

# **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 SCOTLAND

#### SCOTTISH 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.
4. Failing to answer the specifics of the question and simply listing generic points around areas such as Pre Packs.

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 and did not attempt to match their answers to the specifics of the question. 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 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.

## Question 1

- (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”)

Most candidates tended to focus on the process of calling the meeting rather than the proposal and practical aspects. Candidates missed most of the practical points around discussions with directors and what was required to be amended per the revised proposals.

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 with only one candidate scoring well in this question.

Generally candidates struggled with the layout and the calculations required.

The candidate who scored high, read the question carefully and understood what was being asked, was only stopped from scoring higher by some small mis calculations.

## 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)**

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. Overall this was poorly attempted.

Some candidates attempted to list practical points which were better placed in Part B.

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.

Most candidates forgot or did not attempt to list a reasoned argument for and against completing the WIP which was the fundamental requirement of the question.

In terms of the request for further key information required, a lot of candidates listed documents they required but then did not 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, and candidates were able to list good practical points.

### 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)**

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. Most candidates listed generic points and did not attempt to match to the specifics of the question. A number of candidates also answered from a buyer's perspective rather than an Administrator.

- (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 interested parties for 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.

Candidates generally answered this question well recognizing an evaluator would be required however some just lacked the knowledge of the information to provide to the evaluator.

- 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. Most candidates could list the basic options available however none attempted to explain why that option should be considered. 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 (c). 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.

**(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 one candidate 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 with most candidates drifted into providing answers which were standard Liquidation actions rather than specific points around the CVA being in place.

**(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)**

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. A lot of candidates focused on S216 and focused on this rather than looking at other wrong doing.

**(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 poorly answered most candidates no recognizing the RPS would not pay Wages/Holiday. No candidate attempted to break down the notice element or recognize that this would be reduced by working an additional month.

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

**(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 as most candidates are able to layout a basic EOS and input the basic numbers provided which gains a significant amount of marks.

No candidate was able to calculate the figures required for the Cylinders which was the more complex of calculations required.



**Corporate Insolvency Scotland 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)
	<b>Meet with the Directors to discuss:</b>
1A b	<ul style="list-style-type: none"> <li>Reasons for the Company's inability to meet the obligations</li> </ul>
1A c	<ul style="list-style-type: none"> <li>The proposed variation</li> </ul>
1A d	<ul style="list-style-type: none"> <li>The consequences if creditors do not approve the proposal (e.g. termination and winding up of the Company)</li> </ul>
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.
	<b>Check any modifications to the proposals to:</b>
1A g	<ul style="list-style-type: none"> <li>Ensure that they do not preclude a variation to the agreement</li> </ul>
1A h	<ul style="list-style-type: none"> <li>There are no other terms that need to be varied (such as minimum dividend)</li> </ul>
1A i	Obtain copies of the Company's forecasts
1A j	Review the forecasts to ensure that these are reasonable in the circumstances
	<b>Draft the revised terms of the arrangement</b>
1A k 1A l 1A m	<ul style="list-style-type: none"> <li>In relation to changes to contributions;</li> <li>Duration of the arrangement; and</li> <li>Additional Supervisor's fees</li> </ul>
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.

(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				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	ref	REVISED PROPOSAL
				£		£		£		£
<b>Contributions</b>										
	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
<b>Officeholder fees</b>										
	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)	<b>1B n</b>	(7,500,000)
Original estimate of claims	6,000,000	=7.5m/1.25	(6,000,000)	<b>1B g</b>				
Rooker								
£50k delivered before - assume included in £6m						-	<b>1B o</b>	-
£150k delivered before CVA but invoiced after - assume not included						(150,000)	<b>1B p</b>	(150,000)
£250k claim - outside limitation act						-	<b>1B q</b>	-
Total unsecured creditor claims			<b>(6,000,000)</b>			<b>(7,650,000)</b>		<b>(7,650,000)</b>
Deficit to creditors			<b>(1,515,000)</b>			<b>(7,055,000)</b>		<b>(4,094,999)</b>
P in £			<b>74.75</b>	<b>1B h</b>				<b>46.5</b>
								<b>1B</b>

## 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		
<b>Costs to complete</b>			
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 Daily pay rate = £39k / 52 / 5 = £150 per day	2A d
Cutting and Packing - wages	-3,000	Employees would need to be retained for the 2 weeks. 3 x £26,000/52 x 2	2A e
Cutting and Packing - holiday pay	-300	As above - (2/52*33) = 1.27 days x £100 = c£100 per ee	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 x 2	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 x 2	2A l
Lease costs (cutting machine)	-10,000	Assumed have to pay for 2 weeks	2A m
	-64,400		
Net realisation by completing	<b>85,600</b>		2A n
Staff costs - Assumed payable to retain cooperation rather than relying on non-adoption of contracts.			

