

**This guidance is tailored specifically for official receivers. It is discretionary and not designed for use by third parties. This version was the most up to date guidance available to official receivers as at 10 March 2020.**

## 33. Monetary assets

### Annexes

[Centralised bank statement request guidance](#)

[Monetary assets - How to deal with a bank account](#)

[How to deal with assurance policies](#)

[How to deal with jointly owned policy](#)

[Centrally Managed Parties and bank sort codes](#) - The bank contact list is contained in Centrally Managed Parties

### Chapter content

[Frequently asked questions](#) - Monetary assets

[Frequently asked questions](#) - Bank & building society accounts

[Introduction](#)

[Cash](#)

[Payment accounts, savings accounts and investments](#)

[Trusts](#)

[Life assurance and other policies](#)

[Shares and other traded investments \(including employee share schemes\)](#)

Valuing Shares in unquoted companies
Shares with little or no realisable value receipt of dividends
Employee share schemes
Disposing of shares – Official receiver to inform creditors
Other monetary assets

## Frequently asked questions - Monetary assets

These frequently asked questions are to assist official receivers in understanding the subject and should be read in conjunction with the more detailed guidance given in the main body of the chapter.

### Collecting cash, what should I do?

When, on inspection or in the office, the company, partnership or bankrupt has cash you should first confirm it forms part of the estate. You should count the cash in the presence of the director, partner or bankrupt and, if on inspection, issue a temporary receipt. The cash should be handed to the cashier and a formal receipt will then be issued.

### Can a bankrupt keep some of the cash for living expenses?

When collecting cash from a bankrupt allowance should be made for his/her immediate living expenses before receiving their next wages and/or benefits. When cash is handed over a receipt should be issued.

### What should I do when a bankrupt has surplus income?

Where a bankrupt has sufficient income to meet the reasonable domestic needs of his/her family an income payments agreement or order (IPA/IPO) should be obtained. Detailed guidance on obtaining an IPA/IPO is provided in chapter 35.

## What should I do with rental income?

The official receiver as liquidator or trustee has an interest in any rental income from property owned by a company, partnership or bankrupt. Detailed guidance on commercial property is provided in chapter 28 and on dealing with rental income in chapters 29 and 30.

## What should I do if a bankrupt is made redundant?

Redundancy payments and payments in lieu of income are compensation for the loss of employment. As such they are not income but property and should be claimed in the same way as other assets. If the payments are made after the date of the bankruptcy order and before the date of discharge the monies should be claimed as after-acquired property.

## What is a trust?

Basically a trust splits the ownership of an asset between two or more persons. The trustee is the legal owner and the beneficiary the equitable owner. Trusts are commonly created over freehold property, life policies and to provide an income for children and grandchildren.

## What should I do if I discover a trust?

You should obtain a copy of the trust deed to establish what interest the official receiver may have in the trust. This is not necessarily straightforward as there are different types of trust and the company, partner or bankrupt may have created the trust or they may be beneficiaries of a trust created by a third party.

## Can I overturn a transfer of assets into a trust?

The official receiver can only overturn such a transfer of assets if they were undervalued or the intention was to defraud creditors. Each case must be examined on its merits following the guidance provided in chapter 31.

## How do I realise assets held in a trust?

The official receiver, having established an interest in a trust, has a number of options, depending on the nature of the interest. The trust may relate to assets that can be sold, for example freehold property or shares, or may provide an income. The

trust may also impose time limits on when property may be disposed of. Each trust must be considered individually. Detailed guidance is contained within the main body of the chapter.

## Can the official receiver leave a bank account open?

Where the official receiver does not intend to close a bank account, for example where it is used for the receipt of benefits or wages, a BANK 2 notice should be sent. The bankrupt should be informed that the final decision as to whether the account remains open is the bank's decision.

## Do I have to collect all of a bank credit balance?

The official receiver must allow a bankrupt to keep sufficient funds to meet their immediate day to day expenditure. The official receiver must agree this amount with the bankrupt before releasing any funds to him/her.

## What is life assurance?

Insurance companies usually refer to "assurance" when dealing with life policies, and "insurance" when referring to policies covering events such as fire, theft or accidental damage to cars, houses, boats etc.

## What is a life policy?

A life policy is a legally binding contract between the policyholder(s) and the life assurance company. The person whose life is covered must be specified and is known as the "life assured". It is also possible to have a policy covering the life of more than one person and this type of policy is known as joint lives assured. The owner of the policy and the "life assured" may be different people although the policyholder must have an "insurable interest" on the life assured. An "insurable interest" is an entitlement to be compensated for the death of the life assured due to such as the loss of earnings.

## What is a 'Term Assurance' policy?

Term assurance policies usually provide life cover for a specified number of years (the term), for example 20 years. The lump sum (the sum assured) only becomes payable if the life assured dies during that period. This type of policy does not

normally acquire a surrender value and will lapse without value if premiums are not paid up to date.

## What is a 'Whole Life' Assurance policy?

A “whole life” assurance policy provides protection with, or without investment, and pays a guaranteed sum on the death of the policyholder. This insurance can be without-profits, with profits or unit-linked and therefore may acquire a surrender value.

## What happens if premiums are not paid on an assurance policy?

A policy may lapse without value if premiums are not paid. In some cases the assurance company may treat the policy as being “paid up” and will pay out a reduced sum if the condition for payment is fulfilled. Alternatively some life assurance companies allow policies to become “paid up”. The insurance company will pay out on a “paid up” policy once the outstanding premiums have been paid, for example by reducing the amount paid to the beneficiary. In the meantime the policies remain on their file as dormant.

## Do lapsed or dormant policies vest in the official receiver or trustee?

Lapsed policies which are treated as “paid up” by the life assurance company remain an asset in the proceedings even if the pay out comes after the date of discharge. Where a dormant policy is revived after the bankrupt’s discharge, the policy still remains an asset in the bankruptcy estate and the official receiver will retain his/her interest.

## Can I sell a life assurance policy to the bankrupt?

The official receiver should only consider selling a life policy to the bankrupt when it has no surrender value. The official receiver must ensure that there is no prospect of the policy paying out in the foreseeable future due to death or terminal illness.

## Can I sell a life assurance policy to a third party?

The official receiver may sell a life assurance policy to a third party where it has a surrender value. However the official receiver must ensure that there is no prospect of the policy paying out in the foreseeable future due to death or terminal illness. The policy should normally be sold for the full surrender value. Where the policy is jointly owned, and only one of the joint owners is bankrupt, for half the surrender value. The consent of the life assurance company to assign the policy is required to complete the sale. Where the life assurance company refuses to assign the policy it remains as an asset in the estate.

## How do I deal with a joint life assurance policy?

A joint life assurance policy, held by (for example) a bankrupt and their spouse, is held on a joint tenancy. The bankruptcy order severs the joint tenancy and the bankrupt's beneficial interest vests in the trustee. The options open to the trustee include:

- keeping the policy for the benefit of the estate
- surrendering the policy
- selling the interest in the policy to the bankrupt
- selling the interest in the policy to a third party

Detailed guidance is provided in within the main body of the chapter.

## What is an endowment policy?

An endowment policy is a policy where a monthly premium is paid for a set period, for example 25 years. The most common types of endowment policies are called "with profits" and "unit linked". Endowment policies were commonly used in the purchase of homes with the mortgage loan secured on the property and the policy. They are not as popular today. If the official receiver comes across an endowment policy see the main body of the chapter for further information.

## What is an employee share scheme?

There are a number of work related saving and share schemes which are approved by HMRC and attract tax relief. The approved schemes are:

- Save As You Earn (SAYE)
- Share Incentive Plans (SIPs)
- Company Share Option Plans (CSOPs)
- Enterprise Management Initiatives (EMIs)

# What do I do if a bankrupt is in an employee share scheme?

The bankrupt's interest in an employee share scheme vests in the bankruptcy estate. The specific actions required to protect and realise the trustee's interest will vary according to the scheme. Details guidance on each type of scheme can be found within the main body of the chapter.

## What are shares?

A share entitles the holder to receive a proportion of a company's profits. Also it may allow the holder the right to participate in the management of the company at a meeting of the company's members.

## How can I sell shares?

The shares of quoted companies may be sold on the Stock Exchange. The shares of unquoted companies are usually sold privately, although the company may impose restrictions on their sale. Further details on selling shares can be found within the main body of the chapter.

## How do I deal with tax refunds?

There are three main types of tax refunds: corporation tax, VAT and personal income tax. The Crown is allowed to use a tax refund to offset any debt owed to the Crown, for example a VAT refund can be used to partially repay a corporation tax debt. Whether a company, partnership or bankrupt is entitled to a tax refund will depend on the individual circumstances of the case. Detailed information on reclaiming an overpayment of tax can be found within the main body of the chapter.

## How do I recover a tax refund from an employed bankrupt?

Where the bankrupt is entitled to a Schedule E tax refund the official receiver should accept any refund offered by the local HMRC office. Where a cheque has been issued to the bankrupt and not yet cashed the official receiver should ask for it to be stopped. Where the cheque has been sent to the bankrupt he/she should be asked by telephone (followed up by letter/email) to send the cheque to the official receiver. Further guidance is contained within the main body of the chapter.

# Frequently asked questions – Dealing with banks, building societies and credit/charge cards

## What happens to a bank account when an insolvency order is made?

The account will be frozen by the bank. Where there is a credit balance in a bankruptcy funds can be released for essential living expenses or any joint owners share of the money.

## Why does the official receiver contact banks or building societies?

One of the main duties of the official receiver is to identify, collect, secure and protect any assets upon the making of an insolvency order. In some cases it may be necessary for the official receiver to give immediate notice of the insolvency order by telephone to ensure the account is frozen. The giving of this early notice helps to ensure that funds in accounts do not disappear.

