JOINT INSOLVENCY EXAMINATION BOARD SCOTLAND

SENIOR MODERATOR'S COMMENTS ON THE NOVEMBER 2021 SITTING

Introduction

This report is written following the publication of the results of the November 2021 sitting of the Joint Insolvency Examination ("the Examination"). It should be read in conjunction with the reports prepared by the examiners for the two papers in England and by their counterparts in Scotland.

Following the 2020 sitting of the Examination I prepared a lengthy report which set out in some detail what candidates needed to do to succeed in passing the Examination or any paper comprised in it. This year I propose not to repeat much of what I said in my previous report, but I urge all candidates and those helping them in their studies to pay close attention to what is said in the 2020 report. It is as applicable now as it was a year ago.

How candidates fared in 2021

I was pleased to see that, for the two papers set according to English law, there were improvements in some of the key indicators. There was a 27% increase in the overall number of candidates and a greater number of candidates were successful in passing either one or two papers. In Scotland, the very low number of candidates makes year on year comparisons difficult, but the number of those passing at least one paper was commensurate with 2020. The less good news is that the percentage of candidates who unfortunately did not pass any of the papers that they attempted continues its upward trend. Over the past four sittings of the Examination, on average 53% of candidates did not pass any paper. The figure for the 2021 sitting was 60%.

Away from the statistics, the examination team and I welcome that fact that at least some candidates appear to have taken heed of the detailed comments in my 2020 report. However, I have continuing concerns about how some candidates approach questions.

One theme of my reports in recent years, and highlighted in my 2020 report, is the continued tendency of some candidates to adopt what I have called the checklist approach. By this I mean answering questions by rote, setting out information learned during studies in a mechanical way without ensuring that the question context requires this to be done. The Examination is very largely comprised of questions based on practical scenarios which require focussed practical answers. Regurgitation of long lists of what has been learned while studying or through practical experience often misses the point, in part or entirely, and does not give the examination team any confidence that a candidate has appreciated the issue in hand and has identified the solution. Even when candidates succeed in making relevant points, if they have done this by taking the checklist approach and have happening upon mark-worthy points along the way, it will usually be obvious to the examination team that this is so and it can be difficult to conclude that the candidate really knows what they are doing.

In the reports issued this year by the four examiners, there are a number of examples where the checklist approach has not served candidates well. In question 2a of the corporate insolvency paper, the fact that the scenario (a merger of two insolvency firms) gave rise to ethical issues was clear, but too many candidates saw this as an opportunity to write widely about ethics and not to focus just on those ethical issues which arose in the circumstances described. In question 4e of the same paper some candidates saw a reference to retention of title as an opportunity to write extensively on the subject although the question was narrow in scope. There were no marks for discussing the process that would be needed to establish whether an all monies clause existed, or even for suggesting that enquiry about this should be made, when the question clearly stated that the existence of such a clause had already been established.

In question 1a of the personal insolvency paper candidates were asked to deal with five tenanted properties owned by the bankrupt and specifically to list the information that the bankrupt should be required to provide in relation to these. Rather than concentrate on what was asked for, a number of candidates thought it appropriate to widen their answers by wondering whether any other such properties existed or by referring to the bankrupt's own private residence when it should have been clear from the question that no such assets existed. In question 2 of the same paper candidates were told that a creditor was owed money respect

of steel supplied. This led a number of candidates to raise retention of title and to write about the possibility of the creditor recovering money by exercising their rights in this direction, despite the bankruptcy having started over three years previously.

The issues highlighted in the foregoing two paragraphs are not only examples of where candidates alight on a subject and decide to write about extensively, perhaps in circumstances where this is not required, but they are also examples of candidates not thinking clearly. This in turn leads to an increasing worry which is that candidates are writing comments or answers that could not ever apply in the circumstances.

By way of further examples, in question 1a of the personal insolvency paper too many candidates discussed section 283A, a provision which is concerned with a property which is the sole or principal residence of the bankrupt or his family. The question was about tenanted properties. In question 3a of the same paper, a number of candidates discussed contracts with customers, and whether they included insolvency clauses and retention of title when the individual concerned was a self-employed painter and decorator. In question 4a of the same paper, which asked candidates to set out the steps that they would take to protect and realise the assets identified, some candidates thought that it would be appropriate to employ agents to value a business which had been totally destroyed by fire some time earlier or to discuss whether a yacht owned by the bankrupt would be property that was necessary to meet his or his family's basic domestic needs.

Examples could also be found in answers by candidates sitting the corporate insolvency paper. In question 2c, where money had been received from an account in the Isle of Man, a number of candidates discussed whether the Isle of Man could, in effect, be trusted or not. One candidate concluded that the Isle of Man is generally considered a safe offshore jurisdiction, whilst another dismissed it as a tax haven where money laundering activities can be based. In question 4 candidates were not told the nature of the company's business as this was not relevant. This did not stop one candidate concluding that, as the holder of security over the company's assets was a Mr. Fish, the company operated in the fishing industry.

It would be easy to dismiss the examples given above as one-offs or aberrations. That would be to miss the point, which is that there are too many instances of candidates who do not focus on the question that has been set but appear to get distracted. It is not clear why this is, but, particularly in the personal insolvency paper, some candidates appear not to possess the real live practical experience that would equip them with the depth of knowledge that would enable them to hone in on the specific issues being examined.

This conclusion is supported by the continuing tendency of some candidates sitting the personal insolvency paper to bring to their answers practice which is clearly rooted in corporate rather than personal insolvency. Practical experience gained in one form of insolvency will sometimes have application elsewhere, but such experience is not always transferrable and, even if it is, some adaptation is usually required. In question 1 of the personal insolvency paper, a number of candidates referred routinely to leases (as opposed to tenancies) and considered that locks could or should be changed. Importing corporate insolvency practice into an answer to a personal insolvency question without due care is a clear indicator that the candidate concerned may not have, and certainly has not demonstrated, the necessary levels of practical experience in and knowledge of personal insolvency.

I end by reiterating that candidates and those helping them should continue to have regard to all the issues set out by me in my report following the 2020 sitting of the Examination. The two points that I wish to emphasise following the 2021 sitting are firstly that candidates would be very well advised to read the questions and their requirements very carefully and plan their answers. Time spent doing this rather than diving straight in and writing at length to limited or even no effect (the checklist approach) should be well rewarded. Secondly, and this too should be helped by time spent on planning, candidates must remain focussed and ensure that their answers are relevant to the question and do not contain irrelevancies or points which are technically wrong, which lack common sense or which could never be applicable in the context of the particular question.

JOINT INSOLVENCY EXAMINATION BOARD

CORPORATE INSOLVENCY PAPER

EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2021 SITTING

General comments

As we have highlighted previously many candidates fail to set out the basis of their calculations and as such it is not possible to establish how they have arrived at their answer and award marks accordingly. Candidates are reminded that whilst the current electronic system used during the exams has a spreadsheet function the markers do not have access to the underlying calculations.

Despite comments made in previous years' examiner's reports there was frequent use of the phrase "Take legal advice" without any specific additional information. Whilst there may be situations where seeking legal advice is appropriate, in order to achieve a mark candidates have to be specific as to what they require legal advice on and be in relation to a matter that an Insolvency Practitioner could not be realistically expected to know the answer to.

Again, candidates should read the question and tailor their answer to the circumstances of the question. Candidates should answer the question being asked, but have a tendency (as above with the legal advice comment) to simply list everything they know on a topic and not break down what is being asked.

Question 1

The first question set out a draft declaration of solvency and provided candidates with notes relating to the situation. Generally the question was well answered.

In both parts of the question there was evidence that candidates had not fully read the question raising queries or making assumptions that were explicitly set out in the question.

Requirement

(a) Comment on the draft Declaration of Solvency, setting out any adjustments you would make. Prepare a revised calculation for your next meeting with the Directors, clearly stating any reasonable assumptions that you have made.

For the first part of the question candidates were asked to present a Declaration of Solvency, adjusted to the facts given within the question itself.

Candidates seemed to understand the different elements of a DoS on a basic level but not beyond. One really good answer. Debtors seemed to be the main issue and calculating the factored element. Nobody dealt with VAT well.

On numeric questions we would suggest that as a general principle candidates should use measurement units that match those set out in the question. In this question the numbers were set out in £ however a number of candidates adopted £'000 as their preferred unit. Given the quantum involved this was not appropriate and resulted in figures being rounded, which in some cases made it more difficult to follow calculations and award marks.

Some candidates wasted time providing general information regarding the MVL process and client take on issues.

(b) Set out the possible options to deal with this change of circumstances and explain the associated consequences for the Company and Holly.

Additional information was provided in this part of the question, which stated that one of the directors was no longer able to repay their loan account. As a consequence, the company was no longer balance sheet solvent and candidates were expected to outline the consequences on both the company and the director.

On the whole, this was poorly answered with the main issue being candidates failed to identify solvency depended on DLA.

Question 2

State the practical and legal steps that you should take to address the following matters.

This question was made up of 4 different unconnected short scenarios where candidates were expected to set out how they would deal with the situation.

There was significant variability in the quality of answers across the different subject areas and many candidates simply repeated back the facts of the situation rather than answering it.

(a) Your Firm has recently merged with a local competitor. You have identified several insolvency cases where the newly merged firm is now acting for different stakeholders.

