

The Joint Insolvency Examination

November 2025 sitting

Senior Moderator's Remarks

Introduction

These remarks are written following the publication of the results of the November 2025 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. In their reports, the Examiners give specific examples of where candidates did or did not do well.

How candidates fared at the 2025 sitting – some statistics

The number of candidates sitting one or more papers in 2025 was 172, exactly the same number as in 2024. The vast majority (161) attempted the English versions of the papers, but there was a welcome increase in the number of candidates attempting the Scottish law papers. Across the cohort there were 51 candidates who sat the personal insolvency paper and 150 who sat the corporate insolvency paper.

There were 18 candidates who were successful in passing the English law personal insolvency paper, a disappointing pass rate of 39%. The pass rate for this paper has been falling steadily since the introduction of the two-paper format in 2018. The pass rate for the Scottish law personal insolvency paper was a creditable 60%.

The results for the corporate insolvency paper in England were very pleasing, with a pass rate of exactly 50% being recorded. This is the highest pass rate achieved for some years. However, the pass rate in England was, as for personal insolvency, bettered by the candidates sitting the Scottish law corporate paper who achieved an excellent 60% pass rate.

Personal insolvency

The personal insolvency landscape has changed significantly in recent years and the wide range of solutions available now open to individuals with debt problems which do not **all** need the involvement of an authorised insolvency practitioner. Where firms in the insolvency market are involved with personal insolvency, the work is often carried out by a small number of designated staff. The vast majority (over 90%) of IVAs are now carried out by fewer than 20 specialist organisations.

It is not possible to pinpoint exactly why the pass rate in personal insolvency (in England and Wales) is on a downwards trajectory, but the developments outlined in my previous paragraph may well be a significant factor. There are some candidates who present excellent scripts and demonstrate that they have good practical knowledge of the subject. However, far too many candidates are unable to do this and their scripts suggest that they are attempting to pass the paper without the advantage of actually having done much, if any, personal insolvency work in practice. Given the practical focus of the examination, these candidates are always going to be at a disadvantage.

As has been the case in recent years, the percentage of candidates passing the personal insolvency paper coming from smaller firms (those with fewer than 10 insolvency practitioners) was commensurate with the percentage of candidates passing the paper

coming from firms with 10+ insolvency practitioners. This contrasts with the results for the corporate insolvency paper where the pass rate achieved by candidates from larger (10+ insolvency practitioners) is significantly higher than that achieved by candidates from smaller practices.

Corporate insolvency

As I have said, the pass rate for the 2025 sitting, at 50%, was very pleasing. Many candidates were able to show good practical application of many of the subjects examined. However, the 2025 paper examined areas which, although undoubtedly in the syllabus, might be considered away from the mainstream (for example, litigation funding in question 1 and changes in office holder in question 3). Generally speaking, some candidates fared less well when the subject being examined was more towards the margins. The corporate insolvency syllabus is very wide, but candidates need to be properly equipped to tackle questions drawn from across the syllabus.

Bad habits – but continuing good news

Candidates may recall that, following the very poor corporate insolvency results in 2023 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. It also demonstrated that, at that time, the perennial issues to which I have drawn attention over the years persisted, and that perpetuating these bad habits was preventing too many candidates from presenting scripts that were passworthy.

One year on, my review of scripts for the 2024 sitting suggested that there had been an improvement in the way in which some candidates presented their answers. As ever, 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.

I am pleased to say that my own review of scripts in 2025 suggested that the improvements seen in 2024 had been continued. But, as in 2024, the improvement was far from 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 in evidence. These failings are preventing candidates from presenting scripts that can be considered as passworthy: such scripts are at best borderline and are usually at real risk of not being passed.

The first of the above failings (candidates not appreciating what is being required of them) is key. Candidates who do not take the time to (1) read and understand the question and its requirements, and (2) plan their answer, are likely to set off down the wrong track. Time spent reading and planning is usually time well spent.

This year a number of instances were noted where candidates wrote something their scripts that could never be right, legally or otherwise, and might be considered as dangerous. This must be avoided. Candidates who do this sow seeds of doubt in the minds of the examiners and moderators who, rightly, question whether the candidate in question has demonstrated

the appropriate levels of knowledge and competence. At the very least, candidates who make such comments can expect to be marked down holistically.

Final remarks

Too many candidates are falling just short. 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 many scripts failing by very few marks, if candidates take heed of these remarks it would not take much for the pass rates achieved in 2025 to be exceeded in 2026.

Postscript

The 2025 sitting of the Examination marks my final session as Senior Moderator. The examination only happens each year because a small team of dedicated, experienced and professional people work together to create papers of a high standard and to make a proper assessment of candidates' efforts. The Examiners and Moderators for the four papers in England and Scotland, and the marking teams in England, all play a significant part and I am very grateful to them all, past and present, for their hard work. I must also thank the team at ICAEW who, every year, work diligently behind the scenes to ensure that the examinations work and actually take place. Finally, I am very grateful to the members of the JIE Board for all their support over the years. My successor as Senior Moderator is already in place and I know that the Examination is in good hands for 2026 and beyond.

JOINT INSOLVENCY EXAMINATION BOARD

CORPORATE PAPER SCOTLAND

EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2025 SITTING

General comments

It is encouraging to see that the number of candidates achieving success in the corporate paper has increased in Scotland this year. There appears to have been an issue with the system on the day for some candidates, however, the better candidates appear to have dealt with this well.

The examination is a test of knowledge and understanding of corporate insolvency including Insolvency Law and "best practice" guidance. The exam calls on the knowledge and experience of candidates and requires the application of these to the specific facts of the question. The scenarios set out in each question are practical and typical to what an Insolvency Practitioner in general practice will face. As in practice, in some questions, the application and processing of significant numerical data is required.

A common theme on each question, as noted below in the detailed commentary, is that familiarity with the Insolvency Act and Rules will assist and guide in the examination. Although the regurgitation of sections of the Act and Rules is not encouraged, the "Book" can help in the examination (as it does in the day to day working of an Insolvency Practitioner). As in previous years, a lot of easy marks have been missed which if the Book had been used effectively and efficiently in the examination could have made the difference between a pass and a fail if applied correctly to the facts of the question. Whilst I would not place a huge amount of reliance on the book, as the exam is centered around a practical test of being an IP, there are sign posts on some questions which candidates can pick up on which take them to easy marks from the book.

In addition, time management in the exam is essential. It is clear to see which candidates have attempted all four questions and those where insufficient time has been spent on each question which severely hampers the prospect of passing the exam. Exam practice, under exam conditions, is recommended.

I provide detailed commentary on each question setting out the areas being examined and an assessment of how candidates performed on each question. Generally, except for Question 2, the paper was performed well. Further details of the performance of each question are set out below.

Comments on each question

Question 1

This question was set around the situation where an insolvency appointment has limited funds available but there may be a case to pursue which has merit. The question required candidates to set out the powers available to a Liquidator in these circumstances, the due diligence that would be carried out against the parties being pursued and the options available to fund the pursuit of claims.

The question then moved forward to the position where action had commenced, and an offer had been made by the parties being pursued. This required candidates to consider the offer compared to the alternative of pursuing the action in Court and the associated risks of doing so.

This question was the best answered by candidates across the paper.

Part (a)

The first part of the question asked candidates to list the powers available to a Liquidator when bringing proceedings in office holder and company actions. Candidates that had spent time familiarising themselves with the Insolvency Act and Rules would have been at an advantage when approaching this question.

Generally, this was answered ok but a lot of candidates missed out on “easy” marks by not identifying the relevant sections of the Insolvency Act that deals with the powers available re S165.

Part (b)

Candidates were asked to explain what financial due diligence would be performed against the individuals and the company being pursued. This was a practical question and candidates with experience of pursuing claims and assessing the financial position of parties being pursued should have done well in this part of the question.

This was answered very well.

Part (c)

This part of the question required candidates to set out the potential options available to fund actions following the advice, by the legal team, that the case had decent prospects of success if brought to Court. In addition, there was a requirement to set out the risks, advantages and disadvantages of each option for the IP and the creditors.

Again, those candidates with experience of pursuing claims, when funds are limited, should have performed well.

This part was not answered well with a lot of candidates not explaining all options available. Many candidates did not understand the difference between litigation funding and the legal assignment of a claim, and the difference to control the risk of each should proceedings ultimately be issued. Also, a number of candidates thought that one way forward might be for the liquidator’s firm to fund the action. Given the sums and risks involved, this was highly unlikely to be a viable option.

Part (d)

This part of the question required candidates to calculate the estimated net realisations available should the case be won at court and compare to the offer being made.

There were two ways that candidates could approach this question by either:

1. Calculating the total income including the costs award and then deducting all costs or
2. Deducting the irrecoverable costs from the claim value

This part of the question was answered ok but a lot of candidates simply listed out all costs without differentiating those that would be claimable from the other side if won and those that would be irrecoverable and most candidates failed to identify the correct net amount.

It should have been recognised by candidates that even if a case is successful after the issuing of proceedings that not all costs are recoverable and the amount awarded by the Court will be reduced following payment of irrecoverable costs such as adverse costs insurance fees, success fees etc.

Part (e)

This required candidates to consider the advantages and disadvantages of accepting the offer compared to issuing proceedings. Due to the offer resulting in a similar net amount being available compared to success at Court, due to the litigation risk involved, it was considered appropriate to accept the terms of the offer.

This part was answered well by the general body of candidates.

Question 2

This question was set around the practical scenario of a business facing financial difficulties seeking advice as to the best way forward. This question required candidates to compare the option of shutting down immediately against the option of the company continuing to trade and placing the company into administration at a later point.

A high proportion of candidates failed to identify this and answered the question on the basis of an immediate appointment of administrators and the administrators trading the business.

The overall standard of scripts in this question was mixed but generally, it was disappointing that candidates did not deal with this question well and percentage wise, was the worst performed question on the paper.

The main part of the question was to estimate the final cash position after the company had continued to trade taking into account the realisation of WIP and payment of wages, trading costs and creditor payments to allow the company the ability to continue to trade (including, for example, the continuation of the HMRC time to pay agreement to avoid HMRC issuing a winding up petition).

The outcome of doing this was significantly better than simply closing down and therefore the Directors would have made a sensible commercial decision to perform a managed wind down to allow a better return to creditors.

Part (a)

This required the comparison of the treatment of corporation tax liability on the sale of the freehold property sold prior to insolvency, in administration or in liquidation.

There were some straightforward marks available for noting that pre-appointment corporation tax liabilities are company liabilities and would rank as unsecured claims, whereas corporation tax arising during an Administration or Liquidation would be an expense of the process. This was generally well answered, with full marks for most candidates.

Part (b)

This requested the preparation of an Estimated Outcome Statement which should have clearly identified the benefits of continuing to trade and effectively turning the WIP into cash.

It was evident that candidates were under time pressure, which resulted in missed easy marks. A more methodical approach, starting with a clear Estimated Outcome Statement structure and then working through the question, would have helped.

Some candidates correctly identified that Administration fees rank ahead of corporation tax in Part (a) but failed to apply this in Part (b) calculations. Few attempted to calculate bank interest, which was another opportunity to gain easy marks. There was also confusion around VAT on WIP and expenses, with candidates spending too much time reconciling figures for the pre-Administration period which was not required.