## When should I make contact?

Notice (BANK1, BANK 2 or NORD1 for credit card companies) should be given as soon as possible, but in any event within 5 working days of the order being made. Full information should be sent including the branch sorting code and account number.

## How do I know what accounts a bankrupt has?

The information can be obtained from the company director/bankrupt. In adjudicator cases it should be listed in the application. In the event that a bankrupt cannot be traced the details may be found in the Experian search.

## How do I know which letter to send to the bank?

There are a number of bank letters, all of which have provide a different instruction. These are:



Bank1: used when there is a credit balance to be claimed by the official receiver

Bank2: used when it is agreed that funds will be released to the bankrupt

Bank3: used where there is FI in a company case

Bnk1: used in company cases

## How should I deal with bank/credit cards?

Bankrupts should also be instructed to refer to their bank for instructions on what to do with any debit cards held in respect of a current account. Company directors and bankrupt should be instructed to destroy any other bank/credit cards in their possession and dispose of the cards appropriately. Any cards passed to the official receiver should be destroyed in the presence of the company officer/bankrupt and a file note made.

## Can a bankrupt still operate an existing bank account after they are made bankrupt?

Yes, subject to any bank or building society policy. This is most likely to occur where a bankrupt's regular income is paid into an account comprising their wages or benefit payments.

A bank or building society frequently asks the official receiver for authority to operate an account on behalf of a bankrupt. The official receiver is not in a position to provide such an authority and it is entirely a matter for the bank or building society to make that decision

## Can the bankrupt open a new bank/building society account after the bankruptcy order?

Yes - but they must tell the bank or building society that they are bankrupt. Some banks will allow continued use of the bank account after the bankruptcy order.

It is the bankrupt's responsibility to make arrangements for an account to receive any income. It is then at the discretion of the bank or building society whether to permit an undischarged bankrupt to operate an account. The publication [Guide to Bankruptcy](#) will provide the bankrupt with information.

Any request from the bankrupt or their agents regarding the operation of a new bank account can be answered using form BAOPB (Docs tab).

## What happens where there is a credit balance on a bankrupt's account at the date of the order?

If a bankrupt evidences to the official receiver that they need any money in their account or a proportion thereof for normal living expenses before the next "pay day", then they may be allowed to retain some or all of the funds for that purpose. Authorisation should be given to the bank, using form BANK2 tailoring the letter according to the circumstances of each case.

## What happens to the bank card where only some of a credit balance should be released?

Where only part of the funds in the account is to be released to the bankrupt a decision needs to be made whether to leave the bank card with the bankrupt. In order to protect the part of the balance the official receiver should immediately telephone the bank to specify how much of the balance should be remitted to the official receiver, followed by a letter to confirm this. The sum the official receiver intends to recover should be shown as the asset on ISCIS. The asset note should be used to record the detail of the arrangement i.e. how much was in the account and how much was agreed that the bankrupt could withdraw.

## What will happen to a joint account?

If there is a credit balance, consideration should be given as to whether all or part of the credit balance vests as an asset in the bankruptcy or whether it belongs to the joint account holder. Where it is established that funds belong to the third party account holder an instruction should be given to the bank release the money.

The notes tab should be updated to record any decision made.

## How do I deal with a telephone or internet bank account?

You should not ask for details of the password, pin number or security information, or otherwise attempt to access the account through the internet or telephone. The director/bankrupt should be told not to access the accounts and a note should be recorded on ISCIS. The banks should be notified and the cards dealt with as detailed above.

## What do I do with an old style credit card machine?

The metal plate from the imprinting machine should be returned to the issuer.

## Post office card account

A post office card account is operated through the post office and can only be used to receive benefit, state pensions and tax credit payments. There is no overdraft facility on this account, and no other payments, such as wages, can be paid into it. No credit checks are undertaken when the account is opened. The official receiver will therefore have no interest in the balance of such an account and should not take the cash card for one of these accounts from a bankrupt.

## How do I deal with a building society account where there is a passbook?

Where there is a passbook this is likely to be a savings account. The building society will normally require the production of a passbook or card before releasing the balance to the official receiver. In the event that the passbook is not available a 'lost passbook declaration' form will have to be signed by the official receiver as trustee. Usually the building society will also require a withdrawal form to be signed by the official receiver before releasing any funds and a copy of the bankruptcy order.

## How do I obtain bank statements?

The Service has an agreement with certain banks/building societies that requests for copy statements will be sent centrally. Copy bank statements can be requested via the [fortnightly bank statement spreadsheet](#) which is centrally collated and issued on behalf of ORS, IES and CI offices. See [Centralised Statement Request Guidance](#)

## How do I deal with a foreign bank account?

A written authority from the director or bankrupt should be obtained to get information and /or monies from the bank. Either a general authority or a specific authority directed to a particular bank to authorise the provision of information and the remittance any credit balance to the official receiver should be provided. Some banks may release information on production of a copy of the winding-up or bankruptcy order. Other banks may require a court order from within the relevant jurisdiction.

# Introduction

## 33.1 General

This chapter provides guidance on dealing with monetary assets: cash, savings, investments, insurances. These are assets easily disposed of or concealed. It is important that the official receiver takes early steps to identify and protect these assets and to bring the money into the estate.

## 33.2 Income generating assets

An asset may be owned by a company or vest in the bankruptcy estate which provides an income stream. If the underlying asset or source forms part of the bankruptcy estate the official receiver as trustee is entitled to the income. By way of example, a bankrupt will generate income through engaging in employment or trade. The underlying source, the bankrupt's labour, does not form part of the estate and therefore, post order, the income is payable to the bankrupt and may only be brought into the estate through an income payments agreement or order (see chapter 35). Examples of income generating assets where the official receiver will be entitled to receive any or all of the income can found within this chapter and chapters 28, 29, 30, 35, and 40.

## Cash

## 33.3 Collecting cash in hand

Care must be taken when collecting cash or cheques from directors, bankrupts or third parties to ensure that there are no disputes about the amounts involved at a later date. The amount should, where possible, be independently verified and a receipt issued.

## 33.4 Cash found on inspection

Any cash and/or cheques collected on inspection should be counted in the presence of the director(s) or bankrupt, witnessed if possible by another member of the official receiver's staff, agents or a third party present at the premises. A receipt for that amount should be issued to the director(s) or bankrupt. A note should also be made

of any amounts retained by the bankrupt for day to day living requirements (see paragraph 33.11).

On returning to the office the monies collected should be handed to the office cashier who will issue an official receipt, a copy of which is scanned and uploaded to the case file.

Cash should be returned immediately to the office but if this is not possible money should be put in bags which are sealed and signed. This should be kept in a safe place at home and delivered to the office the following working day. Agents attending the inspection may be used to safeguard cash.

## 33.5 Cash brought to the official receiver's office

It is possible that director(s) or a bankrupt will bring sums of cash or uncashed cheques with them to the interview. The official receiver should establish the source of the monies and, in a bankruptcy, ask the bankrupt about meeting their immediate living requirements (see paragraph 33.11). If confident the cash forms part of the insolvent estate it should be counted in the presence of the director(s) or bankrupt, witnessed if possible by another member of the official receiver's staff. The monies should be handed over to the cashier and a formal receipt issued by them. If this is not possible the cash should be placed in the office safe and a temporary receipt issued, witnessed by another member of staff. A formal receipt should be issued as soon as possible to the director(s) or bankrupt. All receipts issued should be scanned and uploaded to the case file.

## 33.6 Cheques

Where cheques made payable to the company or bankrupt are collected care should be taken where companies with similar names occupy the same premises or where companies within a group have similar names. In a bankruptcy family members may have the same name or the same initials. Where a third party appears or claims to be the correct payee the official receiver should ask for evidence of the third party's entitlement to the cheque.

Cheques should be paid into the estate account without delay and not held pending the appointment of an insolvency practitioner as liquidator or trustee.

## 33.7 Cheques more than six months old

By convention cheques that are more than six months old may be rejected by the issuing bank to protect the drawer (the person who wrote the cheque). All cheques

should be banked but if rejected, due to age, the drawer should be asked to provide a replacement. If the request is refused the drawer is a debtor of the company or bankrupt the debt should be pursued as any other book debt.

## 33.8 Cash at bank – initial contact

Directors and bankrupts are asked to provide details of any bank or building society accounts, and warned not to use them, in the appropriate Preliminary Information Questionnaire (PIQ) or bankruptcy application.

The bank should be contacted as soon as possible, but within five days of the winding-up order, bankruptcy order, or the official receiver becoming aware of the bank account. The director or bankrupt should always be asked to supply or confirm the bank details (account number and sort code) during the initial telephone contact. See also guidance from paragraph 33.16 onwards for further information on types of account the company or bankrupt may operate.

## 33.9 Cash at bank– credit balance

In bankruptcy the official receiver needs to give some consideration to the funds the bankrupt will require to meet their immediate living requirements, the bankrupt's ability to access banking facilities in the future to receive income and the claims of joint account holders (see paragraphs 33.11, 31.12. and 33.13).

In all other cases the official receiver should close the account and bring the monies into the estate as soon as possible<sup>1</sup>.

The cost of the effort made to recover a credit balance should not be more than the amount realised. If the credit balance (or the sum of balances with one bank) is £50 or less, the initial letter should be followed up by a telephone call and generally no more than one further follow-up letter. Where the credit balance exceeds £50 the official receiver should exercise discretion as to the resources required to collect the balance.

1. ISClS forms BANK1 and BANK3.

## 33.10 Accessing accounts via internet and telephone banking

The official receiver should not access, or attempt to access, bank accounts through the internet or by telephone using a password, pin number or security questions. The official receiver should not ask for details of these. The director(s) or bankrupt should be informed not to access the bank accounts. Where the account is being closed all

debit and/or cash withdrawal cards should be delivered to the official receiver and destroyed.

