

JOINT INSOLVENCY EXAMINATION BOARD

SENIOR MODERATOR'S COMMENTS ON THE NOVEMBER 2021 SITTING

Introduction

This report is written following the publication of the results of the November 2021 sitting of the Joint Insolvency Examination ("the Examination"). It should be read in conjunction with the reports prepared by the examiners for the two papers in England and by their counterparts in Scotland.

Following the 2020 sitting of the Examination I prepared a lengthy report which set out in some detail what candidates needed to do to succeed in passing the Examination or any paper comprised in it. This year I propose not to repeat much of what I said in my previous report, but I urge all candidates and those helping them in their studies to pay close attention to what is said in the 2020 report. It is as applicable now as it was a year ago.

How candidates fared in 2021

I was pleased to see that, for the two papers set according to English law, there were improvements in some of the key indicators. There was a 27% increase in the overall number of candidates and a greater number of candidates were successful in passing either one or two papers. In Scotland, the very low number of candidates makes year on year comparisons difficult, but the number of those passing at least one paper was commensurate with 2020. The less good news is that the percentage of candidates who unfortunately did not pass any of the papers that they attempted continues its upward trend. Over the past four sittings of the Examination, on average 53% of candidates did not pass any paper. The figure for the 2021 sitting was 60%.

Away from the statistics, the examination team and I welcome that fact that at least some candidates appear to have taken heed of the detailed comments in my 2020 report. However, I have continuing concerns about how some candidates approach questions.

One theme of my reports in recent years, and highlighted in my 2020 report, is the continued tendency of some candidates to adopt what I have called the checklist approach. By this I mean answering questions by rote, setting out information learned during studies in a mechanical way without ensuring that the question context requires this to be done. The Examination is very largely comprised of questions based on practical scenarios which require focussed practical answers. Regurgitation of long lists of what has been learned while studying or through practical experience often misses the point, in part or entirely, and does not give the examination team any confidence that a candidate has appreciated the issue in hand and has identified the solution. Even when candidates succeed in making relevant points, if they have done this by taking the checklist approach and have happened upon mark-worthy points along the way, it will usually be obvious to the examination team that this is so and it can be difficult to conclude that the candidate really knows what they are doing.

In the reports issued this year by the four examiners, there are a number of examples where the checklist approach has not served candidates well. In question 2a of the corporate insolvency paper, the fact that the scenario (a merger of two insolvency firms) gave rise to ethical issues was clear, but too many candidates saw this as an opportunity to write widely about ethics and not to focus just on those ethical issues which arose in the circumstances described. In question 4e of the same paper some candidates saw a reference to retention of title as an opportunity to write extensively on the subject although the question was narrow in scope. There were no marks for discussing the process that would be needed to establish

whether an all monies clause existed, or even for suggesting that enquiry about this should be made, when the question clearly stated that the existence of such a clause had already been established.

In question 1a of the personal insolvency paper candidates were asked to deal with five tenanted properties owned by the bankrupt and specifically to list the information that the bankrupt should be required to provide in relation to these. Rather than concentrate on what was asked for, a number of candidates thought it appropriate to widen their answers by wondering whether any other such properties existed or by referring to the bankrupt's own private residence when it should have been clear from the question that no such assets existed. In question 2 of the same paper candidates were told that a creditor was owed money respect of steel supplied. This led a number of candidates to raise retention of title and to write about the possibility of the creditor recovering money by exercising their rights in this direction, despite the bankruptcy having started over three years previously.

The issues highlighted in the foregoing two paragraphs are not only examples of where candidates alight on a subject and decide to write about extensively, perhaps in circumstances where this is not required, but they are also examples of candidates not thinking clearly. This in turn leads to an increasing worry which is that candidates are writing comments or answers that could not ever apply in the circumstances.

By way of further examples, in question 1a of the personal insolvency paper too many candidates discussed section 283A, a provision which is concerned with a property which is the sole or principal residence of the bankrupt or his family. The question was about tenanted properties. In question 3a of the same paper, a number of candidates discussed contracts with customers, and whether they included insolvency clauses and retention of title when the individual concerned was a self-employed painter and decorator. In question 4a of the same paper, which asked candidates to set out the steps that they would take to protect and realise the assets identified, some candidates thought that it would be appropriate to employ agents to value a business which had been totally destroyed by fire some time earlier or to discuss whether a yacht owned by the bankrupt would be property that was necessary to meet his or his family's basic domestic needs.

Examples could also be found in answers by candidates sitting the corporate insolvency paper. In question 2c, where money had been received from an account in the Isle of Man, a number of candidates discussed whether the Isle of Man could, in effect, be trusted or not. One candidate concluded that the Isle of Man is generally considered a safe offshore jurisdiction, whilst another dismissed it as a tax haven where money laundering activities can be based. In question 4 candidates were not told the nature of the company's business as this was not relevant. This did not stop one candidate concluding that, as the holder of security over the company's assets was a Mr. Fish, the company operated in the fishing industry.

It would be easy to dismiss the examples given above as one-offs or aberrations. That would be to miss the point, which is that there are too many instances of candidates who do not focus on the question that has been set but appear to get distracted. It is not clear why this is, but, particularly in the personal insolvency paper, some candidates appear not to possess the real live practical experience that would equip them with the depth of knowledge that would enable them to hone in on the specific issues being examined.

This conclusion is supported by the continuing tendency of some candidates sitting the personal insolvency paper to bring to their answers practice which is clearly rooted in corporate rather than personal insolvency. Practical experience gained in one form of insolvency will sometimes have application elsewhere, but such experience is not always transferrable and, even if it is, some adaptation is usually required. In question 1 of the personal insolvency paper, a number of candidates referred routinely to leases (as opposed

to tenancies) and considered that locks could or should be changed. Importing corporate insolvency practice into an answer to a personal insolvency question without due care is a clear indicator that the candidate concerned may not have, and certainly has not demonstrated, the necessary levels of practical experience in and knowledge of personal insolvency.

I end by reiterating that candidates and those helping them should continue to have regard to all the issues set out by me in my report following the 2020 sitting of the Examination. The two points that I wish to emphasise following the 2021 sitting are firstly that candidates would be very well advised to read the questions and their requirements very carefully and plan their answers. Time spent doing this rather than diving straight in and writing at length to limited or even no effect (the checklist approach) should be well rewarded. Secondly, and this too should be helped by time spent on planning, candidates must remain focussed and ensure that their answers are relevant to the question and do not contain irrelevancies or points which are technically wrong, which lack common sense or which could never be applicable in the context of the particular question.

JOINT INSOLVENCY EXAMINATION BOARD

CORPORATE INSOLVENCY PAPER

EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2021 SITTING

General comments

As we have highlighted previously many candidates fail to set out the basis of their calculations and as such it is not possible to establish how they have arrived at their answer and award marks accordingly. Candidates are reminded that whilst the current electronic system used during the exams has a spreadsheet function the markers do not have access to the underlying calculations.

Despite comments made in previous years' examiner's reports there was frequent use of the phrase "Take legal advice" without any specific additional information. Whilst there may be situations where seeking legal advice is appropriate, in order to achieve a mark candidates have to be specific as to what they require legal advice on and be in relation to a matter that an Insolvency Practitioner could not be realistically expected to know the answer to.

Question 1

The first question set out a draft declaration of solvency and provided candidates with notes relating to the situation. Generally the question was well answered.

In both parts of the question there was evidence that candidates had not fully read the question raising queries or making assumptions that were explicitly set out in the question. In several situations candidates stated assumptions that were contradictory to the facts set out in the question.

Part (a)

Requirement

- (a) Comment on the draft Declaration of Solvency, setting out any adjustments you would make. Prepare a revised calculation for your next meeting with the Directors, clearly stating any reasonable assumptions that you have made.**
(12 marks)

For the first part of the question candidates were asked to present a Declaration of Solvency, adjusted to the facts given within the question itself. Generally candidates were able to present their answer in the required format and make the relevant adjustments. A number missed out key assets and several treated the Hire Purchase assets as a general asset and the associated claim as an unsecured, non-preferential creditor.