In this scenario candidates were expected to outline the ethical issues associated with a firm merger where there was a potential for conflicts. No candidate identified the fact that you treat the merged practices as one for purposes of assessing threats.. Very few identified need to discuss with stakeholders or resign if conflict identified.

A number of candidates set out a lot of general points around ethics rather than addressing the particular circumstances.

(b) You have recently received a bank transfer of £55,000 from a sole trader who is a debtor of a company of which you are Liquidator. The money was transferred from an Isle of Man bank account. The sole trader has now contacted you to explain that they have overpaid the amount due by £50,000 and has requested that you refund the money to a different company bank account held in Scotland.

For this part candidates were provided with a scenario where a customer claimed to have paid too much. Whilst the majority of candidates identified that there was a potential money laundering issue very few thought to check the amount owed to determine if it was an overpayment.

Generally, candidates did ok on this question however there was very little content around client due diligence.

(c) The sales manager of a company where you act as Administrator has informed you that he is unable to locate an expensive company laptop that he had been using recently.

In this scenario there was a potential missing laptop. The majority of candidates identified that there could be data protection issues connected to the problem and were able to come up with action points that should be taken.

Several candidates appeared to immediately jump to the conclusion that the sales manager was failing to deliver up the laptop and covered in detail the Section 234 and 235 actions that could be taken in relation to this. A small number of candidates also considered steps that should be taken to deal with a missing or stolen asset but most focused on the potential data protection issues.

(d) A company over which you have recently been appointed as an Insolvency Officeholder is part of a VAT group.

This was a short question testing candidates general knowledge as to what actions should be taken should they be appointed in connection with a company that is within a VAT group. Whilst this is not a particularly uncommon situation many struggled to identify more than a couple of valid points beyond the basics and there was no real grasp of VAT on an insolvency group scenario.

Question 3

For this question candidates were expected to produce an outcome statement, albeit in a slightly different context to a normal insolvency situation.

(a) To assist the Bank in its decision as to whether to accept the offer, calculate and set out the upper case and lower case values that the Bank should expect to recover if the Company was to enter Administration.

This section accounted for the majority of marks and was a numeric question. Generally candidates were able to complete the outcome statement and include the basic elements. A significant proportion took the outcome statement down to an unsecured, non-preferential creditors level, which was not required as the question asked only for the outcome for secured creditors. A lot of candidates forgot to summarize the recoveries for the Bank.

(b) Summarise the key issues and risks in relation to achieving a sale of this particular business as a going concern.

This sought out the key risks and issues associated with selling a garden centre as a going concern. The question was answered well by a small number of candidates, with one scoring full marks, but generally many struggled to identify more than a couple relevant points and instead listed points that were not relevant to the circumstances. Overall it appeared that candidates struggled with this part of the question.

Question 4

There were 5 parts to this question.,

(a) Set out a deficiency account, reconciling the December 2020 position to that shown by the statement of affairs as at 13 October 2021.

Candidates were asked to set out a deficiency account and the majority of candidates struggled with this, with only one candidate calculating the stock position correctly.

(b) Explain the purpose of the deficiency account and the reconciliation adjustments contained within your answer to Requirement 4(a).

Whilst most candidates were able to pick up some marks explaining the purpose of a deficiency account, there appeared to be a lack of depth of understanding.

(c) In relation to the loan provided by Mr Fish and its associated security, explain what matters you would need to consider in relation to its validity and provide a list of information you would seek in this respect.

This part was effectively asking candidates to identify issues associated with a loan provided to the company by a third party. Given that on cases where there is to be a distribution to a secured creditor candidates will most likely have obtained a security review, it was a bit disappointing as to the depth of knowledge as to what matters would be subject to review. Most candidates identified the potential issues regarding avoidance of floating charges but many could not think of any other points. In some cases, candidates spent time detailing how they would obtain information, covering topics such as the directors' duties to co-operate with the office holder.

(d) For each of the categories of assets shown in the statement of affairs, set out the steps you would have taken in the first two days following your appointment to preserve and/or protect their realisable value.

This part was answered well overall with most candidates able to identify steps that would be taken to protect the company's assets.

(e) Set out the information you would now seek to establish the validity of Cichlid's reservation of title claim and explain why, in these circumstances, this is required and/or relevant.

Candidates struggled with this reservation of title claim question and a significant proportion wasted time explaining the concept of all monies clauses and incorporation despite the question stating that these issues had been resolved. In addition, a number set out the process that would be undertaken to establish the validity of the claim rather than focusing on the information required.

Where candidates did identify valid points in relation to information required many failed to explain why they wanted that information. One of the aims of this question was to establish whether candidates understood why they ask for documents/information, and whilst some candidates demonstrated they did, many simply listed rather than explained. Candidates who scored well answered specific to the circumstances.

Corporate Insolvency Exam
November 2021
Mark plan

Question 1a

Declaration of Solvency for Romilysur Limited as at 31 October 2021

		Question	Adjustment	Answer	Assumptions
Assets		**£**	**£**	**£**	
ASSETS SUBJECT TO A FIXED CHARGE/ASSIGNMENT					
Debtors					
Factored debts	60%	54,000		54,000	60% factored
Amount owed to factoring company	75%		(40,500)	(40,500)	75% advance rate
Notice costs			(6,000)	(6,000)	£2,000 per month (assumed VAT recoverable).Could be entered as £7,200 with VAT recoverable elsewhere.
		54,000	(46,500)	7,500	
Hire Purchase					
Motor vehicles			40,000	40,000	Asset of the company (£20,000 x 2)
Amounts payable to HP Company			(10,000)	(10,000)	£5,000 x 2
		-	30,000	30,000	
UNCHARGED ASSETS					
Cash at bank		105,000	-	105,000	Per question
Debtors ledger		36,000	(36,000)	-	All non-factored debts to be credited as event not taking place
Cash deposits		5,600	(5,600)	-	Repay to customers. Assumed as kept separate these are Trust monies. (Alternative presentation could be an asset and liability)
Event deposits		-	15,000	15,000	Receive 75% of deposits paid
Director's loan account		-	56,000	56,000	Is an asset of the company
VAT relief on debtors			6,000	6,000	VAT on non-factored debts written off
Shares in subsidiary			-	-	Assumed nil value
Estimated realisable value of assets		146,600	35,400	182,000	

LIABILITIES

Dilapidations		35,000	35,000	Per question
Trade creditors	110,000	(12,500)	97,500	Assume £12,500 is kept in as a contingent liability (see below)
Contingent liability		12,500	12,500	Contingent liability for event space
Insurance excess		10,560	10,560	12% is the greater amount. Alternative presentation may be an insurance asset and liability
Intercompany creditor		4,900	4,900	Amount outstanding to Miniromi less management fees (3 x £750 plus VAT) (£7,600-£2,700). Assumed no VAT group
HMRC (VAT payable in relation to management invoices)		450	450	3 x £750 x 20%
Estimated unsecured liabilities	110,000	50,910	160,910	
Estimated costs of the winding up	-	12,500	12,500	Candidate to make sensible suggestion, assumed VAT recoverable.
Estimated amount of interest accruing	-	9,192	9,192	IR5.1 (g) interest accruing until payment of all debts in full. 8% on outstanding creditors (exc dilapidations and insurance excess). Assume include contingent liability. 1 year
Total costs	**-**	**21,692**	**21,692**	
Estimated surplus after paying debts in full	**90,600**	**(53,702)**	**36,898**	

Question 1b

• Estimated surplus from MVL and solvency relies on repayment of this debt
• Deficit of £19,102 without the loan account • £9,910 excluding interest
• As such Company appears insolvent
• Proposal for Holly to purchase vehicle – unlikely to be possible but assume value achievable by sale to third party.
• Even if contingent liability does not crystallise
• DLA or a proportion of it could be paid over time if retirement income and expenditure allows. o If realistically can be paid within 12 months an MVL maybe possible o Potential risk in signing the Declaration of solvency if uncertain
• Brother could step in to cover the loan repayment to allow an MVL to continue
• Informal negotiation with creditors may be possible – agree full and final settlement with element of debt write off
• Creditors Voluntary Liquidation likely to be the key alternative insolvency option available
• A 'full and final' CVA could be considered to deal with the situation
• Compulsory liquidation a possibility if creditors pursue their debts
• Company may have to formally seek repayment of the director loan
• Risk of sequestration
o But cost v benefit to estate given no assets?
• Insolvency process of company may provide a longer period of time to repay the debt
• If income and expenditure allows, an Trust Deed may deal with the personal debt position
• Non-repayment of DLA creates personal tax charge for Holly
• Costs of a CVL likely to be higher than an MVL
Where DOS remained solvent based on candidates answer to part (a)
• DLA could be distributed in specie
• If distributed in specie Holly would owe nick for his share of the loan distributed
• Or shareholders could agree for DLA to be distributed to Holly, and Nick could receive an equivalent value
• Alternatively, Holly could raise funding to repay the loan and then repay part of this through the funds distributed to shareholders
• Holly to consider tax implications of the distribution in specie

Question 2a

• Per Insolvency Code of Ethics guidance on practice mergers: Where *practices* merge, they should subsequently be treated as one for the purposes of assessing threats to the fundamental principles.
• At the time of the merger, existing *insolvency appointments* should be reviewed and any threats identified.
• *Principals* and employees of the merged *practice* become subject to common ethical constraints in relation to accepting new *insolvency appointments* to clients of either of the former *practices*.
• However existing *insolvency appointments* which are rendered in apparent breach of the Code by such a merger need not be determined automatically, provided that a considered review of the situation by the *practice* discloses no obvious and immediate ethical conflict.
• If there is an obvious and immediate ethical conflict, then need to consider options – is the issue/risk capable of being mitigated do you need to resign from an engagement
• Carry out review and identify how the risk could be mitigated to an acceptable level
• Discuss with major creditors/stakeholders involved in the matters to identify whether there is a conflict.