## 33.11 Money required for the bankrupt's immediate living requirements

Cash in hand or in a bank account at the date of a bankruptcy order is not 'income' within the meaning of section 310(7) (see chapter 35) irrespective of the original source of the funds. It is an asset of the bankruptcy estate.

Having said that, the bankrupt will rely on income received shortly before the bankruptcy order to meet immediate living requirements. The bankrupt should be allowed to keep or access sufficient monies to meet expenses such as rent/mortgage (if about to fall due), daily travel and groceries. The bankrupt should be asked to provide an estimate of their immediate needs by telephone or by e-mail. In assessing this, account should be taken of the bankrupt's usual income source and sufficient funds should be made available to enable the bankrupt to provide for the immediate costs of the family whilst waiting for the next payment of income. After releasing monies to the bankrupt, there may still be a credit balance in the bank account which should be recovered.

## 33.12 The account into which the bankrupt's income is paid

The decision on whether to continue to offer the bankrupt banking facilities lies with the bank, not the official receiver. Where the account has no overdrawn balance the official receiver might confirm that they have no objection to the account remaining open<sup>1</sup>. The official receiver should not take possession of the bankrupt's bank card as the decision to close the account, or not, will be taken by the bank. The letter should state the amount of the credit balance to be released to the bankrupt and the amount, if any, to be remitted to the official receiver. A file note should be made of the agreement made with the bankrupt as to the amount to be released.

1. ISCIS form Bank 2

## 33.13 Joint accounts

Where the bankrupt has a joint bank account with a credit balance the official receiver should take steps to determine who owns the monies. The official receiver should obtain, where possible, documentary evidence to confirm the source of the funds. Without more, the official receiver might assume that one half of the funds belong to the bankrupt, and therefore are part of the bankruptcy estate. If the joint

account holder(s) claim to be entitled to a greater share of the funds they should be asked to produce evidence of the source of funds to support their claim.

The bankrupt should be allowed to retain sufficient funds to meet immediate living expenses (see paragraph 33.11) but this should be calculated on the basis that the joint account holder will also contribute to those expenses.

## 33.14 Joint accounts – deceased insolvents

On the death of an individual the deceased's interest in jointly held assets, including a joint bank account, passes to the surviving partner. The official receiver would have no interest in a joint bank account where an Insolvency Administration Order is made against a deceased debtor; the balance on the account would be retained wholly by the surviving account holder. There are provisions in the legislation to allow the trustee to recover for the estate any value lost by the operation of the right of survivorship (see chapter 56).

## 33.15 Overseas accounts

If the official receiver becomes aware of any overseas bank accounts the director(s) or bankrupt should be asked to provide a general or specific written authority directing the bank to provide information and remit any credit balance to the official receiver. If the official receiver is unable to obtain authorisation from the director(s) or bankrupt some overseas banks (particularly those within EU members states) will provide information and remit funds after being provided with a copy of the winding-up or bankruptcy order. Other banks may require a court order from within the relevant jurisdiction.

When corresponding with an overseas bank the letter is more likely to receive a response if it is written in the language of the recipient bank. In order to minimise the potential translation charges the official receiver's initial enquiry letter should be as brief as possible and focus on the request to remit any credit balance. For more information on overseas assets see chapter 62.

# Payment accounts, savings accounts and investments

## 33.16 General



This part provides an overview of some accounts, savings and investments the official receiver may encounter in dealing with the winding-up of a company or, more commonly, a bankruptcy. Further general information on types of savings accounts and investments is available on the [Money Advice Service](#) website.

## 33.17 Realisation or longer term investment

The official receiver may use their discretion as trustee<sup>1</sup> to continue to hold longer term investments to maximise returns to creditors rather than losing funds through early realisation. For example, most banks and building societies offer savings accounts where a higher rate of interest is paid in return for restricted access to the funds. Such accounts usually have a notice period of between 30 and 120 days before monies can be withdrawn without incurring a penalty. The official receiver should give the required notice before closing the account rather than forfeit any interest due, unless the funds are considered to be in jeopardy. The official receiver should realise the balance in the usual way<sup>2</sup>, amending the request for remittance to include the required notice period.

In deciding whether to hold an investment the official receiver should have regard to the length of time the creditors will have to wait for their money against the projected gain from waiting. The realisation of the estate should not be unnecessarily prolonged for little return. The official receiver can, of course, always seek the views of creditors but should avoid holding speculative investments.

The official receiver as liquidator or trustee should only realise investments where proceeds are likely to be greater than the costs of realisation. Before instructing agents the official receiver should be clear on their costs and the costs of exiting the investment to avoid a loss to the estate.

1. Section 305(2)

2. Forms BANK1 and BANK3

## 33.18 Post Office card account

This is an account that can only be used to receive benefits, state pensions and tax credit payments. There is no overdraft facility on the account and no other deposits, such as wages, can be paid into it. The official receiver may have an interest in the balance of a post office card account at the date of the bankruptcy order (but see paragraph 33.11) and should contact the bank if the official receiver considers there are funds in the account which should be remitted to the official receiver. Currently the Post Office card account is operated by J. P. Morgan Europe Limited. The official receiver should not take the bank card from the bankrupt.

## 33.19 PayPal account

A company or individual may operate a PayPal account ([www.paypal.com](http://www.paypal.com)). The account operates in a similar manner to a bank current account and should be treated in the same way. Any credit balance in the account should be realised for the estate (see paragraphs 33.8 – 33.10)

## 33.20 Easy access savings accounts

The bankrupt may use an easy access savings account to receive their regular income. If the account is being used in a similar manner to a current account it should be treated in the same way as a current account (see paragraphs 33.8 – 33.10).

Otherwise the bank or building society should be notified as soon as possible, but within five days of the winding-up order, bankruptcy order, or the official receiver becoming aware of the bank account <sup>1</sup>. Any passbooks and/or cards for the account should be recovered as soon as possible and the bank or building society asked to close the account and remit the funds.

1. Forms BANK1 and BANK3

## 33.21 Individual Savings Accounts (ISAs)

ISAs are a tax efficient way of saving or investing. Tax is not deducted from the interest paid on an ISA account, nor is capital gains tax incurred if the value of the investments made rise over the investment period. There are currently four types of ISA: cash ISA, stocks and shares ISA, innovative finance ISA and lifetime ISA. You can only pay your ISA limit into one of each type of ISA in the tax year but your ISA limit can be paid into any combination of the types. An individual can't hold an ISA with or on behalf of someone else.

Current details of the ISA limit can be found on [GOV.UK](http://gov.uk).

The official receiver should seek to close cash ISA, stocks and shares ISA, innovative finance ISA accounts and ask for the monies to be remitted to the estate.

## 33.22 Lifetime ISAs

Lifetime ISAs are aimed at assisting individuals to save to buy their first home or provide for later life. There is a limit, currently £4,000, on payments into a Lifetime ISA. This limit counts towards the annual ISA limit. The government will add a 25% bonus to the individual's savings, up to a maximum of £1,000 per year. An individual

can only open a Lifetime ISA if they are under 40 and can't pay into the ISA or earn the 25% bonus after the age of 50.

There is a 25% charge to withdraw cash or assets from a lifetime asset. The charge doesn't apply if the:-

- a) funds are to be used by the individual to buy their first home
- b) individual is 60 or over, or
- c) individual is terminally ill with less than 12 months to live

The official receiver should seek to close the Lifetime ISA and subject to the bankrupt meeting criteria (b) or (c) accept the 25% charge for withdrawal.

## 33.23 Junior ISAs

A parent or legal guardian can open a Junior ISA on behalf of a child under the age of 18. Money in the account belongs to the child but they can't withdraw the funds, except in exceptional circumstances, until they are 18. Anyone can pay funds into the account on behalf of the child up to the annual tax-year limit. If the limit is exceeded the excess is held in a separate savings account in trust for the child.

As the monies in the account are on trust they do not form part of the bankrupt's estate even if the sole source of funding the ISA was the bankrupt. The official receiver may be able to show that the gift to the child was a transaction at undervalue or the account was used to put monies beyond the reach of creditors to recover money for the estate<sup>1</sup> (see also chapter 31).

1. Sections 339 and 423

## 33.24 Building society merger windfalls

In 2007 legislation was passed giving building societies and mutual societies greater powers to merge with other companies<sup>1</sup>. This change led to a number of mergers and demutualisations which resulted in members being offered incentives such as share options or cash bonuses. These are now very rare but where an account remains open or the bankrupt continues as a borrower, and therefore a member of the building society, they would be entitled to receive any shares or bonuses that arose. Where the bankrupt is entitled to receive free shares or bonuses before discharge they may be claimed as after-acquired property<sup>2</sup>.

1. The Building Societies (Funding) and Mutual Societies (Transfers) Act 2007

2. Section 307

## 33.25 National Savings and Investments (NS&I)

NS&I is one of the largest savings and investment organisations in the UK. It is best known for issuing premium bonds but offers a wide range of saving and investment accounts.

It is possible for a company to hold certain NS&I accounts but this is likely to be a rare occurrence. The official receiver should seek to obtain any passbooks, savings certificates or bank cards held for the account and notify the Director of Savings, NS&I, Boydstone Road, Glasgow, G58 1SB of the bankruptcy order and realise the balance in the account.

Where the official receiver requires information from NS&I they will only respond if the letter is personally signed by the official receiver. Enquiry letters should be sent to The Head of Compliance, NS&I, 1 Drummond Gate, London, SW1V 2QX

## 33.26 Premium bonds

Premium bonds may be purchased by any person aged 16 years or over. Parents, legal guardians, grandparents or great grandparents may buy premium bonds on behalf of a person under the age of 16 years. Each bond costs £1 with a maximum holding of £30,000. No interest is paid on the premium bonds, instead a monthly draw is held and cash prizes awarded. Cash prizes may be automatically re-invested in bonds up to the maximum holding.