Question 3

This question was set dealing with the practicalities of a fellow Insolvency Practitioner, with 80 live cases, having to retire due to ill health.

One case that was being transferred, a Members' Voluntary Liquidation, had been reviewed by a member of the team and identified several issues that required the candidate to consider the next steps to be taken.

Part (a)

This asked candidates to explain the most efficient way of transferring the cases to another IP to allow the cases to be progressed and set out the legal and practical steps to do so. This was seeking candidates to identify that a Block Transfer Order would be the most efficient way to deal with the matter and to set out how this would be done.

Again, familiarity with the Act and Rules would have put the candidate in a good position.

Easy marks were missed by a lot of candidates by failing to state straightforward points such as the block transfer application would involve specifying the removal of the outgoing IP, the replacement incoming IP or simply explaining the reasons why the block transfer was required. Candidates didn't score well in this question.

Part (b)

This asked candidates to explain what due diligence should generally take place when dealing with a Members' Voluntary Liquidation and distributions to shareholders.

Many candidates identified the fact that due diligence should have been increased due to the sector that the company traded in (the waste industry). Not many candidates identified the lease point or other practical points such as reviewing the company's accident book. Most candidates identified potential environmental issues.

Part (c)

This part requested candidates to set out the next steps once it was identified that the company was potentially insolvent. This was looking for candidates to set out the steps needed to convert the company into CVL and explain the potential implications for the directors.

Candidates with knowledge of the Act and Rules would have been in a better position on this matter as Section 95 of the Act provides a "checklist" for candidates to use as guidance but many missed it or simply repeated it verbatim and weren't selective. Some got stuck on the alternative methods of appointment of the CVL liquidator.

Part (d)

This required candidates to set out the potential recovery options available to the liquidators to recover monies from shareholders. This was looking for practical ideas such as call on the indemnity, issue statutory demand, issue sequestration petition etc.

Many candidates chose to describe what breaches had been committed by the directors/shareholders rather than what options were available to the liquidator to recover the monies – which would have been easy marks gained.

Question 4

This was a practical question dealing with a typical scenario of an engagement with an insolvent company with the potential of identifying a purchaser of the business and assets. The question then dealt with the additional requirements when dealing with a sale to a connected party.

Technical areas around the approval of pre-appointment costs, the placing of the company into administration following the issuing of a winding up petition and compliance were examined in the later parts of the question.

Part (a)

This required candidates to set out the financial position of each offer and make a recommendation.

Candidates performed well on this part of the question which was mainly a numbers question requiring the calculation of two different types of offers. Candidates scored well on this part.

Part (b)

This part required candidates to explain the definition of an interested party which could generally be lifted from Schedule B1 to the Act. Again, knowledge of the Act would assist candidates in the exam and in general was not answered well. The question guided candidates to P60 but a number of candidates sought to focus on connected parties.

Part (c)

This required candidates to set out the additional steps and requirements since the sale was to take place with a connected party.

This was examining the requirements of The Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021 setting out that the sale could not be concluded without the approval from creditors, or more likely, an independent Evaluator's Report. Many candidates appeared to be unfamiliar with the requirements and few presented acceptable answers.

Part (d)

This part required candidates to detail the legal documentation required to execute the sale.

This was answered well with easy marks available for setting out the items that might be included within a sale and purchase agreement and licence to occupy.

Part (e)

Originally, it was the intention that the Directors were going to appoint Administrators. A winding up petition was issued which required candidates to explain the implications and other ways the company could be placed into administration. Too many candidates struggled with this and this was the worst answered part across this question. The correct strategy given the petition was to approach the bank to appoint but a lot candidates ignored this key point. A great example of reading the question and applying the facts to get the correct answer.

Part (f)

This required candidates to explain how pre-appointment costs would get approved following the appointment of administrators but surprisingly was not answered well as most could have been lifted from the act.

Part (g)

This part was examining candidates' knowledge of compliance following the sale of business and assets in a pre-pack sale. Again, this was not answered well as candidates sought to focus on statutory notices, documents etc rather than noting what was required in the context of pre-packaged sale notification.

**Corporate Insolvency Scotland Exam
November 2025
Mark Plan**

QUESTION 1

- (a) List the powers and possible actions available to a Liquidator to bring legal proceedings either as Office Holder or on behalf of the Company.

(2 marks)

S165 Deals with voluntary winding up
Schedule 4 of the Insolvency Act sets out the powers available to a Liquidator regarding legal proceedings
Sch 4 – (3A) – Liquidator has power to bring legal proceedings under s213, 214, 238, 239, 242 or 423
Sch 4 (4) – has power to bring legal proceeding in name and on behalf of the company

- (b) Explain what due diligence you would perform on the financial position of the Respondents before deciding whether or not to issue legal proceedings.

(3 marks)

On both individuals and associated company

Consider instructing search agents to carry out financial due diligence
Land registry searches
Companies House searches to identify any shareholdings
Court search to identify any existing legal actions

Individuals

Request personal statements of assets and liabilities (unlikely to be provided under the circumstances)
General internet / social media searches
Credit reference agency report

Related Company

Companies House search to identify financial position

- (c) As there are no monies available in the case, explain what options may be available to you to fund the pursuit of the claims. Set out the risks, advantages and disadvantages of each option for both you and the creditors.

(8 marks)

OPTIONS AVAILABLE

1. Approach creditors to fund legal actions

Consider approaching all or key creditors to ascertain whether there is any appetite to fund legal action.
If a committee exists, approach the committee.
Liquidator would need to set out the claims and the likely level of funding required.

The options to creditors would range from fully funding the case to partially funding the case.

The advantages to creditors of them fully funding the case is that they get a higher proportion of the Award (i.e. no Success Fee on legal fees or Premium required for funding / insurance).

The risk to creditors is that if they provide funds to cover the whole costs including the adverse costs is they carry all of the litigation risk (i.e. they pay all the legal costs including the other sides).

There could be a mix of options where for example, solicitors work on a contingent basis and take a Success Fee but creditors fund the adverse costs etc.

The Liquidator would need to cover the risk by seeking a cash deposit or significant assets / security to cover the potential adverse costs.

2. Litigation Funding

There are several organisations that will provide funding to an Insolvency Practitioner.

To fund all legal costs and the potential adverse costs.

Typically these are done by the Funder either taking an assignment of the claim (see below) and taking full control of the claim.

Or by providing direct funding the IP for all costs and the IP retains control of the case

Ultimately, this high risk investment for the Litigation Funder comes at a cost with them requiring a "Success Fee", repayment of costs funded etc.

The disadvantage for the creditors is that they will see a lower amount of net realisation if successful.

Ultimately, there is a risk for the Liquidator in the event that the Litigation Funder is unable to meet the funding commitments should it fail in any way.

Ultimately the proceedings are brought by the Liquidator and the litigation risk remains with the Liquidator

3. Sell / Assign the Claim

Similar to above, there are organisations that will offer to buy the claim and ultimately take control.

The advantage, to both liquidator and creditors, is that they cover all of the costs of the litigation including the adverse costs.

The proceedings are issued by the purchaser of the claim following the assignment.

Downside is that Liquidator loses control / decision on settlement etc.

Liquidator needs to be reasonably comfortable that the case has merit of success prior to assignment to avoid being criticised / sued from defendant.

(d) To assist you in the mediation, provide an estimate of the net outcome to creditors from the litigation should you be successful in a Court Proceedings. You should assume that judgment is obtained for the full value of the claims.

(4 marks)

CANDIDATES MAY ANSWER ONE OF TWO WAYS			
NOTE - IF CANDIDATES HAVE NOT INCLUDED COST RECOVERY AS PER OPTION 1 THEN NO MARKS AVAILABLE FOR SIMPLY LISTING OUT ALL THE COSTS PAID OUT AGAINST £1M RECOVERY			
OPTION 1 - WORK OUT ALL INCOME AND EXPENDITURE		OPTION 2 - WORK OUT THE DEAD / IRRECOVERABLE COSTS	
Claim value	1,000,000	Claim value	1,000,000
Award of costs		Dead costs	
Solicitors Fees	70,000	Solicitors Fees	30,000
Counsels Fees	35,000	Counsels Fees	15,000
Disbs /witness	20,000		
Claim fees	40,000		
	165,000		
Total award	1,165,000	Solicitors Fees - Success fee	100,000
Costs		Counsels Fees - Success fee	50,000
Issue Fees	40,000	Insurance policy	175,000
Solicitors Fees	100,000		
CFA	100,000		
Counsels Fees	50,000		
CFA	50,000		
			370,000
Insurance policy	175,000	Additional Liquidators Fees	100,000
Witness costs	10,000	Total costs	470,000
Disbursements	10,000		
	535,000	Net amount available for creditors	530,000
Additional Liquidators Fees	100,000		
Total costs	635,000		
Net amount available for creditors	530,000		

(e) Set out your thoughts on the offer and on the potential advantages and disadvantages of settling the claims without issuing proceedings.

(3 marks)

It is estimated that, if the case is won at court, Liquidator would get c£530k.
As the offer is relatively close, must be considered.
Acceptance avoids litigation risk (risk of losing).
Allows case to be progressed and closed.
Could win the case and defendants might not have money (despite due diligence carried out).
The only potential disadvantage is the lower estimated realisations but this could be eliminated by the negotiations.
On balance, seems acceptable.

Total: (20 marks)

QUESTION 2

- (a) Compare and contrast the treatment of any corporation tax liabilities arising on the sale of a freehold property by a limited company prior to its entering into any formal insolvency process with the liabilities arising on a sale by that company's administrator or liquidator after formal insolvency proceedings have begun.

(3 marks)

LIQUIDATION

In Liquidation, Rule 7.28 deals with the general order of priority of costs.
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Corporation Tax on chargeable gains is included with 7.28.
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Paid after remuneration of Liquidator.
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ADMINISTRATION

In Administration, Rule 3.51 deals with the general order of priority of costs.

Corporation Tax on chargeable gains is included with 3.51.
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Administrators Remuneration ranks ahead of the tax on chargeable gains (3.51).
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SALE PRIOR TO APPOINTMENT

If sold by the company, pre insolvency, any tax on profit of sale would be a liability of the company.
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Corporation Tax falls as an unsecured creditor claim in both Administration and Liquidation.
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- (b) Prepare an estimated outcome statement which sets out the likely outcome for creditors of the Company under each of the two scenarios being considered by the Board. Assume in each case that the freehold property is sold by the administrator or liquidator as the case may be.

