

**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 11 March 2020**

## 40. Sundry assets

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These FAQs aim to assist official receivers in giving a brief overview of the subject, but for full information they must be read in conjunction with the more detailed guidance given in the main body of the guidance.

## Frequently asked questions - Household and personal effects

### Can a bankrupt's personal pet animal be realised as an asset?

The official receiver is able to arrange for a bankrupt's pet animal to be sold but is unlikely do so unless it would benefit the estate. It is highly unlikely that selling a pet would benefit the estate, unless it has a good pedigree.

### What is the first stage in selling a pet animal?

In the unlikely event that the official receiver decides a bankrupt's pet does have a realisable value, as a first step enquiries should be made to establish whether the bankrupt wishes to introduce a third party to make an offer to buy the animal.

## Can a bankrupt's wedding ring be realised?

Yes, if the bankrupt no longer wishes to retain the ring or where its value is significantly higher than most simple gold bands. In most cases it is unlikely that it will be appropriate for the official receiver to claim a wedding ring as an asset in the bankruptcy. Where a ring is of a high enough value to be sold, the bankrupt should be given sufficient funds from the sale proceeds to purchase a simple gold band as a replacement.

## Can the official receiver realise an engagement ring given by the bankrupt to their fiancé(e)?

Yes, although the ring must be of sufficient value to warrant the costs involved in any sale and the official receiver should not take engagement rings as a matter of course. In principle an engagement ring constitutes a gift conditional on the marriage or civil partnership taking place, so the ring does not pass as property to the recipient until the marriage has taken place. If the ring is of sufficient value to realise, it may be possible to effect a sale of the ring to a family member or other third party introduced by the bankrupt.

## Can the official receiver realise an engagement ring received by the bankrupt?

Yes, however the ring must be of sufficient value to warrant its sale costs. Official receivers should not take engagement rings as a matter of course. The general principle is that an engagement ring constitutes a gift conditional on the marriage or civil partnership taking place – therefore the ring does not pass as property to the recipient (the bankrupt) until the marriage/civil partnership has taken place, so cannot be realised where they remain engaged only. The date of the marriage/civil partnership is key as follows:

- where the marriage/civil partnership occurs before the date of the bankruptcy order the ring will form part of the estate and can be realised by the official receiver
- where the marriage/civil partnership takes place after the bankruptcy order date (and during the period of bankruptcy), the ring can be claimed as after acquired property

It may be most cost effective to sell the ring to a family member or other third party introduced by the bankrupt.

## What happens if the bankrupt's fiancé(e) bought the engagement ring?

Before the marriage/civil partnership the engagement ring will belong to the fiancé(e)/proposed civil partner, where they can prove they provided the funds to purchase the ring, so it cannot be realised as an asset in the bankruptcy. After the marriage/civil partnership the ring then belongs to the recipient of the ring (i.e. Bride/Groom/Civil Partner). The ring can be realised where it is of sufficient value to warrant the costs of sale, but official receivers should not take engagement rings as a matter of course. It may be possible to effect a sale of the ring to a family member or other third party introduced by the bankrupt.

## What do I need to do when I take possession of any jewellery/high value item(s)?

Where jewellery or any personal/high value item(s) are delivered into the official receiver's possession, a written receipt must be issued to the person delivering up the item(s), detailing all item(s) collected. It is accepted that the collecting examiner/officer may be unable to verify the exact material or quality of the item received, so the description should be phrased in general terms e.g. "Yellow metal ring, said by X to be gold, set with three clear stones, said by X to be diamonds".

## Can the official receiver realise personal or household items claimed by the bankrupt as a domestic requirement?

Whilst generally furniture and provisions required to satisfy the bankrupt's domestic needs would not be claimed in the bankruptcy, valuable items, such as antique furniture, might be claimed by the trustee as exempt property of excess value. In considering whether a realisation of such items is viable, the cost of providing a reasonable replacement should be factored in.

## Can the official receiver realise the bankrupt's personal correspondence?

No. Although it would appear that personal correspondence falls within the definition of property this point was considered in the case of *Haig v Aitken* [2000] 3 WLR 1117 where it was ruled that personal correspondence, whatever the subject matter, does not form part of the bankrupt's estate within the definitions of the Insolvency Act 1986.

