

Joint Insolvency Examination

November 2023 sitting

Senior Moderator's Report

Introduction

This report is written following the publication of the results of the November 2023 sitting of the Joint Insolvency Examination ("the Examination"). It should be read in conjunction with the individual reports prepared by the Examiners for the two papers in England and by their counterparts in Scotland.

How candidates fared at the 2023 sitting

The number of candidates sitting one or more papers in 2023 was 151 which was essentially unchanged from 2022, with the vast majority sitting the English versions of the papers. Across the entire cohort there were 68 candidates who sat the personal insolvency paper and 126 who sat the corporate insolvency paper. There were 34 candidates who were successful in passing the personal insolvency paper, a pass rate of exactly 50%. This was a very welcome recovery from the equivalent figure of 28% for the 2022 sitting and marked a return to the pass rates in 2020 and 2021. The corresponding results for the corporate insolvency paper were far less encouraging. Of the 126 candidates attempting the paper, only 33 were successful, a pass rate of 26%. The pass rate for 2022 was 45%.

The small number of candidates who sit the Examination is always going to result in the pass rates varying from year to year. The pass rate for the corporate paper is no exception, but the 2023 pass rate for this paper is by some way the lowest since the paper's inception in 2018.

The corporate insolvency paper

The syllabus for the corporate insolvency paper is very wide, encompassing all aspects of corporate insolvency including related advisory work and subjects such as Part 26A arrangements and reconstructions. Questions in the paper can be drawn from any part of the syllabus and accordingly candidates need to have studied, and ideally have gained practical experience in, a wide range of aspects of corporate insolvency.

The reports prepared by the Examiners for the corporate insolvency paper in both England and Scotland are required reading. Both draw attention to three factors giving rise to poor scripts being presented by candidates. The first of these is a failure by candidates to apply practical experience and knowledge when answering questions. Rightly the Examiners say that the ability to apply knowledge and experience to practical scenarios is an important skill for any insolvency practitioner and candidates who do not demonstrate an ability to do this are always going to struggle to pass.

Examples of instances where practical knowledge was not always applied (with the consequence that markworthy points were missed) are given in the corporate insolvency Examiners' reports.

In their reports the corporate insolvency Examiners set out two further factors which, all too often, lead to candidates presenting poor scripts. The first of these is that too many candidates do not appear to take the time to read the question properly and to understand fully what they are asked to do by the requirements of the question. Too often it is apparent from candidates' scripts that they have not taken care to appreciate the context within which the question is set, and not doing this inevitably leads to answers that are irrelevant and for which no marks can

be awarded. The apparent failure by candidates to take time to read the question carefully and to plan their answers is one contributory factor to too many candidates being brought within the range of marks where the examination team is forced into making a decision as to whether they have passed or not. Candidates should be aiming to present scripts which earn high marks which clearly point to their being good enough to pass.

The final factor highlighted by the corporate insolvency Examiners relates to “numbers” questions where some candidates do not properly structure their answers. Answers to such questions that are not laid out in a logical way are unlikely to lead to candidates arriving at the right conclusions. They can also be very difficult to mark.

Final remarks

The three factors highlighted by the corporate insolvency Examiners apply of course to all papers set by the Board in every year. The messages conveyed are not new and have been made by me in my reports over the years. It is to be regretted that candidates are not taking notice and persist in presenting “middling” scripts which may or may not be good enough to pass.

It is essential that all candidates are fully conversant with the overall objective of the Examination, which is to assess whether candidates are able to demonstrate that they have sufficient knowledge of insolvency law, procedure and practice to enable them to carry out the functions of an authorised insolvency practitioner. Candidates who are able to demonstrate that they have the requisite knowledge, and support this by presenting relevant, focussed and practical answers to a paper, applying experience acquired in practice, are likely to pass. Candidates who do not do this are, at best, always going to struggle to convince the examination team and ultimately the Board that they are worthy of being awarded a pass.

JOINT INSOLVENCY EXAMINATION BOARD

CORPORATE PAPER

EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2023 SITTING

General comments

As reflected by the recent published results, there were very few candidates that performed well in this year's corporate paper. I will try and set out, for future guidance for candidates, the reasons for poor performance and the characteristics of a well answered paper.

The main issues in the poorly answered papers were:

1. Failing to read the question properly and understanding the requirements in full.
2. Failing to apply practical experience and knowledge to the answer.
3. Failing to structure numerical answers in a way that allows efficient answering.

Many candidates limited the number of marks available by failing to understand the requirements of the question. As seen below, in the more detailed commentary on each question, there are specific examples in this year's paper where candidates have made the exam more difficult for themselves by not breaking down the question requirements. An example of this is Question 3 (a) where a lot of candidates focused purely on the advantages of a pre-pack sale. As in previous years, candidates provided a significant level of detail on irrelevant points and wasted time which would have been better spent on other questions.

There was a significant proportion of candidates that did not apply practical knowledge to their answers and missed out on marks for very simple practical points. This was demonstrated in Question 2 (b) and Question 4 (b). As in previous years, 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.

There were candidates that did not attempt the "numbers" questions which, again, limits the marks available or answered the question in an un-structured way which would have wasted valuable time.

The more successful candidates identified the full requirements, scored consistently well on all questions, both numeric and written questions, and demonstrated both practical knowledge and exam technique.

**Corporate Insolvency England Exam
November 2023
Examiner's Comments**

Question 1

Requirements

- (a) Detail the key steps required to put forward the proposed variation to creditors. (8 marks)**

The first part of the question asked candidates to set out the key steps required to propose a variation of a Company Voluntary Arrangement ("CVA")

A lot of candidates simply stated the detail of how a decision procedure is carried out and failed to address the key steps, including practical points such as discussions with directors and creditors, review of what variations were needed, and checking that the company could meet the new obligations.

Generally, this was not well answered with a lot of candidates missing marks for such practical steps.

- (b) Prepare a statement which sets out the current position and compare the estimated outcome for creditors under both the original and revised proposals. Clearly state any assumptions that you make. (12 marks)**

Candidates were presented with the information to set out the current position of the CVA and compare the estimated outcome for creditors under both the original and revised proposals. This was a numeric based question and was generally not answered well by the candidates that attempted the question. Approximately 10% of the candidates did not attempt the question.

A lot of candidates failed to break down and understand the requirements and the failure to approach it as requested in the question meant that many candidates failed to "prepare a statement which sets out the current position" and only compared the "original CVA" and "Revised CVA".

The good candidates (with some achieving full marks) who read the question carefully and understood what each part was asking did very well. Many students failed to do this in both parts.

Question 2

Requirements

- (a) Setting out a reasoned argument, decide whether or not the work in progress should be completed in the liquidation. Say what key further information you would require and explain how the receipt of this could affect your decision. Clearly state any assumptions that you make. (15 marks)**

This question was a two-part question which asked candidates to set out a reasoned argument as to whether work in progress (“WIP”) should be completed by the liquidator and to set out what further information may be requested and how this further information would impact on the decision to complete or not.

The first part required candidates to perform calculations, using the information provided, to assess if there was any benefit to creditors of completing the WIP. This calculation had to be performed to answer the question appropriately and a significant number did not do this (and therefore did not pick up the associated marks). Quite a few candidates either didn’t attempt the WIP calculations or got very confused on the numbers either in terms of the time periods or how to lay it out (e.g. trying to incorporate into a full comparative estimated outcome statement).

Candidates were able to pick up marks on the more practical points of completing the WIP (i.e. co-operation of key stakeholders and preserving the debtor ledger)

Lots of candidates picked up on the fact that completion of the WIP required co-operation of the landlord, employees, key suppliers, and the lease companies and highlighted the fact that the debtor ledger would have been more recoverable.

There were a few candidates that outlined aspects that were not relevant to the question such as the requirement of funding (when it was clear in the question that funding was available) and several candidates focused on the members choice of liquidator and what they were compelled to do which had no bearing on the question itself.

In terms of the request for further key information required, a lot of candidates listed documents they required but then didn’t clarify why they required it.

- (b) Prepare a list of practical matters to address whilst on site at the Company’s premises. (5 marks)**

This part was a very practical question requiring the identification of potential matters to address on site.

On the whole this was generally well answered albeit quite a few candidates missed out on the staple points (e.g. out on site – meter readings, books and records, keyholders, instruct agents etc).

Question 3

Requirements

- (a) Having regard to the circumstances described, set out the advantages and disadvantages for an Administrator of the Company of selling the business and assets immediately after their appointment rather than continuing the Company's business with a view to a sale at a later date. (7 marks)**

A lot of candidates failed to understand the requirements of the question and therefore limited the possible marks available. The facts presented to candidates highlighted that the Company seeking advice had a potentially viable business that had been impacted by an event (in this case, fraud).

The question was requesting from candidates the advantages and disadvantages of a pre-pack sale in administration compared to trading the business for a period and seeking a purchaser whilst in administration. A lot of candidates focused just on the advantages of a pre-pack sale and therefore limited the marks available.

- (b) Prepare a briefing note for the Directors explaining:**
- i) the steps they must take (as potential purchasers) should an agreement be reached with the Administrator to purchase the business within 8 weeks of their appointment. (7 marks)**

The main part of the question required candidates to prepare a briefing note to the directors in their capacity as potential purchasers of the business and assets should it be placed into Administration. This was testing the knowledge of what was required to be done in relation to a sale to a connected party by an Administrator. This also required candidates to approach the answer from the perspective of the interested party as opposed to the Administrator.

A lot of candidates mistakenly thought the question was testing their knowledge of the procedure to place a company into administration and did not properly deal with the requirements. Many candidates failed to identify that an evaluator would be required and therefore missed out on the marks available.

- ii) the actions that could be taken by the Funder in the event that debtor collections are insufficient to repay their indebtedness. (1 mark)**

A small part of the question sought the potential actions that could be taken by the funder, against the director guarantors personally, in the event of a shortfall. This was generally answered well.

- (c) Identify any alternatives to Administration that the Directors could consider to deal with the situation and allow the business to continue to trade. Explain briefly why each alternative could be considered. (5 marks)**

As above, the facts provided indicated that there was, potentially, a viable business within a distressed limited company. The question was generally answered well but not many candidates picked up on the options of trading out, potential insurance coverage and pursuing the fraudster personally.

Question 4

The overall standard of scripts in this question was poor, in particular parts (a) and (b). Again, the main issue was candidates not reading the question properly and tending to “brain dump” on an area not being examined.

This was a very practical question dealing with the interaction between the IP and creditors, the preparation of an Estimated Outcome Statement and calculation of employee claims.

It was also apparent that this question was possibly left to the end and/or candidates simply ran out of time to give this question the required time and attention necessary which would indicate that time management was an issue

Requirements

- (a) Set out what additional actions you would take as a consequence of the Company having previously been subject to a Company Voluntary Arrangement. (5 marks)**

The facts set out that the candidate had just been appointed as liquidator of a company that had ceased to trade following the failure of a Company Voluntary Arrangement (“CVA”).

Candidates were asked to explain what actions were required as a result of the company previously being subject to a CVA. This was a practical question.

This was generally answered poorly except for a handful of candidates that scored well as a result of setting out the information that would be required from the supervisor. The poorly answered scripts did not deal with such practical matters and several candidates focused on the conduct of the supervisor and/or set out procedural steps.

