

Joint Insolvency Examination

November 2022 sitting

Senior Moderator's Report

Introduction

This report is written following the publication of the results of the November 2022 sitting of the Joint Insolvency Examination ("the Examination"). It should be read in conjunction with the reports prepared by the examiners for the two papers in England and by their counterparts in Scotland.

Following the 2020 sitting of the Examination I prepared a comprehensive report which set out what candidates needed to do to succeed in passing any of the papers in the Examination. I recommend that all candidates and those helping them in their studies should have regard to what is said in the 2020 report: the messages are still relevant.

How candidates fared at the 2022 sitting

Dealing first with some statistics, the number of candidates sitting one or more papers in 2022 was essentially unchanged from 2021. The vast majority of these sat the English versions of the papers. I was very pleased to see that the proportion of those who were successful having attempted the corporate insolvency paper in England continued its recent upward trend, with 47% of those who sat the paper being awarded a pass. Very worrying was the fact that only 28% of those who attempted the personal insolvency paper were awarded a pass. This percentage has been on a downward trend for some while, but 28% is by some margin the lowest pass rate for this paper.

It is very difficult to determine the reason(s) for this very low pass rate. One undoubted issue is the fact that the majority of candidates sitting the personal insolvency paper are not demonstrating that they have practical experience in the subject. It is not entirely clear why this is. All the papers set in the Examination are practical papers and the examination team is looking to candidates to demonstrate that they can assimilate facts, to think round a problem and to come up with a practical solution. This reflects the approach of insolvency practitioners in their day-to-day work. Candidates who do not demonstrate that they have sufficient knowledge of insolvency law and practice to enable them to carry out the functions of unauthorised insolvency practitioner are putting themselves at a significant disadvantage. Approximately 40% of the overall marks available on each paper are for applying the law (i.e. actually solving the problem) and candidates who are unable to do this are missing out.

In my 2021 report I referred to the unwelcome increasing trend in the percentage of candidates who unfortunately did not pass any of the papers that they attempted. I am pleased to report that in 2022 the percentage of those who were wholly unsuccessful fell slightly. Since the introduction of the two paper format in 2018, each year on average 53% of candidates have not passed any of the papers attempted by them.

In Scotland, the very low number of candidates who sit the papers makes year on year comparisons difficult, but the results for 2022 were commensurate with those for 2021.

Helpful pointers

Away from statistics, the examination team and I welcome that fact that at least some candidates appear to have taken heed of the detailed comments in my 2020 report. However, I have continuing concerns about how some candidates approach questions. The reports written by the four examiners this year are essential reading as they point out where candidates did well and where they struggled. There are a number of useful pointers, of which future candidates would do well to take careful note.

For my own part, and echoing some of the comments made by the examiners:

- candidates should not go off at a tangent but stay true to answering the question set. Straying into presenting irrelevant information (often at great length) can never earn marks and wastes precious time. Time taken to read the question and to appreciate the specific requirements should help candidates to structure and plan their answers and to avoid wasting time. No marks can be awarded for explaining what the office holder should do later at some later date when the requirement asks for a list of actions that would be taken in the first seven days;
- reading the question and understanding the requirements should help candidates to avoid being put off by questions. A question set within the context of, for example, a solicitors' partnership will usually be able to be answered to some degree without any knowledge of either legal practices or partnerships;
- candidates must be sure that they are clear from the question scenario the role that they are adopting and who it is they are interacting with. Answering a question from the point of view of an insolvency practitioner as officeholder is very different from answering a question from the point of view of a insolvency practitioner who has been approached for help by a creditor of an insolvent entity. Advising the spouse of the bankrupt on their position vis-à-vis the matrimonial home requires a different approach from that that would be adopted by the trustee. It is vital that candidates appreciate who they are and who they are dealing with and then stick to this throughout their answer and do not default to answering the question as if they were an insolvency practitioner holding a formal insolvency office;
- if the requirements ask for an email or letter to be prepared, candidates must do this. Candidates who either ignore the requirement, or who start off by following the requirement but then revert to a generic answer, are at the very least likely to be marked down holistically;
- in questions where candidates are asked to advise on the options available, they should not waste time setting out in detail those options which are theoretically available but which, given the facts of the question, could never be adopted as a solution. There is no point in writing pages about Members' Voluntary Liquidation if the company in question is clearly insolvent. Briefly mention irrelevant options, explain why they are not relevant in the context of the question, and move on;
- in "numbers" questions it is important that candidates do not simply insert a figure into their answer without explaining from where the figure derives. A note or assumption should be provided so that the examination team is made aware of the candidate's thinking. Even if the figure given in the answer is wrong, some marks can sometimes be given by the examination team for the workings behind it;

- candidates sitting the personal insolvency paper are of course free to use their knowledge of insolvency generally, including corporate insolvency, when attempting a personal insolvency question. However, care must be taken to ensure that law and/or practice usually relevant to corporate insolvency is not imported into the personal insolvency arena without thought. Candidates sitting the personal insolvency paper who refer in their answers to law and/or practice that could only ever be relevant in the corporate arena run the risk of demonstrating to the examination team that they lack the requisite personal insolvency experience; and
- there is a continuing tendency of some candidates to adopt what the examination team calls the “checklist approach”. By this is meant answering questions by rote, setting out information learned during studies in a mechanical way without ensuring that the question context requires this to be done. The Examination is very largely comprised of questions which require focussed practical answers. Regurgitation of long lists of what has been learned while studying often misses the point, in part or entirely, and does not give the examination team any confidence that candidates have appreciated the issue in hand or identified the solution. Even when candidates succeed in making relevant points, if they have done this by taking the checklist approach, happening upon mark-worthy points along the way, it will usually be obvious to the examination team that this is the case and it can be difficult to conclude that the candidate really knows what they are doing.

JOINT INSOLVENCY EXAMINATION BOARD

CORPORATE PAPER SCOTLAND

EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2022 SITTING

General comments

In this year's paper there was a number of questions that required the presentation of numeric answers and generally these were well answered. Whilst candidates were able to demonstrate their understanding of these areas, the level of supporting notes, workings and assumptions were often lacking, restricting the marks awarded. Candidates should ensure that they cover all aspects of the question to maximise the opportunity to achieve a good overall mark.

Whilst candidates appeared generally to be confident with numeric and process driven questions, where the answer required the application and consideration of practical aspects of an insolvency situation many candidates struggled. The ability to apply knowledge and experience to practical scenarios is an important skill for any Insolvency Practitioner.

Candidates should ensure that they are addressing the specific requirements of each question and not simply answer the question they would have liked to have been asked. In some situations candidates had provided a significant level of detail on irrelevant, tangentially related topics, time which would have been better spent on other questions. In addition, where the requirements ask for a comparison, candidates should relate the attributes to each other and identify differences

Question 1

(a) Set out the key steps that Buddrose would take to place the Company into compulsory liquidation. (5 marks)

The first part of the question asked candidates to set out the steps required to place the company into compulsory liquidation.

A very basic question which candidates were required to copy extracts from the open book and therefore an overall a high mark was achieved across this question.

(b) Explain how you would respond to this request. (5 marks)

Candidates were presented with a situation where a creditor was unhappy with the actions of the administrator and wished for a replacement administrator to be appointed.

Generally this question was not well answered. There appeared to be a general lack of understanding as to the circumstances in which an administrator can be replaced and the process required. Many candidates incorrectly suggested that an administrator could be replaced through a Qualifying Decision Procedure or by creditors 'voting out' the incumbent officeholder.

A number of candidates provided a long list of general questions regarding the marketing process and SIP 16 instead of setting out the creditors' rights in relation to the specific circumstances.

(c) Explain to Buddrose the circumstances in which they would have been asked to approve the remuneration of the Administrators and, given the circumstances, set out what action they can take if they are dissatisfied with the level of the fees charged. (5 marks)

This part of the question required knowledge of the process for approval of an Administrator's remuneration and creditors' rights in relation to challenging this, in situations where they were dissatisfied.

For a very straightforward question where the majority of the content could have been lifted from the open book, overall it was answered poorly and there appeared to be a lack of understanding of this important topic. A proportion of candidates had not properly read the question or did not understand the implications of a Paragraph 51(1)(b) statement on fee approval, incorrectly suggesting that the general body of creditors had the right to not approve the Administrator's remuneration. It was also surprising about the lack of practical content included i.e. write to the Administrator/discuss/complaint.

(d) Explain how Buddrose could protect itself from another bad debt arising in the event that Hemphill Limited were to fail to pay. (5 marks)

For this final part candidates were asked to provide a list of actions that could be taken to reduce the risk of a bad debt. Generally this was answered well, however some candidates fixated on one particular aspect, for example Reservation of Title, providing large amounts of unnecessary detail.

Some candidates focused on current debt or provided reactive solutions to future debt rather than proactive, preventative measures. Candidates who scored higher tended to provide enough content to mark on whereas a number of candidates elaborated on one point rather than looking to provide different options.

Question 2

Draft a statement of affairs for the LLP as at 30 September 2022, together with relevant notes explaining to Mrs Butani how the figures have been determined. Explain what other information you will require in order to finalise the statement. (20 marks)

There was only a single part to this question and candidates were expected to present a statement of affairs and explain the figures included within it.