## What if the personal correspondence relates to affairs relevant to the administration of the bankruptcy estate?

Even if the personal correspondence is relevant to the insolvency proceedings the ruling in *Haig v Aitken* [2000] 3 WLR1117 still applies, it does not form part of the bankrupt's estate.

## What happens if the official receiver is unable to sell an asset belonging to a company in liquidation or vesting in them as trustee?

Generally, where an asset is considered to be unsaleable it should be disclaimed as soon as possible. An alternative is to sell the item to the directors of a company in liquidation or a relative of the bankrupt for a nominal sum.

## Frequently asked questions - Aircraft and boats

### Where can I check if a bankrupt is the owner of an aircraft?

The CAA (Civil Aviation Authority) maintains a register of aircraft registered in the United Kingdom, which is available for anyone to inspect.

### Can I sell an aircraft registration mark (like a personalised car number plate)?

No, an aircraft registration mark can only be used once and cannot be applied to any other aircraft.

## Who needs to be informed where the official receiver decides to sell an aircraft?

The CAA must be informed of any change in the ownership of an aircraft, and notification of registration must be completed within 28 days of the change. The original Certificate of Registration must be returned to the CAA or the CAA should be notified using the Address Change Form available on their website.

## Where can I check if an insolvent is the owner of a sea-going ship or boat?

The UK Ship Register (maintained by the MCA – Maritime and Coastguard Agency) may assist the official receiver in ascertaining the owner of a particular ship or boat. An application to search the register can be submitted to the relevant MCA office.

## How do I sell a sea-going ship/boat or shares in a ship/boat?

To sell a ship or boat, or shares in a ship or boat, a bill of sale will need to be produced to the Registry of Shipping and Seamen in the prescribed format available on the Registry's website.

## Where can I check if an insolvent is the owner of a vessel held on a UK inland waterway?

The Environment Agency operates a registration scheme for boats using inland waterways over which it has responsibility. This includes most of the UK's navigable rivers.

## What about boats on canals in England, Wales and Scotland?

The Canal and River Trust (England and Wales) and Scottish Canals administer and maintain canals in England, Wales and Scotland. They are responsible for issuing licences, detailing boat owners and registering changes of ownership.

# What do I do if the insolvent owns a boat in the Lake District or on the Norfolk Broads?

Where a boat on Lake Windermere is to be transferred, sold or otherwise disposed of, the official receiver (acting in place of the registered owner) has a legal obligation to notify the Lake Windermere registrar within 14 days of the change. Any boat kept within the Norfolk Broads Authority's navigation area for more than 28 days must be registered with the Broads Authority. Any change of ownership must be notified to the Broads Authority by the buyer and seller.

## Introduction

### 40.1 Explanation, chapter contents and abbreviations

This chapter is not intended to be an exhaustive list of every type of asset, instead it provides information relating to assets most likely to be encountered by the official receiver but that are not covered elsewhere in the guidance, together with information regarding how best to protect and realise these assets.

## Aircraft

### 40.2 Definition of aircraft

For the purpose of this chapter and the guidance given therein the term aircraft can be taken to cover aeroplanes, helicopters, hot-air balloons, airships and gliders.

### 40.3 Aircraft registration

With very limited exceptions, all civil aircraft using the skies of the United Kingdom are required to carry a unique mark. Exceptions include historic aircraft with historic or military markings - which are authorised by the Ministry of Defence. Usually, the unique mark is a group of five letters of which the first identifies the country in which the aircraft is registered (for example, G for the United Kingdom) and the other four letters are allocated by the Civil Aviation Authority (CAA) on registration of the aircraft. A particular registration mark can be reserved in advance of its application to

an aircraft but there is no market in transferring these marks (in the same way as “personalised” car registration numbers are bought and sold) as a mark can only ever be applied to one airframe.

## 40.4 Searchable record of aircraft registration

The Civil Aviation Authority (CAA) maintains a register of aircraft registered in the United Kingdom which is available for inspection by any person (after payment of the requisite charge where applicable). The [CAA register](#) lists the registration mark, aircraft type, serial number and owner. In addition, it gives details of the previous identity (if any) of the aircraft, whether it is currently registered or not, the date of registration, manufacturer, class of aircraft, number of engines, maximum take-off weight, total hours flown, year built and date of issue of certificate of airworthiness. The UK register of Civil Aircraft is not a register of legal ownership and the details on the register do not confirm legal title and the official receiver will need to confirm ownership by reference to other documentation. No changes

## 40.5 “Personalised” aircraft registration marks

A registration mark may only be used once and cannot be applied to another aircraft even in circumstances where the original aircraft is destroyed or exported. This being the case there is no market for unusual or “personalised” registration marks.

