented when the cheque for the Official Receiver’s deposit was received on 18 January 2024. But the presentation of the Petition had not come about as a result of anything that could be regarded as an abuse of process or breach of any order by the Petitioner, and so there was no justification for striking the Petition out. The Petitioner had submitted the Petition to the BPC in Manchester in an entirely regular fashion, and it had posted its cheque for the Official Receiver’s deposit to the court before the Application was served upon it. Moreover, it received delivery of the sealed Petition back from the BPC in Manchester before it received the First Order from the BPC in Birmingham; and the First Order did not in fact prohibit the Petitioner from doing anything.
95. As such, if the Application was to be regarded as an application for an injunction to restrain presentation of a petition, the Judge was right to conclude that the Application had no further utility.
96. Alternatively, on the basis that the First Order was intended to be a direction to the BPC office in Manchester not to issue a sealed copy of the Petition before the Application could be heard in Birmingham, the First Order had still been overtaken by events.
97. Although the Judge is recorded as having made the First Order on 17 January 2024, by the time that a sealed version was circulated by the BPC office in Birmingham on 18 January 2024, the Petition had already, and entirely properly, been issued (within the meaning of PD51O) and delivered to the Petitioner (in accordance with Rule 7.7(5) of the 2016 Rules) by the BPC office in Manchester. Accordingly, the First Order had failed to achieve its intended result.
98. In these changed circumstances, I think that the Judge was entirely right to review his First Order. The Petition had been validly presented and it had been issued and delivered by the court to the Petitioner for service.
99. Against this background, the Judge’s solution of dismissing the Application in Birmingham and leaving the real question between the parties (whether the Petition

was the subject of a genuine dispute on substantial grounds) to be decided on a fresh application to be made by the Company in the BPC in Manchester, was entirely pragmatic and sensible. Further, since the situation had come about without fault on the part of either the Petitioner or the Company, the Judge was also entitled to take the view that there should be no order as to costs.

Disposal

100. For these reasons, I would dismiss the appeal.

101. I would, however, maintain the injunction against notice (advertisement) of the Petition granted by Asplin LJ until after the hearing of the application issued by the Company in the BPC in Manchester, or further order in the meantime. As is conventional in such a situation, this judgment therefore does not mention the Company by name.

Lady Justice Falk :

102. I agree.

Lord Justice Peter Jackson :

103. I also agree.