	<b>Arguments for completion of WIP</b>
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	<b>Arguments against completing WIP</b>
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
	<b>Other key information required</b>
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

**(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)

	<b>Against quick sale in a pre-pack</b>
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
	<b>For a potential pre-packaged sale</b>
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	<p>High risk of loss of 25% of business (re leasing) impacting on profitability</p> <ul style="list-style-type: none"> <li>Aspects of the business may be subject to FCA regulation, which could impact on ability to trade.</li> <li>Administrator unlikely to be willing to sell products on 2 year leases as principal.</li> <li>If external lease providers used, these are unlikely to want to trade with an administrator</li> </ul>

3A p	Administrator will not be able to provide a 2 year warranty on goods, potentially impacting on: <ul style="list-style-type: none"> <li>the price it can charge and/or</li> <li>reducing the likelihood of customers purchasing from the company.</li> </ul>
3A q	May not be profitable trading <ul style="list-style-type: none"> <li>after administrators costs incurred</li> <li>After loss of some customers</li> </ul>
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

**(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)**

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
	<b>Provide information to evaluator (max 3 marks)</b>
3B g	<ul style="list-style-type: none"> <li>Name of purchasing entity</li> </ul>
3B h	<ul style="list-style-type: none"> <li>Names and addresses of beneficial owners of the old and new businesses</li> </ul>
3B i	<ul style="list-style-type: none"> <li>Names of directors of old and new businesses</li> </ul>
3B j	<ul style="list-style-type: none"> <li>Nature of any connection and nature of likely involvement in new business</li> </ul>
3B k	<ul style="list-style-type: none"> <li>Details of any losses suffered by the directors personally</li> </ul>

3B l	<ul style="list-style-type: none"> <li>An outline of the proposed transaction – heads of terms</li> </ul>
3B m	<ul style="list-style-type: none"> <li>Details of the proposed administrator</li> </ul>
3B n	<ul style="list-style-type: none"> <li>Latest financial information available for the Company</li> </ul>
3B o	<ul style="list-style-type: none"> <li>Value of the assets being purchased and the basis of valuation</li> </ul>
3B p	<ul style="list-style-type: none"> <li>Details of any other offers made and marketing undertaken</li> </ul>
	<b>3B g – 3B p</b>
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)
	<b>Obtain a qualifying evaluators' report:</b>
3B s	Containing a statement (regulation 7(h)) with reasons, that either:
3B t	<p>(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</p> <p>(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”)</p>
	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.
	<b>3Bs to 3B x</b>
3B y	Instruct solicitors to advise on commercial matters such as sale agreement etc

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><b>Trade out</b></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><b>Payment by directors/employees</b></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><b>Insurance</b></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><b>Recovery from perpetrator</b></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><b>CVA</b></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><b>Refinance</b></p> <p>It may be possible to find a different or additional funder to support the deficit.</p>
3C g	<p><b>Restructuring Plan</b></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"> <li>Mere presence on a website is not sufficient</li> </ul>
4B c	<ul style="list-style-type: none"> <li>Establish if an account opening form, contract or similar document agreed prior to trading</li> </ul>
4B d	<ul style="list-style-type: none"> <li>Obtain copy order from Company to Rhee and any associated terms</li> </ul>
4B e	<ul style="list-style-type: none"> <li>Obtain a copy of any order confirmation together with any associated terms</li> </ul>
	<b>4b to e</b>
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"> <li>Logistics for collection of the goods</li> </ul>
4B l	<ul style="list-style-type: none"> <li>Associated costs that the liquidators may bear in relation to assisting the creditor</li> </ul>
4B m	<ul style="list-style-type: none"> <li>Contains dangerous goods; permits/licences to move and dispose of products may be required. Does the supplier have these?</li> </ul>
4B n	<ul style="list-style-type: none"> <li>How to deal with items at customer sites</li> </ul>
4B o	<ul style="list-style-type: none"> <li>How the valve may be removed and retained/returned to the liquidator</li> </ul>
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 protection against process
4B ab	Contact and notify the SO of appointment
4B ac	Contact and notify the creditor of appointment
4B ag	Obtain details of asset being sold
4B ad	See if any surplus monies available following sale and settlement of costs
4B ae	Obtain agents advice on how to deal with asset (to be placed into auction by SO)
4B af	Execution not complete at time of CVL resolution being passed (or notice of resolution being sent)

**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.
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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	Establish if possible the extent to which the former directors are involved in the new business. <ul style="list-style-type: none"> <li>• Are they listed as directors;</li> <li>• Is there any other evidence</li> </ul>
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"> <li>• Any record of the transportation of products</li> </ul>
4B bj	<ul style="list-style-type: none"> <li>• Any accounting entries in relation to a potential transfer</li> </ul>
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
	<b>Consider any antecedent transactions</b>
4B bn	Consider whether there is a claim for: <ul style="list-style-type: none"> <li>• a <b>Transaction at an Under-value</b></li> </ul>
4B bo	<ul style="list-style-type: none"> <li>• or <b>Transactions defrauding creditors</b></li> </ul>
4B bp	Carry out further investigations: <ul style="list-style-type: none"> <li>• Is there any evidence of assets being transferred?</li> </ul>
4B bq	<ul style="list-style-type: none"> <li>• Is there any evidence of an agreement in this respect?</li> </ul>
4B br	<ul style="list-style-type: none"> <li>• Is there any evidence of a valuation or similar of any assets transferred?</li> </ul>
4B bs	<ul style="list-style-type: none"> <li>• Is there any evidence of payment being made for the assets?</li> </ul>
4B bt	Consider whether there may be a <b>Preference</b> - Was any liability extinguished by the transaction
4B bu	Consider the extent to which there could be <b>wrongful trading</b>
4B bv	<ul style="list-style-type: none"> <li>• 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.</li> </ul>

