



Neutral Citation Number: [2025] EWHC 328 (Ch)

Case No: BR-2024-000195

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INSOLVENCY AND COMPANIES LIST (CHD)**

**IN THE MATTER OF ANTHONY LEE GASTER**  
**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

Royal Courts of Justice  
Rolls Building  
EC2A 4NL

Date: 10/02/2025

**Before :**

**INSOLVENCY AND COMPANIES COURT JUDGE BURTON**

**Between :**

**ANTHONY LEE GASTER**

**Applicant**

**- and -**

**THE COMMISSIONERS FOR HIS MAJESTY'S  
REVENUE AND CUSTOMS**

**Respondent**

**Christopher Snell** (instructed by **LEXLAW**) for the **Applicant**  
**Rosamund Baker** (instructed by **HMRC Solicitors Office**) for the **Respondent**  
**Megan Brooker, Deputy Official Receiver**

Hearing date: 22 November 2024

**Approved Judgment**

This judgment was handed down remotely at 10.30am on 17 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**ICC Judge Burton :**

1. This judgment concerns the correct method by which notice of an adjourned hearing of a bankruptcy petition should be given to the respondent to the petition.
2. The issue arises in the context of an application listed before me in the ICC Judges' interim applications list by Mr Gaster to set aside or annul a bankruptcy order made against him on 7 October 2024.

**Background**

3. On 14 March 2024, the Commissioners for His Majesty's Revenue and Customs ("HMRC") presented a bankruptcy petition against Mr Gaster in respect of £226,357.65 (the "Petition Debt"). The petition stated that the Petition Debt comprised £593,691.13 claimed in a statutory demand served upon him personally on 6 December 2023, less £2,000 received in payments and £365,333.48 in credits, each applied to his account following the date of the statutory demand.
4. The date and time of the first hearing of the petition was endorsed on its front page: Monday, 29 April 2024 at 10.30am or as soon thereafter as it could be heard.
5. The Friday before the hearing (26 April 2024), Mr Gaster made a witness statement explaining that his accountants had recently submitted some updated tax returns and that he was waiting for them to be processed in order to confirm the total amount of his liability to HMRC. He exhibited a statement of assets and liabilities and asked the court to adjourn the hearing of the petition by twelve weeks to enable him to liquidate sufficient assets to pay whatever he was found, following adjustment, still to owe to HMRC.
6. Mr Gaster was represented at the first hearing of the petition by Mr Snell of counsel who also appears on his behalf in pursuing this application. The petition was adjourned to 12 noon on 15 July 2024 for settlement, with costs in the petition. A minute of the court's order was sealed on 3 May 2024 and sent to HMRC. The substantive part of the order did not expressly provide for service of the order. However the order included a service note stating:

"The court has provided a sealed copy of this order to the serving party:"

followed by HMRC's address at Stratford in East London.

7. The next hearing of the petition, on 15 July 2024, was before ICC Judge Prentis. Mr Gaster was again represented by Mr Snell. The judge adjourned the petition to 2pm on 7 October 2024. A minute of order was sealed on 16 July 2024 (the "Adjournment Order") and sent to HMRC. Again, the substantive part of the order did not include any requirement for service, but included, at the bottom of the page, the same service note.
8. When the petition next came before the court on 7 October 2024, Mr Gaster was neither present nor represented. By then, the Petition Debt had been reduced to £97,674.85 following adjustments of £63,682.80 (which I assume arose following the late filing of

his returns) and payments of £65,000. A bankruptcy order was made against Mr Gaster in his absence.

9. The evidence in support of Mr Gaster’s application explains that his solicitor understood from counsel who attended the hearing on 15 July 2024, that ICC Judge Prentis was concerned that the court’s list on 7 October 2024 was already full and that he “indicated that the next hearing of the petition would take place on 14 October 2024”. Mr Snell submits that as HMRC then failed to serve Mr Gaster’s solicitors with a copy of the order, which in fact adjourned the hearing to the earlier date of 7 October 2024, proper notice of the adjourned hearing was not given and the bankruptcy order should be set aside or annulled.
10. HMRC opposes the application asserting that there was no procedural irregularity and that, in any event, in the circumstances of this case, the court should exercise its discretion not to annul the bankruptcy order.

**Relevant provisions of the Insolvency (England and Wales) Rules 2016**

11. Rule 10.23 of the Insolvency (England and Wales) Rules 2016 (the “Rules”) provides:

“(1) This rule applies if the court adjourns the hearing of a bankruptcy petition.

(2) The order of adjournment must identify the proceedings and contain—

- (a) the date of the presentation of the petition;
- (b) the order that the further hearing of the petition be adjourned to the venue specified in the order;
- (c) the venue of the adjourned hearing; and
- (d) the date of the order.

(3) Unless the court otherwise directs, the petitioner must as soon as reasonably practicable deliver a notice of the order of adjournment to—

- (a) the debtor; and
- (b) any person who has delivered a notice of intention to appear under rule 10.19 but was not present at the hearing.

(4) The notice of the order of adjournment must identify the proceedings and—

- (a) contain—
  - (i) the date of the presentation of the petition,
  - (ii) the date the order of adjournment was made, and

(iii) the venue for the adjourned hearing; and

(b) be authenticated and dated by the petitioner or the petitioner's solicitor.”

