

JOINT INSOLVENCY EXAMINATION BOARD

SENIOR MODERATOR'S COMMENTS ON THE NOVEMBER 2020 SITTING

Introduction

This report is written following the publication of the results of the November 2020 sitting of the papers comprised in the Joint Insolvency Examination ("the Examination").

This report incorporates my comments on how candidates fared at this sitting. There are also more general comments. This report should be read in conjunction with the reports prepared by the examiners for two papers in England and their counterparts in Scotland.

My reports in recent years have, in many key respects, looked similar, in that I have felt the need to refer to important areas where candidates have fared less well. I had hoped that, by drawing attention to these important areas, candidates would have been able to avoid some of the pitfalls discussed. However, the experience of the examination team ("the Team") is that too many candidates continue to present scripts which, for the reasons explained in my previous reports, are marginal and which are putting them at risk of not passing a paper.

Before turning to the 2020 sitting itself, it will I think be useful to look at the Examination more widely and to put it into context.

The purpose and nature of the Examination

The opening paragraph in the syllabus for the Examination ("the Syllabus") reads:

"Candidates must be able to demonstrate a thorough working knowledge of relevant law and guidance as described in this syllabus, sufficient to enable them to carry out the functions of an authorised insolvency practitioner".

The regulations for the Examination ("the Regulations") repeat this at paragraph 2(d).

The papers set as part of the Examination are written with this overriding purpose in mind. To pass a paper, a candidate needs to demonstrate that they look as if they have the attributes necessary to work as an authorised insolvency practitioner. All candidates who do this will pass the paper concerned. Pass marks and pass rates are not predetermined, nor does the Team have imposed on it any form of quota or target for the number of candidates who should pass a particular paper at any sitting of the Examination.

The Regulations set out clearly the level at which candidates can expect the Examination to be set. Paragraph 2(d) of the Regulations says "The standard will be broadly consistent with that required in the final qualifying examinations of the participating bodies". Candidates can therefore expect a rigorous examination of their knowledge and skills.

The Regulations also say, at paragraph 2(c), that the overall emphasis of the Examination will be practical. The papers set as part of the Examination have evolved over time and in recent times have concentrated for the most part on asking candidates to assimilate facts, to identify the relevant issues, to recognise the relevant legal and other principles and to devise practical solutions and/or identify options and practical solutions and/or give clear advice. Most candidates attempting the Examination have a number of years of experience behind them (the average age of the candidates sitting a paper at the November 2020 sitting was 36) and what the Examination often asks them to do should be familiar territory.

The practice of allocating marks in every paper (approximately 30 out of 100 to knowing the law/guidance, 40 out of 100 to applying this to the facts of the question and 30 out of 100 to "numbers") reinforces the practical nature of the Examination.

The work of an authorised insolvency practitioner is essentially real-world problem solving, within a framework set by legislation, best practice and regulatory guidance and oversight. The Examination's aim is to identify candidates who demonstrate that they are likely to have the attributes necessary to work as an authorised insolvency practitioner. The Examination is not looking for candidates to show that they are already fully-fledged authorised insolvency practitioners. But, to be successful in the Examination, they must show that they have the potential

and, to put it crudely, look as if they will be a safe pair of hands if they are let loose on the public with an insolvency licence.

Candidates and the Examination: the application of knowledge

Candidates and those helping them to prepare for the Examination cannot be under any illusions about the practical thrust of the Examination and that candidates are almost certainly going to be presented with a number of practical problems requiring them, in one form or another, to:

- i. identify and then concentrate on what the question is asking them to do;
- ii. identify the key issues;
- iii. in the light of (i) and (ii) identify and explain the law/guidance/practice that is relevant; and
- iv. set out unambiguous and practical solutions/options/advice that is relevant to answering the question.

How each candidate will approach this task is of course for them to decide and may well be influenced by examination technique. But, successfully tackling a question which presents a candidate with a practical problem and asks them to come up with a solution will require the candidate to be familiar with the four steps set out above.

In all papers set as part of the Examination around 40% of the available marks (out of 100) will be available for points made applying the relevant law/guidance/practice to the facts of the question and setting out unambiguous and practical solutions/options/advice that is relevant to answering the question. A candidate who is able to show aptitude in applying their appreciation of the issues and relevant law to actually answering the question in a comprehensive and focused way is tapping into the pool of marks available and maximising their chances of passing the paper. A candidate who does not do this is materially reducing the number of marks out of which they are trying to pass the paper.

Candidates and the Examination: the checklist approach

As discussed above, candidates need to be able to identify the law/guidance/practice which is relevant to the question. There are many candidates who do this and earn good marks.

However, candidates' scripts sometimes include answers which appear to have their origins in checklists or similar. The impression given by some scripts is that candidates have learned by rote and, having identified what they believe to be the relevant subject, are determined to display their knowledge, come what may. This approach can result in candidates writing extensively on subjects that are not relevant to the question. Extraneous material, even if well set out, comprehensive and technically right, can never attract marks.

Candidates who take the approach outlined in the preceding paragraph will earn marks for relevant points made. However, this is achieved not by showing a real understanding but rather by making mark-worthy points amongst any amount of extraneous material. It is obvious to the Team when this is happening, and this approach will always be taken into consideration when considering the holistic mark to be awarded. Candidates could do worse than bear in mind the old saying that, at least sometimes, "less is more".

Taking the approach outlined in this section cannot ever be a substitute for moving on to apply the law/guidance/practice as discussed above. Candidates also need to bear in mind that writing extraneous material wastes time.

To end this section on a positive note, some of the Team have detected a move away in very recent years from candidates taking the "checklist" approach. This is to be welcomed, but there is much more to do.

Candidates and the Examination: holistic marks

Earning good holistic marks is important. These are an indicator of quality and, at the margins, are one invaluable tool available to the Team when making the final pass/fail decision.

How holistic marks are awarded and the range of holistic marks available for each answer are explained in part 10 of the Regulations. The award of 4 or 5 holistic marks indicates that a candidate's answer is good or excellent. The award of 0 or 1 holistic mark is a clear indication that the answer is at best poor. At an individual question

level when the marks give a clear pass or a clear fail, the distinctions between 0 and 1 and 4 and 5 holistic marks do not alter that decision.

Of far more importance is the consideration as to whether a candidate should be awarded 2 or 3 holistic marks. Paragraph 10(d) of the Regulations explains that 2 holistic marks are awarded for:

“An answer that has merit but is not quite sufficient: it does not include quite enough relevant information, and/or it does not demonstrate competence in dealing with the question”.

This contrasts with the award of 3 holistic marks for:

“An acceptable answer: it includes just sufficient relevant information, any examples are mainly correct, and it demonstrates competence in dealing with the question”.

At an individual question level, being awarded 2 holistic marks signifies a (perhaps marginal) fail whereas 3 holistic marks signifies a pass.

Holistic marks are awarded at the discretion of the Team. They represent the conclusion reached by the marker and examiner, and if appropriate the moderator and me, on the quality of an answer and, at the margins, whether the answer is good enough or not. The decision whether an individual question answer should attract 2 or 3 holistic marks can be a fine one, but can nevertheless be crucial to a candidate's overall result.

There is a fine distinction to be made when awarding holistic marks generally, but in particular when considering whether to award 2 or 3 such marks. By way of example, a candidate who gains say 10 out of 20 for a question, but does so earning their marks by taking the “checklist” approach and happening upon mark-worthy points along the way is likely to be awarded a lower holistic mark than another candidate who makes the same mark-worthy points but in a structured and focussed way.

There is not a rule which prescribes how many holistic marks a candidate should be awarded in order to pass a paper. However, a candidate aspiring to pass a paper should be aiming to gain at least 12 holistic marks. A candidate who does this will be presenting four answers which, on average, have been awarded 3 holistic marks each.

Being awarded 12 holistic marks is not a guarantee of success but by achieving this a candidate is putting themselves very much in the frame to be awarded a pass. Candidates who are awarded fewer than 10 holistic marks are very unlikely to pass. Those who are awarded either 10 or 11 holistic marks are at putting themselves at a real risk that their scripts will be adjudged not good enough to pass

A word of caution. Holistic marks, although a very good indicator of quality and an invaluable tool for the Team, are not the final determinant. For all papers, the final recommendation as to where the pass mark should be set is made by me in taking into account the views of the relevant senior members of the Team. All scripts around the putative pass mark will have been marked and moderated. They will also have been reviewed by me. I do not carry out a second remarking exercise but I look at each script in full in order to reach a decision as to whether I concur with the views of the Team and, at the same time, to make my own judgement as to whether, given the purpose of the Examination, the script is good enough to pass.

Candidates and the Examination: numbers questions

In all papers approximately 30 marks out of 100 are allocated to questions or parts of questions which require candidates to produce a financial statement of some kind or otherwise to undertake numerical calculations.

The ability to prepare accurate clear figures in an insolvency context is a vital part of an authorised insolvency practitioner's tool kit. In essence this skill requires the assimilation of information, the calculation of the relevant figures and an ability to present the results clearly, having due regard to insolvency law/guidance/practice. In this respect it resembles the skills required in non-numerical work.

I recognise that not everyone is as confident with using and manipulating figures as others may be. However, the Examination must and will continue to test candidates' aptitude in this area and candidates need to show that they have the potential to possess the skill outlined in the previous paragraph. Those who cannot do this are distancing themselves from being able to earn at least some of the 30 or so marks available.

Again, on a positive note, some of the Team have detected an improvement in the way in which some candidates tackle numbers questions. This is good news.

The 2020 sitting

My report and comments so far have been largely general and not specific to the 2020 sitting of the Examination. They reflect the key messages that have been made in my reports of recent years, although in greater detail than before.

I have considered it necessary to go over old ground because those areas with which candidates have struggled in the past, and which gave rise to my comments in earlier years, are also relevant in 2020.