Generally candidates achieved average marks for completing the statement of affairs but any explanations regarding how the figures had been determined were often lacking. Overall there appeared to be a lack of understanding as to how the value of Work in progress is determined within a balance sheet and also how to calculate VAT bad debt relief. Additional information requests all seemed to center around WIP/Debtors/Lease when they should have focused on what was required to complete an SOA, not complete the insolvency!

Question 3

This was a practical question requiring the identification of potential issues within the given scenario and how this could impact on an insolvency situation.

Generally this was not well answered with a number of candidates going off topic or not understanding the scenario. For example, some candidates outlined general concerns regarding whether the company needed to buy the additional equipment and some suggested that all containers should be immediately recalled.

A number of candidates mentioned points relevant to part (a) in part (b) and vice versa. Due to the nature of the question and the potential for cross over, candidates were awarded relevant marks no matter where they had placed the point..

(a) Provide a summary of the issues that may affect the value of the Company's assets and the Bank's recovery, specific to the circumstances set out above and in the event the Company entered an insolvency process. (12 marks)

This asked candidates to identify risks and issues that would affect the value and return to the bank. Whilst a minority of candidates achieved a good mark, generally the responses were poor and the average mark for this part of the question low.

Whilst candidates were generally able to identify certain key risks, they often failed to address the question set and did not relate it back to how it would affect the Bank's recovery in an insolvency situation. This limited the amount of marks certain candidates were able to achieve.

A number of candidates sought to ask questions/provide advice rather than simply identify the risk associated on appointment with the assets. Only one candidate mentioned sale of the business and the risk on this and very few identified general risks around increase costs and HMRC Preferential debt and the prescribed part.

(b) In the event that the Bank wished to appoint you as Administrator of the Company, set out the key considerations and legal and practical steps that you would take prior to appointment. It is not necessary for your response to cover issues identified in requirement (a). (8 marks)

This part of the question asked candidates to set out steps they would take prior to accepting the appointment as Administrator.

Most candidates tended to focus on ethics and take on procedures, failing to recognize that the company already had an involvement and that the only real consideration around this is whether they should be accepting the appointment given the work previously done.

It was concerning that very few candidates mentioned checking the validity of the appointment and the QFCH and whether or not the objective of the administration could be achieved. A few candidates mentioned reviewing strategy/funding/staffing but very few considered other practical elements like H&S/valuations etc. Some candidates tended to focus on providing advice on which appointment route to take which is not what the question asked.

Question 4

There were 5 parts to this question.

- (a) **Explain the principal differences between an Administration moratorium and a moratorium under the provisions introduced by the Corporate Insolvency and Governance Act 2020. (4 marks)**

Candidates were asked to set the differences between the moratoriums provided by an Administration and Corporate Insolvency and Governance Act 2020. There was a wide range of responses with some candidates achieving full marks and some scoring zero or not attempting the question at all.

Generally candidates missed out on marks because they simply listed attributes of a moratorium without any element of comparison between the two.

- (b) **Outline the procedure necessary to obtain a moratorium under the provisions introduced by the Corporate Insolvency and Governance Act 2020. (5 marks)**

This asked candidates to set out the process to obtain a moratorium. It was generally well answered as this could be lifted from the open book.

- (c) **Using the above information, and assuming trading ceases at the end of week 6, set out an 8 week cash flow forecast. Identify the peak funding required from the Bank, the point at which this funding can be repaid and the overall benefit to creditors of continuing to trade. (18 marks)**

The question provided additional information for a weekly cash flow to be prepared. Some candidates achieved high marks in this part of the question and most candidates achieved a reasonable mark.

- (d) **Set out the key steps required to distribute the prescribed part to unsecured creditors. (8 marks)**

Candidates were asked to set out the process for paying a dividend to creditors. Given that the process is generally set out in the open book there was a surprisingly high proportion of candidates that were unable to list the steps required and failed to recognize that court approval was not required.

- (e) **In these circumstances, explain how you would ensure that there is sufficient time to arrange for the remaining funds to be distributed and the steps you would take in this regard. (5 marks)**

Candidates had been presented with a situation where there was insufficient time for a distribution to be arranged and paid prior to the expiry of the Administration. Despite having set out the process and timescales required for a distribution in part (d) a relatively high proportion of candidates failed to identify that it was not possible to complete the dividend process and close the case by its anniversary. As such these candidates failed to identify that a court extension would be required. There seemed to be a general lack of understanding as to when it is possible to place a company into voluntary liquidation following an administration with many candidates setting this out as an option. The question outlined that this was a prescribed part distribution only and as such a CVL exit was not available.

**Corporate Insolvency Scotland
Mark Plan**

1a Set out the key steps that Buddrose would take to place the Company into compulsory liquidation.

Issue Statutory demand

S123 – unable to pay debts if neglected to pay or to secure/compound to creditors satisfaction.

Debt over prescribed minimum to present a winding up petition - £750

..or can prove unable to pay debts as they fall due;

which based on facts should be possible

Establish court jurisdiction >£120k share capital court of session – otherwise sheriff court

Prepare a petition

Verify petition by statement of truth

Filed in court & fee paid

Serve sealed copy of petition on the company -sheriff officers

If unable to serve – last known principal place of business

Handed to person (employee, director, other officer, authorised to accept service) at registered office or failing that attached to fixture or fitting/posted

Service on Liquidator/Administrator/Receiver if appropriate

Service on Bank of England if Financial Institution

Notice of petition forthwith placed in Gazette and local newspaper as court directs – 8 days for answers after intimation, service and advertisement

Issue Statutory demand

1b Explain how you would respond to this request.

Ethics – existing client of firm; would have to consider if able to take appointment

Burden on creditor to show why Administrator should be removed

An effective, unbiased and honest Administrator will usually not be removed.

Review SIP 16 statement to understand extent of marketing

Consider discussions with Administrators to establish the facts of the case and air any concerns

Establish if pre-pack regulations apply and whether appropriate process undertaken in this respect

Para 97 Sch B1 creditors can only remove by QDP if no floating charge holder so does not apply

Para 88 Sch B1: the court may by order remove an administrator from office

VE VEGAS INVESTORS IV LLC V SHINNERS [2018];

Only one purchaser came forward

Difficulties in obtaining information

Led to a conflict of interest

Brewer and another (as joint liquidators of ARY Digital UK Ltd) v Iqbal

Assets not sold at full value due to defective marketing

Administrator liable for loss of value

SIP 16 should have involved consultation with creditors

Will be a cost implication of an application to court

1c Explain to Buddrose the circumstances in which they would have been asked to approve the remuneration of the Administrators and, given the circumstances, set out what action they can take if they are dissatisfied with the level of the fees charged.

Budd likely to be unsecured, non-preferential

If Budd was a member of a creditors' committee in relation to this matter they would be asked to approve the basis and quantum of remuneration.

If there was likely to be a distribution to Budd as an unsecured, non-preferential creditor other than by virtue of the prescribed part then, in the absence of a committee, the Administrators would have asked for remuneration approval from this body of creditors:

If there was only to be a distribution to secured and/or preferential creditors or just a prescribed part distribution as in this case then it would be the secured and/or preferential creditors that would approve the basis and quantum of remuneration.

If dissatisfied

- Consider why dissatisfied and whether any challenge is likely to be successful
- Discuss concerns with the officeholder.

Is additional information required to establish if fees reasonable?

Request the administrator to provide further information about the fees and expenses

A request must be in writing

If a creditor believes that the administrator's fees are excessive, the basis is inappropriate, or the expenses incurred by the administrator are in all the circumstances excessive, the creditor may, provided certain conditions are met, apply to the court

Application may be made to the court by any creditor or creditors provided at least 25% in value of unsecured creditors (including themselves) agree, or they have the permission of the court.

- Any such application must be made within 8 weeks of the applicant receiving the administrator's progress report in which the charging of the fee or incurring of the expenses in question is first reported

Application would set out reason for dissatisfaction and evidence available.

If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the administrator a copy of the application and supporting evidence at least 14 days before the hearing.

If the court considers the application well founded, it may order that the fees be reduced, the basis be changed, or the expenses be disallowed or repaid.

Unless the court orders otherwise, the costs of the application must be paid by the applicant and not as an expense of the administration.

Future expected costs cannot be challenged until incurred but the basis may be changed by the court.

A complaint could be made to the relevant authorising body.

1d Explain how Buddrose could protect itself from another bad debt arising in the event that Hemphill Limited were to fail to pay.

Payment in advance

Deposit

Limited credit terms

Reservation of title clause if any goods are provided

Personal guarantees off the director/shareholders

Security to support the PGs

Increase in price to reflect additional risk

Credit insurance if available

Debenture/charge against Hemphill Limited

Requirement to provide financial information on an ongoing basis.