4B bw	Consider taking action against the directors for <b>misfeasance</b> / 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 £		
<b>ARREARS OF PAY</b>						
Salary		30,000	54,000	26,000		Assumed full time
Weekly		576.92	1,038.46	500.00	<b>4c a</b>	
Capped weekly (wkly cap - £643)			643.00		<b>4c b</b>	
Daily rate		115.38	207.69	100.00	<b>4c c</b>	Assumed 5 days per week
Arrears of pay	Not paid by RPS	<b>2500</b>	<b>4500</b>	<b>1000</b>	<b>4c d</b>	
						Not paid by the RPS - SSBIS v McDonagh
	Preferential	800	800	800	<b>4c e</b>	
	Non-preferential	1700	3700	200	<b>4c f</b>	
		<b>2500</b>	<b>4500</b>	<b>1000</b>		
<b>HOLIDAY PAY</b>						
Entitlement		24	30	24		
Accrued		20	25	20	<b>4c g</b>	Assumed calendar year for holidac accrual
Taken		(25)	(18)	(15)		
Remaining		(5)	7	5	<b>4c h</b>	
Value	<b>Preferential</b>	<b>(577)</b>	<b>1,454</b>	<b>500</b>	<b>4c i</b>	Not paid by the RPS - SSBIS v McDonagh
<b>REDUNDANCY PAY</b>						
Age		33	42	25		
Length of service		8	3	1		
Weeks of redundancy		8	3.5	0	<b>4c j</b>	
		<b>4,615</b>	<b>2250.5</b>	<b>0</b>	<b>4c k</b>	

<b>NOTICE PAY</b>						
Statutory		8	3	1		
Total		4,615	3,115	500	<b>4c l</b>	
Payable by RPS		4,615	1,929	500	<b>4c m</b>	
Less worked		(2,500)	(4,500)	(2,167)	<b>4c n</b>	Assumed work for liquidator reduces notice entitlement
Less Job seekers allowan	84.80 per week	(339)	-	-	<b>4c o</b>	
Paid by RPS		1,776	-	-	<b>4c p</b>	
Contractual notice		2500	13500	2000	<b>4c q</b>	
Less paid by RPS		(1,776)	-	-		
Less worked (remaining)		-	(2,571)	(1,667)	<b>4c r</b>	
		724	10,929	333		
<b>SUMMARY</b>						
Arrears of pay	Preferential - estate	800	800	800	<b>4c s</b>	
	Non Preferential - in estate	1,700	3,700	200	<b>4c t</b>	
Holiday pay	Preferential - estate	(577)	1,454	500	<b>4c u</b>	
Redundancy	RPS	4,615	2,251	-	<b>4c v</b>	
Notice	RPS	1,776	-	-	<b>4c w</b>	
	Non-pref in estate	724	10,929	333	<b>4c x</b>	

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"> <li>• Arrears of pay</li> <li>• Holiday pay</li> </ul> <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

(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	reference	Assumptions
	£		£	£		
Leasehold improvements	100,000		0	0	4D a	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	4D b	
	1,500,000		754,000	604,000		
<b>Less : Costs etc</b>						
Collection costs			-30,000	-30,000	4D c	
ROT creditor contribution to recovery costs			7,500	7,500	4D d	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)	4D e	
Invoicing of cylinders out on site once collected			80,000	0	4D f	400 x £200 - Assumption that not collected if staff not retained
Provision			(16,000)		4D g	Assume same provision as for debtors so x 80% and 50%
Staff costs		2	-10,542	0		
Liquidation cost estimate			-40,000	-55,000	4D h	Any reasonable assumption; likely to be more costs if no debt collector support
<b>Amount available for preferential creditors</b>			719,958	501,500		
<b>Preferential creditors</b>						
Holiday pay			-20,000	-20,000	4D i	
Arrears of wages			-24,000	-24,000	4D j	Assumes 30 x 800
<b>Amounts available for floating chargeholder</b>			675,958	457,500		
Bank			(50,000)	(50,000)	4D k	Pre EA debenture - no PP (0.5 for £50k in right place and 0.5 mark for identifying no PP)
<b>Amounts available for unsecured creditors</b>			625,958	407,500		

CVA Creditors		(1,000,000)	-1,000,000	-1,000,000	4D l	
Post CVA creditors		(500,000)	-500,000	-500,000	4D m	
Reduction for ROT			225,000	225,000	4D n	
Landlord	Rent arrears	(80,000)	-80,000	-80,000	4D o	
	Future rent	(320,000)	-320,000	-320,000	4D p	Assumes no mitigation
Employees	Arrears of wages		(16,000)	(16,000)	4D q	
	Other claims		-200,000	-200,000	4D r	
	Reduce for working notice		9,167		4D s	
			<u>-1,881,833</u>	<u>-1,891,000</u>		
Deficit to creditors			<u>-1,255,875</u>	<u>-1,483,500</u>		
<b>Notes</b>						
		<b>Ref</b>				
<b>1 Cylinders</b>	£					
NBV	900,000		Assumed as recently delivered cylinders cost is NBV			
ROT	(225,000)	(4D t)	300,000/400 = £750 per unit x 300 Assuming all ROT cylinders that have been located are returned			
Missing cylinders	(85,000)	(4D u)	100 x (£750 + 100 (Valve)). Assumed nil value			
Revised BV	590,000					
Recovery %	60%					
Estimated	354,000	(4D v)	in both scenarios			
<b>2 Staff costs</b>						
Joe	2,500					
Sam	4,500					
Adele	2,167					
	9,167	(4D w)	Reduce from NP claim			
Additional pay costs	1,375	(4D x)	Assumed 15% additional pay costs , Ni provision. Costs may be higher as loss of notice pay would decenterise.			
	<u>10,542</u>					
		4D y				

