

## JOINT INSOLVENCY EXAMINATION BOARD

### SENIOR MODERATOR'S COMMENTS ON THE NOVEMBER 2019 SITTING

#### Introduction

This year's two papers were good tests of candidates' knowledge and skills, and their ability to apply these to resolving practical problems and situations presented to them. A written examination paper will always struggle to replicate real life circumstances, but the two papers presented candidates with situations with which an Insolvency Practitioner should be capable of dealing in his or her daily work or that will be encountered from time to time.

The two papers covered a mix of procedures and subjects. Some subjects were in general tackled well by candidates; for example question 3 on the Corporate Insolvency paper which asked candidates to address different issues arising during an Administration and question 1 on the Personal Insolvency paper dealing with real property in a Bankruptcy. However other questions, on which candidates should have been able to achieve good marks, were often not done well. The average marks on question 1 on the Corporate Insolvency paper (ethical matters) and question 2 on the Personal Insolvency paper (retiring IP and succession planning) were particularly disappointing. In each case there was only a minority of candidates who were able to achieve high marks, and too many presented scripts which suggested a lack of knowledge of the subject being examined.

There were a few subjects examined where candidates fared poorly. Very few candidates dealt well with question 4 part (a) of the Corporate Insolvency paper dealing with taxation. Virtually no candidate identified the principle of marshalling of securities in part (d) of the same question. Also poorly answered was question 3 part (c) in the same paper which asked candidates to say what should be done about company assets in the possession of a former employee.

As ever there were some very good scripts on both papers which attracted good basic and holistic marks, demonstrating that it was possible to do well.

#### The checklist issue

This is a recurring problem. It is very disappointing that it is necessary to mention it again and to point out that it is probably the issue which results in candidates presenting scripts which are at best marginal and, all too often, are simply not good enough to pass.

As highlighted by the examiners in their individual reports, too many candidates presented scripts which gave the appearance of having been written with the benefit of having committed checklists to memory and little more. It is of course for individual candidates to determine how to learn and recall knowledge, but simply regurgitating a checklist in answer to a question, without having due regard to the facts of the question and the specific wording of the requirements, is rarely if ever the best approach. This approach usually results in time spent writing, sometimes long, paragraphs or bullet point lists for which few or no marks can be given. More importantly it does not demonstrate to the examination team that the candidate has understood the subject or what is required. This scattergun approach can result in some basic marks being awarded but it will always be difficult to award good holistic marks. The importance of these is discussed below.

The examination team has regularly debated the reason why candidates persist in taking the scattergun approach. The answer is that candidates often appear to lack either practical experience in the particular subject or procedure being examined, or they are unable to apply experience and common sense to solving the problem posed. Or both. In such circumstances, under examination conditions, candidates feel that they have little choice but to fall back on what they have learnt in the classroom. But, being an Insolvency Practitioner demands an ability to think and to solve problems, all supported by sound technical and legal knowledge. It does not demand an ability to trot out checklists, sections, rules, regulations etc. without understanding them and knowing how and when they should be applied.

#### Answering the question

This is not, or should not, be difficult. Candidates must answer the question asked and not the question that they think has, or should have, been asked. Before starting to write, candidates should take time to ensure that they

identify what is being asked of them and not waste time and opportunity by going down blind alleys and presenting irrelevancies.

### **Holistic marks**

This year holistic marks have again played a major part in helping to decide whether candidates should pass or fail a paper. Holistic marks in themselves do not determine whether a script should pass or fail, but are an important indicator of quality both of individual questions and also scripts overall.

At the margins the award of 2 holistic to the answer to a question is an indication that the answer presented is not quite sufficient. It has merit but does not include quite enough relevant information, and/or it does not demonstrate competence in dealing with the question. By contrast the award of 3 holistic marks to the answer to a question is an indication of an acceptable answer. It includes just sufficient relevant information, any examples given are mainly correct and it demonstrates competence in dealing with the question.

The dividing line between being awarded 2 or 3 holistic marks is narrow but vitally important. It is always going to be difficult for the examination team to convince itself that an answer which does not demonstrate understanding and/or does not seek to deal with the question posed, should be awarded more than 2 holistic marks. Answers which adopt the checklist regurgitation approach, without more, are likely to fall into this category. Candidates who present scripts which, across all four questions, have overall been awarded holistic marks in single figures will not pass. Those scripts awarded 10 or 11 holistic marks are invariably borderline and are increasingly at risk of being failed. Across a paper as a whole, candidates must aim to present, on average, 4 acceptable or better answers scoring overall at least 12 holistic marks.

This year candidates in England and Wales passed a total of 98 papers. Included amongst these were just 4 scripts that were awarded fewer than 11 holistic marks. As in recent years too many scripts were presented which, once marked, were marginal. Candidates who persist in doing this are running a significant risk that they will fail and this year many did.

## JOINT INSOLVENCY EXAMINATION BOARD

### CORPORATE PAPER

#### EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2019 SITTING

##### **General comments**

Compared to previous years it appeared that there was an increase in the proportion of candidates using a 'scattergun' approach to answering the requirements, often failing to address the specific circumstances of the question. Many candidates took the opportunity to 'dump' information on subjects tangentially connected to the question in the hope of picking up marks. A significant number of candidates spent considerable time in listing formulaic answers that did not address the requirements and then appear to have then found themselves running out of time.

In a similar vein to the above, many candidates struggled to demonstrate the depth of knowledge and ability to adapt their approach to the situation, focusing on quantity rather than the quality of points. Marks are awarded for explained and good quality points rather than vague answers, and within the mark plan marks may be weighted to account for complexity or importance. As such candidates should not focus entirely on ensuring that they have listed as many individual points as possible and certainly should not repeat previous points in the hope that markers will miss the duplication.

**Question 1**

Candidates had to consider whether it was ethically appropriate to accept the position of officeholder for three scenarios and set out the ethical considerations, safeguards that could be put in place and ultimately whether the appointment should be accepted.

Generally, candidates were able to identify matters applicable to all scenarios such as approaching the practitioner's regulator for guidance, documenting decisions and consulting with internal ethics partners. Some candidates listed generic answers that did not achieve marks including items such as "check you are a qualified IP", "check that you are not mentally incapacitated", "check you have a bond" and other similar non-ethical matters.

**Requirements**

**For each of the three situations described, set out the relevant ethical considerations and explain what safeguards could be put in place in relation to your proposed appointment. In each case state, giving your reasons, whether you think it would be appropriate for you to accept the appointment.**

**(a) You are Administrator of Doodah Signs Limited and your proposals, approved by creditors, stated that the Administration would exit into Creditors' Voluntary Liquidation and that you would act as Liquidator. Subsequent to your proposals being accepted you have received a complaint from a relatively small creditor of the company stating that they believe you were negligent in selling the trade and assets on deferred terms, given that the acquiring company has gone into Liquidation leaving the majority of the consideration unpaid. (4 marks)**

**Part (a)** was a situation where an administrator had received a complaint as to their conduct and was considering an appointment in the subsequent liquidation. Out of the three parts of the question, the average mark percentage was the highest, but some candidates wasted time outlining what the practitioner should have done at the time or how the deferred consideration could be collected rather than addressing the current position and the ethical question.

**(b) You were engaged by Molinaro Equipment Limited to undertake an accelerated sales process of its trade and assets in the expectation that the sale would be completed by an Administrator. Despite your best efforts, the Directors were not particularly co-operative during the process and did not allow the business to be marketed widely. The Directors have made an offer for the assets in line with agent valuations, to be concluded immediately following the appointment of an Administrator. If the sale does not complete the business will close and realisations will be significantly lower than if the Directors' offer is accepted. You have consulted with the major creditors and they have agreed that, given the circumstances, a sale to the Directors should be completed. It is proposed that you should act as Administrator. (7 marks)**

**Part (b)** focused on a situation where there was a potential pre-packaged sale of the business and assets of a company and the directors had placed limitations on the ability of the proposed administrator to widely market the business for sale. Whilst generally candidates were able to identify the possibility of a self-review threat a relatively small proportion mentioned the relatively recent and high publicity case of VE Interactive. Whilst SIP16 was relevant to the situation some candidates set out in detail its requirements instead of considering the associated ethics of accepting such an imminent appointment.

**(c) Deagle 2007 Limited was a tax client of your Firm until it was placed into Members' Voluntary Liquidation with a Partner in a local firm of Insolvency Practitioners acting as Liquidator. Your tax colleagues had assisted Deagle 2007 Limited in relation to the company's corporation tax returns and you prepared the Declaration of Solvency for the Directors based on information the Directors had provided.**

**At the date of liquidation, the company's Declaration of Solvency stated that it had over £10 million of cash at bank and its only liability was a £1 million intercompany debt. Since the Declaration of Solvency was signed a significant complex liability involving a large number of claimants has been identified in relation to potential mis-selling claims and the Liquidator believes it is necessary to 'convert' the Liquidation to a Creditors' Voluntary Liquidation.**

**Due to the complexity of the situation, the existing Liquidator does not believe that he has the required expertise available to him and has suggested that you should be appointed in his place. Your Firm's Managing Partner is keen for you to accept the appointment as it is estimated that, due to its complexity, the Liquidation fees going forward will be in excess of £1 million. (9 marks)**

**Part (c)** asked candidates to consider the appointment as a liquidator in relation to a conversion from an MVL to a CVL where another firm had acted as liquidator. In the circumstances the firm considering accepting the appointment had provided other services to the company and had had some involvement in matters connected to the MVL. As one would expect most candidates were able to identify that the potential high fee was irrelevant to the decision as to whether to accept the appointment and that there would be a self-review threat in connection with the work undertaken on the Declaration of Solvency. Most candidates outlined the principles of a Material Professional Relationship and identified methods of mitigating the ethical risks.