Question 2b

• Confirm amount is actually an overpayment. If it is consider money laundering
• Money Laundering Regulations 2017: Potential money laundering offence, as funds' identity could be changed so that the proceeds (repayment of the £50k) appear to originate from a legitimate source
• Liquidator should carry out customer due diligence and monitor business relationships of insolvent companies, such that any transactions i.e. the settlement of debts by customers, is consistent with the Liquidators knowledge of that debtor, his business and risk profile. Consider if this request is consistent with the debtor's profile.
• If money laundering is suspected the Liquidator and/or case staff should make a Money Laundering report to the Firms' Money Laundering Reporting Officer (MLRO)
• The MLRO in turn will consider that report in light of any relevant information that is available to the Liquidator and determine whether the information gives rise to a knowledge or suspicion of money laundering. Where it does, the MLRO should report the matter to the Serious Organised Crime Agency
• Failure to disclose knowledge or suspicion of money laundering is an offence
• Should a report be made, care must be taken not to tip the potential money launderer off (an offence)
• Having made a report to SOCA, no action that could assist the launderer or otherwise constitute money laundering must take place for seven working days, unless SOCA gives consent for it to go ahead
• If funds are to be remitted only do so to the original account

Question 2c

• Establish the last known location of the laptop
• Consider if there is any physical security such as CCTV
• Report laptop stolen to the police
• Establish what information is on the laptop
• Consider if the information that would be on the laptop is something that the sales director may be withholding
• Notify the insurers
• Establish if the company has a data breach plan and procedures.
• Inform data protection officer
• Establish if the laptop is password protected • and encrypted
• Ensure that any remote system access is immediately suspended
• Establish if there is any mechanism (e.g. software) for tracing location of device
• Consider whether necessary to notify the Information Commissioner of the breach
• Consider, if necessary, notifying any other parties such as individuals whose data may have been lost, credit card companies if financial information on the laptop
• Seek legal advice as to your responsibilities in the circumstances
• Consider if any disciplinary action against the employee is necessary
• Investigate the circumstances and put processes in place to prevent re-occurrence
• Document all decisions

Question 2d

• Form 769 completed and submitted to HMRC
• Establish which company is the representative member
• Establish members of the VAT group
• Remove the company from the VAT group o VAT 50 form o VAT 51 form
• Consider if new VAT registration is required o Voluntary registration o Compulsory registration
• Joint and Several liability for Group VAT position
• Record total group liability at appointment as a creditor
• If settled by another group member then they will have a subrogated claim and this should be recorded.
• Discuss situation with other members of the VAT group
• If necessary seek tax accounting advice

Question 3a

	Upper	Lower	Notes
Standard Security - property	1,800	1,000	
Agent costs	(27)	(15)	Any reasonable assumption; e.g. 1.5%
Legal costs	(15)	(15)	Any reasonable assumption;
Holding costs (insurance, security etc.)	(30)	(30)	Say £5k per month open (lower costs), £10k closed (additional security, insurance, etc.) (any reasonable assumption), 3 months for lower, 6 months for upper.
IP costs	(10)	(20)	Any reasonable assumption; e.g assumes more cost at lower due to longer monitoring
Available for Bank	1,718	920	
Floating charge - stock	1,688	1,171	See workings
Agent costs	(10)	(20)	Any reasonable assumption;
Legal costs	(15)	(30)	Any reasonable assumption;
IP costs	(30)	(50)	Any reasonable assumption;
Net floating charge realisations	1,633	1,071	
Capital gains tax	(150)	-	See workings
Available for preferential creditors	1,483	1,071	
Preferential creditors - employees	(6)	(25)	Any reasonable stated assumption; 25 employees; £1,000 worst case £250 best case. Best case may assume TUPE transfer
Secondary Preferential creditors - HMRC	(75)	(75)	PAYE all preferential
Available for prescribed part	1,402	971	
Prescribed part	(283)	(197)	
Available for floating chargeholder	1,119	774	
Total available for bank from insolvency	2,837	1,694	As shortfall on debt PGs will crystallise
PG - lister	50	-	
PG - Hadley	20	-	Remains a risk of failure
Total to Bank	2,907	1,694	

WORKINGS

Stock

Bought in plants

Book Value		Per question		400	400	
ROT	Supplier B	100x50%	50%	(50)	(50)	all deducted as lower than debt
Net of ROT				350	350	
Realisation %		Per question		60%	50%	
Estimated to realise				210	175	

Self-grown plants

Book Value	Per question		600	600	
Retail value - Gross up for margin	=600/(1-60%)	60%	1,500	1,500	
Realisation %	Per question		50%	30%	
Estimated to realise			750	450	

Bought in non-plant products

Book Value			1,000	1,000	
ROT	Supplier A	stock value	(25)	(25)	
ROT	Supplier C	stock value	(15)	(15)	
ROT	Others	Limited to debt	(50)	(50)	
Net of ROT			910	910	
Realisation %		Per question	80%	60%	
Estimated to realise			728	546	

ROT assumed to be returned to supplier as only realising 50% to 80% of cost.

Totals	Upper	Lower	
Bought in plants	210	175	
Self-grown plants	750	450	
Bought in non-plant products	728	546	
	1,688	1,171	

Corporation tax

Realisation (net of costs (excluding holding))	1,748	950	Assumed all of those costs are allowable
Cost	(1,000)	(1,000)	
Gain/(loss)	748	(50)	
Tax	20%	0%	
Capital Gains tax payable	150	-	
		(nil as <0)	

Question 3b

• Limited market of interested parties
• Loss making at present
• May be difficult for purchaser to find finance for both property and assets
o Lenders may look at 'closed' valuation for lending purposes
• Likely to have to trade in administration to achieve top valuation
o Co-operation of staff may be an issue
o Neglect could adversely affect value of stock (e.g. watering)
o Seasonal business and therefore losses could be greater (or lower) depending on timing of any process.
o Would need to be mindful of health and safety/environmental
• Seasonal and timing (November) may make a sale of the business more challenging.
• Company highly dependent on 3 suppliers which could impact on ability to trade in administration.

Question 4a

			ALTERNATIVE PRESENTATIONS	
			Net assets	Profit and loss reserves
Position as at 31 December 2020			150,100	150,000
Adjustments to asset values for the purpose of the Statement of Affairs				
Property		300,000		
Stock	135,000 - 135,000/0.9	(15,000)		
Debtors		(50,000)	235,000	235,000
Liabilities arising on account of liquidation				
Mr Fish termination costs		(50,000)		
Redundancy costs		(100,000)		
Pay in lieu of notice		(75,000)		
Lease termination costs	£50,000 rent arrears part of loss	(100,000)	(325,000)	(325,000)
New share capital received in the period	200,000 shares issued at £100,000 premium		102,000	100,000
Dividends paid	210,000 shares at 10p per share		(21,000)	(21,000)
Estimated loss for the period			(841,100)	(841,100)
Deficiency as regards creditors/members			(700,000)	(702,100)

Notes

- ROT claim deducted from creditors and from stock so no adjustment required.
- Assumed holiday accrued and therefore part of the loss
- Business interruption claim relates to profit and therefore is not adjusted in deficiency account.
- As ROT balance has been deducted off creditors, no further adjustment required.
- Different presentation depends on whether reconciling profit and loss reserves or net liability position

Question 4b

• Reconciliation of last known balance sheet position to the deficit within the statement of affairs.
• Assists in the understanding as to the reason for failure
• Identifies areas of further investigation
○ Wrongful Trading ○ Transactions at an undervalue ○ Unlawful distributions
• Adjustments to asset values
○ shows the impact of the liquidation on the asset values
○ Identifies other differences between carrying value of assets on a balance sheet and actual value
• Liabilities resulting from liquidation
○ These are liabilities that would not normally be found on a balance sheet because they crystallise as a result of the liquidation.
• Share capital
○ Share capital issued after the last known balance sheet position brings cash/assets into the company
• Dividends
○ Distributions made after the last balance sheet date to shareholders reduces the assets of the company
• Estimated loss
○ This is the balancing figure between the above effects and the deficit in the statement of affairs Represents; ▪ Trading losses incurred during the period; and/or ▪ Dividends paid during the period; and/or ▪ Assets disposed of during the period at less than book value; and/or ▪ Other losses or crystallisation of liabilities.