All premium bonds should be realised by the official receiver. See paragraph 33.27 for the only exception. The official receiver should not use the online or phone service to make the realisation, even if the bankrupt is registered to do so, but use the online form available from the [NS&I website](#).

Where information about the bond numbers is not available the form should be accompanied by a letter explaining the position and asking for the value of the bankrupt's holding to be remitted to the estate. The official receiver will receive the face value of the premium bonds together with any unclaimed winnings.

## 33.27 Premium bonds with sentimental value

A bankrupt may have a small number of premium bonds, usually on or below the current minimum holding of £100, which was purchased for them as a gift at birth or before their 16th birthday. They may wish to keep these bonds for largely sentimental reasons. In such circumstances the official receiver may allow the bankrupt to purchase the interest in the premium bond holding for the full face value

of the holding plus the value of any unclaimed prizes. If the bankrupt supplies their premium bond holder's number the details of any outstanding unclaimed prizes can be found via the [NS&I website](#).

The bankrupt should confirm, in writing, that they will inform the official receiver of any prizes won on draws occurring before discharge and acknowledge that any monies won may be claimed as after- acquired property<sup>1</sup>.

1. Section 307

## 33.28 Government bonds or stocks

Often referred to as 'Gilts', these are investment bonds issued by HM Government. The bonds pay a fixed rate of interest twice a year until the maturity date when the final interest payment and capital sum are paid. Investors can also buy index-linked gilts where the twice yearly interest payment is linked to the rate of inflation as is the amount repaid on maturity. Gilts usually have a life of between 5 and 20 years, although some have no redemption date. They are listed on the London Stock Exchange and may be bought and sold prior to their maturity date. Where a company or bankrupt is holding gilts the official receiver should obtain the certificates from the director or bankrupt and issue a receipt. If the company or bankrupt is part of the Crest system the advice provided in paragraph 33.77 should be followed. Gilts may be sold through a stockbroker or a bank. More information on selling gilts can be found on the [UK Debt Management Office](#) website.

## 33.29 Friendly Societies – tax exempt savings plan

Friendly society savings plans offer an additional tax free investment in addition to the annual ISA allowance. The plan may or may not include life assurance cover and investment periods tend to be between 10 and 25 years. The maximum tax free investment limit is £25 per month or £270 per year. Plans may be surrendered at any time although fees charged by the friendly society may reduce the amount repaid. The official receiver should recover any documents relating to the plan from the bankrupt and notify the friendly society of the bankruptcy order as soon as possible, requesting the plan be surrendered.

## 33.30 Precious metals – coins and bullion

Gold, silver and platinum may be bought as an investment in the form of coins or bars. Coins and bullion can be bought and sold through banks, coin dealers, stockbrokers or through the bullion dealing companies that make up the London

Bullion Market Association. Current prices for precious metals are listed on the internet. The official receiver should recover the coins or bullion from the director(s) or bankrupt and issue a receipt. The coins or bullion would usually be stored in the official receiver's safe pending disposal unless safe alternative arrangements are made. In the first instance the official receiver should instruct their local agent to sell the coins or bullion. The world trade in gold is transacted in US dollars so the current exchange rate between the US dollar and the pound will affect the amount realised.

## 33.31 Cryptocurrency

The best known cryptocurrency is Bitcoin but there are a number of others such as Ethereum, Ripple and Litecoin. Cryptocurrencies only exist in a digital form and individuals will hold their cryptocurrency in digital wallets. The currency is bought and sold via a number of exchanges and brokers.

Cryptocurrency was designed as a way of storing currency and making purchases without the involvement of a bank or other central regulator. The technology, known as block-chain, is a financial ledger maintained by a network of computers.

It is an unregulated market and there is a risk of new cryptocurrencies being used as investment scams or cryptocurrencies being used for money laundering.

The value in cryptocurrencies appears presently to be their scarcity and attraction to an investment market. Like more traditional currencies or shareholdings, they have a market value which is traded and the value of the cryptocurrency will increase, or decrease, depending on the market at a given point in time.

The official receiver should obtain details from the bankrupt of where their digital wallet is held and attempt to notify the provider of the winding-up order or bankruptcy order. The cryptocurrency should be sold through a broker or exchange.

# Trusts

## 33.32 Introduction

A trust is a way of managing assets. Property is held by one party (the legal owner) for the benefit of another party (the beneficial or equitable owner). The legal owner (the trustee) owes a duty of care (a fiduciary duty) to the beneficiaries of the trust. The creator of the trust is known as the "settlor", if the trust is created during their lifetime, or the "testator" if the trust is created under a will. A trust created under a will is usually known as a "testamentary trust" and will come into existence on the death of the testator.

The official receiver is most likely to encounter trusts in relation to freehold or leasehold property and life policies. A trust may also be created as part of a will to provide an income for the deceased's children or grandchildren.

### 33.33 Fixed trusts (or bare trusts)

A fixed trust is one where the interests of the beneficiary or beneficiaries are determined at the outset when the trust is set up. The trustee has little discretion and must simply carry out the wishes of the settlor. An example of a fixed trust is a life interest trust, where a beneficiary may have a right to all of the trust's income or use of the trust's assets during the beneficiary's lifetime. On that beneficiary's death, the trust property will generally be payable to named capital beneficiaries. Another example of a fixed trust is one contingent upon the beneficiaries satisfying certain conditions, such as reaching a certain age. Once the condition is satisfied, the beneficiaries have an absolute right to the trust property. The simplest form of a fixed trust is called a 'bare trust'. The interests of any bankrupt beneficiary under a bare or fixed trust are absolute and will vest in the official receiver as trustee in bankruptcy.

### 33.34 Discretionary trusts

A discretionary trust provides the trustee of the trust with the power to decide which beneficiaries will benefit from the trust and the extent of those benefits. The beneficiaries cannot compel the trustee to use any of the trust property for their benefit.

Discretionary trusts are more common than fixed trusts. Most family trusts or trusts created under wills are discretionary trusts.

The official receiver as trustee in bankruptcy can have no better rights than the bankrupt and will only receive funds from the trust if the discretion is exercised to make a payment to the bankrupt as a beneficiary. Any payments made to a bankrupt whilst undischarged should be claimed by the official receiver as after-acquired property unless they are paid solely for the "maintenance and support" of the bankrupt and their family where the payments should be treated as income (see paragraph 33.44).

### 33.35 Hybrid trusts

It is possible for a trust to contain elements of both a fixed trust and a discretionary trust. Any interest a trustee in bankruptcy will have would be dependent upon the terms of the trust.

### 33.36 Accumulation trusts

An accumulation trust is one where the trustees do not distribute the income from the trust until a specified date, usually when the trust ends. The trustees may have discretionary powers to use the trust's income for the maintenance or education of the beneficiaries before the trust terminates. An accumulation trust is likely to be a form of hybrid trust.

## 33.37 Other types of trusts

A trust can be created by statute, for example, title in land can be held by up to four joint owners on trust for themselves as joint tenants<sup>1</sup>. The court might determine a trust exists, "constructive" and "resulting" trusts are the two main legal concepts where the court might decide whether someone has a share in a property when the legal title is registered in the name of someone else. For example, claims for personal damages in an action which would otherwise be part of the bankruptcy estate (see chapter 37) are held on constructive trust for the bankrupt by the official receiver as trustee. A third party who has paid life assurance premiums up to the date of the bankruptcy order may be entitled to a share of the benefits or surrender value of the policy under a resulting trust (see paragraph 33.56).

1. Law of Property Act 1925 section 34 (2)

## 33.38 Protective trusts

Under a fixed trust a beneficiary may assign (transfer) their interest to another person. The assignee would have the right to demand the beneficiary's rights be paid to them. Under a fixed trust the trust rights of a beneficiary pass to the trustee in bankruptcy. A protective trust can be created to prevent a beneficiary transferring their interest to a third party or to stop the rights passing to a trustee in bankruptcy. Under a protective trust the beneficiary may lose the right to receive an income from the trust upon the making of a bankruptcy order or other event. A protective trust is described as a defeasible fixed trust (see paragraph 33.40) which becomes a discretionary trust (see paragraph 33.34) after a defeating condition such as bankruptcy, has occurred.

## 33.39 A contingent interest in a trust

A beneficiary's interest in a trust is said to be a contingent interest if it is dependent upon a certain event arising. For example, the beneficiary receives a quarterly amount when they enter higher education and for the period they remain studying. The trustee in bankruptcy would have an interest in the trust if the event triggering the trust payments occurred before the date of discharge.



## 33.40 A defeasible interest in a trust

A beneficiary's interest in a trust is said to be a defeasible interest if it comes to an end if a specified event occurs. For example, the beneficiary would no longer receive income from the trust if they married. In this instance the trustee in bankruptcy's interest in the trust, if any, would terminate if the specified event occurred.

## 33.41 The creation of a trust – transactions at an undervalue or defrauding creditors

A company director or bankrupt may create a trust with the intention of putting assets beyond the reach of a liquidator or trustee in bankruptcy. A trust that transfers the assets of a company, the benefits of a company director or the assets of a bankrupt to another person or person(s) for no consideration or for a consideration which is less than the value of the assets may constitute a transaction at an undervalue<sup>1</sup> or a transaction defrauding creditors<sup>2</sup>. Where the official receiver suspects that the creation of the trust constituted a transaction at an undervalue or was a transaction defrauding creditors the advice in chapter 31 should be followed.