12. The Rule therefore appears to require an order to be drawn adjourning the petition and containing the information set out at Rule 10.23(2). It then requires the petitioner to “deliver a notice of the order of adjournment to the debtor” containing the information set out at Rule 10.23(4) (and Rule 10.23(4)(b) requires the notice of the order of adjournment to be authenticated).

13. Rule 10.23 notably includes no requirement for the order of adjournment itself to be *served* on the debtor. The only document it requires to be *delivered* to the debtor, is a “notice of the order of adjournment”. This is possibly because the Insolvency Rules 1986 provided:

“Rule 6.29

6.29(1) If the Court adjourns the hearing of the petition, the following applies,

6.29(2) Unless the court otherwise directs, the petitioning creditor shall forthwith send –

(a) the debtor, and

(b) where any creditor has given notice under Rule 6.23 but was not present at the hearing, to him,

notice of the making of the order of adjournment. The notice shall state the venue for the adjourned hearing.”

14. Unlike the 2016 Rules which replaced them, the 1986 Rules included prescribed forms. Form 6.23 was the prescribed form of order of adjournment of a bankruptcy petition. It does not include any provision for the order to be served on any party. A footnote to the prescribed form in *Muir Hunter on Personal Insolvency*, April 2011 release, states:

“GENERAL NOTE. In the High Court this order is not normally drawn up, but is simply noted by the Registrar on the attendance sheet which is then filed.”

15. It appears that it was only as a result of the introduction of the 2016 Rules, that the High Court started to draw up such orders, having noted the specific requirements of Rule 10.23(2) regarding the required content of such an order.

16. The prescribed form under the 1986 Rules for giving notice to the debtor of the adjournment of a bankruptcy petition, Form 6.24 provided several blank lines at the bottom of the page with the following note:

“insert name and address of debtor and creditors”.

17. The note does not refer to inserting details of the debtor “or his solicitor”. The reference to creditors was presumably a reference to any creditor falling with the category described at rule 6.29(2)(b) of the 1986 Rules above.
18. The 2016 Rules draw a clear distinction between documents that must be *delivered* to, and those which must be *served* on specified recipients. Most, but as noted above in relation to an order adjourning a bankruptcy petition, not all court documents as well as statutory demands, must be *served*, whereas a separate, bespoke procedure is introduced for *delivery* of many other documents, including, for example, delivery of notice to the Secretary of State of an intended application for a block transfer order, and delivery of notices to creditors of an intended dividend.
19. Rule 1.2(2) provides a separate interpretation of each:

‘deliver’ and ‘delivery’ are to be interpreted in accordance with Chapter 9 of Part 1

‘serve’ and ‘service’ are to be interpreted in respect of a particular document by reference to Schedule 4”.
20. Schedule 4 to the Rules then provides that service is to be carried out in accordance with Part 6 of the CPR, with further detail depending on whether the document is to be treated as if it were a claim form or a document other than a claim form.
21. Before leaving Rule 1.2(2) and turning to Chapter 9 of Part 1 of the Rules in accordance with which, as stated at Rule 1.2(2) “deliver” and “delivery” are to be interpreted, it is helpful to note that Rule 1.2(2) also sets out the meaning of “authenticate”:

“‘authenticate’ means to authenticate in accordance with rule 1.5.
22. Rule 1.5 provides:

**“Authentication**

**1.5.—(1)** A document in electronic form is sufficiently authenticated—

(a) if the identity of the sender is confirmed in a manner specified by the recipient; or

(b) where the recipient has not so specified, if the communication contains or is accompanied by a statement of the identity of the sender and the recipient has no reason to doubt the truth of that statement.

(2) A document in hard-copy form is sufficiently authenticated if it is signed.

(3) If a document is authenticated by the signature of an individual on behalf of—

- (a) a body of persons, the document must also state the position of that individual in relation to the body;
- (b) a body corporate of which the individual is the sole member, the document must also state that fact.”

23. Chapter 9 of Part 1 of the Rules, “Delivery of documents and opting out (sections 246C, 248A , 379C and 383A)” commences at Rule 1.36(1) as follows:

“**1.36.**—(1) This Chapter applies where a document is required under the Act or these Rules to be delivered, filed, forwarded, furnished, given, sent, or submitted in respect of proceedings under Parts 1 to 11 of the Act or the EU Regulation unless the Act, a rule or an order of the court makes different provision including one requiring service of the document.”

24. Rule 1.40 provides:

**“Delivery of documents to authorised recipients**

**1.40.** Where under the Act or these Rules a document is to be delivered to a person (other than by being served on that person), it may be delivered instead to any other person authorised in writing to accept delivery on behalf of the first-mentioned person.”

25. Rule 1.42 addresses delivery by post:

**“Postal delivery of documents**

**1.42.**—(1) A document is delivered if it is sent by post in accordance with the provisions of this rule.

(2) First class or second class post may be used to deliver a document except where these Rules require first class post to be used.

(3) Unless the contrary is shown—

- a) a document sent by first class post is treated as delivered on the second business day after the day on which it is posted;
- b) a document sent by second class post is treated as delivered on the fourth business day after the day on which it is posted;
- c) where a post-mark appears on the envelope in which a document was posted, the date of that post-mark is to be treated as the date on which the document was posted.