## 40.6 Aircraft mortgages

An aircraft registered in the UK register may be made security for a loan or other valuable consideration<sup>1</sup>. The Civil Aviation Authority (CAA) maintains a register of aircraft mortgages into which a mortgagee may apply to have a mortgage registered. The mortgage may relate to a stock of spare parts kept for the aircraft but does not otherwise include a mortgage created as a floating charge<sup>2</sup>. A registered charge does not construe priority over a possessory lien in respect of work done on the aircraft (whether before or after the registration of the mortgage) on the express or implied authority of any persons lawfully entitled to possession of the aircraft or over any right to detain the aircraft under any Act of Parliament<sup>3</sup>.

1. Mortgaging of Aircraft Order 1972 article 3

2. Mortgaging of Aircraft Order 1972 article 2

3. Mortgaging of Aircraft Order 1972 article 14(2)

## 40.7 Conducting a search of the UK aircraft register

The UK aircraft register is available for public search on application to the following:

Aircraft Registration Section, CAA House, 45-59 Kingsway, London, WC2B 6TE

Telephone: 0330 022 1917

Fax: 020 7453 6670

Email: [aircraft.reg@caa.co.uk](mailto:aircraft.reg@caa.co.uk)

The current prescribed form to use when applying to search the register is CA350, which can be downloaded from the [CAA website](#)

The fee payable is currently £30

The form once downloaded can be completed and returned by post or scanned and emailed to the address above, although for email submissions, payment authorisation form CA02 must be returned at the same time. If a certified copy is required this can also be provided for a further fee of £30.

## 40.8 Airport charges and the detention and sale of aircraft

Fees are charged by airport operating companies to individual aircraft relating to the aircraft's use of the airport. Charges vary depending on factors such as the type of aircraft and the time of the departure or arrival. An airport operator may detain an aircraft that is in default relating to airport charges whether or not the charges were incurred by the person who is the operator of the aircraft at the time of detention<sup>1</sup>.

The power to detain extends to equipment and stores carried by the aircraft, and allows the aircraft to be detained at any other airport owned by the same operating company. The aircraft operator is allowed 56 days to pay the outstanding charges, or provide sufficient security, after which the airport operator may apply for leave of Court to sell the aircraft.

1. Civil Aviation Act 1982 section 88

## 40.9 Action to take where insolvent's aircraft has been or might be detained

In the event that the official receiver becomes aware that an aircraft owned by an insolvent has been, or is likely to be, detained due to unpaid charges consideration should be given to paying the outstanding charges if they are less than the value of



the aircraft. The official receiver will need to obtain a specialist valuation of the aircraft and a search of the internet should assist in locating details of an agent that specialises in the valuation and sale of aircraft.

If, after a prescribed 56 days, the charges for which an aircraft has been detained remain outstanding, the detainer may apply to court for an order to sell the aircraft. In advance of making the application to court the detainer must serve notice on interested parties and give them the opportunity to be joined in the proceedings<sup>1</sup>. On becoming aware that an aircraft belonging to an insolvent has been, or is likely to be, detained, the official receiver should immediately inform the detainer of their interest in the aircraft. The order of payment from any subsequent sale of the aircraft is set out in the legislation, and the official receiver should monitor the sale and distribution to ensure that any payment due is received.

1. Civil Aviation (Airport Charges) (Sale of Detained Aircraft) Regulations 1971 regulation 3

## 40.10 Navigation charges

In the UK the CAA levies charges against aircraft operators for the provision of air navigation (air traffic control) services<sup>1</sup>. Regulations relating to the procedures for the detention of aircraft whose operators have outstanding payments in this respect are largely the same as those relating to outstanding airport charges, and the guidance outlined in above should be followed. The CAA has the power to detain aircraft in respect of outstanding air navigation charges. Where the official receiver is aware they have an interest in a detained aircraft, notice of this interest should be sent to the [CAA](#).