There also appeared to be a general lack of understanding as to how factoring operates with some candidates adding 75% of the book debt value into the declaration of solvency instead of realising that the company had already received this money. In addition, several

candidates made provisions against the debtor balance despite the question stating that they were fully collectable.

A small number of candidates identified that the costs of the liquidation process should also be included within the declaration of solvency and only a small proportion of these actually estimated and included the costs.

On numeric questions we would suggest that as a general principle candidates should use measurement units that match those set out in the question. In this question the numbers were set out in £ however a number of candidates adopted £'000 as their preferred unit. Given the quantum involved this was not appropriate and resulted in figures being rounded, which in some cases made it more difficult to follow calculations and award marks.

Some candidates wasted time providing general information regarding the MVL process and client take on issues.

(b) Set out the possible options to deal with this change of circumstances and explain the associated consequences for the Company and Holly.

(8 marks)

Additional information was provided in this part of the question, which stated that one of the directors was no longer able to repay their loan account. As a consequence, the company was no longer balance sheet solvent and candidates were expected to outline the consequences on both the company and the director.

The majority of candidates identified the impact on the solvency of the Company and make relevant points in this respect. A relatively small proportion of candidates covered off the implications to the director concerned.

In a number of cases candidates explained in detail the impact of signing the declaration of solvency when the scenario set out that the company had not yet been placed into MVL.

Question 2

Requirements

State the practical and legal steps that you should take to address the following matters.

This question was made up of 4 different unconnected short scenarios where candidates were expected to set out how they would deal with the situation.

There was significant variability in the quality of answers across the different subject areas and many candidates simply repeated back the facts of the situation rather than answering it.

- (a) Your Firm has recently merged with a local competitor. You have identified several insolvency cases where the newly merged firm is now acting for different stakeholders. (3 marks)**

In this scenario candidates were expected to outline the ethical issues associated with a firm merger where there was a potential for conflicts. Generally candidates answered this part of the question well although it appeared that very few candidates were aware of the specific guidance in relation to this situation. A number of candidates set out a lot of general points around ethics rather than addressing the particular circumstances.

- (b) You have recently received a bank transfer of £55,000 from a sole trader who is a debtor of a company of which you are Liquidator. The money was transferred from an Isle of Man bank account. The sole trader has now contacted you to explain that they have overpaid the amount due by £50,000 and has requested that you refund the money to a different company bank account held in England. (5 marks)**

For this part candidates were provided with a scenario where a customer claimed to have paid too much. Whilst the majority of candidates identified that there was a potential money laundering issue very few thought to check the amount owed to determine if it was an overpayment.

Generally candidates did well in this question.

- (c) The sales manager of a company where you act as Administrator has informed you that he is unable to locate an expensive company laptop that he had been using recently. (8 marks)**

In this scenario there was a potential missing laptop. The majority of candidates identified that there could be data protection issues connected to the problem and were able to come up with action points that should be taken.

Several candidates appeared to immediately jump to the conclusion that the sales manager was failing to deliver up the laptop and covered in detail the Section 234 and 235 actions that could be taken in relation to this. A small number of candidates also considered steps that should be taken to deal with a missing or stolen asset but most focused on the potential data protection issues.

Whilst a number of candidates achieved good marks in this part of the question, overall it appeared that candidates struggled with this scenario.

(d) A company over which you have recently been appointed as an Insolvency Officeholder is part of a VAT group.

(4 marks)

This was a short question testing candidates general knowledge as to what actions should be taken should they be appointed in connection with a company that is within a VAT group. Whilst this is not a particularly uncommon situation and some candidates achieved very high marks, many struggled to identify more than a couple of valid points.

Question 3

For this question candidates were expected to produce an outcome statement, albeit in a slightly different context to a normal insolvency situation.

- (a) To assist the Bank in its decision as to whether to accept the offer, calculate and set out the upper case and lower case values that the Bank should expect to recover if the Company was to enter Administration. (16 marks)**

This section accounted for the majority of marks and was a numeric question. Generally candidates were able to complete the outcome statement and a number of candidates achieved the maximum number of marks. A significant proportion took the outcome statement down to an unsecured, non-preferential creditors level, which was not required as the question asked only for the outcome for secured creditors. The better candidates summarised clearly the return to the bank under its fixed charge, floating charge and recoveries through personal guarantees.

- (b) Summarise the key issues and risks in relation to achieving a sale of this particular business as a going concern. (4 marks)**

This sought out the key risks and issues associated with selling a garden centre as a going concern. The question was answered well by a small number of candidates but generally many struggled to identify more than a couple relevant points and instead listed points that were not relevant to the circumstances. Overall it appeared that candidates struggled with this part of the question.

Question 4

There were 5 parts to this question.,

- (a) Set out a deficiency account, reconciling the December 2020 position to that shown by the statement of affairs as at 13 October 2021.**

Candidates were asked to set out a deficiency account and the majority of candidates successfully achieved a high mark in this part of the question, again with a number achieving full marks.

- (b) Explain the purpose of the deficiency account and the reconciliation adjustments contained within your answer to Requirement 4(a).**

Whilst most candidates were able to pick up some marks explaining the purpose of a deficiency account, there appeared to be a lack of depth of understanding. This part together with part (a) suggested that candidates were aware of how to prepare each part of a deficiency account but did not fully understand why.

- (c) In relation to the loan provided by Mr Fish and its associated security, explain what matters you would need to consider in relation to its validity and provide a list of information you would seek in this respect.**

This part was effectively asking candidates to identify issues associated with a loan provided to the company by a third party. Given that on cases where there is to be a distribution to a secured creditor candidates will most likely have obtained a security review, it was a bit disappointing as to the depth of knowledge as to what matters would be subject to review. Most candidates identified the potential issues regarding avoidance of floating charges but many could not think of any other points. In some cases candidates spent time detailing how they would obtain information, covering topics such as the directors' duties to co-operate with the office holder.

- (d) For each of the categories of assets shown in the statement of affairs, set out the steps you would have taken in the first two days following your appointment to preserve and/or protect their realisable value.**

This part was answered well overall with most candidates able to identify steps that would be taken to protect the company's assets. The requirements of the question were specific in terms of immediate actions but some candidates wasted time detailing activities that would not realistically be undertaken until several weeks into the appointment. In addition, some candidates listed out all 'first day' activities rather than those associated with preserving the value of the assets.

- (e) Set out the information you would now seek to establish the validity of Cichlid's reservation of title claim and explain why, in these circumstances, this is required and/or relevant**

Candidates struggled with this reservation of title claim question and a significant proportion wasted time explaining the concept of all monies clauses and incorporation despite the question stating that these issues had been resolved. In addition, a number set out the process that would be undertaken to establish the validity of the claim rather than focusing on the information required.

Where candidates did identify valid points in relation to information required many failed to explain why they wanted that information. One of the aims of this question was to establish whether candidates understood why they ask for documents/information, and whilst some candidates demonstrated they did, many simply listed rather than explained.

MARK PLAN

Question 1a

Declaration of Solvency for Romilysur Limited as at 31 October 2021

Assets		Question £	Adjustment £	Answer £	Assumptions
ASSETS SUBJECT TO A FIXED CHARGE/ASSIGNMENT					
Debtors					
Factored debts	60%	54,000		54,000	60% factored
Amount owed to factoring company	75%		(40,500)	(40,500)	75% advance rate
Notice costs			(6,000)	(6,000)	£2,000 per month (assumed VAT recoverable). Could be entered as £7,200 with VAT recoverable elsewhere.
		<u>54,000</u>	<u>(46,500)</u>	<u>7,500</u>	
Hire Purchase					
Motor vehicles			40,000	40,000	Asset of the company (£20,000 x 2)
Amounts payable to HP Company			(10,000)	(10,000)	£5,000 x 2
		<u>-</u>	<u>30,000</u>	<u>30,000</u>	

UNCHARGED ASSETS

Cash at bank	105,000	-	105,000	Per question
Debtors ledger	36,000	(36,000)	-	All non-factored debts to be credited as event not taking place
Cash deposits	5,600	(5,600)	-	Repay to customers. Assumed as kept separate these are Trust monies. (Alternative presentation could be an asset and liability)
Event deposits	-	15,000	15,000	Receive 75% of deposits paid
Director's loan account	-	56,000	56,000	Is an asset of the company
VAT relief on debtors		6,000	6,000	VAT on non-factored debts written off
Shares in subsidiary		-	-	Assumed nil value
Estimated realisable value of assets	146,600	35,400	182,000	