(17 marks)

	Managed wind down £	Shut down now £	Assumption
Assets subject to Fixed Charge			
Property	750,000	750,000	
Estimated agents and legal fees	(37,500)	(37,500)	
Holding costs	(5,000)	(30,000)	Covered in managed wind down position by overheads Will still have to be paid in shut down situation
	707,500	682,500	
Owed to bank			
Term Loan	(768,750)	(768,750)	
Overdraft		(200,000)	
Shortfall to the bank	(61,250)	(286,250)	
Assets subject to floating charge			
Cash from WIP and debtors	933,000		Marks in Notes
Sale of WIP		100,000	Marks in Notes
	933,000	100,000	
Less : Costs			
Liquidators fees -		(9,375)	
Tax on prop sale - CVL (ranks after fees at scale rates) (shortfall in CVL for CGT bill)		(90,625)	Marks in notes
Administrators Fees	(50,000)		Any sensible estimate
Tax on prop sale - ADM (ranks after ADM fees)	(90,625)		
	(140,625)	(100,000)	
Available for primary preferential creditors	792,375	0	
Primary Preferential creditors			
Employees - primary	0	36,000	Marks in notes
Employees - holiday pay	0	100,000	Marks in notes
	0	136,000	
Surplus / Shortfall to primary	792,375	(136,000)	
Secondary Pref Creditors			
HMRC - TTP	300,000	500,000	(half mark CVL) ADM - Marks in notes
HMRC - other		287,000	(half mark CVL) ADM - Marks in notes
	300,000	787,000	
Net property / shortfall to preferential creditors	492,375	(923,000)	
Prescribed part retention	101,475	0	Note to be included
Available to Bank under Floating Charge	390,900	(923,000)	
Shortfall to Bank under Fixed Charge	(61,250)	(286,250)	
PP retention added back	101,475		
Surplus available for unsecured creditors	431,125	(1,209,250)	
Unsecured creditors			
Employees - salary	0	89,000	Marks in notes
Employees - redundancy pay	562,500	562,500	Marks in notes
Run off cover	500,000	500,000	
	1,062,500	1,151,500	
Distributon available to unsecured creditors	40.58		
TOTAL DEFICIT TO CREDITORS	(631,375)	(2,360,750)	

1 Cash generation from WIP - managed wind down		
Net WIP	3,000,000	
Salaries	-1,100,000	
Overheads to Feb 26	-200,000	
retention bonus	-125,000	
Hol pay	-100,000	extra mark for recognising paid in period
Debtors	145,000	
	<u>1,620,000</u>	
Creditor payments		
HMRC - TTP payments		
5 @ £40k	-200,000	need to be paid to avoid TTP being ended
HMRC - Liabilities at 31 oct 25	-287,000	need to be paid to avoid TTP being ended
Bank overdraft	-200,000	reduction in o/d
	<u>933,000</u>	
2 WIP - shutdown		
5% £2,000,000	100,000	
3 Employees - redundancy (both situations)		
45 redundancy @ @12.5k	562,500	
4 Employees - salaries (Salary accrual relevant in Liquidation scenario only)		
45 Pref @800	36,000	assumption all have £800 plus claim
Balance - Unsecured	89,000	
5 Employees - holiday pay (in Liq scenario only)		
HP	100,000	all pref
6 Bank		
term Loan	750,000	
5% monthly interest	3,125	
Interest holiday 6 months	18,750	
	<u>766,750</u>	
7 HMRC		
Debt at 31 October	787,000	
Paid	-287,000	
TTP	-200,000	
	<u>300,000</u>	
8 Tax on property sale		
Sale	750,000	
Original cost	-350,000	
Costs of disposal - 5%	-37,500	
Profit	362,500	
25% Tax	90,625	

Total: (20 marks)

QUESTION 3

(a) What is the most expedient way to deal with the change in office holder and what are the legal and practical requirements to do so?

(6 marks)

In general, there are only certain circumstances where an IP can “step down” as Liquidator or Administrator.
These include ill health, intention to cease as an IP, conflict of interest or change in personal circumstances.
In the situation where there are lots of cases to deal with (like in this particular case), the practical way to deal with change in office holder is by a “Block Transfer”.
In this case, although the IP appears to be ill, it would not seem practical to resign and seek the appointment of a new liquidator on 80 cases when there are provisions for a BTO.

Practical Steps

Obtain a list of the “Outgoing” IP’s appointments.
For the IP who is taking the cases, ensure that no ethical or other issues prevent the acceptance of the appointment.
Make a file note of any issues and conclusions following this review.
Consider issuing a firm wide conflict review email to ensure no conflicts exist.
Instruct a solicitor, experienced in dealing with BTO, to prepare legal documentation required (Application, witness statements).
Arrange practicalities of how cases are to be dealt with between now and BTO being made (signing, is there a joint appointee etc?).
Liaise with Bond provider to advise of the impending BTO.
Inform relevant RPB prior to issuing new bordereau submission detailing new appointments (influx of new appointments may cause concern).

Legal requirements

An application to the Court is required to be made requesting the Block Transfer Order (“BTO”).
Together with a schedule of those cases to be transferred appended.
With information on the type of case, the “Outgoing Office-holder” and replacement IP.
The Application for a BTO to be made to the Court of Session requesting:
<ul style="list-style-type: none">• The removal of the “Outgoing Office-holder” from the listed cases
<ul style="list-style-type: none">• The appointment of a replacement officeholder
<ul style="list-style-type: none">• Such other direction as may be necessary
The Application, in this scenario, may be made by:
<ul style="list-style-type: none">• The Outgoing office-holder (if well enough)• A joint appointee• The proposed replacement office-holder• A creditor• A RPB• The Secretary of State
There must be evidence attached to the Application (a Witness Statement)
setting out the circumstances as to why it is expedient to appoint a replacement office holder

and a consent to act from each replacement office holder.

(b) Explain what due diligence should have been carried out and what protective measures should have been taken by the Liquidator prior to making the interim distribution to the shareholders.

(6 marks)

The Liquidator ("L") should have obtained an indemnity from the Shareholders prior to making any distribution to cover the scenario of an overpaid distribution

L should have placed a notice in the Edinburgh Gazette requesting creditors to prove their debts by delivering proofs to the L.

L will have the Statement of Assets and Liabilities appended to the Statutory Dec of Solvency for information.

It is noted that the Company may have recently traded in the waste sector which would indicate a potentially higher level of Due Diligence may be required.

Due diligence should be carried out prior to issuing a distribution. This could include:

- a review of the latest financial statements to review the liabilities contained

- a general internet search to see if any news stories available or details of any regulatory issues

- make contact with the Company's accountants to make enquiries as to the most recent statutory accounts

and if they finalised all tax liabilities with HMRC on closure (e.g. final Corporation Tax returns etc)

- Make contact with the company's solicitors to request details of cases worked on / obtain client files

- Review the Trade Debtors to ensure they are recent, collectible etc. Write to the Debtors immediately on appointment, and contact them to ensure they are likely to be realised.

- Make enquiries to SEPA in relation to any Waste Permits still live (that may need disclaiming)

And request details of any potential ongoing claims or actions

- Make enquiries to the former land position (either landlord or new owner if sold) to enquire as to any potential clean up liability / dilapidations etc

Review books and records of the Company to see if any

- Minutes of board meetings where such matters discussed

- Correspondence with solicitors

- Accident book

- Copies of risk assessments

- Correspondence with SEPA

- Any insurance claims / policies

- Details of any guarantees / indemnities provided

- Copies of leases

(c) In view of the liabilities to creditors, what steps should now be taken by you and what are the potential implications for the Directors of the company?

(6 marks)

Steps

On the facts of this case, it would appear that the Company may be insolvent on the basis of the recoverability of the Trade Debtors, the Liabilities exceeding £1.5 million etc.
Where L is of the opinion that Company will not be able to pay its debts in full (together with stat interest) within the period set out in the original stat dec of solvency.
Before the end of the period of 7 days beginning with the day after the opinion formed.
L must make out a Statement of Affairs along with a statutory declaration (in the prescribed form as set out in R4.2) and
Send it to the company's creditors
L must seek a nomination from the creditors for a liquidator in the CVL by: <ul style="list-style-type: none"> - a decision procedure or - the deemed consent procedure
Together with the S of A, the L must send a Notice of Deemed Consent Procedure (that complies with R8.7) or Notice of a Decision Procedure (that complies with R8.8) setting out the decisions being sought
The Decision Date must not be later than 28 days after the L formed the opinion that Co will not be able to pay its debts in full.
A Notice must also be delivered to Creditors (with the S of A + Notice of DCP/DEC PROC).
Providing the contact details of the existing L and
with a statement advising that of nominations for an alternative L are provided the existing L will be the L in the CVL
IP needs to ensure any ethical threats presented by the prior conduct of the case have been fully assessed, mitigated and documented and that it remains appropriate for them to accept the appointment as CVL Liquidator.

Implications for the Directors

The Statutory Declaration of Solvency is sworn under oath by the Directors (the number depending on the number of directors).
The declaration says that they have made a full enquiry into the Company's affairs and having done so, have formed the opinion, that the Company can pay its debts in full with stat interest within 12 months (from the passing of the resolution).
As it is made under oath, a false statement is perjury, and anyone guilty shall be liable on conviction
Potentially subject to a fine, imprisonment up to 2 years or both.
Dear IP, Chapter 20, Offences and Prosecution advises that IP's should submit a report to the Insolvency Service where a Declaration has been made under S89 without having reasonable grounds for the opinion that the Company will be able to pay its debts in full.

(d) Assuming the Directors and Shareholders are to be pursued for financial recovery and they have the appropriate financial means, what recovery options are available?

(2 marks)

Make a call under the indemnity for the overpaid distributions.
If they do not repay the amounts, consider instructing solicitors.
If it is considered that they have the financial means, it may be sensible to make formal demand for the repayment of the monies and issue statutory demand.
If undisputed and/or ignored, issue sequestration petition with a view to making bankrupt.
If disputed, liaise with solicitors – may need to issue proceedings to recover monies (cost implications).
Assess the nature of the personal assets available to satisfy any judgement obtained and the various enforcement remedies most appropriate to the asset types (freezing orders, charging orders, attachment of earnings, sequestration).
Attempt to negotiate a beneficial settlement which adequately compensates creditors for their losses.

Total: (20 marks)

QUESTION 4

(a) Appraise both offers, setting out any advantages and disadvantages of each. Giving your reasons, make a recommendation for which of the offers should be accepted.

(8 marks)

The estimated return from the sale to the connected party is higher when the debtor collection fee is built in.
The advantage of the competitor bid is higher amount of cash available immediately (£3.65 m vs £3.525 m).
However, estimated collection fee of £450k takes net down to £3.2m (vs £3.525m).
Competitor – deferred consideration vs MBO team cash on completion.
On balance, MBO team offer appears to offer the best realisations.

	Comp	MBO
P&M	1,750,000	1,250,000
Stock	900,000	1,350,000
Goodwill	250,000	200,000
MF	750,000	725,000
	<u>3,650,000</u>	<u>3,525,000</u>
Collection fee / diff in debtor collections	(450,000)	
	<u>3,200,000</u>	<u>3,525,000</u>
1 DEBTORS		
EITHER		
A Collection fee		
Debtors	2,500,000	
Bad debts	(500,000)	
Collected	<u>2,000,000</u>	
General provision	(200,000)	
	<u>1,800,000</u>	
Coll Fee	25% (450,000)	
	<u>1,350,000</u>	
OR		
B Debtor realisations difference		
Debtors	2,500,000	2,500,000
Bad debts	(500,000)	(500,000)
	(200,000)	(200,000)
Collected	<u>1,800,000</u>	<u>1,800,000</u>
Coll Fee	25% (450,000)	0
	<u>1,350,000</u>	<u>1,800,000</u>
2 Stock		
Book value	1,500,000	1,500,000
Obsolete	(200,000)	
ROT	(300,000)	(150,000)
	<u>1,000,000</u>	<u>1,350,000</u>
90% Competitor	900,000	
MBO team		1,350,000
3 Motor Fleet		
Offer	1,000,000	725,000
Finance	(250,000)	
	<u>750,000</u>	<u>725,000</u>

(b) In the context of Administrations and pre-pack sales, what is the definition of a connected party?