- (b) Explain how you would approach the three issues raised with you by the creditors.**

Mark allocation:

Issue 1: Rhee (6 marks)

Issue 2: Stout (2 marks)

Issue 3: Hershel (7 marks)

(15 marks)

This part of the question set out three very practical scenarios regarding Retention of Title (“ROT”), bailiff action and concerns that the business had been diverted to an associated party. The responses to the question were generally poor with not many candidates getting a good grasp of the question and demonstrating their practical knowledge of issues on insolvency matters. As with other questions, a lot of “easy marks” were missed by not setting out basic practical points.

- (c) Set out for each of the 3 employees their claim in the estate together with information as to who would be responsible for payment. (8 marks)**

This question was generally answered well but a lot of candidates failed to attempt the question which resulted in lost marks. The better performing candidates set out their answer

in a structured manner which once set up, allowed marks to be obtained up in a time efficient manner.

This was essentially a “numbers” type question and a lot of candidates attempted to answer in a “wordy” response rather than in numbers where most marks were available.

Also, some candidates failed to identify that there were three different employee claims to calculate and provided answers for one employee only.

Very few candidates picked up on the fact that certain entitlements cannot be claimed in a liquidation following a CVA and also failed to reduce the notice pay claims as a result of continuing to earn in the liquidation.

(d) Prepare an outcome statement showing the return to creditors both with and without the assistance of the employees. (12 marks)

This part of the question required candidates to prepare an Estimated Outcome Statement (“EOS”) showing the return to creditors in two scenarios. As in previous sittings, this type of question was answered well.

Again, the better performing candidates set out the EOS clearly and scored well as a result.

**Corporate Insolvency England Exam
November 2023
Mark Plan**

Question 1

(a) Detail the key steps required to put forward the proposed variation to creditors. (8 marks)

1A a	Consider all of the CVA documentation to see if there is any alternative available (e.g. a contribution break or extension of the duration)
	Meet with the Directors to discuss:
1A b	<ul style="list-style-type: none"> Reasons for the Company's inability to meet the obligations
1A c	<ul style="list-style-type: none"> The proposed variation
1A d	<ul style="list-style-type: none"> The consequences if creditors do not approve the proposal (e.g. termination and winding up of the Company)
1A e	Check the proposals to ensure that it is possible to vary the terms of the arrangement.
1A f	Review the proposals to establish the process for varying the terms of the arrangement.
	Check any modifications to the proposals to:
1A g	<ul style="list-style-type: none"> Ensure that they do not preclude a variation to the agreement
1A h	<ul style="list-style-type: none"> There are no other terms that need to be varied (such as minimum dividend)
1A i	Obtain copies of the Company's forecasts
1A j	Review the forecasts to ensure that these are reasonable in the circumstances
	Draft the revised terms of the arrangement
1A k 1A l 1A m	<ul style="list-style-type: none"> In relation to changes to contributions; Duration of the arrangement; and Additional Supervisor's fees
1A n	Confirm these revised terms in writing to the Directors
1A o	Prepare an outcome statement setting out the return to creditors under the revised proposal.
1A p	Consider whether the revised CVA presents a better return to creditors compared to the alternative.
1A q	Consider discussion with any creditors committee or major creditor that has significant influence over the voting.
1A r	Consider instructing solicitors to assist in the drafting of the variation.
1A s	Convene a meeting/decision process in accordance with the proposal terms.

1A t	Send out proof of debt and voting forms as may be appropriate
1A u	Schedule votes received
1A v	Consider any modifications proposed by creditors
1A w	Establish whether the variation to the proposal is approved by the majority set out in the terms of the proposal.

1(b) Prepare a statement which sets out the current position and compare the estimated outcome for creditors under both the original and revised proposals. Clearly state any assumptions that you make.

(12 marks)

		ORIGINAL CVA								VARIATION					
Year	Period	Months	Monthly contributions	Total	Forecast profit	@75%	Additional contribution	Expected contribution	Monthly contributions	Total contributions	Actual profit	@75%	Additional contribution	Actual contribution	
1	Feb 21 - Jan 22	12	30,000	360,000	60%	600,000	450,000	90,000	450,000	30,000	360,000	500,000	375,000	15,000	375,000
2	Feb 22 - Jan 23	12	50,000	600,000	60%	1,000,000	750,000	150,000	750,000	50,000	600,000	800,000	600,000	-	600,000
3	Feb 23 - Sep 23	8	100,000	800,000	60%	2,000,000	1,500,000	300,000	1,500,000	100,000	800,000	1,000,000	n/a	n/a	800,000
3	Oct 23 - Jan 24	4	100,000	400,000						25,000	100,000			n/a	100,000
4	Feb 24 - Jan 25	12	100,000	1,200,000	60%	2,000,000	1,500,000	300,000	1,500,000	60,000	720,000	1,200,000	900,000	180,000	900,000
5	Feb 25 - Jan 26	12	100,000	1,200,000	60%	2,000,000	1,500,000	300,000	1,500,000	60,000	720,000	1,200,000	900,000	180,000	900,000
6	Feb 26 - Jan 27	12								60,000	720,000	1,500,000	1,125,000	405,000	1,125,000
				4,560,000				1,140,000	5,700,000		4,020,000			780,000	4,800,000

			ORIGINAL CVA	ref	CVA TO DATE	ref	PROPOSED VARIATION - FUTURE	Mark	ref	REVISED PROPOSAL
			£		£		£			£
Contributions										
	Monthly contributions		4,560,000	1B a	1,760,000	1B i	2,260,000		1B r	4,020,000
	Additional profit contributions		1,140,000	1B b	15,000	1B j	765,000		1B s	780,000
			5,700,000		1,775,000		3,025,000			4,800,000
Officeholder fees										
	Nominees fee		(30,000)	1B c	(30,000)	1B k	-			(30,000)
	Supervisor fee									
	Original	£15k per annum x 5 years	(75,000)	1B d						
	Varied									
	To date									
		2 years	£15k p.a. x 2 years		(30,000)	1B l				(30,000)
		8 months (2/3 year)	£15k x 2/3		(10,000)	1B m				(10,000)
	Future									
	Variation fee						(10,000)		1B t	(10,000)
		4 months	£15k x 1/3				(5,000)		1B u	(5,000)
		3 years	£15k p.a. x 3 years				(45,000)		1B v	(45,000)
			(105,000)		(70,000)		(60,000)			(130,000)
	Legal fees	Per question	(10,000)	1B e	(10,000)		(5,000)		1B w	(15,000)
	Amount available to preferential creditors		5,585,000		1,695,000		2,960,000			4,655,000
	Preferential creditors		(1,100,000)	1B f	(1,100,000)					(1,100,000)
	Amounts available for non-preferential creditors		4,485,000		595,000		2,960,000			3,555,000

			Original creds					Revised creds
Unsecured, non-preferential creditors								
Agreed claims	7,500,000	25% higher				(7,500,000)	1B n	(7,500,000)
Original estimate of claims	6,000,000	=7.5m/1.25	(6,000,000)	1B g				
Rooker								
	£50k delivered before - assume included in £6m					-	1B o	-
	£150k delivered before CVA but invoiced after - assume not included					(150,000)	1B p	(150,000)
	£250k claim - outside limitation act					-	1B q	-
Total unsecured creditor claims			<u>(6,000,000)</u>			<u>(7,650,000)</u>		<u>(7,650,000)</u>
Deficit to creditors			<u>(1,515,000)</u>			<u>(7,055,000)</u>		<u>(4,094,999)</u>
P in £			<u>74.75</u>	1B h				<u>46.5</u>
								1B x

QUESTION 2

- (a) Setting out a reasoned argument, decide whether or not the work in progress should be completed in the liquidation. Say what key further information you would require and explain how the receipt of this could affect your decision. Clearly state any assumptions that you make. (15 marks)

	£	Assumptions	Reference
Total contract value	250,000		2A a
Delivered	(100,000)	£120k includes VAT. Divide by 1.2 to get amount delivered	2A b
Remaining value of work to be done	150,000		
Costs to complete			
Staff costs			
Printing - wages	(4,500)	(6 staff x £39,000) / 52 weeks	2A c
Printing - holiday pay accrual	(600)	assumed 33 days holiday - entitlement $(1/52 * 33) = 0.63$ days x £150 (day rate) = c. £100 per employee	2A d
Cutting and Packing - wages	(3,000)	Daily pay rate = £39k / 52 / 5 = £150 per day	2A e
Cutting and Packing - holiday pay	(300)	Employees would need to be retained for the 2 weeks. $3 \times £26,000/52 \times 2$	2A f
Other			
Materials	0		2A g
Overprinting costs	(10,000)	Assumption that WIP of £50k has already incurred cost (ie leaving £100k) at 10%	2A h
Transport costs	(3,000)	3 x £1,000	2A i
Rent	(20,000)	520,000/52 x2	2A j
Rates	(8,000)	Rates payable in 10 monthly instalments. Accrual payable as a liquidation expense. $62,400/3 * 10 = 208,000$ pa. = £4,000 per week	2A k
Utilities	(5,000)	$80,000/8 * 0.25 \times 2$	2A l
Lease costs (cutting machine)	(10,000)	Assumed have to pay for 2 weeks	2A m
	(64,400)		
Net realisation by completing	85,600		2A n

Staff costs - Assumed payable to retain cooperation rather than relying on non-adoption of contracts.

	Arguments for completion of WIP
2A o	Generates surplus realisations – workings show this
2A p	Completion potentially protects the existing debtor of £120,000
2A q	Completion avoids the potential costs of disposing part complete work.
2A r	Failure to complete contract could result in a counter claim that may exceed the debtor balance increasing the level of unsecured, non-preferential debts.
2A s	It may be possible to reduce the level of unsecured creditor claims in relation to employee notice pay if employees work their notice period rather than being immediately dismissed.
2A t	Funding is available (cash at bank) to pay wages etc
2A u	Arguments against completing WIP
2A v	Rent arrears may have to be paid.
2A w	Landlord issues generally; will they create any problems regarding access etc?
2A x	Employees may not co-operate.
2A y	May be necessary to incentivise staff to complete contract on time resulting in additional costs.
2A z	There be issues regarding equipment breakdowns etc. meaning deadline missed
2A aa	External supplier may be owed arrears and refuse to complete contract.
2A ab	Haulier may be owed arrears resulting in higher costs of using an alternative.
2A ac	It may not be possible to use the cutting machine if it has already been removed or disconnected or the lease provider may not allow its use.
2A ad	Completion would delay sale of machinery which could impact if there is a current buyer.
2A aJ	Customer might not pay for the work being performed
	Other key information required
2A ae	Will need to retain other staff members such as Health and safety, fire marshals, management resulting in additional cost.
2A af	Are we satisfied regarding health and safety?
2A ag	Any insurance issues with continuation?

2A ah	What are the implications of a missed deadline with customer?
2A ai	Any risk in relation to utilities to the property?
2A ak	Due diligence on Porter – ability to pay
2A al	Copy of contract / purchase order with Porter
2A am	Copy of lease on property

2(b) Prepare a list of practical matters to address whilst on site at the Company's premises.