## Question 2

**(a) Set out the key practical tasks specific to these circumstances that you would seek to undertake prior to your appointment. (10 marks)**

### Part (a)

This question asked candidates to set out for practical considerations before taking the appointment as Administrator of a childcare provider. The aim of the question was to test the candidates' ability to identify areas of risk and provide practical ways of dealing with them.

Most candidates were able to identify general issues applicable to most appointment situations including the importance of health and safety and employee retention. Those candidates that achieved a good mark also identified potential sector specific issues and the impact of regulation.

Generally, the question was well answered but many candidates appeared to simply list out a general checklist rather than apply it to the situation and some candidates wasted time setting out post appointment actions and general, non-practical, points such as checking the qualification to act as an Insolvency Practitioner.

**(b) Explain how, in these particular circumstances, the leased property may be dealt with. (10 marks)**

### Part (b)

The question outlined that there was a leasehold property and that it was uncertain whether the proposed purchaser of the business wished to acquire/retain this. The question asked candidates to set out how the leased premises may be dealt with.

Many candidates assumed that the purchaser wished to stay in the property and did not set out how the property would be dealt with if they decided they did not require it. When answering questions where there are different potential outcomes, in order to achieve a good mark, candidates should consider and outline matters relating to each possible scenario.

As a result, generally candidates did not achieve high marks in this question. Those that did well clearly set out how the vacated property would be dealt by the administrator and how ongoing occupation could be facilitated if this was the outcome.

### Question 3

This question was broken down into 4 different parts each testing a different area of the candidates' knowledge. Generally, candidates were able to achieve a good mark for this question.

#### Requirements

##### **(a) Reservation of title claim. (7 marks)**

###### **Part (a)**

This was a reservation of title question and virtually all candidates identified that the claim was being made under an 'all monies' clause. Despite this very few candidates demonstrated an understanding as to how this would affect the claim with very few, for example, checking to determine if the account balance had ever reached zero.

Generally whilst candidates appeared to have the technical knowledge required many failed to apply these principles to the specific examination question. A proportion of candidates determined that due to the time that had elapsed that there was little that could be done to progress the claim and suggested that an application could be made to court for directions.

The better answers identified the risk for use of the stock lay with the Administrator and set out how this liability would be dealt with in light of there being a purchaser of the business and its assets.

##### **(b) Outstanding customer debt. (6 marks)**

###### **Part (b)**

In this part of the question candidates had to consider how to deal with a response from a debtor stating that the company was subject to a CVA and therefore unable to pay the debt.

Most candidates were able to pick up marks for seeking information in relation to the CVA but only a small proportion of candidates considered the alternative scenarios of the debt being within the CVA or being post CVA, thereby limiting the marks available.

Many candidates identified that it may be possible to challenge the CVA on the grounds of a material irregularity. A number of candidates set out a highly detailed account of the process and the length of some of these responses were disproportionate to the marks available.

Strong candidates discussed the potential impact on the strategy of the Administration should the debt be irrecoverable.

##### **(c) Items in the possession of a former Employee. (4 marks)**

###### **Part (c)**

Candidates were asked to set out how they would deal with an employee that was refusing to return company property, due to amounts owed to him.

The majority of candidates demonstrated an understanding of the powers of an Administrator to demand delivery under Section 234, but many did not consider that it would be best to attempt to find an alternative and less drastic/costly solution before resorting to court action.

Many candidates identified data protection issues and highlighted that the Administrator should seek to ensure that the employees claims had been dealt with by the RPS.

##### **(d) Accounting information. (3 marks)**

###### **Part (d)**

This was a situation whereby an IT supplier had suspended access to a company's IT system. In a similar vein to part (c) many candidates immediately resorted to threatening letters and court action. In practical terms the enforcement of powers through a court application should be considered as a last resort - only a small proportion of candidates even considered simply asking the supplier to re-instate access, presumably assuming that they would refuse to do so.

#### Question 4

The 40-mark question was broken down into 5 different sections and had a numeric bias requiring various calculations.

Overall the average mark for this question was relatively low however this was skewed by the very low average marks attained in part (d) and (e).

**(a) Briefly explain and quantify the claims that the Liquidator could make either to minimise the amount due to HMRC or to recover funds from HMRC for the estate. (10 marks)**

##### Part (a)

Candidates were required to outline how a liquidator may reduce HMRC's claim or identify recoveries that may be made into the estate from HMRC.

The majority of candidates identified the two key claims; bad debt relief and terminal loss relief and were able to set out some of the principles that apply. However very few attempted to calculate what the claim may be and how it would affect the estate. Clearly this is not a tax exam and therefore only very basic calculations were sought.

Most of the points within the mark plan were identified by one or more candidates however only a small number were able to set out enough points to achieve an overall good mark.

**(b) Calculate and set out the employee claims, clearly indicating the extent to which they are preferential and the amounts that would be paid by the Redundancy Payment Service. (8 marks)**

##### Part (b)

This was a relatively basic employee liability calculation and many candidates did well in this part of the question. A few candidates took the opportunity to write out in detail how employee claims are calculated and paid by the RPS, which was not required.

There generally appeared to be a lack of awareness and knowledge of protective awards in insolvency and how such claims are calculated and paid, and many candidates struggled to establish what residual liability would remain after payment by the RPS.

Generally, with the exception of Protective Awards, there seemed to be good knowledge of how total preferential elements of claims are calculated but less so on how this are allocated between the RPS and individual creditors.

**(c) Set out how the existing and any future funds will be disbursed from the estate, making it clear in your answer the priority of entitlement for each creditor and the expected return to each. (10 marks)**

##### Part (c)

This was a numeric question requiring completion of an outcome statement.

Generally, this was well answered, and most candidates successfully allocated the various elements into fixed and floating charges. Very few candidates linked their answers in parts (a) and (b) into the calculations.

Some candidates appeared to be confused as to the treatment of VAT within the receipts and payments account and how this fit into an outcome statement.

The requirements asked for the priority of payment to be made clear and for the expected return to each creditor to be calculated. Despite completing the outcome statement, a surprising number of candidates did not even attempt the distribution calculation missing out on relatively simple marks.

**(d) Explain how your answer to part (c) would differ had the priority agreement stated that Mr Augustine's charge ranked first. (3 marks)**



**Part (d)**

A very small minority of candidates recognised that this was a question about marshalling of security. Instead many candidates ignored the question all together.

**(e) Explain how you would deal with this situation assuming that you distribute funds to creditors on 1 September 2020. (9 marks)****Part (e)**

This part of the question introduced a situation where the insolvent estate was effectively returned to solvency due to an unexpected asset realisation. Candidates were required to set out how they would deal with the situation.

Most candidates identified that the estate was solvent, but many struggled to consider the implications that this would have (to a large extent treated as an MVL). Very few identified that creditors would be paid in full and that statutory interest would be payable. Only a few of those candidates that identified that interest was payable attempted a calculation, that had been made simple by the stated assumption that distribution would occur exactly 1 year following appointment.

Several candidates did not attempt to answer this part of the question at all and some simply listed steps that would be required to close a liquidation. As a result, there was a significant variation in the marks attained by candidates with some scoring very high marks and some nil or very little.

## MARK PLAN

### Question 1

#### GENERAL POINTS

<ul style="list-style-type: none"><li>• Document decisions</li></ul>
<ul style="list-style-type: none"><li>• Regulatory helplines</li></ul>
<ul style="list-style-type: none"><li>• Legal advice</li></ul>
<ul style="list-style-type: none"><li>• Consult ethics partner/compliance department</li></ul>
<ul style="list-style-type: none"><li>• Document decisions</li></ul>
<ul style="list-style-type: none"><li>• Regulatory helplines</li></ul>

#### PART A

<ul style="list-style-type: none"><li>• Liquidator would review the conduct of the Administrator; self-review threat</li><li>• Check that the company validly exit into CVL</li></ul>
<b>Safeguards</b>
<ul style="list-style-type: none"><li>• Internal independent review of complaint and situation;</li><li>• Joint appointment with external IP to review administrator's conduct</li><li>• Consideration should be given to creditors' choice of IP</li><li>• There could be additional costs to creditors of using a new IP</li><li>• Consult with other major creditors</li><li>• Change of IP within firm not likely to address issue</li></ul>
<b>Conclusion</b>
<ul style="list-style-type: none"><li>• On balance, given the majority of consideration unpaid and therefore on the face of it a potentially valid issue, do not accept the appointment</li></ul>

#### PART B

<ul style="list-style-type: none"><li>• Administrator would be responsible for reviewing the directors' conduct in the lead up to appointment</li><li>• There is a potential self-review threat as involved in marketing the business for sale</li><li>• Obligations in relation to the business sale are set out in SIP 16</li><li>• VE Interactive – "not necessarily mean they should resign from their appointments [as Administrators]"</li><li>• Acting for the Company not the directors; ensure advice, etc. was not to the directors personally</li></ul>
<b>Safeguards</b>
<ul style="list-style-type: none"><li>• Different Firm IP for Administration appointment</li><li>• Internal review of pre-pack prior to completion</li><li>• Recommend purchaser approaches the Pre-pack pool</li><li>• Ensure that work undertaken and correspondence with directors regarding responsibilities etc. is documented on file.</li><li>• Investigations conducted by independent team to those involved in the sale process.</li></ul>
<b>Conclusion</b>
<ul style="list-style-type: none"><li>• Creditors consulted and support transaction</li><li>• Every effort made by IP; therefore, unlikely to be criticism</li><li>• Creditors may be prejudiced by a change of IP/strategy</li><li>• Safeguards can be put in place</li><li>• Accept appointment</li></ul>

