

# **Joint Insolvency Examination**

**November 2024 sitting**

## **Senior Moderator's Report**

### **Introduction**

These remarks are written following the publication of the results of the November 2024 sitting of the Joint Insolvency Examination ("the Examination"). It should be read in conjunction with the individual reports prepared by the Examiners for the two papers in England and by their counterparts in Scotland.

### **How candidates fared at the 2024 sitting**

The number of candidates sitting one or more papers in 2024 was 172. This was an increase of 14% over the previous three years when, in each year, around 150 candidates sat at least one paper. In 2024 the vast majority (167) attempted the English versions of the papers.

Across the cohort there were 65 candidates who sat the personal insolvency paper and 144 who sat the corporate insolvency paper. There were 30 candidates who were successful in passing the personal insolvency paper, a pass rate of 46%. This was slightly lower than the pass rate for the 2023 sitting (50%) but commensurate with the trend of recent years. The results for the corporate insolvency paper were a material and very welcome improvement on the very poor results in 2023. Of the 144 candidates attempting the paper in 2024, 67 were successful, a pass rate of 46% which is the highest achieved since 2019.

### **Bad habits – but some good news**

Following the poor corporate insolvency results in 2023 and after my comments on the 2023 sitting had been published, the decision was taken to share with representatives from the tutoring organisations and major insolvency firms anonymised examples of marginal candidates' answers.

This exercise demonstrated to a wider audience the range of approaches that candidates can and do take when formulating their answers and committing them to paper. It also demonstrated that the perennial issues to which I have drawn attention over the years persist, and that perpetuating these "bad habits" is preventing too many candidates from presenting scripts that are passworthy.

I am pleased to say that, during my own review of scripts for the 2024 sitting, I sensed an improvement in the way in which some candidates had presented their answers. As in recent years, there was rarely any visible evidence of planning but it was good to see that some candidates had apparently given thought to how their answers could be presented in a logical, organised way. Candidates who did this will invariably have been awarded better holistic marks.

This improvement was far from being universal. However well laid out, a candidate's answer will not be acceptable if they (1) do not take the time to appreciate what is being required of them, (2) spend time answering a question that has not been asked and/or (3) wander off the subject. The oft warned against practice of a candidate committing to paper everything they know on a particular topic (the "checklist" approach), in the hope of being awarded marks along the way, is still much in evidence. Finally, and worryingly given that the questions set by the Board are essentially practical in nature, too few of the answers that I looked at during my own review demonstrated a deep understanding of the subject being examined and an appreciation of the practical steps that should be taken to address the problem to which a solution was sought.

None of the issues in the foregoing paragraph is new. I have said in previous remarks that candidates who persist in perpetrating these "bad habits" are not presenting scripts that can be considered as passworthy. Such scripts are at best borderline and are usually at real risk of not passing.

## **Final remarks**

Too many candidates are falling just short. This year on the corporate insolvency paper 20 candidates (14% of the cohort) achieved a final mark between 1 and 3 marks below the pass mark. The equivalent number on the personal insolvency paper was 8 (12% of the cohort). The purpose of the exam is to identify candidates who are able to demonstrate that they have sufficient knowledge of insolvency law, procedure and practice to enable them to carry out the functions of an authorised insolvency practitioner. This is the yardstick by which candidates are measured and candidates whose scripts do not show the required knowledge will not pass. With so many scripts failing by very few marks, if candidates take heed of these remarks it would not take much for the good pass rates achieved in 2024 to be bettered in 2025.

## **JOINT INSOLVENCY EXAMINATION BOARD**

### **CORPORATE PAPER SCOTLAND**

#### **SCOTTISH EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2024 SITTING**

##### **General comments**

Only one candidate passed the Scottish corporate paper this year. I have provided below details of the performance of the candidates on each question but, as my English counter part has also done, I have set out my general thoughts on what makes the difference between a “pass” and a “fail” candidate.

For both unsuccessful candidates and those that are attempting the examination for the first time, I will attempt to set out the characteristics of a good quality, well answered paper and those of a submitted script that does not score well enough to achieve a pass.

As explained in my previous year's report, the main issues in the poorly answered papers are:

- failing to read the question properly and understand the requirements in full;
- failing to apply practical experience and knowledge to the answer;
- failing to manage time in the exam and answer questions in a structured manner; and
- failing to structure numerical answers in a way that allows efficient answering.

The more successful candidates:

- set out their answers in a structured way;
- provide answers relevant to the facts of the question – they do not go off at tangents;
- attempt all questions including the numbers questions (a candidate not attempting the numbers questions is unlikely to achieve the required pass mark);
- read the question carefully and identify the full requirements;
- apply basic practical knowledge from experience to the facts of the question. I would stress this is a key factor here in demonstrating your ability to be an IP; and
- Demonstrate exam technique.

The candidates that demonstrate the above score consistently well on all questions, both numeric and written questions.

##### **Comments on each question**

###### **Question 1**

This question came from the practical angle of a group of creditors, in their view, disgruntled with the progress and conduct of the appointed Liquidator in a Creditors' Voluntary Liquidation. They had several questions and concerns they wanted addressing with a view to replacing the liquidator.

###### **Part (a)**

The first part of the question asked candidates to set out the steps required to remove and replace the Liquidator.

Generally, this was not well answered with a lot of candidates not setting out the instances in which a Liquidator can be removed, the procedure required, the level of creditors required to commence the procedure (which was also clear in the Question facts that threshold was easily reached), the duties of the incumbent Liquidator once the request had reached the necessary threshold etc.

#### **Part (b)**

Candidates were examined on an ethical issue around the threats to Objectivity and whether the current liquidator should have accepted the appointment due to the company being an audit client of the same firm.

This was answered well with one candidate obtaining full marks.

#### **Part (c)**

This part of the question requested candidates to set out the functions of a committee, the responsibilities and an overview of how one is formed. Most candidates answered well but few recognised the practical aspects of having 7 creditors.

#### **Part (d)**

This part was seeking an overview of the Liquidator's duty to submit a conduct report to the Insolvency Service. This was generally answered ok with most candidates noting the reporting requirements.

The one better scoring candidate covered the following:

- identified that the current liquidator should have already submitted the conduct report.
- set out the general duties of the Liquidator in respect of reporting
- assuming a new liquidator appointed, what they should do if any new evidence of unfit conduct is identified
- the potential outcomes for the Directors if unfit conduct discovered

#### **Part (e)**

Again, this part was not answered well by the general body of candidates.

The question facts set out certain financial information which indicated that the statement of affairs and / or the deficiency statement may be incorrect and there may be a possible intercompany debt that had been written off after the last financial statements had been prepared.

The general thoughts are that candidates struggled with practical investigation aspects of this question prior to looking at a winding up petition. Most candidates just jumped straight into the fact that there may be a debt due and they should issue a winding up petition and what that would entail.

## **Question 2**

This is the first time that Restructuring Plans have been examined in depth at JIEB. When stripped back, the question was largely a “numbers question” requiring the preparation of an Estimated Outcome Statement (“EOS”) at a future point when a Restructuring Plan (“RP”) may be sought. The approach was from a firm of solicitors requiring some assistance with the EOS, the views on the Relevant Alternative that should be used and thoughts of the proposal vs the Relevant Alternative.

All parts of the question were not answered well.

### **Part (a)**

This required the preparation of an Estimated Outcome Statement at 28 February 2025 being the estimated timeframe for achieving a Restructuring Plan. Lots of information was available in the question to prepare the EOS.

Candidates seemed to struggle with a basic EOS here and it may be because the question mentioned a Restructuring Plan. If candidates had stripped this back to what the question was fundamentally asking, for i.e. a pre pack, then I expect they would have done better.

### **Part (b)**

This requested the views on the choice of relevant Alternative used in the EOS. There were various “pointers” in the question facts showing that a sale in Administration was possible and should be used as a benchmark as opposed to, say, a forced sale, winding up scenario.

### **Part (c)**

This required candidates to compare the outcome of the Relevant Alternative to that being proposed in the Restructuring Plan. No candidate did well here as only one recognised that the Relevant Alternative provided a better result for HMRC and landlords and, as a result, needed improving or risk the RP being rejected by the Court but then went on to state that the RP would likely succeed which is not the case.