(2 marks)

Defined in para 60A (3) of Sch1 B1 to IA1986.
Means either a relevant person in relation to the Company or
This could be: <ul style="list-style-type: none"> • A director, other officer, or shadow director of co • Associate of any of the above • Associate of the Company • which includes a shareholder entitled to exercise one third or more of the voting power at a general meeting
A company connected with the Company.
i.e. if any relevant person of one company is or has been a relevant person of the other.

(c) Explain the additional steps that you, the MBO Team and any relevant third party will need to take in order to reach the position where you are satisfied that the sale to the MBO Team can proceed.

(11 marks)

The relevant legislation is The Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021 ("the Regulations") which sets out -
that Administrator ("ADM") is unable to complete this sale to the MBO team within 8 weeks of the ADM appointment without: <ul style="list-style-type: none"> • the approval of creditors or
<ul style="list-style-type: none"> • An independent written opinion from an Evaluator
Creditor Approval
<ul style="list-style-type: none"> • ADM will need to include a statement in the proposals and issue to creditors.
<ul style="list-style-type: none"> • Sale can be completed if creditor approval is obtained (with or without modifications agreed by ADM).
<ul style="list-style-type: none"> • Approval may be given via a Deemed Consent Procedure (NOT Deemed approval process), per Dear IP 126.
Independent Evaluators Report
<ul style="list-style-type: none"> • ADM needs Evaluator's report before the sale can take place.
<ul style="list-style-type: none"> • The Report can be obtained before or after the appointment of ADM.
<ul style="list-style-type: none"> • but not after the completion of the sale.
It is the responsibility of the MBO Team to obtain the Evaluator's Report and provide it to the Administrator.
The MBO Team are responsible for selecting the Evaluator but ...
the ADM will need to be satisfied that the Evaluator has the relevant knowledge, experience and independence.
The MBO team can (and practically should) liaise with the ADM or proposed ADM to make sure their choice is going to be suitable.
The Evaluator, who is able to provide a report: does not need to hold any specific professional qualifications
must have professional indemnity insurance

<ul style="list-style-type: none"> • must be independent / have no conflict of interest
<ul style="list-style-type: none"> • must not have been at any time been convicted of dishonesty or deception
<ul style="list-style-type: none"> • must not be in a current formal arrangement with creditors / currently or ever been made bankrupt
<ul style="list-style-type: none"> • must not be or previously been disqualified director or provided undertaking not to act as director
<ul style="list-style-type: none"> • Practically, the Evaluator will be from the pre Pack Pool or from a selection of independent Evaluators
THE EVALUATOR'S REPORT
The report: <ul style="list-style-type: none"> • has to be in writing • be dated and signed by the Evaluator
be provided by an individual (and not a company)
The Regulations set out various information that must be contained in the report including:
details of the property to be disposed of
details of the consideration to be paid including value
<ul style="list-style-type: none"> • whether, or not, the Evaluator is satisfied that the consideration and grounds for the sale are reasonable and
how Evaluator has reached that conclusion
detailed information of PI insurance
<ul style="list-style-type: none"> • details of the connected parties and explanation of connection
<ul style="list-style-type: none"> • details of the Evaluator's relevant knowledge and experience

(d) Following your decision to proceed with the best offer, set out the key legal documentation you would require in order to complete the transaction and the main provisions that you would expect to see in each document.

(5 marks)

Sale and Purchase Agreement

Agreement setting out the terms of the sale and purchase.
Main provisions
Consideration – how much being paid and how?.
Assets included (as detailed within the question).
Assets excluded (debtors, cash at bank etc).
Exclusion of personal liability for the Administrators.
Safeguarding of the Company's books and records – typically majority of records retained by purchaser and made available to Administrator to perform statutory duties.
Treatment of VAT as a TOGC.
Completion particulars – when, time etc.
Recognition that Third Party items (Leased assets etc) will be left on site at completion and Purchaser will deal with them (i.e. get new agreements or allow lease companies to collect etc).
Procedures on how to deal with ROT claims
Collection of Debtors – procedures, how to deal with unallocated debtor receipts, buyer acting as Company's agent to collect etc.
Exclusions of warranties by the Seller.
Details of any warranties provided by the buyer.
Employees and TUPE – including warranties from Buyer regarding responsibilities.
Apportionment provisions – any costs incurred by the company, where purchaser gets benefit – payment of etc.

Schedules of assets being sold.

LICENCE TO OCCUPY

Agreement setting out the terms of the Purchasers use of the Premises.
--

Lease remains with the Company and document allows Purchaser to use the premises for a Licence Fee.

Generally, the Licence Fee, covers the Company's costs of occupying the property.

Allows the Purchaser time to negotiate with the landlord regarding an assignment of the current lease, negotiation of new lease or to allow time to move premises.
--

Main provisions

Licence Fee – how much being paid and how?.

Obligations of the Purchaser.

Termination provisions.

Details of the premises.

Exclusion of personal liability.

- (e) Explain the implications of the winding up petition being issued on the proposed strategy to place the Company into Administration and any potential changes to the strategy that may be applicable.**

(4 marks)

Original strategy was for the Directors to appoint administrators under Para 22 of Sch B1 to IA86.
--

However, winding up being issued stops Directors ability to do this.
--

Most practical solution would be to ask the Bank to appoint under their QFC.
--

If they feel uncomfortable, the Directors could invite them to appoint administrators.
--

Explain to the Bank the benefits of taking control vs other alternatives (i.e. Application to Court for ADM and CVL).

Application to Court – not practical in this case – takes longer amount of time due to availability of court, court hearing etc.
--

More costs involved (require a solicitor, application, report by IP etc).

Business may not be able to continue in the longer period (e.g. wages may not get paid, employees leave etc)
--

CVL – again not practical – longer than above + would need to negotiate with petitioning creditor to dismiss petition.
--

- (f) Explain whether the pre appointment costs can be recovered and, if they can be, how you would seek to ensure that all involved get paid for their work.**

(6 marks)

Pre-appointment costs can be recovered (Rule 3.52).

Where a committee is formed, it is their responsibility to approve the basis of unpaid pre-administration costs.
--

Where no committee or committee doesn't determine the basis:
--

If Para 52 1 b statement made – consent of each secured or
--

If distribution to prefs – consent from secured creds + from the Prefs in a decision process.

If no para 52 1 b made - Approved by a decision of creditors by a decision Procedure.

The definition of "pre administration costs" and unpaid "pre-administration costs" are included within R3.1.
--

In the event that the Committee or Creditors do not approve, the Administrator can apply to Court for determination.
--

R3.35(10) The ADM must include within the Statement of Proposals:

- A statement of pre-administration costs charged by ADM (or any other person qualified to act as an IP).

- A statement that payment of unpaid pre adm costs is subject to Rule 3.52 and not part of the Proposals (subj to approval under P53).

The statement under R3.36 must include:

- Details of any agreement re fees and expenses, including the parties
- Details of the work done
- An explanation of why the work was done and how this has helped achieve the purpose.
- Details of the pre appointment costs (fees charged by ADM, expenses incurred, fees and expenses incurred by any other IP
- Details of any amounts already paid
- Details of who has paid any pre-admin costs
- A separate statement of unpaid pre-admin costs.

(g) What are the statutory requirements and associated timescales for notifying creditors of your appointment and the transaction in the circumstances set out above?

(4 marks)

The Administrator must send a "SIP 16 Statement" to creditors with the first notification to creditors and in any event within 7 calendar days of the transaction.
In this situation, notification of the appointment and details of the transaction must be sent to creditors within 7 calendar days.
The SIP 16 statement should provide creditors with sufficient information to enable a conclusion to be made that the ADM has acted in the interests of creditors.
ADM needs to explain to creditors with details and justification of the sale and what alternatives were considered.
Ideally, the ADM proposals should be issued at the same time.
Information to be disclosed within the SIP 16 Statement
- Where the matter was introduced from
- Extent of administrator's pre appointment involvement
- Alternative options considered
- Details of registered charges and dates of creation
- Details of marketing (or reasons for not marketing)
- Details of the valuations and who carried out the valuations (inc qualifications)
- Date of the transaction
Details of the Purchaser and details of any connections / relations (as in this case).
Details of the assets sold and consideration paid.
In this particular case, a copy of the Evaluators Report is to be attached to the SIP 16 report.

Total: (40 marks)

JOINT INSOLVENCY EXAMINATION BOARD

PERSONAL PAPER SCOTLAND

SCOTTISH EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2025 SITTING

General comments

The quality of candidate's papers in the Scottish PI exam this year was good.

Responses, particularly to the numbers questions were well laid out and assumptions and workings were clearly shown. Candidates showed good technical knowledge on a variety of issues.

Responses were mainly focused on the questions asked and there were only rare lapses into wasting time on issues not relevant to the question.

There are two areas which could be improved and these are:-

- Reading and really thinking about the requirements of the question before answering; and
- Fully considering what the cashflow or EOS you have prepared is showing and the implications for all stakeholders. Marks are being missed by simply preparing the calculations and being unable to advise or constructively comment on them. This is a key aspect of the role of the IP.

Comments on each question

Question 1

This question had the highest average mark in this year's paper and was answered the most consistently well by candidates. It asked candidates to comment on a series of creditors' claims and then the funds which would be required to recall the Award of sequestration.

- (a) For the two claims relating to the bank guarantee and the landlord, set out the steps that you would take in order to be in a position to adjudicate on these claims. In each case explain what further information or documentation you would require in order to complete your adjudication. (7 marks)**

Good marks were picked up on the various aspects of the landlord's claim. The issues in relation to the PG were not as fully explored, with few candidates commenting on the potential for there to be co-obligants under the guarantee.

More than one candidate wasted time at the start of their answer making detailed comments about the creditors' claims adjudication process generally.

- (b) Explain, giving reasons, whether or not you would admit the claims received from the spread betting company, Mr Durres's former wife and the Council. (5 marks)**

Generally this was answered well, although there were some completely incorrect points made.

- (c) Giving your reasons, explain whether the sum of £200,000 is likely to be sufficient to enable Mr Durres to make an application to the Accountant in Bankruptcy for recall of the sequestration under section 31(1) of the Act. Clearly state any assumptions that you make. (5 marks)**

Candidates did well here. It is acknowledged that the legislation in relation to statutory interest in recall changed on 25 June 2025, clarifying the position, and the paper was intended to test the legislation in force at 30 April 2025. Credit was given for answers based

on either the previous or current position. A number of candidates had a clear understanding of the previous case law and recent legislative changes and were able to justify their reasoning.

Curiously, however, despite this good understanding, more than one candidate calculated statutory interest at the historic rate of 8%.

(d) Assuming that Mr Durre's mother confirms that she is prepared to advance the sum of £200,000, what steps should you take and why? (3 marks)

There were some good answers to this question which addressed what needed to happen next for recall to progress which probably reflected candidates experience of this in practice.

