

To Trustees
By email only

Our Ref GP/OPC

Date 12 March 2019

Dear Trustee

This Dear Trustee letter contains important information about how the Accountant in Bankruptcy (the Accountant) requires trustees to notify the Accountant about funds that you, or your firm, receive from third parties and secured lenders for the purpose of funding any part of your administration of a bankruptcy.

I would be grateful if you could bring the content of this Dear Trustee letter to the attention of all your staff who are involved in the administration of your bankruptcies.

Recognised professional bodies (RPBs) have been consulted on the content of this Dear Trustee letter and will be sent a copy of the letter.

1. Sale of heritable assets by trustees on behalf of secured lenders

The Accountant is aware that it is not uncommon for a trustee to agree to sell a debtor's property on behalf of a secured lender where there is a shortfall to the lender and/or no anticipated surplus available to unsecured creditors. The trustee will agree to sell the property on behalf of the secured lender, and in turn will be paid a fee by the secured lender for this work.

The Accountant has no wish to interfere with these agreements but considers it important for trustees to be fully transparent with regard to notifying the Accountant/Commissioner(s), creditors and debtors, of the terms and conditions that have been agreed with a secured lender, including the financial terms of the agreements.

The requirement for this transparency is set out in Sections 1 to 7 of SIP9 Scotland.

The Accountant considers it important that all interested parties are aware of the background and reason why the trustee is selling a property on behalf of the secured lender, to help inform any decision they may make with regard to applying their legal right to challenge the actions of the trustee.

As a property forms part of the debtor's estate, regardless if it is in 'Nil' or 'negative' equity, the trustee is required, before commencing any action regarding the property, to submit their proposal for the property to the Accountant for consideration, in accordance with Section 109 of The Bankruptcy (Scotland) Act 2016 ('the Act'), using Appendix L to the Accountant's [Notes for Guidance](#). The Accountant has revised the Appendix L Form and the new Appendix L is at Annex A to this letter.

To allow the Accountant to make an informed decision when an Appendix L is received, the trustee must submit the following supporting information to the Accountant:

- a copy of the agreed terms between the trustee and the secured lender to sell the property;
- details of fees and outlays agreed to be paid by the secured lender, including details of the basis for how the fees are to be calculated;
- detail of how, in the trustee's opinion, the proposed sale will comply with the conditions specified in Section 50(9) of the Act;
- a professional valuation of the property; and
- confirmation of the redemption figures for all secured loans.

All Appendix Ls submitted to the Accountant from 1 April 2019, that concern the sale of a property on behalf of a secured lender, must contain and be accompanied by the information and documents requested above.

1.1 Declaration and accounting for the trustee's fees and outlays

Details of the agreed amount of fee and outlays paid by the secured lender to the trustee, in the specific accounting period, along with details of the properties sold in the period, should be declared in the relevant sequestration account circular issued on or after 1 April 2019.

However, the Accountant will not determine any fee and/or outlay of the trustee that relates to work completed for the sale of a property on behalf of the secured lender that will be paid by the secured lender.

If the trustee has sold a property on behalf of a secured lender for an agreed fee, but is also seeking payment of other remuneration and outlays from the debtor's estate, the trustee must submit with the bankruptcy accounts their SIP 9 detailed time sheets and vouchers in support of their claim for the remuneration and outlays to be paid from the estate.

For cases where the trustee is selling a property on behalf of a secured lender, and there are other assets to be realised for the benefit of the estate generally, the trustee should account for the income and expenditure relating to the secured asset sales in a separate Receipts and Payments account, in the same way they would with a trading account. This should be submitted with any trustee's Receipts and Payments account submitted for determination from 1 April 2019 onwards

An example of the additional account to be used, along with guidance notes, is provided at Annex B of this letter.

2. Declaration of payment of the trustee's fees by a third party

The Accountant is also aware that some Insolvency Practitioners, or their firms, are requesting that a third party pays, deposits, or guarantees an amount towards payment of the trustee's fees and outlays, particularly in the event of a shortfall of asset realisations or debtor contributions being insufficient to cover the expenses of the insolvency, including the trustee's remuneration.

The Accountant considers it is important that all interested parties are made aware of any agreement that the trustee has made with a third party, which has influenced the decision of the trustee to act.

The Accountant requires trustees to declare in the Notes to bankruptcy accounts, and in their accounts' circulars, any monies that have been paid to, or deposited with, the trustee or their firm, being payment of the trustee's remuneration and outlays.

The requirement to disclose such payments is specified in Section 8(f) of SIP 7 and is consistent with paragraphs 2 and 5 of SIP 9(Scotland).

This declaration is required in respect of all accounts submitted to the Accountant and circulars issued to creditors on or after 1 April 2019.

The Accountant will not determine any fee and outlay of the trustee that is to be met from funds contributed by a third party.

If the trustee has received, or is to receive, funds from a third party in respect of a specific instruction, but also seeks approval of remuneration and outlays from the debtor's estate, they must submit to the Accountant with their bankruptcy accounts their SIP 9 detailed time sheets and vouchers and a copy of the terms and conditions and payment details, that the trustee has agreed with the third party.