Question 4c

DISTRIBUTION/GENERAL Appears that the liquidator may have to distribute to this party therefore claim has to be agreed security validity must be established
General information required regarding validity
• Obtain a copy of the loan agreement
• Obtain a copy of the floating charge document
• Check whether charge document provides for any fixed charge
• Obtain a copy of minutes approving the loan
• Check creation and registration dates of the charge o Co house o Land registry
• Establish what funds were provided to the company by reference to bank statements
• Write to the company's solicitors for their files relating to the loan
• Establish if the current balance in the Statement of Affairs is consistent with the expected level.
• Obtain any correspondence relating to the loan
• Obtain legal advice in relation to the termination costs
• Obtain legal advice regarding validity of security
• Check amounts to management accounts/accounts system
• Establish what the money was used for
• Check who signed the documentation and whether they were authorised to do so.
• Ensure that the company had the authority to enter into loans per its constitution.
• Obtain a copy of any priority agreement in place.
AVOIDANCE OF FLOATING CHARGES
• Loan was provided within a relevant period (2 years connected, 1 year unconnected) under s245 (avoidance of floating charges)
• Establish the date funds were provided - before or after the charge
• Establish if Mr Fish is connected to the company
• If not consider if company was insolvent at the time the charge was granted.
PREFERENCES
• Repayments may have been made in a relevant period
• Establish if any repayments have been made
• Obtain details of any Personal Guarantees
• Establish if there is any connection between Mr Fish and the Company/its directors to establish relevant period
EXTORTIONATE CREDIT TRANSACTIONS
• Within relevant period under s244 Extortionate credit transactions
• Establish the interest rate payable on the loan
• Consider if interest has been capitalised up front.
OTHERS
• Work could identify a Transaction at an undervalue
• Work could identify a Transaction defrauding creditors
• Work could identify a Misfeasance/breach of duty claim

Question 4d

Land and property
• Ensure insurance is in place to cover relevant risks
• Instruct health and safety assessment if appropriate.
• Consider security arrangements
• Visit site to assess situation
• Consider environmental issues
Cash
• Notify the Bank of your appointment
• Ensure bank account is frozen (for payments out) with immediate effect
Stock
• Ensure insurance is in place to cover relevant risks
• Secure the premises where the stock is located
• Establish if there are any perishable goods
• Discuss with management if there are any immediate opportunities to realise an enhanced value; e.g. completed customer order that may be lost in the event of a delay.
• Obtain details regarding the suppliers of the goods and stock on site
• Establish from the directors if any ROT claims other than Cichlid's.
Debtors
• Secure relevant paperwork regarding the debtors; o Invoices o Customer orders o Proof of delivery of goods o Contractual information o Customer statements o Contact details o Payment terms
• Obtain information regarding the debts from relevant personnel o Details of any disputes or issues o Payment history/typical payment terms
• Consider notifying customers of appointment and liquidation bank account details.
Insurance claim
• Notify insurers of appointment
• Ensure any settlement to be paid to liquidation account
• Establish if there are any time critical activities required in relation to the claim
• Obtain copy of the claim off the directors
• Obtain relevant information to support the claim; how loss of profit calculated.
• Discuss with the directors and document the history of the claim

Question 4e

Identification of goods
• Obtain a stock list with value to establish the cost of the remaining goods and what they are claiming title to.
• Establish if/how the goods can be identified as originating from the supplier; if unable to do so then claim may not be valid
• Establish if any other supplier supplies the goods in question;
○ if the company sources goods from another suppler (e.g. via a wholesaler) it may be necessary to identify the specific supplier's goods (see below).
○ If no other supplier supplies the goods then it is reasonable to assume that the supplier supplied these goods.
• Establish if there is a means of identifying specific goods to invoices/despatch notes/etc. This may be needed for example if there are other suppliers or for some of the goods' ownership may have passed (see below).
• Establish how the goods were stored prior to segregation; if stored in original packaging the claim may be easier to prove ownership compared to if goods are placed into stores where they could be mixed with other suppliers/shipments.
• Establish if any of the goods have changed form or incorporated into other goods.
•
Transfer of ownership
• Obtain the history of the account; invoices, payment and rolling balance due to supplier.
• Has the account ever reached zero; if so ownership of goods would have passed at that point and therefore all monies clause would only apply to goods supplied after this date.
•
Confirm liability
• Obtain copy invoices to establish information contained thereon in relation to the goods.
• Does the debt equal or exceed the cost of goods subject to the claim; if not then their claim may only cover a proportion of the stock.

JOINT INSOLVENCY EXAMINATION BOARD

PERSONAL INSOLVENCY PAPER

EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2021 SITTING

General comments

This paper covered mainstream topics including information required from a debtor with a property portfolio, the process for approval of a Trustee's remuneration and information requirements for a debtor considering signing a Trust Deed. The longer question 4 contained calculation elements including the assessment of a DCO and an estimated outcome statement. The preparation of the Estimated Outcome Statement was made easier by candidates being required to consider asset realisations, the level of DCO and then creditors claims in turn before pulling this information together in an Estimated Outcome Statement.
On the whole scripts were well presented and marks obtained for the explanatory workings provided. There were a few instances where explanations of figures were not provided and candidates are reminded of the importance of showing their thought processes as without them very limited marks can be given. The main technical areas where "easy" marks were lost was on the calculation of preferential and secondary preferential claims which was dealt with poorly. This was disappointing as it is fundamental knowledge for an Insolvency Practitioner, is set out in legislation and is clearly topical due to recent changes to legislation.

Question 1

The scenario of an appointment as a Trustee of a debtor with a property portfolio is both topical and has been examined recently. The answers to this question were generally good, although in some cases while candidates had an understanding of the basic steps they should take their knowledge of why they were necessary appeared lacking.

(a) What information should you ask Mr Salinas to provide in relation to his properties?

This was the simplest part of the question, effectively a list of all the information which you would require to allow you to establish your strategy and take any action. Marks for this question were good with many candidates being able to score high marks.

(b) Once you have obtained the information you require, what are the next steps that you should take in relation to the properties and to any rental income that is generated by them?

This section asked candidates about the next steps they would take. On the whole candidates were able to make simple points. Higher marks were achieved where they were able to articulate what they were trying to achieve through the actions they would take. Some answers were overly focused on the detail of what they would do in relation to the sale of the properties, rather than the rental position and few gave any meaningful comment on what their overall strategy would be. No candidates mentioned any taxation considerations in relation to any parts of this question and there also seemed to be little awareness of the secure deposit scheme.

(c) What risks are associated with being appointed as the Trustee of an individual who owns a number of solely owned tenanted properties, and how can these risks be mitigated?

This section asked candidates to comment on the risks to the Trustee and how to mitigate them. Answers were fair though lacking in detail.

Question 2
This question examined the process for a Trustee to obtain approval for their fees and outlays and the options available to a creditor to challenge these fees.
On the whole this question was answered less well than others in the paper. Half of candidates responded in the email format requested.

Prepare an email to Mr Hamilton which:

(a) explains the process that a Trustee in a sequestration should follow to secure approval of fees and outlays;

This question simply required a knowledge of the process for a Trustee to seek approval for their fees and outlays. As the answer is essentially in the legislation candidates were generally able to achieve high marks.

(b) sets out the additional information and documentation that you need Mr Hamilton to provide in order that you can advise him on his options;

Candidates generally struggled to think of the information which a creditor would have been provided during the course of a bankruptcy appointment and what they would be trying to find out from reviewing it. Some responses got side tracked into advising Mr Hamilton on his own solvency position or were completely unclear about who they were requesting information from and why.

(c) explains the options available to creditors of a sequestrated estate who want to challenge the remuneration of a Trustee and the key points to be considered by a creditor before making such a challenge.

Candidates understood the process for an appeal to the Trustee's remuneration although seemed to struggle to put this into practice. Few commented on the fact that the creditor may be out with the timescale for an appeal here. There was limited comments on the commercial considerations for a creditor before embarking on such an appeal.

Question 3

This question was regarding an individual who had approached your office for advice on whether a Trust Deed would be a suitable option for him. This question was the most poorly answered in the paper.

(a) In advance of the proposed meeting, prepare a note which sets out all of the additional information and documentation that you will need Mr Quinn to provide in order for you to be able to consider whether a Trust Deed would be appropriate.

The first part of the question related to the information which would be required from Mr Quinn. This part of the question was answered well, with candidates able to address a wide range of information which would be required and also identify the issues around verifying the debtor's identity and address.

(b) If Mr Quinn fails to provide you with all requested information and documentation in connection with his affairs, how would this impact upon your decision as to whether or not to act as Trustee?

The second part of the question tested what you should consider if the information you need is not all forthcoming. The answers to this question were poor with candidates unable to articulate why complete information is important. No one made reference to the SIP 3.3.

(c) **What additional enquiries should now be made to determine whether a Trust Deed could still be appropriate and how would you advise Mr Quinn to proceed?**

Finally, this part of the question asked what the implications would be for the individual of a previous award of bankruptcy. Candidates failed to provide coherent responses to this question. Better candidates were able to make a limited number of sensible observations about the need to check whether the debtor and the Trustee were discharged and knew that if the Trustee was not discharged a Trust Deed would not become protected.

Question 4

The subject of this question was a debtor who had set fire to his business premises. His business was now closed and a Trustee was appointed whose role was to identify and realise the assets and then distribute any funds available to the creditors. Overall, of all the questions in the paper, this was answered best, with most candidates providing a competent response.