(4) In this rule “post-mark” means a mark applied by a postal operator which records the date on which a letter entered the postal system of the postal operator.”

26. I have omitted Rule 1.43 which addresses delivery by document exchange but set out below are Rules 1.44 and 145 which address personal delivery of documents and electronic delivery of documents:

**“Personal delivery of documents**

**1.44.** A document is delivered if it is personally delivered in accordance with the rules for personal service in CPR Part 6.

**Electronic delivery of documents**

**1.45.—(1)** A document is delivered if it is sent by electronic means and the following conditions apply.

(2) The conditions are that the intended recipient of the document has—

- a) given actual or deemed consent for the electronic delivery of the document;
- b) not revoked that consent before the document is sent; and
- c) provided an electronic address for the delivery of the document.

(3) Consent may relate to a specific case or generally.

(4) For the purposes of paragraph (2)(a) an intended recipient is deemed to have consented to the electronic delivery of a document by the office-holder where the intended recipient and the person who is the subject of the insolvency proceedings had customarily communicated with each other by electronic means before the proceedings commenced.

(5) Unless the contrary is shown, a document is to be treated as delivered by electronic means to an electronic address where the sender can produce a copy of the electronic communication which—

- a) contains the document; and
- b) shows the time and date the communication was sent and the electronic address to which it was sent.

(6) Unless the contrary is shown, a document sent electronically is treated as delivered to the electronic address to which it is sent at 9.00 am on the next business day after it was sent.”

27. Chapter 7 of Part 1 of the Rules sets out the standard contents of notices to be delivered to persons other than the registrar of companies. It is therefore of relevance to the delivery of a notice of order of adjournment under Rule 10.23. Rules 1.28 to 1.35 of Chapter 7 set out the information that must be included in such a notice:

**“Standard contents of notices to be delivered to persons other than the registrar of companies**

**1.28.**—(1) Where the Act or these Rules require a notice to be delivered to a person other than the registrar of companies in respect of proceedings under Part A1 to 11 of the Act or the EU Regulation, the notice must contain the standard contents set out in this Chapter (in addition to any content specifically required by the Act or another provision of these Rules).

(2) A notice of more than one type must satisfy the requirements which apply to each.

...

**Standard contents of all notices**

**1.29.** A notice must—

- (a) state the nature of the notice;
- (b) identify the proceedings;
- (c) in the case of proceedings relating to an individual, identify the bankrupt or debtor;
- (d) state the section of the Act, the paragraph of Schedule B1 or the rule under which the notice is given; and
- (e) in the case of a notice delivered by the office-holder, state the contact details for the office-holder.

...

**Standard contents of notices relating to documents**

**1.31.** A notice relating to a document must also state—

- (a) the nature of the document;
- (b) the date of the document; and
- (c) where the document relates to a period of time the period of time to which the document relates.

**Standard contents of notices relating to court proceedings or orders**

**1.32.** A notice relating to court proceedings must also identify those proceedings and if the notice relates to a court order state—



- (a) the nature of the order; and
- (b) the date of the order.”

28. Rule 1.52 addresses proof of delivery of documents:

**“Proof of delivery of documents**

**1.52.**—(1) A certificate complying with this rule is proof that a document has been duly delivered to the recipient in accordance with this Chapter unless the contrary is shown.

(2) A certificate must state the method of delivery and the date of the sending, posting or delivery (as the case may be).

... [(3) and (4) address delivery by the Official Receiver, Adjudicator or office-holder]

(5) In the case of a person other than an office-holder the certificate must be given by that person and must state—

- (a) that the document was delivered by that person; or
- (b) that another person (named in the certificate) was instructed to deliver it.

(6) A certificate under this rule may be endorsed on a copy of the document to which it relates.”

29. Rule 12.1 provides:

*“Application of the Civil Procedure Rules 1998*

**Court rules and practice to apply**

**12.1.**—(1) The provisions of the CPR (including any related Practice Directions) apply for the purposes of proceedings under Part A1 to 11 of the Act with any necessary modifications, except so far as disapplied by or inconsistent with these Rules.”

30. Rule 12.63 provides:

**“Court orders**

**12.63.** Notwithstanding any requirement in these Rules as to the contents of a court order the court may make such other order or in such form as the court thinks just.”

**The Insolvency Practice Direction**

31. Paragraphs 12.5.3 and 12.5.4 of the Practice Direction: Insolvency Proceedings [2020] BCC 698 (the “IPD”) provide, in relation to bankruptcy proceedings:

**“12.5.3** On any adjourned hearing of a petition, in order to satisfy the Court that the petitioner has complied with rule 10.23, the petitioner will be required to file evidence of when (the date), how (the manner), and where (the address), notice of the adjournment order and notification of the venue for the adjourned hearing was sent to:

(1) the debtor, and

(2) any creditor who has given notice under rule 10.19 but was not present at the hearing when the order for adjournment was made or was present at the hearing but the date of the adjourned hearing was not fixed at that hearing.