## JOINT INSOLVENCY EXAMINATION BOARD

### PERSONAL INSOLVENCY PAPER

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

##### General comments

The 2023 PI paper was largely focused on “mainstream” topics, including managing and realising property portfolios, the treatment of a family home, setting a DCO and preparation of a simple cashflow, most of which have been examined in recent years. This provided candidates opportunities to provide detailed and comprehensive answers and most did this confidently. Those candidates who failed did so because their responses were lacking in enough detail to give the Examiner confidence that they did understand these topics. Areas answered less well were more topical areas for example, crypto assets or the considerations for an IP when assessing whether it is appropriate for a debtor to enter a trust deed.

Overall, the quality of presentation was good and scripts were easy to mark. However, candidates still lose marks in the numerical questions for not stating the assumptions they have made or displaying their workings.

##### Question 1

This question was in 3 parts and related to your appointment as Trustee following a creditor petition to a debtor who owned a portfolio of properties. Parts (b) and (c) related to the steps which you would take to realise cryptocurrency and overseas property interests. This question was the highest scoring question in the paper in large part due to the excellent, comprehensive answers to part (a).

- (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 seven buy-to-let properties. Outline the impact that the actions of the City Council and banks may have on your ability to realise your interests in the properties. (12 marks)**

This section was answered very well with candidates on the whole being able to demonstrate a detailed knowledge and understanding of the issues they would face in a property portfolio and the steps that they would take to deal with these issues. There were conflicting responses regarding the statutory repairs notice and not all candidates recognised that while the Council could not force the sale of the property to settle this, practically it would have to be dealt with in any sale of the tenement properties.

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

This section was not answered well and it was clear that few candidates had any experience of Cryptocurrency in an insolvency situation or otherwise. Some candidates did better than others at making sensible comments in the absence of any detailed knowledge.

- (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)**

This section dealt with two overseas property interests. It was clear from the responses that candidates had limited experience of either time shares or overseas property interests and some candidates did not appear to know what a timeshare was but generally managed to make enough sensible comments to achieve a passing mark.

## Question 2

This question asked candidates to advise a debtor who had recently experienced Mental Health issues and incurred significant debt and who, having heard a radio advert, wanted to consider entering a trust deed. This question was the least well answered in the paper.

- (a) List the additional information which will be required for you to carry out your assessment. (4 marks)**

This section asked candidates to outline the additional information they would require to advise the debtor and was answered well. One candidate did note that they would need to obtain a copy of their Firm's vulnerable Person Policy. I would expect Insolvency Practitioners offering these services to know what their vulnerable person policy was.

- (b) Set out the factors to which an Insolvency Practitioner should have regard when carrying out an assessment of whether a trust deed 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)**

Candidates were asked to outline the factors they should have regard to when advising the debtor on whether a trust deed would be an appropriate solution. This is a topical issue due to the updating of SIP 3.1 and SIP 3.3. While the SIP has only recently been updated in Scotland it has not materially changed and answers would be accepted based on the requirements of either version. However, candidates had very little to say about this and marks were poor. The debtor's poor mental health and vulnerability were ignored by most candidates and only one raised the question of whether a moratorium should be considered.

- (c) Briefly comment on the potential alternative options available to Miss Denver and the appropriateness of each to her situation. (5 marks)**

Candidates were asked to outline the alternative options and this section was answered well and better than similar questions in previous diets with attempts being made to tailor the comments to the facts in the question and to make the comments constructive rather than simply a list of features of the alternative options.



### Question 3

This question asked candidates to comment on the next steps which should be taken in 5 cases which your office is administering. Overall, this question was answered well by most candidates and for those that didn't achieve a passing mark this was due to a lack of detail in the responses rather than a failure to understand the question.

**Prepare a memo for the Trustee. For each of the 5 cases, set out your proposed strategy for progressing the case during the course of the next 3 months. Where appropriate, explain what further enquiries should be made or investigations undertaken.**

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

**Mr Seattle** – dealt with the Trustee's interest in the family home and was answered well. Not all candidates dealt with the detail in the question around mortgage payments not being made or considered adaptations which may have been made to the property and the impact both on value and the timescales in which the Sheriff may grant eviction.

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

**Mrs Washington** – dealt with a debtor who had not made any contact at all. This was answered reasonably well but candidates were not all aware of the provision in the Act for the indefinite discharge of a debtor who cannot be traced.

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

**Miss York** – related to a debtor in a trust deed who had ceased making payment. This was not answered well. While some candidates did identify the ability to request her employer deduct contributions from wages, they did not comment meaningfully on what would be done in due course about the property or the debtor discharge.

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

**Mr Lauderdale** examined the steps which should be taken to investigate the affairs of a debtor who appears to have no assets or income but is living a lavish lifestyle. The marks in this section were disappointing and candidates were a bit short on ideas about how these potential discrepancies in assets/income disclosed could be investigated.