LIABILITIES

Dilapidations		35,000	35,000	Per question
Trade creditors	110,000	(12,500)	97,500	Assume £12,500 is kept in as a contingent liability (see below)
Contingent liability		12,500	12,500	Contingent liability for event space 12% is the greater amount.
Insurance excess		10,560	10,560	Alternative presentation may be an insurance asset and liability
Intercompany creditor		4,900	4,900	Amount outstanding to Miniromi less management fees (3 x £750 plus VAT) (£7,600-£2,700). Assumed no VAT group
HMRC (VAT payable in relation to management invoices)		450	450	3 x £750 x 20%
Estimated unsecured liabilities	110,000	50,910	160,910	

Estimated costs of the winding up	-	12,500	12,500
Estimated amount of interest accruing	-	9,192	9,192
Total costs	-	21,692	21,692
Estimated surplus after paying debts in full	90,600	(53,702)	36,898

IR 5.1(f) Candidate to make sensible suggestion, assumed VAT recoverable.
 IR5.1 (g) interest accruing until payment of all debts in full. 8% on outstanding creditors (exc dilapidations and insurance excess). Assume include contingent liability. 1 year

Question 1b

<ul style="list-style-type: none"> • Estimated surplus from MVL and solvency relies on repayment of this debt
<ul style="list-style-type: none"> • Deficit of £19,102 without the loan account • £9,910 excluding interest
<ul style="list-style-type: none"> • As such Company appears insolvent
<ul style="list-style-type: none"> • Proposal for Holly to purchase vehicle – unlikely to be possible but assume value achievable by sale to third party.
<ul style="list-style-type: none"> • Even if contingent liability does not crystallise
<ul style="list-style-type: none"> • DLA or a proportion of it could be paid over time if retirement income and expenditure allows. <ul style="list-style-type: none"> ○ If realistically can be paid within 12 months an MVL maybe possible ○ Potential risk in signing the Declaration of solvency if uncertain
<ul style="list-style-type: none"> • Brother could step in to cover the loan repayment to allow an MVL to continue
<ul style="list-style-type: none"> • Informal negotiation with creditors may be possible – agree full and final settlement with element of debt write off
<ul style="list-style-type: none"> • Creditors Voluntary Liquidation likely to be the key alternative insolvency option available
<ul style="list-style-type: none"> • A 'full and final' CVA could be considered to deal with the situation
<ul style="list-style-type: none"> • Compulsory liquidation a possibility if creditors pursue their debts
<ul style="list-style-type: none"> • Company may have to formally seek repayment of the director loan
<ul style="list-style-type: none"> • Risk of bankruptcy <ul style="list-style-type: none"> ○ But cost v benefit to estate given no assets?
<ul style="list-style-type: none"> • Insolvency process of company may provide a longer period of time to repay the debt
<ul style="list-style-type: none"> • If income and expenditure allows, an IVA may deal with the personal debt position
<ul style="list-style-type: none"> • Non-repayment of DLA creates personal tax charge for Holly
<ul style="list-style-type: none"> • Costs of a CVL likely to be higher than an MVL
<p>Where DOS remained solvent based on candidates answer to part (a)</p>
<ul style="list-style-type: none"> • DLA could be distributed in specie
<ul style="list-style-type: none"> • If distributed in specie Holly would owe nick for his share of the loan distributed
<ul style="list-style-type: none"> • Or shareholders could agree for DLA to be distributed to Holly, and Nick could receive an equivalent value
<ul style="list-style-type: none"> • Alternatively Holly could raise funding to repay the loan and then repay part of this through the funds distributed to shareholders
<ul style="list-style-type: none"> • Holly to consider tax implications of the distribution in specie

Question 2a

<ul style="list-style-type: none"> Per Insolvency Code of Ethics guidance on practice mergers: Where <i>practices</i> merge, they should subsequently be treated as one for the purposes of assessing threats to the fundamental principles.
<ul style="list-style-type: none"> At the time of the merger, existing <i>insolvency appointments</i> should be reviewed and any threats identified.
<ul style="list-style-type: none"> <i>Principals</i> and employees of the merged <i>practice</i> become subject to common ethical constraints in relation to accepting new <i>insolvency appointments</i> to clients of either of the former <i>practices</i>.
<ul style="list-style-type: none"> However existing <i>insolvency appointments</i> which are rendered in apparent breach of the Code by such a merger need not be determined automatically, provided that a considered review of the situation by the <i>practice</i> discloses no obvious and immediate ethical conflict.
<ul style="list-style-type: none"> If there is an obvious and immediate ethical conflict, then need to consider options – is the issue/risk capable of being mitigated do you need to resign from an engagement
<ul style="list-style-type: none"> Carry out review and identify how the risk could be mitigated to an acceptable level
<ul style="list-style-type: none"> Discuss with major creditors/stakeholders involved in the matters to identify whether there is a conflict.

Question 2b

<ul style="list-style-type: none"> Confirm amount is actually an overpayment. If it is consider money laundering
<ul style="list-style-type: none"> Money Laundering Regulations 2017: Potential money laundering offence, as funds' identity could be changed so that the proceeds (repayment of the £50k) appear to originate from a legitimate source
<ul style="list-style-type: none"> Liquidator should carry out customer due diligence and monitor business relationships of insolvent companies, such that any transactions i.e. the settlement of debts by customers, is consistent with the Liquidators knowledge of that debtor, his business and risk profile. Consider if this request is consistent with the debtor's profile.
<ul style="list-style-type: none"> If money laundering is suspected the Liquidator and/or case staff should make a Money Laundering report to the Firms' Money Laundering Reporting Officer (MLRO)
<ul style="list-style-type: none"> The MLRO in turn will consider that report in light of any relevant information that is available to the Liquidator and determine whether the information gives rise to a knowledge or suspicion of money laundering. Where it does, the MLRO should report the matter to the Serious Organised Crime Agency
<ul style="list-style-type: none"> Failure to disclose knowledge or suspicion of money laundering is an offence
<ul style="list-style-type: none"> Should a report be made, care must be taken not to tip the potential money launderer off (an offence)
<ul style="list-style-type: none"> Having made a report to SOCA, no action that could assist the launderer or otherwise constitute money laundering must take place for seven working days, unless SOCA gives consent for it to go ahead
<ul style="list-style-type: none"> If funds are to be remitted only do so to the original account

Question 2c

<ul style="list-style-type: none">• Establish the last known location of the laptop
<ul style="list-style-type: none">• Consider if there is any physical security such as CCTV
<ul style="list-style-type: none">• Report laptop stolen to the police
<ul style="list-style-type: none">• Establish what information is on the laptop
<ul style="list-style-type: none">• Consider if the information that would be on the laptop is something that the sales director may be withholding
<ul style="list-style-type: none">• Notify the insurers
<ul style="list-style-type: none">• Establish if the company has a data breach plan and procedures.
<ul style="list-style-type: none">• Inform data protection officer
<ul style="list-style-type: none">• Establish if the laptop is password protected• and encrypted
<ul style="list-style-type: none">• Ensure that any remote system access is immediately suspended
<ul style="list-style-type: none">• Establish if there is any mechanism (e.g. software) for tracing location of device
<ul style="list-style-type: none">• Consider whether necessary to notify the Information Commissioner of the breach
<ul style="list-style-type: none">• Consider, if necessary, notifying any other parties such as individuals whose data may have been lost, credit card companies if financial information on the laptop
<ul style="list-style-type: none">• Seek legal advice as to your responsibilities in the circumstances
<ul style="list-style-type: none">• Consider if any disciplinary action against the employee is necessary
<ul style="list-style-type: none">• Investigate the circumstances and put processes in place to prevent re-occurrence
<ul style="list-style-type: none">• Document all decisions

