JOINT INSOLVENCY EXAMINATION BOARD

OVERALL COMMENTS ON THE NOVEMBER 2018 SITTING

Introductory remarks

The 2018 sitting was the first (in modern times) to offer just two papers, now Corporate and Personal Insolvency. At the same time the papers moved from 4 questions of 25 marks each to a 20/20/20/40 mark format. The introduction of 40 mark questions enables the Examiners, if they so desire, to explore candidates' knowledge of a particular subject, procedure or chain of procedures in more detail and greater depth.

As well as having to adapt to the new papers and formats, this sitting was the first where candidates moved to using computer-based exams. Regrettably, too many candidates faced issues with the computerised system and, in some cases, with examination hall conditions. These matters have been addressed elsewhere by the Joint Insolvency Examination Board and are not discussed in these remarks. The job of the Examination Team was to mark the scripts as presented. It is to candidates' credit that it was rarely evident from candidates' scripts that they had been faced with practical difficulties.

One happy consequence of moving to computer-based exams is that poor handwriting is no longer an issue. This was of substantial benefit to the Examination Team. However, in their individual reports the Examiners give a few tips on how candidates might improve layout and ensure that everything is visible to the Examination Team. Marks can sometimes be given for workings, even if the final product is wrong, but that is only possible when the workings can be seen.

Sadly, all the changes made in 2018 have not resulted in any material improvements in other areas where candidates have, in the past, lost marks. These have been highlighted in recent years but candidates, and those who teach and prepare them for the examinations, seem unwilling or unable to address issues which, if corrected, would mean that more candidates should present scripts that are obviously pass-worthy as opposed to being distinctly average. Candidates who present average scripts are running the risk that they will fall (perhaps by a small margin) the wrong side of the pass mark.

Candidates must read the requirements of the question carefully. For example, if the question requires a letter to be written, then a bullet point list is inappropriate. If the question asks for a recommendation or advice to be given, candidates must do this. Simply setting out the options is only half doing the job. If a question asks for advice to be given to a third party (as opposed say to an office holder) then candidates must do this. Too often candidates default to advising the office holder who will usually have objectives and duties that differ from those with whom he/she is negotiating.

Candidates continue to present scripts that demonstrate that they are able to identify the law or principles that are relevant, but that they are less able to apply that knowledge to solving the facts of the question. A better balance is required. There is still a tendency for some candidates to write checklists or disgorge all they know on a particular subject (or another related to it) without either considering whether it is relevant to do so or moving on to solve the problem at hand.

This year there were times when candidates needed to demonstrate basic knowledge beyond the confines of the Insolvency Act and associated Rules. An appreciation of how self-employed persons' tax affairs are managed and knowledge of directors' duties and obligations under the Companies Act were relevant considerations in two questions. Too many candidates

failed to show that they could “demonstrate a basic knowledge of taxation, accountancy and business law directly relevant to the performance of an insolvency office holder’s duties” (a direct quote from the syllabus). This is a significant weakness that candidates and those helping them must address.

There are still too many candidates who appear to be uncomfortable with “numbers”. The confident manipulation of numbers and the ability to prepare what is a fairly limited number of different sorts of financial statements and similar is a fundamental skill for an Insolvency Practitioner. The examinations will continue to test candidates’ ability to work with numbers and those candidates who are unable to do this to a good standard will materially reduce their chances of success.

Insolvency is essentially a practical, problem solving subject. A competent Insolvency Practitioner is able to assimilate facts and identify/devise workable solutions, all against a legal, best practice and regulatory background. He/she is able to apply a sound basic knowledge of the wider business world and key skills such as the ability to produce reliable financial statements (of whatever kind), together with softer skills such as the ability to communicate. Finally, he/she must be able to bring a healthy dose of common sense to everything he/she does. The principal objective of the examination will continue to be to identify those candidates who have the potential to become a competent Insolvency Practitioner.

JOINT INSOLVENCY EXAMINATION BOARD

CORPORATE INSOLVENCY EXAM

EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2018 SITTING

General comments

This was the first year of computer-based examinations and generally the format and readability of scripts had significantly improved compared to previous years. However, whilst the system allows basic calculations, candidates should ensure that their workings are fully set out as formulas are not visible when the script is marked.

Question elements relating to the 2016 Insolvency Rules were well answered but knowledge of the SIPs was disappointing overall, and there was minimal quoting of sections of the Act or Insolvency Rule numbers. Knowledge of the Companies Act also appeared to be generally lacking within the candidate group.

Corporate Insolvency Exam
November 2018
Mark Plan
Question 1

This was a question relating to the procedures required to place a company into Creditors' Voluntary Liquidation and in addition candidates were required to set out how they would deal with two situations relating to committee non-attendance and unpaid share capital.

(a) Assuming there is no request for a physical meeting, set out the key practical and legal steps required to place the Company into Creditors' Voluntary Liquidation. (12 marks)

Generally, this question was well answered however a proportion of candidates included steps that would be required after the appointment of liquidators such as statutory notifications and realisation of assets. The question only sought the information to the point at which a liquidator was appointed, so some candidates wasted valuable exam time taking their response one step further.

Few candidates stated any practical steps, focusing on the legal procedures and thereby missing out on relatively easy marks.

(b) Prepare a file note outlining how you would deal with the above two matters. (8 marks)

The question on creditors' committees was answered well although only a limited number identified that the member who had failed to attend may have been a creditor and therefore the committee would be in breach of Rule 17.8(2b).

The question relating to unpaid share was more of a challenge for candidates with only a small number achieving high marks.

Question 2

This question, set within a compulsory liquidation situation, asked candidates to provide the directors with advice in relation to five different aspects.

Write a file note in preparation for your meeting with the Directors, advising them of the key points to consider in relation to the above five matters. (20 marks)

- Most candidates identified the issue relation to Section 216; re-use of Company name and provided comprehensive advice to the directors concerned. Many missed the relevance of SIP 13 in relation to the directors' intention to acquire the assets from the liquidator.

- Generally, candidates identified the potential issue in relation to wrongful trading but failed to apply the facts of the question and provide sufficiently detailed tailored responses.

- The stronger candidates were able to provide some relevant comments in relation to the Employee Benefit trust, but many answers failed to comprehensively cover off this issue. Given the profile of such schemes in recent years it was disappointing how few candidates appeared to be aware of the issue.

- Many candidates were unable to identify issues in relation to the provision of consultancy services to the company but those that did scored well. There appeared to be a general lack of knowledge in relation to Companies Act duties and responsibilities and very few candidates identified that such a connected party arrangement could be subject to challenge under that legislation.

- The majority of candidates were able to identify that the payment of tuition fees could be a potential transaction at an undervalue and a possible breach of duty claim against the director. This part of the question was generally well answered.

Candidates must ensure that they write their answers from the correct perspective; in this scenario it was advice to the directors. Some candidates wrote their answer as if they were the liquidator or were advising the liquidator.

Question 3

This was a question regarding the requirement to convene a physical meeting of creditors and tested knowledge of how creditor claims would be treated in such a situation. It also required knowledge as to how treatment of the claims may differ for the purpose of requesting a physical meeting, voting at a meeting and ranking for distribution.

Generally, candidates were able to satisfactorily answer the question, but many candidates lacked the depth of knowledge and understanding required to score highly.

(a) Summarise the circumstances when an Insolvency Practitioner is required to convene a physical meeting of creditors and set out the steps required to convene a meeting in these circumstances (5 marks)

This part of the question was answered better that part (b) reflecting perhaps that the answer was substantially within the open text book that students have access to.