It is important to record that there were candidates in 2020, as in previous years, who earned very good marks, both out of 100 and holistically. They showed real aptitude and demonstrated clearly that they have the potential to undertake the work of an authorised insolvency practitioner.

At the same time there were a lot of candidates who sat papers in November 2020 who presented scripts that, following completion of the marking and moderation process, were clustered around what was thought would be the pass mark. This can be illustrated by looking at the two papers in England.

- There were 94 candidates for the Corporate Insolvency paper. There were 58 candidates (62% of the population) whose overall mark was fewer than 10 marks either above or below the initial pass mark recommended by the examination team. Of these, 37 candidates (39% of the population) were within 5 marks, either way, of the same pass mark.
- There were 59 candidates for the Personal Insolvency paper. There were 43 candidates (73% of the population) whose overall mark was fewer than 10 marks either above or below the initial pass mark recommended by the examination team. Of these, 29 candidates (49% of the population) were within 5 marks, either way, of the same pass mark.

For those candidates, across both papers, within 5 marks of the recommended pass mark, the holistic marks earned were typically in the range from 9 holistic marks to 12 holistic marks.

It may not be too surprising either (1) that more candidates were awarded a mark somewhere in the middle of the overall range, or (2) that the pass mark for both papers was set somewhere in the range where the largest number of candidates' marks were congregated.

The key point is that there are too many candidates who, in 2020 as in previous years, presented scripts on which ultimately a judgement call had to be made as to whether the candidate concerned had done enough on their paper to meet the purpose of the Examination and therefore pass.

In my view, with which the senior members of the Team agree, the principal reasons why candidates are not presenting scripts that rise above the average and are clear passes are the same as in recent years. Too many candidates:

- do not demonstrate that they are able to bring the base knowledge that they often show they possess, and their practical experience, to solving the problem put to them by the question;
- still take the “checklist” approach by writing to excess on the law/guidance without concentrating on what is really relevant to the question; and
- still seem uncomfortable with “numbers”.

One example of the “checklist” approach taken by candidates in 2020 was in question 4 of the personal insolvency paper where the first requirement asked candidates to set out the ethical issues prior to accepting an appointment as nominee in an IVA. The better candidates identified the fairly limited parts of the code of ethics that were relevant to the question and restricted their answers to dealing with these. However, too many candidates saw the mention of “ethics” as being an invitation to set out the full list of ethical issues that a prospective appointee might have to consider, in some cases even in a corporate insolvency scenario.

I of course appreciate that there is a world of difference between the environment of everyday work and that of the examination hall. Sitting any examination imposes all sorts of different pressures. But candidates are not showing that they can bring their everyday experience to bear. It is not clear why this is, but it may have something to do with the continued compartmentalisation of the insolvency profession, whereby in some firms specific procedures are carried out by dedicated teams. Working within such an environment can restrict the range of experience that can be gained.

This seems particularly to be the case with the Personal Insolvency paper where candidates are not showing that they have practical experience. Is this because many, perhaps the majority, of those who sit this paper have no experience of working on bankruptcies or individual voluntary arrangements, now almost always the territory of specialist teams and the “IVA factories” respectively? Even in corporate insolvency work it will, for some candidates, have been difficult for them to get practical experience across the board. Those candidates who cannot bring practical experience to the table will find themselves at a disadvantage.

The introduction of computer based examinations for the Examination in 2018 removed the need for my annual plea to candidates to ensure that their handwriting was at least legible. However, in 2020 there were too many scripts where insufficient care and attention had been paid to the layout of answers and poor spelling (or inaccurate typing) was commonplace. Perfection in these areas is not required, but candidates who do not have some regard to the sense and order of what they are putting down, and/or are inventing words which are impossible to interpret, are not doing themselves any favours.

One final point. The Team used to see some evidence of planning on the part of candidates as rough notes were often handed in alongside candidates’ handwritten scripts. That does not now happen: the Team now only sees what candidates present via the computerised system. Accordingly, we cannot know to what extent candidates are taking just a few minutes to read the question carefully and to plan their answers before starting to type. It is not always evident from a candidates’ script whether some planning has taken place. In some ways it is easier to spot an answer where it looks very much as if the candidate has dived straight in as the answer lacks structure and direction. All candidates would be well advised to devote time to reading the question, making sure they understand the requirements (in particular whom they are advising in the question scenario) and planning their answer.

JOINT INSOLVENCY EXAMINATION BOARD

CORPORATE INSOLVENCY PAPER

EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2020 SITTING

General comments

The 2020 Corporate JIEB paper comprised a relatively typical proportion of numeric and non-numeric questions and generally candidates performed better on the former.

In relation to numeric questions, perhaps due to time pressure, many candidates did not set out the basis of their calculations and as such it was not clear as to how the answer has been derived. Marks are awarded for appropriate calculations even where the answer is incorrect and therefore it is possible that candidates missed marks simply because they did not set this out.

In relation to written questions, candidates achieved higher marks on those that were broken down into separate requirements and some struggled on larger mark questions. We have highlighted in previous Examiner's reports the importance of approaching questions in a logical manner to ensure that all aspects of the requirements are met. For example in several parts of the 2020 paper where there were two companies involved, a material proportion of candidates missed out on marks by failing to apply the requirements to both.

As part of the Holistic assessment markers provide their view as to the extent to which the candidate is, or could be, a capable Insolvency Practitioner. Whilst the use of an online system for the exams has removed the frustrations experienced by markers in relation to being able to read handwriting, certain scripts were set out very poorly, were highly abbreviated and difficult to follow. Furthermore there was one particular script where approximately 1 in 5 words were incorrectly spelt and in parts it was unclear as to whether these were mis-types or the candidate simply didn't know the correct terminology.

It is accepted that, due to time pressure, the focus is on making the relevant points, however the Holistic assessment may take account of the extent to which the marker would be confident in presenting the response to a client or other party. As such answers set out in a professional manner with appropriate headings, sentences and bullet points would likely achieve a better Holistic mark compared to one that does not.

Question 1

The first question related to a company in creditors' voluntary liquidation and was split into two equally weighted parts;

Requirements

Explain the steps that you would take to deal with:

(a) the information gleaned from the review of the bank statements and accounts. (10 marks)

The first part of the question provided candidates with information obtained during a review of the company's bank statements, relating to the payment of shareholder dividends in the lead up to the liquidation. In addition, candidates were provided with the company's assets and liabilities at two year-end dates.

Generally candidates were able to identify that there was an issue regarding distributable reserves however many did not state that this was a matter set out in the Companies Act 2006 and used the terminology 'illegal dividends'.

The majority of candidates were unable to accurately calculate and set out the net asset position of the company and as such relatively few candidates correctly established which distributions were unlawful. Candidates who achieved a good result for this question presented relevant calculations and identified that further information was required in relation to the company's share capital (which is non-distributable) to fully identify the unlawful elements.

Once candidates had established that there had been unlawful distributions, generally they struggled to adequately explain how they would deal with the situation and there appeared to be a lack of understanding as to what parties may be liable to repay the amounts.

A reasonable proportion of candidates identified, from the information, that there could also be a wrongful trading issue to consider given the move from a net asset position of £50,000 to £70,000 net liabilities. The majority of candidates that identified this issue failed to take account of the dividend payments in their calculation of losses during the period.

(b) the situation as regards liquidator's fees. (10 marks)

This question outlined a situation where the fee approval obtained, upon which fees had previously been paid, was invalid.

The majority of candidates identified the issue and stated that the fees already drawn should be repaid into the estate immediately. Most candidates stated that it was necessary to obtain a new creditors' decision but only a few set out the detailed process required to obtain approval and the recourse should the fee proposal be rejected. A number of candidates suggested practical approaches to the situation to help secure approval without the need to approach court.

A number of candidates did not appreciate that the Company was in Creditors' Voluntary Liquidation and provided details relevant to a compulsory liquidation.

Question 2

This question presented candidates with a situation where a retail business was considering a CVA to address its under-performance and deal with creditors including landlords. Whilst this question was written prior to Covid-19, the associated impact on the retail sector made this a highly topical question.

Requirements

- (a) Assuming that the Directors' proposal and turnaround plan is implemented, estimate the amount that would be available for creditors of the CVA. Clearly state any assumptions made. (7 marks)**

This part of the question sought out a calculation of the funds that would be available for creditors should the CVA be successfully implemented. Candidates were required to undertake basic calculations to establish the post CVA profitability of the company based upon information contained within the question.

Whilst most candidates attempted the calculations very few were able to establish the impact of the increase in sales stated in the question, struggling to establish the profit impact. Candidates generally seem to struggle with the concept of gross margin.

- (b) Summarise the key information that may be required by landlord creditors as set out in the British Property Federation CVA guidance. (7 marks)**

For this part of the question candidates were required to list the information required by landlord creditors as set out in the British Property Federation CVA guidance. This guidance effectively sets out what information a typical landlord would require in order to make an assessment as to whether they should support a CVA and as such did not require any specific knowledge. There were a few additional marks available for general points regarding the process.

Generally candidates set out some of the basic information that creditors may require but quite a large number of candidates were unable to tailor their answer to information that landlords would be interested in.

- (c) In relation to closed sites, summarise the key elements of each landlord's claim within the CVA and what information you would require to establish its validity. (6 marks)**

This part sought summary of the types of claims that a landlord of a closed site may have in the CVA and what information you would require to establish its validity.

The majority of candidates identified rent arrears and future rent as claims but relatively few considered that the landlord may have a claim for dilapidations. In relation to the claims for rent most candidates achieved marks for seeking copies of the lease and supporting documentation for arrears but generally there appeared to be a lack of depth of knowledge as to other information required to agree claims.

However overall this part of the question was answered well and candidates achieved a high mark.

Question 3

Candidates were required to provide advice to a secured creditor in relation to a situation where they had invested in and lent money to a holding company that owned a potentially valuable subsidiary undertaking. The question stated that the individual held security in both entities and that there was a cross guarantee in place.