1. Transport Act 2000 section 73

## 40.11 Sale of an aircraft

The CAA must be informed of any change in the ownership of an aircraft<sup>1</sup>. The notification of registration must be completed within 28 days checked no change of the change in ownership. The original Certificate of Registration must be returned to the CAA for amendment where the aircraft is transferred to a new owner or the owner's address changes. If the original certificate is not available (or has been lost or destroyed) the CAA should be notified using the Address Change Form available on the website, to allow the CAA to issue a new Certificate. There is no charge for the re-issue of a Certificate of Registration for an address change.

1. Air Navigation Order 2009 article 7

# Clothing and jewellery

## 40.12 Clothing

Clothing, unless it has a designer label or is a collectors' item such as pop memorabilia or a unique antique item, is unlikely to be of sufficient value to be sold. In cases of doubt advice may be obtained from an agent or a specialist second-hand shop. Antique or other collectable clothing should be valued and sold by specialist agents.

## 40.13 Jewellery

In circumstances where a bankrupt is in possession of jewellery it may be appropriate to deal with the jewellery as an asset in the proceedings. This would depend on the value of the item and the likely costs of sale and, in this respect, agents (possibly a local jewellery shop) should be engaged to carry out a valuation.

## 40.14 Taking possession of jewellery

In a case where the official receiver is taking possession of jewellery from a bankrupt or director, either at an inspection or during interview, a detailed receipt should be issued which should, in so far as is possible, describe the items collected. It is accepted that the collecting officer will be unable to verify the material from which the jewellery is made, or the quality or grade thereof and, therefore, the description should be phrased in general terms, such as:

"Yellow metal ring, said by X to be gold, with three clear stones, said by X to be diamonds."

The receipt should be signed by the collecting officer and the person from whom the items are collected. Ideally, a copy should be left with the person giving up possession of the item.

## 40.15 Storage and sale of jewellery

Items collected should be passed to the official receiver's agents for sale as soon as possible. When jewellery is collected outside the operational hours of the official receiver's agents, it should be stored in the office safe pending collection by the agents. Adequate insurance should be obtained for items of high value.

Specialist agents should be employed to deal with the sale of antique jewellery or jewellery pieces of high value. The official receiver's agents may be able to suggest a suitable firm or alternatively local jewellers may be able to assist.

In all cases the jewellery should, of course, be of sufficient value to warrant the costs of sale, and official receivers should not take jewellery as a matter of course. Where possible the best course of action may be to effect a sale of the item to a family member or other third party introduced by the bankrupt for an agreed sum, according to the value of the item as at the date of sale.

## 40.16 Engagement Rings

The general principle is that an engagement ring constitutes a gift conditional on an event taking place (for example the marriage or civil partnership) and the ring does not pass as property to the recipient until the marriage has taken place<sup>1 2</sup>.

Where the bankrupt is the party with the ring, and the bankrupt's fiancé(e) can prove that the funds to purchase the ring came from their own funds (rather than those of the bankrupt) then the ring will not form part of the estate. If they cannot prove this, or the marriage/civil ceremony took place before or during the period of bankruptcy, then the official receiver may claim an engagement ring held by the bankrupt as an asset or after-acquired asset – whichever is appropriate according to the date of the marriage/civil ceremony.

It follows that an engagement ring given by a bankrupt to their fiancé(e) may also be recoverable as an asset where the wedding or civil partnership has not taken place before the date of the bankruptcy order. Section 339(3)(b) also allows for a transaction given in consideration of marriage or the formation of a civil partnership to be claimed as a transaction at undervalue, as long as the transaction takes place within the relevant time as detailed at section 341. The transfer of an engagement ring by a bankrupt to their fiancé(e) or proposed civil partner might also be recovered as a disposition of property under section 284, where the transaction occurs between the date of the presentation of the petition and the vesting of the bankrupt's estate in the trustee.

1. *Jacobs v Davis* [1917] 2KB 532

2. *Cohen v Sellar* [1926] 1KB 541

## 40.17 Wedding rings

Weddings rings constituting a simple gold band will generally have a low financial value. Consideration has been given to the symbolism of a wedding ring and, taking into account the circumstances in which a wedding ring is given; in most cases it is unlikely that it will be appropriate for the Official Receiver to claim a wedding ring as an asset in the bankruptcy.