(a) Set out the steps you would take to protect and realise the assets identified from the information provided by Mr Charles.

This section required candidates to outline the steps they would take to identify and protect the assets of the debtor. On the whole this part of the question was answered well, with candidates able to pick up significant marks for what should be basic knowledge for an Insolvency practitioner.

Most candidates followed the requirements of the question and focused on the assets identified in the question and didn't waste time commenting on other theoretical assets. Most candidates were able to deal well with the heritable property and comment sensibly on the shareholding. A number of candidates did not know that with a value of <£3,000 the motor vehicle would not vest. No candidates identified any issue with the caravan which was also unlikely to vest. The comments about the yacht were a bit confused and generally candidates failed to identify the potential issue of the Marina refusing to release the yacht unless the issue of the outstanding repairs and mooring charges was addressed.

(b) Draft an email to Ms Eden. Estimate the amount of the monthly Debtor Contribution Order you should seek from Mr Charles. Your email should include your detailed workings, explain any estimates or assumptions that you make and outline any issues that you foresee.

This required candidates to comment on the likely level of DCO which could be secured from Mr Charles and the issues which may be experienced in securing this. Candidates were mainly able to assess Mr Charles income, although, worryingly, only one candidate gave any consideration to whether Mr Charles would have to pay any income tax on his earnings. Candidates were also able to make generally sensible assumptions about the monthly level of expenses which Mr Charles would incur and arrive at an estimated DCO figure. In general, that is where the responses to the question stopped and few then went on to comment on any issues which the Trustee may experience in collecting the DCO. Whether this is due to lack of practical experience from the candidates or due to the time constraints of the question is difficult to say.

(c) For each of the creditor claims, set out any additional information or documentation that the creditor should be required to provide in support of their claim. Clearly stating any assumptions that you have made, explain which creditor claims you would advise should be admitted and in what amount.

This required candidates to consider the claims received to date and comment on what they would be likely to admit and what further information they would request. Candidates were able to achieve passing marks in this section. A number however, made basic mistakes in the categorisation of HMRC and Employee claims between ordinary and preferential which was disappointing as the answers are available in the legislation.

Candidates were generally confused about the insurance claim and failed to identify that the landlord and the insurer cannot both claim for dilapidations/the cost of rebuilding the premises.

(d) Showing your workings and clearly stating any assumptions you make, prepare an Estimated Outcome Statement which Ms Eden can provide to her contact at HMRC.

The final part of this question required candidates to put together the analysis they had done so far in the question and prepare an estimated outcome statement for the purposes of advising HMRC what level of dividend they may expect to receive. Candidates were generally able to produce Estimated outcome statements in a good format. However, where they fell short was in actually answering the question, so few of these actually presented what HMRC would expect to receive.

Some other observations:-

- There were a reasonable number of marks for setting out what would be recovered for the property. A number of candidates lost marks for simply inserting a figure without commenting on how they had calculated it;
- No candidates appeared to give any consideration to the mortgage payments which had been paid by Mrs Charles;
- Half of candidates forgot that the DCO would be included in realisations;
- Most candidates correctly identified that there would be secondary preferential creditors, however, **none** calculated this correctly;
- There were some worrying basic errors about what constitutes a preferential claim.
- All candidates identified that costs would be incurred and were able to make a meaningful attempt at quantifying these.

Personal Insolvency Exam
November 2021
Marks plan

Question 1(a)
Upon appointment you should:-

Contact the debtor to request:-

- copies of tenancy agreements / names of all tenants and occupants
- confirmation of whether any of the properties are HMO's. If they are, does the debtor have all requisite licences, have the properties passed local inspections etc
- details of whether the properties are let on a furnished or unfurnished basis.
- If furnished, is there evidence that all furniture meets all current safety regulations?
- Details of the deposit for each property ie amount, and which secure tenancy deposit scheme has been used.
- whether a letting agent is used and if they are, their contact details, details of their charges and a copy of any agreement entered into with the letting agent
- ask for confirmation of whether any of the tenants are in arrears and if they are, for details to be provided
- are there any outstanding legal actions or disputes with tenants or former tenants i.e. rent recovery actions, possession proceedings or disputes in relation to the return of deposit.
- confirmation of whether the rent is paid to a letting agent or directly to the debtor.
- Bank account details for the account into the rent is paid (if being paid to debtor)
- establish who is responsible for arranging repairs/ maintenance (letting agent or debtor).
- Are there any outstanding repairs or maintenance issues?
- establish whether there is a gas fire/ heating system. If there is, a copy of the annual safety certificate should be requested.
- Request copies of electrical safety certificates
- Copy EPCs
- details of where all keys to the solely owned properties are located. The debtor should be asked to deliver up the keys to the solely owned properties
- whether any tenants have been given notice
- details of any mortgages or charges secured against each property, together with confirmation of whether the loans are in arrears. If there are arrears, has any enforcement action been taken such as the appointment of a receiver.
- in relation to the jointly owned property, what interest does the debtor consider he has in the property (i.e. 50% or more/ less)
- has any significant capital expenditure been incurred since purchase?
- Copy tax returns should be requested to see if any declarations have been made regarding the properties.
- Is there any outstanding liability to HMRC in respect of the rental income
- Have any valuations been carried out recently. If they have, a copy of the valuations should be provided.
- Are the properties currently insured and if so details of the insurer.

Whether any of the properties are factored and if so, who is responsible for common repairs and whether there are any outstanding or in contemplation.

Question 1(b)
The rental income

The Trustee's entitlement to receive the rental income will depend on whether the property is solely or jointly owned.

Where the property is solely owned, legal title to the property vests in the Trustee. The Trustee becomes landlord and the Trustee is entitled to collect in the rental income.

The Trustee should establish whether any of the solely owned properties require any urgent repair work or maintenance undertaken.

As the property vests in the Trustee it is not 'income' as such and a DCO should not be entered into in relation to the rental income.

Write to the bankrupt to put him on notice that in relation to the solely owned properties the Trustee has the right to the rental income and that he has no right to continue collecting it.

For solely owned properties, there is no obligation upon the Trustee to pay the mortgage from the rental income. Whether this is done will depend on whether there is equity in the property that the Trustee wishes to preserve pending realisation of the property. If the property has minimal equity or is in negative equity, it is unlikely that there will be any benefit the estate in the mortgage being paid.

Put in place arrangements to collect the rental income – via agent or payment directly by tenant.

If a letting agent is already in place, consider whether they should be allowed to continue to collect rentals and manage the properties. Consider their reputation, independence, level of insurance etc

Letters will need to be sent to the tenants to notify them of the Trustees' appointment and to advise that it is the Trustee (or their appointed agent) who they should deal with going forward and not the bankrupt.

The Trustee's right to collect the rent ceases if the secured lender takes possession.

Where a property is jointly owned, the entitlement to rent should be in accordance with the owner's interest in the property i.e. if owned 50/50, each co-owner is entitled to 50% of the net rental income.

The Trustee is obliged to pay tax on the rental income.

Letting agent
If a letting agent has been instructed, you should write to them to advise them of the award of sequestration. Ask the letting agent to confirm whether they are holding any funds on behalf of the bankrupt. In relation to the solely owned properties, any such monies have vested in the bankruptcy estate and should therefore be held to the Trustee's order.

If a letting agent has not been instructed previously, consider instructing a reputable agent to commence collection of rent on your behalf in relation to the solely owned properties. They can also deal with any maintenance issues and ensure that all necessary health and safety checks are carried out.

Tenants
Write to the tenants of the solely owned properties to notify them of the making of the award of sequestration. Where a tenancy is assigned (which includes vesting in a Trustee) formal notice must be given of the landlord's name and address. If the tenants were paying rent directly to the bankrupt, advise them that the rent should be paid to the Trustee going forward.

Co-owner

In relation to the jointly owned properties, write to the co-owner to advise them of the making of the sequestration and your appointment as Trustee. The letter should explain that the Trustee is entitled to the

bankrupt's share of the rental income but that the obligations under the tenancy agreement remain with the co-owners.

If the co-owner is receiving the rental income, he should be given the accounts details for the account into which the bankrupt's share of the rental income should be paid.

Deposits

If the deposits are held in a secure deposit scheme, for the solely owned properties write to the scheme provider to advise that the deposit should not be released without the Trustee's consent

Tenancy Agreement

Review the tenancy agreements to establish the type of tenancy, whether there are any particularly onerous terms or obligations place upon the landlord and when the tenancy expires.
Instruct your agent to inspect the solely owned properties to establish whether they are in a good state of repair.

Insurance.

In addition to ensuring that the properties are insured, check whether the bankrupt has landlord insurance in place which includes public liability insurance. If not, ensure that it is put in place as soon as possible in relation to the solely owned properties. For the jointly owned properties ensure that the equity is insured and the rental income (if appropriate).

Ownership/ charge position
Obtain property searches to verify ownership and to establish whether there are any securities registered against the property.
If there are securities registered against the property, contact the secured lender to put them on notice of the award of sequestration and to request a redemption statement. Ask the secured lender to confirm whether possession proceedings have been commenced or such action is imminent

If all mortgages are with the same lender, request a copy of the terms and conditions of lending to establish whether there is an all sums clause.