**Question 3**

This question was set as the candidate being in the role of compulsory liquidator in a case where there were various transactions that had been discovered that required further investigations. This question was generally answered well which you would expect as combining SIP 2 with basic common knowledge would lead candidates to score well.

**Part (a)**

This part sought the general obligations and duties of a Liquidator when investigating the affairs of a company. It was effectively testing candidates understanding of SIP 2.

The question was generally answered well.

**Part (b)**

This provided several issues that had been discovered in initial investigations and what further work should be done to potentially seek recoveries for the estate.

The question was answered well by most candidates.

#### **Question 4**

This question was predominantly a “numbers” question asking the candidate to prepare an EOS to enable the Administrators Proposals to be prepared. The EOS should have indicated that there were sufficient realisations available to make a distribution to unsecured creditors.

The flow of the question then sought drafting of the proposals in relation to the exit and how remuneration approval would be sought on the basis of achieving statutory purpose 3(1)(b) and how this, and the approval of the proposals would contrast with a situation where the statutory purpose (3)(1)(c) was being followed.

The overall standard of scripts in this question was mixed with one candidate scoring really well across all sections, however the remaining candidates struggling with the numbers and exit route and remuneration. Parts (C) to (E) in particular should have picked up easy marks as these could be **lifted from the Act**.

#### **Parts (a) and (b)**

These parts requested candidates to work out amounts due to the main customer following a period of trading and then the estimated outcome to creditors based on the Administration to date and updates from agents.

One candidate scored full marks here, with the rest struggling to understand what was required. Candidates missed out on marks by failing to take a methodical approach to each contract. Part b candidates picked up marks for basic elements however struggled again on basic things like calculating employee amounts due and trading surplus. Some candidates also lacked basic notes to accompany their calculations.

#### **Part (c)**

This part of the question required candidates to identify that secured creditors and preferential creditors would be paid in full and there would be a distribution available to unsecured creditors. Based on this, the requirement was to set out what would be contained in the proposals regarding exit from administration and other statutory requirements.

It appeared that a lot of candidates did not read the requirements of the question properly or failed to apply practical experience. This was generally answered poorly with wrong answers being provided

#### **Part (d)**

Following on from part c, this question was asking candidates to explain how fee approval would be sought in the circumstances. As above, this was answered poorly with candidates failing to identify that the body of unsecured creditors would need to provide approval.

#### **Part (e)**

This requested candidates to compare the ways in which approval of the proposals and remuneration is sought under Para 3 1 b and 3 1 c. This was answered poorly and very few candidates identified that there would be no difference (to part d) in how remuneration would be sought. Many candidates failed to highlight the fact that in situations where para 3(1)(a) and 3(1)(b) cannot be achieved that Para 51 shall not apply and the proposals are deemed approved unless creditors seek a decision procedure to obtain approval.

**QUESTION 1**

**(a) Is it possible to remove and replace a Liquidator? If yes, what is the procedure for us to follow? If possible, we would like to remove the Current Liquidator and replace him with someone from your firm. (5 marks)**

1A a	It is possible to remove and replace a Liquidator in certain circumstances
1A b	A liquidator may only be removed from office by an order of the Court or in this instance under S171 (2) (b) of the IA
1A c	being a decision of the Company's creditors made by a qualifying decision procedure instigated for that purpose in accordance with the Rules
1A d	Under Rule 8.18, the Creditors can request the current liquidator to commence a decision procedure to remove and replace the liquidator
1A e	In this scenario, assuming that no creditor exceeds 25% of all creditors, the request must include: <ul style="list-style-type: none"> <li>a statement of the requesting creditor's claim</li> </ul>
1A f	<ul style="list-style-type: none"> <li>together with a list of the creditors concurring with the request and the amounts of their claims</li> </ul>
1A g	<ul style="list-style-type: none"> <li>confirmation of concurrence from each creditor</li> </ul>
1A h	If one of the creditors is more than 25%, then they can commence the process themselves (without the need for a list of creditors concurring and their note of support)
1A i	The current liquidator must instigate a decision procedure for the removal of the liquidator if 25% in value of the Company's, excluding those connected, request it
1A j	The Current Liquidator or Convenor, must not later than 14 days after the request, provide the requesting creditor with an itemised estimation of costs of the decision procedure
1A k	If these costs are not paid then the convenor does not have to commence the process
1A l	(a) Once the convenor has received the requested amount the convenor has 28 days to complete the decision procedure
1A m	(b) If the convenor does not request the costs then after 14 days from the request the convenor must initiate the procedure within 28 days
1A n	The process must be commenced 28 days from the earlier of (a) or (b)
1A o	The costs of the process are taken from the deposit unless the creditors decide that they are to be an expense of the liquidation
1A p	In this instance, the deposit will be returned to the requesting creditor
1A q	Practically, as the creditors appear to represent more than 25%, the decision procedure can be commenced
1A r	At the decision procedure, as creditors requesting the removal and for us to replace are more than 50% then this should be achievable



**(b) We understand that the company in liquidation was an audit client of PIN Accountancy LLP. Is this acceptable? (3 marks)**

1B a	There are five fundamental principles of ethics for Insolvency Practitioners
1B b	Objectivity is one of the five Fundamental Principles -
1B c	This is not to compromise professional or business judgements because of bias, conflict of interest or undue influence of others
1B d	Where a service has previously been carried by the Current Liquidators firm, there are potential: <ul style="list-style-type: none"> <li>- Self-interest threats (if for example an error is discovered relating to a service carried out by the firm) and</li> </ul>
1B e	- Self-review threats (where the firm has previously carried out professional work of any description)
1B f	When the IP considered the appointment, they should have identified a threat to compliance and evaluated whether that threat was at an acceptable level
1B g	It may depend on what service was being provided by PIN as the term “auditor” is a general term for anyone providing accountancy services
1B h	Assuming in this instance that audit related work has been carried out by the Current Liquidators firm, the appointment should possibly not have been taken
1B i	The firm or an individual within the firm completing audit related work, is a specific example in the Code of Ethics where the IP should not take the appointment (2510.1 Insolvency appointment following audit work)
1B j	It is assumed that a Significant Professional Relationship would have existed .....
1B k	and it is unlikely that appropriate action can be taken to reduce the threat to compliance with the fundamental principles

**(c) Initially the creditors did not consider that a creditors’ committee was required. Now that we have co-ordinated a group of seven creditors, which makes up most of the unsecured creditors in terms of value, we would consider forming a committee. Given that the Current Liquidator was appointed some months ago, have we lost the opportunity to form a committee? If we can form a committee, we would like to understand its functions and responsibilities and be given an overview of how one would now be formed. (4 marks)**

1C a	No, you have not lost the opportunity to form a committee
	The general functions and responsibilities of the Committee are to:
1C b	<ul style="list-style-type: none"> <li>• assist the Liquidator in discharging the Liquidators functions</li> </ul>
1C c	<ul style="list-style-type: none"> <li>• act in relation to the Liquidator in such manner as may from time to time be agreed</li> </ul>
1C d	Committee members will need to attend meetings from time to time with the liquidator to deal with various potential matters
1C e	One of the main responsibilities of the Committee is to consider and agree the remuneration of the Liquidator
1C f	On a practical point, there can only be between 3 and 5 members of a committee
1C g	Overview of formation:
1C h	- The creditors decide at a decision procedure whether a committee should be established
1C i	- The first stage is a simple majority vote (ie if more than 50% of voting creditors request then a committee should be established)
1C j	- There must also be a decision procedure by creditors as to the membership (ie which members should form the committee)

1C k	- The committee is not formally established until the Liquidator has sent a notice of its membership to the Accountant in Bankruptcy
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**(d) We have concerns about the conduct of the Directors. We have advised the Current Liquidator of our concerns but not heard anything back. Does a Liquidator have a duty to issue some kind of report to an official body that may see them get struck off? (4 marks)**