2B a	Box up and remove books and records
2B b	Secure debt collection records
2B c	Obtain meter readings
2B d	Obtain a back up of the computer systems / remove computers, servers etc
2B e	Instruct agents to remove any removable, valuable goods
2B f	Instruct solicitors to advise in relation to rights to remove the Company's printing press
2B g	Address staff and advise of position
2B h	As may be necessary terminate employment of any remaining employees
2B i	Provide employees with information on how to make claims to the Redundancy Payments Service
2B j	Inform lease companies of issue
2B k	Attempt to negotiate with the landlord for use of premises for short period
2B l	Investigate the claims of Porter with staff on site to see if genuine (impacts on debtor balance)
2B m	Take photographs of site, state of equipment being left etc
2B n	Liaise with Porter re issues with goods
2B o	Seek legal advice re property lease
2B p	Obtain list of keyholders

QUESTION 3

- (a) Having regard to the circumstances described, set out the advantages and disadvantages for an Administrator of the Company of selling the business and assets immediately after their appointment rather than continuing the Company's business with a view to a sale at a later date. (7 marks)

	Against quick sale in a pre-pack
3A a	The existing funder may be willing to fund completion of work in progress to improve their chances of recovery.
3A b	Enough free stock to supply customers for several weeks; 1 month of finished goods (40% = 20 units so total 50 units per month)
3A c	Production staff could potentially be temporarily laid off reducing costs
3A d	Many potential interested parties
3A e	Loyal employees
3A f	Customer contract secures element of future business for administrator and purchaser
3A g	Significant customer may be willing to trade with the company in administration if it cannot source such high quality elsewhere.
3A h	High quality; USP for marketing
3A i	Profitable business
3A j	The proposed offer for the business may not seem attractive as the company is normally profitable.
3A u	Moratorium available to allow protection whilst trading
	For a potential pre-packaged sale
3A k	Battery suppliers may change terms impacting on prices/profitability and funding
3A l	Whilst it has high levels of stock allowing for continued trade if stock is used and no new purchases made, the supply chain issues could present a problem for any purchaser as they could be left with minimal stock and delays in obtaining new stock.
3A m 3A n 3A o	High risk of loss of 25% of business (re leasing) impacting on profitability <ul style="list-style-type: none"> Aspects of the business may be subject to FCA regulation, which could impact on ability to trade. Administrator unlikely to be willing to sell products on 2 year leases as principal. If external lease providers used, these are unlikely to want to trade with an administrator
3A p	Administrator will not be able to provide a 2 year warranty on goods, potentially impacting on: <ul style="list-style-type: none"> the price it can charge and/or

	<ul style="list-style-type: none"> reducing the likelihood of customers purchasing from the company.
3A q	<p>May not be profitable trading</p> <ul style="list-style-type: none"> after administrators costs incurred After loss of some customers
3A r	Existing management team may be better placed to help collect in debts and minimise loss to the funder.
3A s	Typically lower cost
3A t	Continuity of supply and minimal disruption could avoid risk of key customer contract being cancelled.
3A v	Certainty of sale and realising cash for the estate

3) Prepare a briefing note for the Directors explaining:

- i. **the steps they must take (as potential purchasers) should an agreement be reached with the Administrator to purchase the business within 8 weeks of their appointment. (7 marks)**

3B a	Administration (Restrictions on Disposal etc to Connected Persons) Regulations 2021
3B b	Establish with administrator their strategy and whether sale will be completed within 8 weeks of their appointment.
3B c	Confirm that any disposal will be considered substantial by the Administrator
3B d	Establish if the Administrator would seek approval of creditors prior to completing a sale
3B e	If not Find an appropriate evaluator (insured and independent)
3B f	Prudent to check Administrator considers evaluator choice appropriate
	Provide information to evaluator (max 3 marks)
3B g	<ul style="list-style-type: none"> Name of purchasing entity
3B h	<ul style="list-style-type: none"> Names and addresses of beneficial owners of the old and new businesses
3B i	<ul style="list-style-type: none"> Names of directors of old and new businesses
3B j	<ul style="list-style-type: none"> Nature of any connection and nature of likely involvement in new business
3B k	<ul style="list-style-type: none"> Details of any losses suffered by the directors personally
3B l	<ul style="list-style-type: none"> An outline of the proposed transaction – heads of terms
3B m	<ul style="list-style-type: none"> Details of the proposed administrator
3B n	<ul style="list-style-type: none"> Latest financial information available for the Company

3B o	<ul style="list-style-type: none"> Value of the assets being purchased and the basis of valuation
3B p	<ul style="list-style-type: none"> Details of any other offers made and marketing undertaken
	3B g – 3B p
3B q	Consider the preparation of a viability review stating how the purchasing entity will survive for at least 12 months from the date of the proposed purchase.
3B r	Generally ensure that they avoid conflicts of interests (wearing hat as director of oldco and purchaser)
	Obtain a qualifying evaluators' report: (max 3 marks)
3B s	Containing a statement (regulation 7(h)) with reasons, that either:
	(i) the evaluator is satisfied that the consideration to be provided for the relevant property and the grounds for the substantial disposal are reasonable in the circumstances; or
3B t	(ii) the evaluator is not satisfied that the consideration to be provided for the relevant property and the grounds for the substantial disposal are reasonable in the circumstances (a "case not made opinion")
	In addition, the report must contain:
3B u	A statement as to what relevant knowledge and experience the evaluator has to make the report.
3B v	Details of the professional indemnity insurance that the evaluator carries.
3B w	Details as to any previous report that the connected person has obtained, where known to the evaluator
3B x	Identification of the property being disposed of and the consideration for the disposal.
	3Bs to 3B x
3B y	Instruct solicitors to advise on commercial matters such as sale agreement etc

3(b)

- ii. **the actions that could be taken by the Funder in the event that debtor collections are insufficient to repay their indebtedness. (1 mark)**

3B aa	Seek a repayment proposal from the Directors
3B ab	Make demand on the Directors under the Personal Guarantee
3B ac	Seek personal security from Directors
3B ad	Ultimately commence bankruptcy proceedings against the Directors if satisfactory proposal not agreed

(c) Identify any alternatives to Administration that the Directors could consider to deal with the situation and allow the business to continue to trade. Explain briefly why each alternative could be considered. (5 marks)

3C a	<p>Trade out</p> <p>As the business is profitable and all other creditors are up to date it may be possible to agree a phased repayment of the shortfall over months/years.</p> <p>Could be structured by converting shortfall to a loan.</p> <p>Trading forecasts</p>
3C b	<p>Payment by directors/employees</p> <p>As they have established some funds for purchasing the business these could be used to make good any shortfall to the funder or be used in conjunction with a trade out.</p>
3C c	<p>Insurance</p> <p>Check whether any fidelity insurance could cover the loss and if so negotiate with the funder for time to claim.</p>
3C d	<p>Recovery from perpetrator</p> <p>It may be possible to recover funds from the perpetrators of the fraud.</p> <p>As for the insurance option it may be necessary to negotiate a standstill period to explore this and additional funding may be required to cover costs.</p>
3C e	<p>CVA</p> <p>It may be possible to structure a CVA to improve the overall return to creditors, avoid marketing the business for sale and allow the directors/shareholders to keep control of the business.</p>
3C f	<p>Refinance</p> <p>It may be possible to find a different or additional funder to support the deficit.</p>
3C g	<p>Restructuring Plan</p> <p>Consider merits of restructuring plan taking into accounts costs, complexity of creditor position etc</p>

QUESTION 4

(a) Set out what additional actions you would take as a consequence of the Company having previously been subject to a Company Voluntary Arrangement. (5 marks)

4A a	Obtain copy of recent reports
4A b	Ensure Supervisor notified of appointment
4A c	Establish whether any CVA funds are subject to a Trust in favour of the Supervisor
4A d	Establish if there are any other assets subject to a Trust in favour of the Supervisor
4A e	Obtain details of CVA claims
4A f	Obtain details of payments made to CVA creditors and the extent to which CVA debts are outstanding
4A g	Obtain any books and records that the Supervisor may hold
4A h	Obtain a copy of the Supervisors' final report and account
4A i	Obtain confirmation of the termination of the CVA
4A j	Consider the extent to which any VAT on fees paid to the Supervisor can be recovered.
4A k	Obtain a copy of the CVA document and review to ensure Supervisor has acted within their capacity/fees etc. are appropriately approved.
4A l	Consider if there are any further investigations are required into or action necessary against the supervisor.

(b) Explain how you would approach the three issues raised with you by the creditors.

Issue 1 : Rhee (6 marks)

4B a	Establish if any other party supplies cylinders bearing Rhee's marks
	Establish extent to which the supplier's terms incorporated into contract for supply;
4B b	<ul style="list-style-type: none"> Mere presence on a website is not sufficient
4B c	<ul style="list-style-type: none"> Establish if an account opening form, contract or similar document agreed prior to trading
4B d	<ul style="list-style-type: none"> Obtain copy order from Company to Rhee and any associated terms
4B e	<ul style="list-style-type: none"> Obtain a copy of any order confirmation together with any associated terms
	4b to e
4B f	Obtain details of each item; its location, customer status etc.
4B g	Seek professional advice in relation to specialist nature of the contents of the cylinders
4B h	Appears that product has not changed form; valve can be unscrewed.

4B i	Establish if there is any value to the cylinders
4B j	If it appears valid discuss with the supplier
4B k	<ul style="list-style-type: none"> Logistics for collection of the goods
4B l	<ul style="list-style-type: none"> Associated costs that the liquidators may bear in relation to assisting the creditor
4B m	<ul style="list-style-type: none"> Contains dangerous goods; permits/licences to move and dispose of products may be required. Does the supplier have these?
4B n	<ul style="list-style-type: none"> How to deal with items at customer sites
4B o	<ul style="list-style-type: none"> How the valve may be removed and retained/returned to the liquidator
4B p	Investigate/establish where the 100 cylinders which are not accounted for are.
4B q	If valid and all cylinders are identified consider how to deal with those that have effectively been paid for – Rhee has been paid £110,000 so far.
4B r	Instruct agent to provide a valuation for the cylinders.
4B s	Arrange site visit with Rhee to identify cylinders
4B t	Obtain advice from solicitors on validity

Issue 2 : Stout (2 marks)

4B aa	CVL does not provide automatic protection against execution
4B ab	Contact and notify the Bailiffs of appointment (s184 (1))
4B ac	Contact and notify the creditor of appointment
4B ag	Obtain details of van being sold
4B ad	Execution not complete at time of CVL resolution being passed (or notice of resolution being sent)
4B ae	Obtain agents' advice on how to deal with van (to be placed into auction by bailiff)
4B af	Decide whether more practical to let auction go ahead and have sale proceeds handed over by bailiff or get bailiff to return van

Issue 3: Hershel (7 marks)

4B ba	Conduct a Companies House search to verify Hershel's claim that the new company had been set up.
4B bb	Contact the Supervisor to establish whether they have any relevant knowledge
4B bc	Establish if possible whether the new company is trading
4B bd	<p>Establish if possible the extent to which the former directors are involved in the new business.</p> <ul style="list-style-type: none"> Are they listed as directors; Is there any other evidence

4B be	Contact the Directors to establish their version of the facts
4B bf	Speak to other employees to establish facts
4B bg	Consider a site visit to the new premises
4B bh	Review company records
4B bi	<ul style="list-style-type: none"> Any record of the transportation of products
4B bj	<ul style="list-style-type: none"> Any accounting entries in relation to a potential transfer
4B bk	Obtain and review any legal agreements that may be relevant
4B bl	Consider the extent to which there may be a breach of Section 216 Name appears similar
4B bm	Consider reporting breach of Section 216
	Consider any antecedent transactions
4B bn	Consider whether there is a claim for: <ul style="list-style-type: none"> a Transaction at an Under-value
4B bo	<ul style="list-style-type: none"> or Transactions defrauding creditors
4B bp	Carry out further investigations: <ul style="list-style-type: none"> Is there any evidence of assets being transferred?
4B bq	<ul style="list-style-type: none"> Is there any evidence of an agreement in this respect?
4B br	<ul style="list-style-type: none"> Is there any evidence of a valuation or similar of any assets transferred?
4B bs	<ul style="list-style-type: none"> Is there any evidence of payment being made for the assets?
4B bt	Consider whether there may be a Preference - Was any liability extinguished by the transaction
4B bu	Consider the extent to which there could be wrongful trading
4B bv	<ul style="list-style-type: none"> The formation of another company was months prior to liquidation which suggests perhaps that the view was formed then that the Company could not avoid insolvent liquidation.
4B bw	Consider taking action against the directors for misfeasance / breach of duty.
4B bx	Review fixed asset registers or Nominal Ledgers containing fixed assets
4B by	Review security camera footage (if available)

(c) Set out for each of the 3 employees their claim in the estate together with information as to who would be responsible for payment.