In circumstances where the wedding ring appears to be considerably more intricate or unusual and may possess a high financial value (e.g. where it is set with precious

stones) then the official receiver may consider obtaining a valuation of the wedding ring, and if of high value, selling the ring and providing sufficient funds to the bankrupt to purchase a replacement simple gold band.

Where the bankrupt does not wish to retain a wedding ring (possibly where they are divorced or their civil partnership has been dissolved) the official receiver can realise the wedding ring as appropriate.

## **Ships and boats**

### **40.18 Definition of ships and boats**

For the purpose of this chapter and the guidance given therein the terms ships and boats can be taken to include merchant shipping, pleasure craft, fishing boats, yachts and small craft, and can be taken to include both sea and ocean going vessels and vessels used on inland waterways.

### **40.19 Ship and boat registration**

Ships and boats with a connection to Britain (usually through British, European Economic Area (EEA) or European Union (EU) ownership) may be registered with the UK Ship Register<sup>1</sup>. Registration is voluntary, but brings with it benefits such as easier passage through foreign ports, assistance with seafarers' travel costs, threat level information and the protection of the Royal Navy.

Fishing boats (with the exception of salmon cobles, boats which are 10 metres or less in length without an engine, or boats which are 10 metres or less in length which are used to catch only common eels)<sup>2,3</sup> are not allowed to fish for profit unless they are on the UK register or the register of another country. A mortgage may not be registered against a vessel unless the vessel is recorded on the register.

At registration, the ship is given a port of choice, which is the port from which the vessel usually operates. This is chosen by the person applying for registration.

A registered ship may be owned outright by one person or divided into a maximum of 64 shares checked no change. A share may be owned by up to five people or companies. Joint owners of a share are considered to be one person<sup>4</sup>.

1. Merchant Shipping (Registration of Ships) Regulations 1993 regulation 2

2. Merchant Shipping Act 1995 section 15

3. Merchant Shipping (Registration of Ships) Regulations 1993 regulation 17

## 40.20 Official number and name

Following registration of the boat or ship it is allocated a registration number (known as the official number)<sup>1</sup>, which is then carved on the main beam or, if there is no main beam, another readily accessible part of the vessel<sup>2</sup>. On commercial ships this is normally found on the aft side of the forward beam of the main hatch and a note of the tonnage will be found in the same place.

A registered ship must also have a name, in roman letters, which is different from any other ship in the same part of the register. In addition, fishing boats must have a different name from any other boat or ship that operates from the same port of choice<sup>3</sup>.

1. Merchant Shipping (Registration of Ships) Regulations 1993 regulation 31(2)(a)

2. Merchant Shipping (Registration of Ships) Regulations 1993 regulation schedule 3 paragraph 4(a)

3. Merchant Shipping (Registration of Ships) Regulations 1993 regulation schedule 1

## 40.21 Mortgaging

A registered ship or a share in a registered ship may be made security for the repayment of a loan<sup>1</sup>. The mortgagee may apply to have the mortgage registered with the Registry of Shipping and Seamen<sup>2</sup>.

1. Merchant Shipping Act 1995 schedule 1 paragraph 7

2. Merchant Shipping (Registration of Ships) Regulations 1993 regulation 58

## 40.22 Searching the UK Ship Register

Whilst the UK Ship Register does not constitute proof of ownership of a ship, the details available on the register may assist the official receiver in ascertaining ownership where this is unclear. The UK Ship Register is part of the Maritime and Coastguard Agency (MCA). A search of the register may be made by contacting the [MCA](#) and making an application to search the register. You will need to provide the name and official number of the vessel to conduct a search.

Extracts from the register are known as transcripts and the current prescribed fees for the issue of a transcript are £21 for a current transcript or £32 for a historical transcript. The register contains details of the ship's name and number, its owners, and of any mortgage against the vessel.

## 40.23 Detention

A ship may be detained by a number of different authorities (such as the Royal Navy or the Coast Guard) for a number of different reasons (such as unsafe working practices, being a dangerous vessel or breach of pollution controls). In the event that the official receiver becomes aware that a ship belonging to an insolvent has been, or is likely to be, detained an attempt should be made to identify the location of the ship and the identity of the detaining authority. Consideration can then be given to the costs of having the ship released against the likely value to the estate. Due to the varied nature of the law in this regard, official receivers may wish to seek the advice of ORS Advice before proceeding.