Requirements

Prepare a briefing note for Mr Oldenburg. Briefly summarise the insolvency options available to him in these circumstances. Set out the key relative advantages or disadvantages of each option and provide a reasoned recommendation as to what action he should take. Total: 20 marks

Generally candidates identified the key options available to deal with the situation but many responses were not tailored to providing advice to the holder of the security rather than the entity itself.

Whilst the processes were generally identified, the majority of candidates failed to break their response down into the separate entities and it was not clear which option was applicable to which entity. For example, identifying that Mr Oldburg was not a Qualifying Floating Chargeholder in relation to Campeiro but was in Garrano would achieve more marks compared to a candidate that stated Mr Oldburg could appoint administrators but did not identify which company it applied to.

Very few candidates identified the option of appointing a receiver over the shares in the subsidiary undertaking.

There was a tendency for candidates to state facts without actually explaining what the respective advantage or disadvantage was or why it was advantageous over other processes. For example a number of candidates stated that the purpose of administration was an advantage without any further explanation. Similarly a number of candidates simply listed an administrator's powers and duties without explaining why these were an advantage or disadvantage to the secured creditor.

A number of candidates spent time outlining the respective appointment processes and the steps required to make the appointment. This was not required and resulting in candidates wasting valuable time.

Candidates generally struggled to achieve a high mark for this question and this appeared to be a result of a failure to consider the options in relation to each company individually and due to candidates not tailoring their response to the particular circumstances set out in the question.

Question 4

This question was split into five parts with the first two requiring calculations and the remaining parts written responses.

Requirements

- (a) **Set out the weekly cash flow of the Company assuming that it trades in administration for a 4-week period. Include an extra column for receipts and payments that would be received or paid after that period. (13 marks)**

Candidates were asked to set out a trading cash flow for the business. Generally candidates were able to make a reasonable attempt but struggled with some of the more complex areas. In particular candidates found the calculation of debtor receipts and rent payments challenging.

- (b) **Compare the total realisations in the administration under (i) a pre-packaged sale, (ii) a sale following 4 weeks of trading and (iii) trading followed by closure. (7 marks)**

This part of the question asked candidates to set out a comparison of the financial outcome of the various options.

Generally candidates could not work out the stock position and failed to appreciate that the period of trading would change the stock level as a result of receiving the stock in transit and selling goods. Similarly candidates found it a challenge to establish the debtor position for the comparison and a small minority identified that there could be a bad debt relief claim for the elements of sales that were uncollectable.

- (c) **Outline the approach which you would take in relation to identifying other potential interested parties. (8 marks)**

This sought out ways in which an Insolvency Practitioner could market a business for sale and identify potential purchasers. Whilst the various potential parties were identified across the candidate base very few were able to list more than a few in their response which was disappointing considering the importance of SIP 16. The vast majority of responses included the use of agents to market the business for sale perhaps highlighting a dependency on third parties to undertake marketing rather than the insolvency practitioner firm.

Very few candidates considered creditors or employees, other than the directors, to be a potential source of interest.

- (d) **In the event that a sale to Esperia were to proceed, summarise what protection could be put in place in relation to the deferred consideration and what would you do to satisfy yourself that the risk of selling the assets on such terms would be acceptable. (6 marks)**

Generally candidates were able to identify a few ways of reducing the risks associated with non-payment of deferred consideration. Some easy marks were lost through failing to apply the answer to the individual entities for example stating it may be possible to obtain security in both the acquiring company and its parent would achieve a higher mark than stating a general 'obtain security'.

- (e) **Explain generally how the value of intellectual property could be determined in insolvency situations. (6 marks)**

This part of the question tested the candidates understanding as to how intellectual property may be valued. A proportion of candidates did not attempt this question but a number that did typically considered the use of specialist agents, comparison with other similar transactions and its future economic benefit. Only a limited number considered any adverse factors that could affect value.

Overall whilst some candidates achieved a high mark for their response, generally candidates struggled with this part of the question.

MARK PLAN

Question 1

Part (a)

Potential unlawful distribution under CA 2006 Part 23					
Check and review articles of association to check if interim dividends can be made					
Obtain statutory records and establish if ordinary resolution passed to make distribution					
Must have distributable reserves					
Check level of share capital included in net assets as this is not distributable.					
Table below assumes no material share capital					
	Net asset position b/f	Loss during period	Net	Dividends	Net assets c/f
28-Feb-19	n/a	n/a	n/a	(10,000)	£50,000
31-Mar-19	50,000	(5,000)	45,000	(15,000)	30,000
30-Jun-19	30,000	(15,000)	15,000	(30,000)	(15,000)
30-Sep-19	(15,000)	(15,000)	(30,000)	(5,000)	(35,000)
31-Jan-20	(35,000)	(20,000)	(55,000)	(10,000)	(65,000)
28-Feb-20	(65,000)	(5,000)	(70,000)	-	(70,000)
Check accounting treatment for the calculation of reserves					
First 2 dividends there were distributable reserves					
Third distribution only had £15,000 of reserves. Entire dividend unlawful.					
Thereafter all appear to have insufficient reserves					
Obtain any management accounts for the period in between annual accounts					
Write to directors setting out					
<ul style="list-style-type: none"> • Directors jointly and severally liable to repay unlawful dividends • Repayable with interest • Solvency irrelevant • Breach of duty/misfeasance • Potentially Transaction at an undervalue • Potentially a Transaction defrauding creditors 					
Write to the shareholder					
<ul style="list-style-type: none"> • If received in the knowledge that they were unlawful or had reasonable grounds to believe they were unlawful, liable to repay them. 					
Preference under s239; unlikely claim (extent to which a declared dividend is a debt being paid)					
Consider whether the respective parties have the means to settle any amount; likelihood of recovery					
Legal advice in relation to prospects of success					
Consider consensual, commercial negotiation of settlement					

Consider selling the claim to directors or a third party
Consider how claim/legal action will be funded; creditors, litigation funder, other assets in case
If necessary and likely recover funds consider the issue of claim.
Claim £45,000
Losses of £60,000 in final periods of trade; establish if wrongful trading has been considered
Check whether matter reported as part of conduct report

Part (b)

Check all claims and votes to ensure that resolutions would not have been passed if correctly lodged.
Fee resolution likely to be invalid
Risk that new resolution will not be passed
Previous fees drawn should be immediately repaid
Will require new fee approval
Establish if valid committee on the case
If so seek fee approval from committee
Qualifying decision procedure if no committee
Consider correspondence, virtual meeting or electronic voting (most likely former)
Fee estimate will be required
Voting form and proof of debt required
Invite formation of committee
Delivered when uploaded to portal, next business day if email, second business day if 1 st class post and fourth business day if 2 nd class post
Minimum 14 days' notice
If request for physical meeting Within 5 days of delivery of notice 10/10 Within 3 days' notice of meeting must be sent
If committee formed seek approval from them once constituted
Review claims for voting purposes
Consider votes for remuneration
If resolution passed then can draw fees in accordance with resolution

If basis not fixed under r18.20 consider application to court (r18.23)
Must be made within 18 months of appointment.
Consider negotiating a lower fee if necessary to obtain approval.
Consult with the ethics partner/regulatory body
Consider creditors disclosure requirements to ensure transparency

Question 2

Part (a)

	£	
Previous Loss	(175,000)	
Rebate	50,000	
Agency cost savings	25,000	
Additional contribution	192,000	492000 - 300000 See workings (1) below
General costs - Head office	50,000	
Redundancy	40,000	
	<u>182,000</u>	
Store capital	(25,000)	5 stores at £5,000
Head office and distribution centre capital	<u>(10,000)</u>	
Available funds	147,000	
Number of years	3	
% Available	75%	
Total available for creditors	<u>330,750</u>	
Less:		
Nominee costs	(15,000)	Any reasonable assumption
Supervisor costs	(30,000)	Any reasonable assumption
Legal costs	(10,000)	Any reasonable assumption
Available for creditors	<u><u>275,750</u></u>	

Workings (1)

Store Number	a Turnover (p.a.)	b Rent (p.a.)	c Market rent	d Contribution	e=b-c Rent difference	f=d+e Contribution on with adjusted rent	g=a x 10% x 60% Additional margin from sales	f=d+e+g=a x 10% x 60% Adjusted contribution	Retained stores
1	500,000	125,000	125,000	75,000	-	75,000	30,000	105,000	105,000
2	450,000	85,000	65,000	40,000	(20,000)	60,000	27,000	87,000	87,000
3	750,000	175,000	125,000	(15,000)	(50,000)	35,000	45,000	80,000	80,000
4	600,000	140,000	150,000	50,000	10,000	50,000	36,000	86,000	86,000
5	400,000	95,000	75,000	30,000	(20,000)	50,000	24,000	74,000	
6	400,000	100,000	90,000	100,000	(10,000)	110,000	24,000	134,000	134,000
7	250,000	60,000	50,000	20,000	(10,000)	30,000	15,000	45,000	
Total	3,350,000	780,000	680,000	300,000		<u>410,000</u>		<u>611,000</u>	<u>492,000</u>
Distribution centre		100,000	100,000	(175,000)					
Head office costs		50,000	50,000	(300,000)					
				(175,000)					

Part (b)