Unfortunately some answers were overly focused on Mr Durre's mother and as a consequence were "clutching at straws".

Question 2

This question was clearly challenging for candidates and had the lowest average mark in the paper. However, it also had the widest spread of marks ranging from excellent to very weak answers.

(a) Identify the particular risk factors faced by an Authorised Insolvency Practitioner who is an office holder on a high number of PTD cases. Explain how each of the risk factors might be mitigated. (14 marks)

The best answers to this part of the question were laid out in a format which addressed each risk and mitigating factor in turn. The table of risks and mitigation for each issue produced by one candidate was particularly clear. As well as being easy to mark for the examiner, using this structure also helped candidates to avoid repeating themselves and score marks by addressing the both the risk and how to manage it.

Some candidates were clearly aware of the guidance for High Volume Providers and were able to score highly covering the areas addressed in the guidance.

Other candidates, were less focused on issues which affect a high volume of cases and digressed into control issues which affect Personal Insolvency cases generally and suggested solutions which would equally apply if an IP had cases of 5,000 or 50.

(b) Explain the issues which an Authorised Insolvency Practitioner should consider prior to his firm instigating an advertising and marketing campaign. (6 marks)

This part of the question was not answered well. Candidates were able to make general points about the need for advertising to be factual and not misleading but few referred to the Ethical code and other guidance in this area and no candidates explored the suggestion in the question of a third party marketing campaign.

Question 3

This question examined 3 different scenarios which had arisen on insolvency cases which candidates were managing.

Part a related to a Lotus which was owned by a debtor, Mr Tirana and an offer which had been received for it by a dubious party, Mr Berat.

Set out your proposed course of action in relation to Mr Berat's suggestions and the motor vehicle. (9 marks)

This section was the least well answered in the question.

There were marks available for three aspects of this response:

- Mr Tirana and concerns about the circumstances of his ownership of the vehicle;
- Steps to be taken to establish whether the vehicle can be realised and its value;
- The offer from Mr Berat.

Most candidates were able to identify the "red flags" raised by the question. They were generally aware of the need for AML checks when accepting payments for assets, and of considering a report to the MLRO with the intention of submitting a SAR. However, some of the responses were quite confused and not all identified a DAML as a consideration and some of the suggestions actions bordered on "tipping off".

Part b related to a property jointly owned by a debtor and his wife which had been the subject of a divorce order to the wife shortly prior to sequestration.

Set out the actions that should be taken by you in relation to the property. (7 marks)

The responses to this part of the question were mostly good, particularly for those candidates who were not thwarted by the fact that they were not fully confident about the position with the divorce order and addressed the steps which should be taken to assess the value in the property and then realise it.

The third and final part of this question examined candidates understanding of what should be done following receipt of a complaint.

Set out the action that should be taken by you following receipt of Miss Elbasan's complaint. (4 marks)

This part of the question was answered very well with full marks being achieved in some instances and others very close to full marks. Candidates were able to set out a clear range of steps which should be taken to manage the response to the debtor. Not all candidates were clear on the process by which a Trustee in a TD could secure payment directly from an employer but as this was not the purpose of the question it did not materially affect the marks. The most consistent omission from responses was to follow your own Firm's internal procedures and in particular, to make the Trustee aware of the complaint.

Question 4

This question examined a scenario of an individual with a portfolio of 5 buy to let properties with a significant debt which he was not immediately able to repay to HMRC.

The calculation elements of the question were answered well. The parts of the question which required candidates to comment on what the numbers told them were not answered so well. Although overall, there were some very good answers to this question.

(a) Prepare a monthly cash flow for the 12 month period ending 31 October 2026 demonstrating the surplus funds available to facilitate a repayment to HMRC. Show your workings and clearly state any assumptions that you make. (13 marks)

The format of the cashflows produced were generally good and easy to follow with detailed notes of calculations and assumptions and limited instances of figures being used with out explanation of how they were calculated.

Presentation of the property sale could have been improved for some candidates who showed the full proceeds as income and the mortgage redemption and settlement of costs in the expenditure lines when the reality in cashflow terms would be that a single net inflow would be received from the solicitor. In practice showing this as a single figure would make sensitising the cashflow easier for a change in the date of sale.

All candidates recognised the need to provide for CGT on the sale of the property and made decent attempts at calculating the liability.

Not all candidates recognised that mortgage payments and insurance would no longer be required when the property was sold.

(b) Prepare an email to Mr Morris giving your observations on the cashflow and outlining a proposal which could be made to HMRC. (7 marks)

Most candidates were able to identify what their cashflow showed but weren't able to explain very coherently what should be considered before making a proposal to HMRC. Better responses did explain the potential risks in the cashflow and the alternative solutions.

A number of candidates addressed their response to their client rather than their colleague as requested in the question. This did not materially affect the marks as the same issues would be addressed with albeit in a slightly different tone.

c) Prepare an estimated outcome statement which assumes that Mr Smiles is made bankrupt. Compare the estimated returns to creditors if the Trustee immediately markets the properties for sale or if time is allowed following the Trustee's appointment to secure vacant possession of the properties. Clearly state any assumptions that you make and comment on the factors which should be considered when determining the sales strategy for the properties. (20 marks)

The Estimated Outcome Statements produced by candidates were generally good and well laid out. The best responses to this question showed both options on the EOS for ease of comparison. When the comparison was simply discussed in text the answers became confused and were more difficult to mark. Candidates generally recognised the differences in property outcome in an immediate sale and allowing time to secure vacant possession. They also addressed the balance of funds in hand and possible income from a DCO.

Some candidates did not consider or address the trading position (rental income, mortgage payments) in the period to completion of a sale.

Most (but not all) candidates recognised the CGT and Income tax liabilities would need to be provided for and made reasonable calculations and assumptions regarding these.

Concerningly however, not all candidates recognised that there was negative equity in the property at Spring Road and there would be a shortfall if this property was sold which should be included in the unsecured creditors. Some candidates also showed the net realisations from the full portfolio on the EOS.

While the EOS's were generally well completed, the comments on the sales strategy for the properties were poor. Charitably this could be due to time constraints however, it does suggest, as noted above, that candidates are not thinking about what the numbers mean. In this case, there is a compelling argument for allowing time to secure vacant possession, to generate improved recoveries. This improves the position for HMRC and the unsecured creditors generally and potentially for Mr Smiles. While some candidates acknowledged that the outcome was better, only one candidate commented on statutory interest and no one considered whether there could be funds available for a reversion to Mr Smiles which in turn could incentivise his co-operation and provide more certainty over the outcome for the unsecured creditors.

**Personal Insolvency Scotland Exam
November 2025
Mark Plan**

Question 1

- (a) **For the two claims relating to the bank guarantee and the landlord, set out the steps that you would take in order to be in a position to adjudicate on these claims. In each case explain what further information or documentation you would require in order to complete your adjudication.**

(7 marks)

- (a) The personal guarantee.

A copy of the PG should be requested. The PG should be reviewed to check:

- i) That it was properly executed, dated and delivered;
- ii) Whether Mr Durres is solely liable for the guaranteed debt or if the PG was given jointly with one or more others. If the PG was given jointly, enquiries should be made to establish whether any of the other guarantors have made payment of some or all of the debt such that the amount claimed should be reduced.
- iii) Check whether the amount claimed is below any limit specified in the PG.

If there is any uncertainty regarding the validity or enforceability of the PG, legal advice should be sought.

The personal guarantee was given on 2 May 2022. As warrant to cite was granted on 24 March 2025, the personal guarantee has been granted within 5 years of the presentation of the sequestration.

It would need to be established:

- i) Whether the debtor received any benefit from the grant of the personal guarantee i.e. were further funds advanced to the company and did he benefit from those funds e.g. did the loan enable continued trading allowing him to draw an income?
- ii) Whether the personal guarantee was given at a relevant time. Whilst it was given within 5 years of the date of sequestration, it is only a relevant time if Mr Durres was insolvent at the time, or became insolvent in consequence of the granting of the personal guarantee.

The fact that Mr Durres has not paid the order made in matrimonial proceedings in 2018 could be indicative of insolvency. However, an analysis of his assets and liabilities would need to be undertaken to establish whether he was insolvent when the PG was granted.

Enquiries should also be made of the liquidator to establish whether there has been, or is likely to be a dividend paid in the liquidation and to advise them of the award of sequestration made against the director. Check Companies House to see whether the loan to the limited company was secured by way of fixed/ floating charge or unsecured. If a dividend has been paid, the creditor cannot prove for the full £50,000 in the sequestration.

Check whether the liquidator has identified any actual or potential causes of action against the director – overdrawn loan account, misfeasance etc. If they have, check whether they will be filing a claim. If they intend filing a claim, this could impact whether or not Mr Durres can seek a recall of the sequestration (NB – credit to be given if this point is made in (a) or in (c)/(d)).

Landlord

A copy of the lease should be obtained in order to verify the rent payable. Check whether a rent deposit was provided and if it was, whether it has been taken into account when calculating the claim in the sequestration.

The landlord would have been entitled to exercise a right of hypothec by claiming stock or goods at the premises at the date of insolvency to offset against the arrears of rent. Confirm whether any goods have been held and ensure the claim is adjusted accordingly.

A statement of account should be obtained to confirm the arrears position. Assuming that the rent payable was £1,500 a quarter, the amount claimed in respect of arrears should be admitted.

£24,000 is claimed in respect of future rent. This equates to 4 years of rent. A creditor is under a duty to mitigate their loss and to seek to re-let their premises. As the IP confirmed they had no interest in the premises almost 6 months ago, enquiries should be made to establish whether the premises have been re-let and if so, on what terms. If not, the creditor will need to provide evidence about the ability to re-let and likely rent.

The lease should be reviewed to check that the landlord is entitled to claim for dilapidations. A schedule of dilapidations and accompanying photos evidencing the work required should be requested to check that the work was required to be undertaken and the amounts claimed were reasonable.

(b) Explain, giving reasons, whether or not you would admit the claims received from the spread betting company, Mr Durres's former wife and the Council.

(5 marks)

Spread-betting contract

Spread-betting contracts are not covered by the Gambling Act 2005. They are a regulated activity for which the FCA has oversight.

Any debt due under a spread betting contract entered into by the bankrupt is a provable debt.

Based on the contract and trade statement, the claim should be admitted.

Matrimonial debt

An obligation to make a lump sum payment in divorce proceedings is a valid unsecured claim which will be released on discharge.

A copy of the order should be requested to establish when the sum of £30,000 became payable (i.e. was it payable immediately or was payment postponed to a future date). As the payment was ordered by the Court the order will be likely to have a 20 year prescriptive life and the fact that the order was made more than 6 years ago is unlikely to be relevant for prescription purposes.

Council Tax

Mr Durres is the owner and occupant of the property. If Mr Durres occupies the property with a spouse/ civil partner, they are also jointly and severally liable.

Establish whether Mr Durres is married / has civil partner who is also liable and/ or has discharged the debt.

All outstanding liabilities (all arrears and future instalment payments) for council tax for the year in which the insolvency commences are provable debts unless the debtor moves during that year. As the WTC is 24 March 2025, the Council can prove for the arrears and for Council tax falling due until the end of the council tax year i.e. to April 2025. However, the Council Tax for the following year is not a claim and should be paid by Mr Durres.