1. Sections 238 and 339

2. Section 423

## 33.42 Establishing the official receiver's interest

The director or bankrupt should be asked to provide the name(s) and address(es) of the trustee(s) together with a copy of the trust deed. The official receiver should write to the trustee(s) as soon as possible asking for the official receiver's interest in the trust to be noted together with a schedule of payments made to the company or bankrupt. If the director or bankrupt has not provided a copy of the trust deed the trustee(s) should be asked to provide a copy.

On receiving a copy of the trust deed the official receiver should check the document to establish what, if any, interest the company or bankrupt has in the trust. The company or bankrupt may have an interest in both the trust's capital and the income generated by that capital dependent upon the terms of the trust deed. In particular, the official receiver should establish that there are no clauses in the trust deed referring to the bankruptcy of a beneficiary or restricting the transfer of the beneficiary's interest.

## 33.43 Realising an interest in a trust

The steps the official receiver can take to realise their interest in a trust will be largely dictated by the terms of the trust. The official receiver should try, as early as possible, to realise all interests in which the bankrupt has an absolute right. If the trust deed allows the official receiver might sell the interest in the trust. Where trust assets are held for the benefit of the bankrupt and payments are made from monies generated by those assets, for example the dividends from shares held in the trust, the official receiver will be entitled to the payments.

## 33.44 Income from a trust

The trust may be the source of income provided under the terms of the trust for the maintenance of the bankrupt and their family. Where this is an absolute interest it will transfer to the official receiver but if the trustees have discretion over the payment or the amount of the payment then the interest will not vest in the trustee in bankruptcy. Any sums paid to the bankrupt above that required to meet reasonable domestic expenses should be claimed by way of an income payments agreement or order. See chapter 35.

## 33.45 A reversionary interest in a trust

A reversionary interest in a trust is created where the balance of the trust assets revert to the creator of the trust (in reversion) or to a named person or persons when the trust comes to an end. The company or bankrupt would have a reversionary interest in the trust whilst it was in existence. For example, if a company created a trust for a period of ten years after which time the trust assets revert back to the company. A further example would be where a bankrupt's grandfather leaves in his will a freehold property in trust for the bankrupt's father until such time as the father dies after which it reverts to the bankrupt.

A reversionary interest is an asset in the insolvency and the official receiver should immediately contact the trust trustees and inform them of the official receiver's interest. Where reversionary interest includes land or freehold property a restriction could be lodged with Land Registry.

## 33.46 Realising a reversionary interest

The liquidator or trustee in bankruptcy may not be able to realise a reversionary interest in a trust immediately. The liquidator or trustee in bankruptcy must wait until the trust property has reverted to the company or bankrupt before realising the asset(s). The reversionary interest itself may be sold.

# Life assurance and other policies

## 33.47 Introduction

This section explains how the official receiver should administer life assurance and other policies, including when the policy may be sold to the bankrupt or a third party, and when it should be surrendered.

It is very important that a policy is not sold or surrendered where there is the chance of a claim being made against it (see paragraph 31.5.)

## 33.48 Types of life assurance policies

Life assurance policies come in a variety of forms.

Term life policies are the most common. This type of policy covers the insured for a specific period of time. Provided the premiums are maintained, the policy will pay out the sum assured if the insured dies before the end of the term. Term assurance is usually taken out to cover a mortgage debt or to provide lump sum to assist relatives in the event of death. The policy has no surrender or cash value and the cover simply stops at the end of the term with no payout.

Whole life policies are more expensive and will pay out when the insured dies no matter when death occurs. Premiums are required to be paid for a set period of time but, provided the premiums are maintained, the policy will pay out when the insured dies. The policy generally has no surrender value but payout is guaranteed. Some policies do have an investment element (described as “with profits”) and in those circumstances may acquire a surrender value.

Endowment policies are investment products set up as regular savings plans which will pay out a lump sum at the end of a specified period. The amount of the lump sum is not guaranteed. An endowment policy includes term life cover and will pay out a death benefit if the insured dies during the term. An endowment policy will have a surrender value.

## 33.49 Life assurance policies vest in the trustee

Where the policy has not been surrendered or otherwise disposed of, the trustee will receive any payments due under the policy which would have been payable to the bankrupt as the policy-holder or joint policy-holder. For example a life assurance policy may pay to a defined beneficiary or to the estate of the deceased policy-holder. This may include monies paid on death, disability, or terminal diagnosis. The

trustee would be entitled to receive the monies paid to the bankrupt (or their deceased's estate) even if they are paid after the bankrupt's discharge<sup>1</sup>.

The official receiver should decide whether to retain an interest in the policy, which may mean maintaining the premium payments (see paragraph 33.53), or whether to sell or surrender the official receiver's interest. It is very important that a policy is not sold or surrendered where there is the chance of a claim being made against it.

1. *Re Cork v Rawlins* [2001] 3 WLR 300]

## 33.50 Protecting the official receiver's interest in life assurance policies

The policy documents, in all cases should be recovered from the bankrupt, unless the policy is held as security by a secured creditor (see paragraph 33.69) The policy document contains important information, such as the policyholder, life/ lives assured, amount of cover (sum assured), commencement date, maturity date, type of policy, conditions, etc. The official receiver on becoming aware of a life assurance policy should write, using the form NTASS, to the assurance company to inform them of the bankruptcy order and to ask them to note the official receiver's interest, if any. The assurance company should be asked to confirm the type of policy and the amount of any surrender value.

The official receiver should explain to the bankrupt the policy is now vested in the official receiver and the consequences.

## 33.51 Non-payment of premiums on a life assurance policy

A policy may lapse without a surrender value if the premiums are not paid. However, the assurance company may instead treat the policy as "paid up". This often results in the monies paid to the beneficiary being reduced in order to pay the outstanding premiums. The policy would then be considered to be lapsed or dormant.

An assurance company may pay the full surrender value on a "paid up" policy once the outstanding premiums have been paid (this is generally known a 'reinstatement').

## 33.52 Reinstatement of dormant or lapsed policies

Where a bankrupt reinstates a lapsed or dormant policy, even where the payments are made post-discharge, the whole benefit can be claimed by the trustee when it is

paid out as the policy vests in the trustee. The official receiver should inform the bankrupt of the consequences of reinstating and continuing to pay the premiums of a lapsed policy which vests in the trustee.

### 33.53 Official Receiver continuing to pay premiums where claim is likely

Where a claim is likely in the foreseeable future, (see paragraph 33.59), premiums may be paid by the bankruptcy estate. Before committing to pay the future premiums the official receiver should be satisfied that the potential benefit for creditors is greater than the likely cost of the premiums.

### 33.54 Life assurance policies held in trust

The official receiver may come across life assurance policies where the policy benefits are held in trust for the benefit of individuals other than the bankrupt. A trust may be created by the assurance company when the policy is commenced at the request of the policy-holder. An existing assurance policy may have been converted into a trust either by way of a deed of assignment or by a declaration of trust. Where a trust has been created, the individual whose life is insured cannot be a beneficiary. Reasons for a policy being subject to a trust include controlling the destination of the funds paid out on the policy and ensuring the payment of the sum assured without the need to wait for probate or (in the absence of a will) letters of administration to be granted.

### 33.55 The creation of a trust

The official receiver should be satisfied that the creation of a trust was not an attempt by the bankrupt to put assets, for example the premiums paid or the surrender value of the policy, out of the reach of creditors. Once the official receiver is satisfied, regarding the existence of the trust, the official receiver will have no further interest in the assurance policy<sup>1</sup>.

1. Section 283 (3)(a)

### 33.56 Third party payment of life assurance premiums

Where a third party has paid the life assurance premiums up to the date of the bankruptcy order a “resulting trust” is created. The contribution to the premiums entitles the third party to a proportionate share of the surrender value or any

repayment made under the terms of the policy<sup>1</sup>. A “resulting trust” is not created where the third party intended the payments to be a gift or a loan.

1. Re Policy No 6402 of the Scottish Equitable Life Assurance Society [1902] 1 Ch 282 and Foskett v McKeown and others [1997] 3 ALL ER 392

## 33.57 Joint life assurance policies

The bankrupt may have a life assurance policy in joint names with another. Usually a joint life assurance policy is held on a “joint tenancy”, meaning the policy will pay out to a defined beneficiary or the surviving policy-holder on the death of the first life assured. Provided the policy is not held in trust, the making of the bankruptcy severs the joint tenancy and the bankrupt’s beneficial interest, usually 50%, vests in the trustee in bankruptcy <sup>1</sup>. To determine the extent of the trustee’s interest the official receiver should obtain details of the beneficial owners together with the surrender value, if any from the assurance company.

1. Pritchard (A Bankrupt) [2007] B.P.I.R. 1385

## 33.58 Joint life assurance policy – the official receiver’s interest on the death of the bankrupt and/or joint policy holder

Where the bankrupt’s interest in a joint life assurance policy vests in the trustee the official receiver will have an interest in the policy proceeds should a claim be made under the policy. The joint policy holder may be able to claim more than half the policy proceeds if they can show they made all the premium payments. On confirmation that the life assurance policy provides for the proceeds to be paid directly to the bankrupt on the death of the joint policy holder any payment will vest in the trustee in full.

## 33.59 Policy not to be surrendered or sold if a claim is likely to be made under the policy

The official receiver should not consider surrendering or selling (see also paragraph 33.60) a life assurance policy to the bankrupt or other third party where a claim is likely to be made under the policy in the foreseeable future.

In addition to paying out on death, life assurance cover may pay out on receipt of notification of a critical or terminal illness. Critical illness is often defined as life threatening, whilst terminal illness is defined as life limiting. What constitutes a critical illness will be defined in the policy and usually covers a number of illnesses as well as some accidents, involving for example, the loss of a limb. Where a

payment is made the monies should generally be paid directly to the official receiver as trustee. In some cases the insurance payment may include monies to pay for rehabilitation. The official receiver should carefully consider any application to keep all, or part of the pay out before agreeing to release the monies to the bankrupt.