Related party guarantees (if any)

Bank guarantee

Don't supply newco

2. **Draft a statement of affairs for the LLP as at 30 September 2022, together with relevant notes explaining to Mrs Butani how the figures have been determined. Explain what other information you will require in order to finalise the statement.**

Additional information

Any creditors with reservation of title claims over the LLP's assets

Name and address of partners

Names and address of each creditor including employees

Details of security held by creditors (bank)

Date on which security was given

Value of any security

Schedule setting out number of employees and total debt owed to them

Front page of Statement of affairs

- Details of the matter
- Statement of truth signed

	Book Value		Estimated to realise	Note
	£		£	
Assets subject to a floating charge				
Leasehold improvements	75,000		-	Assumed that the leasehold improvements cannot be realised As returned to the lessor at point of liquidation, assumed lease
Office equipment	25,000		-	
Work in progress	60,000			
Project Pumpnickel	£40,000 (60% complete) but deposit of £40,00		-	Any reasonable assumption: see note below
Project Penguin	£20,000 (40% complete)		<u>20,000</u>	Any reasonable assumption: see note below
Debtors	150,000		95,000	
Hill Snacks Limited - Customer dispute	£50,000*50%		25,000	
Other debtors	£100,000*70%		70,000	
Prepayments and other debtors	40,000		17,500	
Landlord deposit	£30k p.a. x 6 months = £15k		-	Assumed set off against liability
Professional indemnity insurance	£10k per question		10,000	Assumed unused premium can be recovered. May be subject
Marketing events	50% per ques £40k - £15k - £10k = £15k @ 50%		7,500	
Estimated total assets available for preferential creditors			<u>132,500</u>	
Primary Preferential creditors				
Employees - arrears of pay	10 employees at £800		(8,000)	Due to quantum assumed full pref claim for arrears of pay
Employees - holiday pay	Per question		<u>(20,000)</u>	
Secondary Preferential creditors - HMRC				
VAT (Quarter to September 2022)	per question		30,000	Question states that invoices raised in same period as the VAT debt and therefore VAT not paid over; therefore reduction in claim rather than realisation.
Bad debt relief on uncollectable debtors	150000-25000-70000=55000/1.2=45833x0.2		(9,167)	
PAYE deductions	per question		15,000	
Employee National Insurance	per question		<u>10,000</u>	(45,833)
Estimated surplus as regards preferential creditors			<u>58,667</u>	
Estimated prescribed part of net property			(14,733)	Or recognition that the floating chargeholder will be paid in full
Estimated total assets available for floating chargeholders			<u>43,933</u>	
Debts secured by floating charges				
Bank overdraft	Per question		(50,000)	
Estimated deficiency of assets after floating charge			<u>(6,067)</u>	
Estimated prescribed part of net property			14,733	
Available for creditors			<u>14,733</u>	

Available for creditors		<u>14,733</u>
Employees		
Redundacny pay		(150,000)
Pay in Lieu of notice		(100,000)
Arrears of pay	£50,000 per question less preferential element	(42,000)
Landlord		
Rent invoices	Quarter in advance	(7,500)
Less deposit	£30k p.a. x 6 months	15,000
Future rent	6 years less quarter already invoiced	(172,500)
Dilapidations	As per question	<u>(30,000)</u> (195,000)
Mrs Butani - CAD	Subrogated claim	(10,000)
Finance leases	Settled as part of the CAD claim	-
Trade creditors	balance per question less landlord invoice	(42,500)
Deposit/deferred income creditors		
Project Pumpernickle	Assumed work completed and therefore no lial	-
Others		<u>(35,000)</u> (35,000)
HMRC-Employer National Insurance		(15,000)
Estimtaed deficit as regards unsecured, non preferential creditors		<u>(574,767)</u>
Estimated deficiency of assets after floating charge		<u>(6,067)</u>
Estimated deficiency as regards creditors		(580,833)
Members' interests		(20,000)
Estimtaed total deficiency as regards members		<u><u>(1,181,667)</u></u>

Note: personal tax provision is not an LLP liability

Note: Liquidator may have a s214A claim against Mrs Butani (potentially £60,000 cash received in the last 2 years) and other partners. Not included as success of such a claim is uncertain.

Project Pumpernickle

The work in progress balance is £40k, which would be the cost of the inputs to date. In addition to this one would assume that there is a profit element. The Company has received a deposit which would be £40,000 net of VAT as it is within accrued income at that value. Therefore there may still be a profit element within the Work in progress balance; however if the work had not been completed it is unlikely that this would have been realised. Given that the only element potentially recoverable would be the profit element assumed no realisations.

Project penguin

The work in progress balance of £20,000 plus a profit element may be recoverable either from the partner wishing to complete the work or from the customer. A copy of the contract is required to undersand this and determine whether the other member of staff should be pursued if they have completed the work and received payment. Assumed that just the £20,000 work in progress balance is recoverable.

3a Provide a summary of the issues that may affect the value of the Company's assets and the Bank's recovery, specific to the circumstances set out above and in the event the Company entered an insolvency process.

Containers

Original cost £8m plus £1.6m if additional containers purchased

Liens in warehouses

Liens with hauliers/shippers

Insurance post appointment may prove problematic which could affect realisations if there are any stolen/lost

Cost of recovery would be high reducing net realisations

Ongoing storage costs

- In UK at leased warehouse
- Overseas

Complex international law may apply adding to the cost but also affecting the ability to realise the assets

Hypothec issues for any Scottish premises

Value of a second hand container may be limited

Currently high transportation costs including shipping containers would impact on recovery.

Debtors

Delays in shipping process could lead to claims

Demurrage charges if containers stuck in ports

Claims for losses from customers if there is disruption

Concentration of customers presents a risk if one of the top customers does not pay

Paper trail from hauliers that have not been paid may be difficult to obtain; proof of delivery for realising the debts.

Potential contra with customer who is also a supplier

If unable to complete order book there may be a claim against debts outstanding

International customer so may be difficult/costly to enforce payment and recover debt

Many small debtors (297 accounting for 50%) which will add to costs

There may be foreign exchange differences and losses

Goodwill/business

Disruption to the supply chain may adversely affect the ability to sell the business as a going concern.

Long term supply agreements in various jurisdictions may terminate on insolvency or not be capable of assignment.

May be challenging to trade the business in an insolvency process due to above issues and profitability, potentially restricting value.

General

Risk of action against the Company by foreign creditors in foreign jurisdictions could impact on assets available in the UK for the bank.

Preferential creditors (employees and HMRC) will reduce net realisations available for the bank

Costs of managing the process as office holder would potentially be high due to the above issues reducing the amount available for the bank.

Prescribed part will apply as the Bank's charge must be dated 2018 or later. This will reduce the amounts available under its floating charge.

3b In the event that the Bank wished to appoint you as Administrator of the Company, set out the key considerations and legal and practical steps that you would take prior to appointment. It is not necessary for your response to cover issues identified in requirement (a).

Consider ethics/conflicts of interest especially in light of previous work for the bank.

Establish if one of the administration objectives can be achieved.

Ensure that the lender has undertaken an appropriate process; default, serving demand in accordance with facility agreements, etc.

Establish if there is any reason to believe the charge may not be valid.

Ensure the bank has the right to appoint an administrator

Establish if there are any other QFCs.

Consider if there are any environmental or health and safety issues that should be taken into consideration.

Discuss with insurers to determine likely cover and any actions required.

Obtain legal advice in relation to assets residing in multiple jurisdictions.

Discuss strategy with management to determine if any of the risks can be mitigated through timing/planning.

Establish a strategy for the administration and any funding requirements.

1. Can a sale be achieved
2. Trade?
3. Closure/shut down

Establish what employees need to be retained

Statutory

1. Complete consent to act
2. Establish if multiple administrators are to be appointed and agree their respective roles.

Consider and if relevant obtain indemnity from QFC.

Consider capability/staffing resources, etc.

Obtain a valuation of the company's assets

4a Explain the principal differences between an Administration moratorium and a moratorium under the provisions introduced by the Corporate Insolvency and Governance Act 2020.

A QFCH can select their own administrator whereas the monitor is the company's choice.

Directors remain in control under the 'new moratorium' whereas in a Sch B1 their powers are restricted.

Notice has to be provided to the QFCH for an Administration appointment but not for a new moratorium.

The new moratorium provides a payment holiday for most pre-commencement debts similar to an administration but there are differences in terms of debts incurred during the moratorium such as redundancy payments that remain payable in the new moratorium.

New moratorium initially lasts 20 business days compared to an administration moratorium which initially lasts up to 1 year.

An administration moratorium can last up to 2 years with creditors' consent compared to 1 year for the new moratorium.

Outcome of an Administration moratorium can be the rescue of the company or other outcomes whereas the new moratorium results in a solvent outcome.

Under paragraph 44, a moratorium can come into effect prior to the appointment of an administrator if an application to court has been made or a Notice of intention to appoint an administrator under paragraph 14 has been filed. The new moratorium only comes into effect on filing the relevant documents in court or the court making the order.

4b Outline the procedure necessary to obtain a moratorium under the provisions introduced by the Corporate Insolvency and Governance Act 2020.

Establish if the Company is an eligible company

Establish if there is an outstanding winding up petition

Prepare relevant documents:

A notice that the directors wish to obtain a moratorium,

a statement from a qualified person ("the proposed monitor") that the person is a qualified person, and consents to act as the monitor in relation to the proposed moratorium.

If more than one proposed monitor a statement setting out which functions (if any) are to be exercised by the persons acting jointly, and which functions (if any) are to be exercised by any or all of the persons.

a statement from the proposed monitor that the company is an eligible company,

a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its debts

a statement from the proposed monitor that, in the proposed monitor's view, it is likely that a moratorium for the company would result in the rescue of the company as a going concern.