**12.5.4** For convenience, in the Royal Courts of Justice this certificate is incorporated in the attendance sheet for the parties to complete when they come to Court and is to be filed at the hearing. A fresh certificate will be required on each adjourned hearing. It is as follows:

‘I certify that the petitioner has complied with rule 10.23 of the Insolvency Rules 2016 by sending notice of adjournment to the debtor [supporting/opposing creditor(s)] on [date] at [address]’”.

32. It can be seen that whilst Rule 10.23 requires notice of the order of adjournment to be *delivered* to the debtor, and that pursuant to Rules 1.42 to 1.45, a document may be delivered by post, document exchange, in person or by electronic means, the IPD refers to evidence being provided of when and how the document was *sent* to the debtor (and would need to be amended in circumstances where notice of the adjourned hearing was delivered in person to the debtor (as, in those circumstances, it would not have been “*sent*”).

33. It can also be seen that whilst Rule 1.52 and paragraph 12.5.3 of the IPD provide for the petitioner to file evidence in the form of a certificate stating when (the date), *how (the manner)*, and where (the address), notice of the order of adjournment and notification of the venue for the adjourned hearing was - as required by Rule 1.52 *delivered*, and as required by paragraph 12.5.3 of the IPD, *sent* - to the debtor, the wording of the certificate set out at paragraph 12.5.4 of the IPD, and which appears on

the Court's attendance sheet, does not include any provision for the petitioner to specify *the manner* in which the notice of adjournment was so delivered or sent, nor, contrary to Rule 1.52(5), whether the person signing the certificate delivered it themselves, or whether another person was instructed to deliver it.

34. The nature and effect of a practice direction, such as the IPD, made under Part 1 of Schedule 2 to the Constitutional Reform Act 2005 was considered in detail by the Court of Appeal in *Bovale Ltd v Secretary of State for Communities and Local Government* [2009] 1 WLR 2274. Lord Justice Dyson noted with approval the academic writing of Professor Jolowicz in relation to a practice direction made under the Constitutional Act 1997, before its amendment in 2005. The Professor concluded that: "It is right that the court should retain its power to regulate its own procedure within the limits set by statutory rules, and to fill in gaps left by those rules; it is wrong that it should have power to actually legislate". This approach was confirmed in *Cameron v Liverpool Victoria Insurance Co Ltd* [2019] UKSC 6 (at paragraph [12]) where the Supreme Court noted that a practice direction "has no statutory force and cannot alter the general law". As noted above, Rule 12.1 provides that the provisions of the CPR apply to proceedings under Part A1 to 11 of the Act with necessary modifications unless disapplied by or inconsistent with the Rules.
35. In my judgment, as the Rules (i) specifically require evidence that a notice of an adjournment order was *delivered* to the debtor; (ii) prescribe the required contents of such a notice and the various methods by which it may be *delivered*; and (iii) expressly set out the detail that must be included in a certificate to prove that a document was *delivered* to its intended recipient, notwithstanding the reference in the IPD to providing evidence of when the notice was *sent* to the debtor, the certificate included within the court's attendance sheet should address the matters required by the Rules, which concentrate on *delivery* of a notice of an adjournment order. Moreover, in my judgment the certificate should be expanded to require the party signing the certificate to specify the manner in which the notice of the order of adjournment was delivered/sent to the debtor (as required by Rule 1.52 and paragraph 12.5.3 of the IPD), as well as, per Rule 1.52 provision for the person signing the certificate to state whether they delivered it themselves, or whether another person was instructed to deliver it. Whilst some petitioners (albeit very few who use the certificate on the attendance sheet) provide a certificate setting out all of the required information, in this case, HMRC did not do so.

### **Mr Gaster's application**

36. Mr Gaster claims that HMRC failed to *serve* him with notice of the bankruptcy hearing "despite the adjournment order specifically requiring [HMRC] to serve the Applicant."
37. His application is supported by his two witness statements and one from his solicitor, Mr Akram. Mr Akram states that it is clear on the face of the Adjournment Order that:

"HMRC was to serve us with a copy of the order. CE file also notes the same, and suggests that the Court emailed the adjournment order to [*an HMRC email address*] for service.

The basic position is that HMRC failed to effect service of the hearing notice on this firm; and thus we did not have notice of

the fact that the hearing was taking place on 7 October 2024 as opposed to 14 October 2024.”

38. Mr Gaster’s first witness statement, dated 15 October 2024 (eight days after the bankruptcy order was made against him), explains the background to the petition and the steps he has taken substantially to reduce the debt claimed in HMRC’s statutory demand. He states that as at the date of his statement, that he is confident that if granted a further twelve-week adjournment, he will be able to raise sufficient funds to discharge the remaining debt due to HMRC.

39. His next witness statement dated 14 November 2024 is in reply to HMRC’s evidence. He states:

“I want to make it categorically clear that I did not receive that notice of hearing in the post.

I also wish to make clear that, having instructed solicitors, I expected correspondence about hearings to be sent to my solicitors. I was not, therefore, expecting any such correspondence to be sent to me in any event.”

40. Both of Mr Gaster’s witness statements appear to provide incorrect details of his address. In each, he describes himself as “Anthony Lee Gaster of G&G Commercial, Ascorn Industrial Park, Camp Road, Castle Cary, BA7 BJ7”. “Ascorn” appears to be a typographical error and should read “Acorn”. The postcode can be seen to be in an incorrect format, reading “BJ7” instead of “7JB”.