The Accountant's Notes for Guidance for trustees will be updated shortly to record the processes and requirements detailed in this Dear Trustee letter and the amended Appendix L Form.

If you have any questions regarding the requirements that are detailed in either of the sections of this Dear Trustee letter, please contact me at: graeme.perry@aib.gov.uk, or on: 0300 200 2712.

Yours faithfully



Graeme Perry
Head of Operational Policy and Compliance

Annex A

Accountant in Bankruptcy – Appendix L

APPENDIX L

APPLICATION FOR APPROVAL OF ACTION ON HERITAGE

To: Accountant in Bankruptcy
1, Pennyburn Road
Kilwinning
Ayrshire
KA13 6SA

From:
.....
.....

(DX552090, Kilwinning 2)
(Fax: 0300 200 2601)

For the attention of: AiB's Bankruptcy Accounts and Supervision Team

(email: aibtrusteecorrespondence@aib.gov.uk)

Contact name:

BANKRUPTCY OF

AiB reference: Trustee's reference:

1. Trustee's Proposal

I should be grateful if you would approve my proposed action, as detailed below, to dispose of the trustee's interest in the property at:

Details of Proposal:



Please outline any communication there has been with the debtor and how they have been made aware of the outcome of the action that is to be taken? (Please attach copies of these communications).

2. Value of Property

(i) On what date was the property last valued?

(ii) At what sum was the property last valued? £

(iii) What is the current redemption figure for each heritable security?

- | | | |
|---|---------|-------------|
| 1 | £..... | as at |
| 2 | £ | as at |
| 3 | £ | as at |

Copies of the following documents must be enclosed:

Property Search; a professional property valuation report; Current redemption figure statement(s); Offers and/or negotiated settlement.

3. Consents (Please answer "YES" or "NO")

(i) [a] Are the subjects jointly owned?

[b] If yes, does the joint owner wish to accept the offer?

(ii) [a] Are the subjects a family home within the meaning of section 113 of the 2016 Act?

[b] If yes, do you have the necessary written consent to sell the debtor's interest, as required by section 113?

(iii) Will the proposed action require the debtor to be removed from their property?

(Note: Where a family home is jointly owned and both parties have been sequestrated, each must consent to the sale of the other's interest.)



(iv) Do you have the consent of each secured creditor to sell the property, under section 109(7)(a) of the 2016 Act?

(v) Do you have an agreement with the secured creditor(s) that all expenses of sale and conveyancing will form a first charge on the sale proceeds?

4. If you are selling the property on behalf of a secured creditor

You must:

- have an agreement with the secured lender that confirms your fee and all associated outlays and expenses, and states that these will form a first charge on the sale proceeds and not impact upon the other realisations and costs of the estate.

A copy of the terms and conditions of your agreement with the secured lender must be submitted with the Appendix L.

- detail how and why this sale will comply with both of the criteria specified in Section 50(9) of The Bankruptcy (Scotland) Act 2016 - be of financial benefit to the debtor's estate and in the interests of the creditors.

5. Special Considerations

Please outline any communication there has been with the debtor and how they have been made aware of the outcome of the action that is to be taken?

If the outcome of your action will be that a debtor will be removed from their home either voluntarily or through eviction action:

- What, if any, information has been given to the debtor to assist them to find alternative accommodation?
- Have you issued statutory Form 24 to the debtor's Local Authority?
- What alternative means were considered to realise the equity in the property, prior to seeking the removal of the debtor and why was this not deemed appropriate?

Trustee: Date.....

Annex B

Suggested 'Sale on behalf of Secured Lender Account' template

TRUSTEE ACCOUNTS

**Bankruptcy of
AiB Ref No.**

Receipts and Payments of Account of..... as Trustee, selling property on behalf of the secured lender.

	From To	From To
Realised/Paid		Total

Estate Secured

Expenses

Balance

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Signed:
(Trustee)
Date:

Guidance Notes for the completion of the Account of Sale on behalf of secured lender account

- 1. The gross proceeds of sale must be shown through the account.*
- 2. Any expenses incurred in selling the property, or outlays agreed to be paid by the secured lender, are to be shown through the account, as they become due.*
- 3. The amount paid to the secured lender is to be shown through the account and an up-to-date redemption statement provided if the sale is completed six months or more after the Appendix L action was approved by the Accountant in Bankruptcy.*
- 4. The Trustee's fee, agreed by the secured lender for selling the property, is to be shown through the account.*
- 5. If the agreement specifies all fees and outlays are to be paid by the trustee and reimbursed from the secured lender, but not from their security, the money paid to the trustee is to be shown through the Receipts, in order to balance the account.*
- 6. Any net amount arising from the sale, which is due to the sequestration, should be shown through the main Receipts and Payments account. If this situation arises, the fee agreed by the secured lender may not be taken from the sequestration funds. If the trustee wishes to take remuneration in respect of the sale from the sequestration funds, they must first have the amount determined by the Accountant in Bankruptcy.*