If no winding up petition - file the above documents in court

If winding up petition outstanding

- application to court
- Information to satisfy the court that a moratorium for the company would achieve a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being subject to a moratorium)

Moratorium comes into effect on the documents being filed in court or the granting of an order by the court.

4c Using the above information, and assuming trading ceases at the end of week 6, set out an 8 week cash flow forecast. Identify the peak funding required from the Bank, the point at which this funding can be repaid and the overall benefit to creditors of continuing to trade.

	1	2	3	4	5	6	7	8	After	Total	
Sales			150,000	200,000	175,000	150,000	250,000	225,000		1,150,000	
VAT on sales			30,000	40,000	35,000	30,000	50,000	45,000		230,000	
Total income			<u>180,000</u>	<u>240,000</u>	<u>210,000</u>	<u>180,000</u>	<u>300,000</u>	<u>270,000</u>		1,380,000	
Trade debtors											
Memo: Sales	150,000	200,000	175,000	150,000	250,000	225,000				1,150,000	
Memo: VAT on sales	30,000	40,000	35,000	30,000	50,000	45,000				230,000	
Costs											
Stock (GM)	35%	(97,500)	(130,000)	(113,750)	(97,500)	(162,500)	(146,250)			(747,500)	
Existing stock		50,000								50,000	
Purchases		(47,500)	(130,000)	(113,750)	(97,500)	(162,500)	(146,250)			(697,500)	
VAT on purchases		(9,500)	(26,000)	(22,750)	(19,500)	(32,500)	(29,250)			(139,500)	
Total purchases		<u>(57,000)</u>	<u>(156,000)</u>	<u>(136,500)</u>	<u>(117,000)</u>	<u>(195,000)</u>	<u>(175,500)</u>			<u>(837,000)</u>	
Delivery costs	5%		(7,500)	(10,000)	(8,750)	(7,500)	(12,500)	(11,250)		(57,500)	
VAT on delivery costs			(1,500)	(2,000)	(1,750)	(1,500)	(2,500)	(2,250)		(11,500)	
			<u>-</u>	<u>(9,000)</u>	<u>(12,000)</u>	<u>(10,500)</u>	<u>(9,000)</u>	<u>(15,000)</u>	<u>(13,500)</u>	<u>-</u>	<u>(69,000)</u>
Weekly paid staff	10%	(20,000)	(15,000)	(20,000)	(17,500)	(15,000)	(25,000)	(22,500)		(135,000)	
arrears per question											
Net	65%	(13,000)	(9,750)	(13,000)	(11,375)	(9,750)	(16,250)	(14,625)		(87,750)	
Payroll deductions	35%						(25,375)	(21,875)		(47,250)	
Direct payroll cash flow		(13,000)	(9,750)	(13,000)	(11,375)	(9,750)	(16,250)	(40,000)	-	(21,875)	
Salried staff				(40,000)				(20,000)		(60,000)	
Saving (5 staff x £24k /12)				10,000				5,000		15,000	
Gross cost				(30,000)				(15,000)		(45,000)	
Deductions	40%			12,000				6,000		18,000	
Net pay		-	-	-	(18,000)	-	-	-	(9,000)	-	
Salareid staff deductions							(12,000)	(6,000)		(18,000)	
Landlord				(25,000)				(12,500)		(37,500)	
VAT on landlord				(5,000)				(2,500)		(7,500)	
Other costs		(5,000)	(5,000)	(5,000)	(5,000)	(5,000)				(30,000)	
VAT on other costs		(1,000)	(1,000)	(1,000)	(1,000)	(1,000)				(6,000)	
		<u>(6,000)</u>	<u>(6,000)</u>	<u>(6,000)</u>	<u>(6,000)</u>	<u>(6,000)</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>(36,000)</u>	
VAT	See below								(65,500)	(65,500)	
Total payments		<u>(76,000)</u>	<u>(180,750)</u>	<u>(167,500)</u>	<u>(192,875)</u>	<u>(219,750)</u>	<u>(212,750)</u>	<u>(65,500)</u>	<u>(24,000)</u>	<u>(93,375)</u>	<u>(1,232,500)</u>
NET CASH FLOW		<u>(76,000)</u>	<u>(180,750)</u>	12,500	47,125	(9,750)	(32,750)	234,500	246,000	(93,375)	147,500

Bank										
b/f	0	(76,000)	(256,750)	(244,250)	(197,125)	(206,875)	(239,625)	(5,125)	240,875	-
c/f	(76,000)	(256,750)	(244,250)	(197,125)	(206,875)	(239,625)	(5,125)	240,875	147,500	147,500

PEAK FUNDING
 REPAYMENT
 BENEFIT TO CREDITORS

(256,750)

Week 8

Overall cash flow	147,500	
Stock used	(50,000)	Assumed that full value would be obtainable
Wages arrears	(20,000)	Would reduce preferential claims
Overall benefit	<u>77,500</u>	

VAT Workings										
On sales	(30,000)	(40,000)	(35,000)	(30,000)	(50,000)	(45,000)	-	-	-	(230,000)
On purchases	10,500	28,500	25,750	27,250	35,000	32,750	2,250	2,500	-	164,500
	<u>(19,500)</u>	<u>(11,500)</u>	<u>(9,250)</u>	<u>(2,750)</u>	<u>(15,000)</u>	<u>(12,250)</u>	<u>2,250</u>	<u>2,500</u>	<u>-</u>	<u>(65,500)</u>

4d Set out the key steps required to distribute the prescribed part to unsecured creditors.

Administrator has the power to distribute under s176A without court approval (para 65(3)(a)).

Consider if the provisions should be disapplied if net property less than the prescribed minimum

Consider if a court application to disapply the provisions is relevant if costs disproportionate to benefits

Establish date of Floating Charge

Establish amount of distribution – Calculate prescribed part

File notice with ROC under P115(2)

Deliver notice to creditors to claim – 8 weeks to submit – Provide claim form and information requested per R3.105

In this instance only 5 weeks until anniversary but Administrator could waive – 14 days to submit

Declare whether interim or final

Confirm where proofs to be sent and request supporting documentation

Small debts information including information in rule (3.119) -12 weeks however could waive

Review claims; admit or reject within 4 weeks end of accounting period

Notify creditors of any rejection in full or part

Declare dividend

Sent to all creditors that have proved for debts

Include asset realisations and expenses paid

4e In these circumstances, explain how you would ensure that there is sufficient time to arrange for the remaining funds to be distributed and the steps you would take in this regard.

CVL exit not available

Therefore court extension required

Creditors should have been notified of intention to extend -Previous PR or by separate circular

Application to court:

Witness statement explaining reason for extension

Period of extension required

Recent progress report

Details of previous extension

Agreement of secured creditors to extension (not mandatory)

Proposals

Filed in court at least 4 weeks before end date

Court hearing would determine extension period

Notify creditors of extension

Notify companies house of extension.

Compulsory liquidation an alternative option

**JOINT INSOLVENCY EXAMINATION BOARD
SCOTLAND PERSONAL PAPER
EXAMINERS'S REPORT AND MARK PLAN FOR THE NOVEMBER 2022 SITTING**

General Comments

Scripts were well presented and marks obtained for the explanatory workings provided. Responses were well structured and easy to follow. Candidates also adhered to the requirements of the question when responding producing emails and briefing notes when asked to do so.

There were two separate parts of questions within the paper where candidates were asked to set out options available to an individual in different scenarios. Some candidates did this very well, summarising the position, then identifying options that in the circumstances were not relevant and needed to be mentioned only in passing before moving on to a more detailed analysis of the proposed solution. Poorer candidates treated it as an exercise in describing the features of all of the available debts solutions in Scotland in turn without any context or commentary about whether they would be an appropriate option. Quite often their understanding of those solutions was not correct! While scripts are not negatively marked, large tracts of irrelevant content will affect the Holistic mark awarded and also prevents the candidate from scoring higher marks by focusing on solutions which are relevant.

Advising someone based on the facts of their individual circumstances whether that be debtor, creditor or any other stakeholder is a key skill for an Insolvency Practitioner. Candidates could improve their scores in this area by stopping to think about the scenario and planning their answer before beginning their response.

Question 1

- (a) Having regard to the specific circumstances of this case, identify the legal and other issues you would need to consider prior to deciding whether to continue trading the general store. (4 marks)**

This question presented a scenario where candidates were appointed as Trustee to a small business trading as a general store with a petrol pump and asked candidates to consider the factors which would help decide whether they continued to trade and, if they did so, what their immediate actions should be.

This question was answered very well indeed, with very high marks being scored.

- (b) Assuming that trading continues, what actions would you need to take in the first seven days of your appointment as Mr Hunter's Trustee? (16 marks)**

Candidates were able to identify that there had to be a benefit to trading continuing and the types of issues they needed to consider. Some candidates achieved full marks.