As would be expected the vast majority of candidates identified the 10/10/10 requirements but many went into detail on the various decision procedures available, objections to the deemed consent procedure, the administrators' proposals and other unnecessary points.

Many candidates missed the marks available for the requirement to call meeting within 3 business days of reaching threshold and advertisement in gazette which is surprising since this is within the Insolvency Rules. Even fewer picked up marks for 14 days' notice, provide proof of debt/proxy and remote access, convenience for creditor etc.

(b) Outline how the claims received by you would be treated and, where you consider it necessary, what additional supporting information/documentation you would request in relation to;

(i) the request to convene a physical meeting to consider your proposals and fees;

(ii) the voting at any physical meeting that is held; and

(iii) the distribution by way of dividend of funds to the creditors.

(15 marks)

Candidates that set about the question by identifying the 3 parts of the question did well. Most candidates answered as one so have missed easy marks by not setting out the requirements of the question. For example, if candidates answered by saying that the Director/Shareholder was not a creditor and therefore:

- Did not count towards the physical meeting thresholds;
- Could not vote in a physical meeting; and
- Would not be entitled to a dividend,

then they would score well. Most have identified that the Director/Shareholder is not a creditor but then failed to apply it to each part of the question. Whilst this may have appeared obvious, candidates should not assume reader knowledge especially where the question requirements explicitly set out the areas to cover.

Many candidates showed a lack of understanding of the application of the rules, treating each creditor on their own and not as an overall towards a threshold. For example, some candidates said that the employees did not have a right to request a physical meeting because they did not meet the 10/10/10 requirements etc.

A good proportion of candidates spent a lot of time explaining, in great detail, employees' entitlements, statutory limits, RPO procedures etc. However there appeared to be a lack of understanding as to how employee claims interact with the Redundancy Payments Service, with many candidates stating that the claims (e.g. notice, weekly pay, etc.) for voting, etc. were subject to the statutory limits rather than recognising that there would be a residual employee claim.

The majority of candidates treated the landlord's claim (for threshold purposes) at lower amounts, which set them down the path of not reaching the threshold for a physical meeting. There seemed to be the (incorrect) general view that the claim would always be for £1 for voting purposes if there is any uncertainty as to the quantum. Many candidates also did not appreciate that for the purpose of convening a meeting and the required threshold, the officeholder should not adjudicate on claims.

The candidates that scored well picked up marks for detailing the additional information that would be needed for each creditor and for each stage.

Question 4

Following the introduction of a Corporate paper, this was the first 40-mark question and was relatively number intensive including a cash flow and outcome statement. Generally, the numeric elements were better answered than the written parts of the question.

(a) List the key areas of information that a Court would require for it to consider granting a Validation Order. (4 marks)

Very few candidates answered this well with many explaining what a validation order was rather than listing the information a court would require. There appeared to virtually no awareness of the relevant practice direction or any application of the principals behind a validation order to determine what a court may be interested in.

(b) Prepare a weekly cash flow forecast for the two-week period commencing 13 November 2018, together with notes, in a format that could be included with an application for a Validation Order. (12 marks)

Most candidates set out their answers without taking account of the situation, including an 'After' column for payment of PAYE/NI, VAT etc. The question had set out that this was a cash flow for the period up to the date of appointment of a liquidator/administrator and therefore any payments due after this date would be claims in the insolvency. Similarly, as this was for a validation order the cash flow had to demonstrate that it did not prejudice creditors and therefore candidates should have considered how such liabilities accrued during the period would be addressed as part of the application.

Many candidates failed to appreciate or take account of the opening balance sheet and its effect on the cash flow – for example very few candidates included any debtor receipts in the first period. There also seemed to generally be a lack of understanding as to how gross margin percentages work and are applied.

Generally, however this part of the question was satisfactory answered.

(c) Assuming that a Validation Order, covering transactions undertaken in the normal course of business, is approved, and clearly stating all other assumptions, prepare an estimated outcome statement comparing Administration to Compulsory Liquidation as at the date of the hearing. (20 marks)

Most candidates answered this part of the question well and were able to achieve a good mark.

Most candidates missed the interaction with part (b) of the question, failing to recognise that trading in the lead up to the appointment would affect the balance sheet for the outcome statement – for example stock, debtors and cash all changed during that period affecting the book value for the outcome statement.

Most candidates were able to identify some of the factors that could influence the Court as to which process was most appropriate, and incorporated the differences between liquidation and administration into the outcome statement.

(d) In these circumstances set out the options as to how an Administrator may be appointed. (4 marks)

This part of the question was effectively asking for the routes to an appointment of administrator where there is a winding up petition outstanding. Most candidates were able to make a few relevant points, but many failed to apply the facts in the question and a number included significant detail as to the appointment process and filing obligations that was disproportionate to the marks available.

MARK PLAN

Question 1

PART A

• Consider ethical matters, perform conflict check and anti-money laundering checks, agree engagement letter.
• Hold board meeting to pass resolutions to: wind up company, convene a general meeting and a creditors meeting/decision procedure, appoint a director to chair both meetings
• S99 IA86 and Rule 6.3 and 6.4 Directors to prepare statement of affairs accompanied by statement of truth
• Need to give notice of resolution to wind up the company to any QFCH, resolution can't be passed until QFCH consents or 5bd have elapsed
• Organise and hold a general meeting. Ensure meeting is valid in accordance with the Company's articles. Short notice can be agreed if 90% of members agree. Special resolution to wind up will be passed if 75% of attending and voting members agree.
• Ordinary resolution to appoint liquidator 50% attending and voting members to agree
• Creditors decision procedure must be held within 14 days of general meeting, often held on same day
• SIP 6 (Decision making in insolvency) principles • Persons entitled to participate in decision making should be able to make informed decisions with their participation properly facilitated • Information should be transparent, consistent, useful and proportionate to the circumstances • Notice seeking deemed consent or convening a decision procedure should be sent on the same business day, irrespective of delivery method used
• Obtain details of all creditors of the company
• SIP6 - IP to make directors fully aware of duties and responsibilities
• SIP6 – IP to inform the directors that it may be appropriate for them to obtain independent assistance in determining the authenticity of a prospective participant's authority or entitlement to participate and the amount for which they are permitted to do so, in the event these are called into question
• SIP6 - Need to provide certain information (in addition to that required by statute) available in advance to facilitate the making of an informed decision by those entitled to participate, to include: • Date instructions to IP and who gave them • Any amounts paid by or on behalf of the company in respect of those instructions and to who paid • Any prior involvement of the IP with the company and/or directors • Summary of company's relevant trading activity and financial history • Statement of company's affairs with a deficiency account • Names and professional qualifications of any valuers whose valuations have been relied upon

• Information should ordinarily be available not later than the business day prior to the decision date
• Rule 6.19 – notice to be sent to creditors inviting them to decide whether to form a creditors committee
• SIP15 (Reporting and providing information on their functions to committees and commissioners) – creditors should be able to make an informed decision on whether they wish to be nominated to serve on a committee. Must provide in writing how they access suitable information on the rights, duties and the functions of the committee prior to inviting nomination of committee members • Issue link to R3 Liquidation/Creditors' Committees and Commissioners: A Guide for Creditors
• Rule 6.14 – notice to be sent to creditors for nomination of a liquidator with proof of debt, stating decision date (not earlier than 3bd after deemed delivery of notice and no more than 14 days after resolution to wind up company)
• Rule 15.8 Notice seeking decision procedure must provide certain further information and must be authenticated and dated by the directors as conveners.
• Practical considerations – whether to hold deemed consent procedure or virtual creditors meeting, identifying all creditors, organising and holding board and general meeting
• Proposed liquidator to provide chair with a written statement that they are an IP, duly qualified to act as liquidator and that they consent to act
• Appointment of liquidator and minutes certified by the convenor. Certificate provided to liquidator.