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

**Mr Houston** examined what the Trustee should do about a debtor who may not have been as co-operative as first appeared. Marks were low in this section and it is possible that candidates were simply short of time.

#### Question 4

This question related to a showjumper, Estelle Simpson, who ran a successful riding school in the grounds of her parents' estate, however, had received a statutory demand for sums due to HMRC and was subsequently sequestered. Overall, answers to this question were good, particularly in the first part, the cashflow.

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

This part of the question required the preparation of a 5 month cashflow. The cashflow was a simple one and this question was answered well, with full marks being achieved by some. Answers were well presented and cash flows clearly laid out. Some candidates lost marks by not stating their assumptions and then making errors in their calculation. The absence of workings makes it difficult to award partial marks in these circumstances.

- (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 asked to comment on the implications of the statutory demand. There were a few basic errors in the responses around the level of debt required to petition for insolvency and when a statutory demand expires which is basic knowledge for a prospective Insolvency Practitioner.

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

This section followed immediately from a Trustee's appointment to Estelle's estate and an early offer received from Estelle's parents for the moveable assets of the business. Candidates were required to think about what the Trustee's strategy should be to realise the most value for the assets and the practicalities of doing this. This required candidates to consider whether the Trustee could trade the business as a going concern to market it for sale or even market it for an immediate sale. Responses in this section were poor with some candidates not even recognising that a valuation of what the Trustee was selling would be required before an offer could be accepted.

- (d) From the information provided, comment on the level of income and acceptable expenditure which would be allowed when putting in place a DCO for Estelle. Outline any additional information and supporting documentation you will require.**

- (e) Set out the process required to put in place a DCO with Estelle. (2 marks)**

(d) and (e) Dealt with the assessment of the debtor's contribution order and the process for setting this. Part (e) was answered well, but it was clear from the answers to part (d) that candidates only had a theoretical knowledge of how a DCO should work and not a practical one.

- (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)**

Section (f) required candidates to comment on a number of issues or possible future issues which may arise in the sequestration. Answers here were not very detailed and this may have been due to time constraints.

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

**Question 1**

**General**

Ensure that inhibition has been registered against the debtor following the Award of Sequestration.

Insurance – ensure open cover insurance is in place.

Notify the secured lenders of the Award of sequestration and your appointment as trustee. Request details of the amount that is outstanding to them.

Ask the bankrupt to provide you with details of the terms on which the properties are occupied through providing tenancy agreements etc. Establish current position with leases and whether there are any arrears

Establish whether a letting agent is being used.

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. If the potential CGT liability will be greater than the net sale proceeds that are payable to the estate, consider whether abandoning any properties would be appropriate.

If the properties are all let out and a rental income has been received, 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.

Establish whether deposits for any tenancy are being held in a secure tenancy deposit scheme and if so which one.

Notify the tenancy deposit scheme of your appointment and advise that funds should not be withdrawn from the scheme without your consent.

- (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 seven buy-to-let properties. Outline the impact that the actions of the City Council and banks may have on your ability to realise your interests in the properties. (12 marks)**

**Statutory Repairs notice**

Confirm whether this is a current repairs notice or whether the repairs have already been completed and paid for. If the notice is current establish the sums still due to the Council. In practical effect a flat will be unable to be sold while there is a statutory notice in place without sums being deducted from the purchase price to pay them. This notice will not prevent the sale but the sums due need to be taken into account when calculating the equity to establish the strategy

Establish value of the properties.

Sums due to secured lender.

Sums due under statutory notice.

Whether these properties are tenanted.

CGT liability on disposal.

Assess whether there is sufficient equity to proceed with a sale and whether they should be sold together or individual and tenanted or with vacant possession.

### **Possession proceedings**

Contact mortgage company to establish 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, that they are properly marketed and that the best possible price is achieved in the circumstances.

The Trustee should confirm in writing to Snow Bank that Mr Chicago's share of any surplus proceeds should be paid to the Trustee. The Trustee should provide them with a claim form to complete if they suffer a shortfall under their security.

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

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 abandoning the property ahead of the completion of any sale.

### **Service charge**

Need to engage with Rain Bank. If Mr Chicago has not been paying the 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 service charge that is being charged each year.

Are the properties tenanted? If they are, the Trustee should collect the rent. If not, take agents advice on whether one or more of the properties could be let 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 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.

Review the terms of Rain Banks facility to establish if they are entitled to add the arrears of service charge they paid to their secured date or whether this would simply be a subrogated unsecured claim in the place of the Factor.

**(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 the nature of the cryptocurrency that is held and the exchange on which it can be sold.

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

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

Note that if no co-operation from debtor, this will be virtually impossible to realise.

Volatility in market

HMRC liability on disposal

**(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)**

**Timeshare and Bulgarian ski chalet**

**Timeshare**

Contact timeshare provider and request a copy of the initial contract for purchase.

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 property or the timeshare contract.

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.

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 abandoning the timeshare.

**Bulgaria ski chalet**

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.

If it will be necessary to first obtain recognition of the award of sequestration 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 and any local taxes that would have to be paid the property were to be sold.

Discuss with the bankrupt whether a third party might be in a position to purchase the property.

## Question 2

This question asked candidates to advise a debtor who had recently experienced Mental Health issues and incurred significant debt and who, having heard a radio advert, wanted to consider entering a trust deed. This question was the least well answered in the paper.