### **HMRC opposition**

41. The grounds on which HMRC oppose Mr Gaster’s application are set out in a witness statement of Paul Doyle, a member of HMRC’s Debt Management, Enforcement and Insolvency Service in Bradford. He states that the examiner who attended the hearing before ICC Judge Prentis in July 2024 is unable to recall whether there was any confusion regarding the date of the adjourned hearing. He continues:

“Notwithstanding this, the relevant adjournment order was provided to the debtor.

In response to point 10, it is agreed that HMRC was to serve a copy of the order on the Applicant. As per Rule 10.23(3) of the Insolvency Act 1986, (*sic*) HMRC delivered a notice of the order of adjournment to the debtor (Mr Gaster) on 18 July 2024”.

42. Mr Doyle’s reference to “point 10” is to paragraph 10 of Mr Akram’s witness statement where Mr Akram states that it is clear from the wording of the Adjournment Order that HMRC was to serve a copy of it on “us”. Mr Doyle then states that there is no requirement for a petitioner to serve the order on a debtor’s solicitors:

“Mr Gaster was sent the adjournment notice and the fact it is referred to in Mr Akram’s Witness Statement confirms it was received.”

43. His witness statement exhibits a letter dated 18 July 2024 from HMRC addressed to Mr Gaster at: “Acorn Industrial Park Camp, Castle Cary, Somerset BA7 7JB”. It is the same address as set out on the face of the petition. Having compared it with the address set out in Mr Gaster’s evidence and then Royal Mail’s “Find an address” service (using the post code), the address appears to be slightly incorrect. The word “Camp” should have been preceded by a comma and followed by “Road”. The correct address appears to be “Acorn Industrial Park, Camp Road, Castle Cary, Somerset, BA7 7JB”.
44. The letter commences:
- “Please find enclosed your Adjournment Order and Cost Schedule.
- Your hearing will take place in person and will be heard by the Court sitting in Bankruptcy: The Rolls Building Royal Courts of Justice, 7 Rolls Buildings, Fetter Lane, London, EC4A 1NL.”
45. The substantive part of the letter concludes “Yours sincerely” and the only copy in the court bundle, which is the copy exhibited by Mr Doyle, is followed by a blank space, underneath which is typed the name of an HMRC officer and beneath their name, “Administrative Officer”. The copy of the letter included in the court bundle is then followed by copies of the two documents said to be enclosed with the letter, namely the Adjournment Order and a schedule of HMRC’s costs incurred in the petition.
46. It is clear from Mr Doyle’s evidence that the letter was intended to be a notice of the order of adjournment required by Rule 10.23(3) to be delivered by the petitioner as soon as practicable to the debtor. I shall therefore describe the letter for the purposes of this judgment, as the “R10.23 Notice”. However, contrary to the requirements of Rule 1.29(a) and (d), the R10.23 Notice:
- i) failed to state “the nature of the notice”;
  - ii) failed to state the Rule under which the notice was given;
  - iii) only identifies the debtor by addressing the letter to him; and
  - iv) only identifies the proceedings by including under “Your Ref”, the court’s case number “BR-2024-000195”.
47. Whilst the R10.23 Notice complies with Rule 1.32(a) by identifying the nature of the order it relates to, in breach of the requirements of Rule 1.32(b), it fails to identify the date of the order.
48. Contrary to the requirements of Rule 10.23(4), the R10.23 Notice:
- i) fails to state the date of presentation of the petition;
  - ii) fails to state the date on which the Adjournment Order was made; and
  - iii) was not authenticated in the manner required by Rule 1.5.

49. If the court could be satisfied that, as stated on the face of the R10.23 Notice, the Adjournment Order was in fact enclosed with it, that enclosure, combined with the case reference number included under “Your Ref” should, in my judgment, have been sufficient to enable the recipient to identify the proceedings to which it relates. Similarly, the provision of the Adjournment Order would meet the requirements set out at paragraph 46 (i) and (ii) of this judgment. In those circumstances I would have been prepared to waive the absence of a signature, authenticating the document.
50. However, whilst Mr Doyle’s witness statement exhibits the R10.23 Notice, Adjournment Order and costs schedule, as can be seen from the extracts of his evidence at paragraph 37 above, he states only that HMRC delivered a notice of the order of adjournment on Mr Gaster on 18 July 2024. He then refers by page number alone, to three pages of the exhibit to his witness statement which comprise the R10.23 Notice, the Adjournment Order and a costs schedule. He does not state (i) the reason for his belief that all three documents were delivered to Mr Gaster, (ii) who delivered them, (iii) how, or (iv) when.
51. The court would not usually make a bankruptcy order in circumstances where a debtor is neither present nor represented unless satisfied that notice of the order of adjournment has been given to the debtor. However the evidence that was before the court when it made a bankruptcy order against Mr Gaster was not included in the hearing bundle for this application. That evidence was provided by HMRC completing the certificate on the court’s attendance sheet. The attendance sheet was then entered by the court staff on the court’s electronic CE-File. When it was put on the court file, it was marked “confidential”. It was not therefore available to either party – at least not by accessing CE-File - when preparing for this hearing.
52. Having: (i) satisfied myself that, on this occasion, there was no reason for the attendance sheet to be kept confidential; (ii) confirmed with the Judge in question that they had no objection to it being released to parties; and (iii) seen that it contained evidence regarding notice of adjournment having been sent to Mr Gaster, I arranged for a copy to be sent to parties, explaining that I considered it should properly be in evidence and inviting them to send to my clerk any additional submissions they wished to make in relation to it.
53. The certificate on the attendance sheet repeats the wording set out in paragraph 12.5.4 of the IPD and consequently omits to state how notice of the Adjournment Order was *delivered* to Mr Gaster. The certificate was signed by the HMRC Insolvency Examiner who attended the hearing:
- “I certify that the petitioner has complied with Rule 10.23 of the Insolvency Rules 2016 by sending notice of adjournment to the debtor (and supporting/opposing creditor(s)) on: 16 July 2024 at Acorn Industrial Park Camp, Castle Cary, Somerset, BA7 7JB.”
54. In their post-hearing, written submissions, both parties identified an apparent discrepancy between the date of the R10.23 Notice and the date on which, according to the certificate, it was sent to Mr Gaster. HMRC noted that the certificate states that the notice was *sent* on 16 July 2024 and submits that this supports Mr Doyle’s evidence that it was delivered on the second business day after that, namely on Thursday 18 July 2024.