PART B

Committee

• Rule 17.11, if a committee member fails to attend three consecutive meetings then their membership of the committee is automatically terminated
• Ascertain if this rule was resolved not to apply at last committee meeting, and if so termination is not automatic (Rule 17.11 (C))
• Contact committee member to ascertain whether wish to remain member of the committee
• If the member represented a company, confirm that company which they represent wishes to resign from the committee, rather than individual, and therefore can they just change representative?
• Liquidation committee must have at least 3 members, but not more than 5 (Rule 17.3)
• Of these, the Liquidation committee must have at least 3 creditor members (Rule 17.8(2b))
• Rule 17.8 if vacancy arises, as creditor members will fall below three, Liquidator may appoint a creditor replacement as long as other creditor members consent and creditor agrees to act, therefore need to first identify suitable replacement who is acceptable to other creditor members and who consents to act

• If no suitable replacement can be found, would need to seek a decision from creditors to appoint a vacancy or else committee will be inquorate, notwithstanding contributory member
• Rule17.7 need to notify Registrar of Companies asap re change in membership of committee

Share capital

• A contributory is a person liable to contribute to the assets of a company in the event of its being wound up, liability would extend to the amount, if any, remaining unpaid on shares held by them – here £80,000.
• S74 (2)(a), check whether contributories ceased to be members more than a year before the company was wound up, as if so they are not liable to settle their unpaid balance
• S74(2)(f) unpaid dividends not deemed to be a debt of the company so £10,000 can't be set off
• Confirm whether other realisations (excluding any unpaid shares) will be sufficient to settle the payment of debts, liabilities and expenses
• Write to contributories asking them to settle unpaid amounts, consider debt enforcement if fail to pay
• Liquidator has power to make call on contributories

Question 2

Name	• S216 Re use of company name
	• Applies to directors during the 12m prior to liquidation
	• Applies to a name so similar as to suggest an association. Proposed name will fall within this definition
	• Unless court agrees, or correct process followed, being a director of the new company would breach the restriction.
	• If breach the provisions the director may be liable to imprisonment or a fine
	• Under s217 also personally liable for debts of the new company.
	
	• Part 22, of Insolvency Rules 2016 sets out exceptions and process:
	  • 22.4: First exception
	
	  • Purchasing the business or substantially the whole of the business from the liquidator
	  • Prior to acting in contravention to the act the director
	  • Gives notice to the company creditors
	  • Publishes a notice in the Gazette
	  • May be given prior to purchasing the business or within 28 days of acquiring it
	  • Must contain prescribed information
	
	  • 22.6 Second exception
	
	  • Apply to court for permission
	  • If apply no later than 7 days after liquidation, then directors can trade until the hearing (max 6 weeks). Too late in this case unless already made.
	  • 22.7 Third exception - Doesn't apply; question states new company.

Asset sale	• SIP13 – Disposal of assets to connected parties in an insolvency process • for market value, at arm's length, transparency of dealings, formal valuation required • Disclosure will be required by the liquidator
Trading	• S214 Wrongful trading • At some time before the commencement of the winding up that person knew or ought to have concluded that there was no reasonable prospect of avoiding liquidation. • Defence is that the person took every step to minimise the loss to creditors. • Significant debt write off known in May 2018 but continued for several months • The debt value reduced to c. £3,750; unlikely to be sufficient to pay debts? • Evidence of insolvency due to non-payment of creditors and CCJs • Is there evidence that there was a reasonable prospect of avoiding liquidation – board minutes, forecasts? • Establish what the loss was over that period • Directors may be personally liable for the loss to creditors. • Also risk of S212 Misfeasance and disqualification

EBT	• S423 actions defrauding creditors – will depend on purpose of scheme here likely tax avoidance • HMRC pursue them for potential personal liability in respect of NIC elements of tax savings • As 6 years has passed since scheme implemented it may not be possible for liquidator to 'unwind' it (unless fraud). • HMRC may still be able to pursue and issue Advance Payment Notices • Potential s212 misfeasance claim

Consultancy Services	• S239 Preference
	  • may be able to defend his position if he is the largest creditor
	  • Connected party therefore payments within relevant period. Desire to prefer assumed.
	  • Appears that the company was insolvent for at least part of this period.
	  • Would need to review when payments made and whether other creditors were being paid at the same time.
	  • May have to repay funds
	• Companies Act 2006 Duty
	  • Duty to avoid conflicts of interest (s175 CA2006)
	  • A duty to disclose any interest in a proposed transaction or arrangement with the company and a separate and independent duty to disclose any interest in an existing transaction or arrangement with the company (transactional conflicts) (s.177)
	  • Such arrangement must be approved by shareholders or board (if shareholders have provided that power)
	  • Failure to declare an interest in an existing transaction or arrangement with the company is a criminal offence

Arla
TUV
	• S238 Transaction at an Undervalue
	  • Appears to be a gift
	  • To a connected party
	  • Payments in the last 2 years likely to have to be repaid
	  • Possibly both directors and daughter personally liable to repay
	• Tax
	  • Tax should have been paid on these amounts as a benefit in kind
	  • Could be a liability for his daughter and/or Ned depending on structure of payments
	• Breach of duty – difficult to see how this promotes the interests of the company

Other	• Conduct Report • Ability to pay • Personal insolvency risk if can't pay back etc

Question 3

PART A

• Meeting convened if:
  o 10% by value of any class of creditor
  o 10% in number of any class of creditor
  o 10 creditors

• Administrator does not adjudicate on claims for the purpose of convening a meeting.
• Location: convenient to creditors

• Notices
  o 14 days' notice required (clear days)
  o Not count day delivered or the day of the meeting.
  o Delivered on the day it is uploaded to the firm's portal.

• Notice sent to creditors, directors and former directors
  o Physical meeting must be sent within 3 BD
  o Advertised in Gazette
  o Proof of debt
  o Proxy form

• If required facilitate remote access to meeting for those that cannot attend in person

PART B

	Convening Meeting	Actual meeting	Distribution
Employees	• Counts 3 towards number % and level. • Total claim counts towards 10% value • Can accept letter – no proof of debt required • £46,650	• Proof of debt required • Details of element of claim subject to RPS subrogation should be obtained.	• Information from the RPO as to what claims have been paid • Information regarding employees' length of service, pay, termination date, date of birth, other amounts outstanding. • Details of earnings during period of notice • Copy contract of employment to review non-statutory entitlements – claim does not appear to be based on statutory • Arrears of pay up to £800 (in last 4 months) preferential = £1,750. • Holiday pay would be preferential – no evidence there is holiday pay. • Redundancy and notice non-preferential. • Allocation of payment between RPS and individuals required.
Director/Shareholder	• Mr Gorvin not a creditor but is a contributory. However, this is a creditor decision and therefore he does not count towards number.	• Not a creditor therefore cannot vote.	• Not a creditor
Landlord	• Administrator does not adjudicate on claims for the purpose of convening a meeting.	• Obtain details of claim; • Schedule of dilapidations • Discuss claim for future rent with agents; what do they consider to be reasonable given the local market.	• Obtain copy of lease • Landlord required to mitigate losses; Obtain details of what steps landlord taken to re-let the property.