Share a draft of the proposal with the BPF Committee
Non-disclosure agreement may be required
At least 3 business days to allow for comments
Areas to address/key issues for landlords
<ul style="list-style-type: none">• The basis of valuation proposed for the landlords' claims (and corresponding voting rights)
<ul style="list-style-type: none">• The basis of stratification where different options being offered, e.g. different properties continuing to trade or closing and/or different rental discounts being applied
<ul style="list-style-type: none">• Terms which enable the landlord or tenant to terminate the lease outside of any existing lease provisions, and any conditions attached
<ul style="list-style-type: none">• Compensation offered
<ul style="list-style-type: none">• Relevant antecedent transactions
<ul style="list-style-type: none">• "Clawback" - any opportunity for compromised landlords to benefit from a successful turnaround of the business"
<ul style="list-style-type: none">• Rent reviews
<ul style="list-style-type: none">• Rent repayments
<ul style="list-style-type: none">• The effect on any guarantors
<ul style="list-style-type: none">• Liability for rates
<ul style="list-style-type: none">• Payments in lieu of dilapidations, and basis for calculation
<ul style="list-style-type: none">• The ability, if any, for the landlord to terminate the CVA in the event of default
<ul style="list-style-type: none">• If there have been previous failures, an explanation of the CVA stands a better chance of success
<ul style="list-style-type: none">• As required by the legislation, an explanation of why the CVA is a better option for landlords than administration (particularly in terms of the number of stores likely to be closed)
<ul style="list-style-type: none">• If relevant, the source of funding to make the CVA financially viable
<ul style="list-style-type: none">• An explanation of why the business will be sustainable post-CVA
<ul style="list-style-type: none">• The justification for any differential treatment of critical and non-critical trade and other creditors
<ul style="list-style-type: none">• Conditions for termination of the CVA, to include the treatment of the CVA and landlord compromises in the event of a subsequent Administrator or Liquidator appointment

Part (c)

Arrears of rent
<ul style="list-style-type: none">• Copy invoices
<ul style="list-style-type: none">• Statement
<ul style="list-style-type: none">• Details of any deposit held
<ul style="list-style-type: none">• Details of any controlled goods orders
Dilapidations
<ul style="list-style-type: none">• Initial condition schedule
<ul style="list-style-type: none">• Schedule of current condition/work required
<ul style="list-style-type: none">• Schedule of costs incurred
<ul style="list-style-type: none">• Copy invoices for rectification work
<ul style="list-style-type: none">• Agent advice in relation to dilapidations
Future rent and service charges
<ul style="list-style-type: none">• Landlord calculation of loss
<ul style="list-style-type: none">• Details of any new leases entered into; rent, premium, etc

<ul style="list-style-type: none"> • Details of steps taken to mitigate loss
<ul style="list-style-type: none"> • Advice in relation to possible Void periods
<p>General considerations</p>
<ul style="list-style-type: none"> • Discount to Net Present Value for future claims
<ul style="list-style-type: none"> • Advice as to discount for voting
<p>General information</p>
<ul style="list-style-type: none"> • Details of guarantors
<ul style="list-style-type: none"> • Copy of lease
<ul style="list-style-type: none"> • Size of property
<ul style="list-style-type: none"> • Copy of any variations to the lease
<ul style="list-style-type: none"> • Valuation of lease
<ul style="list-style-type: none"> • Details of historic lease incentives; capital contributions/rent free periods etc.
<ul style="list-style-type: none"> • Break clauses
<ul style="list-style-type: none"> • Professional advice in relation to re-let values, likely incentives to re-let, etc
<ul style="list-style-type: none"> • Obtain proof of debt

Question 3

Campeiro
<ul style="list-style-type: none"> • Company appears insolvent as evidenced by the loan arrears • CVL – requires special resolution so will not be possible • CVA – not possible • Directors' Out of court Administration – not possible as requires directors' approval • No QFC in Campeiro so no out of court route available to Mr Oldenburg
<ul style="list-style-type: none"> • In court Administration <ul style="list-style-type: none"> ○ Mr Oldenburg could apply to court for an administration order as a creditor ○ Objective most probably that a distribution can be made to secured creditor ○ Additional costs associated with court application <ul style="list-style-type: none"> ▪ For appointment ▪ For ending administration ○ Mr Oldenburg could choose the administrator (subject to court approval) ○ Reasonably quick process ○ Costly statutory matters – more reporting to creditors than liquidation or receivership.
<ul style="list-style-type: none"> • Compulsory liquidation <ul style="list-style-type: none"> ○ Could apply to court as a creditor on the basis that the company is insolvent ○ Just and equitable as minority shareholder may be possible but not required due to insolvency. ○ Can take time for hearing date to be set ○ Limited control over practitioner ○ Additional costs associated with court fees and OR deposit and OR fees
<ul style="list-style-type: none"> • Fixed charge receiver <ul style="list-style-type: none"> ○ Could be appointed over the property and shares ○ Appointment quick ○ Cheaper due to less statutory matters to deal with ○ No (or limited) impact on subsidiary ○ Primary duty to Mr Oldenburg ○ No power to deal with the directors who may attempt to frustrate any process. • Receiver over shares could potentially place company into CVL <ul style="list-style-type: none"> ○ Significantly adversely affect realisations • Receiver over shares could sell the shares in Garrano as a trading business • Law of Property Act Receiver <ul style="list-style-type: none"> ○ Could be appointed over the property and shares ○ More limited powers than fixed charge receiver
Insolvency processes allow for antecedent transactions and investigations that may result in additional realisations
Garrano
<ul style="list-style-type: none"> • QFC appointment of administrator <ul style="list-style-type: none"> ○ Quick appointment ○ Could significantly adversely affect the profitable business ○ Debtor book could be jeopardised ○ Possible sale as a going concern ○ Could be costly
Conclusion
<ul style="list-style-type: none"> • Fixed charge receivership over the shares in Garrano and property in Campeiro

• Cost effective
○ Less statutory matters
○ Low cost of appointment and end of process
• Quick to appoint
• Doesn't directly affect subsidiary preserving value
• Removes the cost of the directors allowing for returns to be made to Mr Oldenburg
• Not time pressured – maximise value for the property and shares

Question 4

Part (a)

		1	2	3	4	Continuity		No continuity		
						After	Total	After	Total	
Income from debtors	See workings	1,620	1,080	1,620	3,780	7,884	15,984	5,913	14,013	
Stock on water	Per q	(1,800)					(1,800)		(1,800)	
VAT on stock on water	20% x £1,500	(360)				360	-	360	-	
VAT on sales						(864)	(864)	(648)	(648)	Assumes bad debt relief
VAT on debtors							-	113	113	2700-2025 /1.2 x 0.2
Directors' remuneration	-60*50%				(30)		(30)	-	(30)	
PAYE and NI on directors' remuneration	-100*50%+30					(20)	(20)	(20)	(20)	
Wages and salaries					(1,500)		(1,500)		(1,500)	
PAYE and NI on wages and salaries						(500)	(500)	(500)	(500)	
Rent	December 25 next rent due (paid up to that date)									
	3x£15,000 3 days due for period					(45)	(45)	(45)	(45)	
	VAT on rent					(9)	(9)	(9)	(9)	
	VAT reclaimed					9	9	9	9	
Rates	Amount accrued for the 4 week period					(200)	(200)	(200)	(200)	No VAT
Heat light and power	Payable once bill arrives for administration period - outside 4 weeks					(158)	(158)	(158)	(158)	5% VAT stated
VAT reclaimed on utilities						8	8	8	8	
Other costs	100/4x1.2	(30)	(30)	(30)	(30)		(120)	-	(120)	inc VAT
VAT on other costs						20	20	20	20	
Depreciation	Not a cash item									
Change in cash		(570)	1,050	1,590	2,220	6,485	10,775	4,843	9,133	
Cash balance		(570)	480	2,070	4,290	10,775		9,133		
Funding required from Bank		570								

WORKINGS

		Week				After		
		1	2	3	4	Continuity	No continuity	
						75%		
Debtors								
b/f		10,800	10,476	10,692	10,368	7,884	7,884	
Sales	6000x80%x90%/4	1,080	1,080	1,080	1,080			
VAT on sales		216	216	216	216			
Cash receipts		15%	10%	15%	35%	25%		
Existing Debtors	10,800	(1,620)	(1,080)	(1,620)	(3,780)	(2,700)	(2,025)	2700x75%
New Debtors						(5,184)	(3,888)	5184x75%
Debtors c/f		10,476	10,692	10,368	7,884	-	1,971	Bad debt

Stock on the water would generate more on both a closure and continuity basis and therefore should be accepted.

Part (b)

	Pre-pack £'000	Trading Closure £'000	Trading Sale £'000	
Intellectual property	750		1,500	
Fixed assets	250	250	450	Assumed closure = pre-pack
Stock	6,000	11,760	8,820	Discretion as to how stock on water dealt with in pre-pack
	£10m x 60%	See workings	9800x90%	
From sale	7,000	12,010	10,770	
Trading position (inc Debtors)	-	9,133	10,775	
Debtors on pre-pack	10,800			
Total realisations	<u>17,800</u>	<u>21,143</u>	<u>21,545</u>	

Alternative presentation for trading position/bad debt

Trading position (excl debtors)		2,891	2,891
Debtors	7884x75%	5,913	7,884
Bad debt relief	1971/1.2*20%	329	
		<u>9,133</u>	<u>10,775</u>

Stock

b/f		10,000	11,300	10,800	10,300
Sales	2500x80%/4	(500)	(500)	(500)	(500)
Stock on water		1,800			
c/f		<u>11,300</u>	<u>10,800</u>	<u>10,300</u>	<u>9,800</u>

Gross margin	58%
Sales price	23,520
Realisation %	<u>50%</u>
	<u>11,760</u>

Part (c)

• Discuss potential acquirers with the Directors
• Identify potential trade buyers/competitors
• Use PR releases to seek potential interested parties
• Circulate details internally to colleagues to identify whether they have any contacts or clients that may be interested
• Ask the existing bank as to whether they have any contacts that may be interested.
• Stock market announcement to seek interested parties
• Establish if agents have any contacts in the sector
• Place on agent's website
• Contact parties that have expressed an interest in such opportunities in the past (interested party register)
• Advertise online
• Consider social media
• Place on firm's website
• Consider advert or article in trade press/trade websites
• Outline opportunity in first letter to creditors
• Review customer list and contact any that may be interested
• Review supplier list and contact any that may be interested
• Discuss with management whether they have any interest in the business
• Discuss with employees/representatives to seek if they could be interested
• Establish from the Corporate Finance Boutique what interest there was and what parties they contacted.
• Market to private equity/investors/shareholders

Part (d)