## 33.60 Selling a life assurance policy with a surrender value

Where the bankrupt has a life assurance policy with a surrender value the official receiver may consider selling the policy to a family member or third party rather than surrendering the policy where the bankrupt may find it difficult to obtain another policy and would like the policy to continue (but see paragraph 33.59). The offer to sell may be made by way of standard letters SOPOL (solely-held policy) or JTPOL (jointly-held policy). The usual consideration for selling the policy is the full surrender value of the policy.

The consent of the assurance company to assign the policy will need to be obtained by the purchaser before the sale can proceed.

## 33.61 Selling a life assurance policy with no surrender value

Only where the official receiver is satisfied that there is no foreseeable prospect of making a claim under the policy (see paragraph 33.59) should the official receiver offer to sell, or consider a request to buy, the official receiver's interest to the bankrupt.

The Insolvency Service has adopted a standard fee of £50 to cover the administrative costs of any sale. The official receiver should send form LTBPOL to the bankrupt (copied to joint policy holders, as appropriate) which explains the position. The letter informs the bankrupt that if the trustee's interest is not purchased and they continue to pay the premiums then any payment due from the life assurance policy will be an asset in the bankruptcy proceedings.

## 33.62 Sale of life assurance policy and an IPA/IPO calculation

Where the official receiver, as trustee, decides to sell the interest in a life assurance policy to the bankrupt any future premium payments should be allowed in the calculation for an income payment agreement or order. As a result the amount of these should be considered at the time the decision is made to sell.

## 33.63 Letter to life assurance company if interest is sold

Where the official receiver as trustee sells the interest in the life assurance policy to the bankrupt the official receiver should write to the assurance company confirming the official receiver no longer has an interest in the policy and any future monies due under the terms of the policy should be paid to the beneficiary or beneficiaries. A copy of the letter should be sent to the bankrupt.

## 33.64 Lost policy document

In some circumstances the bankrupt will be unable to produce the original policy document. The official receiver should still be able to surrender the policy although the procedure to do so with each assurance company may differ. Usually the assurance company will issue the official receiver with a "lost policy declaration form". The form should be signed by the official receiver as trustee. If the policy is in joint names the joint policy holder will be required to sign the form. The form should be sent to the joint policy holder for signature before the official receiver signs it.

## 33.65 Lost policy document – indemnity insurance

The assurance company may ask the official receiver to take out indemnity insurance when asked to surrender a policy where the policy document has been lost. The advice in chapter 14 should be followed. Where the surrender value is substantial the official receiver should consider obtaining separate indemnity insurance.

## 33.66 Windfall payments arising from assurance policies

In the past assurance companies have merged with other financial institutions. Some assurance companies have demutualised and subsequently floated their shares on the stock exchange. In such cases financial incentives such as shares and/or cash bonuses have been offered to existing account or policy holders. Such windfall payments will now be very rare but should be claimed for the benefit of the bankruptcy estate where the policy remains vested in the bankruptcy estate. (see also paragraph 33.24).

## 33.67 Windfall payments and joint policies



Where a joint policy is held the bonus payment is usually made to the first named policy holder. The official receiver should agree to an equal division of the bonus with the other policy holder. If the other policy holder does not agree to an equal division of the monies the official receiver may consider making an application for a private examination and seeking an order requiring payment of the monies to the trustee<sup>1</sup>.

1. Section 366

## 33.68 Endowment policies and house purchases

Towards the end of the last century it was common for houses to be bought with an interest only mortgage together with an endowment policy for the same period. The policy would often then be charged to the lender. When the endowment policy matured the proceeds would be used to pay off the balance outstanding on the mortgage.

It is anticipated that the policy would also provide a surplus to the policy holders after the mortgage had been repaid. This method of buying a house has become less popular as with less favorable market conditions in more recent times the proceeds from maturing policies have not been sufficient to cover outstanding mortgages. Many lenders also no longer hold the endowment policies as security for the outstanding debt. The official receiver may still encounter policies held as security.

## 33.69 Checking whether the endowment policy is subject to a charge

The official receiver should check whether the endowment policy has been formally charged to determine whether it is a free asset for the benefit of the estate. A formal deed of assignment should be drawn up by the mortgagee who will also hold the original policy document for safekeeping. Where the mortgagee does not have a formal assignment of the endowment policy they may still have an equitable charge on the policy. An equitable charge will have been created if the original mortgage loan agreement contained a requirement that an endowment policy would be purchased to support the loan.

## 33.70 Selling an unsecured endowment policy

Where a “with profits” endowment policy has a surrender value of £1,500 or more the official receiver, as trustee, should consider selling it rather than surrendering it. The official receiver may sell a “with profits” endowment by auction or to “market makers”. A market maker is a company, a firm, or individual which buys endowment policies

and sells them to other investors. More information on the sale of policies can be found on [The Association of Policy Market Makers](#) website. Where the endowment policy is in joint names the written agreement of the other beneficiary should be obtained before the policy is offered for sale. The official receiver should follow the important guidance in paragraph 33.59 before selling.

## 33.71 Other insurance policies

A bankrupt may have other types of insurance, for example income protection, payment protection and ill health insurance. Where the policy is in the name of the bankrupt or held jointly with another person, it is a vesting asset and comprises part of the bankrupt's estate. The official receiver should write to the insurance company asking for the official receiver's interest to be noted. If the bankrupt's circumstances change and the insurance policy pays out then the funds can be claimed by the trustee for the benefit of the estate, even where the payments are being made monthly, for example from an income protection policy.

The bankrupt should be made aware that if policy pays out, the benefit will be claimed by the trustee. Where the policy has no surrender value and the insurance company would allow the official receiver's interest to be reassigned to the bankrupt or third party such as, a family member, the official receiver may consider selling it for the standard £50 fee. The official receiver should follow the important guidance in paragraph 33.59 before selling.

# Shares and other traded investments (including employee share schemes)

## 33.72 What is a share?

A share is an entitlement to the profits of a company. Some shares offer the holder the right to participate in the management of the company through voting at meetings of the company's members. Shareholding is also a vital source of long term funding for companies. The amount a holder will receive will depend upon the success of the company and the nature of their holding.

## 33.73 Share certificates

Shares in a private limited company or an unquoted public limited company will normally be held by way of a share certificate. The certificate will normally state the

name of the company, the name of the shareholder, the number of shares held and the type/class of share along with the nominal/ face value of the shares. It is possible to hold share certificates for publicly quoted companies although shares held this way are usually more expensive to trade.

## 33.74 Electronic and nominee holdings

Shares can also be held electronically (via a brokerage service, nominee service, or via Crest (see paragraph 33.77)). Most high street banks now offer a nominee/brokerage service where they will be registered as the holders of the shares while the investor retains the beneficial interest in the holding (i.e. any dividends due and the sale proceeds when the shares are sold will be payable to the investor). One potential limitation with this type of service is that it may not be possible for the investor to receive all of the associated benefits, e.g. the ability to vote at shareholder meetings, or receive discounts available to shareholders.

## 33.75 Initial action where insolvent holds shares

Where an insolvent claims to own shares, the official receiver should verify that the company or bankrupt is the registered owner of the shares. Although it is useful to have sight of any share certificates, checks should also be made through Companies House and by writing to the company secretary or share registrars acting for the company. Under no circumstances should a sale be commenced without ensuring that the insolvent is the registered owner of the shares and, ideally, with the share certificates in the possession of the official receiver. Where a bankrupt holds shares in their name but a claim is made that the shares are held beneficially for another it will be for the bankrupt or the other party to provide evidence regarding ownership of the shares.

Where the shares are held by a broker or through a nominee service (see paragraph 33.74) the broker/ nominee should be informed of the making of the insolvency order and the consequences of the insolvency and asked to note the official receiver's interest. Enquiries should be made of the broker's/ nominee's charges for dealing with the shares.

## 33.76 Lost share certificates

If a share certificate has been lost, an indemnity may be required before the shares are sold. Before giving such an indemnity the official receiver should take steps to purchase indemnity insurance cover only if the actual value of the shares held is £10,000 or more. The shares should only be realised if the official receiver is able to

obtain cover at a premium which results in a net benefit to the estate of the realisation. For lost share certificates, the amount of the indemnity is the current value of the shares. Insurers will base the premium on this amount but do recognise that share prices may go up or down. Some stockbrokers offer a service where they obtain the indemnity cover on behalf of the official receiver.

## 33.77 Crest

Crest is the Stock Exchange's paperless settlement system. Under Crest, shareholdings are recorded electronically, avoiding the need for paper share certificates, although shareholders can choose to keep their share certificates if they so wish. Shareholders have the option of either holding their shares in nominee names with their brokers or remaining as a registered shareholder as a sponsored member of Crest. If an insolvent has been dealing under Crest and has no share certificates, checks should be made with their broker who will have a record of the holding whether the insolvent had nominee holdings, or was a sponsored member. The broker should be contacted promptly to prevent any unauthorised dealing in the shares taking place after the date of the insolvency order.