If the Bankrupt/ letting agent cannot provide a copy of the gas safety certificate and there is a gas appliance/ fire etc at a solely owned property, the Trustee should arrange for an engineer to attend the property and obtain a gas safety certificate as soon as possible.

Arrears
If rent arrears have built up, prior to accepting any rent from the tenant a decision will have to be taken whether to seek possession of the property. Accepting rent may prevent the Trustee seeking possession of the property. The decision about whether to accept rent may be dictated by whether or not there is equity in the property which can be realised for creditors.

Property strategy
Obtain valuations, redemption statements to establish equity position in each property. Take advice from a property agent regarding the best strategy for disposal of the properties, for example, as a rental portfolio or on an individual basis.

Seek their advice on whether best value will be achieved with tenants in situ or with vacant possession and plan to achieve this.

If there is no equity consider whether the Trustee should abandon their interest.
Consider Capital Gains tax position and specifically whether Trustee should abandon their interest to avoid gains crystallizing on properties following repossession by the secured lender where there will be no benefit to the estate but a CGT liability arises.

Question 1(c)

Solely owned tenanted property vests in the Trustee upon his/her appointment meaning the Trustee becomes the landlord. This is irrespective of whether the rental income is collected by the Trustee.

This means that even if avoiding adopting the tenancy, the Trustee takes on the responsibilities of the landlord which include:-

- where the property is let on a furnished basis, ensuring that the furniture complies with fire safety regulations
- that any gas installations (fire, boiler etc) meet gas safety regulations
- that fire alarms are hard wired and in good working order

The Trustee should arrange an inspection of the properties to ensure that they are in a good state of repair. This is because Trustee owes a duty of care to visitors and anyone entering the property.

The Trustee should also check any existing inspection records and ensure that any urgent structural or other repairs are carried out by a reputable contractor as soon as possible.

A professional letting agent could be engaged by the Trustee to ensure that all necessary legislation/ regulations are complied with.

If the tenanted property is in a very poor state of repair and significant work would be required to bring it up to an acceptable standard and there is no or limited equity in the property, consideration should be given to the Trustee abandoning their interest.

If there are any potential or actual legal issues in relation to the properties i.e. possession proceedings etc, instruct solicitors to advise you in relation to those proceedings and recommended next steps.

Question 2(a)

Process for approval of remuneration and outlays

A Trustee should prepare accounts of his intromissions with the estate and a request for approval for his outlays and remuneration within 2 weeks of the end of an accounting period.

An accounting period would end on the 12 month anniversary of the award of sequestration. An accounting period can be reduced but not to less than 6 months if funds are available for distribution to creditors. This seems unlikely here and it seems likely that the accounts have been prepared annually to 9 August 2019, 2020 and then 2021 and that the third set of annual accounts have been prepared.

Within 2 weeks after the end of an Accounting Period, the Trustee must submit to the Commissioners or if there are no Commissioners to the AIB (a) an account of his intromissions and (b) a claim for outlays and for the Trustee's remuneration.

If this is being sent to the Commissioner(s) for approval, a copy must also be sent to AIB.

Within 6 weeks of the accounting period end, the Commissioners or AIB **may** audit the accounts and **mus**t issue a determination fixing the outlays and remuneration payable.

AIB considers it appropriate to audit all accounts.

The Trustee must advise the creditors and the debtor of the sums determined and must make the audited accounts, scheme of division and determination available for inspection by the debtor and the creditors.

The basis for remuneration may be a commission but should also reflect the work reasonably undertaken and the responsibility the Trustee has taken on.

When submitting accounts for audit, considerable information is provided to AIB, including:-

Receipts and payments account;

Bank statements and vouching for receipts and payments, including for example invoices paid, or states for settlement;

A detailed time analysis in accordance with SIP 9 to support the work done.

Where a request for remuneration is >£15,000, AIB will require copies of the Trustee's files to be submitted.

When AIB audit the account they will be ensuring that outlays have not been incurred prior to sequestration, costs are reasonable and reasonably incurred and that legal outlays have been taxed.

All accounts in respect of legal outlays incurred by the Trustee, should, before they are paid, be submitted for taxation to the auditor of court in the jurisdiction of the sequestration.

However, where Commissioners are appointed, with the Commissioners consent and if the account is agreed and not to a connected party, then the account for legal expenses need not be taxed.

Question 2(b)

Additional information required

Copies of the Trustees progress reports which should have been issued to creditors around 6 weeks after each anniversary of the Trustee's appointment.

What is the date of the last report and when was it received by Mr Hamilton? Creditors have 14 days within which to appeal a determination of the Trustee's remuneration and outlays.

On the face of it, it would appear that if accounts were prepared to the anniversary date we are at today's date more than 8 weeks after this date and may no longer be able to appeal the remuneration requested in the last period. It is possible however, that application was made to the Court for permission to prepare the accounts late.

The reports would have to be reviewed to determine when the Trustee's fees were notified, in what amounts and when those fees were drawn. As the award of sequestration was made over 3 years ago, some of the costs could no longer be challengeable. Was the last report received within the last 2 weeks? If it was, were the costs incurred during the period of this final report significant enough to warrant an application to challenge them being made?

Check how long Mr Hamilton still has to bring an application if considered appropriate to do so i.e. when does the 14 day period for challenge expire?

Whilst the Court has the power to extend time periods, it will not generally do so unless there is good reason for the delay.

Confirmation of whether a final report has been filed by the Trustee and whether the Trustee remains in office. If the Trustee has vacated office and had his release from liability pursuant it is too late for the fees that have been charged to be challenged.

The total level of the Trustee's fees and the legal fees. Was the amount charged/drawn/requested significantly less than the actual time cost incurred. If the Trustee has already written off a significant proportion of the time costs that were incurred, a successful challenge to the time costs is less likely.

What work has been undertaken by the Trustee. Have there been any particular factors that have caused costs to escalate?

It will be important to establish whether any Commissioners were appointed at the first meeting of creditors or subsequently. The benefits of doing so are saving some expenses for example, AIB audit fees and the expenses of taxing legal accounts. This will also determine the appropriate route for any appeal.

Fees estimates
A copy of the initial report to creditors on the actions that the Trustee plans to take to realise the estate and his fee estimate for doing so.

Copies of any additional reports prepared by the Trustee outside of his annual reporting requirements should also be requested.

Question 2(c)

Options and considerations

Not later than 8 weeks after the end of an accounting period, the Trustee, debtor or any creditor may appeal against a determination of the Trustee's fees and outlays.

If the determination was issued by the Commissioners, the appeal is to the Accountant in Bankruptcy. If the determination was issued by the Accountant in Bankruptcy, the appeal is to the Sheriff Court with jurisdiction in the sequestration. If the appeal is initially to the AIB then there is a further right of appeal to the Sheriff. The Sheriff's decision is final.

A creditor must give the Trustee notice of his intention to appeal.

8 weeks after the accounting period end, a Trustee can draw his remuneration in accordance with the determination unless there is an outstanding appeal in which case the remuneration can be drawn on the determination of the final appeal.

Prior to making an appeal, it may be prudent to request further information from the Trustee. Pursuant to SIP9, requests for additional information should be viewed upon their individual merits and treated by an office holder in a fair and reasonable way.

The provision of additional information should be proportionate to the circumstances of the appointment. Negotiate directly with the Trustee. A Trustee might be willing to reduce the overall level of their remuneration in order to avoid the cost of dealing with a potential application to the Sheriff Court. Considerations for Mr Hamilton

Timing – are we within the timescale to appeal the determination ie 8 weeks from the end of the Accounting period. On the face of it we are not within the time period. If not within the time period, are there any grounds for an extension to the appeal period.

Costs – If there has not already been an AIB audit, then requesting one will incur an audit fee (17.5% of the sum determined) which would be borne by the Estate before any improvement to creditors could be delivered. If an appeal is to be submitted to the Sheriff Court, then Mr Hamilton will incur legal costs in submitting an appeal and has the potential for an award of costs against him if the appeal is unsuccessful.

Prospects of success – having considered all of the information provided by the Trustee, does the request for remuneration and outlays seem reasonable for the work done an actions taken to realise the assets, is there a reasonable argument that the time costs are excessive. Who issued the determination previously, Commissioner or AIB ? The experience/ extent of the audit and vouching may influence the view on the likelihood of a successful challenge.

Impact of success – What period and amount of fees can the fees be challenged for. What level of reduction would reasonably be achieved ? Is there already a shortfall on the costs incurred in comparison to the level of realisations. Would securing a reduction result in funds being available for creditors. If so what proportion of creditors does Mr Hamilton represent and therefore what dividend, if any could he expect. Would the potential risks/costs associated with a challenge outweigh the potential uplift he may receive.

Question 3(a)

Evidence to verify Mr Quinn's identity and also his current residential address will be required to carry out AML/KYC checks. It is not sufficient to simply have an email address or a care of address.

Does Mr Quinn have any other assets that he has not declared, including any jointly owned assets? Vehicle, shares, interest in a property etc.

Has he disposed of/ gifted/ transferred any assets whether at full value or otherwise over the last 5 years? If he has, details should be provided together with evidence of how any proceeds have been utilised.

Has he made any payments to creditors that could be subject to challenge as a preference?

Does Mr Quinn have an accountant? Can he supply copy accounts/ tax returns for the last 3 years in order that his earnings can be verified?