Potential safeguards
<ul style="list-style-type: none">• Debenture/security in Esperia 2020 Limited
<ul style="list-style-type: none">• Seek a fixed charge over the intellectual property and fixed assets
<ul style="list-style-type: none">• Cross Guarantee from Esperia Limited
<ul style="list-style-type: none">• Debenture/security in Esperia Limited
<ul style="list-style-type: none">• Personal guarantee from the owners of Esperia Limited
<ul style="list-style-type: none">• Security to support Personal guarantees
<ul style="list-style-type: none">• Consider cross guarantee and security in any other group companies
<ul style="list-style-type: none">• Reservation of title over certain goods
Risk
Review financial position of <ul style="list-style-type: none">• Esperia 2020 Limited• Esperia Limited• Other guarantors
Obtain <ul style="list-style-type: none">• Accounts• Credit references• Asset statements• Trading forecasts• Details of funders and why consideration cannot be paid up front.
Compare to alternative
<ul style="list-style-type: none">• Trading closure total realisations c. £850,000 lower than sale
<ul style="list-style-type: none">• There would be additional claims from creditors; employees in particular

Part (e)

<ul style="list-style-type: none">• Test the market<ul style="list-style-type: none">○ Only worth what a willing buyer is willing to pay
<ul style="list-style-type: none">• Cost<ul style="list-style-type: none">○ How much it cost to develop○ Indicative as to what it may cost for another party to develop a similar product
<ul style="list-style-type: none">• Comparison<ul style="list-style-type: none">○ Establish if there are comparative transactions to sell or licence the IP
<ul style="list-style-type: none">• Income/economic benefit<ul style="list-style-type: none">○ Additional value to an acquirer○ Consider the future income and costs over the life of the asset○ Net Present Valuation; risk and financial cost○ Often difficult to accurately establish income, costs and life
<ul style="list-style-type: none">• Specialist agent's advice
<ul style="list-style-type: none">• Adverse factors<ul style="list-style-type: none">○ Is the IP dependent on a particular person in the business?○ Is ownership/entitlement clear; any disputes?○ Have any registrations lapsed?

JOINT INSOLVENCY EXAMINATION BOARD

PERSONAL INSOLVENCY PAPER

EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2020 SITTING

QUESTION 1

Write a letter of advice to Mrs Enys. The letter should set out:

- (a) the options that are available to Mr Enys's creditors to pursue the amounts that are due to them and the potential implications for Mrs Enys if her late husband's debts are not discharged. (8 marks)**
- (b) your advice on the next steps which you recommend should, in all the circumstances, be taken by Mrs Enys. (12 marks)**

The first part of this question was answered better than the second with most candidates able to identify the options that were available to creditors and the potential implications for Mrs Enys. However, having answered the first part of the question, candidates struggled to advise Mrs Enys on what she should do in the circumstances. This in turn led to a lot of irrelevant advice being given. In addition there seemed to be quite a lot of confusion around the property ownership issue. Many candidates wrote about the property passing through the right of survivorship when it was registered in Mr Enys sole name. Even some of the better candidates did not seem to understand the principle that because the property was solely owned, equity follows the law and the burden falls to Mrs Enys to establish her beneficial interest in the property. There was also a focus in this regard upon checking whether there had been an error at the land registry, rather than the facts which might allow her to establish a beneficial interest

Most candidates were able to suggest possible alternatives to an Insolvency Administration Order such as raising money from the children or friends. There was a strong tendency to suggest re-mortgaging the property rather than an equity release scheme which would have been a more viable option given that Mrs Enys is retired and reliant upon the state pension to meet her day to day living costs. Candidates are reminded that they must have regard to the information that is set out in the question and ensure that their answers contain appropriate advice having regard to the individual's circumstances.

Question 2

Requirements:

This question was also in two parts. The first part challenged candidates' accounting knowledge and the second part sought candidates' ability to think through a problem practically and advise based on the individual's financial situation and his ability to discharge his liabilities from the income that his business was projected to generate.

- (a) Prepare a monthly cash flow forecast for the 6 month period from 1 December 2020 to 31 May 2021 which illustrates the surplus cash which Mr Hanson will generate in this period. Clearly state any assumptions you make. (12 marks)**

Part A required the preparation of a cashflow. Candidates, on the whole answered this part reasonably well, picking up the easy marks. However, very few considered other issues, outside of the information provided, that impact on the finances of a sole trader. For example, only a few candidates noted that pension contributions needed to be paid and no-one put in a provision for future taxation, which is disappointing when candidates have been advised that HMRC have served a statutory demand and many candidates advised in part B, that in order to reach a Time To Pay arrangement returns need to be filed.

There was a variety of calculations on how to work out the finance payments on the machinery, with only a handful calculating it correctly. A number of candidates correctly identified that VAT needed to be charged on income, but there was wide spectrum of answers on what VAT applied to the expenditure, the amount to be paid, and when it should be paid.

A number of candidates did make valid assumptions regarding the wife's contribution to the mortgage payments and also how the payments for the Maserati could be catered for.

- (b) Set out your advice to Mr Hanson on the steps he should take to deal with his financial situation. (8 marks)**

Part B was the advice to Mr Hanson regarding his financial situation. On the whole, this question was answered poorly. Too many candidates saw this question as an opportunity to 'brain dump' a comparison between bankruptcy and IVA. Most candidates identified that the business was profitable, so on this basis, it was clear bankruptcy ought to be avoided. However, recognising that an IVA might be an option, marks were missed regarding the steps Mr Hanson could take to avoid this formal insolvency process and instead take practical, informal steps to resolve his current financial difficulties.

The fact there are only two unsecured creditors should have made candidates question whether an IVA was appropriate and indeed, even possible. If HMRC say no to informal proposals, it is unlikely they would agree to a similar proposal wrapped in an IVA proposal.

A number of candidates recognised the need to act quickly, due to the timings triggered by the serving of a statutory demand and many referenced the need to try and agree a Time To Pay arrangement with HMRC. Some candidates noted that VAT and Tax Returns would need to be brought up to date and that the cashflow forecasts would need to be prepared. Only a few candidates provided any advice regarding timescales for repayment to HMRC.

Easy marks were missed in considering how other funds could be raised. Could the debtor's wife or family advance any funds? Could the debtor find new additional work? Is there any equity in the Harvester II machine or Pick Up?

Re-mortgaging the family home would not be sensible advice as there is minimal equity in the property, circa £17,500 for Mr Hanson's share and if a lender could be found who would, in the circumstances, be prepared to advance funds, the cost and interest repayments are likely to be disproportionately expensive.

Few candidates discussed the issue of Levant Bank and the risk that is posed in the event of non-payment to them. Also, few raised the issues presented by the credit card company and what could be done to avoid them taking enforcement action.

A number of candidates discussed legal principles of *Stack v Dowden* and / or *Re: Pittortou*, but the question requested candidates to advise Mr Hanson, a client requiring advice on dealing with his financial difficulties, not provide legal argument about his interest in the property, particularly when a bankruptcy petition had not yet been issued.

Overall, there was a number of easy marks available for providing sensible, practical advice but many were missed by candidates who only provided advice on formal options.

Question 3

Generally the answers to this question were poorly answered with an obvious lack of planning by many candidates. Often there appeared to be a desire to completely ignore the fact of the divorce proceedings as candidates attempted to answer the question as if the trustee had to deal with the realisation of her interest in a jointly owned property only, with no real consideration of how a financial order in a divorce may affect this.

In part a, most candidates recognised the need to communicate with the bankrupt, Mr Despard in order to obtain further information about the divorce proceedings and their status. Disappointingly very few candidates identified the need to establish what assets, other than the matrimonial home, the bankrupt and his wife had, or the value of those assets.

Requirements:

Prepare a memorandum to the Trustee. Explain:

- (a) the steps that should be taken by the Trustee in relation to the divorce proceedings. (8 marks)**

Marks were lost by many candidates for failing to set out practical steps, such as establishing whether or not a financial order had been made, or notifying the court, and any solicitors instructed in relation to the divorce, of the fact of the bankruptcy order and the trustee's appointment.

- (b) how the divorce proceedings could impact upon the actions of the Trustee and her ability to realise assets for the benefit of creditors. (7 marks)**

In part b, despite the reference to "assets" very few candidates recognised that there could be assets beyond the matrimonial home which could be impacted by the divorce proceedings.

Marks were picked up by those who understood the fact the bankrupt's assets vested in the trustee upon her appointment, and demonstrated an understanding of the fact the timing of any financial order concerning the home would impact on what actions the Trustee could take in relation to that asset.

The highest marks were given to those who were able to set out a clear summary of the effect of a financial order occurring before the presentation of the petition, between the petition and bankruptcy order, and after the bankruptcy order had been made, together with references to the relevant case law for each scenario. However a number of candidates appeared to be confused about this area.

A high number of candidates recognised that any maintenance payments payable by the bankrupt may impact on how much money the trustee could potentially recover under an Income Payments order or agreement. Only one candidate considered that the bankrupt may benefit from maintenance payments and/or the transfer of assets from his ex-wife as a result of the divorce.

- (c) In light of this information prepare a supplemental memorandum to the Trustee:**

- (i) setting out the further enquiries that should be made; and**
(ii) explaining whether or not the Trustee can challenge the financial order. (5 marks)

Of the three parts of question 3 part c was the best answered. Candidates who identified practical steps such as requesting more information from the creditors, instructing an agent to investigate the suspicions, reviewing bank statements to identify evidence of a shared lifestyle, and undertaking social media searches, scored well.

The majority of candidates recognised the fact that evidence of a sham divorce could potentially enable the trustee to challenge a financial order in which assets have been transferred from the bankrupt to his ex-wife.

