

# JOINT INSOLVENCY EXAMINATION BOARD

*Joint  
Insolvency  
Examination  
Board*

**Joint Insolvency Examination (Scotland)**

**Wednesday 4 November 2015**

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## **PERSONAL INSOLVENCY (3.5 hours)**

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**ANSWER ALL FOUR QUESTIONS**

**EACH QUESTION CARRIES TWENTY-FIVE MARKS**

**SUBMIT ALL WORKINGS**

**The Examiner will take account of the way material is presented. Candidates should answer the questions set - marks will not be awarded for extraneous material.**

**Note:** References to legislation are to that which was in force on 30 April 2015. References to 'the Act' are to the Bankruptcy (Scotland) Act 1985 as amended.

References to Sections and Rules of other Acts, Regulations and Orders will mention the Act, Regulation or Order.

1. You are an Authorised Insolvency Practitioner.

You were appointed as Trustee in the Sequestration of John Herbert ("John") by the Sheriff Court in Glasgow on 20 October 2015, following a petition by the City Council. Warrant to cite John was granted on 8 September 2015. John has not paid his Council Tax for more than six years.

During your initial interview with John after your appointment, you established the following:

- John currently lives with his wife in rented accommodation. He pays rent of £500 per month to his landlord, who lives and works abroad. John and his wife have lived in this same property for 6 years and the tenancy agreement, which is in John's name, provides that 2 months' notice must be given on either side if the tenancy is to be brought to an end. John and his wife have no wish to move.
- John and his wife have no children.
- After many years working in the local branch of a high street bank, John now works as an Assistant Manager at the local DIY store and earns a gross salary of £24,000 per year. After tax, his net take home pay is, on average, £1,600 per month.
- John's wife works part time as a Librarian with a monthly take home pay of £800.
- John's date of birth is 23 October 1960.
- John's liabilities amount to £26,500 and, in addition to the Council Tax debt, are primarily made up of credit card debts and loans from various financial institutions.

Prior to his interview with you, John jotted down details of his monthly income and expenditure which shows the following:

	£	£
<b>Income (net of tax)</b>		1,600
<b>Expenditure</b>		
Rent	500	
Food & drink, including entertaining friends and going out	400	
Gas, electricity and water	100	
Household expenditure	80	
Clothing	80	
Motor expenses – self	60	
Motor expenses – wife	30	
Council tax	125	
Credit card instalments	85	
Loan repayments	110	
Fines/costs following driving conviction	40	
Total expenditure		<u>1,610</u>

## Requirements

- (a) Giving your reasons and detailing any further enquiries you would make, calculate the amount which you should seek as a Debtor Contribution Order. Explain the mechanism(s) by which such contributions could be secured, and the period(s) over which any contributions should be made. (18 marks)

### Note:

You should assume that appropriate allowances under the Common Financial Tool are as follows:-

	<b>1 Adult</b>	<b>Additional Adult</b>
	<b>£</b>	<b>£</b>
Phone Costs	40	15
Travel Costs	80	75
Housekeeping	350	220
Other Expenses	150	100

You have recently received correspondence from a life assurance company confirming that, for many years, John has contributed to an approved personal pension scheme (the "Pension"). The fund value currently amounts to £285,000.

## Requirements

- (b) Explain, in view of the existence of the Pension, the actions you would take regarding the future administration of John's sequestration. (7 marks)

**Total: (25 marks)**

2. You are a Manager in the employment of Joe Swanson ("Joe"), an Authorised Insolvency Practitioner.

Joe was appointed as Trustee in the Sequestration of Thomas Tucker ("Thomas") on 4 September 2013. The Award of Sequestration was made on 17 July 2013 following a petition by HMRC.

Joe has had no communication with Thomas who has persistently ignored all attempts to contact him to discuss his Sequestration. The only asset which has been identified is an interest in a solely owned property, which is where Thomas appears to reside and which has equity of £35,000. In the absence of a response from Thomas to any of the correspondence sent to him, a recent application was made by Joe's legal agent to evict Thomas from the property in order that Joe can sell it.

Yesterday you received a call from a solicitor acting for Thomas advising you that Thomas has recently been awarded £67,000 in compensation from mis-sold payment protection insurance and that he has been instructed to proceed with the recall of the Sequestration. The solicitor advised that Thomas is keen to understand the level of funds which would be required from the compensation payment to "deal with" the Sequestration.

Your file shows that the petition debt was £3,200 and in addition, HMRC is claiming payment of the costs of the petition amounting to £1,450 (including all fees and deposits).

Other creditors who have submitted claims (at the date of the award) are as follows:

	£
Credit cards (x3)	4,370
Bank loan	8,105
Bank overdraft	190
Store cards (x4)	7,940
Student Loan	3,300
Loan from Wife	5,000

As at today's date, your firm's outstanding time costs amount to £4,620 and disbursements of £380 have been incurred.

This morning, you received notice that Thomas has indeed made an application for the recall of the Sequestration.