Question 2d

<ul style="list-style-type: none">• Form 769 completed and submitted to HMRC
<ul style="list-style-type: none">• Establish which company is the representative member
<ul style="list-style-type: none">• Establish members of the VAT group
<ul style="list-style-type: none">• Remove the company from the VAT group<ul style="list-style-type: none">○ VAT 50 form○ VAT 51 form
<ul style="list-style-type: none">• Consider if new VAT registration is required<ul style="list-style-type: none">○ Voluntary registration○ Compulsory registration
<ul style="list-style-type: none">• Joint and Several liability for Group VAT position
<ul style="list-style-type: none">• Record total group liability at appointment as a creditor
<ul style="list-style-type: none">• If settled by another group member then they will have a subrogated claim and this should be recorded.
<ul style="list-style-type: none">• Discuss situation with other members of the VAT group
<ul style="list-style-type: none">• If necessary seek tax accounting advice

Question 3a

	Upper	Lower	Notes
Fixed Charge - property	1,800	1,000	
Agent costs	(27)	(15)	Any reasonable assumption; e.g. 1.5%
Legal costs	(15)	(15)	Any reasonable assumption;
Holding costs (insurance, security etc.)	(30)	(30)	Say £5k per month open (lower costs), £10k closed (additional security, insurance, etc.) (any reasonable assumption), 3 months for lower, 6 months for upper.
IP costs	(10)	(20)	Any reasonable assumption; e.g assumes more cost at lower due to longer monitoring
Available for Bank	<u>1,718</u>	<u>920</u>	
Floating charge - stock	1,688	1,171	See workings
Agent costs	(10)	(20)	Any reasonable assumption;
Legal costs	(15)	(30)	Any reasonable assumption;
IP costs	(30)	(50)	Any reasonable assumption;
Net floating charge realisations	<u>1,633</u>	<u>1,071</u>	
Capital gains tax	(150)	-	See workings
Available for preferential creditors	<u>1,483</u>	<u>1,071</u>	
Preferential creditors - employees	(6)	(25)	Any reasonable stated assumption; 25 employees; £1,000 worst case £250 best case. Best case may assume TUPE transfer
Secondary Preferential creditors - HMRC	(75)	(75)	PAYE all preferential
Available for prescribed part	<u>1,402</u>	<u>971</u>	
Prescribed part	(283)	(197)	
Available for floating chargeholder	<u>1,119</u>	<u>774</u>	

Total available for bank from insolvency	2,837	1,694	As shortfall on debt PGs will crystallise
PG - lister	50	-	
PG - Hadley	20	-	Remains a risk of failure
Total to Bank	<u>2,907</u>	<u>1,694</u>	

WORKINGS

Stock

Bought in plants

Book Value		Per question		400	400	
ROT	Supplier B	100x50%	50%	<u>(50)</u>	<u>(50)</u>	all deducted as lower than debt
Net of ROT				350	350	
Realisation %		Per question		<u>60%</u>	<u>50%</u>	
Estimated to realise				<u>210</u>	<u>175</u>	

Self-grown plants

Book Value		Per question		<u>600</u>	<u>600</u>	
Retail value - Gross up for margin		=600/(1-60%)	60%	1,500	<u>1,500</u>	
Realisation %		Per question		<u>50%</u>	<u>30%</u>	
Estimated to realise				<u>750</u>	<u>450</u>	

Bought in non-plant products

Book Value			1,000	1,000
ROT	Supplier A	stock value	(25)	(25)
ROT	Supplier C	stock value	(15)	(15)
ROT	Others	Limited to debt	(50)	(50)
Net of ROT			<u>910</u>	<u>910</u>
Realisation %		Per question	80%	60%
Estimated to realise			<u>728</u>	<u>546</u>

ROT assumed to be returned to supplier as only realising 50% to 80% of cost.

Totals	Upper	Lower
Bought in plants	210	175
Self-grown plants	750	450
Bought in non-plant products	728	546
	<u>1,688</u>	<u>1,171</u>

Corporation tax

Realisation (net of costs (excluding holding))	1,748	950	Assumed all of those costs are allowable
Cost	(1,000)	(1,000)	
Gain/(loss)	748	(50)	
Tax	20%	0%	
Capital Gains tax payable	<u>150</u>	<u>-</u>	

Question 3b

<ul style="list-style-type: none">• Limited market of interested parties
<ul style="list-style-type: none">• Loss making at present
<ul style="list-style-type: none">• May be difficult for purchaser to find finance for both property and assets<ul style="list-style-type: none">○ Lenders may look at 'closed' valuation for lending purposes
<ul style="list-style-type: none">• Likely to have to trade in administration to achieve top valuation<ul style="list-style-type: none">○ Co-operation of staff may be an issue○ Neglect could adversely affect value of stock (e.g. watering)○ Seasonal business and therefore losses could be greater (or lower) depending on timing of any process.○ Would need to be mindful of health and safety/environmental
<ul style="list-style-type: none">• Seasonal and timing (November) may make a sale of the business more challenging.
<ul style="list-style-type: none">• Company highly dependent on 3 suppliers which could impact on ability to trade in administration.

Question 4a

			ALTERNATIVE PRESENTATIONS	
			Net assets	Profit and loss reserves
Position as at 31 December 2020			150,100	150,000
Adjustments to asset values for the purpose of the Statement of Affairs				
Property		300,000		
Stock	135,000 -	(15,000)		
Debtors	135,000/0.9	<u>(50,000)</u>	235,000	235,000
Liabilities arising on account of liquidation				
Mr Fish termination costs		(50,000)		
Redundancy costs		(100,000)		
Pay in lieu of notice		(75,000)		
Lease termination costs	£50,000 rent arrears part of loss	<u>(100,000)</u>	(325,000)	(325,000)
New share capital received in the period	200,000 shares issued at £100,000 premium		102,000	100,000
Dividends paid	210,000 shares at 10p per share		(21,000)	(21,000)
Estimated loss for the period			(841,100)	(841,100)
Deficiency as regards creditors/members			<u>(700,000)</u>	<u>(702,100)</u>

Notes

- ROT claim deducted from creditors and from stock so no adjustment required.
- Assumed holiday accrued and therefore part of the loss
- Business interruption claim relates to profit and therefore is not adjusted in deficiency account.
- As ROT balance has been deducted off creditors, no further adjustment required.
- Different presentation depends on whether reconciling profit and loss reserves or net liability position

Question 4b

<ul style="list-style-type: none">• Reconciliation of last known balance sheet position to the deficit within the statement of affairs.
<ul style="list-style-type: none">• Assists in the understanding as to the reason for failure
<ul style="list-style-type: none">• Identifies areas of further investigation
<ul style="list-style-type: none"><ul style="list-style-type: none">○ Wrongful Trading○ Transactions at an undervalue○ Unlawful distributions
<ul style="list-style-type: none">• Adjustments to asset values
<ul style="list-style-type: none"><ul style="list-style-type: none">○ shows the impact of the liquidation on the asset values○ Identifies other differences between carrying value of assets on a balance sheet and actual value
<ul style="list-style-type: none">• Liabilities resulting from liquidation
<ul style="list-style-type: none"><ul style="list-style-type: none">○ These are liabilities that would not normally be found on a balance sheet because they crystallise as a result of the liquidation.
<ul style="list-style-type: none">• Share capital
<ul style="list-style-type: none"><ul style="list-style-type: none">○ Share capital issued after the last known balance sheet position brings cash/assets into the company
<ul style="list-style-type: none">• Dividends
<ul style="list-style-type: none"><ul style="list-style-type: none">○ Distributions made after the last balance sheet date to shareholders reduces the assets of the company
<ul style="list-style-type: none">• Estimated loss
<ul style="list-style-type: none"><ul style="list-style-type: none">○ This is the balancing figure between the above effects and the deficit in the statement of affairs Represents;<ul style="list-style-type: none">▪ Trading losses incurred during the period; and/or▪ Dividends paid during the period; and/or▪ Assets disposed of during the period at less than book value; and/or▪ Other losses or crystallisation of liabilities.