## 33.78 Stock exchange

A stock exchange has two main functions, firstly to enable companies to raise new capital through the issue of new shares (known as the primary market) and secondly to enable the efficient trading of those shares (known as the secondary market). The market is made up of market makers who are traders who buy and sell (bid and offer) securities, therefore making a market for them. Throughout the trading day, the market makers are obliged to display to the market, for all stocks in which they are registered, their bid (buying) and offer (selling) prices and the maximum bargain (transaction) size to which these prices relate. These prices are fixed to other Exchange member firms. Market makers compete to have the best quote and make their income by buying and selling at a profit. Market makers' bids and quotes are carried on the Stock Exchange Automated Quotations (SEAQ) system which is a continuously updated computer database containing price quotations and trade reports in UK companies. Any broker employed by the official receiver will deal with the market makers. For a company to be listed (or quoted) on a stock exchange the company must meet the requirements of that particular stock exchange. The principal trading market for trading shares in the UK is the London Stock Exchange. Valuing shares in quoted companies

## 33.79 General

The valuing of shares in a quoted company is the same in principle as valuing the shares in an unquoted company (see paragraph 33.82). In practice the availability of an efficient market (i.e. a stock exchange) with regular trades means that more reliance can be placed upon the market price of the shares and the valuation models serve more as a tool for confirming their values. It is for anyone wishing to sell the shares to decide whether they wish to accept the market price.

## 33.80 Selling shares in quoted companies

If the official receiver is intending to sell shares then a stockbroker should be instructed. It is important that the official receiver considers the broker's fees in carrying out the transaction before deciding whether to instruct the agent. Individual trades of shares are limited to shares in the same company and with the same shareholder. This means that if there are a number of shares in the same company with different insolvents holding the shares then each of the holdings needs to be dealt with in a separate transaction.

Where the shares are already held by brokers, in a nominee account, or where it is obvious that a share registrar has been involved in previous dealings enquiries should be made as to the cost of them continuing to act and to realise the holding. When considering whether to use the services of an alternative broker consideration should be given to the costs of transferring the shares as a transfer fee will normally be charged.

## 33.81 Selling shares on the stock exchange

The official receiver should sell any publicly quoted shares provided that the sale of those shares achieves a benefit to the estate. Up-to-date share prices can be found on the [London Stock Exchange](#) website. It is important that the official receiver considers the value of the shares as well as the brokerage fees before conducting a sale. A broker should not be instructed to carry out the sale unless it is absolutely clear that there will be a benefit to the estate after considering the broker's fees and charges.

Under the London Stock Exchange system sales and purchases of shares need to be completed within 3 days of the transaction date, this is often referred to as "T + 3". Due to this tight deadline it is imperative that the broker instructed to conduct the sale has the appropriate documentation and information to complete the transaction within this deadline.

## Valuing Shares in unquoted companies

## 33.82 General

Where companies are unquoted there is no readily available market to indicate the value of shares and it can therefore be difficult to place a value on them. There are a number of different models or calculations that can be used to calculate the value of the shares.

As a guideline minimum amount the net asset value of the company (i.e. the net value of the company's assets) may be used. This figure is useful as a guide but this model has serious limitations as it fails to account for the earning potential of the underlying assets of the company. Another potential pitfall is that the fixed asset values quoted in the company's balance sheet will usually be out of date.

## 33.83 Considerations when valuing unquoted shares

When the official receiver sells shares in unquoted public companies or private limited companies, care should be taken to ensure that a proper price is obtained for them. Valuing such shares is notoriously difficult. The first offer to buy shares should not be accepted without the official receiver first confirming that the offer made represents a fair value for the shares. It is unlikely that any two valuations would provide the same value. When considering an offer to purchase shares, the official receiver should take the following into consideration:

- what the current balance sheet shows the value of the company as a whole to be, and what the current balance is on the company's last profit and loss account
- what percentage of the total shares the insolvent's holding represents. The larger the percentage of the total shares held, the greater the control the shareholder has over the company and the greater the relative value of the shares
- whether any shares have recently been sold, and for what price
- what the dividend history of the company is. The value of shares may be affected on the basis of the expected dividends attached
- whether the shares are fully or partly paid up. Shares that are only partly paid up carry a potential liability which should be included in calculation of their value
- whether any restrictions have been placed on the transfer of shares in the company (see also paragraph 31.87)
- any other factors applicable to the company itself such as future trading prospects

## 33.84 Considering an offer to buy shares in an unquoted company

Where there is any doubt as to whether an offer made to purchase shares in an unlisted company is a fair one, the official receiver should not hesitate to obtain a valuation from an accountant or other competent valuer. In applicable cases they may also become involved in the negotiation of the sale price. Great care should be taken when relying on information supplied by the company in which the shares are held or by any company or person closely associated to it. Costs incurred in obtaining professional assistance as sales or valuations should be paid from the insolvent's estate in the usual way.

## 33.85 Restrictions on transfer

Restrictions on the right of a member to transfer shares do not apply to a personal representative or trustee in bankruptcy of a deceased or bankrupt member who seeks to be registered as the holder of the shares which have vested by operation of law<sup>1</sup> unless the articles expressly apply restrictions on transfers to such cases as well.

1. Bentham Mills Spinning Co (1879) 11 ChD 900

## 33.86 Refusal to register transfers

The company's articles may give directors the power to refuse to register a transfer of shares. The Companies (Model Articles) Regulations 2008 (if adopted) give directors that power. The directors must exercise their power to refuse to register a transfer of shares, in good faith and for the benefit of the company. There is extensive historical case law where the court has ordered that transfers be registered where the directors acted inappropriately in refusing to register such transfers. It is unlikely that directors would refuse to register transfers.

## 33.87 Other members' rights of pre-emption over shares

The other common restriction on the transfer of shares found in the articles is a provision that a member of the company who wishes to transfer shares to a transferee who is not already a member, shall first offer them to the other members of the company at a price ascertained in accordance with a formula set out in the articles, or at a fair price at which the shares are valued by the directors or by the company's auditors, and that the member may transfer the shares to the proposed transferee only if other members do not exercise their right of pre-emption. Before commencing a sale it would be prudent to check that the company's articles do not contain such a provision. No such provision is contained in The Companies (Model Articles) Regulations 2008.

The shares would be transferred to the purchaser by a 'proper instrument of transfer'<sup>1</sup>, the forms for such a transfer being contained in the Stock Transfer Act 1963.

1. Companies Act 2006 section 770(1)

## **Shares with little or no realisable value receipt of dividends**

### **33.88 General**

In cases where the cost of the sale of the shares would be greater than the realisable value of the shares, while the case remains open and where the official receiver, as liquidator or trustee should receive any dividends payable as a result of holding the shares and pay the amounts received into the insolvency estate.

### **33.89 Disclaiming shares with little or no realisable value**

If it is not possible for the official receiver to dispose of the shares in any other way, the official receiver should disclaim the shares. Low value shareholdings should not be kept on the long term long term asset realisation register. A copy of the disclaimer should be sent to the company secretary or share registrar<sup>1</sup>. Further details concerning the disclaimer of shares is contained in chapter 42.

1. Rule 19.3

## **Employee share schemes**

### **33.90 General**

There are a number of share schemes operated by employers that can provide financial benefits with tax incentives for their employees.

Types of tax approved share scheme are-

- Save as You Earn (SAYE)
- Share Incentive Plans (SIPs)



- Company Share Option Plans (CSOPs)
- Enterprise Management Initiatives (EMIs)

Where an employee share scheme does not have HMRC approval it will not attract the tax advantages associated with the above scheme types. Any shares already accumulated by the bankrupt at the date of the bankruptcy order will form part of the estate and will vest in the trustee. It should be noted that Income Tax and National Insurance may be payable if acquired shares are sold before the deadline set in the scheme's terms.

Further details of the types of tax approved employee share schemes is available on [GOV.UK](https://www.gov.uk).

## 33.91 Realisations from employee share schemes

The official receiver should obtain details of the scheme and ask the scheme administrator to note the official receiver's interest. The official receiver should use the information gathered to choose the course of action which will lead to the best return for creditors.

## Disposing of shares – official receiver to inform creditors

### 33.92 General

In all circumstances creditors should be informed of how shares have been disposed of whether they have been sold or disclaimed. Creditors may be given this information in the official receiver's report to creditors or notice of intention to apply for release as appropriate. Derivatives, Warrants, Options Futures and Commodities

### 33.93 Derivatives

A derivative is a financial instrument that is used for the purposes of 'hedging', It is referred to as a derivative as its value is 'derived' from the security to which it relates. These instruments allow parties to 'hedge' by transferring risk, at a cost, to one another. The market dealing of derivatives is a specialist field and membership of the particular market is required to be a trader on those markets. The principle market for derivatives in the UK is the NYSE LIFFE London. Common types of derivative are referred to below.

## 33.94 Employment of a broker to deal with derivatives

Where the official receiver encounters an insolvent who holds derivatives (e.g. futures, warrants, or options) then a broker should be employed to assist in the realisation of these items. This paragraph does not apply to the options granted under a Save As You Earn (SAYE) scheme or similar (see paragraph 33.88).

## 33.95 Warrants

A warrant is issued by a company and gives the holder the right to buy shares at a particular time in the future at a price set in the present - the exercise price. In the meantime they can be traded on the stock market. The aim is for the exercise price to be cheaper than the future price or projected market value. You can then sell the warrant for a windfall profit. But if the shares of the company never reach the exercise price, then the warrants are worth nothing. The warrant's value rises when the share price rises.

## 33.96 Options

An option works in a similar way but is bought from a market-maker - a professional buyer and seller of shares - rather than the company. The two types of option are the put option (which is an option to sell) and a call option (which is an option to buy). Options work by giving the purchaser the right (but not obligation) to buy or sell shares at a set price (referred to as the strike price) subject to certain time constraints. Traditional options last for three months and you can either buy or sell the shares, or let the option lapse. There are also traded options which can be bought and sold in their own right.

## 33.97 Futures

A futures contract is a contract for a transaction to occur at predetermined future date and price. One example would be where a farmer who has yet to grow a crop may be concerned that the price he is set to receive would be less than the current market price of the crop which he is planning to grow. To protect against this he can enter a futures contract to set a price now so that he knows what he shall receive in the future.