Has his income been declared in his tax returns? Are all returns up to date?

Copy bank statements for the last 6 months should be requested. However this may not help establish Mr Quinn's income or levels of expenditure as he has advised that he receives most of his income in cash.

Mr Quinn charges £125.00 a day which works out at approximately £2,500 a month assuming he works 5 days a week. Does he work full time or part time? What is his average monthly income?

Does Mr Quinn have a cashflow forecast for the next 12 months?

Copies of any unpaid invoices should be provided together with details of any debtors.

Does he have any outstanding liability to HMRC in respect of previous tax years? Based on previous years, what does he consider should realistically be set aside for HMRC each month going forward?

Outgoings

Details of all items of expenditure should be provided and verified where appropriate.

Does Mr Quinn have any children or other dependants?

The Common Financial Tool would be utilised to establish the level of contribution which Mr Quinn can afford to make on a monthly basis based on the information provided. Is the £200 per month suggested by Mr Quinn adequate/reasonable and sustainable.

Does Mr Quinn have a bank account from which the monthly contributions can be made?

Creditors
With Mr Quinn's permission, a copy of his credit report should be obtained, this will help verify the balances he has provided and ensure that there are not additional creditors we are not aware of. Evidence of the amounts due to the disclosed creditors should be provided. Confirmation should be obtained of whether any of these creditors hold security.

Does Mr Quinn have any other creditors that he has not disclosed such as contingent creditors pursuant to guarantees etc?

Copy credit card statements should be provided together with a copy of the PCP agreement, log book and insurance cover for the car verifying ownership should be provided.

In relation to the credit card debt, is this all owed to one company or to more than one company? Details to be provided together with confirmation of whether the minimum payments are being met. If not, has any enforcement action been taken or is threatened?

What does the PCP agreement relate to? When does it end? Is it a vehicle that is needed for work? If he has a work vehicle in addition to the vehicle on PCP, why does he need two vehicles? How much is paid each month and what would the cost be if the agreement was to be terminated early?

Has anyone provided a guarantee in relation to the PCP agreement?

Further details should be provided regarding the liability to his ex-wife. Is the £10,000 owed pursuant to an order made in divorce proceedings or has it arisen as a result (for example) of a loan being made. Documentation evidencing the nature of the debt and how it has arisen should also be provided to establish whether it is an unsecured or postponed debt.

If it is not a debt that can be included as an unsecured debt in the Trust Deed, does he still want to/ is it worthwhile still proposing the Trust Deed? What is his relationship like with his ex-wife? How does he intend making payment to her if all surplus income is made available to creditors through the Trust Deed?

Does Mr Quinn know what the likely attitude of creditors will be to the Trust Deed?

Has he had any previous insolvencies?

A short personal history should also be provided which sets out his background to and reasons for the Trust Deed being entered into.

Question 3 (b)

Where a Trust Deed is to be proposed, an insolvency practitioner has to be satisfied that it is achievable and that a fair balance is struck between the interests of the debtor and the creditors.

SIP 3.3 states, in the initial circular to creditors the insolvency practitioner should provide clear and accurate information to enable creditors to decide whether or not to object to the Trust Deed becoming protected. If an insolvency practitioner forms the view that creditor interests will be materially prejudiced by non-disclosure he/ she should decline to act.

SIP 3.3 requires an IP to be satisfied that an assessment can be made of whether the debtor is being honest and open and sufficiently co-operative and the debtor's understanding of the process, and commitment to it;

A proposed Trustee has to consider whether the Trust Deed has a reasonable prospect of being protected and achieving its purpose. It is possible that protection will not be granted by AIB if adequate vouching cannot be provided of the debtor's Income and Expenditure.
It is also essential to have an accurate assessment of the level of creditors and their attitudes to establish whether the trust deed is likely to become protected.

Question 3(c)

S164(2)(a) of the Bankruptcy Act states that a trust deed will not be protected if a debtor has been sequestrated and his trustee has not been discharged.

Has Mr Quinn received his discharge from bankruptcy? Check the ROI to see whether his discharge was granted after one year or thereafter.

Does the Trustee remain in office or have they been discharged ?

If the Trustee remains in office, Mr Quinn's Trustee could still pursue a DCO as any surplus income should be properly payable to his Trustee for the 48 month period following the appointment. Is there already a DCO in place that Mr Quinn has not disclosed? Has Mr Quinn declared this surplus income to

his Trustee? Notwithstanding whether he has received his discharge, he is under an obligation to co-operate with the Trustee if the Trustee remains in office.

Assuming that Mr Quinn did receive his discharge in June 2019, when were his liabilities incurred?

If the liabilities pre-date the sequestration, they are debts in the bankruptcy and he should not be pursued now.

The credit card liabilities are significant. Were they built up after his discharge? If not, it is an offence to obtain credit of more than £500 without disclosing the fact that you are an undischarged bankrupt.

Assuming that the credit card debt was incurred after Mr Quinn received his discharge, how was the money spent? Are there assets that he has not disclosed?

If he has spent £20,000 on credit cards in the last 2.5 years, is it realistic to expect that he can change his spending habits such that he can make money available from his income each month? Has expenditure been on day to day living expenses?

If the debt post dates the sequestration, Mr Quinn will not be able to enter a Trust Deed until the Trustee is discharged, he should establish with the Trustee's office when they will be seeking their discharge.

Mr Quinn would also be unable to submit an application for a further sequestration as he has been sequestrated in the last 5 years. No application could be made until June 2023.

Question 4(a)

NB – for a number of the assets it would be appropriate for a valuation to be carried out and for insurance to be obtained. Marks should only be awarded for making these points once.

Property
Carry out property search to ensure property is owned jointly by Mr and Mrs Charles.

Check that inhibition is noted on the Register of Inhibitions and that the date of the inhibition is correct. Instruct a valuation.

Obtain an up to date redemption statement from the mortgage lender and note Trustee's interest in the property.

Obtain open cover insurance and once the value of the property is established obtain insurance.

Assuming that the property has held its value at £312,000 and the redemption is broadly accurate at £75,000, there appears to be equity in the property of c£237,000. A one half share of this would be £118,500. There may be arguments that Mrs Fawkes is entitled to recover her £50,000 deposit assuming that she can provide a signed Minute of Agreement that has been Registered in the Books of Council and Session or before the proceeds are split.

It may also be possible for her to argue that she can deduct 50% of the mortgage payments she has made since the separation until the date of sequestration (October 2020 to August 2021 = (11*£1,800) *50% = £9,900), before the proceeds are split.

The inhibition obtained by Exclusive Yacht Supplies was obtained less than 60 days prior to the warrant to cite date and the sequestration has the effect of cutting down the inhibition.

Even if Mrs Charles argues for these deductions prior to a split of the sales proceeds, the equity in Mr Charles ½ share would be £88,550 (before deduction of any costs).

Establish whether Mr Charles has any proposal to make regarding the equity in the property. From the information available this seems unlikely.

Write to Mrs Charles to advise her of the Trustee's appointment and that Mr Charles share of the property vests in the Trustee. Explain that equity in this half share will need to be realised for the benefit of creditors. Invite her to make a proposal.

Ultimately if no proposal is received and Mrs Charles does not consent to the sale, the Trustee has the right to raise an action for division and sale and eviction to recover the property.

This step would need to be taken within 3 years of appointment to prevent the revesting of the property.

Caravan
Section 88 of the BSA 2016 and Section 11(1) (c) of the Debt Arrangement and Attachment (Scotland) Act prevents a mobile home which is the debtor's only or principal residence from vesting in the sequestrated estate. There may be a debate here about the definition of mobile. Assuming that the Trustee is satisfied that the caravan could be moved from one caravan park to another then it is unlikely that the Trustee would be able to realise this asset for the benefit of creditors.

Yacht
Mr Charles has offered the Trustee £15,000 for the yacht. However, Cyrus Bay Marina who are owed £70,135 in total according to their claim are claiming a lien over the yacht. This means it would be unable to leave the Marina and Mr Charles is unlikely to want to acquire it on this basis.

Request a copy of the documentation which entitles Cyrus Bay to claim a lien. Establish whether the lien is valid and if it is whether it only applies to the unpaid mooring fees or all sums claimed to be outstanding.

Cyrus Bay's claim may reduce significantly on the basis of funds paid by the Insurer.

Consider the extent of the sums covered by any lien before instructing a valuation for the yacht to establish if Mr Charles' parents offer is reasonable.

Carry out a search to establish whether there is a marine mortgage registered against the yacht / obtain specialist legal advice
Verify ownership.

Shareholding
Review information held about Lovely Yachts Limited at Companies House and check the Memorandum and Articles of Association to determine the process for realising the shareholding. Write to Lovely Yachts Limited to ascertain if there is a separate Shareholders Agreement.

Obtain original share certificates from the Bankrupt.

Write to the Lovely Yachts Limited to advise them of the appointment of the Trustee and that the shares vest in the Trustee. Ask that the Trustee be entered into the register of members. Request that they provide up to date management accounts to help establish the current value of the company.

Obtain a valuation of the Debtor's shareholding.

Follow the process set out in Articles or Shareholders Agreement to attempt to sell the shares, which is most likely to be to offer them for sale to the other shareholders in the first instance.