## 40.24 Selling a ship

To sell a ship or share(s) in a ship, a bill of sale under the prescribed format should be produced to the registrar<sup>1</sup>. The current prescribed form to use is the [MSF4705](#). When completed this form should be sent, together with the appropriate fee (currently £80) and supporting documents (if required) to:

Registry of Shipping & Seamen,  
Anchor Court,  
Keen Road,  
Cardiff CF24 5JW

1. Merchant Shipping Act schedule 1 paragraph 2

## 40.25 Windermere boat registration scheme

Windermere in the Lake District in Cumbria has a parallel [registration system](#) for all boats with engines or outboard motors using the lake, be they boats available for hire on the lake, boats kept on the lake or boats brought to the lake to use. All such boats must be registered before use with the Windermere Registration Scheme, even those with a Small Ships Register number, which since April 2011 does not provide any exemption from the Windermere Registration Scheme. The other lakes in the Lake District do not operate similar schemes. The reason for this is that the Windermere scheme is primarily in place to allow the enforcement of speed limits relating to powered craft and, historically, there have been fewer powered boats using other Lake District lakes.

## 40.26 Sale of a vessel registered under the Windermere Registration Scheme

Where a boat registered under the Windermere Registration Scheme is to be disposed of or sold to new owners, registered owners have a legal obligation to notify the registrar within 14 days of disposal or sale of the vessel. There is a [form available](#), which should be completed and emailed to [windermere.registration@lakedistrict.gov.uk](mailto:windermere.registration@lakedistrict.gov.uk) with an electronic payment of £20.

Further details of the scheme are available on the [Lake District website](#).

## 40.27 Norfolk Broads

Any boat which is kept within the Broads Authority's navigation area for more than 28 days must be registered with the authority (registration is free). The boat is then issued with an adhesive registration number which must be displayed on each side of the bow and on the stern. Any change in ownership of the boat is to be notified to the authority by both the buyer and seller. The registration number is not changed when the owners change. There are also short and annual visit tolls due respectively for periods up to and beyond 28 days within the toll year running 1 April to 31 March. Further details can be obtained from the [Broads Authority website](#).

## 40.28 Environment Agency

The Environment Agency operates a [registration scheme](#) for boats using waterways over which it has responsibility. They record details of the owner of the boat and changes in ownership are notified to them. The scheme is administered from a number of centres, depending on which waterway is used by the vessel.

## 40.29 Canal & River Trust and Scottish Canals (formerly British Waterways)

The [Canal & River Trust](#) administers and cares for historic waterways in England and Wales, and [Scottish Canals](#) administers and maintains the historic waterways of Scotland. They issue licences for boats to use the United Kingdom's canal system. They record, amongst other things, details of the owner of a boat and are notified of changes in ownership.

## Miscellaneous – animals, firearms and correspondence

## 40.30 Bankrupt's own pet animal

It is highly unlikely that the bankrupt's own pet animal will have any realisable value, unless it has a good pedigree.

If so, the official receiver should, in the first instance, establish if the bankrupt wishes to introduce a third party to purchase the animal from the estate. The third party should arrange for the valuation, conducted by a registered breeder or other specialist, on which the sale price should be based.

Guidance on dealing with pet animals held as stock is provided in chapter 34.

## 40.31 Firearms held by a bankrupt personally

This paragraph deals only with firearms held by the bankrupt personally. Firearms held as stock are dealt with in chapter 34.

Advice and information on dealing with firearms (including illegally held firearms) when first encountered by the official receiver is contained in chapter 11).

It is an offence to be in possession of a firearm without the necessary certificate<sup>1</sup> and dealing in firearms is controlled by the local police force. Apart from the obligation to hold a certificate, there are a number of other regulations surrounding the transfer of firearms, particularly as regards record keeping. Where it is beneficial to the estate to realise the firearms, the official receiver should ensure that any agents appointed to deal with the sale are registered firearms dealers. The website of [The Gun Trade Association Ltd](#) carries a list of registered firearms dealers, searchable by name and location.

If there is any doubt when dealing with a firearm, the advice of the local police firearms liaison officer should be sought.