**(a) List the additional information which will be required for you to carry out your assessment. (4 marks)**

Copy of payslips for the last 3 months ie 13 weeks to establish average weekly income and any deductions at source;

Evidence of any other income for example benefits award

Copies of at least last 3 months bank statements to establish any additional sources of income and verify fixed expenditure.

Clarify whether Miss Denver pays board and lodgings to her mother or whether she is jointly on a tenancy agreement.

How does she travel to work clarify whether she owns a vehicle or has one on a PCP agreement;

Establish what, if any, level of surplus income Miss Denver has to pay towards her debts. Note that in a trust deed or sequestration, no contribution can be made from benefits income.

AML checks – confirm Miss Denver's identity. Obtain photo ID and separate confirmation of address via bank statement or utility bill.

Carry out a property search on the address provided by Miss Denver to ensure she does not own the property and check who does.

Establish details of any other assets owned by Miss Denver.

List of creditors and supporting statements. The debt level is important in this case as the threshold for entering the MAP process is unsecured debts of < £25,000 with no single asset over £1,000, excluding motor vehicles where the normal rules apply.

Ideally a copy of credit report to support the consumer debt due.

Credit report will also identify whether there are additional bank accounts or lending not identified through discussion

**(b) Set out the factors to which an Insolvency Practitioner should have regard when carrying out an assessment of whether a trust deed 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 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 a trust deed or alternative process (if more appropriate).

Miss Denver will need to be made aware of the process and also her obligations, which, if a trust deed is ultimately pursued will require her to commit to making payments for 4 years.

The process should be explained clearly, in jargon free language. A face to face meeting should be offered and insisted on if the IP feels it is necessary. An assessment needs to be made of whether Miss Denver understands the process and that she is committed to it. Particularly given that she is a vulnerable individual with a mental health diagnosis.



**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 is clearly 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.

For example, would Miss Denver like us to speak to a representative on her behalf or with her. We would need her consent to speak to a third party on her behalf.

Will also need to ensure that Miss Denver fully understands the process and the effects/obligations if ultimately a trust deed 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 4 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. Also consider whether she is likely to experience ongoing illness which would reduce the likelihood of the trust deed being completed successfully.

**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. Details of all creditors should be obtained and reviewed to see which creditors are likely to be key to the approval process.

Consider whether significant amounts of debt were borrowed very recently, this can be confirmed by the credit report. Recent debt may affect the attitude of some creditors to approving the trust deed.

**Whether a trust deed 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 a trust deed term of 4 years.

**Whether a moratorium is required.**

Miss Denver has not intimated that creditors are threatening to take action. Enquiries should be made during the next call of whether any creditors are starting to threaten action to try and enforce repayment.

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. (5 marks)**

**The Alternative options and the appropriateness of these**

*Offer to creditors*

Miss Denver could approach her creditors and ask them informally to accept a reduced payment in settlement of her debt. To do this she would need to establish what she could realistically afford to pay each month or whether there was a third party willing to help her.

It is difficult to predict the creditor response without asking them as this will vary from case to case and by creditor to creditor.

An informal offer would not be legally binding on creditors. Miss Denver would also require to understand that no further debt should be taken in these circumstances although there is no statutory obligation not to, unlike with a formal process.

#### *Debt Arrangement Scheme*

The Debt Arrangement Scheme would require Miss Denver to be able to repay her debts in full in a reasonable time frame. Whether this is suitable depends on the assessment of her surplus income.

Interest and charges would be frozen and she would receive protection from her creditors to do so. From the information we have it appears that Miss Denver's surplus income will not be high and therefore this option may be ruled out.

#### *Trust Deed*

Miss Denver's assets would be realised and she would be required to pay her surplus income as assessed under the CFT for a period of 48 months. Typically, depending on creditor profile, the dividend required for creditors not to object to it achieving protected status is likely to be about 10p in the £1

#### *Minimal asset process bankruptcy*

This Bankruptcy process could allow Miss Denver to be discharged within 6 months. However, the maximum debt level is £25,000 and it appears that her debt is higher than this.

#### *Bankruptcy*

Miss Denver could make an application for her own Bankruptcy. There is an application fee of £150 payable to the AIB. This would require all her assets to be realised and her to contribute her surplus income as assessed under the CFT for a period of 48 months. If she co-operated with the Trustee then she could be discharged of her debts in 1 year.

### Question 3

**Prepare a memo for the Trustee. For each of the 5 cases, set out your proposed strategy for progressing the case during the course of the next 3 months. Where appropriate, explain what further enquiries should be made or investigations undertaken.**

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

This property falls within the definition of a Family Home under section 113 (7) (a) (iii) of the Bankruptcy Act (2016) being occupied by the debtor's former spouse/or spouse. To sell the property, the Trustee needs consent of the spouse or the authority of the sheriff.

The Trustee has a period of 3 years from the date of sequestration to take steps to realise the debtor's solely owned property which has vested in the Trustee.

We are aware that the mortgage on the property is not being paid and has not been paid since March 2023. It is important to establish whether there is any equity in the property that could be realised for the benefit of creditors.

If a letter has not already been sent to the secured lender notifying them of the making of the Award of Sequestration and that the property has vested in the bankruptcy estate, such a letter should be sent together with a copy of the Award and evidence of your appointment as trustee.