#### PART C

<ul style="list-style-type: none"><li>• Due to previous relationship there could be a perceived conflict of interest</li></ul>
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<ul style="list-style-type: none"><li>• As an existing client there could be a familiarity threat compromising objectivity</li></ul>
<ul style="list-style-type: none"><li>• There is a potential self-review threat relating to the declaration of solvency; would need to establish extent of work but the question suggests that it was just putting information provided into appropriate format. Therefore, may not be a conflict in itself.</li></ul>
<ul style="list-style-type: none"><li>• There could be a self-review threat if the tax work could or should have identified the potential liability.</li></ul>
<ul style="list-style-type: none"><li>• Consider why we were not appointed liquidators in the MVL.</li></ul>
<ul style="list-style-type: none"><li>• Consider if the nature of the liability may be that it couldn't have reasonably been identified or expected.</li></ul>

## Question 2

### PART A

<ul style="list-style-type: none"><li>• Contact OFSTED</li></ul>
<ul style="list-style-type: none"><li>• Health and Safety review</li></ul>
<ul style="list-style-type: none"><li>• Site visit</li></ul>
<ul style="list-style-type: none"><li>• Check DBS records</li></ul>
<ul style="list-style-type: none"><li>• Check qualification records</li></ul>
<ul style="list-style-type: none"><li>• Contact parents to explain situation (potentially)</li></ul>
<ul style="list-style-type: none"><li>• Consider specialist sector assistance</li></ul>
<ul style="list-style-type: none"><li>• Establish first aiders/fire marshals</li></ul>
<ul style="list-style-type: none"><li>• Establish any other key employees</li></ul>
<ul style="list-style-type: none"><li>• Check key processes – e.g. safeguarding/parent pick up</li></ul>
<ul style="list-style-type: none"><li>• Ask director to commence consultation with employees</li></ul>
<ul style="list-style-type: none"><li>• Prepare cash flow and trading account forecast for the expected period of trade</li></ul>
<ul style="list-style-type: none"><li>• Establish landlord position</li></ul>
<ul style="list-style-type: none"><li>• Contact lender to explain situation and strategy (if not already)</li></ul>
<ul style="list-style-type: none"><li>• Discuss funding requirements for trading period with lender</li></ul>
<ul style="list-style-type: none"><li>• Obtain indemnity from purchaser for trading losses</li></ul>
<ul style="list-style-type: none"><li>• Contact open cover insurers to discuss the situation</li></ul>
<ul style="list-style-type: none"><li>• Establish payment terms and whether any service has been paid in advance</li></ul>
<ul style="list-style-type: none"><li>• Establish staff mobilisation plan for site attendance following appointment</li></ul>
<ul style="list-style-type: none"><li>• Ensure potential purchaser bound into purchase</li></ul>
<ul style="list-style-type: none"><li>• Check deliverability of offer – funding, sector expertise etc.</li></ul>

## PART B

<ul style="list-style-type: none"><li>• Obtain a copy of the lease</li></ul>
<ul style="list-style-type: none"><li>• Establish rent outstanding</li></ul>
<ul style="list-style-type: none"><li>• Establish if any guarantors to the lease</li></ul>
<ul style="list-style-type: none"><li>○ If there are contact guarantors</li></ul>
<ul style="list-style-type: none"><li>• Seek legal advice on the lease and its ability to be transferred, assigned, terminated for insolvency events</li></ul>
<ul style="list-style-type: none"><li>• Obtain a valuation of the lease</li></ul>
<ul style="list-style-type: none"><li>○ However unlikely to be any value as recent</li></ul>
<ul style="list-style-type: none"><li>• Establish if the purchaser wishes to remain in occupation</li></ul>
<ul style="list-style-type: none"><li>• If wish to stay long term agree a price for the Company's interest in the lease</li></ul>
<ul style="list-style-type: none"><li>• If does not wish to remain</li></ul>
<ul style="list-style-type: none"><li>○ Notify landlord that property not being used</li></ul>
<ul style="list-style-type: none"><li>○ Consider marketing for sale if any value</li></ul>
<ul style="list-style-type: none"><li>○ Discuss situation with guarantor (if any) – consider if they wish to take a lease assignment.</li></ul>
<ul style="list-style-type: none"><li>○ try to agree a surrender with landlord</li></ul>
<ul style="list-style-type: none"><li>○ If no surrender establish any termination terms of lease</li></ul>
<ul style="list-style-type: none"><li>○ Consider exercising any break rights to minimise creditor claim</li></ul>
<ul style="list-style-type: none"><li>• If do wish to remain,</li></ul>
<ul style="list-style-type: none"><li>○ Licence to occupy for a short period</li></ul>
<ul style="list-style-type: none"><li>○ Provide purchaser with the opportunity to agree new lease with the landlord; and</li></ul>
<ul style="list-style-type: none"><li>○ Surrender of lease; or</li></ul>
<ul style="list-style-type: none"><li>○ Provide opportunity to transfer the lease</li></ul>
<ul style="list-style-type: none"><li>○ Agree terms with purchaser and landlord</li></ul>
<ul style="list-style-type: none"><li>○ Ensure licence fee covers relevant costs and current rent</li></ul>
<ul style="list-style-type: none"><li>• Rent arrears will have to be paid before assignment</li></ul>

<ul style="list-style-type: none"><li>• Public liability insurance maintained until property surrendered or fully assigned.</li></ul>
<ul style="list-style-type: none"><li>• Commission a formal review of condition to establish dilapidations</li></ul>
<ul style="list-style-type: none"><li>• Consider advice in relation to dilapidation claims</li></ul>
<ul style="list-style-type: none"><li>• If exit via liquidation, consider disclaimer if lease not surrendered</li></ul>

**Question 3**

**PART A**

<ul style="list-style-type: none"> <li>• Appears to be an 'all-monies' clause</li> </ul>																								
<ul style="list-style-type: none"> <li>• Account does not reach zero during course of trade:</li> </ul> <table border="1"> <thead> <tr> <th>Date</th> <th>Amount</th> <th>Bal</th> </tr> </thead> <tbody> <tr> <td>01/09/2018</td> <td>6,000</td> <td>6,000</td> </tr> <tr> <td>09/09/2018</td> <td>5,250</td> <td>11,250</td> </tr> <tr> <td>12/09/2018</td> <td>(6,000)</td> <td>5,250</td> </tr> <tr> <td>15/09/2018</td> <td>11,250</td> <td>16,500</td> </tr> <tr> <td>20/09/2017</td> <td>(12,000)</td> <td>4,500</td> </tr> <tr> <td>22/09/2018</td> <td>7,000</td> <td>11,500</td> </tr> <tr> <td>28/09/2018</td> <td>11,250</td> <td>22,750</td> </tr> </tbody> </table>	Date	Amount	Bal	01/09/2018	6,000	6,000	09/09/2018	5,250	11,250	12/09/2018	(6,000)	5,250	15/09/2018	11,250	16,500	20/09/2017	(12,000)	4,500	22/09/2018	7,000	11,500	28/09/2018	11,250	22,750
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01/09/2018	6,000	6,000																						
09/09/2018	5,250	11,250																						
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22/09/2018	7,000	11,500																						
28/09/2018	11,250	22,750																						
<ul style="list-style-type: none"> <li>• Therefore, not necessary to identify goods to particular invoices</li> </ul>																								
<ul style="list-style-type: none"> <li>• Items clearly marked as being supplied by Birdlip.</li> </ul>																								
<ul style="list-style-type: none"> <li>• Terms and conditions are on reverse of invoice – post contractual</li> </ul>																								
<ul style="list-style-type: none"> <li>• May be incorporated into contract through course of dealing.             <ul style="list-style-type: none"> <li>○ Only trading with supplier for a short period (4 weeks); may not be sufficient to prove course of dealing</li> <li>○ Payments made and therefore likely that invoices containing the clauses have been received by the Company.</li> </ul> </li> </ul>																								
<ul style="list-style-type: none"> <li>• Seek legal advice as to whether this could be considered sufficient course of dealing for the terms to be adequately incorporated.</li> </ul>																								
<ul style="list-style-type: none"> <li>• Seek further detail as to whether terms incorporated elsewhere</li> </ul>																								
<ul style="list-style-type: none"> <li>• If no further detail (and subject to legal advice) reject claim on the basis of failure to incorporate the terms.</li> </ul>																								
<ul style="list-style-type: none"> <li>• If subsequently determined that the claim is valid:</li> </ul>																								
<ul style="list-style-type: none"> <li>• Administrator may be liable for all stock on site at appointment             <ul style="list-style-type: none"> <li>○ 50 bags Chocolate @ £112.50 = £5,625</li> <li>○ 100 bags Molasses @ £28.00 = £2,800</li> </ul> </li> </ul>																								
<ul style="list-style-type: none"> <li>• Pay for goods used in the administration period (half)             <ul style="list-style-type: none"> <li>○ 25 bags Chocolate @ £112.50 = £2,812.50</li> <li>○ 50 bags Molasses @ £28.00 = £1,400 (CORRECT) or</li> </ul> </li> </ul>																								