Question 4c

DISTRIBUTION/GENERAL Appears that the liquidator may have to distribute to this party therefore claim has to be agreed security validity must be established
General information required regarding validity
<ul style="list-style-type: none">• Obtain a copy of the loan agreement
<ul style="list-style-type: none">• Obtain a copy of the floating charge document
<ul style="list-style-type: none">• Check whether charge document provides for any fixed charge
<ul style="list-style-type: none">• Obtain a copy of minutes approving the loan
<ul style="list-style-type: none">• Check creation and registration dates of the charge<ul style="list-style-type: none">○ Co house○ Land registry
<ul style="list-style-type: none">• Establish what funds were provided to the company by reference to bank statements
<ul style="list-style-type: none">• Write to the company's solicitors for their files relating to the loan
<ul style="list-style-type: none">• Establish if the current balance in the Statement of Affairs is consistent with the expected level.
<ul style="list-style-type: none">• Obtain any correspondence relating to the loan
<ul style="list-style-type: none">• Obtain legal advice in relation to the termination costs
<ul style="list-style-type: none">• Obtain legal advice regarding validity of security
<ul style="list-style-type: none">• Check amounts to management accounts/accounts system
<ul style="list-style-type: none">• Establish what the money was used for
<ul style="list-style-type: none">• Check who signed the documentation and whether they were authorised to do so.
<ul style="list-style-type: none">• Ensure that the company had the authority to enter into loans per its constitution.
<ul style="list-style-type: none">• Obtain a copy of any priority agreement in place.
AVOIDANCE OF FLOATING CHARGES
<ul style="list-style-type: none">• Loan was provided within a relevant period (2 years connected, 1 year unconnected) under s245 (avoidance of floating charges)
<ul style="list-style-type: none">• Establish the date funds were provided - before or after the charge
<ul style="list-style-type: none">• Establish if Mr Fish is connected to the company
<ul style="list-style-type: none">• If not consider if company was insolvent at the time the charge was granted.
PREFERENCES S239
<ul style="list-style-type: none">• Repayments may have been made in a relevant period s239
<ul style="list-style-type: none">• Establish if any repayments have been made
<ul style="list-style-type: none">• Obtain details of any Personal Guarantees
<ul style="list-style-type: none">• Establish if there is any connection between Mr Fish and the Company/its directors to establish relevant period
EXTORTIONATE CREDIT TRANSACTIONS
<ul style="list-style-type: none">• Within relevant period under s244 Extortionate credit transactions
<ul style="list-style-type: none">• Establish the interest rate payable on the loan
<ul style="list-style-type: none">• Consider if interest has been capitalised up front.
OTHERS
<ul style="list-style-type: none">• Work could identify a Transaction at an undervalue
<ul style="list-style-type: none">• Work could identify a Transaction defrauding creditors
<ul style="list-style-type: none">• Work could identify a Misfeasance/breach of duty claim

Question 4d

Land and property
<ul style="list-style-type: none">• Ensure insurance is in place to cover relevant risks• Instruct health and safety assessment if appropriate.• Consider security arrangements• Visit site to assess situation• Consider environmental issues
Cash
<ul style="list-style-type: none">• Notify the Bank of your appointment• Ensure bank account is frozen (for payments out) with immediate effect
Stock
<ul style="list-style-type: none">• Ensure insurance is in place to cover relevant risks• Secure the premises where the stock is located• Establish if there are any perishable goods• Discuss with management if there are any immediate opportunities to realise an enhanced value; e.g. completed customer order that may be lost in the event of a delay.• Obtain details regarding the suppliers of the goods and stock on site• Establish from the directors if any ROT claims other than Cichlid's.
Debtors
<ul style="list-style-type: none">• Secure relevant paperwork regarding the debtors;<ul style="list-style-type: none">○ Invoices○ Customer orders○ Proof of delivery of goods○ Contractual information○ Customer statements○ Contact details○ Payment terms• Obtain information regarding the debts from relevant personnel<ul style="list-style-type: none">○ Details of any disputes or issues○ Payment history/typical payment terms• Consider notifying customers of appointment and liquidation bank account details.
Insurance claim
<ul style="list-style-type: none">• Notify insurers of appointment• Ensure any settlement to be paid to liquidation account• Establish if there are any time critical activities required in relation to the claim• Obtain copy of the claim off the directors• Obtain relevant information to support the claim; how loss of profit calculated.• Discuss with the directors and document the history of the claim

Question 4e

Identification of goods
<ul style="list-style-type: none"> • Obtain a stock list with value to establish the cost of the remaining goods and what they are claiming title to.
<ul style="list-style-type: none"> • Establish if/how the goods can be identified as originating from the supplier; if unable to do so then claim may not be valid
<ul style="list-style-type: none"> • Establish if any other supplier supplies the goods in question; <ul style="list-style-type: none"> ○ if the company sources goods from another supplier (e.g. via a wholesaler) it may be necessary to identify the specific supplier's goods (see below). ○ If no other supplier supplies the goods then it is reasonable to assume that the supplier supplied these goods.
<ul style="list-style-type: none"> • Establish if there is a means of identifying specific goods to invoices/despatch notes/etc. This may be needed for example if there are other suppliers or for some of the goods' ownership may have passed (see below).
<ul style="list-style-type: none"> • Establish how the goods were stored prior to segregation; if stored in original packaging the claim may be easier to prove ownership compared to if goods are placed into stores where they could be mixed with other suppliers/shipments.
<ul style="list-style-type: none"> • Establish if any of the goods have changed form or incorporated into other goods. •
Transfer of ownership
<ul style="list-style-type: none"> • Obtain the history of the account; invoices, payment and rolling balance due to supplier.
<ul style="list-style-type: none"> • Has the account ever reached zero; if so ownership of goods would have passed at that point and therefore all monies clause would only apply to goods supplied after this date.
<ul style="list-style-type: none"> •
Confirm liability
<ul style="list-style-type: none"> • Obtain copy invoices to establish information contained thereon in relation to the goods.
<ul style="list-style-type: none"> • Does the debt equal or exceed the cost of goods subject to the claim; if not then their claim may only cover a proportion of the stock.

JOINT INSOLVENCY EXAMINATION BOARD

PERSONAL INSOLVENCY PAPER

EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2021 SITTING

Question 1

This question sought to test candidates' knowledge of how a Trustee in Bankruptcy should deal with tenanted properties.

A significant amount of time incurred by a Trustee in Bankruptcy involves dealing with property issues, so it is fundamental that an Insolvency Practitioner has a grasp of the practical, as well as legal, issues that they face on day 1 of being appointed. This question tried to draw out from candidates what they would do at the outset of the bankruptcy when faced with a property portfolio, but unfortunately, far too many candidates strayed away from the requirements of the question and provided much broader points, wasting time and were unable to answer the question in sufficient depth.

Many candidates tried to apply their knowledge of corporate insolvency and assumed these same concepts applied in personal insolvency. Too many candidates referred to leases, not tenancies, or rent deposits rather than tenancy deposit schemes and some believed they could change the locks when a tenancy ended. It was also apparent that many candidates did not understand the fundamental differences between how a Trustee should deal with solely owned and jointly owned property. As a consequence, holistic marks were limited as it was clear there was a lack of understanding of what a Trustee can or cannot do in relation to tenanted properties.

(a) What information should you ask Mr Salinas to provide in relation to his properties?

(7 marks)

Part A of the question required candidates to list the information they required in relation to the properties. There was already a certain amount of information provided in the question, including confirmation that Mr Salinas had five properties which he rented out. On the whole this part of the question was answered reasonably well, with a number of valid points made. However, asking about vacant properties or if Mr Salinas owned any other properties wasted time and did not score any marks. In addition, there was no need to ask about Mr Salinas' own private residence, when the question referred to the five properties being rented out.

(b) Once you have obtained the information you require, what are the next steps that you should take in relation to the properties and to any rental income that is generated by them?

(10 marks)

Part B tried to draw on candidates' practical knowledge regarding the steps that should be taken to deal with the property portfolio after appointment. This is a basic requirement, so it was disappointing that this part of the question was not answered at all well. A number of candidates wanted to change the locks which is illegal when tenants are living in the property. Other candidates wanted to serve section 283A notices on the tenants believing they had up to 3 years to realise them. A common thread was how quickly could the tenants be evicted, in order to sell with vacant possession. The

question was silent regarding the equity position and there was little consideration of whether the properties could be sold with the tenants 'in situ' or whether it was appropriate to collect the rent and allow the mortgagees to enforce their security. A number of candidates believed that Income Payments Agreement ought to be arranged based on the level of rent collected. Basic misunderstandings such as this will limit the award of holistic marks.