Obtain an updated redemption statement from the secured lender. Establish the rate at which arrears are accruing. Clarify if the secured lender have or intend to take any steps to repossess the property.

Check whether the Trustee has put the Secured lender on notice of an intention to sell. If they have not and the secured lender has taken steps to repossess then there is nothing the Trustee can do to prevent this.

Prior to raising any legal action it would be prudent to seek an internal valuation of the property as the current valuation is only a drive by. If Mrs Seattle will not consent to a valuation then an application to the Court would be made for access.

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 then the Trustee could accept a nominal payment and abandon their interest in the property.

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.

Review the correspondence from Mrs Seattle to establish whether she is making any claim against the property from 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 can put forward any proposals for the realisation of the property (voluntary sale, purchase of trustee's interest). This should reflect the most up to date prior correspondence. Whilst it would be your preference to reach an agreement with Mrs Seattle, you need to be clear that if no proposal is forthcoming that it will be necessary for the Trustee to raise an action for possession.

Prior to raising an action you should consult with solicitors and also consider how the costs of the action should be funded. Litigation funding may be available.

You should also submit an Appendix L to the Accountant in Bankruptcy to secure their consent prior to raising legal proceedings.

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 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 has been obtained.

The Capital gains tax position should be considered if the property is to be sold, however, it is likely that the property will fall within the Principle Private Residence exemption and no CGT will be payable.

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

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

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

Make enquiries of the creditors to see whether they hold any alternative contact details for Mrs Washington.

If all attempts to contact Mrs Washington fail, consider instructing an enquiry agent 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 debtor cannot be traced – Section 141 Deferral of discharge where debtor cannot be traced within 8 to 10 months of the date of sequestration. This would mean that discharge could be deferred indefinitely.

If the tracing agents are confident that the debtor is resident at the address provided and therefore simply ignoring you the debtor should not be discharged under section 137 and you should consider application to the Sheriff Court under Section 215 – Debtor to Co-operate with Trustee, to compel the debtor to co-operate with you.

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

Miss York has complied with her obligations to contribute her surplus income for the majority of the term of the trust deed.

Contact needs to be made with Miss York to understand why her contributions have stopped and to engage with her regarding the proposed realisation of equity. Miss York may be unwell or have lost her job and if so then it may be possible that she does not have to make payment of the arrears of contributions which have arisen.

Miss York should be asked to provide evidence of this or make payment for the remaining 48 month period.

Check the file for details of her employer and whether we have asked Miss York or failing which her employer directly to deduct her contribution from earnings.

The terms of the Form 1 B should be reviewed. It is likely however that Miss York has agreed to make payment of a sum by a defined date and if this is not done then the agreement reached in the Form 1 B will not stand and the Trustee will have to establish what the current equity in the property is and deal with it, which depending on the sum involved could require an action for possession to be made.

It is obviously in Miss York's interests to make payment in the terms of the Form 1 B.

If Miss York fails to make contact and to meet her obligation to contribute her surplus income and adhere to the agreement in the Form 1 B, then application should be made to the AIB for the Trustee to withhold the debtor's discharge.

**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?

Obtain a title search 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.

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.

If Mr Lauderdale will not co-operate in this respect a copy of his credit report should establish if there is any outstanding finance or alternatively an agent will be able to perform an HPI check to confirm whether the vehicle is free from finance.

The DVLA will if necessary be able to confirm whose name the V5 is in although this is not definitive proof of ownership.

Bank statements for all disclosed accounts should be obtained 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 sequestration.

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.

Check the credit report for evidence of additional accounts and write to all of the main UK clearing accounts to identify any accounts in Mr Lauderdale's name.

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.

Write to the Liquidator to request details of the Bank account to which any payments to Mr Lauderdale were made.

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

The Accountant in Bankruptcy can grant the debtor's discharge at any time 12 months after the Award of Sequestration, which in this case would be 28 March 2024.

The Trustee must without delay, 10 months after the Award of Sequestration (ie shortly after 28 January 2024) send a report on the debtor's conduct and financial affairs to the Accountant in Bankruptcy and their recommendation about whether the debtor should be discharge or not.

A copy of this report should also be sent to the debtor and all known creditors.

If the Trustee can substantiate that the debtor has not made a full disclosure then they should report this to AIB and not recommend discharge.

AIB will then decide whether to discharge the debtor based on the information provided. The debtor would have the right to appeal this decision.

The Trustee would need to be able to support 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 Houston then required to provide an explanation in respect of his failure to disclose those assets.

If Mr Houston does receive his discharge, that does not impact upon his duty as a bankrupt pursuant to s215 of the Bankruptcy (Scotland) Act 2016 to co-operate with you and provide such information in relation to his affairs as may reasonably be required.

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

**Question 4**

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

Green Meadows								
Monthly Cashflow for the 6 months ending 30 September 2023								
	April	May	June	July	August	September	Total	Layout
	£	£	£	£	£	£	£	
<b>Income</b>								
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. 3 marks in total for income/service charge calculation.
<b>Total Income</b>	<b>94,347</b>	<b>94,347</b>	<b>94,347</b>	<b>17,498</b>	<b>67,617</b>	<b>111,053</b>	<b>479,210</b>	
<b>Expenditure</b>								
<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	
<b>Total Expenditure</b>	<b>49,580</b>	<b>78,330</b>	<b>48,720</b>	<b>54,448</b>	<b>53,201</b>	<b>53,051</b>	<b>337,329</b>	
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	
<b>Closing Balance</b>	<b>46,970</b>	<b>62,987</b>	<b>108,614</b>	<b>71,664</b>	<b>86,081</b>	<b>144,084</b>		
<b>Notes</b>								
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 sequestration. In this case HMRC are a qualifying creditor as they are owed more than £5,000.