<ul style="list-style-type: none"> <li>○ 50 bags Molasses @ £30.00 = £1,500</li> </ul>
<ul style="list-style-type: none"> <li>○ If unable to determine by reference to markings, assume FIFO stock to determine price per unit (most recent delivery of Molasses is cheaper than previous)</li> </ul>
<ul style="list-style-type: none"> <li>• Check terms of sale contract with Oxenton to establish how stock dealt with</li> </ul>
<ul style="list-style-type: none"> <li>• Assuming ROT stock excluded, and indemnity included contact Oxenton to make payment to supplier</li> </ul>
<ul style="list-style-type: none"> <li>• May be necessary to enforce indemnity</li> </ul>
<ul style="list-style-type: none"> <li>• Possibility that Company will have to pay for stock used by Oxenton and rely on indemnity.</li> </ul>
<ul style="list-style-type: none"> <li>• Document decisions</li> </ul>
<ul style="list-style-type: none"> <li>• Notify supplier in writing of decision</li> </ul>
<ul style="list-style-type: none"> <li>• Goods have not changed form</li> </ul>

## PART B

<ul style="list-style-type: none"> <li>• Check Crickley's status on companies house</li> </ul>
<ul style="list-style-type: none"> <li>• Contact the supervisory of the VA</li> </ul>
<ul style="list-style-type: none"> <li>• Obtain a copy of the proposal</li> </ul>
<ul style="list-style-type: none"> <li>• Obtain chairman's report</li> </ul>
<ul style="list-style-type: none"> <li>○ Obtain copy of any other reports issued by the supervisor</li> </ul>
<ul style="list-style-type: none"> <li>○ Establish the relevant date</li> </ul>
<ul style="list-style-type: none"> <li>○ Check whether part or all of debt falls within the CVA or is a post CVA liability</li> </ul>
<ul style="list-style-type: none"> <li>• If post CVA then</li> </ul>
<ul style="list-style-type: none"> <li>○ Contact Crickley and explain, demand payment</li> </ul>
<ul style="list-style-type: none"> <li>○ Consider enforcement</li> </ul>
<ul style="list-style-type: none"> <li>○ Consider notifying Supervisor if does not pay as could be a term of default.</li> </ul>
<ul style="list-style-type: none"> <li>• If any pre-CVA</li> </ul>
<ul style="list-style-type: none"> <li>○ Confirm if a proof of debt has been submitted into the CVA</li> </ul>
<ul style="list-style-type: none"> <li>○ If not submit proof of debt to Supervisor</li> </ul>



<ul style="list-style-type: none"> <li>○ Ensure Supervisors' records updated with Administrators' details</li> </ul>
<ul style="list-style-type: none"> <li>• Consider the impact of the CVA on the Administration in terms of remaining term of CVA and commerciality of extending administration.</li> </ul>
<ul style="list-style-type: none"> <li>• Consider bad debt relief claim in relation to the debt</li> </ul>
<ul style="list-style-type: none"> <li>• Check whether any other rights such as ROT</li> </ul>
<ul style="list-style-type: none"> <li>• Consider if it would be appropriate and commercial to challenge the CVA.</li> </ul>
<ul style="list-style-type: none"> <li>• Monitor the progress of the CVA and any distributions payable to the company.</li> </ul>

**PART C**

<ul style="list-style-type: none"> <li>• Establish value of equipment and cost of collection</li> </ul>
<ul style="list-style-type: none"> <li>• Establish how much employee owed</li> </ul>
<ul style="list-style-type: none"> <li>• Establish what is on computer - Data protection issues in relation to contents</li> </ul>
<ul style="list-style-type: none"> <li>• Consider whether reasonable to offer to sell equipment to the employee to realise some value and deal with issue.</li> </ul>
<ul style="list-style-type: none"> <li>○ Would require undertaking to wipe and destroy data/software</li> </ul>
<ul style="list-style-type: none"> <li>• Consider blocking mobile phone</li> </ul>
<ul style="list-style-type: none"> <li>• Write to employee stating:</li> </ul>
<ul style="list-style-type: none"> <li>○ Demand delivery up of items under s234 Insolvency Act 1986 and threaten application to court including an order for costs</li> </ul>
<ul style="list-style-type: none"> <li>○ Company property; cannot be sold, used or otherwise disposed of</li> </ul>
<ul style="list-style-type: none"> <li>○ Confidential information on the items</li> </ul>
<ul style="list-style-type: none"> <li>○ Software licences cannot be used</li> </ul>
<ul style="list-style-type: none"> <li>• Unlikely to be cost effective to recover</li> </ul>
<ul style="list-style-type: none"> <li>• Provide details of how to claim outstanding liabilities from the RPS</li> </ul>
<ul style="list-style-type: none"> <li>• Provide employee details to the RPS if not already done so</li> </ul>

**PART D**

<ul style="list-style-type: none"> <li>• Contact supplier to obtain access</li> </ul>
---

<ul style="list-style-type: none"><li>○ Explain needed for investigations</li></ul>
<ul style="list-style-type: none"><li>○ In the interests of creditors as a whole, including them</li></ul>
<ul style="list-style-type: none"><li>● If access refused, consider:</li></ul>
<ul style="list-style-type: none"><li>○ Establish what payment the supplier requires for access</li></ul>
<ul style="list-style-type: none"><li>○ Make a formal request making reference to S236</li></ul>
<ul style="list-style-type: none"><li>○ Consider cost/benefit of s236 application v payment for access</li></ul>
<ul style="list-style-type: none"><li>○ Making a Section 236 application.</li></ul>
<ul style="list-style-type: none"><li>● S233A Insolvency Act 1986</li></ul>
<ul style="list-style-type: none"><li>● May be necessary for the officeholder to provide a personal guarantee</li></ul>

## Question 4

### PART A

<b>Bad debt relief claim</b>				
<ul style="list-style-type: none"> <li>• Appears to be VAT registered</li> </ul>				
<ul style="list-style-type: none"> <li>• Debts did not recover full value</li> </ul>				
	Realised	Recovery - per Q	Calculation	Output
Book value	135,000	60%	$135000/60\%=$	225,000
	Realised	Book Value	Calculation	Output
Bad debt	135,000	225000	$225000-135000=$	90,000
	Bad Debt	Net	Calculation	Output
VAT Element	90,000	75000	$90000-(90000/1.2)=$	15,000
<ul style="list-style-type: none"> <li>• £15,000 VAT bad debt relief claim</li> </ul>				
<ul style="list-style-type: none"> <li>• Realisation into the estate (not set off)</li> </ul>				
<ul style="list-style-type: none"> <li>• Debt must be 6 months overdue</li> </ul>				
<ul style="list-style-type: none"> <li>• Output VAT must have been paid</li> </ul>				
<ul style="list-style-type: none"> <li>• Have to retain certain information</li> </ul>				
<b>Terminal loss relief claim</b>				
<ul style="list-style-type: none"> <li>• Losses for final 12 months of trade</li> </ul>				
<ul style="list-style-type: none"> <li>• Carried back against prior 3 years</li> </ul>				
<ul style="list-style-type: none"> <li>• Losses £600,000, profits in last 3 years exceed this</li> </ul>				
<ul style="list-style-type: none"> <li>• Loss can be carried back for relief</li> </ul>				
<ul style="list-style-type: none"> <li>• <math>£600,000 \times 20\% = £120,000</math> reclaim</li> </ul>				
<ul style="list-style-type: none"> <li>• £25,000 of tax not paid</li> </ul>				
<ul style="list-style-type: none"> <li>• Reclaim of £100,000</li> </ul>				
<ul style="list-style-type: none"> <li>• Subject to crown set off                             <ul style="list-style-type: none"> <li>○ PAYE £50,000</li> <li>○ RPS claim</li> </ul> </li> </ul>				

## PART B

Salary	52,000
Weekly pay	1,000
Stat limit	525

		RPS			Residual							
		Total	Pref	Non-pref	Total	Pref	Non-pref					
Arrears of pay	2 weeks	2,000	800	1,200	2x£525	1,050	1050/2000x800	420	630	950	380	570
Redundancy	see below	2,625	-	2,625	as left	2,625	-	-	2,625	-	-	-
Notice	see below	12,123	-	12,123	see below	3,163	-	-	3,163	8,960	-	8,960
Protective Award	see below	13,000	-	13,000	see below	3,150	-	-	3,150	9,850	-	9,850
		<u>29,748</u>	<u>800</u>	<u>28,948</u>		<u>9,988</u>		<u>420</u>	<u>9,568</u>	<u>19,760</u>	<u>380</u>	<u>19,380</u>

### Redundancy

Age	25		
Service	7		
Weeks due	Years	Multiplier	
Under 22 years	4	0.5	2
	3	1	3
			<u>5</u>
Capped at weekly limit			2625

### Protective Award

More than 20 employees made redundant in last 12 months  
 Assume maximum award - 90 days (13 weeks)  
 RPS only pay out up to 8 weeks  
 Arrears of wages counts within the 8 weeks paid by RPS  
 Not preferential as forms part of arrears of pay and £800 limi reached

		Total	
Weeks			13
Weekly pay			<u>1,000</u>
Total due			13,000
RPO claim			
Weeks	(8 - 2 week arrears)	6	
Weekly limit		<u>525</u>	
Total Paid by RPS			(3,150)
Balance			<u>9,850</u>