### Requirements

- (a) **In the light of Thomas's application, prepare a memorandum to Joe describing what is expected of the Trustee by legislation and advise Joe of the actions he should take generally. (10 marks)**
- (b) **Calculate the estimated amount required to pay the debts and the expenses of the Sequestration in full and estimate the surplus funds available to Thomas. Clearly state any assumptions that you have made. (10 marks)**
- (c) **Draft the Statement of the Debtor's Affairs which Joe must submit to the Accountant in Bankruptcy. (5 marks)**

**Total: (25 marks)**

3. You are an Authorised Insolvency Practitioner.

Yesterday, you were approached by Muriel Goldman ("Muriel") who was very upset and concerned. Her estranged husband has recently been made bankrupt. Muriel jointly owns the family home ("the Property") with her husband. They have been married for 15 years but have been separated for 2 years. Muriel lives in the Property with the couple's twin boys, Luke and Oliver, aged 7.

The couple purchased the Property when they married for £180,000. Muriel advises that she provided the deposit of £30,000 from monies she had inherited from her grandfather. Shortly following their marriage the couple moved to London where they owned a small flat and rented the Property out until their return to Scotland just prior to the birth of the twins.

The Property is valued at £450,000 and is subject to a mortgage of £220,000, and a second charge of £50,000. Muriel told you that she had previously been unaware of the second charge, which her husband has now told her was in respect of a loan taken out to fund her husband's business, which subsequently collapsed and led to her husband's bankruptcy.

Muriel had not known about the Bankruptcy until her husband's Trustee wrote to her last week inviting her to purchase her husband's share of the equity in the Property for the sum of £90,000.

### **Requirements**

**Write a letter to Muriel. In your letter, you should**

- (a) discuss the legal position, the extent of the Trustee's interest in the Property and the overall equity position. Set out what further information you may require. (20 marks)**
- (b) stating your reasons, advise Muriel of the amount she should initially offer for her husband's interest in the Property (5 marks).**

**Total: (25 marks)**

4. You are an Authorised Insolvency Practitioner.

Yesterday you were appointed Trustee in the Sequestration of Alex Watson ("Mr Watson") by the Sheriff Court in Lerwick on the Shetland Isles. The Award of Sequestration followed the presentation of a petition by HMRC for a debt of £82,000. Warrant to cite the debtor was granted on 18 September 2015.

After some difficulty you have been able to speak to Mr Watson and have agreed to travel to Shetland to meet him tomorrow. He has told you that:-

- He has a herd of 110 milking cattle and that he supplies milk to Island Dairies Limited. His vet has advised that his cattle have a wasting disease. A quick internet search has reassured you that this is not a notifiable disease and does not affect the quality of the milk, but it is infectious and is likely to affect the lifespan of the cattle.
- He has a tractor and a small amount of milking equipment. Further credit has been difficult to obtain and he only has enough feed for the cattle for the next 5 days.
- He jointly owns his small farm called Windy Head, which was deconstructed some time ago, with his wife. He estimates that Windy Head is worth around £90,000, and thinks that the sum of £50,000 is due to Island Bank. He and his wife have recently separated and she wants the farm sold and her share of the proceeds paid to her as quickly as possible. To this end, she has obtained an auction appraisal and has agreed to put the farm into the agent's next auction with a reserve price of £70,000.
- In addition to the debt due to HMRC, Mr Watson, has an unsecured overdraft of £25,000 with Farmers Bank and owes around £15,000 to his feed suppliers. He was very vague about these sums, advising that paperwork is not his strong point, although he did have an Accountant in Lerwick.
- He is aware of a legal action against him by a Mr Holmes who did some building work at Windy Head a number of years ago. Mr Watson does not believe that he owes Mr Holmes any sums.
- He has had enough of farming, disillusioned with the long hours, falling milk price and the disease in his cattle. While he is prepared to meet you tomorrow he no longer wants to work on the farm, and has secured a job as ground crew at the Island Airport starting at the beginning of December.

A check on Companies House records reveals that Mr Watson is a 25% shareholder in Island Dairies Limited.

You had just finished your conversation with Mr Watson when Mr Holmes called you. He advised you that he has been pursuing Mr Watson for a debt of £25,000 for years. He wanted to make you aware that Mr Watson also owns High Cliff Farm which is worth £150,000, but two months ago Mr Watson granted a 50 year lease to High Cliff Farms Limited whose shareholders are Mr Watson's parents.

In Mr Holmes's opinion Windy Head is worth around £120,000. He thinks his legal adviser secured an inhibition over Windy Head on the dependence of his Court Action against Mr Watson on 31 August 2015.

Mr Holmes is keen to be kept advised and wants to know more about what the responsibilities of a Commissioner would be. You agree to write to Mr Holmes.

## **Requirements**

- (a) Based on the information provided in these calls prepare a memo to your Assistant setting out the issues, specific to these circumstances, that you will need to address in the coming days and the additional information you will need to obtain. (20 marks)**
- (b) Write a brief letter to Mr Holmes explaining how he could be appointed as, and setting out the main roles and responsibilities of, a Commissioner. (5 marks)**

**Total: (25 marks)**