It is not clear when the statutory demand was served, if no dispute is raised or payment made within 21 days then HMRC would be entitled to present a bankruptcy petition to the Court.

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.

The cashflow suggests that Green Meadows is a cash generative business. Before any provision for tax, it is projected to generate c£142,000 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.

Estelle should contact HMRC urgently and make a proposal to settle the outstanding debt due in instalments. The proposal should reflect that Estelle will need to provide for payment of the ongoing tax liability in respect of Green Meadows and that timing of class bookings 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 by an immediate lump sum and subsequent payment.

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.

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.

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 valuation of the assets of the business, including the animals and the equipment to compare it to the sum offered by the Harriet Portland.

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.

Ideally the Trustee should realise funds now and pressure should be applied to accelerate payment.

If the offer is to be accepted then proof of funding for the initial payment and evidence of the investments being liquidated should be obtained.

**(d) From the information provided, comment on the level of income and acceptable expenditure which would be allowed when putting in place a DCO for Estelle. Outline any additional information and supporting documentation you will require.**

Estelle has an obligation to pay her surplus income to the Trustee via a DCO for a period of 48 months.

Estelle's surplus income should be calculated with reference to the Common Financial Tool which provides a method of assessing Income and Expenditure.

The Common Financial Tool Guidance recommends that where a debtor lives with a partner a full household budget be prepared. However, where in this instance the debtor does not know their partner's income, their income can be used and 50% of the fixed expenditure applied along with a single person allowance.

A provision for taxation on the figures received should be made.

It is assumed that a monthly DCO will be set to include the monthly salary and retainer less a provision for tax.

A variation to the DCO will be made when payment for the Olympic coverage is made to vary the payment for that period.

The monthly PCP payment of £737 is high in the context of monthly after-tax income. However, handing the car back now could crystallize an early settlement claim from the finance company whereas if the end of the agreement is reached then the car will probably be recovered in lieu of the balloon payment and no claim will arise. Estelle will require some kind of vehicle to get to work and therefore there will be some level of monthly cost on an ongoing basis. A copy of the PCP agreement should be obtained and an agreement reached with Estelle regarding the vehicle which will maximise the recovery for all creditors based on the impact on DCO payment/creditor claims.

The sum suggested by Estelle of £750p/m for clothes and make up will breach the maximum allowance for a single adult under the CFT for "other expenditure". It is suggested that additional reasonable expenditure would be permitted around the time of the Olympics which could be deducted from the additional payment she receives at that time and in the meantime the total allowance for other expenditure not be breached.

No provision should be made for Estelle to repay her sister. This will be an unsecured claim.

Now that Estelle has been sequestrated she should not make any payment to her debts and payment of £900 will not be required.

Refer to supporting calculation on attached spreadsheet. Estelle has a monthly after-tax income of £2,250 with the potential for a one-off variation to be made for her Olympics income. Her fixed costs are rent of £1,125 and currently the PCP at £737. This leaves £388 per month to cover her food/phone/clothing costs and generate a DCO.

**(e) Set out the process required to put in place a DCO with Estelle. (2 marks)**

The debtor's income and expenditure must be assessed using the Common Financial Tool and an assessment made of the Surplus income they have available to pay to their sequestration under a Debtor Contribution Order ("DCO"). The period of the DCO would normally be 48 months.

In a creditors' petition the Trustee must send their proposals for a DCO to the Accountant in Bankruptcy (AIB) within 12 weeks of the Award of Sequestration

The AIB will set the DCO and advise the Trustee and the debtor of this.

Any interested party can apply to the AIB for a review within 14 days of the order being made and if dissatisfied with the outcome, can appeal to the Sheriff.

Under section 95 of the Act, the Trustee can vary or quash the DCO following a change in circumstances of the debtor.

**(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 – Unless any element of the severance payment relates to statutory redundancy, which would be considered income, Estelle should be notified that this is an asset of the bankruptcy estate and she should account to her Trustee with this payment

Payment for TV appearance – is income and would require a variation of the DCO less a provision for Tax in the period received.

Parking fines. Assuming that Estelle was issued with a Penalty Charge Notice by a local authority/private landowner then the parking fine does not meet the definition of a 'fine' which would be due to the Crown. The PCNs will therefore be debts in the sequestration which would be discharged in the normal way. If the fines had been issued by the Police following criminal conduct and are due to the Crown they would not be written off.

Potential fine following drink drive conviction. The potential fine for drink driving would be due to the Crown and will not be written off by the Bankruptcy. If a fine is imposed, it could be significant. Estelle will be required to pay that fine failing which the Court could take action to enforce payment. If the DCO 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 DCO.

If Estelle was successful and won the Prize money, 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 a variation of DCO. Alternatively, if it was an asset it would vest in the Trustee under the acquirenda provisions. This payment could possibly be enough to pay creditors in full depending on realisations from Green Meadows and the DCO.

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 will not be written off in insolvency proceedings. Estelle will 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 DCO. 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.

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.