55. Mr Snell submits that the certificate contradicts Mr Doyle's evidence as the certificate states that the R.10.23 Notice was sent on 16 July 2024, whereas Mr Doyle's evidence states that it was delivered on 18 July 2024. I reject this submission as it appears to overlook the wording of the certificate which refers to it being *sent* rather than *delivered*. It would therefore have been possible for the notice to have been delivered on 18 July 2024 if it had been sent by first class post, two days earlier on Tuesday 16 July 2024.
56. The R10.23 Notice does not expressly state how it was to be delivered to Mr Gaster. As the only address for Mr Gaster on the R10.23 Notice was a postal address (i.e. the letter did not include an email address) it seems likely that HMRC intended to deliver it to him by post. But neither the R10.23 Notice, nor Mr Doyle's evidence states whether that was the case, nor whether it was posted or delivered to HMRC's post room by Mr Doyle or by another party, nor whether it was sent by first or second class post, or indeed by any other method. If it was sent by first class post, pursuant to Rule 1.42, it is to be treated as delivered on the second business day after the day on which it is posted, whereas, as highlighted above, Mr Doyle's evidence states that it was *delivered* on the same date that appears on the letter comprising the R10.23 Notice, 18 July 2024. That could only have occurred if the notice was delivered to Mr Gaster in person, but no reference is made in HMRC's evidence to personal delivery. Mr Doyle simply states that Mr Gaster must have received the notice of adjournment as the Adjournment Order was exhibited to his solicitor's witness statement in support of this application. He does not appear to have taken into account that the Adjournment Order could have been subsequently downloaded by Mr Gaster's solicitor from the court's CE-File.
57. Consequently, I accept Mr Snell's second criticism of HMRC's reliance on the certificate. Whilst it states that notice of adjournment was sent on 16 July 2024, as I have already noted, that notice appears to have comprised the R10.23 Notice which was dated two days later, i.e. on 18 July 2024.
58. I have also noted that the R10.23 Notice states that it attached a copy of the Adjournment Order. According to the court's CE File, the order was sealed by the court and sent to HMRC at 5.26pm on 16 July 2024.
59. In my judgment, it is more likely than not that a letter dated 18 July 2024, enclosing an order that was not released to HMRC until 5.26pm on 16 July 2024, was not in fact sent to Mr Gaster, presumably by post, on 16 July 2024 and consequently, that contrary to Mr Doyle's evidence, it is more likely than not, that for the purposes of Rule 1.42(3)(a), the R10.23 Notice should not be treated as having been delivered on the second business day after the day on which it was said to have been sent— i.e 18 July 2024.
60. There is, in my judgment, simply not enough reliable evidence to contradict Mr Gaster's unequivocal statement that he did not receive notice of the adjourned hearing.

**Should notice of the adjourned hearing date have been given to Mr Gaster's solicitors?**

61. Mr Snell's submissions relied largely upon his contention that the Adjournment Order should have been served on Mr Gaster's solicitors. He referred the court to paragraph 1(2) of Schedule 4 to the Rules, Part III of the Civil Procedure Rules and in particular, CPR 6.23(2)(a) which provides that except where any other rule, practice direction or

order makes different provision, a party's address for service must be the business address within the United Kingdom or a solicitor acting for the party to be served. He submits that:

- i) Rule 10.23 does not permit a petitioner to bypass solicitors by serving notice of adjournment directly on the debtor;
- ii) the reference in Rule 10.23 to delivering notice of the order of adjournment to the debtor must mean serving it on the debtor's solicitor when a solicitor has been retained;
- iii) the wording of Rule 10.23 may indicate that the rule itself draws a distinction between (a) service of the order itself (which should be effected on a party's solicitor); and (b) delivering "notice" of the order, which may possibly impose a separate requirement to service of the order itself; and
- iv) HMRC cannot have complied with its service obligations by bypassing Mr Gaster's solicitors.