### Notice Pay

		Claim	Mitigation	Net
Statutory Notice	7 Weeks	3675 7x£525	511.7	3163.3
Contractual Notice	3 months	13000 £52,000/12 x 3	877.2 (assumed 12 weeks)	12122.8

## PART C

			Total	Fixed	Floating
Realisations			385,100	250,000	135,100
Agents costs			(3,000)	(3,000)	
Legal costs			(2,500)		(2,500)
Other costs			(300)		(300)
Current position			379,300	247,000	132,300
Bad debt relief	From part (a)		15,000		15,000
Loss relief claim	From part (a)	£120,000 (Gross) - £25,000 CT outstanding - £50,000 (PAYE) - £9988.3 (RPS Set off)	35,012		35,012
Liquidator costs	Per question		(25,000)	(15,000)	(10,000) Any reasonable allocation
Fixed Charge claim - Trustees of the Fescue Pension scheme			(200,000)	(200,000)	Land Registry registration ranks first
Fixed Charge claim - Mr Augustine			(32,000)	(32,000)	
Available for preferential creditors			172,312	-	172,312
Preferential creditors	RPS		-	Discharged through crown set off	
	Employee	From part (b)	(380)		
Amount available for prescribed part			171,932		
Prescribed part			(37,386)		
Amount available for floating chargeholder			134,545		
Floating chargeholder		175000-32000	(143,000)		
Shortfall to chargeholder			(8,455)		
Prescribed part			37,386		
Amount available for unsecured, non-preferential creditors			37,386		
HMRC	No claim after part (a)		0		
RPS	No claim after crown set off		0		
Employees			(19,380)		
Suppliers			(50,000)		
Deficit to creditors			(31,993)		
Returns					
Trustees of the Fescue Pension scheme		200,000	100.0%		
Mr Augustine		166,545	95.2%		
Preferential creditors		380	100.0%		
Non-preferential, unsecured creditors			53.9%		
Employees	-54%x-19379.5	10,443			
Total employee		10,823			
Suppliers	-54%x-50000	26,943			

## PART D

<ul style="list-style-type: none"><li>• Mr Augustine has a fixed and floating Charge, the Pension scheme a fixed charge only</li></ul>
<ul style="list-style-type: none"><li>• Therefore, after payment of the first ranking chargeholder there would only be £54,500 left for the second chargeholder.</li></ul>
<ul style="list-style-type: none"><li>• As the second chargeholder has no floating charge the marshalling principal would be applied</li></ul>
<ul style="list-style-type: none"><li>• As such it would be assumed that the first chargeholder would rely on its floating charge initially allowing the second chargeholder to effectively benefit from the floating charge.</li></ul>
<ul style="list-style-type: none"><li>• The overall result would be the same but the loss in the outcome statement would be suffered by the second ranking chargeholder; in this case the Pension scheme.</li></ul>

## PART E

<ul style="list-style-type: none"><li>• The estate is now 'solvent'</li></ul>
<ul style="list-style-type: none"><li>• Not necessary to 'change' insolvency process</li></ul>
<ul style="list-style-type: none"><li>• CVL liquidator can distribute to shareholders</li></ul>
<ul style="list-style-type: none"><li>• Could consider exit into CVA</li></ul>
<ul style="list-style-type: none"><li>• Tax may be payable on the IRHP refund<ul style="list-style-type: none"><li>○ If so account to HMRC for the tax</li></ul></li></ul>
<ul style="list-style-type: none"><li>• Statutory interest payable on unsecured debts</li></ul>
<ul style="list-style-type: none"><li>• 1 year interest payable on unsecured debts</li></ul>
<ul style="list-style-type: none"><li>• Interest payable at 8% p.a.</li></ul>
<ul style="list-style-type: none"><li>• Employee £15,800 interest = £1,264</li></ul>
<ul style="list-style-type: none"><li>• Suppliers £50,000, interest = £4,000</li></ul>
<ul style="list-style-type: none"><li>• Distribution to shareholders</li></ul>
<ul style="list-style-type: none"><li>• Reassess bonding level</li></ul>

## JOINT INSOLVENCY EXAMINATION BOARD

### PERSONAL INSOLVENCY

#### EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2019 SITTING

##### **Examiner's comments**

As indicated in previous reports, candidates should answer the questions by reference to the information that is provided in the question. Too many candidates regurgitated checklists without seemingly giving any consideration to whether the answer was appropriate in the circumstances. This was particularly evident in question 3 when candidates were asked to write to the debtor to advise on the consequences of a bankruptcy order being made against him. Many candidates failed to consider the facts of the question and the most pressing implications such as a loss of livelihood and home, instead writing letters advising that Mr Mangle (a pub landlord) could not become a Member of Parliament or an Insolvency Practitioner. Whilst checklists may form a useful revision tool, candidates should ensure that they apply their knowledge to the facts of the question. Credit will not be giving for simply writing out a checklist when parts of that checklist are irrelevant given the facts of the question.

**Personal Insolvency Exam  
November 2019  
Examiners' comments**

**Question 1**

Generally the question was answered well, with the first two parts, of the three part question, producing the stronger answers.

**Requirements**

**(a) Set out the steps that you should take to secure your interest in the property. (3 marks)**

In part a most candidates recognised the need to insure the property, and take steps to notify the bankrupt and her occupant son, together with the secured lender, of the trustee's interest. Whilst the majority of the candidates understood the need to check the Land Registry's records, frequently there was no explanation as to why this was necessary. This was a property solely owned by the bankrupt but most candidates wrongly assumed that a restriction or caution would need to be registered by the trustee.

**(b) Explain how you would realise your interest in the property, taking into account the specific circumstances of the case. (12 marks)**

In part b the strongest answers recognised that the bankrupt's disabled son, who occupies the property, would significantly affect the strategy employed by the trustee when seeking to realise his/her interest. Those answers, of which there were a small number, also identified that the equity release loan would quickly erode the value of the trustee's interest in the property, and that this would make a charge in favour of the bankruptcy estate an unattractive option. Those candidates that scored highly on this part of the question both identified that there may be "exceptional circumstances" that would affect an application for possession and sale, and set out practical steps in dealing with the property. Examples of this include obtaining valuations, communicating with the bankrupt, and collating information in relation to the bankrupt's son's housing needs. Too many candidates wasted time contemplating an annulment of the bankruptcy as a way of realising the trustee's interest in the property.

**(c) Explain the steps that you should take if you receive a letter of complaint from Mrs Lawrence regarding your actions. What steps could be taken by Mrs Lawrence if she does not feel that her complaint has been addressed by you? (5 marks)**

In part c most candidates were aware of the need to communicate with the bankrupt following her complaint, and identified the bankrupt's option of making an application under section 303 of the Insolvency Act 1986. It was disappointing that only a small number of candidates mentioned the Insolvency Complaints Gateway, and too many assumed that the complaint was a challenge to the trustee's remuneration despite there being no suggestion of this in the question.



## Question 2

This question required candidates to set out the arrangements and additional steps a sole IP at a multi-partner practice should make ahead of his impending retirement. The question also required candidates to comment on other circumstances where an IP might cease to act.

### Requirements

**(a) Set out the arrangements that an only remaining Authorised Insolvency Practitioner such as Mr Robinson should make regarding succession planning generally. (12 marks)**

The question was, on the whole, poorly answered; very few candidates mentioned the profession's Insolvency Guidance Paper on Succession Planning, and only a handful of candidates were able to say what the Guidance Paper sets out in any detail, or make any relevant points about it. Consequently, almost all candidates scored low marks for the first part of the question. Candidates are reminded that all areas of the syllabus are examinable, and they should therefore ensure they have an understanding of areas that are tested less often, such as the Guidance Papers.

**(b) What additional steps will Mr Robinson need to take in advance of his retirement? (5 marks)**

Most candidates were able to make some good points on the practical and legal aspects of dealing with a retiring IP's casework, and many candidates scored well in this area. However, a significant number of candidates failed to read the question and set out unnecessary details of post-retirement events.

**(c) Other than retirement, what are the other circumstances in which an Authorised Insolvency Practitioner might cease to act in relation to formal insolvency appointments? (3 marks)**

Candidates on the whole were able to say in what other circumstances an IP might cease to act, with reference to the open book.

### Question 3

Answers to what was considered a relatively straightforward question were generally quite poor.

This question gave candidates the opportunity to demonstrate their ability to think practically, but unfortunately too many candidates 'brain dumped' and wrote out checklists which did not assist the candidate in answering the question. When asked to advise a specific individual about the consequences for them of being made bankrupt, candidates should focus on the implications for that individual. There was no suggestion from the question that Mr Mangle was intending to stand as a Member of Parliament so his inability to now do so was unlikely to be a consideration for him.

#### Requirements

**Write a letter to Mr Mangle. In your letter:**

**(a) Explain to Mr Mangle whether he is obliged to continue to follow the Official Receiver's instructions to cease trading and close the pub. Explain any implications for Mr Mangle if he fails to do as the Official Receiver has instructed. (2 marks)**

In part a most candidates were able to explain that Mr Mangle had a duty to co-operate with the OR, that he would need to deliver up books and records and if he did not co-operate, his discharge could be suspended or he could be made subject to a BRO.