1D a	A Liquidator has a duty to prepare a report on the conduct of any director at the date of insolvency and anyone that has been a director in the preceding 3 years
1D b	The Conduct Report must describe any conduct, of those mentioned above, which may assist the Secretary of State, in deciding whether it is in the public interest that a disqualification order should be made
1D c	The Conduct Report must be submitted within 3 months unless the SoS has agreed an extension based on circumstances
1D d	In this scenario, the Current Liquidator has been in office over 3 months so this should have already been submitted
1D e	There is no requirement of a new Liquidator in this scenario to prepare another Conduct Report
1D f	However, if new information comes to the attention of the Liquidator (Proposed or Current) then they should send that information to the S of S ASARP
1D g	This "new information" is information that a Liquidator considers should have been included in a conduct report
1D h	Should we be appointed as Liquidator and we identify any potential misconduct then we can provide to the S of S
1D i	Should the SoS deem unfit conduct then they may seek an application to court to disqualify as a director or
1D j	Agree an undertaking with a Director that they will not be a director of a company in an agreed period
1D k	This period could be between 2 and 15 years

**(e) What are your thoughts on this and how you would investigate and potentially attack this transaction? (4 marks)**

1E a	The initial view of the estimated S of A is that it doesn't make sense
1E b	The known creditors of the Group are c£1.2 million and the deficiency is showing as £300k with no assets
1E c	Further investigations will need to be made into the financial position once appointed to understand
1E d	Likewise, the position with the debt due from the associated company does not make sense
1E e	It would appear that there is or was a debt due from the associated company for c£500k
1E f	It appears that this debt has been written off between the preparation of the last statutory accounts and the date of the statement of affairs
1E g	From basic investigations, it would appear that the associated company is solvent and owns an unencumbered property
	On our appointment we would:
1E h	- make enquiries to the directors as to the reasoning of the write off
1E i	- pursue the associated company for repayment of the debt
1E j	- obtain searches at Land Registry in relation to the property owned by the associated company
1E s	- Obtain a desktop valuation / valuation advice from an agent

1E k	- perform searches on the financial position of the Directors (to consider whether any action is commercial to run)
1E l	- investigate whether the £500k is the correct balance (could be higher due to the larger deficiency)
1E r	- obtain board minutes/books and records
	On the face of it, it would appear that there is either:
1E m	- misconduct by the Director/s in writing off the debt when it is recoverable (potential misfeasance action)
1E n	- an action for a Transaction at an Undervalue on the basis that the debt has been written off for nil consideration
1E o	- the write off has not occurred and there is a debt due from the associated company to be pursued
1E p	Initially, an attempt would be made to settle the matter amicably by seeking repayment (to minimise costs)
1E q	If this is not possible, legal action may be required including the issuing of proceedings which can be expensive and carry litigation risk
1E t	Liaise with professional advisers to consider any potential claim

**Total: 20 marks**

## QUESTION 2

(a) EOS Numbers – see spreadsheet (14 marks)

Spaghetizza Limited		
Estimated Outcome Statement		
Relevant alternative - Administration and pre-pack		
		£
<b>Assets subject to Floating Charge</b>		
	Lease premiums	3,000,000
	Goodwill / IPR / Leasehold improvements	2,500,000
	Other Assets	3,250,000
		8,750,000
<b>Less: Costs</b>		
	5% Administrators Fees	(437,500)
	2.5% Legal Fees	(218,750)
	2.5% Agents Fees	(218,750)
		(875,000)
<b>Available to preferential creditors</b>		7,875,000
	Primary - assume tfrd in PP	
<b>Secondary</b>		
	HMRC - VAT	(1,916,000)
	HMRC - PAYE	(1,666,000)
<b>Shortfall to Prefs</b>		4,293,000
<b>Availability under Floating Charge Less PP</b>		3,493,000
<b>Amounts owed to SLH</b>		(10,250,000)
<b>Shortfall to SLH</b>		(6,757,000)

	<b>Unsecured creditors</b>	
	Landlords - retained sites	0
	Landlords - closed sites	(5,000,000)
	Local authorities - all sites	(1,500,000)
	Trade creditors	(2,500,000)
	<b>Shortfall to unsecured creditors</b>	<b>(9,000,000)</b>
	<b>Prescribed Part</b>	<b>800,000</b>
	<b>Total shortfall to ordinary creditors</b>	<b>(8,200,000)</b>
	<b>Shortfall to SLH</b>	<b>(6,757,000)</b>
	<b>Total Shortfall</b>	<b>(14,957,000)</b>
	<b><u>Notes</u></b>	
	<b>1 Leasehold premiums</b>	
	50 sites @ £50,000	2,500,000
	50 sites @ £10,000	500,000
	<b>2 Goodwill / IPR /Leasehold improvements</b>	
	100 sites at £25,000 per site	2,500,000
	<b>3 Equipment - closed sites</b>	
	Not economical to collect and sell	0
	<b>4 Kitchen equipment</b>	
	100 sites @ £15,000	1,500,000
	<b>5 Stock</b>	
	100 sites @ £100,000	10,000,000
	ROT suppliers	(5,000,000)
		<b>5,000,000</b>
	25p/£	<b>1,250,000</b>

<b>6 Cash</b>	
Cash available	3,500,000
Rent	
100 @ £100,000 / 4	(2,500,000)
Est restructuring costs	(500,000)
	500,000
<b>7 HMRC</b>	
<b>VAT</b>	
30 Sept VAT qtr	1,000,000
Est to 30 November (two thirds of £1m)	666,000
	1,666,000
TTP	250,000
	1,916,000
<b>PAYE</b>	
October	1,000,000
November - estimate	666,000
	1,666,000
<b>8 Landlords - retained sites</b>	
Assume that liabilities will transfer on relevant alternative	
<b>9 Landlords - closed sites</b>	
50 sites @£100k	5,000,000

<b>10 Local authorities</b>	
150 sites at £10k per site	1,500,000
<b>11 Trade creditors</b>	
Per question	7,500,000
ROT	(5,000,000)
	<u>2,500,000</u>
<b>12 Amounts owed to SLH</b>	
Primary indebtedness	10,000,000
Interest - 3 months	250,000
	<u>10,250,000</u>

**(b) Explain your rationale for choosing the relevant alternative used by you in your answer to Requirement (a). (2 marks)**

2B a	The relevant alternative is whatever the Court considers to most likely to the Company should the RP not be sanctioned
2B b	In this particular matter, the largest shareholder and secured creditor has indicated that, if the RP was not approved, then they would buy back as a pre-pack
2B c	It is also known that there are parties that have expressed an interest in buying out of a pre-pack
2B d	In this scenario, it is considered that the appropriate relevant alternative would be a pre pack sale out of an administration
2B e	and not a liquidation / forced sale scenario

**(c) Set out your initial thought on the prospects of the proposed restructuring plan being successfully implemented. (4 marks)**

2C a	It is likely that the restructuring plan is going to be contested on the basis that :
	- HMRC are likely to receive more in the Relevant Alternative
	- certain creditors are receiving monies in the Relevant Alternative
2C b	Under Part 26A of Companies Act, if at least 75% of a class of creditor do not agree ("Dissenting Creditors"), the court can still sanction the plan (901G (1) and (2))
2C c	For the Court to do this, it needs to be satisfied that, under the plan, none of the creditors in the "Dissenting Class" would be worse off in the "relevant alternative". (901G (3)). ("the no worse off test")
2C d	The Court also requires that those classes of creditors who would receive a distribution in the "relevant alternative" (in the money creditors) agree to the plan (75% or more in a meeting). (901G (5))
2C e	HMRC are estimated to receive payment in full in relevant alternative
2C f	HMRC to receive £3 million in the proposed restructuring plan
2C g	HMRC are almost certain (based on case law) to reject the plan
2Ch	In this scenario, HMRC are worse off under the relevant alternative and the Court will not be able to sanction on the basis of (901G (3)). ("the no worse off test")
2C i	Therefore recommended, if possible, to offer HMRC more in the RP than they would receive in the relevant alternative

2C k	All unsecured creditors (including landlords) are estimated to receive £800k in relevant alternative
2C l	Landlords are estimated to receive £nil in the proposed restructuring plan
2C m	Landlords are almost certain (based on case law) to reject the plan
2C n	In this scenario, Landlords are worse off under the relevant alternative. Possibly look to offer £800k to those creditors affected as part of RP.