62. However, I have already found that the Rules do not require an order adjourning a bankruptcy hearing to be *served* on the debtor and that Rule 1.2 draws a clear distinction between delivery of documents and service of documents.

63. This distinction can readily be seen in Rule 1.35 which addresses the required, standard contents and authentication of applications to the court:

“**1.35.**—(1) This rule applies to applications to court under Part A1 to 11 of the Act (other than an application for an administration order, a winding up petition or a bankruptcy petition).

(2) The application must state—

...

(h) the names and addresses of the persons on whom it is intended to serve the application or that no person is intended to be served;

(i) where the Act or Rules require that notice of the application is to be delivered to specified persons, the names and addresses of all those persons (so far as known to the applicant); and

(j) the applicant's address for service.”

64. Consequently I consider Mr Snell's reliance upon Schedule 4 to the Rules to be misplaced as it expressly refers only to service of documents and thus has no relevance to delivery of a notice of adjournment order.

65. Whilst there is a clear requirement, when a debtor makes an application to court, to provide details of his address for service, neither the Act nor the Rules require, or provide any formal method by which solicitors instructed by the respondent to a bankruptcy petition should, or may, “go on the record”. Rule 1.40 is in permissive



terms: a document may be delivered to any other person authorised to accept delivery. There is no requirement that it be delivered to such an authorised person. This can be contrasted with an application to set aside a statutory demand where (consistently with Rule 1.35 which requires an applicant always to provide their address for service) Rule 10.5(3)(a) provides that unless the application is summarily dismissed, the court must fix a venue for it to be heard, and give at least five business days' notice to:

“(a) the debtor or, if the debtor's application was made by a solicitor acting for the debtor, to the solicitor;”

66. Mr Snell also referred to Rule 12.1 that applies the provisions of the CPR to proceedings under Part A1 to 11 of the Act with necessary modifications, except so far as disappplied by, or inconsistent with the Rules. CPR 6.23 requires, unless the court otherwise orders, a party to proceedings to provide an address at which they must be served. CPR 42.1 (1) provides that where the address for service is the business address of that party's solicitor, the solicitor will be considered to be acting for that party until the provisions of Part 42 (regarding change of solicitor) have been complied with. Both provisions apply expressly to *service* of documents in proceedings. Whether for the reasons I have suggested at paragraphs 13 to 17 of this judgment or otherwise, the Rules do not require either the order adjourning the petition or the notice of that order to be served on any party. In my judgment there was consequently no requirement under the Act or the Rules, nor by application of the CPR, for HMRC to serve a copy of the notice of adjournment order on Mr Gaster's solicitors. There may perhaps be some professional obligation to do so but that was not the issue before the court.

### **Interpreting the Rules – Summary**

67. Subject to the court's discretion under Rule 12.63, an order of adjournment must contain the information prescribed by Rule 10.23(2) and there is no requirement for the order of adjournment to be *served* on the debtor.
68. Instead, the petitioner is required, as soon as reasonably practicable, to *deliver* a notice of the order of adjournment to the debtor. Such notice must identify the proceedings, contain the information set out in Rule 10.23(4)(a) and be authenticated and dated by the petitioner or their solicitor. The notice must be delivered to the debtor by at least one of the methods provided by Rules 1.42 to 1.45. There is no statutory requirement for it to be served on, or delivered to any solicitor acting for the debtor, but it *may* be delivered to any person who has been authorised by the debtor in writing, to accept delivery of it. Unless the contrary is shown, a certificate complying with the requirements of Rule 1.52 is proof that a document has been delivered in accordance with the Rules, to the recipient.

### **Mr Gaster's application**

69. Mr Gaster applied:

“under rule 12.1(1) of the Insolvency Rules, in conjunction with CPR 3.1(7)”

to set aside the bankruptcy order on the basis that HMRC failed to serve him with notice of the adjourned hearing:

“despite the adjournment order specifically requiring [HMRC] to so serve [Mr Gaster].”

70. CPR 3.1(7) provides that the court’s power under the CPR to make an order, includes a power to vary or revoke an order. The bankruptcy order made against Mr Gaster was made pursuant to the Act, without reference to the CPR.
71. Mr Gaster’s application seeks, in the alternative, an order under section 282(1)(a) of the Insolvency Act 1986 that the bankruptcy order should be annulled on the basis that it ought not to have been made. Taking into account This, in my judgment, is the more appropriate order to seek in the circumstances of the case before me.
72. In *Society of Lloyds v Waters* [2001] BPIR 698, Park J identified a two-stage approach for the court when considering an application under section 282(1)(a) of the Act:

“First, it must ask whether, at the time the bankruptcy order was made ... any grounds existed on the basis of which the order ought not to have been made. If it does not appear to the court that any such grounds existed, the bankruptcy order stays in place and the second stage is not reached. If, however, it does appear to the court that such grounds existed, the second stage is reached. At that stage the court has a discretion whether or not to annul the bankruptcy. It is only a discretion, not a duty; the word is ‘may’ not ‘shall’.”