**(b) Set out the consequences for Mr Mangle of a bankruptcy order having been made against him. (6 marks)**

However in part b many candidates went into 'checklist mode'. Whilst some consequences of bankruptcy were clearly relevant to Mr Mangle i.e. he was unable to obtain credit of £500+, unable to be a director, his assets had vested in the Official Receiver, only the better scoring candidates were able consider the question and comment on the implications by reference to the facts i.e. the lease potentially being terminable upon bankruptcy resulting in Mr Mangle having nowhere to live or that his bank account maybe frozen. A number of candidates noted the issue of the premises licence, but very few advised that an urgent application would need to be made to transfer the licence to another person within 28 days of the bankruptcy order.

**(c) In light of his circumstances, set out the options that are available to Mr Mangle, clearly giving your advice as to how he should proceed. As part of providing this advice, set out the practical next steps to be taken. (12 marks)**

In part c most candidates recognised that the options were to do nothing, propose an IVA or seek an annulment. What was disappointing given that the opening line of the question states 'You are an Authorised Insolvency Practitioner', was that many candidates were willing to advise Mr Mangle to seek the advice of an Insolvency Practitioner as regards the process and prospects of an IVA. Furthermore, the question required candidates to give advice, many simply gave the options and made no recommendation.

Candidates did explain that a review of the pub finances needed to be undertaken in order to assess whether it was profitable, but on a practical level, only the higher scoring candidates advised speaking with the brewery or considering applying for an Interim Order to prevent further action being taken. A number of candidates did advise speaking with HMRC to enquire whether they would be supportive of an IVA, but few noted that all returns would need to be filed and kept up to date. In addition many candidates failed to appreciate that once a bankruptcy order is made, it is not simply a case of paying off the petition debt and that other costs would have to be discharged such as the petition costs, Official Receiver's costs and the Secretary of State fee.

In conclusion, this question was designed to test candidates' ability to think pragmatically to a problem and many candidates lost marks and time in providing irrelevant information.

## Question 4

### Requirements

**(a) Assuming that you are going to allow the business to continue trading until it closes permanently on Christmas Eve, prepare a projected weekly cash flow forecast for the six week period beginning today. Show the final balance of funds in hand after trading ceases. State any assumptions that you make; (14 marks)**

**(b) Outline the key trading related issues that would need to be addressed if the Pet Emporium is to trade; (6 marks)**

**(c) Assuming that the business trades for the six week period, prepare an Estimated Outcome Statement which shows the likely return to the unsecured creditors from the business. State any assumptions that you make; (14 marks) and**

**(d) Comment on the options available to Sarah and Fiona to address their personal positions and your recommendation for what they should each do. (6 marks)**

This question clearly challenged candidates, with many struggling with parts b and d.

A number of candidates answered the question by completing parts b and d first, making it harder for themselves as they had to answer generically rather than having calculated the trading position / the partnership position. Candidates are reminded that questions are often structured to follow on and marks may therefore be lost if they choose to answer parts of a question out of turn.

A number of candidates completed the cashflow and outcome statement well, scoring highly, where they showed a logical approach to following the information in the question through. Some common mistakes (from a mathematical/accounting knowledge) included the terminology / interpretation of mark-up in reference to selling price versus cost and also the calculation of wages, with many candidates either not including employers NI (as an additional cost), or calculating it and deducting it from net pay. Generally however, these were small marks and many candidates recognised the need to pay arrears, and a good proportion accounted for post trading costs.

Some candidates complicated part d by preparing EOS for both sisters as well, which was not asked for in the question and will have taken time. A handful of candidates also approached the question on the basis that the partnership itself was still trading out of any insolvency process, when the question said the liquidator had been appointed. The better candidates recognised that CGT would be payable as well as the other costs of the process in addition to the IP fees.

Parts b and d varied in completion. A lot of candidates approached b as a generic 'what to consider when making a decision whether or not to trade' list, but the question asked for issues to address 'IF' the emporium is to trade, i.e. specific challenges / considerations in this instance.

Many candidates mentioned joint and several liability for the partnership debts but then didn't recognise that one partner could claim off the other for shortfall, or that the implication is that the full debt would be claimable against either partner. Many approached it as two individual partners liable for half the liability, not recognising the family relationship. Many advised Fiona to go bankrupt to 'walk away from her share of the partnership debt' and retain the element of personal injury claim not realisable in bankruptcy for the future, whilst not really recognising that this would mean the full partnership claim would fall against Sarah, who is earning a salary as a solicitor and has been caring for her sister. Several mentioned a PVA, although the partnership was already being wound up and as such it was not clear what would be achieved through a PVA. The better candidates talked through the issues and options for them both, and recognised either interlocking IVA's or informal arrangements / refinancing of Sarah's property given that there is potentially enough equity/ assets between the sisters to cover the shortfall (in time).

In relation to the numbers questions, whilst most cases the calculation was obvious, the candidates who manually typed their formula out as a note rather than just the 'answer' showed clearer workings, and were easier to give follow through. Candidates are reminded that the examiners cannot see the formulas within a cell.

**Joint Insolvency Examination  
Personal Insolvency 2019  
Marking Plan**

**Question 1**

**(a) To secure the property (3 mark)**

Obtain a copy of the register of title for the property and check whether the bankruptcy notice and restriction have been entered by the land charges department.

If not, write to the land charges department, enclosing a copy of the bankruptcy order and certificate of appointment and ask that the entries are made as soon as possible.

Alternatively, as the property is solely owned the Trustee is entitled to apply to the land registry to be registered as the proprietor.

Write to Lassiter's Loans to put them on notice of the Trustee's appointment, ask them to note the appointment and the fact that no further advances should be made to Ms Lawrence.

As the property is caught by Section 283A, serve a notice pursuant to Rule 10.167 IR 2016 on the bankrupt as soon as reasonably practicable.

Ensure that the property is adequately insured

**(b) To realise his interest (12 marks)**

Seek Mrs Lawrence's consent to access being afforded to the property in order that your agent can carry out an internal valuation of the property.

If an internal valuation is carried out, ask your agent to report to you on the extent to which the property has been modified given the son's disabilities.

If access is not afforded, ask your agent to carry out a drive by valuation.

Once the valuation has been carried out the equity position can be determined. Based on the estimated value of the property it appears that there is sufficient equity to repay all known liabilities.

Ask mortgage company to confirm whether any redemption penalties apply. Equity release plans commonly have significant early redemption penalties which could reduce the amount of equity available upon sale.

A letter should be sent to Mrs Lawrence asking whether she (or more likely a third party) is in a position to either purchase the Trustee's interest in the property or

... if she is agreeable to the property being marketed for sale voluntarily.

Given Mrs Lawrence's position, a meeting could also be offered at which both her and her son's circumstances could be discussed.

Mrs Lawrence should also be asked to provide further information regarding her son's disability in particular any medical reports which set out the extent of his disability and the potential impact of a house move.

If Mrs Lawrence does not respond or responds to advise that she is not in a position to purchase the Trustee's interest / market the property voluntarily, then the Trustee will need to consider taking action to realise his interest.

The circumstances of this case present the Trustee with two problems:-

Firstly the property is also occupied by Mrs Lawrence's disabled son.

This is likely to constitute an 'exceptional circumstance'. Following *Grant v Baker*, where an exceptional circumstance is found to exist, this should mean that realisation is suspended for months, rather than years (or indefinitely).

If proceedings do have to be issued, consideration should be given to whether a Deputy should be appointed by the Court of Protection to look after his interests.

In addition, if it becomes apparent that proceedings will have to be issued, consider attempting to engage with social services at an early stage particularly if the bankrupt and her son will be reliant upon the Council to re-house them.

Access to the property would need to be obtained to understand the nature and the extent of any adaptations.

Secondly the equity release plan has interest accruing at the rate of 6% per annum. Unless house prices are increasing at a similar rate, the equity in the property will erode as interest of approximately £8,000 will be added to the loan over the course of the next 12 months. This will then be compounded.

If the Trustee delays the realisation of his interest in the property, the equity may not be sufficient to enable creditors to be paid in full.

Query whether an agreement could be reached for the interest to be reduced or frozen.

The Trustee would need to instruct solicitors to assist in making an application for an order for possession and sale.

Whilst the Trustee could seek a charging order (s313) which would charge the property with the current value of the Trustee's interest, given the equity release loan, in the absence of house price growth, the equity in the property will erode and could mean little or no return for creditors.

### **(c) Letter of complaint (5 marks)**

Mrs Lawrence's letter should be acknowledged promptly and passed to the person within the firm responsible for complaints handling.

Having regard to Practice Note on Complaints Handling - Ensure that Mrs Lawrence is kept aware of the steps that are being taken to review and respond to the complaint and likely timescale for a substantive response.

A meeting could then be offered to try and resolve any issues.

The response should, where appropriate, provide a clear explanation of matters affecting the duties of an IP

A bankrupt has the right to make a complaint through the Insolvency Complaints Gateway which is hosted by the Insolvency Service. The bankrupt should be advised of this right when the initial response is sent.

The Insolvency Practitioner's authorising body will then consider any complaints referred to them through the gateway.

If Mrs Lawrence's concerns are not addressed, she could apply to Court pursuant to s303 IA86 on the grounds that she is dissatisfied with any act, omission or decision of the trustee.

If the complaint relates to on-going legal proceedings, Mrs Lawrence could raise any issues as part of those proceedings

## Question 2

**(a)** Insolvency appointments are personal to an insolvency practitioner who has an obligation to ensure that they are properly managed and to have appropriate contingency arrangements in place to cover a change in circumstances.