**Total: 20 marks**



### QUESTION 3

(a) What are the obligations placed on a Liquidator to investigate the affairs of a company in liquidation? (6 marks)

3A a	The Liquidator of an insolvent entity has a duty to investigate what assets there are and what recoveries can be made
3A b	The Liquidator therefore needs to carry out appropriate investigations to satisfy the specific duties and allay the legitimate concerns of creditors and other interested parties
3A c	The Liquidator also has a duty to report to the Secretary of State on the conduct of those formerly in control of the Company
3A d	The Liquidator should carry out investigations that are proportionate to the circumstances of each case
3A e	The Liquidator should report clearly on the steps taken in relation to investigations and the outcomes
3A f	Conduct reports and any new information that comes to light should be submitted in a timely manner
3A g	The Liquidator should locate the company's books and records and ensure they are secured and listed as appropriate
3A h	The Liquidator should invite creditors to provide information on any concerns regarding the way the company's business has been conducted, and on any potential recoveries for the estate
3A i	This should be done at any meeting of creditors and in the first communication to creditors
3A j	Should a creditors' committee be formed then a similar invitation should be extended to such committee upon or soon after the formation
3A k	The Liquidator should always have in mind the need to ascertain what assets can be realised
3A l	Enquiries should also encompass whether prior transactions by the company, or the conduct of any person involved with the company, could give rise to an action that could lead to a recovery
3A m	The Liquidator should make enquiries of the Directors and senior employees by issuing questionnaires and/or interviewing them
3A n	An initial assessment should be made as to whether any matters may lead to recoveries for the estate and what further investigations may be appropriate
3A o	The Liquidator should provide information to creditors, where possible, on the investigations and any action being taken (subject to privilege and confidentiality)
3A p	The Liquidator should document initial assessments, investigations made and conclusions
3A q	The Liquidator should prepare a conduct report based on information coming to light in the ordinary course of enquires
3A r	The conduct report is a statutory duty of a Liquidator and must be complied with regardless of the funds situation
3A s	The Liquidator should report any potential offences to the relevant authorities

**(b) For each of the five matters raised in the case manager's report identify, and if possible quantify, the recoveries that might be made for the benefit of creditors. In each case explain:**

- i **what further enquiries and investigations should be made;**
- ii **what further information should be requested and from whom; and**
- iii **what potential recovery actions could be taken by you. (14 marks)**

**(a) Management Charge**

3B aa	Write to the Director of the Company and .....
3B ab	..... IC2 regarding the following:
3B ac	- seek a copy of the invoice relating to the Management Charge
3B ad	- request further details of what the charge relates to and what the company received for such significant amount
3B ae	Review the statutory books to see if there are any resolutions relating to the transaction
3B af	Review the Books and Records to see if any substantiation / support
3B ag	Speak with the former employee to see what further information they can provide in relation to the charge
3B ah	On the basis that IC2 does not have any employees or costs etc then it is an unusual transaction
3B ai	If the transaction is deemed to be non-commercial / overstated then there could be potential recoveries to pursue against the Director and/or IC2
	These could include:
3B ah2	- Transaction at an Undervalue
3B ai2	- Misfeasance
3B aj	- Simple reversal of the management charge and pursue a debt
3B ak	- If the charge is reversed, potentially wind up IC2 to allow a liquidator to investigate where the funds (£4.5m) have been utilised
3B al	On a practical note, write to Companies House to object against the striking off

**(b) Rolls Royce**

3B ba	Instruct an agent to advise on the value of the Motor Vehicle
3B bb	Write to the Directors to seek further information regarding the transaction and the reasoning for the transfer of the asset
3B bc	On the face of it, it would appear that the MV has been sold at an undervalue of c£75k (£100k market value, sold for £25k)
3B bd	Under S242, this has happened in the relevant time (ie 2 years from insolvency as it is to a connected party)
3B be	In addition, the related company appears to have repaid an interco debt with the transfer of the asset which may indicate a Preference
3B bf	Under S243, this has happened in the relevant time (ie 2 years from insolvency as it is to a connected party)
3B bg	Ultimately, would be seeking to recover c£100k for the claim subject to agents advice on valuation

**(c) Sundry Debtor**

3B ca	This appears to be a straightforward overdrawn Directors Loan Account
3B cb	Write to the Director to seek repayment of the debt .....
3B cc	... or an explanation of why it isn't repayable

3B cd	Ultimately, recoveries would depend on the financial situation of the Director
3B ce	Obtain any publicly available information on the financial status of the Director (eg Land Reg searches, Companies House searches etc)

**(d) Transactions**

3B da	Initial views could be that it is possible that Creditors have been misled as to the activities of the Company
3B db	Write to Creditors and invite them to provide copies of any marketing literature, correspondence etc
3B dc	Subject to further investigations, there is potentially a Fraudulent Trading action consideration if it appears that the business has been carried on with the intention to defraud creditors
3B de	Write to the Director to seek the reasoning for making significant payments to the four investments
3B df	Ultimately, an explanation of how all of the funds have been utilised or recoveries if available should be sought against each individual company
3B dg	Liaise with the Liquidator of CCCC Share trading to see what investigations they are performing and how the £5 million has been utilised
3B dh	Subject to review, consider removing current liquidator and appointing own choice to investigate
3B di	Consider the restoration of BBB Sports Betting Limited and appointing a liquidator to investigate where the funds have been utilised
3B dj	Write to AAAA and DDDD and seek repayment of the monies
3B dk	Consider placing AAAA and DDDD into liquidation (either as potential shareholder or as a creditor via a winding up order if not)

**(e) Solicitors**

3B ea	Write to the Solicitors to explain that you have been appointed
3B eb	Request full details of all matters that they have acted on for the Company including copy invoices for legal fees
3B ec	Request the Client Files in relation to matters dealt with by the Company as they are property of the Company
3B ed	These files may provide valuable information into the activities of the Company and the Directors

#### QUESTION 4

(a) Numbers – see spreadsheet (4 marks)

<b>LLBT Engineering Limited</b>					
<b>Amounts owed by Customer</b>					
<b>Contracts to be continued</b>					
	<b>Contract number</b>	<b>Contract value</b>	<b>% done</b>	<b>% to do</b>	<b>Value</b>
	2	1,000,000	80%	20%	200,000
	3	200,000	75%	25%	50,000
	5	100,000	75%	30%	30,000
					280,000
			Discount	25%	(70,000)
					210,000
			Variation		25000
					235,000
			VAT	20%	47,000
					282,000
			QS costs - share		(6,000)
		<b>AMOUNT DUE</b>			<b>276,000</b>

**(b) EOS – see spreadsheet (25 marks)**

<b>LLBT Engineering Limited</b>			
<b>Estimated Outcome Statement</b>			
	<b>Assets subject to Fixed Charge</b>		
	Freehold property		1,250,000
	<b>Less costs of realisation</b>		
	Administrators, agents and solicitors - 7.5%		(93,750)
	<b>Available to Kingfisher Bank under Fixed Charge</b>		1,156,250
	Owed to Kingfisher Bank		(870,000)
	<b>Surplus (Shortfall) to Kingfisher Bank</b>		286,250
	<b>Assets subject to Floating Charge</b>		
	Plant and machinery		273,500
	Stock		153,736
	Debtors and retentions		200,000
	HP surplus		56,255
	WIP - contracts novated		87,500
	WIP - customer		250,000
	Administrators Trading Surplus		100,000
	Fixed charge surplus		286,250
			1,407,241

	<b>Less: Costs of realisation</b>		
	Administrators Fees	(100,000)	
	Agents Fees	(25,000)	
	Legal Fees	(10,000)	
	QS Fees	(10,000)	
		<u>(145,000)</u>	
	<b>Available to primary preferential creditors</b>	1,262,241	
	Employees	(234,400)	
	<b>Available to secondary preferential creditors</b>	1,027,841	
	HMRC	(150,000)	
	<b>Net Property</b>	877,841	
	Prescribed part		No PP
	<b>Available to unsecured creditors</b>	<u>877,841</u>	
	<b>Unsecured creditors</b>		
	Trade creditors	1,952,058	
	Employees	879,600	
	Parent company	5,000,000	
	BB Loan	18,963	
		<u>7,850,621</u>	
	Estimated dividend available to unsecured creditors	11.18 p/£	

<b>LLBT Engineering Limited</b>		
<b>Notes to the Estimated Outcome Statement</b>		
	<b>Notes</b>	
	<b>1 Plant and Machinery</b>	
	Sales to date	223,500
	Future estimate	
	£200,000 @ 25%	50,000
		<u>273,500</u>
	<b>2 Stock</b>	
	Initial stock list	1,274,872
	Provision for accuracy - 10%	(127,487)
		<u>1,147,385</u>
	ROT	(634,932)
		<u>512,453</u>
	New supplier - 50%	(256,226)
		<u>256,226</u>
	Auction - 10%	<u><b>25,623</b></u>