		Joe	Sam	Adele	
		£	£	£	
ARREARS OF PAY					
Salary		30,000	54,000	26,000	Assumed full time
Weekly		576.92	1,038.46	500.00	
Capped weekly (wkly cap - £643)			643.00		
Daily rate		115.38	207.69	100.00	Assumed 5 days per week
Arrears of pay	Not paid by RPS	2500	4500	1000	
					Not paid by the RPS - SSBIS v McDonagh
	Preferential	800	800	800	
	Non-preferential	1700	3700	200	
		2500	4500	1000	
HOLIDAY PAY					
Entitlement		24	30	24	
Accrued		20	25	20	Assumed calendar year for holidia accrual
Taken		(25)	(18)	(15)	
Remaining		(5)	7	5	
Value	Preferential	(577)	1,454	500	Not paid by the RPS - SSBIS v McDonagh
REDUNDANCY PAY					
Age		33	42	25	
Length of service		8	3	1	
Weeks of redundacny		8	3.5	0	

REDUNDANCY PAY					
Age		33	42	25	
Length of service		8	3	1	
Weeks of redundancy		8	3.5	0	
		4,615	2,250.5	0	
NOTICE PAY					
Statutory		8	3	1	
Total		4,615	3,115	500	
Payable by RPS		4,615	1,929	500	
Less worked		(2,500)	(4,500)	(2,167)	Assumed work for liquidator reduces notice entitlement
Less Job seekers allowance	84.80 per week	(339)	-	-	
Paid by RPS		1,776	-	-	
Contractual notice		2,500	13,500	2,000	
Less paid by RPS		(1,776)	-	-	
Less worked (remaining)		-	(2,571)	(1,667)	
		724	10,929	333	

SUMMARY				
Arrears of pay	Preferential - estate	800	800	800
	Non Preferential - in estate	1,700	3,700	200
Holiday pay	Preferential - estate	(577)	1,454	500
Redundancy	RPS	4,615	2,251	-
Notice	RPS	1,776	-	-
	Non-pref in estate	724	10,929	333

4C aa	Employees claims from RPS will be limited due to existence of failed CVA
4C ab	CVA approval is the relevant date for payment by RPS <ul style="list-style-type: none">• Arrears of pay• Holiday pay RPS will not pay these elements
4C ac	Includes all 3 employees even though Adele was not an employee at the time.
4C ad	Such claims will fall into the estate creditors

(d) Prepare an outcome statement showing the return to creditors both with and without the assistance of the employees. (12 marks)

Payton Air Products Limited					
Estimated Outcome Statement					
	Book value		Estimated to realise		
		Note	With assistance	Without assistance	Assumptions
	£		£	£	
Leasehold improvements	100,000		0	0	Assumed that leasehold improvements cannot be realised as landlord owed significant sums and no value to lease.
Cylinders	900,000	1	354,000	354,000	
Debtors	500,000		400,000	250,000	
	<u>1,500,000</u>		<u>754,000</u>	<u>604,000</u>	
Less : Costs etc					
Collection costs			(30,000)	(30,000)	
ROT creditor contribution to recovery costs			7,500	7,500	As a percentage of cylinders - 100 (Rhee cylinders) /400 (total out on site). Assume agreed
Gas removal from those on site			(25,000)	(25,000)	
Invoicing of cylinders out on site once collected			80,000	0	400 x £200 - Assumption that not collected if staff not retained
Provision			(16,000)		Assume same provision as for debtors so x 80% and 50%
Staff costs		2	(10,542)	0	
Liquidation cost estimate			(40,000)	(55,000)	Any reasonable assumption; likely to be more costs if no debt collection support
Amount available for preferential creditors			<u>719,958</u>	<u>501,500</u>	
Preferential creditors					
Holiday pay			(20,000)	(20,000)	
Arrears of wages			(24,000)	(24,000)	Assumes 30 x 800
Amounts available for floating chargeholder			<u>675,958</u>	<u>457,500</u>	
Bank			(50,000)	(50,000)	Pre EA debenture - no PP (0.5 for £50k in right place and 0.5 mark for identifying no PP)
Amounts available for unsecured creditors			<u>625,958</u>	<u>407,500</u>	

CVA Creditors		(1,000,000)	(1,000,000)	(1,000,000)	
Post CVA creditors		(500,000)	(500,000)	(500,000)	
Reduction for ROT			225,000	225,000	
Landlord	Rent arrears	(80,000)	(80,000)	(80,000)	
	Future rent	(320,000)	(320,000)	(320,000)	Assumes no mitigation
Employees	Arrears of wages		(16,000)	(16,000)	
	Other claims		(200,000)	(200,000)	
	Reduce for working notice		9,167		
			(1,881,833)	(1,891,000)	
Deficit to creditors			(1,255,875)	(1,483,500)	

Notes							
1 Cylinders	£						
NBV	900,000	Assumed as recently delivered cylinders cost is NBV					
ROT	(225,000)	300,000/400 = £750 per unit x 300 Assuming all ROT cylinders that have been located are returned					
Missing cylinders	(85,000)	100 x (£750 + 100 (Valve)). Assumed nil value					
Revised BV	590,000						
Recovery %	60%						
Estimated	354,000	in both scenarios					
2 Staff costs							
Joe	2,500						
Sam	4,500						
Adele	2,167						
	9,167	Reduce from NP claim					
Additional pay costs	1,375	Assumed 15% additional pay costs , Ni provision. Costs may be higher as loss of notice pay would decentivise.					
	10,542						

4C aa	Employees claims from RPS will be limited due to existence of failed CVA
4C ab	<p>CVA approval is the relevant date for payment by RPS</p> <ul style="list-style-type: none"> • Arrears of pay • Holiday pay <p>RPS will not pay these elements</p>
4C ac	Includes all 3 employees even though Adele was not an employee at the time.
4C ad	Such claims will fall into the estate creditors

**JOINT INSOLVENCY EXAMINATION BOARD
PERSONAL PAPER
EXAMINERS'S REPORT AND MARK PLAN FOR THE NOVEMBER 2023 SITTING**

Question 1

- (a) Set out the additional information you require, either from your conference call with Mr Chicago or otherwise. Explain the steps you should now take to deal with the 7 buy-to-let properties. Outline the impact that the actions of the 3 banks may have on your ability to realise your interests in the properties. (12 marks)**

Part a required candidates to set out the additional information required from the bankrupt or otherwise and to set out the steps that should be taken to deal with the seven buy-to-let properties. Candidates were also required to set out the impact that the actions of the three banks may have on the trustee's ability to realise his/ her interest in the properties.

There was a large number of marks available to candidates who were able to set out what information the trustee would require to deal with the properties and explain why the trustee required that information. The stronger answers differentiated between the three situations created by each banks' involvement, and how the properties were held.

As with responses in previous years, it was disappointing to see checklists and, in some answers, the content of which was repeated for each of the three scenarios. Candidates will not achieve additional marks for repeating the same information. Similarly, candidates will not get credit for listing actions (such as "obtain office copies") without explaining the reason a trustee would take such an action (for example, to check bankruptcy notices are registered against the solely owned properties).

- (b) What initial action should you take to safeguard and deal with the cryptocurrency? (3 marks)**

In relation to part b, candidates generally provided sensible answers with many candidates recognizing the need to identify how the cryptocurrency was held, secure this, and seek specialist advice to establish the value with the view to sale.

- (c) Summarise the key steps that that you should take to safeguard, deal with and ultimately realise your interests in the timeshare and ski chalet. (5 marks)**

In part c, candidates were required to summarise the key steps that should be taken to safeguard, deal with and ultimately realise the trustee's interest in the timeshare and ski chalet. The majority of responses to this part of the question contained sensible, practical suggestions.

The better answers distinguished between the nature of the two interests. Stronger candidates recognized the fact that the timeshare interest would be governed by a contract which may contain restrictions on sale, and/or onerous conditions. They also identified that the ski chalet was a physical property owned by the bankrupt, which may need a local lawyer's assistance to protect the trustee's interest (by registering this against the property's title), and to obtain recognition of the bankruptcy order in Bulgaria.

Question 2

- (a) List the additional information which will be required for you to carry out your assessment. (5 marks)**

Part a required candidates to set out the additional information that would be required in order to properly advise an individual who had run up debt whilst suffering from mental health problems. Candidates were then required to set out the factors to which an Insolvency Practitioner should have regard when carrying out an assessment of whether an Individual Voluntary Arrangement could be an appropriate option. Finally, part c required candidates to comment on the alternative options that might be available and the appropriateness of those options.

- (b) Set out the factors to which an Insolvency Practitioner should have regard when carrying out an assessment of whether an IVA would be an appropriate solution, together with your initial comments in relation to each factor based on the information provided by Miss Denver to date. (11 marks)**

Part b was generally done quite poorly as most candidates did not appear to be aware of the new SIP3 and did not engage properly with the factors or how they applied to the specific facts in front of them. Somewhat frustratingly there were one or two candidates who performed very well on part b, but for some reason those candidates did not answer parts a and c as well.

- (c) Briefly comment on the potential alternative options available to Miss Denver and the appropriateness of each to her situation. (4 marks)**

Parts a and c were generally done quite well with many candidates managing to score full marks or at least very high marks on these parts. However, in relation to part c some candidates appeared to simply be listing options without engaging in relation to the appropriateness of those options. The candidates who actually engaged with the advantages and disadvantages for the various options for Miss Denver scored well.