Car
Section 88 of the BSA 2016 and Section 11(1) of the Debt Arrangement and Attachment (Scotland) Act prevent any vehicle, the use of which is so reasonably required by the debtor, not exceeding in value £3,000 from vesting. With a value of £2,500 the Volkswagen Golf will not vest.

Other business assets
Lease on business premises – There is a short period left on the lease. If the premises are still being rebuilt, there seems to be no possibility of assigning the premises at a premium.

Query whether divorce proceedings have been commenced and whether Mr Charles has claimed any assets owned by Mrs Charles if divorce proceedings progress ?

Question 4(b)

Mr Charles is required to pay his surplus income to the Trustee by way of a Debtor's Contribution Order for a period of 48 Months. His Surplus income must be assessed using the Common Financial Tool. The DCO is proposed by the Trustee, currently within 12 weeks of the Award of Sequestration, and set by AIB.

Mr Charles estimated annual Income and expenditure is roughly

Income – Year 1 (from January 2022)
9* €3,250
Assume exchange rate of 1:1.16 = £2,800*9 = £25,200
We should assume that Mr Fawkes remains resident in the UK for tax purposes. With a Personal Allowance of £12,500. He would have an annual tax liability of c £12,700*20% = £2,540.
His net income would be £22,660 which divided by 12 months is £1,888.

Expenses – Year 1
His known expenses are ground rent on the caravan - £1,500;

Assume ongoing mooring fees on the Marina are met by his parents;

Running costs for the Volkswagen;

Food in the 3 months of the year when not employed (assuming that alternative employment is not obtained during this period);

He has intimated that his wife wishes maintenance of £750 per month for two boys. While this figure seems high and does not appear to have either been Court Ordered or set by the CSA, the general approach under the CFT is that if the sum is paid then it is allowed.

Consider allowing a reasonable amount each month for expenses under the CFT, eg mobile phone, clothing, hairdressing.

Clarify whether Mr Charles has to fund the costs of travelling to / from the boat or if travel is arranged by his employer.
Taking the above into account it would appear that a monthly DCO could be set at around £800+ per month which would be subject to verifying these figures.

This figure could rise in the second and subsequent years if the increase in salary is secured.

Issues
As it is a new job, it is likely to have a probationary period and his employment could therefore be terminated if he doesn't pass probation.

Payment is being made in another currency so allowance would have to be made for currency fluctuations and conversion costs.

Whether Mr Charles would be prepared to work away if all his surplus income had to be contributed to the bankruptcy, albeit it would facilitate maintenance payments for his sons.

A further issue is enforceability. An employer based in Scotland can be required to deduct the sums due under a DCO at source if the debtor failed to make payment to the Trustee. It is unlikely that this would be similarly enforceable against a Russian employer.

It is also unclear whether payment would be made cash in hand each month to the Bankrupt. If this is the case there could be issues in banking and accounting with funds each month.

Pursuing repayment from Mr Charles whilst he is out of the country and travelling on a yacht will be practically impossible. If Mr Charles chooses not to pay his DCO there will be little which can be done to force him to do so.

Question 4(c)

Creditor claims – additional information and sums admitted
HMRC

VAT to quarter ended 31 July 2020 would be a secondary preferential claim. Since trading appears to have continued to the fire in September 2020, it is likely that there will be an increase to this claim. Establish if the books and records are available to submit a return for this final trading period or if it will need to be based on assessment. Once the VAT 426 is submitted it is likely that HMRC will increase their claim on an assessment basis in the absence of a return.

PAYE/NIC will be a secondary preferential claim irrespective if the sums claimed relate to payments withheld from sums claimed under the JRS or otherwise. If the book keeper brought the payroll records up to date then it is likely that this will be accurate.

Employers' NIC Contributions are unsecured. Check the payroll records to verify information.

Excess payments under the Coronavirus JRS that are paid to businesses in error are not preferential. Check records to see how the overpayment occurred.

Self-assessment taxation for Mr Charles would be an unsecured claim. It will be necessary to establish what periods this covers. It is possible that this claim is complete as Mr Charles will not have had earnings since September 2020 and may have submitted his tax return for 20/21 already.

Using the figures provided to date the claim can be split:-
Secondary Preferential

- VAT - £36,800;
- PAYE/NIC - £3,250
- Total secondary preferential - £40,050.

Unsecured

- Overpayment on JRS - £600;
- Employers NIC - £2,200;
- Self assessment - £6,500
- Total unsecured - £9,300.

Employees
Pay in lieu of notice £850 – Unsecured claim
Holiday pay £1,350 – Preferential claim
The RPS will then have a subrogated claim in the bankruptcy

Cyrus Bay Marina Limited
Warrant to cite the debtor was 7 September 2021. Unpaid rent can be claimed for the period from August 1 2020 to 7 September 2021. This would reduce the claim for unpaid rent slightly, however, the practical effect would simply be to increase the future sums due under the lease.
Unpaid mooring charges can be claimed from August 1 2020 to 7 September 2021 reducing the claim in the sequestration slightly. In practice if the lien is settled it is likely that this will be paid in full. You should request a copy of the agreement under which the Westerly 33 was moored and repaired at the Marina and check whether CBML are entitled to hold the yacht until these are paid, seeking legal advice if necessary. Assuming the offer of £15,000 for the Westerly is reasonable it is likely that you will have to settle the mooring charges and repairs from the proceeds to facilitate the sale. This would reduce the value of the unsecured claim by this amount.

CBML are entitled to claim for future rent. However, they have a duty to mitigate this sum by attempting to re let the premises. The extent to which they are able to do so will depend on how quickly they are rebuilt. Dilapidations £50,000. It appears that Pinnacle Insurance are claiming £45,000 for the rebuild costs of the premises and therefore assuming that Pinnacle have indeed rebuilt the premises, CBML cannot also claim this sum. The facts on this point need to be established to allow the Trustee to determine who can claim this sum.

Exclusive Yacht Supplies Limited
Goods were supplied prior to the date of sequestration. An inhibition was subsequently obtained by Exclusive Yacht Supplies, however, as this will have been cut down by the sequestration and therefore give them know preference over the other unsecured creditors. Their claim of £23,200 would be unsecured.

Pinnacle Insurance
You would require the Solicitors to submit a completed claim on behalf of their client. This should include a copy of the policy and refer to the relevant part of the terms and conditions which would entitle the insurer to claim back the cost incurred in rebuilding the premises and the damage to the yachts. A loss adjusters report should be provided if available together with any supporting documents evidencing any consequential losses. Assuming the terms and conditions entitle the insurer to pursue Mr Charles, the likelihood is that the full claim for **£125,000** will be admitted.

Steinbeck Bank Limited – Bounce Back Loan
Loan repayments would have been due to commence on the BBIL in April 2021. The loan would be interest free for first 12 months. Steinbeck Bank will be entitled to recover 100% of their debt from the government, with the British Business Bank entitled to claim in full for £12,500 plus any accrued interest on a subrogated basis as an unsecured debt

Other Unsecured creditors
Assuming that proofs of debt together with any necessary supporting documentary evidence have been submitted you would admit **£12,600** of the other unsecured claims.

Q4 (d)

Sequestration of Lee Charles

Estimated Outcome Statement as at 25 October 2021

	Notes		Estimated to realise	
		£	£	
Villa		312,000		Based on purchase price. Will be confirmed by valuation
Due to secured lender		-75,000		Estimated. Will be confirmed with secured lender
Costs of sale		-5,680		Assume Estate Agency 1.5% plus c£1,000 for conveyancing. Allowance given for costs of sale but not litigation on assumption consensual settlement reached.
Net proceeds of sale		231,320		
Deposit due to Mrs Charles		-50,000		Assume copy of Minute of Agreement produced
Mortgage maintained by Mrs Charles		- 9,900		Assume during negotiation allowance given for 50% of payments from separation to seqn
Proceeds to be split		171,420		
Mr Charles' share			85,710	
Caravan			0	Assumed not realised as mobile and sole residence
VW Golf			0	Not realised as less than £3,000 and reasonably required
Yacht - Westerly 33			11,115	Assume that valuation confirms that 15,000 is an acceptable price for yacht and that the lien relates only to the mooring fees which are paid in full
Shareholding			28050	Assume that shareholders funds have not materially changed and the other shareholders are willing to buy the 33% share
Debtor's Contribution Order			56,100	Assume 12 months at £800 = £9600 and 3 years at c £5900 per year
Total Realisations			180,975	
Costs of realisation				
Trustee's Fees		20,000		WIP at present £4,250. Assume total fees £20,000. VAT will be recoverable
AIB Audit Fee		3,500		17.5% - check
Outlays		1,000		Including valuations

		-24500	
Sums available for creditors		156475	
Prefential creditors			
Employees	1,350		£725 +£625 holiday pay
Available for secondary preferential creditors		155125	
Secondary preferential creditors			
HMRC	40,050		
Available for unsecured creditors		115075	
Unsecured creditors			
Employees	850		
HMRC	9,300		
CBML	16,250		Assume Rental and Future rent but not diapidations. Mooring charges paid in full to release boat
Pinnacle Insurance	125,000		
Exclusive Yacht Supplies	23,200		
Steinbeck Bank	12,500		
Other Unsecured Claims	12,600		
Total unsecured creditors		199,700	