<b>New supplier</b>	
Amount at cost being bought	256,226
At 50p/£	<b>128,113</b>
Total	<b>153,736</b>
<b>3 Motor Vehicles</b>	
23 Vans @ £10,000	230,000
15 cars @ £15,000	225,000
	455,000
Agents Fees - 5%	(22,750)
	432,250
XXX Finance - primary indebtedness	(349,763)
Termination fee	(26,232)
	(375,995)
<b>Surplus</b>	<b>56,255</b>



<b>4 Contracts novated to new supplier</b>					
	Cont val	% done	value	paid	WIP
Contract 1	500,000	25%	125,000	-75000	50,000
Contract 4	750,000	10%	75,000	0	75,000
Contract 6	400,000	15%	60,000	-10000	50,000
					175,000
To be paid by supplier - 50%					<b>87,500</b>
<b>5 WIP paid by customer</b>					
	Cont val	% done	value	paid	WIP
Contract 2	1,000,000	80%	800,000	-650000	150,000
Contract 3	200,000	75%	150,000	-100000	50,000
Contract 5	100,000	70%	70,000	-20000	50,000
					250,000
<b>6 Administrators Trading Surplus</b>	£				
Sales to Customer	235,000				
Less Costs	(170,000)				
Add back depreciation cost	20,000				
Add back QS costs - inc above and in calc of work done	15,000				
Admin trading surplus	<u>100,000</u>				

<b>7</b>	Kingfisher Bank		
	Term Loan	742,500	
	Overdraft	127,500	
	Caught under charge	870,000	
	Assume BB Loan is unsecured	18,963	
<b>8</b>	Employee claims		
	<b>Arrears of pay</b>	Pref	u/s
	73 members of staff @£800	58,400	
	73 ees at £1,200		87,600
	<b>Holiday pay</b>		
	88 ees at £2,000	176,000	
		234,400	87,600
	<b>Redundancy pay</b>		
	88 ees @ £9000		792,000
	<b>Notice pay - assume nil claims due to high chance of moving and on better wages</b>		
	<b>Total claims</b>	<b>234,400</b>	<b>879,600</b>

<b>9 HMRC</b>	
PAYE	50,000
VAT - 3 months	60,000
provision for 2 months - 2/3	40,000
	<b>150,000</b>
<b>10 Trade creditors</b>	
Aged creds list	2,713,976
Credit notes re ROT	(634,932)
VAT on ROT credit notes	(126,986)
New Trade creditors	1,952,058

- (c) Based on the estimated financial outcome, draft an outline of the section of your Proposals that deals with how it is proposed that the Administration will end, including any further requirements associated with the proposed exit route. (4 marks)**

4C a	Based on the EOS, it is estimated that secured creditors will be paid in full and there will be a distribution available to unsecured creditors
4C b	Para 83 of Schedule B1 applies where the administrator thinks that: a) Secured creditors will be paid in full and b) that a distribution will be made to unsecured creditors (which is not a prescribed part distribution)
	The following items should be covered within the proposals:
4C c	- confirmation that there are no secured creditors or the opinion that they will be paid in full
4C d	- an opinion provided that there will be a distribution available to unsecured creditors other than the prescribed part
4C e	- a notification saying that as soon as the Administrators are satisfied they have discharged their duties as administrators and the purpose has been achieved, they will deliver a notice of moving from administration to CVL to Reg of Cos
4C f	- notification that on registration of the notice, the administrators cease to act and the company be placed into liquidation
4C g	- The Liquidators shall be:  a) A person nominated by the creditors of the company in the prescribed manner and within the prescribed period or b) The former administrator (if no one is nominated)
4C h	- A proposal that the current administrators be appointed as liquidators
4C i	- Explanation that creditors may nominate a different person as liquidator between them receiving the proposals and before the proposals being approved

- (d) On the assumption that you can achieve the statutory purpose in paragraph 3(1)(b), explain how you would seek authority for the payment of your remuneration. You are not required to explain the different bases on which the remuneration of an Administrator may be calculated. (4 marks)**

4D a	It is for the creditors' committee to approve the basis of remuneration under Rule 3.95 & Rule 3.97 (bases)
4D b	If the committee fails to determine the basis or no committee is appointed then it is for the creditors to determine by a decision procedure
4D c	In this question, it is estimated that no Para 52 1 B statement will be made as there are funds available for unsecured creditors and it is assumed that Para 3 1 B can be achieved
4D d	It is necessary to obtain a separate resolution in relation to remuneration from the body responsible for approving remuneration (and not caught with the approval of the proposals mechanism)
4D e	This is required by seeking a decision from creditors by either: - Decision by correspondence - Electronic voting - Virtual meeting

	- Physical meeting (if requested)
4D f	Full details of work performed and proposing to be undertaken should be provided (within the proposals)
4D g	Provide access to information on creditors rights in relation to remuneration as administrators (either on line or arrangements to send a hard copy)
4D h	The provisions of SIP 9 should be followed in relation to the principles and information provided

- (e) In a matter where you have concluded that the statutory purpose in paragraph 3(1)(c) only can be achieved, explain how the consideration of the Administrator's proposals and seeking authority for the payment of the Administrator's remuneration would be different.

	<b>PROPOSALS</b>
4E a	Para 49 of Sch B1 deals with the Administrator making a statement setting out the proposals for achieving the purpose of administration
4E b	Para 51 (1) of Sch B1 explains the A must seek a decision from the company's creditors as to whether they approve the proposals (as in part (d))
4E c	Para 52 (1) (c) says that Para 51 (1) shall not apply where Para 3 (1) (a) or (b) cannot be achieved
4E d	The Administrators Proposals are still made available to creditors
4E e	Creditors can request that a decision is sought from the unsecured creditors, re the approval of the Proposals, via a decision procedure .....
4E f	..... whose debts amount to at least 10% (under Para 52 (2) of Sch B1
4E g	Under Rule 5.17, this request must be delivered within 8 business days from delivery of proposals
4E h	Under R3.38, if no request within the 8 days, proposals are deemed to be approved
	<b>REMUNERATION</b>
4E i	No different to part (d) – fixed by a decision procedure unless there is a committee

**Total: (40 marks)**

**JOINT INSOLVENCY EXAMINATION BOARD**

**PERSONAL INSOLVENCY PAPER**

**EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2024 SITTING**

There will not be a 2024 Personal Insolvency Examiners Report for Scotland. However, the Personal Insolvency Examiner's report for England has been prepared and is relevant to the Personal Insolvency Scotland 2024 exam.

**Personal Insolvency England Exam  
November 2024  
Mark Plan**

**Question 1**

**(a) Powers given to a trustee in bankruptcy to enforce the bankrupt's co-operation. (3 marks)**

The Bankruptcy (Scotland) Act 2016 gives a Trustee in a sequestration a number of powers to enforce the co-operation of the bankrupt. Section 215 makes clear the debtor's obligation to co-operate with the Trustee

On application to the Court, the Sheriff may make an order under s215 that the debtor must comply with his obligations.

Section 137 - Withholding debtor discharge.

10 months after Award the Trustee must provide AIB with recommendations on whether the debtor should be discharged. Generally discharge would not be recommended until the debtor had co-operated with the Trustee and therefore the debtor would indefinitely be undischarged from their Bankruptcy until they did co-operate.

Section 118 Private Examination

The Trustee has the power to apply to the Sheriff Court for an Order requiring the attendance of the debtor or his spouse or civil partner at a private examination in order that he can be questioned in relation to his affairs.

Failure to attend without reasonable excuse, can result in a fine or imprisonment.

Section 119 Public Examination

At least 8 weeks before the end of the first accounting period, a Trustee may or if the AIB, Commissioners or more than  $\frac{1}{4}$  in value of the creditors request it, must apply to the Sheriff Court for an order to request the attendance of the debtor or any relevant person to attend a public examination before the sheriff.

Failure to attend without reasonable excuse can result in a fine or imprisonment.