An allowance for the ongoing Council Tax would be made when setting a DCO for Mr Durres (if the recall application did not proceed)

- (c) **Giving your reasons, explain whether the sum of £200,000 is likely to be sufficient to enable Mr Durres to make an application to the Accountant in Bankruptcy for recall of the sequestration under section 31(1) of the Act. Clearly state any assumptions that you make.**

(5 marks)

Calculation of amount required to recall Award of Sequestration

Petition costs Estimate say £1,440 (£1,200 +VAT)

Trustee's fees Estimate (been in office for 6 months) say £6,000
plus VAT - £7,200

Future Trustee's Fees Will depend on who pays the creditors and who submits the recall application. Assuming that Mr Durres does this to keep costs down then Trustees fee to close could be c£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. In this case around £1,505.

Creditors

Creditor agreed claims £151,000 (assume no further creditors submit a claim following notification of the recall application)

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. 24 March 2025 to 30 November 2025 (assuming payment made by end of November) = 251 days @ 4.5 +2% = £6,749.49

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 (This was the position based on the legislation at 30 April 2025).

After the legislative change, and assuming that debts could be paid in full by 25 December 2025, no statutory interest would be paid either. There would be no requirement to disclose the amount of interest payable to creditors.

Total amount required - £161,220 assuming that no audit is required and statutory interest is not paid.

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

Therefore, £200,000 should, based on the assumptions set out below, be sufficient to enable all of the liabilities, costs and expenses of the bankruptcy estate to be discharged in full.

Assumptions

No realisations to date.

Mr Durres is not VAT registered and VAT cannot be recovered.
Credit will be given for a reasonable estimate of petition costs.

Trustee's fees. The Trustee has been in office for 6 months. The circumstances of the case do not suggest that a significant amount of work has been undertaken other than abandoning the lease. Time costs would be audited by AIB (attracting a 17.5% audit fee) if agreement on the level of the Trustee's fees is not reached between the debtor and the Trustee.

Estimated future costs variable depending on who is making the application for recall and who is paying creditors. If this is to be done by the Trustee then future costs will increase.

Trustee's disbursements. The Trustee will have incurred the cost of bonding, insurance, and statutory advertising.

The position re statutory interest has been clarified in legislation and is as follows:-
The judgment of the Sheriff Appeal Court published on 6 August 2020 in the case of VCY upheld the previous decision of Sheriff Holligan that where sequestration was recalled on the grounds that debts were being paid in full the "debts" did not include statutory interest and therefore interest did not need to be paid to secure Recall.

The Bankruptcy & Diligence Scotland (Act) 2024 received Royal Assent on 15 July 2024 and has been implemented in stages. The regulations and transitional provisions which came into force on 25 June 2025 clarified the position regarding statutory interest in legislation with the premise being that if debts were paid in full within 6 months of sequestration then statutory interest was not payable. The transitional provisions provided 6 months from the date of commencement for any recall applications underway to not pay interest. In this case as sequestration was awarded prior to 25 June 2025, the debtor would have until 25 December 2025 to pay their debts in full in order to secure a recall without paying statutory interest. If the debts were not paid in full at this date then statutory interest would be payable in order to subsequently secure a recall.

This examination examined the legislation in force on 30 April 2025. Marks were given for the approach based on the legislation in force either before or after this date and any reasonable assumptions made.

(d) Assuming that Mr Durres's mother confirms that she is prepared to advance the sum of £200,000, what steps should you take and why? (3 marks)

What steps should you take on being notified that Mr Durres' mother intends to advance the £200,000 ?

A Trustee needs to be satisfied that there are sufficient funds available to discharge the bankruptcy costs and expenses in full. An estimated payment in full calculation should be prepared and shared with the bankrupt/ third party as they may not have taken into account all of the costs and expenses that have to be met in addition to creditor claims.

Obtain debtor's agreement to Trustee's fees.

Agree with debtor who is going to prepare the application and who will make payment to creditors. If payment is made by the debtor or his mother directly then this will keep costs down, but the Trustee will need to see written confirmation from each creditor that they have been paid in full and that their claim in the sequestration is withdrawn.

If the Trustee is going to make payment to creditors and therefore the sum he receives from Mr Durres's mother is going to be greater than £15,000 then AML checks will need to be carried out on Mrs Durres.

Trustee needs to prepare a SOA & Submit to AIB and confirm that Trustee's remuneration has been agreed (or not.)

Trustee should notify all creditors which means that where creditors are known to the Trustee who have not yet claimed, they have the opportunity to submit a claim in 14 days.

Mrs Durres' mother should be advised to seek her own independent legal advice prior to advancing the funds.

Question 2

- (a) **Identify the particular risk factors faced by an Authorised Insolvency Practitioner who is an office holder on a high number of PTD cases. Explain how each of the risk factors might be mitigated.**

(14 marks)

As Skopje & Co has over 2,500 PTD cases in which one or more person has acted as Trustee in the last 12 months, it is classed as a Volume Provider (the definition having been agreed and adopted by the RPBs). Even if case numbers drop below 2,500, it will remain classed as a Volume Provider for the next 12 months.

Insolvency Practitioners are required to have regard to risk factors in order to address existing and emerging threats to the effective control of cases. IPs should ensure that they are involved in all high-level decision making processes which may impact their role and responsibilities and not be unduly influenced by any non-IP business owners.

Having a large portfolio of cases can bring additional risks. In a Volume Provider the risk factors to which an IP should have particular regard are set out in the Insolvency Guidance Paper on the Control of Case, This sets out the following risk factors:

Volume. Each IP is dealing with a much higher number of appointments than in a traditional practice. However, the IP remains responsible for all advice and decisions on the PTDs on which they are appointed and has an obligation to ensure that their cases are properly controlled.

Staff - Training. Risks include a higher percentage of staff who are lacking sufficient experience and/ or qualifications. High volume providers can experience a high turnover of staff which can affect the retention of skills within the practice.

Mitigation. Recruit suitably experienced or qualified staff. Ensure that a suitable training programme is in place and regularly assess that training programme to ensure that it keeps up with market developments, guidance etc. Ensure that all training is logged to ensure staff are attending. Create training manuals for staff to refer to. When a member of staff leaves, ensure that there is an effective handover of cases to another suitably experienced/ qualified member of staff.

Provide re-training where gaps in staff knowledge or skills are identified.

Staff – Supervision. With a volume provider there is likely to be increased delegation of work to staff at all stages of a case meaning that the IP may have only limited involvement with the individual and the case. Given the number of employees there is a risk that staff are not adequately supervised.

Mitigation – Ensure that adequate supervision and monitoring processes are in place for all staff, including staff working remotely. Monitor capacity to ensure that cases are distributed fairly and managed by those with sufficient capacity to do so. Look to recruit additional staff if numbers are not sufficient to manage the volume of cases.

Carry out regular case reviews with staff.

Review calls to ensure that staff are adhering to scripts and decision trees. Ensure that scripts and decision trees are routinely reviewed to ensure that they reflect current practice and standards.

Staff – Remuneration. Performance incentives can be offered to staff in addition

Mitigation – ensure that any performance incentives (such as commission or bonuses) do not negatively affect outcomes i.e. do not reward quantity rather than quality of outcomes.

Procedures / Systems – the volume of cases means that there is increased reliance on systems and procedures.

Mitigation – ensure that the systems are fit for purpose, comply with insolvency law and relevant standards. Given the volume of cases, procedures should be put in place for the recording and retention of advice provided to debtors by staff and work referrers included all oral communications, web chat transcripts and digital communications. Ensure that any standard letters are regularly reviewed to ensure that they are still fit for purpose.

Complaints Handling – the volume of cases means that the IP may only have limited control over the quality and timeliness of outputs and will be reliant upon unqualified staff

Mitigation – implement a robust system of monitoring response times and reviewing the quality, relevance and timeliness of written and oral communications. Have a system in place to review the areas that are most complained about and ensure that any recurring issues are addressed through additional training, feedback to staff members etc . Ensure that all complaints are properly logged with outcomes i.e. how many complaints were satisfactorily resolved at an early stage.

Case Handling and Quality Assurance – the IP may have limited control over auditing and quality assurance processes.

Mitigation – consider having an internal compliance team which can carry out a regular review and audit of processes, procedures and systems to ensure that they are being followed, they remain fit for purpose, to identify any areas for improvement and that they are carried out by adequately qualified assurance officers (internal or external). If any systemic issues are identified, corrective action should be taken across the portfolio. Regular external compliance reviews could also be instructed and carried out.

Consider having a designated closings team to ensure that cases are closed as soon as it is appropriate to do so, allowing other staff members to focus on the progression of live cases.

- (b) **Explain the issues which an Authorised Insolvency Practitioner should consider prior to his firm instigating an advertising and marketing campaign. (6 marks)**

Advertising and marketing by an Insolvency Practitioner or third party on their behalf

The Insolvency Code of Ethics provides that Insolvency Practitioners are responsible for the quality, accuracy and legality of their own advertising as well as those of any third parties referring work to them.

When an insolvency practitioner seeks an insolvency appointment or work that might lead to an insolvency appointment through advertising or other forms of marketing or promotional activity, there might be threats to compliance with the fundamental principles, including integrity and professional behaviour.

When undertaking marketing or promotional activities, an insolvency practitioner shall not bring the profession into disrepute. An insolvency practitioner shall be honest and truthful and shall not make: a) exaggerated claims for the services offered by, or the qualifications or experience of, the insolvency practitioner; or b) disparaging references or unsubstantiated comparisons to the work of others

If reference is made in advertisements or other forms of marketing to fees or to the cost of the services to be provided, the insolvency practitioner needs to be satisfied that the basis of calculation and the range of services that the reference is intended to cover has been provided. The insolvency practitioner needs to take care to ensure that such references are clear as to the precise range of services and the time commitment that the reference is intended to cover.

If an insolvency practitioner is in doubt about whether a form of advertising or marketing is appropriate, the insolvency practitioner is encouraged to consult with their authorising body.

Where an insolvency practitioner or the firm obtains work via a third party or a third party conducts marketing activities on behalf of the insolvency practitioner or the firm, the insolvency practitioner shall be responsible for ensuring that the third party follows the application material above.

In particular insolvency practitioners should be aware of the FCA ban on the payment of referral fees to debt packager firms. It is not permissible to make payment to an organisation which exists solely to “package” cases and refer them to an insolvency practitioner for a solution.

When obtaining work via a third party or using a third party to conduct marketing activities insolvency practitioners have a responsibility to ascertain that a referral manner is in accordance with the Code because insolvency practitioners cannot do, or be seen to do, through others what they cannot do themselves.

Insolvency practitioners shall never promote or seek to promote their services, or the services of other insolvency practitioners, in such a way, or to such an extent, as to amount to harassment.

Insolvency practitioners need to ensure that any campaign does not breach Advertising Standards Authority’s Advertising Codes through being misleading,

Insolvency practitioners cannot give a financial payment to any third parties for the referral of cases. An IP faces being sanctioned if they do provide a financial payment to third party referrers.

Insolvency Practitioners should ensure that they are appropriately resourced to effectively handle an increased level of enquiries.