	• Therefore, total claim counts towards % of total. • £1,530,000	• Admit a reasonable amount for the purpose of voting at the meeting. Mark the schedule of voting accordingly and document decision in case of subsequent challenge. • Sensible claim may be £30,000 arrears, £50,000 dilapidations and £100,000 (1 year) future rent = £180,000	• Obtain copy documents supporting costs required to resolve dilapidations. • Seek professional advice in relation to the dilapidations claim and claim for rent. • Consider negotiation with the creditor to agree a reasonable claim • Write to the creditor explaining level of claim admitted, to provide creditor with the opportunity to apply to court.
Whatborough Limited	• Treat £35,000 as the value used when calculating relevant percentages. • £35,000	• Request supporting documentation in relation to claim (see next->). • Consider discussing with former director as to whether the SoA balance may have missed off deliveries shortly prior to appointment.	• Obtain • Copy invoices • Copy proof of delivery • Copy Statement • Statement per company's records • Check ROT schedule • Consider materiality given the level of debt.

Total	£1,611,650
SoA Creditors	5,000,000
Creditors above SoA balances	£1,415,000 (assuming ee = SoA)
Total creditors for %	£6,415,000
% requested	25%
	10 in number of creditors threshold not met.

Question 4

PART A

Practice direction – insolvency proceedings

- Who notice of application has been given to (petitioning creditor, person entitled to copy of petition, person given notice that they intend to appear at the hearing, substitute creditor,
- Potentially witness statement of company accountants
- Statutory information including registered office, capital
- Background information as to why the petition was served
- How it found out about the petition
- Whether the debt is admitted or disputed
- Details of the company's financial position
- Copy of last accounts, management accounts or statement of affairs
- Cash flow forecast and profit and loss account for the period the order is being sought
- What dispositions are being sought
- Reasons for the dispositions
- Why dispositions beneficial to the creditors
- Details of the bank account – number, address, sort code, bank, balance
- Any consents from those entitled to notice
- Any other information relevant to the circumstances.

- Evidence of solvency or that the transactions are beneficial or will not prejudice unsecured creditors
- Independent valuation for any property dispositions

PART B

Cash flow			NOTES	week ending 19/11 Week 1 £'000	week ending 26/11 Week 2 £'000	Total £'000
Summary						
Income			*(a)*	340.0	360.0	700.0
Materials			*(b)*	(172.8)	(172.8)	(345.6)
Labour			*(c)*	(50.0)	(100.0)	(150.0)
Tax and other deductions			*(c)*	(25.0)	(50.0)	(75.0)
Rent			*(d)*	(6.0)	(6.0)	(12.0)
Rates		No VAT	*(e)*	(2.5)	(2.5)	(5.0)
Utilities	-8/4*(1+20%VAT)			(2.4)	(2.4)	(4.8)
Sundry costs	10/4*(1+20%VAT)			(3.0)	(3.0)	(6.0)
Legal and professional costs	Any reasonable assumption	VAT payable		(12.0)	(12.0)	(24.0)
Sub total				66	11	78
Output VAT			*(f)*	(60.0)	(60.0)	(120.0)
Input VAT			*(f)*	32.3	32.3	64.6
VAT Payable	Discretion over timing			(27.7)	(27.7)	(55.4)
Total				39	(16)	22
Bank balance						
b/f				65	104	65
c/f				104	87	87

NOTES

(a) - Income

September weekly sales	1200/4	300.00
VAT	20%	60
Total invoiced		360.00

Paid in week	25%
Paid week after	75%

	WEEK 1	WEEK 2	TOTALS
Week 1 sales	90	270	360
Week 2 sales		90	90
Debtors	250		250
Total receipts	340	360	700
VAT (included in above)	60	60	120

Expenditure

(b) - Materials

Cum to date % of sales	8400/14000	60%

		WEEK 1	WEEK 2	TOTALS
Total stock required	0.6*300	180	180	360
Taken from stock	20%	(36)	(36)	(72)
To purchase		144	144	
VAT	20%	29	29	58
Total payments		172.8	172.8	346

(c) - Labour

			WEEK 1	WEEK 2	TOTALS
Weekly	300/4 or 25%*300		75	75	150
Monthly		75		75	75
Total			75	150	225
Deductions		33.3%	(25)	(50)	(75)
Net pay			50	100	150

Assumed that payroll deductions are made at the same time as payroll to avoid increasing / prejudicing HMRC position

(d) - Rent

		WEEK 1	WEEK 2	TOTALS
Weekly	-20/4	(5)	(5)	(10)
VAT	20%	(1)	(1)	(2)
		(6)	(6)	(12)

Assumed pay weekly to avoid prejudice to landlord
Assumed VAT charged

(e) - Rates

Most companies pay over 10 instalments
Assumed that the Company would only pay the amount accrued over the period

		WEEK 1	WEEK 2	TOTALS
Weekly	-10/4	(2.5)	(2.5)	(5.0)

(f) - VAT

Assumed that would have to include VAT payable in validation order to protect HMRC position

		WEEK 1	WEEK 2	TOTALS
Output VAT				
On sales	See note (a)	60	60	120
Input VAT				
Materials	See note (b)	28.8	28.8	57.6
Rent	See note (d)	1.0	1.0	2.0
Sundry costs	10/4*(20%VAT)	0.5	0.5	1.0
Legal and professional costs		2.0	2.0	4.0
		32.3	32.3	64.6
Net VAT		27.7	27.7	55.4

PART C

Estimated outcome statement of Wheeler Turbines Limited

As at 27 November 2018

	Note	Book Value per question	Movement over 2 weeks	Book value at 27 November 2018	Administration	Liquidation	Assumption
		£'000	£'000	£'000	£'000	£'000	
Assets specifically pledged							
Plant and Equipment	Depreciation = 1500/4500*-70/4*2	1,500	(12)	1,488	100	750	Equity in administration could be presented as floating charge Assumed no material valuation change - discretion if value adjusted
Amount due to HP Company		(750)		(750)	0	(750)	In Administration liability settled/transferred
Realisation costs	Assumed 5%				-	(37.5)	Any reasonable assumption
					(as part of business sale)		
Surplus/deficit					100.0	(37.5)	
Assets not specifically pledged							
Plant and Machinery	Depreciation = 3000/4500*-70/4*2	3,000	(23)	2,977	1,100	750	Administration assumed offer level Assumed no material valuation change of Ex Situ- discretion if value adjusted
Cash at bank	From part B	65	22	87	87	87	
Debtors	Note (i)	250	20	270	243	202.5	
Stock	Note (ii)	500	(72)	428	350	257	
Total assets not specifically pledged					1,780	1,297	
Surplus from fixed charge assets					100	-	
					1,880	1,297	
Landlord claim	Note (iii)				(40)	20	
Dispositions	Note (iv)				100	125	
Amount available for costs					1,940	1,442	
Petitioners' cost - Administration fee					-	(5)	
Petitioners' costs - Deposit	Would be refunded				n/a	n/a	
Petitioners' legal costs	Borne in both processes				(1)	(1)	Any reasonable assumption
Costs of administration application	Assumed borne in both cases				(5)	(5)	Any reasonable assumption
Secretary of state fee - General fee					-	(6)	
Secretary of state fee - Company Administration fee					-	(5)	
Officeholder costs	Note (v)				(75)	(216)	
Legal costs	Assumed higher in admin due to business sale				(25)	(15)	Any reasonable assumption
Agent's costs	Assumed higher in liquidation as break up basis				(5)	(15)	Any reasonable assumption
Amount available for preferential creditors					1,829	1,173	
Preferential creditors	Per question				-	(75)	Assumed redundant in liquidation
Amount available for non-preferential creditors					1,829	1,098	
Non-preferential creditors							
Trade creditors	(landlord £40k deducted)				(1,960)	(1,960)	
Landlord					-	(60)	
Taxes					(3,500)	(3,500)	
Bank Loan	Per question				(250)	(250)	
Employees	Per question				-	(450)	
Deficit to non-preferential creditors					(3,881)	(5,122)	
Distribution							
Preferential creditors					n/a	100%	
Non-preferential creditors					32%	18%	