Part (b) This section asked candidates about the steps they would take in the next 7 days if trading were to continue. Again candidates scored very well in this section with sensible comments made about steps to take across a wide range of issues. Mostly candidates stayed on the matters at hand. Some areas which were dealt with less well, were the controls which would need to be in place to control and monitor the trading and also any

reference to an exit strategy from trading whether that a sale of the business or realising the stock. Some time was wasted listing all the things you would tell the debtor when you spoke to him. As his whereabouts are unknown there are probably more pressing issues to address and the marks available were directed to how to find him.

Question 2

This question asked candidates to consider six entries appearing on the Land Certificate and inhibition search for a recently bankrupted debtor. The second part of the question examined actions to be

taken when transactions were identified which suggested that money laundering had taken place. This question was the least well answered in the paper.

- (a) Prepare a briefing note for the Trustee. Explain, for each of the six entries set out above, the potential impact that the entry may have on the Trustee's interest in the property and her ability to realise this. The note should set out what further enquiries should be made by the Trustee in respect of each entry. (15 marks)**

This part of the question was not answered well. Most candidates were able to make sensible comments regarding the liferent, albeit not always getting to the crux of the options for the Trustee to realise this. Inhibitions answers were variable, compounded by silly mistakes in counting and in recalling the relevant periods. Candidates generally knew very little if anything about restraint orders. On a positive note the format of responses was good.

- (b) What action should the Trustee take following your review of the bank statements? (5 marks)**

Responses to this section were generally better with most candidates being able to cover the key points. A few candidates mentioned Suspected Offences Reports which were not relevant here.

Question 3

This question was regarding an individual, Mr Hastings who had approached the candidate for advice on the difficult financial position he found himself in having had a stay in hospital following mental health issues. This question was a good test of candidates as the range of marks was quite wide and the quality of responses variable.

- (a) Prepare the email to be sent to Mr Hastings. Set out the options that are available to Mr Hastings and your recommendation for the most appropriate course of action for him. For each of the options that you identify, you should explain briefly the criteria to be met before that option can be accessed and set out any practical considerations for Mr Hastings given his particular circumstances. (14 marks)**

Part (a) The first part of the question asked candidates to identify the options available and how the options could be accessed. Candidates clearly thought about how they were going to begin their answers and formatted them well. They also generally provided good conclusions and recommendations. However, the content in between was much more variable. There were some excellent answers which dealt quickly and efficiently with unsuitable options before turning to their recommended solution and providing good details about how to access it and the implications of it. Weak responses were simply a list of features of various statutory debt solutions with no attempt made to say why these would or would not be appropriate leaving poor Mr Hastings only a little more informed than when he started. Being able to explain a solution to a problem based on the facts is a key skill for an Insolvency Practitioner and some responses did not inspire confidence. In terms of the technical content of the answer, few candidates appear to be aware that a moratorium exists, how long it lasts and when it would be appropriate to use. Only one candidate considered the application fee for bankruptcy and even they were not aware that being in receipt of certain means tested benefits could mean the fee was waived.

- (b) In the light of this new information, what would you advise Mr Hastings to do? (6 marks)**

Part (b) The second part of the question asked candidates to comment on the implications for the debtor of new information he had provided. The candidates who answered this section were generally correctly able to identify that Mr Hastings could now pay his debts in full and an insolvency solution was no longer appropriate. However, the level of detail they provided was variable.

Question 4

This question related to a partner, Ms Huntly in a two partner law firm who had come to you for advice after her partner, Mr Ifield was in an accident and unable to deal with the financial affairs of the partnership. This meant that Ms Huntly had to take an involvement in the financial affairs of the business which she had not previously.

The question provided detailed management accounts from which it was clear that while profitable Mr Ifield had been drawing more from the business than his share of the profits. This came at the

expense of not paying creditors and there were now significant arrears due to HMRC who had served a statutory demand.

- (a) Prepare a monthly cashflow projection for the 5 months from 1 November 2022 to 31 March 2023. Calculate the cash that will be generated by Lakewell Taylor in this period on the basis that ongoing commitments are maintained but no payment is made to historic debt. Clearly state any assumptions you have made. (10 marks)**

This required the preparation of a 5 month cashflow to show the cash that the business would generate in this period. This was generally well done save for a few silly mistakes. The main issue was the omission of a provision for drawings or “salary” for Ms Huntly in the 5 month period. Those candidates who recognised that this may be required simply suggested that she would not draw anything in the next 5 months which seems to be unrealistic. While she has an interest in ensuring the problems are resolved, she will personally have living expenses.

- (b) Set out the debts currently due by Lakewell Taylor and explain how these could be managed with reference to the cashflow. Advise Ms Huntly of any other information required. (9 marks)**

This question asked candidates to quantify the debts owed by the partnership and was tackled reasonably well. However, few candidates explored the potential for rental arrears.

- (c) Explain the options available to Ms Huntly to deal with Lakewell Taylor’s financial difficulties. (11 marks)**

Armed with a cashflow projection which showed the cash the partnership was capable of generating and the answer to part b which should set out the debts which needed to be addressed, part c which considered the options available to the partnership should have followed naturally. However, this was one of the weakest sections of this question where similar issues to question 3 part (a) were experienced with weak answers simply providing a list of features and benefits of debt solutions with no context or consideration of relevance. Answers would definitely be improved if candidates stopped to think about the information in the question and what they had worked out at (a) and (b) and planning their response. Again, candidates were not all aware of the moratorium provisions and few commented on the implications of bankruptcy for a practicing solicitor.

- (d) Outline any concerns that you may have and advise on what, if anything, Ms Huntly should do. (5 marks)**

In addition to drawing more than the partnership had been generating at the expense of paying creditors it appears that there were likely irregularities on the client account and that Mr Ifield had personally been drawing monies from the account. Candidates were generally able to apply their knowledge of how a client account should be managed and make sensible observations about the issues shown in the extract in the question. However, whilst recognising the issues not all identified the possibility that this was sinister and not all were aware of the need to report this to the Law Society.

(e) Giving your reasons, explain your responsibilities for the various books and records held by Lakewell Taylor and how these responsibilities could be discharged. (5 marks)

This part of the question asked candidates to identify the Trustee's duties for the books and records and how these should be discharged.

Answers to this section were poor because candidates failed to recognise that the partnership would have a variety of records including client account records, accounting records, and client files and documents including wills and possibly title deeds. A good answer would explore the differences in approach.

**Personal Insolvency Scotland Exam
November 2022
Mark plan**

Question 1

Part (a) Trading (4 Marks)

A Trustee will not generally allow the trading of a business to continue unless it is beneficial to do so and there will be a benefit to the creditors as a whole.

Trading may be allowed to continue if it would achieve higher realisations for the assets, either through a going concern sale of the business or a higher value for existing work in progress or stock.

The Trustee needs to carefully consider any losses/costs which would be incurred to achieve these increased realisations and consider whether there is a net benefit to allowing trading to continue.

As the premises are leased, the remaining term of the lease, the position regarding any arrears and the attitude of the landlord are all crucial to understanding whether it will be feasible to continue to trade to sell the business and assign the lease or trade out to realise the stock. The Landlord may also have a hypothec claim over the moveable assets on the premises if there are arrears.

Suppliers. Consider the extent to which the stock has been paid for and could be subject of ROT claims (review invoices/ terms and conditions of supply etc). If the majority of stock could be the subject of a valid ROT claim, then there will be little to sell unless the Trustee purchases stock for the business. In this case the position re the petrol in the pumps and the ability of the Trustee to sell it needs to be established.

The Trustee should consider whether any working capital funding is required for any period of trade and if so, who could provide this.

The Trustee needs to consider whether there are any risks specific to the business in question which would prevent the Trustee trading, for example, licenses to sell alcohol or health and safety issues with the operation of the petrol pumps.

The Trustee should also consider whether they and their team have sufficient expertise to monitor the trading and they are comfortable with the arrangements for the management of the business on a day to day basis, particularly in the absence of the bankrupt.

Part (b) Issues – trading continues actions in first seven days (16 Marks)

Employees

Although you met with one employee at the general store, you need to establish whether the bankrupt had any other employees. All employees need to be **notified** of the sequestration.

You need to establish **which** employees are required to enable trading to continue, how they are paid and when. You also need to establish the extent of any **arrears** due to the employees and make an arrangement with the employees regarding these.

Who ran the payroll and where are the payroll records ? Ensure these records are secured and that an arrangement is in place for ongoing payroll

If the staff are not required, they should be notified of this and their rights to claim arrears, redundancy and PILN via the RPS, and the **RPS** should be notified that their employment has been terminated.

Is there a **pension scheme**? If there is, a section 120 notice should be sent to the pension protection fund.

Funding/control

Set up banking/credit card facilities to enable payments to be taken/banked from customers by contacting supplier of existing banking and merchant service facilities and requesting that the old account be frozen and receipts be directed to the Trustee's account with immediate effect.

Prepare a cashflow projection for the proposed period of trade, whether to a close or sale and understand any funding requirement and make arrangements to cover this.

Review the security procedures currently in place, CCTV, daily reconciliation of takings. Put process in place to allow takings to be reported and monitored on a daily basis.

Ensure Trustee has team in place to monitor information received from store against projection/target.

Count opening balance of cash in till.

Petrol Pump

Immediate steps should be taken to ascertain the level of fuel in the pumps, when the next delivery would be scheduled and on what basis the supplier is prepared to continue to supply.