1. Firearms Act 1968 section 1

## 40.32 A bankrupt's personal correspondence as an asset

The possibility of a bankrupt's personal correspondence having a monetary value is most likely to occur in public interest cases, but the principles outlined in this section may be relevant to bankruptcies in general.

It has been held that personal correspondence, whatever the subject matter, does not form part of the bankrupt's estate within the definitions of the Insolvency Act 1986. It was further ruled that while some of the correspondence may relate to affairs relevant to the administration of the bankrupt's estate that does not bring it within the



definition of estate. The judgment equated a bankrupt's personal correspondence to a right of action for damages for libel as being peculiarly personal to them and their life as a human being<sup>1</sup>.

It is also possible that the removal and sale of a bankrupt's personal correspondence may contravene the Convention for the Protection of Human Rights and Fundamental Freedoms (1953) article 8 which provides a right to respect for one's "private and family life, his[her] home and his[her] correspondence." This was considered in the case referred to above, but did not form part of the judgment. This aspect has not, otherwise, been considered in a court.

1. Haig v Aitken [2000] 3 WLR 1117

## **Assets from other insolvency proceedings**

### **40.33 Assets from a creditors' voluntary liquidation (CVL) or members' voluntary liquidation (MVL)**

Where a compulsory winding-up order is made against a company in a voluntary liquidation, the voluntary liquidator has a duty to deliver any remaining assets to the official receiver or liquidator if not the official receiver<sup>1</sup>. The voluntary liquidator should be advised of the making of the compulsory winding-up order using standard letter<sup>2</sup> and arrangements should be made for the handing over of the company's assets, including any funds which have not been paid into the Insolvency Services Account (ISA).

The voluntary liquidator's remuneration and expenses should be detailed in the report to creditors, as these may affect the amount of any distribution to creditors.

The official receiver, as liquidator, should deal with assets unrealised by the voluntary liquidator in the usual way.

1. Rule 7.73

2. NTVL

### **40.34 Assets remaining after an administrative receivership**

A receiver's powers conferred under section 42 of the Insolvency Act 1986 and schedule 1 of the same act, including the right to realise assets covered by the charge and convey property in the company's name, are unaffected by the making of a winding-up order.

Where a winding-up order is made against a company in an administrative receivership, the official receiver should make contact with the administrative receiver to advise them of the making of the order and to ask him to provide information regarding charged assets not yet realised and an estimate of anticipated realisations. A standard letter and form<sup>1</sup> is available for this purpose. The standard letter also asks the administrative receiver to provide information relating to the charge in respect of which they were appointed. Reference to the information provided by the administrative receiver in this respect should allow the official receiver to make a calculation regarding any surplus available to the liquidation estate and, if appropriate, report this to creditors.

It may be the case that there are assets belonging to the company which were not covered by the charge and, therefore, not being dealt with by the administrative receiver. Those assets should be protected and realised by the official receiver as liquidator in the usual way.

1. ADMREC

## 40.35 Assets from administration proceedings

The assets of a company in administration are charged in favour of:

- liabilities arising out of a contract entered into by the former administrator (or a predecessor)
- liabilities arising under a contract of employment which was adopted by the former administrator (or a predecessor)
- the former administrator's debts and expenses<sup>1</sup>

The official receiver, as liquidator, should establish from the former administrator the value of any remaining assets and the level of the outstanding liabilities (administration creditors) charged against those remaining assets, using the standard form<sup>2</sup>. If it is the case that the level of outstanding liabilities exceeds the value of the assets then the liquidator has no interest in the assets and action to realise them should not be taken. In these circumstances, the official receiver, as liquidator, should inform administration creditors and the former administrator that they intend to take no action regarding the assets and that the former administrator should deal with them. An explanation of the situation should be included in the report to creditors so that pre-administration creditors are made aware of the position.

If the assets are of a greater value than the amounts outstanding to the administrator and the administration creditors the official receiver, as liquidator, should ask the former administrator to deliver up the assets and deal with them in the usual way.

1. Schedule B1 paragraph 99

2. ADMLTR

## 40.36 Partnerships subject to administration orders

Partnerships may also be subject to administration orders<sup>1</sup> and, in this respect, the information and advice given above should be followed.