Question 3

- (a) **Set out your proposed course of action in relation to Mr Berat's suggestions and the motor vehicle. (9 marks)**

Mr Tirana

Whilst the Consultative Committee of Accountancy Bodies (CCAB) guidance provides that where an IP is appointed by court order, by a decision or deemed consent procedure or meeting convened by the Official Receiver, the Accountant in Bankruptcy, or directly by the Secretary of State, without any prior involvement with the insolvent, some reliance can be placed on the order of appointment or the initial bankruptcy order to evidence the identity of the insolvent as part of the risk based Customer Due Diligence procedures, a check should be carried out to ensure that all necessary KYC checks have been carried out in respect of Mr Tirana . Were any risks of money laundering flagged when the checks were carried out?

Given that Mr Tirana does not have an obvious source of funds available to him to have purchased the Lotus, enquiries should be made to establish the source of the funds used to make payment. Bank statements could be reviewed and enquiries made of the Lotus dealership.

Enquiries should be made to establish Mr Berat's relationship with Mr Tirana and why he intends purchasing the Lotus.

The Lotus – practical steps

Check with National Crime Agency/ local police force whether the vehicle is already the subject of a POCA restraint or confiscation order. If it is, the Trustee cannot deal with Lotus without the consent of the NCA/ Police/ Court.

Finance checks should be undertaken to establish whether there is any outstanding finance. If there is, obtain a copy of the finance agreement.

Check on gov.uk website whether the car is taxed and has a current MOT.

A specialist agent should be instructed to inspect the vehicle, with a formal valuation obtained to establish current market value and saleability.

The vehicle has vested in the Trustee. If a sale of the Lotus is effected, it would be by the Trustee personally (rather than as agent in a corporate insolvency). KYC checks would have to be carried out on Mr Berat if the sale was to proceed. If the funds were to come from a bank account in his wife's name, KYC checks would also have to be carried out on his wife. The Trustee is also required to assess the risk of Money Laundering.

Where an agent is used to sell an asset, the agent might be regulated. If they are, reliance can be placed upon the KYC checks that they carry out subject to being satisfied that adequate checks have been carried out. If the agent does carry out KYC checks on your behalf, the agreement that they will do so should be recorded in writing. The Trustee should also carry out a documented assessment of the money laundering, terrorist and proliferation financing risk.

Mr Berat

Enquiries should be made to establish whether Mr Berat is the same individual who was convicted in relation to the supply of drugs in 2020.

If he is, there is the risk that the funds he proposes paying represent the proceeds of crime and/ or that Mr Berat is attempting to launder the proceeds of crime.

The Money Laundering, Terrorist Financing & Transfer of Funds (Information on the Payer) Regulations 2017 apply to persons who carry on business in the regulator sector. This includes acting as an Insolvency Practitioner (s388 IA86)

Notify the firm's MLRO of the offer that has been made and the proposed source of funds. The MLRO can request a defence against money laundering SAR (DAML SAR). A DAMAL SAR can be made to the NCA for consent to proceed with a transaction. The transaction can only proceed if the NCA's consent is received or there has been no response to the DAML SAR within seven working days of receipt by the NCA of the request.

If consent is withheld, you may be prevented from proceeding with the transaction for a period of 31 calendar days. Steps would have to be taken to ensure that Mr Berat is not tipped off during this period of the fact that notification has been made to the NCA.

Mr Berat proposes to make payment from an account held by his wife in Monaco. Monaco is a High-Risk Third Country. Enhanced due diligence to include understanding Mr Berat's wife's source of wealth would be required before payment could be accepted.

Payment in cash cannot be accepted.

- (b) Set out the actions that should be taken by you in relation to the property. (7 marks)**

The Property

Whilst an order was made in divorce proceedings prior to the sequestration pursuant to which the property was to be transferred into the sole name of Mr Kichevo's ex-wife, it does not appear from the property search that title has transferred.

Section 79 (1)(b) of the BA (Scotland) 2016 makes it clear that the debtor's estate includes any property of the debtor, title to which had not been completed by another. While there is a grace period to allow sales to complete, this is not what has happened here.

As the order was made very shortly prior to the sequestration it is likely that Mr Kichevo was insolvent when it was granted or the making of the order made him insolvent. If the property title has been transferred then the Trustee could under section 100 of the BA Scotland (2016) Act request a recall of the order. The Court would consider all of the circumstances of the matter but it is likely that the order would be granted

In the circumstances the Trustee retains an interest in the property. As the property is occupied by the bankrupt's ex-wife and was occupied by her on the date of the Award of Sequestration, the property is a family home. Unless the Trustee takes action to realise his interest, it will re-vest in the bankrupt at the end of the period of three years beginning with the date on which the award of sequestration was made.

Steps will need to be taken to establish the value of your interest in the property.

A letter should be sent to Mr Kichevo's ex-wife and her solicitor to notify her of your appointment and to request that access to the property be afforded for the purposes

of an internal valuation being carried out. If you do not receive a response or access is refused, a drive by valuation should be instructed.

Obtain up to date official copies of the register of title for the property to ensure that there are no restrictions or charges on the title.

Contact the mortgage company and request details of the amount required to redeem the mortgage, including any redemption penalties. The mortgage company should also be asked to confirm whether there are any arrears and/ or if they have taken or intend taking any action to enforce their security.

Once the level of equity has been established, a letter should be sent to the ex-wife to explain that the order made in court proceedings is void and to establish whether she is in a position to make an offer to purchase your interest in the property.

If there is no equity in the property, the Trustee can accept a nominal payment to abandon his interest in the property.

You will be unable to take any steps to sell the property without the consent of the Debtor and his spouse or, if you are unable to obtain this the Consent of the Court.

Prior to raising any Court action you would need to assess the extent of the equity in the half share of the property, the level of cost and unsecured debt to be discharged and whether there were any other assets income available.

A copy of the divorce order should be requested to establish the extent of any additional assets and liabilities Mr Kichevo has that may not have been disclosed to you.

Mr Kichevo's ex-wife, is entitled to submit an unsecured claim in respect of the sums due to her under the order.

(c) Set out the action that should be taken by you following receipt of Miss Elbasan's complaint.

(4 marks)

Dealing with the bankrupt's complaint

S174 of the Bankruptcy (Scotland) Act 2016 sets out the **Powers** of the Trustee in relation to the Debtor's contribution. If a debtor fails to make payment for 2 or more consecutive months then following a request from the Trustee the debtor must give an instruction to their employer in the required form, to deduct payment from their wages. If the debtor fails to do this then the Trustee can request the deduction directly from the employer.

Check the case file to establish the **facts** of the case. When checking the file you are seeking to establish the extent of the missing payments and that the debtor was asked to notify their employer themselves before the Trustee did so. It would also be useful to establish what other communication there has been about the contribution payments and also whether there is anything on the file to suggest that the debtor made us aware of a **change in circumstances**.

Details of the debtor's complaint should be passed to the **Trustee** as soon as possible.

The firm's complaints handling process should be complied with. This is likely to include **acknowledging receipt** of the complaint by letter or email and confirming the **timescale** within which a formal response will be provided.

Reference should also be made to the Insolvency **Guidance Paper**: Dealing with Complaints.

Write to the debtor providing an **explanation** for what has happened based on the facts you have established. Ideally this would be done quickly, if not an acknowledgement of the complaint and holding response could be provided. Your response should be clear and avoid unnecessary jargon so it is clear to the debtor and any third party what has occurred. If appropriate a phone call should be offered/made. However, a written response should be provided.

The debtor could be offered a face to face or teams meeting to discuss matters further if the bankrupt continues to feel aggrieved following the initial letter being sent. Your response should provide details of your Firm's complaints policy and what the debtor can do **next** if he remains unsatisfied with your response including their right to make a complaint to the Trustee's RPB directly or through the Insolvency Gateway.

Question 4

(a) Prepare a monthly cash flow for the 12 month period ending 31 October 2026 demonstrating the surplus funds available to facilitate a repayment to HMRC. Show your workings and clearly state any assumptions that you make.

(13 marks)

JIE PI 2025 Sitting														
Q4 (a)														
Cashflow	Note	Nov-25	Dec-25	Jan-26	Feb-26	Mar-26	Apr-26	May-26	Jun-26	Jul-26	Aug-26	Sep-26	Oct-26	Total
		£	£	£	£	£	£	£	£	£	£	£	£	£
Income														
Rental Income														
6 Wells Crescent				1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	
27 Wells Crescent		1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	
52 Wells Crescent		1,700	1,700	1,700	1,700	1,700	1,700	1,700	1,700	1,700	1,700	1,700	1,700	
1 Fountain Place		1,400	1,400	1,400	1,400	1,400								
14 Fountain Place		1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	
5 Spring Road		1,650	1,650	1,650	1,650	1,650	1,650	1,650	1,650	1,650	1,650	1,650	1,650	
Total		7,150	7,150	8,250	8,250	8,250	6,850	6,850	6,850	6,850	6,850	6,850	6,850	87,000
Net proceeds of sale	1									60,240				60,240
Total Income		7,150	7,150	8,250	8,250	8,250	6,850	6,850	6,850	67,090	6,850	6,850	6,850	147,240
Expenditure														
Interest payments														
6 Wells Crescent		396	396	396	396	396	396	396	396	396	396	396	396	4,750
27 Wells Crescent		525	525	525	525	525	525	525	525	525	525	525	525	6,300
52 Wells Crescent		825	825	825	825	825	825	825	825	825	825	825	825	9,900
1 Fountain Place		674	674	674	674	674	674	674	674	674				6,064
14 Fountain Place		625	625	625	625	625	625	625	625	625	625	625	625	7,505
5 Spring Road		825	825	825	825	825	825	825	825	825	825	825	825	9,900
		3,870	3,870	3,870	3,870	3,870	3,870	3,870	3,870	3,870	3,196	3,196	3,196	44,419
Factoring Charges			1,500			1,500			1,500					5,833
Maintenance		250	250	250	250	250	250	250	250	250	208	208	208	2,875
Insurance		500	500	500	500	500	500	500	500	500	417	417	417	5,750
Income Tax	3													-
Renovation 1 Fountain Place									4,000					4,000
Capital Gains Tax on sale of 1 Fountain Place	2											18,538		18,538
Total Expenditure		4,620	6,120	4,620	4,620	6,120	4,620	4,620	10,120	4,620	3,821	23,692	3,821	81,415
Net cash inflow/(outflow)		2,530	1,030	3,630	3,630	2,130	2,230	2,230	- 3,270	62,470	3,029	- 16,842	3,029	65,825
Opening Balance		10,200	12,730	13,760	17,390	21,020	23,150	25,380	27,610	24,340	86,810	89,839	72,997	
Net cash inflow/(outflow)		2,530	1,030	3,630	3,630	2,130	2,230	2,230	- 3,270	62,470	3,029	- 16,842	3,029	65,825
Closing Balance		12,730	13,760	17,390	21,020	23,150	25,380	27,610	24,340	86,810	89,839	72,997	76,025	

Note 1 - Proceeds from sale of 1 Fountain Place

Valuation achieved	220,000	
Security	154,000	
Estate Agency - 1.5% +VAT	3,960	Estimated - assumed VAT not recoverable
Legal Fees	1,200	Estimated - assumed VAT not recoverable
Home report	600	Estimated - assumed VAT not recoverable
Net Proceeds	60,240	

Note 2 - Capital Gain on Sale of 1 Fountain Place

Valuation achieved	220,000	
Purchase price	120,000	
Costs of sale (above)	5,760	
Costs of Purchase (SDLT)	10,000	Estimate - any reasonable figure acceptable
Improvements	4,000	Assume that nature of work to be done pre sale is improvement and not wear and tear
Gain	80,240	
Annual Exemption	3,000	
CGT payable at 24%	18,538	
Capital Gains Tax should be reported and paid on the sale of most UK property within 60 days		

Note 3 - Income Tax on rental income in y/e 5 April 2025 would be due in January 2026. This liability has been included in Raymond's calculation of the debt due. A tax liability continues to accrue for the period since 6 April 2025 including the period of the cash flow. This is based on rental income less allowable expenses offset by a tax credit of 20% of interest payments.