Given the risk of fire, specialist advice should be obtained on how to mitigate this risk with the insurers notified of the petrol pump to ensure that any specific requirements are met.

Consider if special licences or permits required to deal with the petrol sales and if necessary have these assigned.

Leased premises

Have all sets of keys been located (other employees?)? Consider whether the locks to the premises should be changed. Is there an alarm, should codes be changed?

From the correspondence available at the premises, try to establish whether rental payments are up to date or whether there are any arrears.

Obtain a copy of the lease.

Consider at what stage to make contact with the landlord. You would ideally wish to avoid the landlord making a claim of hypothec over the assets in the premises in respect of unpaid rent.

Creditors/suppliers

Take an inventory of all stock/ goods remaining at the premises. Discuss with an agent the value of this and the realisation strategy.

Are there perishable goods or any out of date goods at the store?

Establish a list of suppliers to the general store and send notice of the sequestration to them.

Check the terms and conditions applicable to other goods that have been supplied. Are there any creditors who may be entitled to claim retention of title. Consider the impact of potential ROT claims on trading strategy and whether this stock should be removed or agreement can be reached regarding the price at which it can be sold

Set up a process to allow creditor who may wish to claim retention of title to stock in the store to have access to the store to count it, but not remove it and then to submit subsequent claims.

Depending on whether your strategy is to trade to improve realisations from the stock or to attempt to achieve a going concern sale you may need to purchase more stock. Make arrangements with key suppliers to do so.

Sale of business

If the decision to trade is to attempt to achieve a sale of the business as a going concern then swift action must be taken to identify interested parties, provide information regarding the assets available for sale and invite offers.

Consult agent/valuer about a swift marketing process.

Payments from bank account

Notify the Bank of your appointment. Request that the account is frozen. Obtain a complete set of bank statements for the last 5 years for the account which you have the statements for. Request copies of any cheques where sizeable payments have been made and cheque book stub/ accounting records do not identify the recipient.

Request that the bank provide details of any other accounts held by Mr Hunter with them. Notify other UK clearing banks of the Award of Sequestration and request details of any accounts held with them

Bankrupt (initial enquiries / assets Spain?)

The bankrupt needs to be located. Is there anything within the office that could give you an indication of his whereabouts. Do any of the other employees have useful information for example mobile phone or other telephone number or address details? He may not be aware that he has been made bankrupt so contact will need to be made as soon as possible.

If he spends lots of time in Spain, does he have any assets or a property there?

Flat

Who is in occupation and on what terms?

Do the terms of occupation prevent access by the Trustee?

Is the only means of access the door at the rear of the premises or do the occupants of the flat also have a right of access to the general store?

Does the flat form part of the premises that are leased by the bankrupt? If it does, was it let in breach of the terms of the lease. Has landlord taken any action to require sub-tenant to pay rent directly to the landlord?

Other issues

Obtain open cover insurance.

Assuming that the general store sells alcohol, check in whose name the licence to sell alcohol is held.

Take opening meter readings.

Update any website documentation or other material regarding the store to reflect the Trustee's appointment.

Are any of the items for example fridges, cash registers at the premises under third party ownership? If so, these items should be identified.

National lottery terminals?

Secure and collect all accounting records. If there are computer records which are password protected, are you able to obtain details from any of the employees?

Question 2

Part (a)

Liferent

It would appear that Ted was given this property over 5 years ago, most likely by a relative as the surnames are the same. This person, Sheila Arnott, retains the right to occupy the property under the liferent for just under 5 years from now.

The Trustee needs to establish who Sheila Arnott is and whether they are still alive and still occupy the property. The simplest way to do this is to ask the debtor, but if he will not co-operate then a letter could be sent to Sheila Arnott or Sheriff Officers could be sent to verify the position.

Details are also required of any rental payment made to Ted Arnott.

When a valuation of the property is obtained the valuer should be asked to comment on the value of the property both with and without the liferent. In some areas popular with investors it may be possible to sell the property with the liferent in place, although there will be implications for the value which can be achieved.

If Sheila Arnott is still alive, would they be willing to accept a sum to vacate the property ? Alternatively, it may be necessary to wait until the liferent expires and then pursue an action for eviction.

Inhibitions

The inhibition in favour of Cottan Credit Limited will automatically fall away in 5 years if not renewed. This means if not renewed it expired yesterday. It would be prudent to carry out the searches again in a couple of weeks to check this.

The inhibition in favour of the Money Claims Centre was granted 8 July 2022, this means it took effect 62 days before the sequestration and is therefore not cut down by the award of sequestration.

The inhibition is a passive diligence and does not allow the creditor to take any steps to call up or force the sale of the property. However, it does mean that the consent of the inhibiting creditor would be required if the property is to be sold. So in practice, if the property is sold the Trustee will have to negotiate with the inhibiting creditor to obtain their consent. The inhibiting creditor would require to be written to in order to establish the level of debt to ensure that there is equity in the property as the inhibition would require to be discharged on the eventual sale of the property.

The Charging Order

This essentially is a standard security registered against the property and would rank as such so would have to be paid in the event of a sale. It is a non voluntary security secured against the property and it is not cut down by the award of sequestration.

The Caveat

This is essentially the new version of a Notice of Litigiosity for properties registered in the Land Register and makes any potential purchasers aware of an ongoing court action that involves the property.

The Trustee should contact the solicitors who registered the notice and advise of her appointment and ask for clarification of the nature of the action.

The Restraint Order

An application for a restraint order will be made where there is evidence to suggest that an individual has obtained a benefit from or in connection with criminal conduct.

A restraint order is an order which prevents the disposal of assets. A restraint order can be made before the individual is charged as long as he is to be charged.

Where a restraint order is made prior to the making of the bankruptcy order, then any property which is the subject of the restraint order does not form part of the bankruptcy estate BSA s80 In this case the restraint order was granted before the Sheriff granted warrant to cite and therefore the restraint order takes precedence.

The Trustee should contact the relevant prosecuting authority, likely to be the Crown Office and request a copy of the restraint order. The fact that a restriction has been entered against the title to the property would suggest that it extends to the property but this should be checked to check what assets it covers.

The Trustee should also ask for confirmation of the current position as regards any criminal proceedings being instigated against the bankrupt as if the bankrupt is ultimately found not guilty, the restraint order will be discharged.

The prosecuting authority should be asked to note that Trustees interest in the property and to be notified should the restraint order be discharged. If the restraint order is discharged, the property will vest in the bankruptcy estate and be dealt with by the Trustee.

If the bankrupt is found guilty and a confiscation order is made, the Trustee will be entitled to any surplus from the sale of that property following the confiscation order being discharged.

The Trustee should ensure that she is aware of when the criminal trial will be taking place, the verdict and the value of any confiscation order that is made.

Part (b) Potential money laundering?

Write to the bank to establish whether they are able to provide any further information in relation to the pay-ins or transfers out as any information available for an MLRO report is helpful.

There is a requirement for IPs to report suspicions of any criminal activity.

The IP's firm is obliged to have a money laundering reporting officer (MLRO). The suspicions should be notified to the MLRO pursuant to the internal reporting procedures.

A report should be made by the MLRO where there is knowledge or suspicion of money laundering to the National Crime Agency.

Once a report has been made, care should be taken to ensure that the bankrupt does not become aware of that report. Care should be taken when drafting reports to creditors to ensure that there is no disclosure of information which could amount to tipping off.

Where an IP is aware that the assets of an individual may have been tainted by criminality, selling those assets without consent may constitute an offence under s327 POCA.

A suspected offences report is not applicable in these circumstances because it does not fall within the offences detailed in the Act and there is no evidence at this time of any wrongdoing.

Comment on any additional checks you would do.

Question 3

Part (a) Options (14 Marks)

At present, Mr Hastings income comprises benefits. A Trustee in an insolvency could not take a contribution from this income. Whilst he could make a contribution towards a DAS, from benefits it appears very unlikely that he will have a surplus income from which to make a contribution.

Without a surplus income, the Debt Arrangement Scheme will not be appropriate

Mr Hastings does not appear to have any assets, he certainly does not own the property that he stays in, however, this should be clarified.

In the absence of a contribution from income or assets a trust deed will not be appropriate as there would be no funds to pay costs or deliver a return to creditors.

From the information available it appears that the most appropriate course of action for Mr Hastings would be to make an application for his bankruptcy on the grounds that he cannot pay his debts as they fall due.

It is likely that Mr Hastings will meet the criteria for a Minimal Asset Process Bankruptcy which are that you must not have a single asset worth more than £1,000 and total asset value of no more than £2,000.

This value excludes the value of any vehicle, although a vehicle must be worth no more than £3,000.

Mr Hastings must owe at least £1,500 and, the value of his debts must be less than £25,000.

Mr Hastings must have been in receipt of benefits for more than 6 months or must have been assessed as not being in a position to make a contribution.

If bankruptcy is awarded under the Minimal Asset Process, then Mr Hastings could be discharged in 6 months and his debts written off.

If his circumstances changed and he became in a position to make a contribution to his bankruptcy the case would be converted to a full administration bankruptcy and he would be expected to make a contribution, if he was able to do so, for 48 months from the date of the Award of sequestration.