Question 4

Requirements

- (a) **Set out the ethical issues you should consider and the steps you should take prior to accepting the appointment as Nominee. (6 marks)**
- (b) **Prepare an estimated outcome statement which contrasts the estimated outcome for creditors if Dr Paynter were to be made bankrupt against the estimated outcome from the proposed IVA. Clearly state any assumptions that you have made. (12 marks)**
- (c) **Set out, giving your reasons, which votes should be admitted for voting purposes and which should be rejected. (9 marks)**
- (d) **Explain whether or not the IVA was approved on the decision date. (2 marks).**
- (e) **Set out the various options available to Dr Paynter and the potential consequences of each option. (11 marks)**

This year's 'case study' question focussed on a high-earning professional who had amassed some debts following an acrimonious divorce and who subsequently proposed an IVA to his creditors, based on his substantial surplus income, but excluding a property that generated a very small surplus rental income and with little net equity. Candidates were asked to set out the ethical principles involved for an IP intending to act for the debtor as both Nominee and Supervisor; to prepare a comparative outcome statement for an IVA as opposed to bankruptcy; to deal with the various votes to approve or reject the proposal and the outcome of those votes; and then comment on the options available to the Debtor following his stated intention to seek voluntary work overseas, shortly after the Proposal had been approved.

On the whole, candidates dealt well with most aspects of the question, and it was particularly pleasing to see that almost all candidates were able to produce a well-structured and reasoned comparative outcome statement; consequently, very many candidates scored high marks on this part of the question. Candidates also showed a good grasp of how to deal with creditor claims received by fax, post and email, and generally understood the requirements for admitting votes in an IVA process, including where there was a connected creditor who was an associate of the bankrupt, thus requiring a second round of voting although a significant number of candidates mistakenly stated that the debtor's mother's claim would be deferred in a bankruptcy scenario.

Many candidates did however struggle to apply their knowledge to the ethical issues facing an IP as Nominee/Supervisor in a personal insolvency, instead repeating the "list" of ethical issues an IP needs to consider especially if they were the proposed appointee of a corporate case.

The final part of the question asked candidates to give critical thought to the debtor asking about his options if he were to seek voluntary work overseas, shortly after his IVA had been approved. It was disappointing to note that on the whole candidates struggled to answer this part of the question, with many of whom simply writing out an "options checklist" rather than properly consider the implications of what the debtor was suggesting and the potential outcomes in the scenario presented. Candidates are again reminded that they will not be awarded marks for simply writing out a checklist learned by rote and without any application to the facts of the question.

MARK PLAN

Question 1

An individual's debts are not automatically written off when a person dies. In practice some creditors such as financial institutions will write off some debts.

However, creditors can still pursue repayment.

As no will was made, Mr Enys' interest in the property will have passed to his wife through laws of intestacy. However, creditors can still look to Mr Enys assets for payment if action is taken.

The options available for creditors and implications for Mrs Enys if debts are not discharged

Dark Bank is a secured creditor and can look to enforce their security if the monthly mortgage payments are not made. They could appoint a receiver or start proceedings for an order for possession and sale.

If the unsecured debts are not paid and/ or the creditors are not satisfied that steps are being taken to resolve Mr Enys' financial affairs, a creditor could petition for an Insolvency Administration Order. In order to petition, the creditor must be owed £5000 or more. The Court can make an order if it is satisfied that the debt is due, there is no reasonable prospect of it being paid and there is a reasonable probability that the estate will be insolvent.

If an IAO is made, a Trustee would be appointed to realise assets in order to pay creditors.

As the property appears to be the only asset of value, the Trustee would need to establish the value of Mr Enys' interest in it and then take steps to realise it for the benefit of creditors.

The cost of the IAO, Trustee's fees etc will mean that the amount needed to pay of Mr Enys' liabilities will increase quite significantly if they are not paid off. It would therefore be in Mrs Enys' interests if Mr Enys' creditors could be discharged without the need for an IAO to be made

Mrs Enys would be required to submit a statement of the deceased affair's to the Trustee (s288IA modified by DPO Art 3)

Any dispositions of property following Mr Enys death would be void if an IAO is made.

Unsecured creditors could pass the matter to debt collection agents or sell their debts. Mrs Enys would then have to deal with the agents or assignees.

Unsecured creditors could also issue proceedings with a view to then obtaining a charging order over the property

Recommended next steps

Mrs Enys should write to all of the creditors to formally notify them of her husband's death, enclosing a copy of the death certificate and to explain that she is currently seeking advice on position and requesting that they take no further action for the next 4-6 weeks to allow her time to consider her position and for a letter of administration to be obtained. Creditors should be asked to freeze any interest.

Mrs Enys should apply for a letter of administration which gives her the legal right to deal with her late husband's estate.

Mrs Enys will also need to ensure that Dark Bank is kept up to date. Whilst they may agree to repayments being frozen, they will not agree to freeze repayments indefinitely.

The amount that is due to Dark Bank needs to be established. This is critical to determine the amount of equity and whether Mr Enys has an interest in the property that could be realised for the benefit of creditors if a Trustee was to be appointed.

Dark Bank should provide information in relation to the charge upon receipt of a copy of the death certificate and letter of administration.

Dark Bank should also be asked to confirm when funds were advanced, how much was advanced etc.

Enquiries should then be made to establish how the funds were utilised by Mr Enys. Did Mrs Enys benefit indirectly?

Whilst the property was registered in Mr Enys' name, Mrs Enys could still assert a beneficial interest in the property as a result of the significant inheritance being used to pay off the mortgage. Mrs Enys should be asked to confirm whether she has made any further contribution to the property, mortgage, bills, improvements etc over the years whether directly or indirectly and to evidence any such payments through copy bank statements etc.

The circumstances are not straightforward. If Mrs Enys can evidence that her money was used to pay off the prior secured loan in full, she could also be entitled to a right of subrogation .

If Mrs Enys can demonstrate that she has a beneficial interest in the property, she could claim an equity of exoneration in relation to the sums due to Dark Bank (subject to outcome of enquiries referred to above).

Mrs Enys should be advised to obtain legal advice regarding her interest in the property.

Whether a claim to be entitled to an equity of exoneration would succeed would depend on the purpose for which the funds were advanced and whether Mrs Enys benefitted directly or indirectly through the funds advanced by Dark Bank.

If there is equity in the property, then assuming that Mrs Enys wishes to remain in the property she could she could consider equity release as a means of raising funds to repay creditors. Whether this is viable will depend on the level of equity etc.

However if interest is compounded through any equity release this could be an expensive way of raising the funds and result in equity being eroded.

Once probate is obtained, the property can't be transferred to Mrs Enys as it is subject to the Dark Bank charge. Any dealings with the property would require Dark Bank's consent.

Mrs Enys will need to consider whether she can meet the monthly repayment from her income. If she can, she could see if Dark Bank would agree to the transfer of the property subject to the charge

Given that Mrs Enys lives in the property alone, she may want to consider selling the property in due course and buying somewhere smaller/ cheaper.

Consider whether family members (children) might assist in discharging the creditors to allow Mrs Enys to remain in the house

Make enquiries of the council to establish whether the council tax account is in sole or joint names. If it is in joint names, Ms Enys will be liable in any event. Ensure council is now aware of the sole occupation and request 25% reduction applied.

Check whether Mr Enys had taken out a policy of life insurance. If a policy is in place, check whether it has been assigned. If not, check the terms to see how much is payable

Question 2(a)

Mr Hanson - monthly cashflow forecast

6 months ending 31 May 2021

	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Total	
	£	£	£	£	£	£	£	
Income								
F&L Scotland	45,000	45,000	45,000	45,000	45,000	45,000	270,000	
Hamish Warleggan	18,000	18,000			18,000	18,000	72,000	
	3,000	63,000	45,000	45,000	63,000	63,000	342,000	Of which £57,000 is Output VAT
Expenditure								
Salaries	6,333	6,333	6,333	6,333	6,333	6,333	38,000	
Employers NIC	633	633	633	633	633	633	3,800	
Pension - 3%	190	190	190	190	190	190	1,140	
Insurance	475	475	475	475	475	475	2,850	No Input VAT
Vehicle expenses (inc fuel)	240	240	240	240	240	240	1,440	Input VAT
Other	120	120	120	120	120	120	720	Input VAT
Finance payments	17,959	17,959	17,959	17,959	14,539	14,599	100,974	No Input VAT
Business Loan repayment	1,500	1,500	1,500	1,500	1,500	1,500	9,000	No Input VAT
Business Loan arrears	1,000	1,000	1,000	1,000	1,000	1,000	6,000	No Input VAT
	28,451	28,451	28,451	28,451	25,031	25,091	163,924	No Input VAT
VAT Payment			31,320			24,820	56,140	
Cash generated by the business	34,549	34,549	14,771	16,549	37,969	13,089	121,936	
Provision for taxation	9,096	9,096	9,096	9,096	9,096	9,096	54,576	
Provision for drawings	1,250	1,250	1,250	1,250	1,250	1,250	7,500	
Provision for 50% of mortgage	1,600	1,600	1,600	1,600	1,600	1,600	9,600	
Monthly payment for Maserati	922	922	922	922	922	922	5,532	
Available for unsecured debt	21,681	21,681	27,639	3,681	25,101	221	44,728	

Finance Payments			
Harvester 1	$(400,000/72)*1.15$	6388	
Harvester II	$(200,000/48)*1.15$	4791	
Forwarder 1	$(180,000/60)*1.12$	3360	
Forwarder II	$(150,000/50)*1.14$	3420	(Dec to March only)
		17959	

VAT calculation

Q/e 31 December due on 7 February

Output VAT 3* £10,500 less 3*£60

Q/e 31 March due on 7 May

Output VAT 3*£7,500 +£2,500 less 3*£60

Provision for taxation - for 6 month period

Sales =£342,000 net =£285000

less Expenses (net) £148,564 (assuming that plant and machinery relief will be given at equivalent rate to finance payments)

Taxable profit for 6 months -£136,436 @.4 = £54,574/6 = £9096

This profit covers 2 tax years and we don't know Mr Hanson's income for the previous part of the tax year or the remainder of 21/22

Assume that he earns more than £150k pa and loses the benefit of his personal allowance and provide for payment at 40% though in reality it will be a blend of 3 rates.