Question 3

Question 3 sought to test a candidate's ability to set out a strategy for five different scenarios. Unfortunately, many candidates either forgot or ignored the fact that the question required them to set out the strategy for the next three months. Furthermore, many candidates did not focus enough of their answers on outlining the practical aspects of the strategy and either gave generic legal answers or provided outcomes without explaining the steps that led to the outcome.

(a) (Case 1: Mr Seattle 5 marks)

Many candidates identified the need to serve a S283A notice on Mrs Seattle and also suggested contacting her to see if any proposal could be made to purchase the trustee's interest in the property. However, only the stronger candidates noted that the Official Copies should be reviewed to see if Mrs Seattle had registered a Family Law Act notice or any other interest in the property. Too many candidates were intent on a trustee issuing an application for possession and sale, without first explaining the steps required to do this and the evidence needed to support the application, let alone ignoring the fact the question required a candidate to note the strategy for the next three months.

(b) (Case 2: Mrs Washington 3 marks)

Many candidates jumped to issuing an application for an examination of the bankrupt at court and potentially imprisoning her for non-co-operation. There were easy marks available for setting out the simple steps a trustee could take to try and contact Mrs Washington i.e. find a telephone number or email, use recorded delivery, contact creditors or neighbours, see if the property is rented and if so, contact the letting agent. A trustee needs to make reasonable enquiries before issuing court applications and these quick and easy steps could elicit a response from the debtor, without seeking to imprison her.

(c)(Case 3: Miss York 3 marks)

Candidates were far too quick to bankrupt the debtor, before taking reasonable and measured steps to assess the situation. In the first instance, the Supervisor ought to make enquiries about why the contributions have stopped i.e. is Miss York unwell or has she lost her job? Contact should be made by whatever means, perhaps a telephone call or a home visit. The IVA proposal should be reviewed to guide the Supervisor on the options. Could the IVA be varied, or if a breach is not remedied, is the Supervisor obliged to petition for Miss York's bankruptcy or could he/she seek the views of the creditors? A number of stronger candidates understood that these steps needed to be undertaken, unfortunately many went straight to the final option of petitioning for her bankruptcy within the next three months.

(d) (Case 4: Mr Lauderdale 5 marks)

The question involved five constituent elements, in particular: the property, Range Rover, school fees, the liquidation of his companies and Mr Lauderdale's wife. It was rare that a candidate referenced all five parts. Most understood the need to investigate the ownership of the property; was it owned or rented and in some answers, the question was raised as to whether it had been transferred out of the reach of creditors. Again, many candidates wanted to investigate the ownership of the Range Rover and identified ways of determining if Mr Lauderdale owned the car outright or on finance. A number of candidates sought to review bank statements in order to find out who was paying the school fees. However, not many wanted to liaise with the liquidator to find out where company funds had been paid to. Some candidates wanted to interview Mr Lauderdale and / or his wife. Simple, practical steps needed to be undertaken to find out the information and it does not always need the legal option of s.366 applications at court.

(e) (Case 5: Mr Houston 4 marks)

A number of candidates realised that the focus of this question related to suspending the bankrupt's discharge. Whilst many identified the issue of a shortage of time, very few noted the option of making an application for an interim suspension of discharge. A few candidates noted that a Bankruptcy Restriction Order (BRO) might be available, and a number realised there were potential bankruptcy offences being committed and needed to be reported to the Official Receiver.

Overall, many candidates spent too long regurgitating the facts in the question, rather than providing the practical steps on what a trustee / Supervisor should do in a defined period time. As a consequence, easy marks were missed.

Question 4

This year's "case study" question dealt with the scenario facing the trustee of an operator of an equestrian centre who also had a media profile, and how the issues arising from those circumstances might be dealt with. On the whole, most candidates tackled the issues set out in the question well, and there was a noticeable improvement on the answers given from the previous year's "case study". Candidates appear to have taken on board the comments made by the examiners and moderators arising from the 2022 paper.

- (a) Stating any assumptions you make, prepare a monthly cashflow for Green Meadows for the 6-month period ended 30 September 2023.**

Note: ignore VAT (10 marks)

This year's question 4 was divided into six parts. Firstly, candidates were presented with a range of financial information about a trading equestrian centre, that had been run by the debtor, and who had been presented with a statutory demand from HMRC for assessed tax. Candidates were required to prepare a 6 month cashflow forecast to consider the viability of future trading.

- (b) Explain the implications of the statutory demand for Estelle and suggest steps that she should consider taking in the circumstances. (4 marks)**

Candidates were then asked to consider and comment on the implications of a statutory demand being served on the debtor by HMRC. Thirdly, candidates were required to set out matters that a trustee should consider when receiving an offer to purchase the assets and business by the bankrupt's parents; candidates were then required to comment on the bankrupt's income and expenditure as disclosed to consider if an Income Payments Agreement (IPA) was appropriate, including seeking additional information and evidence; fifthly candidates were asked to briefly set out the process required to put an IPA in place; and finally, candidates were required to prepare a note in their capacity as manager of the bankruptcy to the trustee setting out how various issues arising should be addressed, together with further action that may be required.

The cashflow forecast was on the whole dealt with well by candidates, with good presentation and good attempts at the calculations required to confirm the viability of the centre. A few candidates made unfortunate mistakes such as not casting figures correctly or placing figures in incorrect months, however overall the candidates scored well.

The second part of the question was mostly dealt with well, although a fair number of candidates launched into "checklist mode" setting out the consequences of a bankruptcy order being made, which missed the point of the question entirely. Those candidates therefore failed to score many marks as a result.

- (c) Set out the matters that the Trustee should consider when deciding whether to accept this offer. (8 marks)**

The offer from the bankrupt's parents to purchase the business was answered adequately on the whole, and candidates were able to demonstrate their commercial acumen in dealing with the offer, although a large number of candidates clearly applied their "corporate" knowledge and terminology to the situation which was inappropriate in the circumstances of the question (such as placing the horses into storage). The better scripts made mention of AML considerations and the requirements of SIP13, but many candidates failed to identify these potential issues. Some candidates also failed to read the question properly and recognise that the bankrupt's parents were associates as defined by the legislation and questioned their connection despite the clear statement as such in the question. Others stated that the bankrupt's husband was a highly paid F1 racing driver when clearly he was not.

- (d) From the information provided, comment on the level of income and acceptable expenditure which would be allowed when putting in place an Income Payments**

Agreement for Estelle. Outline any additional information and supporting documentation you will require. (6 marks)

When asked to comment on the level of income and acceptable expenditure, candidates mostly made a good attempt at this although too many made a full calculation based on incorrect assumptions and therefore missed the point of the question. Most candidates identified that a fair amount of further information was required to establish the level of any IPA and the further information that was required.

(e) Set out the process required to put in place an Income Payments Agreement with Estelle. (2 marks)

The vast majority of candidates were able to set out the process required to obtain an IPA and scored maximum marks; a few however mis-interpreted the question and set out the IPO process via the Court which scored no marks.

(f) In preparation for responding to Estelle, prepare a note to Ms Kansas setting out how each of these issues should be addressed and any further action you need to take. (10 marks)

The final part of the question resulted in a vast array of answers from candidates; most responses identified the key issues but failed to differentiate between fines and penalty charges for the parking offences; and also how the BBL recoveries might be treated where a dissolved company was the beneficiary, including to whom such potential misconduct should be reported. Some candidates were also concerned that the bankrupt might abscond in the Sahara desert which was a fanciful idea. It was pleasing to note however that many candidates identified that any IPA or IPO might need to be varied to take account of the potential change in circumstances from both the drink-driving conviction and the outcome of the reality TV show.

**Personal Insolvency England Exam
November 20X3
Mark Plan**

1(a) Set out the additional information you require, either from your conference call with Mr Chicago or otherwise. Explain the steps you should now take to deal with the 7 buy-to-let properties. Outline the impact that the actions of the 3 banks may have on your ability to realise your interests in the properties. (12 marks)

Obtain official copies of the registers of title and check that bankruptcy notices have been entered against title to solely owned properties. Register a restriction against any jointly owned properties.

Insurance – ensure insurance is in place (property and public liability policies required).

Check whether any urgent repairs are required to be undertaken.

Check whether there are any legal issues or complaints regarding the properties to be dealt with.

Notify the charge-holders of the making of the bankruptcy order and your appointment as trustee. Request that the charge holder provides details of the amount that is outstanding to them in order that the equity position can be determined.

Ask the bankrupt to provide you with details of the terms on which the properties are occupied through providing tenancy agreements etc together with the tenants' contact details. Check whether any of the tenants are due to vacate the properties shortly.

In respect of the solely owned properties, write to the tenants to notify them of the Trustee's appointment and in respect of the properties where LPA Receivers have not been appointed, of the need to account to the Trustee with the rental income.

Where LPA receivers have been appointed, request a copy of the valuation reports that they have obtained. For the remaining properties, obtain valuations of the properties taking into account the terms on which the properties are currently let.

Consider whether the sales of the properties could give rise to a liability to CGT (review official copies to see if these state the purchase price for the property. If not, the bankrupt should be asked to provide this information). If the potential CGT liability will be greater than the net sale proceeds that are payable to the estate, consider whether disclaimer would be appropriate.

If the properties are all let out and a rental income has been received obtain details of the bank account(s) into which the rent is paid. , check how the bankrupt has been utilising that rental income as it does not appear that he has been using it to pay the mortgage or other outgoings related to the properties.

Check whether there are any rental arrears.

If agents have been appointed to manage the properties and collect rent, notify them of the Trustee's appointment and that any rent received in respect of the solely owned properties should be paid to the Trustee.

Check whether gas/ electricity safety certificates are required and have been obtained.

Establish whether any repairs to the solely owned properties are required and if they are, the cost of those repairs.

Establish who holds the spare keys to the properties (agent, bankrupt?)

Were deposits paid when the properties were let. If they were, how much was paid and where are the deposits held (tenancy deposit scheme?) ?

Appointment of Receivers (Sleet Bank)

Provide formal notification of the making of the bankruptcy order and your appointment as trustee. Confirm that bankrupt's legal and beneficial interest in the properties has vested in the trustee and that any surplus

should be paid to the trustee. Request that the LPA receivers notify you should they subsequently leave office for any reason.

Obtain copy of the appointment documents to check that appointment is valid.

Ask for confirmation of whether the properties are tenanted. If they are, ask for confirmation that the receiver is collecting the rent and has adequate insurance in place. Is the rent sufficient to cover the amount falling due each monthly in respect of the mortgage?

Ask for confirmation of the receiver's intentions i.e. continue collecting rent or do they intend selling the properties? If it is intended that the properties be sold, ask for confirmation of the proposed marketing strategy.

If it is intended that the properties be sold, check whether the sale will generate any proceeds over and above the amount required to repay the bank.

Check whether the mortgage deed contains a consolidation clause which permits Sleet Bank to retain entire proceeds of sale (less sale costs) upon sale and until the debt due to them is discharged in full.

If the sale will not generate a surplus for the bankruptcy estate, consider whether there could be any CGT liability arising for the estate of sale. If there is, consideration should be given to disclaiming the properties ahead of the completion of any sale. The Trustee should remain in contact with the Receivers so as to remain updated on their actions.

Possession proceedings (Snow Bank)

Contact mortgage company, notify them of your appointment and request confirmation of the stage at which the possession proceedings are at and whether there are any forthcoming hearings.