Note (i) - Debtors

		WEEK 1	WEEK 2	Change
Brought forward		250	270	
Sales		360	360	
Cash collection	See part B	(340)	(360)	
Carried forward		270	270	20

REALISATIONS	Administration	Liquidation
Book value	270	270
provision	10%	25%
Estimated to realise	243	202.5

Note (ii) - Stock

		WEEK 1	WEEK 2	Change
Brought forward		500	464	
Materials used	See part B	(36)	(36)	
Carried forward		464	428	(72)

REALISATIONS		Administration	Liquidation
Book value		428	428
provision	£350k per offer, 60% closure	(78)	(171)
Estimated to realise		350	257

Note (iii) - Landlord claim

Unpaid rent	60,000
Payments made	(20,000)
Amount due to landlord	40,000

Assume asset worth sufficient to pay the £60k debt
Administration does not remove CGA; only suspends it. Assume £40k remaining debt will have to be paid out of sale proceeds
In liquidation the CGA could be avoided under s128
Payments to Landlord void under s127

REALISATIONS/EXPENSE	Administration	Liquidation
Paid to landlord	(40)	
Void payments		20
Total impact	(40)	20
Revised landlord claim	-	60

Note (iv) - dispositions

Under s127 any property dispositions void post issue of the petition
Validation order likely to seek retrospective approval for dispositions in the normal course of business up to date of order
Could also be challenged as Transaction at an undervalue or preference. Available in both Administration or liquidation
Costs of pursuing TaU or Preference likely to be more than s127 as there are defences.

		Administration	Liquidation
Payment to director			
s127 disposition			125
Preference/TaU		125	
Provision	Any reasonable assumption	(25)	-
Expected to realise		100	125

Note (v) - Officeholder costs

Assumed secretary of state rate of 15% for compulsory. Discretion is assumed IP appointment

Compulsory	
Total realisations	1,442
Rate	15%
Fee	216
Administration	
Pre-appointment	
Sale of business	15
Hearing	10
Total	25
Post-appointment	50
Total	75

PART D

- No QFC so this route is not available
- Whilst petition is outstanding cannot appoint out of court
- If petition was dismissed it would be possible for directors to appoint administrators out of court
- Unlikely petition would be dismissed until administrators appointed; more likely adjourned.
- Therefore, court application required
- Directors could make application
- Alternatively, an unsecured creditor could apply for an administration order
- Application could run in parallel to the petition and be heard together at the same court hearing
- Seek dismissal of the petition at the hearing to make the administration order

JOINT INSOLVENCY EXAMINATION BOARD

PERSONAL INSOLVENCY EXAM

EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2018 SITTING

This is the first year that candidates have typed their answers. The examiners have therefore found the scripts much easier to mark. On the whole answers have benefitted from being more concise although some candidates provided their answers in a "bullet point" format which may not always be appropriate, for example when candidates have been asked to provide advice to an individual in letter format.

As in previous years, candidates should ensure that they answer the questions by reference to the facts of the questions. It was disappointing to note that whilst some candidates started their answers by reference to the facts of the question, they then slipped into 'checklist' mode without thinking about the value of what they were writing in the circumstances.

Question 1

The better answers hit the 'heart' of the issues in terms of the level of equity in the property and linked this to the possible third party contribution (combined with a reduction in the Secretary of State ("SOS") fee and potentially statutory interest), or offer to the Trustee to purchase his interest in the property.

A number of candidates did not pick up that the previous SOS fee regime was in place and instead challenged the calculation of the SOS fee level.

Most candidates noted the rules around fee approval and potential challenge routes. Many however spent a significant amount of time on these points, and few expressed a conclusion that the fee level was reasonable especially given the delay/suspension, and well within the fee estimate approved.

Most candidates were comfortable with the option to propose an IVA, although again, the better candidates noted that the cost savings would likely be minimal, and questioned if there was any real benefit to the proposing an IVA and seeking annulment given the debtor's age and circumstances.

The poorer candidates focussed on the question as if it was a direct challenge of the Trustee's actions, competence and costs rather than what was being asked – i.e. what would you advise Mrs and Mr Mallard to do in relation to the property, the possible third party contribution, and the interaction of this with possible annulment.

The better candidates concluded their answer and recommended a course of action.

Question 2

Overall the question was fairly poorly answered.

Far too many candidates simply listed all of the insolvency procedures that could apply to partnerships and attempted to state the pros and cons to this situation, often incorrectly. A disappointing number talked about using a PVA to deal with the bank situation without noting that a PVA cannot restrict the rights of a secured creditor. The better answers did state that the best course of action would be to try and work with the bank but very few candidates picked up higher marks by giving practical examples of what could be done to maximise realisations and therefore minimising the shortfall for which the brothers would ultimately be liable.

Most candidates recognised that the Bank could and probably would appoint an LPA Receiver but many also suggested that other procedures were likely such as winding the partnership up, appointing a partnership administrator or immediately issuing bankruptcy proceedings, which the Bank would be unlikely to do in the circumstances.

Question 3

This question was, on the whole, well answered.

a) Income

There were a variety of views on what expenditure could be deducted from Mr Eider's monthly income. Whilst most candidates were aware that the IPA / IPO would need to be obtained prior to discharge, that it would last for a maximum of 3 years and that the ex-wife's monthly payments pursuant to the court order could be deducted, many did not know whether deductions in respect of school fees, mortgage payments, pension payments and the payments under the lease agreement for the Range Rover would be permitted. The higher scoring candidates understood that although payment of school fees is not automatically allowed, in this case, Mr Eider is required to pay the school fees pursuant to the matrimonial proceedings and should be allowed to continue to pay the fees. Some candidates also stated that it would be acceptable for Mr Eider to continue to pay £3,000 per month into his pension. This would not benefit the creditors and would not be considered a reasonable domestic need.

Again, there was a variety of responses in how to deal with the Range Rover lease agreement. The higher scoring candidates acknowledged they should review the contract and see whether any penalties accrued.

Very few candidates acknowledged Mr Eider was self-employed and therefore needed to make provision for tax. Many candidates referred to a NT tax code, but this relates to those in PAYE employment and not those who are self-employed.