**(b) How a trustee in bankruptcy can progress their administration of the bankruptcy in the absence of any co-operation from the bankrupt. (17 marks)**

**Bankrupt**

Check that bankrupt is aware of the bankruptcy/ your appointment through visiting the address given for the bankrupt on the bankruptcy petition/ order or instructing a sheriff officer to attend the property to hand deliver correspondence from you.

When attending the property (whether in person or via a sheriff officer) and any other properties known to be connected to the bankrupt, note whether there are any vehicles on the drive and whether the property appears to be occupied.

Carry out a search at the DVLA to establish whether the debtor is the registered keeper of the vehicle(s) identified as being at the property.

If the property appears to be empty, make enquiries of neighbours to try and establish whether the debtor still lives at the property. If not, do they have current address details or any other information that may assist?

Carry out a search of social media (facebook, linkedin, Instagram) to see whether you can find out any information in relation to the debtor.

If the debtor's whereabouts are not known, instruct a reputable enquiry agent to carry out a trace report to see if the debtor's current address can be established.

If the debtor cannot be traced an application may be made to AIB to indefinitely defer the discharge of the debtor. The Trustee can subsequently make an application to resign as Trustee and the AIB will be appointed Trustee in their place.

### **Third Parties**

Contact the petitioning creditor to find out what information they hold in relation to the debtor. Establish whether the statutory demand and bankruptcy petition were served personally. If they were, where was service effected. If not, how was substituted service effected? Email, via social media, post etc.

Contact the bankrupt's other creditors to ask whether they have any information that may assist. Certain creditor may have information in relation to bank accounts from which the bankrupt made payments. Request details of all such accounts together with details of any other known assets.

Contact any other relevant or identifiable third parties who may have had dealings with the bankrupt to ascertain whether they know of his/ her whereabouts and to provide any information that may assist you with your enquiries. Third parties could include solicitors, accountants, tax advisors, family members etc.

Make enquiries of the banks at which it is understood the bankrupt held an account. Ask that details of any accounts be provided, together with bank statements for the last five years.

Review the bank statements to see whether there are any payments that require explanation. Make enquiries of the recipients to establish what the payments relate to.

Do any of the payments indicate the ownership of other assets by the bankrupt i.e. vehicles, overseas property, policies.

Do the statements show what appear to be salary payments going into the account? If they do, can the bankrupt's current or former employer be identified and contacted?

If the statement shows payments being received from the DWP or other government agencies, enquiries could be made to establish what payments the bankrupt is in receipt of and what his/ her current address is.

If HMRC is a creditor, make enquiries to establish how the debt arose and request copies of all tax returns submitted by the bankrupt over the last 5 years.

If the tax returns were submitted by a firm of accountants on behalf of the bankrupt, notify the accountants of your appointment and request delivery up of their files.

### **Searches**

Carry out a search at Companies House to see whether the bankrupt is, or has been, a director of any companies. If he has, does he also have shares in the company? If all correspondence to associated residential addresses goes unanswered, consider writing to the bankrupt c/o the registered office of any companies of which the bankrupt is a director.

Carry out a credit reference agency search to see whether this identifies any other creditors.



Write to the major UK Banks to notify of the appointment and establish whether the debtor held any accounts with that Bank

### **Property**

Carry out a name search in geographical locations known to be associated with the debtor to establish whether there is any property registered in their name.

Carry out a land registry search in respect of the property address given on the bankruptcy petition/order. If the bankrupt is not the registered owner, make enquiries of the registered owner to find out what information they can provide in relation to the bankrupt.

### **Potential court applications**

Consider an application to the Court under section 215 to obtain an order from the Sheriff compelling the debtor to co-operate. Applications under s 118 and 119 can also be considered. However the costs of these applications should be weighed against the available funds to pay for these and the likely effectiveness in terms of return for creditors.

**Total: (20 marks)**

## Question 2

### (a) Amount required to discharge the bankruptcy liabilities. (5 marks)

#### Costs

Petition costs	Estimate say £1,250
Trustee's fees	Estimate (only been in office for 27 days) say £2,000 plus VAT - £2,400
Trustee's disbursements	Estimate (insurance, bonding, statutory advertisement) say £500
AIB Supervision Fees – Annual Supervision fee of £100 +VAT = £120	

AIB Audit fee – If the debtor agrees with the Trustee's fees and outlays then this is not required, however, if the debtor is not in agreement and an audit was required this would be 17.5 % of the Trustee's fees and outlays.

#### Creditors

One known creditor	£25,000 (assume no further creditors)
Statutory interest	To pay creditors in full, statutory interest would be paid from the date of sequestration (warrant to cite) to the date of payment at an annual rate of 2% above the Bank of England base rate. 30 August 2024 to 13 November 2024 (assuming payment made today) = 75 days @ 4.75 +2% = £347

A recall application can be made on the basis that statutory interest is not paid. However, the amount of statutory interest which would be payable should be disclosed when the application is submitted

**Total amount required - £28,770 assuming that no audit is required.**

**Credit will be given where any reasonable assumptions have been made in relation petition costs, trustees fees and disbursements.**

### (b) Further enquiries that should be made in relation to the earlier bankruptcy and the assets disclosed by Mrs Watson. (11 marks)

As set out below, the key issues that need to be determined are the status of the first bankruptcy, specifically realisations to date compared to debt level.

Has Trustee been discharged or do they remain in office. ROI will confirm?

What is the position with their administration of the estate is it ongoing or will they shortly be discharged?

Assets at the date of first sequestration and acquired within 4 years of the sequestration vest in the first trustee. As it is less than 4 years since the first Award of Sequestration any assets which would have vested in the first sequestration but which have been acquired since that date will vest in the first sequestration.

The first Trustee is entitled to realise these assets to the extent that they need to discharge the creditors within the first bankruptcy. They would then pass any surplus to a subsequently appointed Trustee.

What have they realised to date? What has been utilised in terms of costs and dividend and what is their estimate of the realisations which will be required to PIF.

Only then will these assets be available for the second estate.

If the Trustee has been discharged but assets are subsequently discovered (for example the inheritance Mrs Watson has disclosed to you) then under section 152 of the Act the original Trustee is entitled to make an application to the AIB to seek their reappointment (providing it is < 5 years from the original award) and it is in the interests of creditors to do so.

## **DCO**

The first Trustee should be asked to confirm whether a DCO has been put in place. If it has, establish when it was put in place, how long it is due to last, how much is paid each month and whether the amount paid accords with Mrs Watson's current disclosed income and outgoings.

## **Assets**

For each of the assets, the Trustee should be asked to confirm whether he was aware of the asset, had taken any steps to realise that assets and has any further information that may assist.

## **Creditors**

The Trustee should be asked to provide details of the creditors of the first bankruptcy.

Any creditors of the earlier bankruptcy are not entitled to prove in the second bankruptcy in relation to any sums that are due to them.

## **Jointly owned property**

Check whether this is/was an asset in the first bankruptcy. If it is an asset of the first bankruptcy, assuming it is the bankrupt's sole or principal residence, what arrangements have been made to deal with this.

Has the Trustee formally abandoned their interest in the property? If so then any equity in the property at the date of the second bankruptcy would be available to the second Trustee.

## **Inheritance**

The inheritance was received within 4 months of the first Award of sequestration. The first Trustee was therefore entitled to claim this inheritance as a non vested contingent interest which existed at the date of the first sequestration.

The fact that the bankrupt still has this money would suggest that it was not claimed by the first Trustee.

Check whether the inheritance was disclosed to the first Trustee.

## **Rolex**

Require the bankrupt to deliver up the watch to you for safekeeping whilst enquiries are made of the first Trustee and the bankrupt. Ensure that the watch is stored securely and obtain valuations. Consider whether in the circumstances (sentimental value?) the watch should be held and not sold pending the outcome of your enquiries regarding the asset and creditor position in the earlier bankruptcy.

## **Life insurance policy**

Notify policy provider of the making of the Award of Sequestration and your appointment as Trustee.

Ask for confirmation of whether the policy has a surrender value and if it does, the requirements for surrendering the policy.

Ask for confirmation of the date on which the policy was taken out in order to establish whether it is an asset of the first bankruptcy estate or the second estate.

### **Equal Pay Claim**

Notify the debtor's employer of your appointment and request details of the period for which the equal pay award will be made and the amounts due.