A trustee cannot interfere with the rights of a secured creditor, but the trustee should ensure that if possession of the property is obtained, it is properly marketed and that the best possible price is achieved by Snow Bank in the circumstances.

Contact Mr Chicago's daughter (the co-owner). If the property is currently rented out, make her aware that the trustee is entitled to 50% of the net rental income.

The trustee should establish whether there is any equity in the property.

Ground rent/ service charge (Rain Bank)

Need to engage with Rain Bank. If Mr Chicago has not been paying the grounds rent/ service charge, has he been paying the mortgage? If there are arrears, are Rain Bank intending to take any action.

Make enquiries to establish the amount of ground rent/ service charge that is being charged each year.

Are the properties tenanted? If they are, the trustee should collect the rent. If not, take agent's advice on whether one or more of the properties could be let in order to generate a return from the bankruptcy estate. If there is equity in the properties which could be realised, the rental income could be used in discharging ongoing ground rent and service charge costs.

Establish the current equity position in the properties and decide whether steps should be taken to immediately try and realise the properties to prevent any further erosion of the equity. Whether this will be possible will depend on the terms of the tenants' occupation. This should be checked and legal advice sought if appropriate.

Is the development of a sufficient size that you could market three properties for sale at the same time? If this would diminish the likely sale cost, consider a staggered sales process but you would have to factor in the ongoing service charge when calculating equity position.

Rain Bank's terms and conditions of lending should also be reviewed to see whether they have a consolidation clause i.e. do they have a right to receive all of the net proceeds of the sale of each property until such time as their lending is repaid in full? If they do, it might only be upon the sale of the final property that there is a return for the bankruptcy estate.

Check Rain Bank's intentions regarding the properties. Is the appointment of LPA receivers imminent?

(b) What initial action should you take to safeguard and deal with the cryptocurrency? (3 marks)

Obtain further information from the bankrupt to enable you to identify: i) the nature of the cryptocurrency that is held ii) the exchange on which it can be sold and iii) how it is held (hot/ cold wallet, third party, on a registered exchange. . If it is held on a USB stick or other portable device, request that this is delivered up. Once delivered up, check that all of the cryptocurrency is held on it and ensure that it is stored safely.

If the cryptocurrency is held on a registered exchange, notify them of the Trustee's appointment and that the cryptocurrency has vested in the bankruptcy estate.

Seek specialist valuation advice to establish whether the cryptocurrency has any value and/ or is on an exchange where it can be readily realised.

Any gain is subject to tax so will need Mr Chicago to confirm the acquisition cost.

If it is worthwhile selling the cryptocurrency, then the Trustee will need to obtain the relevant public and private keys in order to secure and realise the cryptocurrency. The cryptocurrency should then be transferred to a wallet held by the Trustee

(c) Summarise the key steps that that you should take to safeguard, deal with and ultimately realise your interests in the timeshare and ski chalet. (5 marks)

Contact timeshare provider. Notify them of bankruptcy order and your appointment and request a copy of the initial contract for purchase.

Once received, review the contract to establish whether there are any restrictions on transfer or sale.

Establish whether the bankrupt purchased the timeshare with the benefit of finance. If finance was taken out, establish terms and whether it is secured against the bankrupt's interest.

Check with the bankrupt whether there is a potential claim for mis-selling.

Request details of whether there are any arrears of service or maintenance charges. If there are, it is likely that these will have to be discharged from the proceeds of sale as the consent of the management company to any sale will be required.

Obtain a specialist valuation in relation to the potential value. This will depend on the time of year that the bankrupt is permitted to use the timeshare and also the duration of time that the bankrupt is permitted to stay in the timeshare.

Advice could also be sought from a specialist timeshare resale company as to the likely market for the timeshare.

Once advice has been sought, discuss with bankrupt whether he might wish to purchase the interest or know of someone else who may wish to do so.

If there is no market for the timeshare and/ or arrears of service charge/ maintenance mean that no value will be realised through a sale, consideration should be given to disclaiming the timeshare.

Bulgaria

Ask Mr Chicago to provide you with the title documents. If Mr Chicago does not hold the title documents, ask that he provides you with the full property address, plan showing location of the property and confirms whether any charges secured against the property. If charges are secured against the property, the chargeholder's details and the amount outstanding should be requested.

The Trustee should take advice from a local lawyer in Bulgaria to see what steps would need to be taken to register the Trustees' interest against the title and ultimately realise the property if appropriate to do so (i.e. if the equity in the property after deduction of sales costs would justify sale).

If it will be necessary to first obtain recognition of the bankruptcy order in Bulgaria, obtain an estimate of the likely cost and timescale for obtaining recognition.

Also obtain local advice on the associated sales costs such as agent's fees, lawyer's fees, service charge arrears and any local taxes that would have to be paid the property were to be sold.

Discuss with the bankrupt whether he might be in a position to purchase the property or know of someone (friend/ family) who might be interested in doing so..

Check whether the property is rented out. If it is, is adequate insurance in place?

If the property cannot be realised, consideration could be given to disclaiming the property.

Question 2

(a) List the additional information which will be required for you to carry out your assessment. (5 marks)

Confirmed amount of outstanding debt. Obtain list of creditors and a copy of the last available statement etc. A credit report could be obtained to verify the information provided by Miss Denver in relation to the level of her debt.

Last 6 months of bank statements

Total monthly income and outgoings (including details of any rent paid to her mother). Request that income and expenditure statement be completed. Income verified through payslips/ employment contract

Confirmation of whether Miss Denver has any dependents.

Is there a third party who would be willing to introduce funds to enable an IVA to be proposed on the basis of the third party payment?

List of any potential assets. Could any of the designer clothes, shoes or bags be realised, with the proceeds paid into the IVA? If any of these items are new, could they be returned to reduce overall level of creditor claims?

Are any creditors threatening/ starting to take action to try and enforce repayment

Medical information to support mental health problems and to gain an understanding of current treatment

Confirmation of whether Miss Denver has been in an insolvency process previously.

(b) Set out the factors to which an Insolvency Practitioner should have regard when carrying out an assessment of whether an IVA would be an appropriate solution, together with your initial comments in relation to each factor based on the information provided by Miss Denver to date. (11 marks)

The solutions available and their viability.

IVA is not the only option here and is only likely to be viable if Miss Denver can make payments from her income sufficient to result in a return to creditors once the cost of implementing and supervising the IVA are discharged. Query whether Miss Denver will be in a position to maintain payments for 5 years and avoid any further compulsive spending .

The debtor's understanding of the process, and commitment to it

The debtor's current focus appears to be on writing off debt rather than the process itself of entering into an IVA or alternative process (if more appropriate).

Miss Denver will need to be made aware of the process and also her obligations, which, if an IVA is ultimately pursued will require her to commit to making payments for up to 5 years. Miss Denver will also need to understand the impact that entering into an IVA could have on her credit rating and ability to obtain credit in the future

Whether the debtor is subject to any factors that make them vulnerable, and if so, any necessary adjustments and, subject to the debtor's consent, an accurate record of the vulnerabilities disclosed

Miss Denver appears to be vulnerable. Will need to obtain Miss Denver's consent to record details of her medical history and discuss with her whether there are any reasonable adjustments that can be made.

Will also need to ensure that Miss Denver fully understands the process and the effects/ obligations if ultimately an IVA is put in place

Whether the debtor is likely to be able to fulfil their obligations under the terms of the arrangement for its duration

Once details regarding Miss Denver's income and outgoings is obtained, an assessment can be undertaken of how much could be contributed each month. Will need to ensure that Miss Denver understands the need to maintain contributions for 5 years and check whether she has any plans that may prevent this such as the possibility of moving out of her mother's house, a reduction in her working hours,

The likely attitude of key creditors and the general body of creditors, in particular as to the fairness and balance of the proposals

Based on the information provided, the creditors comprise credit card companies and buy now pay later companies. Creditor details should be obtained and reviewed to see which creditors are likely to be key to the approval process

Whether an IVA would have a reasonable prospect of being approved and successfully implemented

Discussions with Miss Denver will assist with understanding whether she is committed to the process and whether it is likely that she could commit to an IVA for a term of around 5 years.

Whether a breathing space or interim order is needed or available.

Miss Denver has not intimated that creditors are threatening to take action.

If they are, a breathing space moratorium could be considered to allow time to properly advise Miss Denver and implement the most appropriate course of action.

(c) Briefly comment on the potential alternative options available to Miss Denver and the appropriateness of each to her situation. (4 marks)

If Miss Denver's debt is below £30,000 and Miss Denver does not have more than £75 a month after paying for normal expenses, a DRO could be an option which could be the most appropriate as it would enable all of her debts to be written off.

Bankruptcy. If DRO is not an option, bankruptcy would involve payments for 3 years under IPO/A rather than 5 years through an IVA. Will have to ensure that Miss Denver understands the implications of a bankruptcy order being made.

Debt management plan. Unlikely to be an appropriate option if Miss Denver wishes to deal with her debts quickly in order to alleviate stress.

Do nothing. Not an appropriate option given her mental health unless Miss Denver entered into a breathing space moratorium and the intermediary wrote to her creditors inviting one of them to petition for her bankruptcy. A mental health breathing space moratorium would be an option if Miss Denver is undergoing crisis treatment.

Question 3

(a) (Case 1: Mr Seattle 5 marks)

As the principal residence of the bankrupt's spouse as at the date of the bankruptcy order, the property will be caught by s283a IA86 and the Trustee will have a period of 3 years from the date of the bankruptcy order to take steps to realise the property.

Check whether s283a notices have already been served on the bankrupt and his wife

However, we are aware that the mortgage on the property is not being paid and has not been paid for many months. Whilst the initial drive by valuation and redemption statement from March 2023 indicate that there should be equity in the property, the current equity position should be established. In order to establish the equity position, an up to date internal valuation should be obtained (assuming that the bankrupt's wife will co-operate in affording access to the property) together with a redemption statement. If an internal valuation is carried out, the valuer should be asked to confirm whether any adaptations have been made to the property.

Enquiries should also be made of the mortgagee to establish whether they have taken or intend taking any enforcement action. The mortgagee should also be asked to confirm the current position with the mortgage and whether there are any arrears following the bankrupt ceasing making mortgage payments upon the bankruptcy order being made.

If there is no equity in the property, or only minimal equity which would not justify action to take possession of and realise the property, the Trustee can serve notice on the bankrupt and his spouse pursuant to Rule 10.170 that the property will re-vest after a period of one month. Such a notice can be served where the trustee considers that the continued vesting of the property in the bankrupt's estate to be of no benefit to creditors or that the re-vesting to the bankrupt will make dealing with the bankrupt's estate more efficient.

If there is equity in the property, in order to preserve that equity steps should be taken to progress the realisation the property as soon as possible as it does not appear that the mortgage is being paid and the Trustee should not allow the equity to erode

Obtain official copies of the registered title to see whether Mrs Seattle has registered a notice pursuant to the Family Law Act 1996 which gives her the right to occupy the property and not be removed without an order of the Court.

Check the file to see whether Mrs Seattle has already asserted a claim to have a beneficial interest in the property as a result of any agreement with the bankrupt or as a result of contributions made, whether to the purchase of the property or any subsequent improvements made to it.