A review by a tax professional is required to ensure adequacy of provision

Assumptions

Assumed that if debts can be cleared in a relatively short period, Mr Hanson keeps the Maserati and makes the monthly payment.

If Mr Hanson returns the Maserati and no longer incurs the monthly finance charge, this will result in a claim to the estate of at least (£22,400 +(10*£922) = £31,620.

Assume that agreement can be reached to repay the arrears on the secured business loan over the 6 month period of the cash flow.

Assume that Mr Hanson and his wife split the mortgage payment 50:50.

(b)

The cashflow forecast indicates that after settling his ongoing liabilities, profits of circa £45,000 will be generated over the next 6 months

Given that Mr Hanson's business is projected to be profitable it is assumed that he would want to continue trading to generate an income and avoid the restrictions of bankruptcy.

Mr Hanson should however consider whether or not it is likely that his existing contracts will be renewed or alternative contracts will be put in place? Mr Hanson will need to continue trading beyond the period provided for in the cash flow in order to generate sufficient funds to repay his liabilities.

If Mr Hanson is confident the contracts will be renewed/other contracts obtained, his unsecured debts could be cleared within 12 months. Mr Hanson should therefore make enquiries to establish whether any other forestry contracts will be coming up for tender

However, HMRC has served a statutory demand. The date of service must be established. Mr Hanson has 18 days to apply to set aside the statutory demand. HMRC can present a bankruptcy petition after 21 days.

Given that Mr Hanson should be able to discharge the sums due within the next 12 months, it would be advisable for Mr Hanson to try and avoid the costs associated with a formal insolvency process.

Contact should be made with HMRC as soon as possible to check what their position is and whether they would agree to a time to pay agreement being entered into.

The total current liability to HMRC should also be established. Whilst they have served a statutory demand in respect of £81,532 have further sums fallen due or about to fall due since demand was prepared?

If HMRC is agreeable to a TTP, ongoing liabilities to HMRC would have to be discharged otherwise the TTP will be failed.

Mr Hanson would also have to ensure that all vat and tax returns are kept up to date and filed on time.

Mr Hanson would also have to continue meeting the minimum payments on his credit card each month. For as long as this minimum payment is being met, the credit card company should not take any enforcement action. Reaching agreement for the repayment of the HMRC debt should be prioritised, with the credit card debt discharged once the position with HMRC has been brought up to date.

The cash flow forecast could be provided to HMRC to demonstrate that profits should be generated from which they can be repaid if they are prepared to allow him some time.

In approaching HMRC and trying to negotiate an agreement, it should be drawn to their attention that for 2 of the 6 months he will not be in a position to make a payment (unless payments in the other months are reduced to enable Mr Hanson to retain funds to make payment in the months when no profits are generated.

The Harvester II and the pick up both have equity in them. Does Mr Hanson require them for his business? If not, he could consider selling them to generate funds to make an initial lump sum payment to HMRC.

Are the finance agreements all with the same company? If they are, the terms of the finance agreements will have to be checked to see whether there is a consolidation clause that would entitle the finance company to the entire sale proceeds.

Mr Hanson should also consider whether his wife or other family member/ friend is in a position to advance funds to him to help him make an initial lump sum payment to HMRC.

Would Sir Hamish consider reducing the time it takes to pay the invoices to assist with cashflow and enable payment to be made to HMRC sooner?

Levant Bank should also be contacted regarding the arrears on the business loan. Will the bank agree to a repayment plan in respect of the arrears? Mr Hanson should be proactive in contacting the Bank before they threaten possession proceedings.

The position of Levant Bank regarding the arrears will also assist in determining how much can realistically be offered to HMRC each month.

Monthly payments to Levant Bank will have to be made to ensure that they do not take action to repossess the property.

If HMRC refuse to agree to a TTP agreement, Mr Hanson could consider proposing an IVA in order to enable him to continue trading and using the proceeds to discharge all of his liabilities over a period of time.

Depending on when the statutory demand was served, it might be necessary to apply for an interim order pursuant to s252 IA86.

If however HMRC refuse a TTP would they be supportive of an IVA? If HMRC indicate that they will not support an IVA and would vote against its approval, it cannot be approved.

While the Maserati payments are high, handing the car back now could crystallize an unsecured liability. The PCP agreement should be reviewed to see whether the car could be handed back now without incurring any additional charges.

Mr Hanson should consider whether the value of the car at the end of the PCP agreement will exceed the balloon payment and if it will, whether there would be a market for the car. If there is, Mr Hanson could

consider making the balloon payment then immediately selling the car to generate funds that could be put towards his liabilities.

Question 3

Contact Mr Despard to notify him of your appointment and to ask that he provides further information regarding the divorce proceedings and/or attends for interview to discuss:

- their current status of the divorce proceedings,
- whether a financial settlement has been agreed. If it has, a copy of an agreement reached should be provided together with confirmation of when agreement was reached and whether court approval been obtained
- whether any assets have already been transferred between the parties. If they have, what has been transferred, what is their estimated value and on what basis were the assets transferred?
- if the proceedings are on-going, details of any forthcoming hearings, together with details of the court in which the proceedings were issued
- confirmation of whether Mr Despard and his ex-wife have instructed solicitors and if they have, for details to be provided
- requesting that copies of any orders made in the proceedings be provided

If a final order has not been made

Contact Mr Despard's solicitors, his ex-wife (or her solicitors) and the Court to notify them of the Trustee's appointment and of the making of the bankruptcy order and that Mr Despard's assets have vested in his Trustee pursuant to s306IA86

If there is a forthcoming hearing, consider instructing solicitors / Counsel to attend the hearing on behalf of the Trustee

Establish whether a Form E has been completed by Mr Despard and if it has, obtain a copy to review as this may contain useful information regarding his assets

In addition, request that Mrs Despard provide you with details of any known assets and their estimated value

Given that the making of the bankruptcy order will prevent the transfer of assets to Mr Despard's ex-wife, you may face difficulties in securing her co-operation.

Establish whether Mr Despard has any children and if he does, whether maintenance payments have been agreed or provided for in a court order.

Obtain up to date official copies for the jointly owned property in order to verify ownership and see what entries there are against the title. A restriction should be registered to protect the Trustee's interest.

If a final order has been made

Review the order to establish what assets are to be transferred and by whom. If Mrs Despard is obliged to transfer assets to the bankrupt, check whether this has been done. If not, ensure that she is aware of the bankruptcy order and that the bankrupt's entitlement under the order has vested in the bankruptcy estate.

(b)

Pursuant to Section 306IA a bankrupt's assets vests in his/her Trustee in Bankruptcy upon his/ her appointment.

The matrimonial court has no jurisdiction to make an Order that would deprive the Trustee of any assets that have vested in him (Re Holliday (a bankrupt) [1981] Ch.405).

Property

This means that where a bankrupt has an interest in a property, the court cannot make a property adjustment order. The making of a bankruptcy order will sever a joint tenancy. The bankrupt's interest will vest in the Trustee and the spouse will not be able to claim an increased interest as part of the financial proceedings.

The Trustee may therefore need to intervene in the matrimonial proceedings to ensure that the Court is aware of the making of the bankruptcy order and that the matrimonial courts cannot make an order in respect of the bankrupt's assets

Pensions

The position with pensions is less clear. Following *Raithatha v Williamson*, a Trustee cannot compel a bankrupt to draw down on his pension. Therefore arguably a pension sharing order could still be made post bankruptcy.

If excessive contributions were made prior to the bankruptcy order, the Trustee could look to claw these back (s342A IA86)

Income

Pursuant to Section 310IA a court may make an income payments order claiming for the bankrupt's estate so much of the income of the bankrupt as may be specified in the order. Alternatively an IPO may be entered into.

The Court will not make an IPO the effect of which has the effect of reducing the income of the bankrupt below what is necessary to meet the reasonable domestic needs of the bankrupt and his family.

Family is defined as 'the persons who are living with him and are dependent upon him'.

In *Albert v Albert* [1997] 2 FLR 791 the Court of Appeal stated that the family court is concerned to ascertain the amount of the bankrupt's income and decide how much is required to maintain the wife and children of the bankrupt. However, the amount that is available will be affected by any order made by the Insolvency Courts.

If a maintenance order has been made prior to the making of the bankruptcy order, this should be taken into account by the Trustee when considering whether any surplus income is available and could be claimed under an IPA/IPO

If a final Order is made prior to the presentation of the bankruptcy petition, this will be binding on the Trustee subject to the right to apply to have it set aside on the grounds of fraud, mistake etc.

A property adjustment order takes effect from the date that the order is made and not the date on which the terms of the order are implemented i.e. when title to a property is transferred *Mountney v Treharne*

If a final Order is made after the presentation of the bankruptcy petition, dispositions of property made pursuant to that Order can be challenged by a Trustee pursuant to s284IA as being void *Treharne & Sands v Forrester*.

(c)

Speak to the creditors. Do they have any further information regarding Mr and Mrs Despard that would support the suggestion that the divorce proceedings were a sham

Carry out social media/ google searches to see if there is any evidence of Mr and Mrs Despard still being a couple

Obtain a copy of the financial order to establish what assets were transferred. Depending on the value of the assets transferred to the ex-wife, consider whether to engage an enquiry agent to try and establish whether the bankrupt has separated from his ex-wife. The agent can check the electoral register/ council tax records and potentially carry out surveillance.

Were solicitors instructed in relation to the divorce? If they were review their files and the instructions that were given to establish whether there are any factors that may point towards collusion-

- was the order was made in protracted, contested proceedings or by consent shortly after the proceedings were commenced.
- Does the financial order seem unduly generous to Mrs Despard?
- Were all of Mr Despard's creditors disclosed as part of the proceedings?

Obtain and review statements for Mr Despard's bank and credit card accounts. Is there any pre-bankruptcy expenditure to suggest that Mr and Mrs Despard remain a couple?