- (c) What risks are associated with being appointed as the Trustee in Bankruptcy of an individual who owns a number of solely owned tenanted properties, and how can these risks be mitigated?**

(3 marks)

Part C asked candidates to consider the risks of dealing with tenanted property and how those risks can be mitigated. Trustees are usually risk adverse, so it is important to identify risks early on in a bankruptcy case and manage those risks. A Trustee becomes personally liable and this issue is particularly acute in dealing with solely owned properties when a Trustee becomes the landlord. Consequently, candidates needed to identify those risks such as whether the furniture or gas appliances comply with fire safety regulations and whether the properties are in a good state of repair. A number of candidates correctly identified these points and suggested engaging a managing agent to ensure compliance with all the regulations. Unfortunately, few candidates mentioned the possibility of disclaimer if the properties were in a very poor state of repair.

Question 2

The majority of candidates identified that this question was about potentially challenging a Trustee in Bankruptcy's fees, what information should be given to creditors by a Trustee in Bankruptcy, and the procedure by which a creditor may request further information from the Trustee.

- (a) Prepare an email to Mr Hamilton. Set out the additional information and documentation that you will need Mr Hamilton to provide in order that you can advise him on his options. The email should explain why the provision of this information is necessary.**

(13 marks)

Unfortunately a number of candidates wrongly interpreted the question and provided extensive commentary on the Insolvency Practitioner's ethical responsibilities, and client care/file opening procedures.

- (b) On what grounds are creditors of a bankruptcy estate entitled to request further information from a Trustee in Bankruptcy in relation to his remuneration and expenses, including legal fees?**

(4 marks)

Despite the bankruptcy being over three years old, a number of responses focused on whether Mr Hamilton could recover the goods he had supplied to the bankrupt, by a retention of title claim which may have existed. Candidates should have regard to the dates provided in a question. Whilst retention of title might have been a valid point to make had the bankruptcy order been made in the last few weeks, it is not reasonable to suggest that a retention of title claim be asserted over 3 years after the bankruptcy order had been made.

- (c) What options are available to creditors of a bankruptcy estate who want to challenge the time costs of, and disbursements incurred by, a Trustee in Bankruptcy?**

(3 marks)

Most candidates lost marks for failing to provide sufficient detail in relation to the procedures that a creditor may follow under Insolvency Rules 18.34 and 18.9, and failing to provide sufficient detail

about what information a creditor should have received from the Trustee, and why such information was needed in order to advise Mr Hamilton.

Question 3 Requirements

Question 3

- (a) **In advance of the proposed meeting, prepare a note which sets out all of the additional information and documentation that you will need Mr Quinn to provide in order for you to be able to consider whether an IVA could be proposed.**

(12 marks)

Part A required candidates to set out the additional information and documentation that the Debtor should be required to provide.

Candidates are reminded that in order to score well, they need to answer the question by reference to the facts provided in the question. Many candidates made generally points, for example referring simply to 'ascertaining the views of the majority creditor(s)'. The question provided details of Mr Quinn's creditors. The better candidates answered the question by reference to the stated creditor position.

The question related to a self-employed decorator who charges £125 a day and deals in cash. In the circumstances it is unlikely to be appropriate to request that the Debtor provide cashflow forecasts, details of payroll and copies of his VAT returns.

- (b) **If Mr Quinn fails to provide you with all requested information and documentation in connection with his affairs, how would this impact upon your decision as to whether or not to act as Nominee?**

(3 marks)

Part B was reasonably well answered.

- (c) **What additional enquiries should now be made to determine whether an IVA could still be proposed?**

(5 marks)

Part C was not well answered. Whilst many candidates referred to establishing whether Mr Quinn had received his discharge, very few candidates explained why this should be checked or the relevance of having received his discharge in the circumstances.

Question 4

This year's 40 mark "case study" question was a scenario involving a formerly trading Debtor and was split into four sections, being how to protect and realise the assets for the benefit of the bankruptcy estate; calculating a complex potential Income Payments Agreement (IPA) figure; dealing with creditor claims in the bankruptcy; and providing an Estimated Outcome Statement (EOS) for HMRC. Overall, with the exception of the second part of the question, the majority of candidates made a good effort at answering the question, in particular the EOS was dealt with well, and candidates were, in the main, able to deal with the steps required to secure and realise the assets and deal with the claims from creditors. Where almost all candidates struggled was accurately calculating how to deal with assessing a bankrupt's income for the purposes of an IPA, and the associated risks given the nature of Debtor's income and expenditure.

- (a) Set out the steps you would take to protect and realise the assets identified from the information provided by Mr Charles.**

(8 marks)

Part A asked candidates to set out the required steps to protect and realise the assets disclosed by the Debtor. Nearly all candidates scored well in this area showing good commercial skills and practical understanding of the issues, although a few candidates clearly had limited experience of bankruptcy work by their references to "site visits" of the family home, and demonstrating a poor understanding of the principles of the equity of exoneration. That said, it was pleasing to see that the majority of candidates understood the key issues regarding asset protection and realisation in a bankruptcy estate.

- (b) Draft an email to Ms Eden. Calculate the amount of the monthly contributions you should seek from Mr Charles. Your email should include your detailed workings, explain any estimates or assumptions that you make and outline any issues that you foresee.**

(8 marks)

Part B required candidates to assess the Debtor's income and expenditure in order to calculate what could be paid under an IPA. This was, in the main, poorly answered. Candidates clearly struggled with some key considerations such as the unequal nature of the Debtor's income, the potential for currency fluctuation when working abroad, the risks and difficulties of enforcement of the IPA in the event of non-payment, and how to deal with reasonable expenditure in the scenario presented. Consequently most candidates scored poorly in this section and it was clear that few candidates had any practical experience of dealing with more complex IPA calculations. Only the better candidates mentioned the risks detailed above.

- (c) For each of the creditor claims, set out any additional information or documentation that the creditor should be required to provide in support of their claim. Clearly stating any assumptions that you have made, explain which creditor claims you would advise should be admitted and in what amount.**

(10 marks)

Part C asked candidates to consider the creditor claims, what further information was required, and whether each claim should be admitted and if so, in what amount. The better candidates were able to deal with this aspect of the question well, and picked up on the new requirements regarding secondary preferential status for elements of HMRC's claim, dealt with the former landlord's claim well, and other unsecured claims including employees', insurer's and bounce back loan claims. However it was concerning to note that a number of candidates failed to score any or very few marks on this part of the question.

- (d) Showing your workings and clearly stating any assumptions you make, prepare an Estimated Outcome Statement which Ms Eden can provide to her contact at HMRC.**

(12 marks)

The final part of the question asked candidates to prepare an EOS drawing together many of the elements of the preceding parts of the question. The majority of candidates were able to put this together without difficulty. Easy marks were available to candidates to put down some basic financial information in a legible format and most candidates were able to do this, showing good skills in demonstrating their grasp of the numbers generated in this scenario, and an understanding of the statutory costs of a bankruptcy, together with dealing with the breakdown of the preferential and unsecured elements of the creditors. Consequently the majority of candidates were able to score half marks or better on this section of the question although a number of candidates failed to attempt this part of the question at all.