Wages due prior to the first Award would be a contingent interest at the date of sequestration which would vest in the first trustee in full. Ref Gordon Smith vs AIB 2021. Monies due after the date of the first sequestration would be income in that sequestration for which that Trustee could seek the variation of a DCO. Clarification should be sought from the first Trustee over whether they intend to do so. The element of the equal pay claim due in respect of the period prior to 30 August 2024 would vest in the second sequestration (to the extent they did not already vest in the first) as a contingent interest. However, they may already have been addressed by the first Trustee as a variation to the DCO.

### **(c) Ability to Recall the second bankruptcy. (4 marks)**

The enquiries set out above in relation to the assets will determine whether they are assets that are available to you as Trustee to realise for the benefit of creditors.

If the Trustee in the first bankruptcy is prepared to confirm that they have no interest in the inheritance funds then it is possible (based on the calculation at part a), that these would be sufficient to pay the creditor in the second bankruptcy in full and the costs of the recall process.

The first Trustee may not be willing to allow this if he has concerns about the extent of the assets available to him to pay the first sequestration in full.

A recall application could be made at any time.

As matters stand at present statutory interest does not apply in a recall scenario.

The debtor would wish to keep costs from accruing in either process and therefore if it is realistic to recall both sequestrations their co-operation to drive the process would reduce cost.

Limited benefit to early recall as Trustee still appointed in previous case unless it is certain that the first case will PIF and seeking to minimise costs.

Depending on circumstances would you also seek recall in first case?

**Total: (20 marks)**

### Question 3

#### (a) The actions / enquiries you will make within the next 14 days. (16 marks)

Obtain a credit report for Ms Seymour (with her consent) to check the timings and amounts of the borrowing and that you have details of all creditors

Review of correspondence received from Ms Seymour.

Does it appear that all of her liabilities stem from loans taken out to make payment to Barry or are there other liabilities?

Review Ms Seymour's bank statements to see how much she transferred to Barry from her savings account. It may be possible to claim some or all of this money back from the bank.

Checking bank statements to establish whether the savings account is empty. Confirm where the payments were made to.

The payments to the cryptocurrency firm should be reviewed and enquiries made to establish in whose name the wallets were held and whether any of Ms Seymour's funds remain held.

Check when the statutory demand was served. If 21 days expire without the debt being paid and the debt is > £5,000 then the creditor will have grounds to petition for Ms Seymour's sequestration.

Depending on the timescales required to put in place a solution consider whether applying for a moratorium would be appropriate. This would provide Ms Seymour with protection from enforcement action for a period of 6 months.

Check whether there are any internet reports in relation to Barry. Has he been charged with any offences and/ or been imprisoned?

If Barry has been found guilty of fraud, this may assist in seeking recovery of funds paid / writing off of loans taken out if it can be shown that Ms Seymour was the victim of a convicted fraudster.

If not, enquiries could be made to try and establish his true identity/ whereabouts. Whilst recovery of funds might be unlikely, consideration should be given to whether any of the funds could be recovered as a gratuitous alienation..

Confirm Ms Seymour's asset position in particular does she own the property she lives in? What is its value and does it have a security on it.

Does Ms Seymour have any other assets?

Does she have any surplus income?

Ensure that a Suspicious Activity Report (SAR) is made to the National Crime Agency (in most firms this would be done by MLRO) to discharge your duty to report potential money laundering/terrorist financing activity.

#### **Actions you would suggest Ms Seymour takes**

Ms Seymour should report Barry's actions to the police (and obtain crime reference number) and also Action Fraud.

Should open up to friends and family who will be able to offer her support.

Review of the creditors to see whether Barry has obtained any credit in her name following the release of her bank details to him.

Ms Seymour should ensure that her bank is aware of the recent events and that a new account is opened which cannot be accessed by Barry. Her old account should be frozen to ensure that Barry cannot access the account.

**(b) Advice that Mr Jones should give to Ms Seymour's children. (4 marks)**

The implications for Ms Seymour if an Award of Sequestration is made need to be understood.

Does she have surplus income that could be sought by a trustee through a DCO for the next four years? While a contribution could not be sought from state pension a DCO could be secured over any surplus provided it was less than the private pension receipts.

Does Ms Seymour own the house in which she lives? If she does, then if she is sequestrated the Trustee will be obliged to take steps to realise the equity in the property.

It is important to understand the level of equity in any property/asset value compared to the debts owed as it may cost less to acquire the Trustee's interest in these assets than to pay creditors in full.

If Ms Seymour does not have any surplus income, does not own the home in which she lives and does not have any other assets that a trustee would look to realise if she was made bankrupt, query whether there is any benefit to her children trying to raise the money to pay off the liabilities.

The children also need to understand the total extent of Ms Seymour's liabilities and whether there are any other creditors who may make a claim. Paying the debt due to the petitioning creditor may cause other creditors to take action. Ms Seymour needs a solution to deal with all her debts.

It is possible that some of the payments can be claimed back from Ms Seymour's bank and/ or certain of the banks/ credit card companies that loaned money agree to waive some or all of the sums that were advanced. It might therefore be advisable to put a moratorium in place and attempt to negotiate a reduced settlement with these companies (assuming that there are assets to protect).

The children need to be sure that their mother has not been complicit in this fraud as debts incurred fraudulently would not be written off in bankruptcy proceedings.

**Total: (20 marks)**

#### **4(a) (Voicemails) (8 marks)**

##### **Karen**

Return Karen's call on mobile and introduce self. Confirm time of the meeting.

Ask her to bring the cash float and petty cash to the meeting.

Arrange for a case bank account to be opened.

Explain that the Trustee will be able to pay Karen for the work that she does on the Trustee's behalf in attending this meeting and also preparing information. However, any sums that she is due to be paid until this point will be a claim in the sequestration.

Explain that the Trustee's team will be able to assist with the submission of forms to the Redundancy Payments Office to make these claims. This will be able to be expedited now that an Award of sequestration has been made. Explain that you will be able to discuss this in more detail when you meet.

Clarify whether she does the payroll or whether this has been outsourced.

There will be a lot of information which you require from her, but the most urgent things are:-

A schedule of employees showing their name, date of birth, length of service and sums due in respect of arrears of wages and holiday pay;

A copy of the employees contracts if available to her;

Where the customer details are held, including master keys and the security arrangements for these;

Who controls the businesses social media and online presence and details of log ins/passwords.

Details of the phone numbers used by the business;

Details of the sums due to the business by customers and the extent to which the invoice discounting facility has been drawn down;

The whereabouts of the keys for the shop/workshop;

The whereabouts of the vans and the keys for these;

Any alarm security details;

Details of trade creditors, including sums owed and contact details

##### **Interested Party**

Return Theodore Woolf's call

Confirm that the Trustee has been appointed and that future discussion regarding the purchase of the business should come through you and your office as all assets have now vested in the Trustee.

Explain that you are making an immediate assessment of the position but that you appreciate the urgency and will revert to him soon.

Clarify in more detail the aspects of the business that he would want to acquire to help you establish what the Trustee would need to be able to sell and would therefore require access to.

## **Employee**

Return Joe's call. Explain that the Trustee has been appointed and that you are making an immediate assessment of the situation. As for Karen explain that now that an Award of sequestration has been made it will be possible to process claims on behalf of the employees.

Once you have the payroll details you will get a colleague to discuss this with him in more detail.

Explain that if the Trustee needs them to do any work, they will pay for this but you will confirm if this is required after your first meeting.

Establish whether the van is parked safely and that Joe has the keys. Explain that this is an asset in the sequestration and that you will make arrangements for it to be uplifted (or ideally Joe to return it) once you have established how it can be sold.

### **(b) Other actions in next 7 days. (12 marks)**

#### **Appointment date Tuesday 12 November 2024**

Arrange for petty cash/cash float to be banked in case account.

Arrange for Open cover insurance and subsequently complete full details for insurer;

Secure all assets including premises, vehicles, customer listing and proprietary information including master keys and security information.

Prepare details of what would be available to sell, eg shop premises, equipment, vehicles customer listing, the business name, phone numbers, website and social media presence. Consider the extent to which contracts with customers could be novated/transferred. With assistance from Samuel establish parties other than Theodore Woolf who may be interested in acquiring the business/assets. Consider advertising in relevant trade publications.

Contact the parties who may have an interest in acquiring the business, provide details of what is available for sale establish the extent of any interest and invite offers. Consider a closing date if more than one interested party.