## 33.98 Commodities

A commodity is another name for any marketable resource, be it gold, steel, cotton, coffee or wheat. While commodities can be traded in their own right there exists a substantial derivatives market in these items. London's main commodity markets divide between metals and soft (foodstuff) commodities.

## 33.99 Realising financial derivatives and commodities

The markets dealing in financial derivatives and commodities are specialised and membership of the various markets is required to be a trader on those markets. If the official receiver is dealing with an insolvent who had options, futures or commodities as investments then a broker should be employed to assist in the realisation of these items. Where the insolvent was a member of a recognised investment exchange the specialised insolvency procedures contained in Part VII of the Companies Act 1989 apply. Other dealings on the Stock Exchange

## 33.100 General

The following are also traded on the Stock Exchange:-

- Eurobonds - long term loans issued in a currency other than that of the country of issue. The Eurobond market is dominated by large international institutions, and it is difficult to sell them in bargains worth less than £100,000. It is therefore unlikely that the Official Receiver would deal with the realisation of Eurobonds
- depositary receipts - negotiable certificates representing a company's shares. Often used by companies from developing countries. These are marketed internationally to sophisticated investors, mainly financial institutions
- overseas equities - ordinary shares issued by non UK companies. Securities are eligible for trading if they are listed on any stock exchange recognised by the London Stock Exchange. Share prices are usually quoted in the home currency of each country and transactions are settled through the local settlement system
- UK Gilts - the Stock Exchange offers a secondary or trading market which allows investors to buy and sell gilts (see also paragraph 33.26)
- bonds or fixed interest stocks - usually issued by companies or local authorities. The market for fixed interest securities is based on a competing market maker system. Market makers register with the Exchange in specific securities and are obliged to offer to buy and sell up to a marketable quantity of stock at a firm price to other member firms, but are not obliged to buy or sell to other market makers

# Other monetary assets

## 33.101 Tax refunds: Crown right of set-off

It is “fundamental constitutional doctrine that the Crown in the UK is one and indivisible”<sup>1</sup>. The Crown therefore has a general right of set off in respect of all claims due to or from any government department<sup>2</sup>. The official receiver should try to establish whether there are any debts owing to other government departments before accepting a refund. Details of any possible government creditors should be provided to the refunding department to enable any Crown set off to be applied. Some government departments will have a minimum set off limit below which they will not offer funds to other departments. If this is the case the monies should be paid direct to the liquidator or trustee.

1. *Town Investments v Department of the Environment* [1978] AC 359

2. *Rule 14.25 and Section 323 and Secretary of State for Trade and Industry v Frid* [2004] 2 AC 506

## 33.102 Corporation tax

In certain circumstances a company will be due a tax refund. A profitable company may have paid corporation tax for a number of years. Then, for example, after a significant fall in the company's turnover in the final months of trading liabilities increased and a winding-up order was made. The losses during this period can be offset against its previous corporation tax payments and a refund claimed. Where the official receiver believes, either from the directors or another source, that a company may be due a refund the official receiver should obtain details of the relevant tax office together with any reference numbers. The official receiver should send notice of the winding-up order to the tax office to enable the official receiver's interest in any refund to be noted.

## 33.103 Income tax

HM Revenue and Customs receive electronic notification of all bankruptcy orders. The tax office dealing with the bankrupt's tax affairs should note the bankruptcy order and, where applicable, identify for payment to the official receiver or trustee any refund of tax.

All bankrupts are requested to complete and sign the TNIDIS form which authorises the payment to the official receiver (or other trustee) of any income tax refunds payable for any year up to and including the tax year in which the bankruptcy order was made to the bankrupt's estate. HMRC will automatically offer the refund to the official receiver or other trustee appointed. The official receiver must respond to the

offer and forward a copy of the TNIDIS in order to claim the refund. The letter claiming the refund should be sent by post but the signed disclosure form (in Word or pdf format) should be sent separately to the HMRC [email account](#).

## 33.104 Corporation tax and Schedule D tax refunds

A company or bankrupt may be entitled to a tax repayment where losses have been made in the final tax year of trading. To obtain a repayment the company must have paid some corporation tax in the previous 3 tax years. In bankruptcy the position is a little more complicated. The bankrupt must have paid some Schedule D (Self Assessment), PAYE or Capital Gains tax in any of the previous 3 tax years. Obtaining a refund may be complicated, especially with regard to Schedule D tax and the official receiver may require the advice of an accountant or tax specialist to establish whether a repayment is due.

## 33.105 Obtaining a corporation tax or Schedule D tax refund

Where a corporation tax or Schedule D income tax refund is not subject to a right of set-off the official receiver must make an application for repayment to the appropriate local tax office of HM Revenue and Customs. The application must be supported by financial statements showing the losses. The official receiver should ensure, before approaching an accountant or tax specialist, that the expected rebate exceeds the cost of the advice.

## 33.106 VAT and refunds

Where a winding-up or bankruptcy order is made against a company or bankrupt registered for VAT the company or bankrupt will be automatically deregistered unless the official receiver decides otherwise. Where the company or bankrupt is to be deregistered the official receiver will be asked to submit a final VAT return. If a company or bankrupt is due a VAT refund the official receiver should agree the amount with HM Revenue and Customs.

## 33.107 Share fisherman: tax budgeting scheme

A share fisherman is self-employed and receives a percentage of the catch as income. HM Revenue and Customs (HMRC), in cooperation with the fishing industry introduced a scheme whereby a percentage of a share fisherman's income would be placed in a special interest bearing account in the individual's name (their fishing

account) at Barclays Bank plc, PO Box 13, Lemon Street, Truro, Cornwall, TR1 2YY to be used to meet tax liabilities and to pay Class 4 national insurance contributions.

HMRC and the Insolvency Service have an arrangement whereby the balance in a fishing account held by a share fisherman would constitute a vesting asset and can be claimed by the trustee in bankruptcy by giving notice to Barclays Bank plc. On the closure of the account it is likely that another account would be opened for the bankrupt to allow continued participation in the scheme.

## 33.108 Surplus from fixed and floating charges

Where a receiver or insolvency practitioner has been appointed under the terms of a fixed and floating charge the official receiver should write to the appointed person asking that the official receiver's interest in any surplus arising following the sale of the charged assets be noted.

## 33.109 Recovering dispositions of property after the presentation of a winding-up or bankruptcy petition

Where after a winding-up or bankruptcy petition has been presented the company or individual makes a disposition of its property without the consent of the court the official receiver may make an application to set aside the payment or transfer of assets. For further guidance see chapter 32.

## 33.110 Monies or proceeds held by an enforcement agent

Monies held by the county court bailiff or authorised enforcement agents following the seizure of goods may be recoverable by the liquidator or trustee. For further details refer to chapter 12.

## 33.111 Client accounts and monies held by third parties

A solicitor, accountant, or other third party acting for a company in liquidation or bankrupt may be holding funds in a client account or elsewhere. If the solicitor, accountant or third party is a creditor in the proceedings they may claim a lien on the monies (see chapter 12 for advice on dealing with a lien). If the solicitor, accountant

or third party is not a creditor the official receiver as liquidator or trustee should write and ask for the monies to be sent to the official receiver.

## 33.112 Client accounts and a solicitor's undertaking

A solicitor may give an undertaking to the court or a third party to pay over funds held in a client account on behalf of a company in liquidation or bankrupt. Such an undertaking is enforceable against the solicitor unless the court orders otherwise. It is likely that such an undertaking will have been provided as a result of litigation and the issues involved may be complex. In such instances the official receiver should seek advice as an application to the court for directions may be necessary.

## 33.113 Monies held by third parties and investment profits

A third party in possession of monies, which form part of the bankrupt's estate, is not entitled to retain the proceeds from profitably investing these monies. The trustee in bankruptcy is entitled to trace these profits and claim them in an action for "money had and received"<sup>1</sup>.

1. Trustee of the property of F.C. Jones and Sons (a firm) v Jones (1996) 3 WLR 703

## 33.114 Monies paid into court

Where a defendant pays money into court, either voluntarily or following an order, and subsequently goes into liquidation or becomes bankrupt, the plaintiff becomes a secured creditor in the insolvency proceedings to the extent of the amount paid in to court<sup>1</sup>. The official receiver, in such circumstances, should consent to the money being released from the court to the plaintiff unless it is greater than the amount owed to them in the liquidation or bankruptcy. Any balance of funds remaining should be paid to the official receiver for the benefit of the estate.

1. W A Sherratt Ltd v John Bromley (Church Stretton) Ltd (1985) 1 AELR 216

## 33.115 Bills of exchange

Essentially a bill of exchange is a document which ensures that one person pays another person a fixed sum of money on a specified date<sup>1</sup>. A cheque is a form of a bill of exchange. Bills of exchange which include a term of credit, i.e. they are payable in the future, are called "term bills".

A creditor (or drawer) will draw up a bill of exchange and send it to the debtor (or drawee). To accept the bill of exchange the debtor signs vertically across it. When accepting the bill of exchange the debtor may indicate that the bill be presented for payment at their bank.

A creditor (or drawer) may use a bill of exchange to pay off a debt they owe to a third party. The bill of exchange would be drawn up indicating payment should be made to that party. The accepted bill of exchange would be sent to the third party after its return by the debtor (or drawee).

1. For full definition see Bills of Exchange Act 1882, section 3

## 33.116 Proof of debt

A bill of exchange may be submitted by a creditor in insolvency proceedings to support a proof of debt.

## 33.117 Promissory notes

A promissory note is a formal “I.O.U.”<sup>1</sup> A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person, or to a bearer. The writer of a promissory note is called the “maker”. The note is incomplete until it has been delivered to the payee or bearer. Promissory notes issued by private individuals are rare.

1. For full definition see Bills of Exchange Act 1882, section 83