Assumptions

Deposits will be received from the new tenants at 6 Wells Crescent and will be due to be refunded to the tenant at 1 Fountain Place. However, it is assumed that the deposits are with a 3rd party and returned directly to the tenants/placed immediately on deposit therefore not impacting cash flow

Assume renovations of 1 Fountain Place paid for in June 2024, before sale - any reasonable assumption

(b) Prepare an email to Mr Morris giving your observations on the cashflow and outlining a proposal which could be made to HMRC. (7 marks)

The cashflow suggests that the portfolio could generate £66,000 in the year ending 31 October 2026 towards the debt at 5 April 2025 of £80,000. Consideration would need to be given to how the remaining balance due to HMRC of circa £14,000 can be discharged and over what time period. Of the £66,000, £38,000 is generated by the sale of the property at 1 Fountain Place and the balance of £28,000 from trading.

It assumes that the **CGT** liability in relation to the property sale is met within 60 days of the sale. This does not include any provision for **income tax** on the ongoing profits from the period since the returns were made up at 5 April 2025. Mr Smiles will have to make payments on time to account to his ongoing tax liability. These need to be built into the cashflow/proposal.

In addition to the cash surplus generated of £66,000, Mr Smiles should consider how much of the £10,000 **funds in hand** could be added to the proposal to get closer to paying the full debt in one year.

However, he should think about what **contingency** he may need for repairs, void periods, unpaid rent, unexpected expenditure and other matters where you have statutory obligations such as boiler repair and certification.

There is also no contingency in the plan for any payment which Mr Smiles would have to make for the stabilising work under **Spring Road**. The possible timescales and funding for this should be considered in any proposal made.

Generally, HMRC would be unlikely to accept a **Time to Pay arrangement** of longer than 1 year and there is also no guarantee that they would accept a proposal which took a year to repay. The proposal made would be more attractive if **regular payments** were proposed and then maintained in line with the proposal rather than the payment all being made at the end of the year. HMRC are more likely to look favourably upon the proposal if he **submits future tax returns, maintains ongoing liabilities and makes future payments on time**.

Mr Smiles could consider whether the proposal could be **accelerated** by marketing 6 Wells Crescent, which is currently empty, for sale. This property would release a similar level of equity to 1 Fountain Place and has a lower monthly rental income. However, the same lender funds all 3 properties in Wells Crescent and whether any funds could be released for unsecured creditors will depend on whether there is an all sums security/ consolidation clause in place.

If he has not already done so, Mr Smiles could consider applying for a **moratorium** to allow him time to reach an agreement with HMRC/execute this strategy before any enforcement action can be taken.

c) Prepare an estimated outcome statement which assumes that Mr Smiles is made bankrupt. Compare the estimated returns to creditors if the Trustee immediately markets the properties for sale or if time is allowed following the Trustee's appointment to secure vacant possession of the properties. Clearly state any assumptions that you make and comment on the factors which should be considered when determining the sales strategy for the properties. (20 marks)

Part c Estimated Outcome Statement Bankruptcy of Mr Smiles				Note
Comparison of Immediate sale to securing vacant possession of properties				
	Immediate sale	Managed Sale		
	£	£	£	
Realisations from Properties		157,783	265,910	1
Trading in realisation period		0	11,717	2
Cash at Bank		10,200	10,200	3
Debtor Contribution Order		0	-	4
Total realisations		167,983	287,827	5
Costs of realisation				
Trustee's Fees	48,000	60,000		6
Trustee's Outlays	15,000	15,000		7
Legal Fees	6,000	12,000		8
Capital Gains Tax	19,270	46,397		9
Income tax	0	2,461		10
		88,270	135,857	
Funds available for unsecured creditors		79,713	151,970	
Unsecured creditors				
HMRC	80,469	80,469		11
3* credit cards	20,000	20,000		
Shortfall on 5 Spring Road	44,811	29,590		
		145,280	130,059	
(Shortfall to creditors)/Funds available for payment of statutory interest		-65,567	21,911	
Statutory interest			8,454	12
Reversion to debtor			13,457	

Conclusion re position for HMRC

In a managed sales process in insolvency, HMRC would recover 100p plus statutory interest most likely at the end of the first year accounting period. Their current claim would have to be adjusted to include the additional tax liability for the partial year to the date of Award, however, on the basis of the information available this would also be covered by the assets available.

With an estimated £108k reduction in an immediate sale of all properties with tenants in situ HMRC are likely to receive around 55p in the £1 and there is likely to be no reversion to Mr Smiles.

Observations on sales strategy

Immediately marketing all properties for sale as a portfolio would reduce top line realisations by 10%. As shown below, the impact on the total sales price is £115k. There is considerable equity in the properties, c.£158k in an immediate sale. However, after the shortfall on 5 Spring Road and the other unsecured debt, and costs, it is not sufficient to pay HMRC in full and it would be a strategy that Mr Smiles should be keen to avoid.

As the best outcome is likely to be achieved by sales with vacant possession it is suggested that tenants are given notice and once vacant the properties are marketed. In a no fault eviction a minimum of 84 days notice (12 weeks) must be given. Further advice should be taken from the surveyor regarding the impact on price of putting 6 properties on the same development on the market at around the same time. It may be better to stagger the notice periods given.

In the figures above, it is assumed that in a managed sale strategy, the sales can be timed to avoid the redemption penalties at 30 June 2026. The redemption figures are accordingly higher in a forced sale scenario.

There is now negative equity in Spring Road. While there is no benefit to the estate in selling it, there would be a benefit to Mr Smiles if the claim is crystallised during the Bankruptcy so that he cannot be subsequently pursued for it. While there is no benefit to a sale for unsecured creditors crystallising the loss on this property would increase unsecured claims, either reducing any reversion to Mr Smiles or diluting the unsecured dividend.

There are significant capital gains on the property portfolio of £265k if sold in a managed way. At 24% this is a liability of £64k. The loss which could be realised on 5 Spring Road, could shelter some of this gain.

Mr Smiles may be less likely to co-operate in an immediate sale. An immediate sale could still take time and it would be necessary to appoint a Managing Agent to manage the properties in this period. Typically this would cost 10% of what is likely to be limited rental income. In addition the maintenance costs would be higher due to the savings currently being achieved by Mr Smiles carrying out this work himself.

Conversely if a managed sale strategy was adopted, it would be in Mr Smiles interests to work with the Trustee and continue to manage the properties and carry out repairs to keep the costs as low as possible.

Notes/assumptions

(1) Return on sale of properties

	Immediate Sale					Managed Sale				
	Sales price	Redemption	Estate Agency	Legal costs	Return	Sales price	Redemption	Estate Ag	Legal Agents	
6 Wells Crescent	143,400	104,000	2,689	1800	40,311	165,000	100,000	2970	1800	60,230
27 Wells Crescent	144,000	120,000	2,532	1800	19,608	160,000	120,000	2680	1800	35,320
52 Wells Crescent	225,000	160,000	4,050	1800	39,150	250,000	160,000	4500	1800	63,700
1 Fountain Place	198,000	154,000	3,564	1800	38,636	220,000	154,000	3960	1800	60,240
14 Fountain Place	189,000	164,320	3,402	1800	19,478	210,000	158,000	3780	1800	46,420
					157,783					265,910
5 Spring Road	139,500	180,000	2,511	1800	-44,811	155,000	180,000	2790	1800	-29,590
	1,044,900	902,320				1,160,000	892,000			

(2) The cashflow showed that the property rentals generated £28,123 pa before tax. Assuming that Mr Smiles continues to manage and maintain these and on average they are occupied for a further 5 months to allow for notice periods and a staggered marketing this would generate £11,717. Assume nil recovery from trading on an immediate sale.

(3) Assume that the balance which Mr Smiles has in his current account would be frozen at appointment and transferred to the estate.

(4) Mr Smiles income and expenditure would have to be assessed using the CFT and a DCO set in order that he could pay his surplus income to the sequestration for a period of 48 months. Assumed that coaching income covers his living costs and no Dco available.

(5) It is assumed that Mr Smiles has no other assets but enquiries would have to be made, for example does he own a home or rent and does he have a motor vehicle.

(6) The Trustee will have to deal with supervising the management of the tenancies, securing vacant possession and the management of at least 5 and possibly 6 property sales. It is assumed that the Trustee's fees are higher in a managed sale due to the increased time required for the process.

(7) Outlays include as a minimum AIB's 17.5% supervision fee on Fees and outlays plus obtaining open cover insurance, bonding.

(8) Conveyancing costs are included in the estimate of fee on property sales, however, costs will be required to service notice on the tenants and secure vacant possession. It is assumed that these costs are less when selling immediately with tenants in situ.

(9) Capital gains tax

	Immediate Sale					Managed Sale				
	Sales price	Base cost	Estate Agency	Legal Costs	Gain(loss)	Sales price	Base cost	Estate Ag	Legal costs	Gain(loss)
6 Wells Crescent	143,400	100,000	2,689	1800	44,311	165,000	100,000	2970	1800	60,230
27 Wells Crescent	144,000	100,000	2,532	1800	39,608	160,000	100,000	2680	1800	55,320
52 Wells Crescent	225,000	240,000	4,050	1800	-20,850	250,000	240,000	4500	1800	3,700
1 Fountain Place	198,000	120,000	3,564	1800	72,636	220,000	120,000	3960	1800	94,240
14 Fountain Place	189,000	140,000	3,402	1800	43,798	210,000	140,000	3780	1800	64,420
					180,103					277,310
5 Spring Road	139,500	235,000	2,511	1800	-99,811	155,000	235,000	2790	1800	-84,590

Assume that Gains can be partially offset by the loss on Spring Road but that the Trustee is liable for CGT at 24%

(10) Provision for tax at the intermediate rate of 21% on the estimated profit in the trading period. No provision required for an immediate sale.

(11) HMRC debt to 5 April 2025 included. A return would need to be submitted for the final period of trading to appointment so that the final liability could be calculated.

(12) Statutory interest payable at Bank of England base rate (at date of seq) +2%. Assume 4.5%+2% and that the unsecured creditors are paid in full at the end of year 1.

(13) VAT - it is assumed that the debtor's business as a landlord is exempt from VAT and therefore VAT cannot be recovered on expenses including estate agency, legal fees and Trustee's fees.

Total: (40 marks)