Write to employees to confirm that they have been made redundant. Arrange to assist them to submit claims for the arrears of wages, holiday pay, PIL and Redundancy pay due to them.

Ask employees to return vehicles and fuel cards.

Make arrangements to pay employees for any work done on behalf of the Trustee;

Arrange for valuation of premises;

Arrange for valuation of plant and equipment and Vans. Ask valuer to ensure that HPI check is carried out.

Write to Green Turtle Limited to formally request repayment of the loan

Consider steps to be taken in relation to 50% shareholding in Green Turtle Limited. Obtain most up to date management and statutory accounts. Establish whether there is likely to be any value in the shareholding and the £150,000 due to the locksmith business. Establish how this could be realised. Alternatively if the business is insolvent establish the extent of any liabilities under the personal guarantees.

Confirm whether Samuel is a director of the company and advise him that he can no longer continue to act as director while an undischarged bankrupt



Contact Invoice Discounter to confirm sums due under their facility and when they expect to recover the sums due to them. Ask them to keep you advised regarding their progress and confirm when they have collected the sums due to them and the ledger can be passed to the Trustee or alternatively if they expect to have to make a claim in the sequestration.

Confirm bank balance/overdraft and that all card payments prior to the cessation of trade have been credited to the account.

Notify creditors of Trustee's appointment.

Obtain information to submit final Vat returns and submit VAT 769.

In due course interview Samuel, complete questionnaire and establish whether there are any other assets or personal debts. Assess whether any DCO can be set from his private pension income.

Carry out property searches for Samuel's name in the area.

(c) **Estimated Outcome Statement. (14 marks)**

Sequestration of Samuel Hood								
Estimated Outcome Statement as at 12 November 2024							Estimated to realise	Note
						£	£	
<b>Heritable Assets</b>								
Premises of Hoods at High Street, Baltra - shop and work shop								
Valuation						100,000		1
Due to secured lender - Albatross Bank						- 25,500		
Costs of realisation						- 10,000		2
							64,500	
<b>Business Assets</b>								
Sale of Goodwill							38,800	3
Workshop equipment							9,000	4
Vans *3							27,000	4
Debtors Ledger						232,000		
Sums due to Hawk Limited						- 137,000		
						95,000	45,600	5
Loan due by Green Turtle Limited						150,000	-	6
Petty cash/float							524	
50% shareholding in Green Turtle Limited							-	7
SIPP							162,500	8
Debtor's Contribution Order							-	9
<b>Total Assets</b>							347,924	

<b>Heritable Assets</b>					
Premises of Hoods at High Street, Baltra - shop and work shop					
Valuation			100,000		1
Due to secured lender - Albatross Bank	-	25,500			
Costs of realisation	-	10,000			2
				64,500	
<b>Business Assets</b>					
Sale of Goodwill				38,800	3
Workshop equipment				9,000	4
Vans *3				27,000	4
Debtors Ledger			232,000		
Sums due to Hawk Limited	-	137,000			
			95,000	45,600	5
Loan due by Green Turtle Limited			150,000	-	6
Petty cash/float				524	
50% shareholding in Green Turtle Limited				-	7
SIPP				162,500	8
Debtor's Contribution Order				-	9
<b>Total Assets</b>				347,924	
<b>Costs of Administration</b>					
Legal Fees			25,000		10
Trustee's Fees			50,000		11
Outlays			1,000		12
AIB Audit Fee			13,300		13
				- 89,300	
Capital Gains Tax Liability				- 15,400	14
Available for preferential creditors				243,224	

<b>Preferential creditors</b>						15	
Arrears of Wages				4,800		16	
Holiday Pay				3,715			
VAT				45,000			
PAYE/NIC				4,025			
					57,540		
Available for unsecured creditors					185,684		
<b>Unsecured creditors</b>							
Arrears of wages - unsecured				10,681			
PILON				3,096			
Redundancy				30,518			
ER's NIC				3,570			
Pension				500			
Trade suppliers				15,000			
Rates				5,000			
Fuel cards				1,250			
Personal Guarantees				200,000			
					269,615		
Estimated Dividend to the unsecured creditors					0.69		
Preferential creditors will be paid in full and unsecured creditors would receive a dividend of 69p in the £1							

## Notes

- (1) Assume that the Trustee is prepared to have a prolonged marketing period to secure the development value and the holding costs of the property are not prohibitive.
- (2) Costs include marketing, conveyancing, insurance and security during the marketing period – estimate.
- (3) £20,000 already received. Assume that deferred consideration of (£1,040,000 - £100,000)\*2% - £18,800 is also collected in monthly installments of £1,566. Total of £38,800. This assumes turnover is not reduced by move.
- (4) Assume that value is recovered less 10% cost of realisation.
- (5) £95,000 remains on the ledger of which c£22,000 is >90 days old. It would likely be more effective for Hawk Factors to collect for 20%. Assume 60% of £95,000 is recovered of which 80% is paid to the estate = £45,600.
- (6) We don't have enough information to assess whether Green Turtle will be able to repay this loan, assume value is nil.
- (7) We don't have enough information to assess the value of the shareholding in Green Turtle, assumed that value is nil.
- (8) There appears to have been a gratuitous alienation of Samuel's home to his pension scheme. Assuming that property prices are flat, this is  $(450,000 - 125,000/2) = £162,500$ . Costs of a legal action for recovery and reduction of the transaction and then division and sale/eviction could be say £25,000.
- (9) The debtor's income and expenditure will have to be assessed and a DCO set. A DCO could be taken from the private pension assuming that there is a surplus. Assumed nil at present.
- (10) Assume legal advice to challenge the sale of the property to the SIPP and recover this for the estate is required. Net figure, VAT is recovered.

- (11) Estimated net figure, VAT will be recoverable.
- (12) Includes, Supervision fees, bonding advertising.
- (13) Audit Fee 17.5% of Legal, Trustees fees and outlays unless Commissioners are appointed.
- (14) Capital Gains Tax will need to be paid on any gain on the sale of the business premises, goodwill, equipment and vehicles. It is only likely that there will be a gain on the property particularly because it has been owned by Samuel for so long. In Scotland the rates in 2024/25 are 10% or 20% and the annual exemption is £3,000. Assuming that the value of the property was say £20,000 40 years ago it would be prudent to provide for 20% of £100,000-£20,000)=£80,000 - £3,000 =£77,000 \*20% = £15,400.
- (15) Arrears of wages limited to £800 per person - 6\*£800.

**(d) Prepare a brief note to Isla setting out what you believe the next steps should be in relation to Samuel's home and why. (6 marks)**

From the information we have it appears that there has been a Gratuitous Alienation of the property to a family member in an effort to put it beyond the reach of creditors.

Assuming no material change in property values since 2023 and based on the surveyors valuation the property worth £450,000 was sold for £125,000 therefore at undervalue of £325,000. Samuels 50% share of the value alienated was £162,500.

The facts should be checked.

Obtain a retrospective valuation at date of transfer;

Confirm that property was owned 50:50 or if not, what was Samuel's share

Confirm that there was no security on the property at the time of transfer. Confirm whether there is any security over the property now.

Establish that Samuel was insolvent when this transaction was implemented, the timing of the giving of the personal guarantees are important in this calculation.

A defence against a gratuitous alienation would be that the party was solvent when the transaction took place.

Establish what happened to the proceeds from the sale are any funds still left which could be recovered for the estate.

Assuming that the facts support that an alienation has taken place Mr Hood's daughter(?) should be invited to restore the property to the estate, failing which an action for reduction of the transaction could be raised.

It is important to consider the current value of the property and whether there is a security over it to assess the prospects of recovery from an action to reduce the transaction.

It is also important to note that if there is no call under the personal guarantees then Samuel's unsecured creditors will be £69k. Ignoring the assumed net recovery of £137,500 from Mr Hood's daughter, funds available for unsecured creditors would be £48k. The outcome of the Green Turtle Limited Residential development is very important here. If it is able to repay its loans to Hoods, or the debts which have been guaranteed, this action may not be necessary. As it is likely to be costly and risky to raise an action this should be established.

If no settlement can be reached and action is necessary appoint legal agents request an estimate of cost, likelihood of success.

Consider whether better outcome could be achieved by sale to specialist insolvency claims purchaser.

**Total: (40 marks)**