Finally, very few acknowledged that the amount Mr Eider had been paying towards the credit card companies, overdraft and HMRC per month would cease and would therefore be available for contribution through his monthly IPA / IPO.

b) The Property

This question was well answered by most candidates. Marks were awarded for noting that a Trustee had three years to deal with the principal residence, that the interests of creditors outweighed the needs of the bankrupt after the first anniversary and the options for the Trustee were to sell the property to a third party, sell the property on the open market with Mr Eider's consent, or in the absence of this, apply to court for an order for sale.

c) Liabilities

Most candidates acknowledged that Mr Eider would be discharged automatically after one year, subject to any lack of co-operation. Most also noted that Mr Eider's ex-wife could prove for the lump sum and costs in the bankruptcy, but any shortfall would survive the bankruptcy. A number of

candidates reverted to ‘checklist’ mode in listing various types of debts that would not be provable in a bankruptcy such as fines, confiscation orders, student loans etc when such debts were clearly not relevant to the question. Only a few candidates mentioned that secured creditors are not affected by the bankruptcy order.

d) Pension

On the whole, this part of the question was well answered. Most candidates understood that the benefits and rights of an approved pension scheme were excluded from the bankruptcy estate. Furthermore, most candidates correctly referred to the case of *Horton v Henry* and that a bankrupt cannot be compelled to draw down on his pension. Some candidates made the additional observation that Mr Eider is only 44, therefore this is unlikely to be an option in any event.

Most candidates referred to s.342A Insolvency Act 1986 and the Trustee investigating whether he could recover any excessive pension contributions. Weaker candidates simply referred to taking legal advice on the issue rather than expressing any form of view regarding whether or not the contributions could be subject to challenge. Very few candidates commented that Mr Eider will not be able to continue making the payments whilst he is subject to an IPA / IPO.

Question 4

This is the first year that a “case study” type question was set for candidates, and which amounted to 40% of the available marks on the paper.

The question was essentially split into two main parts, with 20 marks available for preparing a simple profit and loss account and a commentary on the options available to the debtor once those figures had been ascertained; followed by a further 20 marks, split into five sub-sections where candidates were asked to consider the ethical considerations of taking a prospective appointment as Trustee of deceased debtor following provision of earlier advice, and then discuss the various practical, legal and commercial issues of such an appointment, as well as comment on how a Trustee might be appointed under the relevant legislation.

On the whole, candidates struggled with the first half of the question, but performed slightly better on the second half.

Candidates appeared to experience difficulty in putting together the profit and loss account, calculating the mark-up and an accurate figure for gross wages costs. Some candidates even found the business to be highly profitable, and failed to consider and question their findings in the context of an insolvency examination.

Candidates were then asked to provide their advice on the options available to the debtor in a failing business where the age of the debtor and seasonal factors had to be considered. This part of the question caused the candidates the most difficulty and few candidates scored well. Of concern was the large number of candidates who simply failed to consider and answer the question in the context of the particular scenario presented to them, and instead wrote out “options checklists” which scored few marks given the need for the question to be answered by reference to the facts of the question.

Candidates did however perform well when asked to comment on the ethical considerations of taking an appointment where prior advice had been given to a now deceased debtor, following an approach from the major creditor. Most candidates were able to explain how a Trustee is obliged to deal with the proceeds of asset realisations and expenses payable from a bankruptcy estate. Candidates were able to give well-considered answers when asked to comment on the commerciality of taking the appointment in the context of the case, and the majority of candidates were also able to set out the various ways in which a trustee in bankruptcy may be appointed.

Question 1	20 marks
	The third anniversary of the making of the bankruptcy order is on 1 June 2019. Pursuant to s283(a) the Trustee must take steps to realise his interest in the property prior to this date to ensure that the property does not re-vest. In practice the Trustee is likely to instruct solicitors to commence proceedings for an order for possession and sale shortly. If Mrs Mallard does intend discharging the bankruptcy liabilities contact should be made with the Trustee as soon as possible, with a request made that he refrain from issuing proceedings for a short time in order to limit costs. Mrs Mallard should be asked to confirm the equity position in the Property through provision of valuations from local estate agents and also a redemption statement in respect of any mortgage/ charges secured against the property. Mr and Mrs Mallard should be asked to confirm how the property is held and whether Mr Mallard could claim to be entitled to a greater than 50% beneficial interest in the property. If the estimated equity is less than the amount required to discharge the bankruptcy liabilities, Mrs Mallard could put forward an offer to purchase the Trustee's interest in the Property. In calculating the amount to be offered, allowance could be made for the notional sale costs (agent's fee, legal fees etc) that will be avoided if the Trustee's beneficial interest is purchased. If the estimated equity exceeds the amount required to discharge the bankruptcy liabilities, Mrs Mallard could look to discharge the liabilities of the bankruptcy estate and avoid proceedings for possession and sale. Whilst the Calculation states that £110,110.98 is needed to discharge the liabilities in full, if Mr Mallard were to draw down the maximum lump sum available to him, this might be sufficient to discharge the liabilities of the bankruptcy estate for the following reasons. **Use of third party funds** Regulation 20 of the Insolvency Regulations 1994 requires that a trustee is required, at specified times, to pay all monies received by him in the course of carrying out his functions as such into the Insolvency Services Account. Payments into the ISA will be subject to the deduction of the Secretary of State fee. *Safier v Wardell & Standish* confirms that where funds are received from a third party rather than from the realisation of an asset vested in the bankruptcy estate, those funds are not payable into the ISA and as such, are not subject to the Secretary of State fee. If therefore Mr Mallard was to draw

	down funds and paid them to the Trustee, the Secretary of State fee would not be payable. **Deal with creditors directly** Mr and Mrs Mallard could contact the creditors directly to arrange payment of the bankruptcy liabilities. This would minimise the Trustee's future time costs. Following payment being made, written confirmation should be sought from the creditor that it has no further claim against the bankruptcy estate. As part of negotiations, the creditors could be asked whether they would be willing to forgo statutory interest. The Petition costs could also be subject to challenge if the costs were not summarily assessed at the bankruptcy petition hearing. However, the petition costs are not particularly high and as such any reduction is likely to be minimal. **IVA** As Mrs Mallard has had her automatic discharge from bankruptcy suspended, an IVA with creditors could still be proposed. The IVA could be based upon Mr Mallard making a one off lump sum payment as opposed to the property having to be sold. As realisations do not have to be paid into the ISA, this would mean that the Secretary of State fee would be avoided. The costs of realising the property would also be avoided. In order to vote in favour of the IVA, creditors would need to be satisfied that they would receive a better return that if Mrs Mallard was to remain in bankruptcy. At least 75% of creditors who vote, would need to vote in favour of the IVA. If the IVA is approved, annulment of the bankruptcy order can be sought pursuant to S261 IA86. Proposing an IVA would however incur the Nominee's fee and Supervisor's fee. The current costs of the Trustee would have to be paid through the IVA. Once the costs of proposing an IVA are taken into account, the overall saving would not be as significant. **Annulment** Pursuant to Section 282 (1)(b) a court can annul a bankruptcy order, if to the extent required by the rules, the bankruptcy debts and expenses have all, since the making of the bankruptcy order, been either paid or secured to the satisfaction of the Court. In deciding whether to annul a bankruptcy order, the Court may, if it thinks just, take into account whether any sums have been paid in respect of post commencement interest (R10.138(6)). Mr and Mrs Mallard could, as part of an annulment application, contact the creditors and ask whether they would be willing to forgo payment of statutory interest.