1. The Insolvent Partnerships Order 1994 Part III article 6

## 40.37 Assets from a failed company voluntary arrangement

Where a winding-up order is made against a company which is in a company voluntary arrangement (CVA) the effect of the order is to terminate the CVA. Following this, the status of CVA assets or monies is dependent on the terms of the arrangement. The assets held by the supervisor may be held on trust, or subject to a charge, in favour of creditors who are bound by the CVA<sup>1</sup>.

In the event that the assets are not held on trust or the way in which they are to be dealt with is not provided for in the terms of the CVA, and there is a surplus in the value of the assets over the expenses of the supervisor, the official receiver should take control of the assets and deal with them in the usual way.

1. NT Gallagher & Son [2002] 3 ALL ER 474

## 40.38 Assets from a failed partnership voluntary arrangement

A partnership may be subject to a partnership voluntary arrangement<sup>1,2</sup> the rules for which are in line with the rules regarding CVAs. The information and guidance in respect of CVAs should be followed in this respect.

The individual members of the partnership may be subject to an IVA and the guidance and information given below should be followed in this respect.

1. The Insolvent Partnerships Order 1994 Part II article 4

2. The Insolvent Partnerships (Amendment) (No.2) Order 2002 article 4

## 40.39 Assets from a failed individual voluntary arrangement

The effect of a bankruptcy order on an existing individual voluntary arrangement (IVA) is dependent on the terms of the IVA, in particular any trust clause<sup>1</sup>. The assets held by the supervisor may be held on trust, or subject to a charge, in favour of creditors who are bound by the IVA.

If the supervisor has unpaid costs when a voluntary arrangement fails and a bankruptcy order is subsequently made the unpaid expenses will be a first charge on the bankruptcy estate – even though the underlying asset from which they are paid may not have been included in the IVA<sup>2</sup>. If the unpaid costs are greater than the value of the assets the official receiver, as trustee, should take no steps to realise the charged assets. The supervisor's unpaid costs should be shown in the report to creditors.

In the event that the assets are not held in trust or the way in which they are to be dealt with is not provided for in the terms of the IVA, and there is a surplus in the value of the assets over the expenses of the supervisor the official receiver, as trustee, should take control of the assets and deal with them in the usual way.

Official receivers should also be aware that certain assets (most commonly the matrimonial home) may have been excluded from the IVA and, subject to any charge in favour of the supervisor; these should be dealt with in the usual way.

1. Re AJW Bradley-Hole, ex parte Knight [1995] BCC 418

2. Section 276(2)

## 40.40 Assets from a previous bankruptcy

In circumstances where a bankruptcy order is made against an undischarged bankrupt any assets (including income) acquired by them after the date of the earlier bankruptcy and not yet distributed by the trustee are to be transferred to the later bankruptcy<sup>1 2</sup>. Any such money or property will then form part of the estate in the later bankruptcy but subject to a first charge in favour of the earlier trustee for any expenses they may have incurred in dealing with those assets<sup>3</sup>.

Where, on receiving notice of a bankruptcy petition, a trustee has any after-acquired property they should hold and protect the property until the petition is disposed of. Any disposal after receipt of notice is void unless the consent or ratification of the court dealing with the earlier bankruptcy is obtained<sup>4</sup>.

Assets belonging to a subsequent bankrupt who is discharged from an earlier bankruptcy would vest in the subsequent bankruptcy estate and should be dealt with

in the usual way. The official receiver should be aware that, particularly with properties, the trustee of the earlier bankruptcy may have transferred the bankrupt's beneficial interest to a third party.

1. Section 334(3)

2. Section 335(1)

3. Section 335(3)

4. Section 334(2)

## Unsaleable assets

### 40.41 Unsaleable assets

Generally, where an asset is considered to be unsaleable it should be disclaimed as soon as possible (see chapter 42), or abandoned, as appropriate. An alternative is to transfer the item to the directors of a company in liquidation or a relative of the bankrupt for a nominal sum.

Where goods remain unsold after an auction, the official receiver should take their agent's advice as to whether it would be worthwhile to enter the items into another sale or otherwise arrange for their disposal.

In bankruptcy cases the official receiver as trustee may, with the sanction of the Secretary of State (see chapter 1), divide the asset between the creditors in circumstances where it cannot otherwise be sold<sup>1</sup>. It is unlikely that this course of action will be the most appropriate to follow, as being practically difficult to administer.

1. Section 326(1)