The over-riding principle is to ensure that the interests of creditors are not prejudiced.

Insolvency Practitioners must consider on a regular basis the arrangements that are in place to ensure continuity in the event of death, incapacity or retirement.

If there is another member of staff at Ramsay & Co who has sufficient expertise and experience to take over the appointments upon Mr Robinson retiring, then arrangements should be made for them to obtain their license through sitting the JIEB and applying for a licence.

If not, consider whether another qualified IP should be recruited to the practice in order that there can be an orderly handover of cases in advance of retirement.

However, as Mr Robinson is a sole practitioner he should already have in place a workable continuity agreement. This would involve have discussions with and an arrangement in place with a nominated successor.

An IP is required to lodge a copy of this continuity agreement with both his RPB and also professional indemnity insurers.

A continuity agreement should typically contains:

- i) a clear statement of the circumstances in which the agreement would become operative
- ii) the extent and frequency of disclosure to the nominated successor of case details and financial information
- iii) detailed provision regarding the steps to be taken by the nominated successor when the agreement becomes operative, ownership or access to case working papers, access to practice records and financial arrangements.

Discussions should also have taken place within Robinson & Co regarding the arrangements for succession planning to cover death, incapacity to act, retirement or leaving the firm.

In addition, consider putting in place a power of attorney and consider key man insurance to cover any costs in the event of Mr Robinson's death prior to retirement

The arrangements should be reviewed as circumstances dictate, preferably at least annually.

The nominated successor would have to consider whether the obligations arising under this continuity agreement could be properly discharged given the number and nature of cases to be taken over.

**(b)** In advance of retirement steps should be taken to review the cases and identify any that would be appropriate for closure or that can be progressed to closure within the next 2 years.

In undertaking this review, the IP should also ensure that all case files are up to date and properly maintained.

Once this review has been undertaken, depending on the number of remaining cases, if considered expedient to do so, an application could be made to Court pursuant to rule 12.36 for a block transfer order.

Whether it would be appropriate to resign rather than apply for a block transfer order will depend on how many cases remain to be transferred.

If a block transfer order is sought, the proposed recipient of the cases would have to be notified of the proposed transfer and their consents to act obtained.

The application can be made by Mr Robinson or by the person proposed to be the replacement office holder.

The Court, if it considers it appropriate to do so, can make an Order transferring all of the cases to the replacement office holder.

If there is no other insolvency practitioner at Robinson & Co, steps should be taken to ensure that the appointments are transferred in sufficient time before the retirement takes place.

If no other IP is appointed at Robinson & Co, consider ceasing to accept new appointments in the 12 months prior to the proposed retirement date or taking any future appointments jointly with another IP

Notify RPB, PI Insurer and Secretary of State of intended retirement date.

Discuss with the other partners your proposed retirement from partnership and reach agreement re terms etc

**(c)** An officeholder can also resign if they intend to cease to practice as an insolvency practitioner. However, prior to doing so, notice must be delivered to creditors with an invite to a decision procedure to consider the appointment of a replacement.

An office holder can resign on:

1. grounds of ill health
2. because the further discharge of duties is prevented or made impracticable by a conflict of interest
3. a change of personal circumstances
4. or, where two or more people are jointly appointed and it is the opinion of both/ all of them that it is no longer expedient that there should continue to be that number of joint appointees.

When removed by a decision of the creditors instigated specifically for that purpose

By Order of the Court / Court order made following annulment of a bankruptcy order / replacing nominee on application of the debtor

If appointed by the Secretary of State, a Trustee can be removed by the Secretary of State

Vacation of office on completion of bankruptcy, liquidation etc

Upon appointment of an Administrator if in office as an Administrative Receiver.

Death

Loss of authorisation ( as a result of bankruptcy, disqualified under CDDA, is subject to a moratorium under a DRO,subject to a DRO, lacks capacity, no longer fit and proper person)



### Question 3

**(a) Is Mr Mangle obliged to follow the Official Receiver's advice?**

Pursuant to Section 333 IA86 a bankrupt is under a duty to co-operate with his Trustee and do all such things as the Trustee may reasonable require.

Which could include surrendering all books, records and papers in relation to the business (s312IA86)

Failure to co-operate could result in the Trustee taking steps to suspend his automatic discharge from bankruptcy.

Practically it would be very difficult for Mr Mangle to continue to trade as all of his assets have vested in the Official Receiver who is likely to take steps to ensure that the pub is closed and the premises/ assets secure.

Given that Mr Mangle should not incur credit of more than £500, if he continues to incur credit he could be made subject to a BRO which could extend the restrictions of bankruptcy for up to a further 15 years.

**(b) What are the consequences for Mr Mangle of a bankruptcy order having been made**

All of his assets vest in the Official Receiver by operation of law. This will include the credit of £1700 held in his bank account.

Mr Mangle will be subject to the restrictions of bankruptcy until he is discharged. This means that he will be unable to obtain credit of more than £500 without disclosing the fact that a bankruptcy order has been made. This would include ordering goods to the value of £500+ which are not paid for on or before delivery.

In addition, Mr Mangle is unable to trade in a name other than the one in which he was made bankrupt and cannot act as a company director.

The lease of the pub is likely to be terminable upon a bankruptcy order being made. As it appears that no sums are due to the landlord, they may not take immediate steps to terminate the lease.

If the lease is terminated and Mr Mangle does not vacate, the landlord is likely to take steps to obtain possession of the premises leaving Mr Mangle without anywhere to live.

If the lease is not terminated by the landlord, the Official Receiver will review the terms of the lease and take valuation advice. If there is no value in the lease and it is not readily assignable, it is likely that the Official Receiver will disclaim the lease.

If the bank becomes aware of the making of the bankruptcy order, it will freeze his bank account. Mr Mangle will need to open another bank account without any credit facilities attached to it.

If Mr Mangle cannot continue to trade, he will not be able to draw a salary leaving him without an income.

The terms on which the stock was provided to the pub should be checked but it is likely that the supplier has the right to reclaim the stock upon a bankruptcy order being made.

The premises licence of the pub will lapse upon the bankruptcy order being made. An urgent application would need to be made to transfer the licence to another person as this has to be done within 28 days of the bankruptcy order being made.

Any licence for fruit machines etc held in Mr Mangle's name would also terminate under the Gambling Act 2005

<p>Whilst a Trustee in bankruptcy can trade a bankrupt's business, it is unlikely that the Official Receiver would trade a pub. As such, the longer the pub is closed, the more trade could be lost.</p>
<p>Options and advice</p>
<p><b>(c) Options</b></p> <p>Mr Mangle needs to undertake a thorough review of the pub's trading to establish whether the pub is in fact profitable. Although he has been drawing £1,000 to £1,500 a month, the debt due to HMRC suggests that tax and vat has not been paid for some time.</p>
<p>Mr Mangle needs to establish whether it is viable for the pub to continue to trade or if future trading will just result in further debts being incurred.</p>
<p>If Mr Mangle is satisfied that it is viable for the pub to continue to trade then he will need to obtain an annulment of the bankruptcy order.</p>
<p>Mr Mangle will however need to enter into discussions with the brewery to establish whether they will allow him to retain the pub if he deals with the bankruptcy order. There may be little point in seeking to annul (through making payment or proposing an IVA) if the decision has already been made to forfeit the lease.</p>
<p>Mr Mangle should also consider the likely timescale for getting an IVA approved and the impact that closure of the pub will have on customers and whether long term trade will be impacted</p>
<p>Mr Mangle has only one trade creditor. Enquiries should be made to establish whether Mr Mangle has any personal creditors.</p>
<p>If he is in a position to do so, it is in his interest to try and make payment of the liabilities of the bankruptcy estate as soon as possible before costs increase.</p>
<p>Mr Mangle should explore whether he is able to raise sufficient funds to pay off the liabilities. Although the debt to HMRC is £26,400, he will also need to discharge their petition costs and the Official Receiver's administration fee of £6,000. He therefore needs to be able to raise around £35,000 (assuming no further creditors).</p>
<p>If this is possible, he should contact the Official Receiver to notify him of his intentions and ask that he refrains from appointing a Trustee for a short period of time in order to limit costs.</p>
<p>Depending on how long it will take Mr Mangle to raise the funds, he could consider applying for a stay of the bankruptcy proceedings. If successful this would allow him to continue to trade pending the bankruptcy order being annulled.</p>
<p>Once all liabilities have been discharged, Mr Mangle could apply to have the bankruptcy order annulled.</p>
<p>If Mr Mangle cannot raise sufficient funds to pay off the liabilities immediately, he could consider an IVA.</p>
<p>To establish whether an IVA would be a possibility, a detailed cash-flow would need to be prepared to determine realistically how much profit could be generated through future trading.</p>
<p>If an IVA is proposed, consider obtaining an Interim Order to prevent any further action being taken by the Official Receiver whilst the IVA is being considered.</p>
<p>Although this would be an expensive option in circumstances where he has only one creditor, this would enable him to start trading again if HMRC is prepared to vote in favour.</p>
<p>Mr Mangle would need to consider how much he could pay into the IVA each month. Given that he lives at the pub, his drawings should be sufficient to enable a monthly contribution to be made.</p>

Given that an IVA will generally last for between 3 and 5 years, Mr Mangle will need to be confident that he can maintain the monthly payments for the duration of the IVA.
HMRC should be contacted to see whether they would, in principal, be receptive to an IVA proposal.
HMRC are unlikely to be supportive of an IVA if tax/ vat returns are outstanding. Mr Mangle would need to ensure that any outstanding returns are filed as soon as possible.
Even if an IVA is proposed, Mr Mangle would still need to arrange for the premises licence to be transferred to a third party.
It is likely that Mr Mangle's bank account will be frozen upon the bankruptcy order being made. A new bank account without any credit facilities attached to it should therefore be opened.
If Mr Mangle concludes that the pub cannot trade profitably and / or decides that he does not want to continue to trade, he could do nothing and seek paid employment.
If income is sufficient, an IPO / IPA could be pursued which would last for 3 years. However, after 1 year (assuming discharge is not suspended) Mr Mangle would be released for his debts.