	With regard to the costs of the Trustee, where an application for annulment is made, the application can also apply to reduce the Trustee's remuneration on the basis that it appears to be excessive (Rule 10.134). In this case, the costs incurred appear to be fairly modest and as such, an application to reduce remuneration could be unsuccessful. If the application was unsuccessful it is likely that Mrs Mallard would have to pay the Trustee's costs of the application. Costs can also be challenged pursuant to Rule 18.35. However the Court will only give permission for such an application to be made if it can be shown that there is, or is likely to be a surplus payable to the bankrupt which does not appear to be the case here. Given that Mrs Mallard is retired, incurring the cost of seeking an annulment or entering into an IVA may not be justified. **Recommended course of action.** In the circumstances if the Secretary of State fee can be avoided through using third party funds, future costs are limited, and the cost of possession proceedings avoided, Mr Mallard can draw down sufficient funds to discharge the liabilities of the bankruptcy estate. Mrs Mallard could attempt to negotiate with creditors regarding a reduction in statutory interest and make payment to them directly but should be mindful of the limited time that is available to her to do so.
Question 2	**20 marks** **Implications if the facility is not renewed** Upon the expiry of the facility, the brothers will be liable to repay the amount then outstanding to Rouen Bank. Given that there is a shortfall to the Bank, it appears unlikely re-banking the facility with another bank will be a possibility. It is likely that under the terms of the bank's charge it will have the ability to appoint a receiver over the Mill and the Rental Properties. If the brothers do not pay the sums demanded by Rouen Bank, it is likely that receivers will be appointed. If receivers are appointed, the brothers will lose control of the sales process. Once appointed the Receiver will collect the rental income generated by the properties and will ultimately look to realise the properties to repay the indebtedness to the Bank. The sale of the properties will give rise to a liability to CGT. The brothers will be liable for the CGT and would need to seek agreement from the bank that an allowance is made from the net sale proceeds for the CGT liability. If not, the brothers would need to raise sufficient funds to discharge the CGT liability.

	Although it does not appear that a formal partnership agreement was entered into, the brothers have been trading in partnership. The brothers are therefore jointly and severally liable for the shortfall. If the brothers do not either discharge the shortfall, or negotiate a settlement with the bank it is possible that this could result in bankruptcy or necessitate an IVA being proposed to avoid bankruptcy. Check whether partnership tax returns were filed and whether terminal loss relief might be available. If one of the brothers discharges more than his proportionate share, a right of contribution would arise against the other brothers. It appears that Barry will not be in a position to discharge his share of the indebtedness. Gary and Harry will be liable for any shortfall to the bank and are likely to be pursued by the Bank. **Options available** Based on the current figures, there will be a shortfall to the Bank of between £800,000 to £1.7 million. It is therefore in the brothers' interest to ensure that realisations are maximised. The brothers may want to consider marketing for sale some or all of the Rental Properties and/ or flats in the Mill in order to try and achieve the best possible price. Although the facility expires in just over 3 months, if a sale has not been agreed but has not completed at the end of February 2019, subject to agent's advice that the sale is at the best possible price, the Bank is likely to allow a sale to proceed. If the properties are all tenanted advice should be taken from an agent regarding the property value and whether this would be maximised through selling the properties subject to the existing tenancies. Given the timescales available, it is unlikely that the brothers would have sufficient time to obtain vacant possession and effect a sale prior to February 2019. If a consensual sales process is commenced, the Bank may be willing to agree to a short extension to the facility to allow the sales to proceed and the capital outstanding to be reduced. Negotiations could be entered into with the Bank regarding the likely shortfall. The Bank may agree to an element of debt forgiveness. The brothers should consider what assets they have available and what could be offered to the Bank during negotiations once the shortfall is known. PVA - this cannot restrict the rights of secured creditors. As such, unless there are other creditors of the partnership, a PVA is unlikely to be appropriate at this stage.

	Once the shortfall to the bank has been chrystallised, a PVA, or interlocking IVAs could be entered into by the partners. Barry has no assets and a limited income. As such, an IVA might not be appropriate. Given their differing financial positions, the brothers may need to get their own independent legal advice regarding the shortfall.
Question 3	**20 marks**
(a)	**Income** Pursuant to Section 310 the Court can make an order requiring a bankrupt to make payments from his income. Alternatively a bankrupt can agree to enter into an IPA with his Trustee. An IPO can last for a maximum of 3 years. An IPO/ IPA can only be entered into prior to the bankrupt receiving his/ her discharge from bankruptcy. The Court cannot make an order which would have the effect of reducing the income of the bankrupt below what appears to the Court to be necessary for meeting the reasonable domestic needs of the bankrupt and his family. On the facts of this case, it does appear that Mr Eider will be required to enter into an IPA. The monthly payments to his ex-wife pursuant to the Court order can be deducted from his income. Although payment of private school fees is not automatically allowed and will depend on the facts of the case (for example is the child taking its GCSEs/ A Levels), Mr Eider is required to pay the school fees pursuant to the order made in matrimonial proceedings. As such, he should be allowed to continue paying the school fees. Mr Eider pays £3,300 a month on a property which he lives in alone. Paying such a significant amount each month is unlikely to be permitted and is likely to be reduced to the amount required to rent a reasonable property in the area. The range rover rental agreement. The agreement has 1 year left to run. It is not reasonable to spend £500 a month leasing a car, and upon expiry of the lease agreement, the amount payable pursuant to the IPA will need to increase to take account of this sum now being available to Mr Eider. The lease agreement should be checked to see whether early termination without any penalty charges is possible. £3,000 a month contributions to pension. This is not a payments necessary for meeting the domestic needs of the bankrupt. As such, Mr Eider will not be permitted to continue making monthly payments into his pension. As Mr Eider is self-employed, provision for tax should be allowed in future tax years when calculating his surplus income.

	The amounts due to the credit card companies, overdraft, to HMRC are bankruptcy debts and any monthly repayments will cease upon the making of the bankruptcy order. As such, the monthly amounts previously paid will be available to Mr Eider and can form part of the IPA/ IPO payments.
(b)	**The Property** A Trustee is under a duty to realise a bankrupt's sole or principal residence within 3 years of the bankruptcy order being made. From 21 August 2019 (the first anniversary of the bankruptcy) in the absence of any exceptional circumstances, the needs of the creditors will be considered to outweigh the needs of the bankrupt's spouse and children (query do Mr Eider's ex-wife and children still live in the property?). Whilst the Trustee may delay taking action to realise the property until after 21 August 2019, he is under a duty to take steps to realise the property. There is £300,000 of equity in the property. Given the level of creditor claims, this will need to be realised. Unless Mr Eider can introduce a third party who can purchase the Trustee's interest in the property, it will have to be realised through either a consensual sale or through an order for possession and sale being obtained.
(c)	**Liabilities** Unless a bankrupt's discharge is suspended as a result of a failure to co-operate with his/ her trustee, a bankrupt will receive his/ her automatic discharge from bankruptcy on the first anniversary of the making of the bankruptcy order. Pursuant to section 281 IA86, discharge releases a bankrupt from all the bankruptcy debts. However pursuant to 281(5)(b) IA86 discharge does not release a bankrupt from a bankruptcy debt which arises under any order made in family proceedings. Section 281(6) IA86 states that discharge does not release a bankrupt from other bankruptcy debts, which are not provable in the bankruptcy. Rule 14.2(2)IR2016 states that an obligation (other than an obligation to pay a lump sum or to pay costs) arising under an order made in family proceedings is not a provable claim. Therefore whilst the bankrupt's ex-wife can prove for the lump sum order and the costs in the bankruptcy, to the extent that these are not paid in full, Mr Eider will remain liable for these sums. Secured creditors are not affected by the making of the bankruptcy order. Mr Eider remains liable for the mortgage repayments until such time as the property is realised and the mortgage redeemed.
(d)	**Pension** All benefits and rights under an approved scheme are excluded from a bankrupt's estate. Assuming that Mr Eider's pension is approved, he will be able to retain his pension.

