

From 30 April 2019, administration appointments in the Business and Property Courts (BPCs) have to be made online. This has been the case in London since April 2017 but will apply in the regional BPCs (Leeds, Manchester, Birmingham, Newcastle, Liverpool, Bristol and Cardiff) from this April. From that date, Notices of Intention to Appoint (NOI) and Notices of Appointment (NOA) in the BPCs can no longer be filed in person. Instead, they must be uploaded and submitted to court electronically.

This sounds efficient, but in practice, it may cause practical problems. Why? Because the sealed NOI/NOA will not be available immediately.

Whilst it is currently possible to wait at the court desk for the NOI/NOA to be endorsed, under the new e-filing system, we will have to wait until the court has processed the filing and uploaded the sealed NOI/NOA to the system. Although we understand that the courts will aim to upload the sealed NOI/NOA as soon as possible (hopefully, within a couple of hours of submission), there will inevitably be a period where the moratorium or appointment has come into effect, but the sealed NOI/NOA supporting that is not available.

The date and time of endorsement on the NOI/NOA will be the date and time that the documents are electronically filed, not the time when they are processed and uploaded.

Why Does This Matter to You?

This matters because:

1. An aggressive creditor or landlord may not accept that a moratorium is in place until they see a sealed NOI and continue with enforcement action (albeit, without consent of the court)
2. Without a sealed copy of the NOA:
 - a. A purchaser is unlikely to complete a sale
 - b. If a trading administration is envisaged, then any delay in returning a sealed NOA may have a knock on effect in terms of getting on site, making redundancies (if any), arranging insurance, organising staff and managing trading
 - c. A pre-pack administration sale may be impacted in terms of the release of the sale contract, cross undertakings and movement of funds

These timing issues could be critical to the administration process and should be factored in to the timeline/process.

Out of Hours Appointments for Director and Company Appointments

Electronic filing is available 24/7 any day of the week, but cannot be used to make an out of hours appointment by a qualifying floating charge holder. The procedure set out in the Insolvency Rules 2016 (Rules) must be followed.

There is ambiguity with regard to whether directors can make out of hours appointments using electronic filing – please see our blog, [eSquire Global Crossings](#), for more details.

Managing Timing Issues

In order to address the issues that electronic filing may create, we are recommending to clients that NOIs/NOAs be filed as close to 10 a.m. as possible on a business day to give the court sufficient time to process and upload the endorsed NOI/NOA.

If an NOI/NOA is filed later in the working day, there is a chance that the sealed version may not be available until the following day; even though the moratorium/appointment will be effective from the date and time of submission.

Electronic filing is compulsory in the BPCs from 30 April 2019 and this cannot be circumvented even if the matter is extremely urgent.

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