73. Ms Baker referred the court to Lord Justice Nugee’s judgment in *Khan v Singh-Sall* [2024] EWCA 1119 (at 66-67) regarding the exercise of the court’s discretion:

*“66. ...If I can express it in my own words, the court has a discretion to be exercised having regard to all the circumstances; but where the court has concluded that the bankruptcy order ought not to have been made, there must usually be something of some weight to put in the scales on the other side before that fact is outweighed and an annulment refused. I do not think it is right to say that that has to be exceptional; but it does have to be something sufficient to lead to the conclusion that annulment should be refused. ...*

*67. In practice the most significant consideration is likely to be the question of the applicant's solvency. If there are debts which can be pursued against the debtor and which he cannot meet, then there is usually little benefit to anyone in granting an annulment. This is, as Mr Brown said, a consistent theme which runs through the cases ...”*

### **Ought the bankruptcy order not to have been made?**

74. Mr Doyle of HMRC conceded that the Adjournment Order should have been served on Mr Gaster. In my judgment, and for the reasons set out above, he was mistaken in reaching that conclusion. The Adjournment Order did not include a direction that it be

served on Mr Gaster; it merely included a note saying that a sealed copy of the order had been sent to HMRC as “the serving party”.

75. On what grounds, then, if any, for the purposes of the first stage of the approach summarised by Park J, can it still be said that the bankruptcy order ought not to have been made?
76. Mr Gaster was represented at both the first and second hearings of the petition. He and his advisers have provided evidence explaining why they had understood that the petition would not be heard until a week later. That evidence has not been contested and, in my judgment, is not inherently implausible.
77. Mr Gaster’s evidence is unequivocal: he did not receive the notice of Adjournment Order. HMRC’s evidence that the notice was delivered to him lacks detail and, for the reasons set out at paragraphs 57 to 60 of this judgment should not be preferred to Mr Gaster’s evidence. There is insufficient evidence before the court to persuade me that notice of the Adjournment Order was delivered to Mr Gaster. He was, through no fault of his own or his advisers, deprived of an important opportunity to be heard by the court before a bankruptcy order was made against him. This, in my judgment, is a sufficient ground on which the order ought not to have been made.

### **Discretion**

78. I turn then to the second stage of the test, the exercise of the court’s discretion. HMRC submits that the court should decline to annul the bankruptcy order as:
- i) Mr Gaster did not contact HMRC between the hearing in July and 7 October 2024;
  - ii) Mr Gaster’s solicitors did not access the court’s CE-File to check the terms of the Adjournment Order; and
  - iii) Mr Gaster’s witness statement made on 15 October 2024 in support of the application sets out various assets that he was still seeking to sell, and concludes saying that if he were to have been given another 12-week adjournment, he would have been able to raise sufficient funds to clear the remaining debt. Mr Doyle states, however, that “there were random payments and broken promises of payment”. He refers in particular to a promise said to have been given by Mr Gaster during a telephone call, to pay £50,000 on 8 July 2024, which was not in fact paid. HMRC highlights that even following the making of the bankruptcy order, Mr Gaster was unable to provide a clear payment plan for how he will discharge the balance of the Petition Debt within a reasonable time.
79. The Deputy Official Receiver, Ms Booker informed the court that Mr Gaster attended an interview on 18 October 2024 and completed the Official Receiver’s preliminary questionnaire. He provided details of assets which he considers to be worth £845,350 against total liabilities (the balance of the Petition Debt, a bounce back loan and bank overdraft) of £120,845. She added that Mr Gaster had not complied with the Official Receiver’s requirements regarding insuring the assets which is naturally of concern to the Official Receiver as they should be properly secured and insured.

80. Taking into account that:
- i) the court has concluded that HMRC's evidence regarding delivery of notice of the Adjourment Order should not be preferred over Mr Gaster's evidence that he did not receive notice of the Adjourment Order;
  - ii) he was thus deprived of an opportunity to be heard on the occasion when the court made a bankruptcy order against him;
  - iii) he applied to set aside or annul the bankruptcy order very promptly after it was made;
  - iv) according to the information he provided to the Official Receiver, he is solvent on a balance sheet basis; and
  - v) he has already paid substantial amounts to reduce the Petition Debt, which has been further reduced by credits following the late submission of his returns,

in my judgment, and notwithstanding that his solicitors did not proactively check the court's CE-File to confirm the date of the adjourned hearing, this is an appropriate case for the court to exercise its discretion to annul the bankruptcy order made against Mr Gaster on 7 October 2024 on the basis that it ought not to have been made.

81. This judgment includes references to several provisions of the Rules that were not cited to me in oral or written submissions. Whilst it should not surprise parties when appearing before a specialist ICC Judge, that the court may refer to sections of the Act and Rules that were not raised in argument, when circulating the judgment in draft, I invited counsel to inform my clerk if they wished to make any further submissions in relation to the Rules referred to in the judgment. Neither party wished to do so.
82. I should be grateful if counsel would inform my clerk whether, following circulation of the draft judgment before Christmas, it has been possible to agree the terms of an appropriate draft order, (i) annulling the bankruptcy order made against Mr Gaster on 7 October 2024, (ii) restoring the petition for further hearing and (iii) addressing the costs of the application and those of the Official Receiver, or whether those matters will need to be considered at an expedited hearing to deal with outstanding, consequential matters.