Process

In order to make an application for his bankruptcy, Mr Hastings must have received advice from a Money Adviser or IP. He must have resided in Scotland in the year before his application.

There is an application fee for bankruptcy which is £150 for the full administration process and £50 for the Minimal Asset Process. However, the application fee will be waived if you are in receipt of qualifying benefits which is likely to be the case for Mr Hastings.

As an IP you could assist him with this application and provide him with a certificate for sequestration. In order to do this, you would require further information including a complete list of creditors, a copy of his benefit award, bank statements.

Alternatively you could refer him to a third sector advice organisation who would be able to assist him with this application.

If applying under the Minimal Asset Process, the AIB would be appointed as Trustee.

Mr Hastings would then be subject to the restrictions of Bankruptcy which include:-

- a requirement to co-operate with the Trustee and provide them with updates on his circumstances;

- Not incur credit of more than £2,000 without advising the credit provider that you are an undischarged bankrupt;
- Not act as the director of a limited company;
- Not act as a member of the Scottish Parliament, on a local Council or on a school board.

Moratorium

A moratorium is a period of breathing space during which creditors cannot take any action against you for the debts you owe.

If Mr Hastings is considering Bankruptcy, entering a TD or DAS and requires more time to think but is concerned about what creditors could do in the meantime then he could request a moratorium. This is appropriate here due to the statutory demand served by Sheriff Officers as an expired Statutory demand would entitle the creditor to make their own petition for Mr Hastings bankruptcy. A creditor petition bankruptcy would not be administered under the minimal asset process.

If a moratorium is granted, AIB will register this on the ROI and the DAS Register.

Mr Hastings would normally have 6 weeks (currently 6 months extended by Coronavirus) during which creditors cannot take action, to decide if he wants to proceed with a debt solution.

A moratorium can be applied for by completing Form 33 and applying through the ROI on the AIB's website. Mr Hastings could do this himself or, with his consent, you could do it on his behalf.

There is no charge for a moratorium.

A moratorium does not prevent interest and charges accruing but it does prevent creditors from taking any enforcement action.

Part (b) Change in circumstances (6 Marks)

Although the property which Mr Hastings owns a 50% share of is in England, it would vest in or be conveyed to a Trustee in a sequestration.

It would therefore form part of the estate which would have to be realised for the benefit of creditors in any insolvency proceedings. Whilst we do not have any information about its value, the fact that it has been transferred to Mr Hastings and his sister would suggest that it has value. This is likely to be upsetting for Mr Hastings and his family and is likely to be something that he would wish to avoid.

Mr Hastings future income and expenditure should be assessed using the Common Financial Tool. Based on the information he has provided it would appear that over the next 48 months he could pay $(12 * £300 + 36 * £500)$ £21,600 towards his debts.

Subject to confirmation of his surplus income and of the level of his debts it would appear that an insolvency, trust deed or sequestration, is no longer appropriate for Mr Hastings, as even before considering the value of his share in the property he could repay his debts within the 48 month period of the insolvency.

It appears that proposing a DPP under the Debt Arrangement Scheme would be appropriate. Under a DAS Mr Hastings would pay the value of his debts in full.

If Mr Hastings proposed 12 months *£300 and then, a discretionary condition that he would increase his payment to £500 per month then he would have to pay for a further 33 months (32.8) a total of 45 months.

Mr Hastings does not have to propose to pay his full Disposable Income to the DAS but doing so minimises the payment term of the DAS and increases the chances of the DAS being approved.

Mr Hastings should consider how certain he is that his salary will increase following the probationary period. If his salary did not increase then the DAS term would be in the region of 8 years and 4 months. Depending on his age, this may not be sustainable.

Under the DAS, Mr Hastings will pay the value of his debts in full. Mr Hastings creditors will receive 78% of their debt and the balance will pay for the costs of the process. When successfully completed, Mr Hastings will be discharged of his debts.

If Mr Hastings fails to make the payments he has agreed due to a change in circumstances this could lead to the DAS being revoked.

It is important to establish whether Mr Hastings did submit a moratorium following your initial meeting. This can be checked on the ROI/DAS register. If he has not submitted a moratorium he would wish to protect the position regarding the property then he would not want the Council to submit a petition for his bankruptcy. While a Sheriff maybe persuaded at a bankruptcy hearing that a DAS application is about to be made, it would be better if the moratorium was in place.

Question 4

Part (a) Refer to Excel Spreadsheet (10 marks)

**Lakewell
Taylor**

**Projected cashflow
5 months to 31
March 2023**

	November £	December £	January £	February £	March £	Total £
Income						
Conveyancing	25,800	17,200	25,800	25,800	25,800	120,400
Executry		15,000		7,500		22,500
Other	2,400					2,400
	<u>28,200</u>	<u>32,200</u>	<u>25,800</u>	<u>33,300</u>	<u>25,800</u>	<u>145,300</u>

Expenditure

Salaries	7,566	7,566	7,566	7,566	7,566	37,830
PAYE/NIC	3,257	3,257	3,257	3,257	3,257	16,285
Pension	626	626	626	626	626	3,130
PI Insurance	1,162	1,162	1,162	1,162	1,162	5,810
Rent	2,500			2,500		5,000
Rates	-	-	-	-	-	-
Utilities/Water	450	450	450	450	450	2,250

Phone/Internet	250	250	250	250	250	1,250
Software						
licensing	750	750	750	750	750	3,750
Stationery	35	35	35	35	35	175
Professional fees -						
Law Society			1,365			
Accounting and						
payroll	500	500	500	500	500	2,500
	<u>17,097</u>	<u>14,596</u>	<u>15,961</u>	<u>17,096</u>	<u>14,596</u>	<u>77,981</u>
Drawings	9,375	9,375	9,375	9,375	9,375	46,875
Net cash inflow						
/(outflow)	1,728	8,229	464	6,829	1,829	19,079
Opening	-	-	-	-	-	-
overdraft	24,300	22,572	14,343	13,879	7,050	
Cash in/outflow	1,728	8,229	464	6,829	1,829	
Closing	-	-	-	-	-	
overdraft	<u>22,572</u>	<u>14,343</u>	<u>13,879</u>	<u>7,050</u>	<u>5,221</u>	

Notes

Depreciation is a non cash expense

Part (b) Debts due by Lakewell Taylor (9 Marks)

Lakewell Taylor

Profit and Loss account

10 months to 31 October 2022

£ £

Turnover

Conveyancing	258,000		
Executry	75,000		
Other	<u>30,000</u>	363,000	
Expenses			
Salaries	111,362		
Employer's Pension	3,130		
PI Insurance	14,520		M
Rent	8,333		
Rates	4,375		
Utilities/Water	4,500		M
Phone/Internet	2,500		M
Software licensing	7,500		M
Stationery	350		M
Professional Fees	1,971		
Depreciation	2,083		
Accounting and payroll	<u>5,000</u>		M
		<u>165,624</u>	
Profit		<u><u>197,376</u></u>	
Split			
T lfield	60%	118,425	

R Huntly	40%	<u>78,950</u>
		<u><u>197,376</u></u>

M - paid by monthly direct debit

	Salary pa £	Employers' NIC £	Employer Pension 4% £	Employee Pension 4% £	Employee's NIC £	Earnings above tax threshold	Tax on £2162 19%	Tax up to £13118 20%	Tax up to £31,092 21%	Total Tax £
Salaries										
Newly qualified solicitor	43,500	5,584	1484	1484	4,455	30,930	410.78	2191.2	3740.52	5,939
Paralegal	30,000	3,552	944	944	2,666	17,430	410.78	2191.2	905.52	3,610
Paralegal	25,000	2,800	744	744	2,003	12,430	410.78	2053.6	0	2,748
Cashier/admin	21,000	2,198	584	584	1,473	8,430	410.78	1253.6	0	2,058
Annual cost	119,500	14,134	3,756	3,756	10,597					14,355

Salaries paid at end of month

PAYE/NIC by 22 of month following if you pay monthly

Pension contributions by law must be paid in by 22 of following month

Salaries	Salary pa £	Employers' NIC £	Employer Pension 4% £	Employee Pension 4% £	Employee's NIC £	Total Tax £
Newly qualified solicitor	43,500	5,584	1484	1484	4,455	5,939
Paralegal	30,000	3,552	944	944	2,666	3,610
Paralegal	25,000	2,800	744	744	2,003	2,748
Cashier/admin	21,000	2,198	584	584	1,473	2,058
Annual cost	119,500	14,134	3,757	3,757	10,597	14,355

HMRC

HMRC have served a statutory demand for £43,329 of unpaid PAYE/NIC. This represents around 13 months worth at the current rate. The balance sheet in the management accounts suggests that this debt has risen by a further two months of unpaid deductions which means that HMRC have now not been paid for over 15 months.

Clarify when the statutory demand expires and check that it has not already expired.

As they have issued a Statutory Demand, HMRC may be less willing to consider a time to pay arrangement.

Ms Huntly should urgently lodge a moratorium on behalf of Lakewell Taylor with the Accountant in Bankruptcy as this will allow a period of 6 months breathing space during which enforcement action cannot be taken. Form 34 is used for partnerships and can be submitted on line.