	The case of *Horton v Henry* confirms that a bankrupt cannot be compelled to draw down on his pension. Given that Mr Eider is 44, this is unlikely to be an option in any event. Excessive pension contributions? Mr Eider contributes a significant sum into his pension each month (£3,000). However, when considering whether pension contributions can be recoverable pursuant to Section 342A, the Court has to consider whether the contributions are excessive in view of the individual's circumstances when those contributions were made. Given Mr Eider's income and also the duration over which the contributions have been made, it is unlikely that the contributions could be recovered as excessive. However, Mr Eider will not be able to continue making payments into his pension whilst he is the subject of an IPA/ IPO.
Question 4	**40 marks** **(a) Profit and loss account** Gadwall Poultry and Meats Estimated profit and loss account for the year to 31 December 2018 Sales (1) 285,000 Cost of sales (meat) (210,000) Gross Profit 75,000 Overheads/ expenses 10% general overheads 28,500 Rent 8,000 Rates 7,000 Wages - self 12,000 Wages - staff (3) 17,364 (including Employers' NI) Utilities 4,800 Total costs 79,664 **Net profit / (loss) (4,664)** **(1)** 15,000 x 11 months = £165,000 45,000 x 1 month = £45,000 Total £210,000 of purchases from Mr Drake

	Less 5% in respect of wasted meat (10,500), meat with a cost of £199,500 is sold. This represents 70% of sales (GP% of 30%) Sales = 199,500/ 70* = £285,000. (2) see first part of (1) (3) 30 hours x £9 = £270. £270 x 52 weeks = £14,040 December 50% increase (£270/ 2 x 4) £540.00 10 hours x £5.60 = £56. £56 x 52 = £2,912 December 50% increase (£56/2 x 4) £112 Assume Employers' NIC say 10% £1,760 Total £19,364 **(b) Options available to Mr Gadwall and potential consequences** The business is loss making. Even though a profit will be generated in December, this is not sufficient to cover the losses made in the first eleven months of the year. It would make sense for the business to continue to trade until the end of the year as the estimated profit during December will cover the loss that is anticipated during November. The creditor position will not worsen. Given that the net loss is less than Mr Gadwall's drawings, he could consider reducing the amount that he draws each month whilst a sale is explored. Whilst Mr Gadwall could try and sell the business, continuing to trade after Christmas will result in Mr Gadwall incurring further liabilities. In addition his current supplier has said that he will not continue to supply Mr Gadwall. As such Mr Gadwall does not have significant time to try and effect a sale. If Mr Drake does stop supplying Mr Gadwall in January, he will either have to agree to start paying in cash or look for another supplier which may be more expensive If Mr Gadwall takes no action, creditors could commence legal proceedings and / or present a bankruptcy petition. If he is made bankrupt Mr Gadwall will not be able to continue trading in any event. IVA - unlikely to be appropriate unless Mr Gadwall ceases trading and uses an IVA to compromise his liabilities. The business is loss making, as such an IVA in conjunction with ongoing trade is unlikely to be appropriate given likely future losses. Mr Gadwall's personal assets are minimal. Mr Gadwall could close the business and, given his limited assets, could try and reach an informal agreement with his creditors to include a surrender of the lease of the premises back to the landlord. Enquiries should be made to establish whether Mr Gadwall has one lease in respect of both the flat and the shop. If he does, surrendering the lease

	would result in Mr Gadwall losing his home unless terms were agreed for Mr Gadwall to take a lease of just the flat going forward. **(c) Appointment** An Insolvency Practitioner should comply with the Insolvency Code of Ethics. SIP 1 provides an introduction to the SIPs and confirms that these should be read in conjunction with the Code of Ethics. The Code of Ethics still applies even if advice is given without a fee being charged. Prior to taking an appointment an Insolvency Practitioner should take care to identify the existence of any threats which might reasonably be expected to arise during the course of the appointment. In this case, the Insolvency Practitioner should consider whether any threats have arisen given the previous instruction by Mr Gadwall. The instruction was however limited to a review of his financial position and a discussion surrounding the options that were available to him. Whilst a familiarity threat can occur when because of a close relationship, an individual could become too sympathetic to the interests of others, in this case, there is no ongoing relationship with Mr Gadwall here. Self-review threat - as Mr Gadwall has died, the advice that was given to him whilst he was still trading was not acted upon is unlikely to impact upon your ability to administer his estate. In the circumstances there does not appear to be any reason why the appointment could not be accepted. **(d) Dealing with proceeds** Paragraph 20 of The Insolvency Regulations 1994 (SI 1994/2507) requires a Trustee to pay all money received by him in the course of carrying out his functions as such without any deduction into the Insolvency Services Account once every 14 days or forthwith if £5,000 or more has been received. An IPA should also ensure that all realisations are handled in accordance with the provisions of SIP 11 The ISA will apply the funds against the debit balance on the estate arising out of the statutory fees incurred. The Official Receiver's administration fee is £2,775 and is deducted from payments made into the account. The Official Receiver's fee of £6,000 will be deducted from payments made into the ISA. The surplus after the statutory fees have been discharged will be utilised to pay the priority expenses under Rule 10.149.

	These charges have the impact of reducing realisations and the sums that are therefore available to pay the expenses that take priority to your remuneration. **(e) Expenses payable ahead of remuneration** The Administration of Insolvent estates of Deceased Persons Order 1986 applies to the administration in bankruptcy of the insolvent estates of persons dying before the presentation of a bankruptcy petition. Rule 10.149 sets out the general rule as to priority. Based on the information provided, i) the costs incurred in petitioning for the insolvency administration order would have to be paid; and ii) any necessary disbursements incurred by the Trustee would be paid in priority to the Trustee's remuneration. **(f) Commerciality of accepting appointment** Mr Gadwall's assets have an estimated value of £17,200 to £22,200 (depending on whether Muscovy Bank can claim set off - see below). Given the time that has elapsed since the initial meeting, enquiries should be made to establish whether the bank account balance has reduced. There would be costs of sale associated with realising the van and personal effects/ items in the shop. In addition, set off may apply in respect of the overdraft and savings account with Muscovy Bank. If set off does apply, this would reduce the amount in the savings account to around £9,700. Once the estimated costs of realising the assets, administration fee and Official Receiver's fee are deducted and petition costs (estimated at £3,000) this could leave circa £4,000 - £10,000 to discharge the Trustee's disbursements and time costs. If Mr Gadwall was registered for VAT, the VAT on professional fees could be reclaimed. Realisations will be limited but it appears to be a straightforward estate. Predicted realisations mean accepting the appointment could be justified although overall fees would be limited. The reasonable funeral, testamentary and administrative expenses of Mr Gadwall's estate are payable in priority to preferential debts. **(g) appointment of a Trustee** When a bankruptcy order is made, the Official Receiver is appointed as the Trustee in Bankruptcy unless the Court orders otherwise (s291A IA86)

	Secretary of State appointment. A creditor/ creditors may nominate a Trustee other than the OR if they comprise more than 50% of the unsecured creditor claims by value. (s296IA86) Commence a Decision Procedure. Where a decision of the creditors is sought and the majority of those voting support an appointment. Requisition of a meeting. Creditors can request that the OR convenes a meeting or commences a Decision Procedure. Pursuant to a block transfer order under Rules 12.35-12.38 IR2016. S291(A)(2) where an order is made on a petition presented by a Supervisor following default on a IVA, the Court can order that the Supervisor be appointed as Trustee