Question 1(a)

Upon appointment you should:-

Contact the bankrupt to request:-

- copies of tenancy agreements / names of all tenants and occupants
- confirmation of whether any of the properties are HMO's. If they are, does the bankrupt have all requisite licences, have the properties passed locals inspections etc
- details of whether the properties are let on a furnished or unfurnished basis.
- If furnished, is there evidence that all furniture meets all current safety regulations?
- details of the deposit for each property i.e. amount, where the deposit is held by letting agent (insured), bankrupt (insured), or in TDS (custodial scheme)
- whether a letting agent is used and if they are, their contact details, details of their charges and a copy of any agreement entered into with the letting agent
- ask for confirmation of whether any of the tenants are in arrears and if they are, for details to be provided
- are there any outstanding legal actions or disputes with tenants i.e. rent recovery actions, possession proceedings or disputes in relation to the return of deposit.
- confirmation of whether the rent is paid to a letting agent or directly to the bankrupt.
- Bank account details for the account into the rent is paid (if being paid to bankrupt)
- establish who is responsible for arranging repairs/ maintenance (letting agent or bankrupt).
- Are there any outstanding repairs or maintenance issues?
- establish whether there is a gas fire/ heating system. If there is, a copy of the annual safety certificate should be requested.
- Request copies of electrical safety certificates
- Copy EPCs
- details of where all keys to the solely owned properties are located. The bankrupt should be asked to deliver up the keys to the solely owned properties
- whether any tenants have been served notice to quit
- details of any mortgages or charges secured against each property, together with confirmation of whether the loans are in arrears. If there are arrears, has any enforcement action been taken such as the appointment of a receiver.
- in relation to the jointly owned property, what interest does the bankrupt consider he has in the property (i.e. 50% or more/ less)
- has any significant capital expenditure been incurred since purchase?
- Copy tax returns should be requested to see if any declarations have been made regarding the properties.
- Is there any outstanding liability to HMRC in respect of the rental income

- Have any valuations been carried out recently. If they have, a copy of the valuations should be provided. **(7 marks)**

1 (b)

The rental income (max 4 marks for this part)

The Trustee's entitlement to receive the rental income will depend on whether the property is solely or jointly owned.

Where the property is solely owned, legal title to the property vests in the Trustee. The Trustee becomes landlord and the Trustee is entitled to collect in the rental income.

The Trustee should establish whether any of the solely owned properties require any urgent repair work or maintenance undertaken.

As the rental income vests in the Trustee it is not 'income' and as such and IPO/ IPA should not be entered into in relation to the rental income.

Write to the bankrupt to put him on notice that in relation to the solely owned properties the right to collect the rental income has vested in the Trustee and that he has no right to continue collecting it.

For solely owned properties, there is no obligation upon the Trustee to pay the mortgage from the rental income. Whether this is done will depend on whether there is equity in the property that the Trustee wishes to preserve pending realisation of the property. If the property has minimal equity or is in negative equity, it is unlikely that there will be any benefit the estate in the mortgage being paid.

Put in place arrangements to collect the rental income – via agent or payment directly by tenant.

If a letting agent is already in place, consider whether they should be allowed to continue to collecting and managing the properties. Consider their reputation, independence, level of insurance etc

Letters will need to be sent to the tenants to notify them of the Trustees' appointment and to advise that it is the Trustees (or their appointed agent) who they should deal with going forward and not the bankrupt.

The Trustee's right to collect the rent ceases if the Mortgagee appoints a receiver to collect the rent

Where a property is jointly owned, the entitlement to rent should be in accordance with the owner's interest in the property i.e. if owned 50/50, each co-owner is entitled to 50% of the net rental income.

In relation to jointly owned, legal title does not vest in the Trustee. The joint owners remain the legal owners and are entitled to collect in the rental income. The Trustee is only entitled to the surplus otherwise payable to the bankrupt once the costs associated with letting the property have been paid.

Deductible costs include ground rent, service charge, letting agent's fees and the interest element of any mortgage.

The Trustee should check that these costs are being paid from the rental income and ensure that his/ her entitlement to any surplus is paid across.

The Trustee is obliged to pay tax on the rental income (Rule 10.149 IR 2016)

Letting agent

If a letting agent has been instructed, you should write to them to advise them of the making of the bankruptcy order. Ask the letting agent to confirm whether they are holding any funds on behalf of the bankrupt. In relation to the solely owned properties, any such monies have vested in the bankruptcy estate and should therefore be held to the Trustee's order.

If a letting agent has not been instructed previously, consider instructing a reputable agent to commence collection of rent on your behalf in relation to the solely owned properties. They can also deal with any maintenance issues and ensure that all necessary health and safety checks are carried out.

If the Bankrupt/ letting agent cannot provide a copy of the gas safety certificate and there is a gas appliances/ fire etc at a solely owned property, the Trustee should arrange for an engineer to attend the property and obtain a gas safety certificate as soon as possible.

Tenants

Write to the tenants of the solely owned properties to notify them of the making of the bankruptcy order. Where a tenancy is assigned (which includes vesting in a Trustee) formal notice must be given of the landlord's name and address. If the tenants were paying rent directly to the bankrupt, advise them that the rent should be paid to the Trustee going forward.

Co-owner

In relation to the jointly owned properties, write to the co-owner to advise them of the making of the BO and your appointment as Trustee. The letter should explain that the Trustee is entitled to the bankrupt's share of the rental income but that the obligations under the tenancy agreement remain with the co-owners.

If the co-owner is receiving the rental income, he should be given the accounts details for the account into which the bankrupt's share of the rental income should be paid.

Deposits

If the deposits are held in a custodial scheme, for the solely owned properties write to the scheme provider to advise that the deposit should not be released without the Trustee's consent

If the deposit is insured, obtain details of the insurance cover and scheme. Notify insurer although the bankruptcy of the landlord may result in cover being cancelled.

Tenancy Agreement

Review the tenancy agreements to establish the type of tenancy, whether there are any particularly onerous terms or obligations place upon the landlord and when the tenancy expires.

Instruct your agent to inspect the solely owned properties to establish whether they are in a good state of repair.

Insurance.

In addition to ensuring that the properties are insured, check whether the bankrupt has landlord insurance in place which includes public liability insurance. If not, ensure that it is put in place as soon as possible in relation to the solely owned properties. For the jointly owned properties ensure that the equity is insured and the rental income me (if appropriate).

Ownership/ charge/ tax position

Obtain official copies for the properties to verify ownership and to establish whether there are any charges registered against the property.

In relation the solely owned properties, check whether land charges entries giving notice of the bankruptcy have been entered against the title. If not, contact land charges department to request that they are entered. If an application has not already been made for a restriction to be entered against the title to the jointly owned properties, apply to the Land Registry on form RX1.

If there are charges registered against the property, contact the mortgagee to put them on notice of the making of the bankruptcy order and to request a redemption statement. Ask the mortgagee to confirm whether possession proceedings have been commenced / receivers have been appointed or such action is imminent

If all mortgages are with the same lender, request a copy of the terms and conditions of lending to establish whether there is a consolidation clause.

Check whether any redemption penalties apply to the lending. If there are, check the applicable dates and amounts as this may be relevant to the Trustee's strategy for the dealing with the properties.

Once the value of the properties has been established, calculate the potential liability for CGT. CGT has to be paid as an expense. If there is only minimal equity in the property, it may not be worthwhile the Trustee taking steps to realise one or more of the properties if the cost of doing so, coupled with the liability to CGT equals or exceeds the equity that is available.

Consider whether disclaimer might be appropriate. If any of the properties are in a dangerous state and/ or the cost of carrying out any necessary work to make the property safe would exceed the equity in the property and/ or the CGT arising on the sale exceeds the equity, disclaimer should be considered.

Arrears

If rent arrears have built up, prior to accepting any rent from the tenant a decision will have to be taken whether to seek possession of the property. Accepting rent may prevent the Trustee seeking possession of the property. The decision about whether to accept rent may be dictated by whether or not there is equity in the property which can be realised for creditors.

1(c)

Solely owned tenanted property vests in the Trustee upon his/her appointment meaning the Trustee becomes the landlord. This is irrespective of whether the rental income is collected by the Trustee.

This means that the Trustee takes on the responsibilities of the landlord which include:-

- where the property is let on a furnished basis, ensuring that the furniture complies with fire safety regulations
- that any gas installations (fire, boiler etc) meet gas safety regulations

The Trustee should arrange an inspection of the properties to ensure that they are in a good state of repair. This is because Trustee owes a duty of care to visitors and trespassers.

The Trustee should also check any existing inspection records and ensure that any urgent structural or other repairs are carried out by a reputable contractor as soon as possible.

A professional letting agent could be engaged by the Trustee to ensure that all necessary legislation/ regulations are complied with and to deal with day to day issues arising in relation to the letting of the properties which could be time consuming and costly for the Trustee to deal with.