Work Place pension

An employer should pay both their and employee contributions to a pension into the pension scheme by the 22nd of the month following deduction. The Balance sheet shows that these contributions have not been paid for 3 months.

These should be brought up to date urgently to avoid enforcement or statutory notices.

Rent

In the P&L rent is accruing at £833 per month (£10,000 pa). As 11 months are accrued on the balance sheet it appears to be the case that rent has not been paid since the quarter ending November 2021.

What discussions, have there been with the landlord about this and has any arrangement been made ?

Rates

Only 1 month of rates is accrued in the balance sheet and since these are paid twice yearly it appears that these are up to date and not due to be paid again until April.

Bank overdraft

An overdraft amount of £24,300 to Nevis Bank is shown in the management accounts. What is the overdraft limit, when is it due to be reviewed and is there any headroom on this facility.

Have any securities or guarantees been given by the partners to support this overdraft.

Management of cash

The cashflow shows that Lakewell Taylor will generate around £17,000 of cash in this 5 month period whilst maintaining their ongoing commitments. This could be increased if Ms Huntly is able to reduce her drawings (total drawings in 5 months £47,000).

With total creditors of more than £85,000, however, it is not going to be possible to pay all of these with the surplus available.

Assuming that the overdraft facility can remain in place and a moratorium is obtained which will provide 6 months of protection, then priority should be given to:-

Reaching an agreement with the landlord regarding the arrears of rent to prevent him from taking action in relation to the office premises;

Bringing the outstanding pensions contributions up to date to avoid statutory notices and fines and

Persuading HMRC to accept a payment plan in relation to the arrears.

Part (c) Options to consider (11 Marks)

**Lakewell Taylor
Balance Sheet as at 31 October
2022**

	£	£	£	£
Fixed Assets	Opening	Depreciation	Closing	
Computer Equipment	7,500	1,563	5,938	
Furniture & Fittings	2,500	521	1,979	
	<u>10,000</u>	<u>2,083</u>	<u>7,917</u>	7,917
Current Assets				
Trade debtors			3,000	
Prepayment Law Society Fees			<u>394</u>	
				<u>3,394</u>
				11,311
Current Liabilities				
Overdraft - Nevis Bank			24,300	
PAYE/NIC			49,691	
Workplace pension			1,878	
Accruals	Rent		9,167	
	Rates		<u>438</u>	85,474
				<u>-</u>
				<u><u>74,163</u></u>

Represented by

Capital Accounts

	Mr Ifield	Ms Huntly	Total
Brought forward	45,000	20,200	24,800
Profit/(loss) in 10 months to date	118,425	78,950	197,376
Drawings	171,738	75,000	246,738

	-		-	-
Carried forward	98,313	24,150	74,162	<u>74,162</u>

The partnership is currently balance sheet insolvent with net liabilities of £73,500. This appears to have arisen because Mr Ifield has drawn more out of the business than he has earned as shown by the deficit of £171k on his capital account.

This has been done at the expense of not paying creditors.

Lakewell Taylor has however, been historically profitable and even without Mr Ifield is capable of generating cash of £17,000 in the next 5 months whilst maintaining a similar level of drawings for Ms Huntly.

Ms Huntly is personally jointly and severally liable for the debts of the partnership, notwithstanding that the position on the face of it appears to have been created by Mr Huntly.

Whilst Ms Huntly may have a claim against Mr Ifield in relation to the shortfall within the partnership, we have no information about his asset position and he is also very unwell.

Ms Huntly may have provided Personal Guarantees to Nevis Bank in relation to the overdraft.

As a practising solicitor, if made bankrupt, Ms Huntly is unlikely to be able to practice, other than possibly as an employee with the consent of the Law Society until she is discharged at the earliest.

Ms Huntly should consider ways to improve the profitability cash generation of the business:-

Mr Ifield carried out Executory and wills work, while Ms Huntly may not feel qualified to take this on herself, can she recruit someone who can, thereby increasing the revenue/income from the overhead base.

Alternatively, can she sell the customer base of Wills/inheritance planning clients, which will provide a forward flow of executry work to another legal firm. Receiving a lump sum in return for these would contribute to the sums required to repay creditors.

Ms Huntly could consider a sale of Lakewell Taylor's entire business. It clearly has significant business particularly in conveyancing in Collersdale and may be an attractive acquisition.

The moratorium in place will provide a [6] month period to explore these options and develop a plan.

As the major creditor Ms Huntly should attempt to secure an informal arrangement with HMRC, explaining the unusual circumstances and supporting the request with reference to financial projections and her plan. An informal plan would have the advantage of saving HMRC cost of a DPP process and improving their return. However, as they have issued a statutory demand they may not be prepared to negotiate.

If the partnership can repay its debts in a reasonable time scale and HMRC will not enter informal discussions, then a DPP under Business DAS could be proposed by Lakewell Taylor to creditors. Every partner in the business requires to consent to the DAS application so Mr Ifield would require to be consulted and consent in this regard.

This would freeze interest and charges and provide protection from creditors while the debt due to creditors was repaid. Maximum repayment period is 5 years.

Costs would be met by the creditors so that while Lakewell Taylor would repay 100p in the £1 their creditors would receive 78% of their debt.

If Ms Huntly does not believe that continuing to trade to repay the unsecured debt which has built up is either feasible or desirable then the partnership could make a bankruptcy application. A Trustee would then realise any value in the client base and fixtures and fittings, and collect any outstanding sums due to from debtors before distributing any funds available to the creditors after costs.

However, Ms Huntly would need to consider that both she and Mr Ifield would be jointly and severally liable for any shortfall to the partnership creditors and therefore, consider the implications for her personal financial situation.

If this were to result in her own personal bankruptcy she should consider the implications for her own ability to continue to work as a solicitor.

The partnership doesn't appear to be solvent, but if it was Ms Huntly could consider approaching the Law Society to discuss the appointment of a Judicial Factor to wind up the affairs of the partnership in an orderly fashion should she have no further wish to be involved.

Part (d) Client account (5 marks)

Lakewell Taylor
Client
a/c

	Out	In	Bal
	£	£	£
14-Oct-22 Corbetts solicitor Mr S Railston - purchase of 22 Kingsgate		242,387.00	248,382.00
20-Oct-22 Hillside Bank - sums due under security	183,597.00		
Collersdale Estate Agency	3,635.00		
Lakewell Taylor Fees a/c	800.00		
#573168 -Ifield	1,000.00		
Ms J Taylor - sale of 22 Kingsgate	53,355.00		5,995.00

It appears that £1,000 from the sale of a property has been transferred to an account in the name of Ifield. There does not appear to be a logical reason for this as the Lakewell Taylor fee has also been deducted from the sales proceeds. As Mr Ifield has been responsible for around 1/3 of conveyancing transactions, this may not be isolated.

Other concerns about the extract shown are that the funds appear to be held in the client account for 6 days before being distributed.

Ignoring this transaction, there is also a balance of funds in the client account. Can these be accounted for ?

The indication that Mr Ifield has been drawing funds from the client account and has been overdrawing on his capital account is concerning.

Ms Huntly should:

Notify the Law Society, who if they believe there have been irregularities in the client account may appoint a Judicial Factor

Notify Lakewell Taylor's Professional Indemnity Insurers;

Potentially notify the Police if it is believed that a theft has taken place; and

After taking advice from the Law Society notify the clients believed to have been affected.

Part (e) Trustee's responsibility for Books and Records (5 Marks)

Client account – the funds in the client account will not vest in the Trustee. Any records pertaining to the client account should be secured and passed to the Law Society or if they have already secured the appointment of a Judicial Factor to them.

Client files – Lakewell Taylor will have client files including, Wills and Title Deeds. The Trustee should obtain an inventory or list of the files and wills/title deeds held. It would be ideal if the Trustee were able to secure a sale of the client book to an alternative legal firm. As part of the sale, provision could be made for the secure transfer of the client files. This would mean that the Purchaser could deal with

client queries or the onward transfer of the files should a client not wish to engage their services. Otherwise dealing with this will be a significant administrative burden for the Trustee for which there appears to be limited assets to pay for it. If a sale cannot be achieved, the Trustee should consider whether a firm would be willing to take on this responsibility to secure the possible upside of any future executry/conveyancing work.

Trading Records – Obtain immediate possession of trading records.

Debtors' ledger and supporting invoices to support the recovery of the outstanding book debts.

In general, the records vest in the Trustee and these would not be returned to the debtor unless the sequestration was recalled or there was a reversion to the debtor neither of which seem likely here. The Trustee should retain the records until they have no further use for them but it would generally be expected that they retain them until they are discharged.

When making arrangements to destroy the records the Trustee should be mindful that virtually all of these records contain confidential information and will need to be confidentially destroyed.

VAT records AIB notes for Guidance say that VAT records more than 6 years old can be destroyed without reference to HMRC. If the records are less than 6 years old but more than 1 year has elapsed since the bankruptcy these can also be destroyed. Otherwise HMRC's authority should be sought before arranging to destroy VAT records.

There is a process to obtain urgent clearance to destroy books and records for example if the Trustee was under pressure from the landlord to clear the premises

Pension records AIB Notes for Guidance state that it is advisable to keep pension records, including the supporting wages separate and preserved until the Trustee can be sure that they are not required.