**Question 4**

**(a) (14 marks)**

**The Pet Emporium Partnership**

Projected cashflow - trade to a close

Week commencing	13-Nov	20-Nov	27-Nov	04-Dec	11-Dec	18-Dec	After trading ceases	Total
Week number	1	2	3	4	5	6		
<b>Income</b>	£	£	£	£	£	£	£	£
Sale of Stock (note 1)	15390	15390	15390	6840	6840	6840		
Collection of Advance orders								
							of advance animal orders(note 2)	
							3600	
Rental Income	200	200	200	200	200	200		
	<u>15590</u>	<u>15590</u>	<u>15590</u>	<u>7040</u>	<u>7040</u>	<u>10640</u>		<u>71490</u>
<b>Expenditure</b>								
Payment to ROT creditor		9000						9000
Payment to animal supplier					1250			1250
Fresh feed	50	50	50	50	50	50		300
Wages (note 3)	1123	1123	1123	1123	1123	1123	1123	7862
Salary (note 3)			1430				1430	2860
PAYE/NIC (note 3)							4393	4393
Pension (note 3)							412	
Utilities (note 4)			900				346	1246
Rates (note 4)			2000					2000
	<u>1173</u>	<u>10173</u>	<u>5503</u>	<u>1173</u>	<u>2423</u>	<u>1173</u>	<u>7704</u>	<u>29324</u>
Cash inflow/(outflow)	14417	5417	10087	5867	4617	9467	-7704	42166
Opening Balance	425	14842	20259	30345	36212	40829	50296	

Cash inflow/outflow	14417	5417	10087	5867	4617	9467	-7704
Closing Balance	14842	20259	30345	36212	40829	50296	42591

### Note 1 - Stock sales

Cost of stock in premises	57000	
Retail price with 50% mark up	114000	
Provision for obsolete stock (10%)	11400	
Retail price of saleable stock	102600	
Saleable in first 3 weeks	46170	60% at 75% of sales price assume evenly over 3 weeks
Saleable in second 3 weeks	20520	40% at 50% of sales price assume evenly over 3 weeks

### Note 2 - Animal sales

Orders for week before Xmas	4800
less deposits already paid	1200
Income	3600

### Note 3 - Employees

Assume that Trustee will honour the salary and weeks wages in arrears to secure the co-operation of the employees in this 6 week period

Salary = £22,000/12 = £1,833. Net = £1,430

Wages 4\*40\*£9 = £1,440 per week

Net =£1123  
weekly

Assume pay PAYE/NIC for Trustee after trading ceases

2 months for salaried employee = £403 x 2 = £806 (2% of gross pay) 806

7 weeks for employees =  $7 \times \text{£}316 = \text{£}2212$  (22% gross pay) 2212

Employers NI for manager =  $10\% \times \text{£}1833 \times 2 = \text{£}367$  367

Employers NI for weekly staff =  $10\% \times 7 \text{ weeks} \times \text{£}1440 = \text{£}1008$  1008

4393

Note 3 - pension contribution = gross in period x 3%

Mgr gross 3666 (£1833 x 2)

Weekly gross 10080 (£1440x7)

13746

x 3% 412.38

#### Note 4 - Overheads

Utilities - for cash flow assume that £900 paid in w/c 27 November and that after trading ceases a balancing payment is made reflecting the total number of days trading less the payment made to date

**(b) To expand on the following (6 marks)**

- Employees – Notify staff of your appointment, of your proposed plans and confirm the position regarding their wages. Ensure that staff will continue to work during the liquidation.
- ROT creditor – Liaise with creditor regarding his claim, and review any paperwork submitted in support of the claim. If the considered valid undertake to pay him from the proceeds of trading to prevent the uplift of stock
- Open Bank Account and secure credit card facilities probably with the same banking provider to facilitate a swift transfer;
- Brief Sarah on the daily cash reconciliation and reporting that you require
- Frequent review of actual stock sales compared to projection and review of stock disposal/trading strategy as required;
- Ensure animals in the shop are fed/watered/cleaned and cared for appropriately
- Ensure that arrangements have been made for appropriate disposal of animal waste
- plan for alternative care of any unsold animals on Xmas Eve
- Insurance in place (buildings, public liability, employers liability, vehicles and stock)
- Carry out Health and Safety and fire risk assessment;
- Notify Utility providers and obtain meter readings / ongoing supply with be classed as an essential supply (Article 8 (4) IPO 1994).
  
- Make Tenant aware that rental should be paid to Trustee. Ask him to make alternative arrangements for credit card users or ensure controls are in place to segregate cash.
  
- Make security arrangements including ensuring designated key holders.

**(c) (14 marks)****The Pet Emporium Partnership  
Estimated Outcome Statement**

		£	£
<b>Property in city centre</b>			
Sales Proceeds		380000	
Due to secured lender (loan and overdraft)		337000	
Estimated costs of sale		<u>10600</u>	
			32400
Disposal of Stock - trading to close			42591
Shop Van (Assume 10% agents fee)			2475
Fixtures and Fittings			2000
			<hr/>
Total Realisations			79466.45
<b>Costs of administration</b>			
Official Receiver's Fees	General fee	6000	
	Admin fee	5000	
Liquidator's fees	(vat recoverable)	20000	
Petition costs		2500	
Tax liability	Rental income- £1200*.2	240	
Tax Liability	Capital Gains tax	27480	
			61,220
Available for preferential creditors			18,246
<b>Preferential creditors</b>			
<b>Arrears of wages - assumed paid in cashflow</b>		0	
<b>Holiday pay</b>		1863	
<b>Occupational Pension Scheme</b>		2500	4363
			<hr/>
<b>Available for unsecured creditors</b>			13,883
<b>Unsecured creditors - partnership</b>			
Hutch Supplier			
Debt at appointment	24,000		
Less ROT payment	9,000	15,000	
Trade creditors		37839	
HMRC			
PAYE		14786	
City Council - Business Rates		22,154	
Employees			
Redundancy	15000		
Pay in lieu of notice	3273		



	<u>18273</u>	
		108052
Shortfall to creditors of partnership		-94,169
Creditors of the partnership will receive a dividend of approx		0.13
<b>Capital Gains Tax - Calculation</b>		
Selling price	380,000	
Less value at date inherited	220,000	
Less costs of disposal	10600	
Taxable Gain	149,400	
Annual Exempt Amount (2019/20)	12000	
CGT to be paid on	137,400	
Assume all at 20%	27480	

**(d) (6 marks )**

Creditors of Partnership will receive 16p in the £1 from the partnership. There is a shortfall to unsecured creditors of the Partnership of approximately £81,000. Partnership creditors are entitled to claim the remaining 84p from either sister as the sisters are jointly and severally liable for the losses of the partnership.

If one sister pays more than their share, they have a claim for a right of contribution against the other. If there is a partnership agreement, this may set out the amount that each sister is liable to contribute to creditors.

Creditors are not entitled to receive more than 100p in the £1.

**Fiona**

Fiona has a potential claim for £80,000. However, the quantum and timing of any payment is uncertain. Enquiries should be made by Fiona to determine the likely timescale for payment. If liability is being disputed, it could be many months/ years before payment is received and it is not clear whether creditors would be willing to wait that long.

If proceeds will be around £80,000 and payable in the short term, this would allow her to pay her unsecured creditors in full and contribute to the residual partnership debt.

Fiona would also need to consider the nature of the Personal Injury claim would determine whether or not it vests in her bankruptcy estate. If it was a purely personal claim i.e. for pain and suffering claim would not vest. If it is a hybrid claim and comprises pain and suffering along with claim for loss of earning etc, it would vest subject to Fiona's right to receive any sums recovered in respect of the purely personal aspect of her claim (i.e. pain and suffering).

**Sarah**

With equity of circa £50,000 in her half share of the property, ISAs of £4,000 and the potential for a significant income contribution, entering into a formal insolvency procedure is likely to result in her paying more than her current debts.

She will wish to protect the value in her family home.

An additional consideration for her is her employment as a solicitor which could be affected by a Bankruptcy

order having been made against her personally.

She has a significant surplus income and cash reserves which could be used to settle the debts of the partnership in full (if required depending on her sister's position).

The Student Loan would not be written off in insolvency anyway.

Sarah also has significant equity in her property and it may be that she and her husband are prepared to borrow against the property to settle the debts in full at an earlier stage.

Once the liquidation trading period has drawn to a close, the assets have been realised and the actual extent of the shortfall to creditors is known, the sisters will need to take steps to discharge the shortfall. Depending on the amount/ timing of the PI claim and the amount of equity that can be realised by Sarah from her property, this could be done without the need to enter into an insolvency process.

If the sisters are not in a position to discharge the partnership liabilities in full, interlocking IVAs could be proposed to compromise the partnership and their personal liabilities.