If not, a letter should be sent to Mrs Seattle to advise her of your duty to realise the property and to establish whether she is in a position to put forward any proposals for the realisation of the property (voluntary sale, purchase of trustee's interest)

If Mrs Seattle has asserted a claim to have a beneficial interest, review the basis of her claim and establish whether any further information/ supporting documentation is necessary in support of her claim. Once full details and all necessary supporting documentation has been obtained, legal advice can be sought regarding Mrs Seattle's claim and whether a beneficial interest could be established. If advice is obtained which indicates that Mrs Seattle has good prospects of making out a claim, the impact on the equity will have to be considered and an assessment made of whether there is sufficient equity to warrant further action.

Review the file (valuation report, notes of interview with bankrupt) to see whether there is any reference to adaptations having been made to the property to accommodate Mrs Seattle's wheelchair. If adaptations have been made, are these relatively minor or has significant changes been made? To the extent that it becomes necessary for an application for possession and sale to be made, the Court will have regard to Mrs Seattle's needs and are unlikely to require her to vacate the property unless satisfied that alternative, appropriate accommodation have been obtained.

If a letter has not already been sent to the mortgage company notifying them of the making of the bankruptcy order and that the property has vested in the bankruptcy estate, such a letter should be sent together with a copy of the bankruptcy order and evidence of your appointment as trustee. (As above)The mortgage company should be asked to confirm whether it has already taken any action to enforce its security.

(b) Case 2: Mrs Washington 3 marks)

Review case file and handover papers to see what contact details are held for Mrs Washington. If there is a phone number, email address or alternative address check whether any attempts have been made to contact Mrs Washington other than by post.

If letters have been sent to Mrs Washington were they sent by a postal service that requires the letters to be signed for? If they were, check whether Mrs Washington did sign for the letters. If not, consider sending the letters again, through a signed for postal service and see whether Mrs Washington signs for those letters.

If not, attempt to contact Mrs Washington by phone/ email. Any emails should request a delivery receipt/ read receipt.

Make enquiries of the creditors (in particular the petitioning creditor) to see whether they hold any alternative contact details for Mrs Washington. Ask petitioning creditor to confirm how and where the petition was served.

If all attempts to contact Mrs Washington fail, consider instructing an enquiry agent/ sending a member of staff to attend her address to see whether she remains in occupation (and is simply ignoring correspondence) or has moved. Enquiries could also be made of neighbours by the agent to verify occupation.

If occupation is verified, solicitors could be instructed to prepare a letter reminding Mrs Washington of her duty to co-operate with her Trustee and the consequences should she continue to fail to co-operate.

Check official copies to see whether Mrs Washington owns the property address specified in the bankruptcy petition. If the property is rented, could make enquiries of the letting agent to see if she is still in occupation and if not, whether they have her current address details.

Given that Mrs Washington failed to attend on the OR, make enquiries of the OR to establish whether an application will be made suspending her automatic discharge from bankruptcy and/ or whether the OR intends seeking an order that Mrs Washington be publicly examined. If the OR intends taking this action, ask that you be kept updated in order that you can attend any hearing and/ or submit questions to be asked of Mrs Washington should she attend the examination.

If it is established that there has been a failure on the part of Mrs Washington to co-operate and the Official Receiver does not intend proceeding with a public examination, consideration could be given to issuing proceedings seeking a private examination

Check social media postings to see whether these give any indication of Mrs Washington's current whereabouts.

(c) (Case 3: Miss York 3 marks)

Miss York has complied with her obligations for the majority of the term of the IVA.

Contact needs to be made with Miss York to understand why her contributions have stopped and also to engage with her regarding the proposed realisation of equity. These are now three months in arrears. Miss York may be unwell or have lost her job.

Contact should be attempted through all possible means including a home visit if appropriate. If contact can be made with Miss York the possibility of varying the IVA could be discussed.

The terms of the IVA should be reviewed. Miss York is already in breach of the terms of the IVA through failing to make the monthly contributions. If the Supervisor has not already done so, notice of breach should be sent to the debtor providing her with one month to remedy the breach, explain the reasons for the breach and pay such sum as may reasonably be required to compensate for any reduction in dividend caused by the breach.

The terms should be checked to determine whether the supervisor is under an obligation to present a bankruptcy petition if the breach is not rectified. If the supervisor is under a duty to present a petition, Miss York should be notified.

If the supervisor is not under a duty to present a petition, the views of the creditors could be sought regarding whether or not a petition should be presented.

Check with the Land Registry to ensure that the property has not been sold recently.

(d) (Case 4: Mr Lauderdale 5 marks)

In relation to the property and the car the initial enquiries detailed below should be made to establish whether Mr Lauderdale does have any interest in the assets (i.e. are they owned by him or simply rented/ leased).

If it is established that the assets are leased, enquiries should be made to establish who is making the monthly rental payments. If it is Mr Lauderdale's wife or partner, does she have her own source of income from which the costs could be discharged. If she has no obvious source of income, enquiries should be made to establish how the payments are being funded and whether there could be any antecedent transactions (i.e. pre bankruptcy transfer of funds or assets) that could be the subject of challenge.

Similar enquiries should also be made in relation to the school fees i.e. have the school fees been paid or are they in arrears, if they are up to date, who is paying the school fees and from what ultimate source? Check bank statements (see below) to see whether there is any evidence of Mr Lauderdale having discharged the school fees.

Obtain official copies to establish whether the property is registered in Mr Lauderdale's sole or joint name. If it is, check whether there are any charges secured against the property. If there are, obtain redemption statements and establish whether the mortgage (s) are being paid. If payments are up to date, enquiries should be made of the mortgage company and Mr Lauderdale to establish who is making the payments and the source of funds being used.

If the property is not registered in Mr Lauderdale's name, check in whose name it is registered and whether they are connected to Mr Lauderdale in any way. If the property has been transferred in the last 5 years, check Mr Lauderdale was previously the registered owner.

Make enquiries of Mr Lauderdale to establish whether the Range Rover is owned or leased. If leased, who leased the car and on what basis is he driving the car i.e. has it been leased for his sole use, or is he simply a named driver who occasionally uses the car.

Check DVLA records for details of the registered keeper.

Bank statements for all disclosed accounts should be obtained for the 5 years prior to the making of the bankruptcy order and reviewed. Do the transactions support Mr Lauderdale's assertion that he has no income? Do the transactions shown on the statements suggest that this account is Mr Lauderdale's only account? i.e. do the direct debits comprise all the debits that you would expect to see for an individual and/or are there any payments being made historically which cease in advance of or upon the bankruptcy order being made. Are there any payments which suggest he is contributing to other undisclosed assets?

If there are pre-bankruptcy transfers of funds to other accounts, details of the recipient should be sought and an explanation sought of why these payments were made.

Consider obtaining a credit reference report to see whether this discloses any additional information in relation to Mr Lauderdale's financial affairs.

Review the Liquidator's report, accounts for the various companies of which Mr Lauderdale was a director and Mr Lauderdale's tax returns to see whether there is any information as regards his level of drawings from the companies whether through salary, loans, dividends, etc and see whether all of these drawings can be accounted for.

Speak to the Liquidator to establish whether Mr Lauderdale was in receipt of funds from the company and to request details of the bank account into which payments were made.

Depending on the outcome of the enquiries set out above, consideration could be given to inviting Mr Lauderdale and/ or his spouse in for an interview.

(e) Case 5: Mr Houston 4 marks)

Mr Houston will receive his discharge from bankruptcy on 19 December 2023 unless an Order is made suspending his discharge.

The only ground on which an application to suspend his discharge can be made is non-co-operation.

The Trustee would need to file a witness statement in support of the application which evidences the non co-operation. Whilst creditors have indicated that he may not have disclosed assets, is there any actual evidence of a failure to disclose assets and/or that his answers were not truthful?

Further enquiries should be made of the creditors to see what further information can be provided in support of their assertions.

If there is evidence of a failure to disclose assets, are those assets material? i.e. failure to disclose a nominal balance in a dormant bank account or shares in a dormant non-trading company is unlikely to warrant an application to suspend.

If there is evidence of a failure to disclose assets, steps should be taken to safeguard those assets (where possible) with Mr Denver then required to provide an explanation in respect of his failure to disclose those assets. The Official Receiver should be notified of any failure to disclose assets (offence s353 IA86) and of any false statements (s356 IA86).

An order has to be made which suspends a bankrupt's discharge prior to the bankrupt receiving their discharge. There is only a limited period of time in which to decide whether the grounds for such an application can be made out. If appropriate, consideration could be given to obtaining an interim suspension of discharge.

Therefore, it would be advisable to liaise with the Official Receiver to see whether they would be prepared to make an application. If not, instruct a solicitor to review matters and advise on likely prospects of success.

If Mr Houston does receive his discharge, that does not impact upon his duty as a bankrupt pursuant to s366 IA86 to co-operate with you and provide such information in relation to his affairs as may reasonably be required. Consideration could be given to a private examination under s366 IA86 if it appears that there has been material non-disclosure.

Discharge will also not impact upon assets that have vested in the bankruptcy estate.

Depending on the extent of any non-disclosure of assets, consideration could be given to referring the matter to the Official Receiver in relation to seeking a BRO.

Question 4

- a) Stating any assumptions you make, prepare a monthly cashflow for Green Meadows for the 6-month period ended 30 September 2023. Note: ignore VAT (10 marks)

Green Meadows								
Monthly Cashflow for the 6 months ending 30 September 2023								
	April	May	June	July	August	September	Total	Layout
	£	£	£	£	£	£	£	
Income								
Block Riding Lessons	93,555	93,555	93,555			93,555	374,220	Although April camp would be received on 31 March 2023, I have included in April. I would accept either assumption.
Summer Camp				16,706	66,825	16,706	100,238	
Single Riding Lessons	792	792	792	792	792	792	4,752	Note I have deducted 1% on income line. I would also accept service charges shown as an expense.
Total Income	94,347	94,347	94,347	17,498	67,617	111,053	479,210	
Expenditure								
<i>Wages</i>								
Net wages	15,010	15,010	15,010	15,010	18,763	15,010	93,813	Uplift in August
PAYE/NIC	6,000	6,000	6,000	6,000	6,000	7,500	37,500	August uplift paid in September
Pension	570	570	570	570	570	713	3,563	August uplift paid in September
Feed	3,250	3,250	3,640	4,368	4,368	4,368	23,244	Pay for increase horses from June and price increase from July based on 30 days credit
Vet	1,500	1,500	1,500	1,500	1,500	1,500	9,000	
Vet vaccinations						1,960	1,960	28 horses
Vet dental	1,250						1,250	25 horses
Rent	20,000	20,000	20,000	20,000	20,000	20,000	120,000	
Other overheads	2,000	2,000	2,000	2,000	2,000	2,000	12,000	
Additional horses		30,000					30,000	
Tack and equipment				5,000			5,000	
Total Expenditure	49,580	78,330	48,720	54,448	53,201	53,051	337,329	
Opening Balance	2,203	46,970	62,987	108,614	71,664	86,081		
Cash inflow/(outflow)	44,767	16,017	45,627	- 36,950	14,417	58,003	141,881	
Closing Balance	46,970	62,987	108,614	71,664	86,081	144,084		
Notes								
Block Riding Lessons = (£420*250) *90% less 1%								
Summer camp per week =£375*50*90% less 1%								
Single riding lessons = £80* 10 less 1%								

Estelle Simpson				
Income				
		Annual	Provision for taxation	Monthly
Salary from Green Meadows		25,000	2,800	1,850
Retainer TV Company		6000	1200	400
Commentary Paris 2024		25000	5000	
Total Income		56,000		
Income				
Assume a monthly total income				2250
Assume a one off payment for Paris Olympics				20,000
Expenditure				
Rental				1125
Housekeeping etc single person				

(b) Explain the implications of the statutory demand for Estelle and suggest steps that she should consider taking in the circumstances. (4 marks)

An expired statutory demand allows a qualifying creditor to petition for bankruptcy if the debt owed is above £5,000.