Once further enquiries have been made, instruct solicitors to review documentation etc and advise on whether the financial order could be subject to a successful challenge

The case of *Hill v Haines* states that consideration was given by the wife in giving up her ancillary rights thereby preventing a challenge to the financial order by the Trustee on the grounds that it was a transaction at undervalue

If there is evidence that the Order was procured as a result of fraud, mistake, misrepresentation or concealment then the Trustee may have grounds to challenge the Order as a transaction at undervalue / transaction defrauding creditors pursuant to s423IA86

Question 4 (a)

An IP is required to comply with the Insolvency Code of Ethics. (NB. A new Code of Ethics was introduced on 1 May 2020. This is after the cut-off point of 30 April regarding the law and guidance that is relevant).

Prior to accepting an appointment, an IP should take reasonable steps to identify the existence of any threats to compliance with the fundamental principles set out in the Code of Ethics.

In particular will there be any threats to objectivity as a result of a conflict of interest or as a result of any significant professional or personal relationships?

Here, Dr Paynter is a doctor who worked at a local surgery and now works at the local hospital. Query whether this could give rise to a familiarity threat.

The proposed Nominee should check that he has appropriate resources / competence/ skills to carry out the proposed instruction as Nominee.

An IP should keep a written record of the decision and the reasons for it. The ensures that the decision making process is fully documented.

The Nominee must ensure that appropriate advice in relation to the IVA is given in writing.

The Nominee must be able to report whether or not i) the debtor's financial position is materially different from that contained in the proposal and the extent to which the information has been verified ii) the IVA is manifestly unfair and iii) the IVA has a reasonable prospect of being approved and implemented.

An IP must ensure that the proposal is achievable and that a fair balance is struck between the interest of the debtor and the creditors

(b)

Dr John Paynter
Estimated outcome statement

	Notes	Bankruptcy		IVA	
Assets		£	£	£	£
ASSETS SPECIFICALLY PLEDGED					
Property ** 1/2		150,000		Excluded	
Less agent's fees	1	2,250			
Less Cornish Bank	2	140,000			
			7,750		
ASSETS NOT SPECIFICALLY PLEDGED					
Contributions from income	3		54,000		90,000
TOTAL ASSETS AVAILABLE FOR UNSECURED CREDITORS			61,750		90,000
COSTS OF REALISATION					
Nominee's Fee				(2,000)	
Estimated Supervisor's Fees	4			(13,200)	
Supervisor's disbursements				(100)	
IVA registration fee				(15)	
Petitioner's costs		(3,000)			
OR's Administration fee		(2,775)			
OR's general fee		(6,000)			
OR IPO/A set up fee		(150)			
Banking fees	5	(352)			
Trustee's fees		(21,000)			
Trustee's disbursements	6	(750)			
Legal fees	7	(5,000)			
VAT	8	(5,350)			
Funds available to unsecured creditors			17,373		74,685
Unsecured creditors					
Student Loans Company	9	-		-	
Bodmin Bank		7,800		7,800	
Credit Cards (2)		12,200		12,200	
Overdraft		6,425		6,425	
Car finance		3,980		3,980	
Car rental	10	9,972		9,972	
Penalty charge notices	11	520		520	
Mrs Paynter		26,400		26,400	
Total		67,297		67,297	

Surplus/ Deficiency to creditors		(49,924)		7,388	
Distribution (p in the £)		0.25p		100p	

NOTES

*mark allocated for correct formatting of EOS

** mark allocated if a sensible assumption has been included regarding the rental income in bankruptcy

1. Assume agent's fee of 1.25% plus vat (£2250)
2. This assumes that the overdraft is not secured against the property
3. In bankruptcy an IPO/IPA can last for a maximum of 3 years. It is proposed that the IVA will last for 5 years.
4. Calculated as 15% of realisations after payment of Nominee's fee
5. Assumes that the bankruptcy runs for 4 years (£22 a quarter x 16)
6. Bonding, property insurance, PI insurance
7. Assume solicitor is instructed in relation to sale of property and to provide general advice.
8. Nominee's and Supervisor's fees are exempt from VAT in consumer IVAs following the Paymex decision
9. Assuming Dr Paynter studied in the UK, Student Loans cannot be included in an IVA.
10. The debt should be converted into sterling.
11. Fines of the Magistrates Court cannot be included in an IVA. They can constitute a bankruptcy debt, but survive bankruptcy. Assumed here that penalty notices have not resulted in Court orders being made.

(c) (i)

At least one vote must be cast in order for the decision to be made
In order to be counted in a decision procedure, votes must be received on or before the decision date.
(15.9(1))

This means that the vote from ABC (credit card) should be disregarded as it was received after the decision date.

Bodmin Bank's vote was sent by fax which is acceptable.

Whilst the vote was received on the decision date, it was not received until 8.30pm. Bodmin Bank's vote was therefore received too late to be taken into account.
In the case of a vote cast by a creditor, the vote must be accompanied by a proof in respect of the creditor's claim unless it has already been given to the convener.

The proof of debt should comply with the requirements of Rule 14.4

This means that the vote of Easy Drive care rental should be disregarded as there was no accompanying proof of debt.

The debt owed to Tfl is a small debt as defined by Rule 14.31.

However, if a creditor wants to vote, they are still required to provide a proof (rule 15.8(3)(f)). This means that Tfl's vote should be disregarded.

Sarah Paynter lodged her claim and accompanying proof in advance of the decision date. It should therefore be admitted.

XYZ also lodged their claim and proof in advance of the decision date, It should also be admitted.

X finance lodged their claim by email. Assuming that the conditions of Rule 1.45 are met (i.e. that actual/ deemed consent for delivery by email was given, that consent was not revoked and an electronic delivery address was provided), the claim can be lodged by email.

However, the value of the claim is higher than the amount that Dr Paynter believed was due.

The proof of debt should be reviewed in order to understand how the debt has been calculated and whether there are termination fees, interest etc which have increased the amount that is due.

Cornish Bank lodged a claim and accompanying proof prior to the meeting

However, Cornish Bank also have a charge over Dr Paynter's property. The terms of the security should be checked to see whether this covers the overdraft. If it does, the equity in the property is greater than the overdraft.

Where a debt is wholly secured, its value for voting purposes is nil. (15.31(4)).

If the convener or chair is in any doubt about whether the claim should be admitted or rejected, it should be marked as objected to and allowed to vote subject to it subsequently being declared invalid if the objection to it is sustained Rule 15.33(3).

If it cannot be determined whether Cornish Bank is secured, then the claim should be admitted but marked as objected to

(c) ii

Rule 15.34(6) a decision approving a proposal is made when $\frac{3}{4}$ or more in value of those responding vote in favour of it

A decision is not made if more than half of creditors who are not associates of the debtor vote against it.

A creditor is not an associate of the debtor unless the convenor/ chair decides that the creditor is an associate of the debtor. Here, Mr Paynter's mother is an associate pursuant to s435 IA 86.

Here- votes admitted and amounts are as follows

Accept – £41,805

Sarah Paynter 26,400

Cornish Bank 6,425 (objected to?)

X Finance 8,980 (assuming that review of proof of debt and finance documents confirms that this is the correct amount due)

Reject – £7,200

XYZ (credit card)

More than $\frac{3}{4}$ of creditors have voted in favour.

If Mrs Paynter's vote is removed as she is an associate, then £15,405 voted in favour. Votes against total £7,200 therefore the IVA is approved.

(d)

If Mr Paynter does nothing, goes travelling and simply stops paying his monthly contributions, he will be in breach of the terms of his IVA.

If the monthly contributions are not paid, the Supervisor is likely to issue a Notice of Breach. If the breach is not remedied within the requisite time period, the Supervisor can give Notice of Termination, or seek creditors' views on varying the proposal.

If the IVA is terminated and there is a trust clause, the contributions paid to date will be used to pay costs and then be distributed to creditors. The contributions would not be returned to Mr Paynter.

Following termination, the Supervisor could then petition for Mr Paynter's bankruptcy.

If the Supervisor does not petition, Mr Paynter could decide to petition for his own bankruptcy

A doctor is not precluded from working as a doctor if a bankruptcy order is made against him. The GMC will generally only take action if the bankruptcy reveals evidence of misconduct. Bankruptcy would not have any impact upon his ability to work upon his return to the UK. It would however mean that his interest in the property would vest in his trustee.

If Dr Paynter is carrying out voluntary work, it is unlikely he will have an income which could be the subject of an IPO/ IPA.

An IPO/ IPA can only be put in place prior to a bankrupt receiving their discharge. If Dr Paynter co-operates with the Trustee and there are no grounds for suspending his discharge, if he starts work in the UK after receiving his discharge, he would not be obliged to make any payments from income

However, not all of his debts would be written off. Dr Paynter would still be liable for his student loans and potentially also in respect of the fines depending on whether an order was made in the Magistrates Court.

Mr Paynter could terminate the IVA himself, go travelling and see whether any of his creditors do actually take any action.

The failed IVA will appear on Mr Paynter's credit record for a period of 6 years which may impact his ability to get credit in the future

If the first IVA is terminated, this does not preclude a second IVA being proposed at a later date but Mr Paynter might find that creditors are unwilling to vote in favour a second time
Mr Paynter could propose a variation to the IVA whereby he makes a lump sum payment. This could be discounted slightly to take account of the early receipt by creditors and the lower cost due to the IVA being concluded earlier than anticipated.

Alternatively he could propose a reduced monthly contribution whilst travelling or a short term payment break. Protocol IVAs allow a payment break of up to 9 months.

The EOS showed that there would be a projected surplus. Depending on the duration of the proposed voluntary work, it might be that a payment break could be taken without having to need to extend the IVA, with creditors still receiving 100p in the £.

Alternatively, or in addition, Dr Paynter's mother may be willing to withdraw her claim in order to increase the return to creditors.

Creditors might agree if they receive the same return and / or are happy to receive payment earlier than projected.