It is not clear when the statutory demand was served, if no dispute is raised, payment made or application to set-aside issued within 21 days of the date of service, HMRC would be entitled to present a bankruptcy petition to the Court. If a petition is presented, other creditors may support the petition. If suppliers become aware of the petition, they may withdraw credit.

HMRC may also take other enforcement action such as taking walking possession of chattel assets.

Estelle should check the correspondence received to establish a breakdown of the debt due. She should find her own tax returns or if they are prepared by her accountant check if any returns have been missed.

Estelle should raise a dispute with HMRC. To do so, she needs to demonstrate what the correct sum owing is. This will probably require her to prepare and submit any outstanding tax returns to ensure that if assessments have been used to determine this debt these are corrected.

HMRC should be asked to confirm that a petition will not be presented whilst steps are being taken to establish the correct amount. If HMRC will not provide this confirmation, legal advice should be sought regarding an application to set aside the statutory demand.

The cashflow suggests that Green Meadows is a cash generative business. Before any provision for tax, it is projected to generate c£177,000 in the next 6 months which would mean that it is capable of paying off this debt during the time frame of the cash flow.

Once the correct sum that is due and owing has been established, Estelle should contact HMRC and make a proposal to settle the outstanding debt due in instalments (time to pay). The proposal should reflect that Estelle will need to provide for payment of the ongoing tax liability in respect of Green Meadows and also that timing of class booking mean that July is not a cash generative month. The proposal should be supported by a copy of the cashflow.

(c) Set out the matters that the Trustee should consider when deciding whether to accept this offer. (8 marks)

Harriet Portland has made an indicative offer for the assets of the business of £60,000 payable in instalments. As the bankrupt's mother, she is an associate of the bankrupt pursuant to section 435 IA86. Where there is a sale to a connected party, SIP13 requires an IP to demonstrate that an offer is in the best interests of creditors.

The Trustee's role is to maximise the value of the business for creditors. The sum offered would offer a reasonable dividend to HMRC but it is not sufficient to pay creditors and costs of the process in full. Given that the bankruptcy order was made relatively recently there may be further creditors that have not yet provided details of the debts due to them.

The cashflow provided for the 6 months suggest that Green Meadows is cash generative and is likely to be profitable and on the face of it there should be a value attaching to the business as a going concern.

The Trustee must consider whether they would be able and willing to continue trading to market the business for sale as a going concern. Issues include:-

The Equestrian Centre premises are owned by Estelle Simpson's parents. Is there a lease in place and what provisions are in the lease for bankruptcy. How long is left on the lease. Will it be possible to realise value for the lease?

A key attraction for customers is Estelle herself, would she be prepared to continue to work with the Trustee to trade the business to try and secure a sale;

The 6 months for which the cashflow was prepared were the summer months which may possibly be more profitable, albeit with an indoor arena this may not necessarily be the case. The Trustee would need to prepare projections for a marketing period to establish whether she could continue to trade the business.

There are a number of risks that the Trustee would have to consider including whether the animals could be well looked after with all animal welfare legislation adhered to, and appropriate safeguarding processes were in place for the wellbeing of the children receiving lessons.

The Trustee will have to ensure that funds are available to cover food, vets bills, grooming, stabling, etc. If there are no funds available with which to meet costs, the Trustee could consider selling some of the horses in order to minimise costs and raise funds.

If a sale is to proceed, it is likely to take time to complete. Who will be responsible for managing the business pending completion of the sale?

Could the Trustee obtain insurance?

The Trustee needs various information to allow her to assess the value of the business including the most recent accounts, and a copy of the lease if it exists.

The Trustee should instruct a specialist valuation of the assets of the business, including the animals and the equipment to compare it to the sum offered by the Harriet Portland. It seems likely that any goodwill is attributable to Estelle's reputation. Obtain advice on whether a higher figure could be achieved if the business was marketed on the open market.

If the position regarding the lease and the co-operation of Estelle Portland are such that selling the business as a going concern are not feasible then the Trustee should seek to maximise the recovery from the assets and at least achieve valuation.

The information provided suggests that £30,000 has recently been spent on 3 horses and £5,000 on tack and equipment. On the face of it this would suggest that as there are 28 horses in total, this offer may be low. However, an independent valuation will be able to clarify this.

Evidence of the £25,000 being available should be requested. Make enquiries as to how it is proposed the balance will be paid and whether any security will be offered as need certainty that funds will be available.

Ideally the Trustee should realise funds now and not in instalments and pressure should be applied to accelerate payment.

(d) From the information provided, comment on the level of income and acceptable expenditure which would be allowed when putting in place an Income Payments Agreement for Estelle. Outline any additional information and supporting documentation you will require. (6 marks)

Estelle has an obligation to pay her surplus income to the Trustee via an IPO/ IPA for a period of 36 months. The payments should not reduce her income below that needed to meet her reasonable domestic needs.

Obtain copy bank statements to verify Estelle's expenditure.

Where a debtor lives with a partner who is working and/ or has other sources of income, then they should also contribute to the household outgoings. If Estelle's husband fails to disclose his income then it could be assumed that he pays for 50% of the expenditure.

In order to check whether the amount payable in respect of rent is reasonable, obtain a market comparison. Obtain a copy of the tenancy agreement to verify rent.

A provision for taxation on the figures received has to be made. It is assumed that a monthly IPO/A will be set to include the monthly salary and retainer less a provision for tax.

Payment for the Olympic coverage can be claimed through a lump sum contribution under the terms of the IPA

With regard to clothing, what is reasonable will depend on the individuals' circumstances. It would be reasonable to allow additional expenditure at around the time of the Olympics which could be deducted from the additional payment she receives at that time.

Amount payable pursuant to PCP agreement seems excessive. Estelle does not need a sports car for her occupation. Can a cheaper vehicle be obtained? Obtain a desktop valuation in order. Check terms to see whether balloon payment exceeds level of equity.

No provision has been made for Estelle to repay her sister. If the money was borrowed prior to the making of the bankruptcy order, this will be an unsecured claim. If it was not, the repayments cannot be taken into account when assessing the level of Estelle's surplus income.

Now that Estelle has been made bankrupt she should not make any payment in respect of her debts and payment of £900 towards credit cards will not be required and can be paid into IPA/O.

(e) Set out the process required to put in place an Income Payments Agreement with Estelle. (2 marks)

Trustee should prepare a calculation of what he/she considers could be made available through an IPA.

The level of the proposed contribution should be discussed with the bankrupt and agreement sought. Assuming agreement is reached, a draft IPA should be prepared by the Trustee and provided to the bankrupt

An IPA must be in writing.

IPA must be put in place prior to discharge

The bankrupt should be allowed up to 14 days to consider, sign and return the IPA

The IPA comes into force once signed by the Trustee. A copy should be sent to the bankrupt once in place.

The IPA, once in force, can be varied by agreement between the parties. Discharge does not affect the ability to vary an existing IPA

If the IPA provides for payment by a third party, a copy of the IPA must be delivered to that person.

(f) In preparation for responding to Estelle, prepare a note to Ms Kansas setting out how each of these issues should be addressed and any further action you need to take. (10 marks)

Severance payment – Estelle should be notified that this is an asset of the bankruptcy estate. Estelle should account to her Trustee with this payment. Now that the annual retainer has been lost, the Trustee should consider the impact of the reduction in income on the IPA.

Payment for TV appearance – is income and would require a variation of the IPO/A less a provision for any associated costs (such as travel if met by Estelle) and tax in the period received.

Parking fines. Assuming that Estelle was issued with a Penalty Charge Notice by a local authority then the parking fine does not meet the definition of a 'fine' and the PCNs will therefore be provable debts. If the fines were issued by the police under criminal law, they will not be provable.

Potential fine following drink drive conviction. The potential fine for drink driving is not a provable debt in bankruptcy and will not be released on discharge. If a fine is imposed, it could be significant. Estelle will be required to pay that fine failing which the Magistrate's Court could take action to enforce payment. If the IPA/O is already in place, Estelle will need to make the Court aware of this. If not, query whether payment could be made in instalments, albeit this will reduce the amount that Estelle can pay through the IPA/O.

If Estelle was successful and won the Prizemoney, the terms of her contract with the reality TV show would need to be reviewed to establish the nature of the payment. If the prize money was considered a bonus payment for winning, then this could be considered income and as such recoverable through the IPA. If however it was considered after acquired property, notice would need to be served on Estelle claiming the payment as after acquired property. This payment could possibly be enough to pay creditors in full.

Questionable whether Estelle would agree to appear in the show on this basis, although it will enable her to maintain her profile and may lead to further opportunities in the future.

Student loans are not a provable debt and will not be written off in insolvency proceedings. Estelle would remain liable to repay these when/if earning above the limit for repayment. The Trustee will need to consider whether the student loans will fall due for repayment during the term of the IPA/O. As she will be earning £25,000 per annum, Estelle will be above the threshold for making payment. Allowance for the repayments to the student loan company should be made when calculating her outgoings.

BBL will be a claim in the bankruptcy which ranks as an unsecured claim. If it was obtained fraudulently then the debt may not be written off. Also Trustee should consider conduct – BRO -implications of this for Estelle.

The Trustee should request a copy of the BBL loans application for Green Meadows and supporting documentation. The Trustee is looking to establish that the information provided about when Green Meadows started trading, the turnover disclosed in the application and that it was not insolvent at 31 December 2019 were correct.

The Trustee should request bank statements to verify the statement that these funds were used to feed and care for the animals is correct.

Assuming this is verified then there may not be an issue with this loan and it will simply be an unsecured claim in the estate. However, if the loan was claimed fraudulently then it would not be written off in the insolvency process.

On the face of it, the loan claimed by the limited company is problematic because the proceeds were used to purchase a car for personal use and the company has possibly been wound up to avoid repayment of the loan.

The Trustee should report these concerns to the Insolvency Service.

The Insolvency Service are actively pursuing Directors Disqualification Actions against company directors who have fraudulently obtained or misused Bounce Back Loan funds.

Were funds used to purchase husband's car? If they were, then the trustee could seek recovery of those funds on the basis that they were used for an improper purpose. Report will have to be made to the Insolvency Service re disqualification or BRO action. The purchase of the car could also be the subject of a challenge as a transaction at undervalue pursuant to s339 IA86. Enquiries should be made to establish when the car was gifted to her husband and the value of the car at the date it was gifted.