If the tenanted property is in a very poor state of repair and significant work would be required to bring it up to an acceptable standard and there is no or limited equity in the property, consideration should be given to a notice of disclaimer being issued.

If there are any potential or actual legal issues in relation to the properties such as non-payment of rent, damage to the properties, ongoing possession proceedings etc, instruct solicitors to advise you in relation to those proceedings and recommended next steps.

Question 2

(a)

The additional information / documentation required would include:-

Application to challenge

The amount due to Mr Hamilton and the total level of unsecured creditor claims in the bankruptcy. This is necessary as a creditor can only make an application challenging the remuneration pursuant to Rule 18.34 if they have the concurrence of at least 10% in value of unsecured creditors, or the permission of the Court.

Does Mr Hamilton's debt exceed 10% of total creditor claims? If not, and/or are other creditors dissatisfied with the level of the Trustee's fees? If other creditors are unhappy, would they be willing to join in the application?

Copies of the Trustees progress reports which should have been issued to creditors within 8 weeks of each anniversary of the Trustee's appointment.

What is the date of the last report and when was it received by Mr Hamilton? Pursuant to Rule 18.34 an application to challenge the remuneration must be made no later than 8 weeks after receipt by the applicant of the progress report under 18.3 or final report under 18.14 which first reports the charging of the remuneration or the incurring of expenses in general.

The reports would have to be reviewed to determine when the Trustee's fees were notified, in what amounts and when those fees were drawn.

The reports should also be reviewed to check that the information provided in relation to time costs is fully compliant with the requirements of SIP9.

Given that the bankruptcy order was made over 3 years ago, some of the costs could no longer be challengeable. Was the last report received within the last 8 weeks? If it was, were the costs incurred during the period of this final report significant enough to warrant an application to challenge them being made?

Check how long Mr Hamilton still has to bring an application if considered appropriate to do so i.e. when does the 8 week period for challenge expire?

Whilst the Court has the power to extend time periods pursuant to s376 IA86, it will not generally do so unless there is good reason for the delay.

Confirmation of whether a final report has been filed by the Trustee and whether the Trustee remains in office. If the Trustee has vacated office and had his release from liability pursuant to s299 IA 86, it is too late for the fees that have been charged to be challenged.

The total level of the Trustee's fees and the legal fees. Was the amount charged significantly less than the actual time cost incurred? If the Trustee has already written off a significant proportion of the time costs that were incurred, a successful challenge to the time costs is less likely.

SIP9 requires the fees of Associates to be the subject of specific approval. Have the legal fees been charged by a party who could be considered as an Associate and was specific approval sought?

Has the Trustee provided any information about disbursements he has incurred in addition to the £40,000 of legal fees and his time costs of £80,000?

What work has been undertaken by the Trustee. Have there been any particular factors or any specific work types (for example, was an application to suspend discharge made or an application to compel co-operation necessary) that have caused costs to escalate?

Was the remuneration of the Trustee fixed by a decision of the creditors at a decision procedure or by the creditors committee (if there is one)? were creditors informed of the outcome and were the resolutions validly passed?

Fees estimates

A copy of the initial report to creditors on the actions that the Trustee plans to take to deal with the estate and his fee estimate for doing so.

Copies of any additional reports prepared by the Trustee outside of his annual reporting requirements should also be requested. These additional reports may include requests for an uplift in remuneration.

If the Trustee has exceeded the fee estimate provided in his reports, he can be required to refund the estate to the extent of any excess.

(b)

Pursuant to Rule 18.9 IR 2016, a secured creditor, an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors or an unsecured creditor with the permission of the Court can make a written request to an officeholder for further information in relation to remuneration or expenses as set out in a progress report or in a final report.

The request must be made within 21 days of the receipt of the report

The Trustee must respond within 14 days either providing all of the information requested, providing some of the information requested or declining to provide the information requested. Legitimate reasons is that the time or cost of preparation would be excessive, it is prejudicial to the conduct of the proceedings, disclosure might reasonably be expected to lead to violence against another person or on grounds of confidentiality.

If the Trustee does not provide all of the information provided, he/ she must explain why only some or none of the requested information has been provided. A creditor has the right to apply to court for an order seeking provision of the information.

Notwithstanding the requirements of Rule 18.9, the creditors are the party with the principal financial interest. As such if a creditor considers that the information provided by the Trustee in relation to the costs and expenses that have been incurred is not sufficient, a creditor can request further information from the Trustee.

Pursuant to SIP9, requests for additional information should be viewed upon their individual merits and treated by an office holder in a fair and reasonable way. The provision of additional information should be proportionate to the circumstances of the appointment.

Creditors also have a right to request information in relation to costs pursuant to Regulation 36A of the Insolvency Regulations 1994

Assets

Have all disclosed assets been realised? Do the Trustee's reports highlight any specific difficulties that were experienced in realising these assets?

(c)

Application to court pursuant to Rule 18.34 IR2016

Negotiate directly with the Trustee and/ or raise the level of the Trustee's fees with their firm. A Trustee might be willing to reduce the overall level of their remuneration in order to avoid the cost of dealing with a potential application under Rule 18.34

If there is a creditors committee, the committee can raise concerns regarding the level of proposed remuneration at committee meeting.

Creditors can also raise concerns at meetings called for the purpose of fixing the basis and extent of the Trustee's remuneration.

Question 3

(a)

Under the standard conditions/ IVA protocol the Nominee has to obtain sufficient information to set out an accurate Statement of Affairs and prepare a proposal that is fit, fair and feasible.

Evidence of Mr Quinn's identity and also his current residential address. It is not sufficient to simply have an email address or a care of address

Does Mr Quinn have any other assets that he has not declared, including any jointly owned assets? Vehicle, shares, interest in a property etc. Confirmation of what assets are to be pledged or excluded. If assets are to be excluded from the IVA, what is the justification for this?

Has he disposed of/ gifted/ transferred any assets whether at full value or otherwise over the last 5 years? If he has, details should be provided together with evidence of how any proceeds have been utilised.

Has he made any payments to creditors that could be subject to challenge as a preference?

Does Mr Quinn have an accountant? Can he supply copy accounts/ tax returns for the last 3 years in order that his earnings can be verified?

Has his income been declared in his tax returns? Are all returns up to date?

Copy bank statements for the last 6 months should be requested. However, this may not help establish Mr Quinn's income or levels of expenditure as he has advised that he receives most of his income in cash.

Mr Quinn charges £125.00 a day which works out at approximately £2,500 a month assuming he works 5 days a week. Does he work full time or part time? What is his average monthly income?

Does Mr Quinn have a cashflow forecast for the next 12 months?

Copies of any unpaid invoices should be provided together with details of any debtors.

Does he have any outstanding liability to HMRC in respect of previous tax years? Based on previous years, what does he consider should realistically be set aside for HMRC each month going forward?

Outgoings

Details of all items of expenditure should be provided and verified where appropriate. This will include providing details of where he is currently living, the terms on which he resides there including how much he is paying and how long he is able to remain at that property.

How much does he currently pay each month in respect of his credit card debt? An equivalent amount should be contributed towards his IVA each month.

Does Mr Quinn have any children or other dependents?

An assessment will need to be made of whether £300.00 can realistically be paid each month and/ or if Mr Quinn is in a position to contribute more than this. Even if £300 a month is contributed for 5 years, total contributions will only be £18,000. After nominee's fees and

supervisors fees, this represents a relatively low return to creditors and means that an IVA might not be attractive to them.

If his monthly contribution cannot be increased, is there any other way that the IVA could be made more attractive. Third party contribution for example?

If a third party is going to contribute, a letter confirming their support should be obtained.

Does Mr Quinn have a bank account from which the monthly contributions can be made?

Creditors

Evidence of the amounts due to the disclosed creditors should be provided. Confirmation should be obtained of whether any of these creditors hold security.

Is there any creditor pressure including threatened litigation and service of statutory demand. If there is details should be provided and consideration given to whether an interim order could be obtained.

Does Mr Quinn have any other creditors that he has not disclosed such as contingent creditors pursuant to guarantees etc?

Copy credit card statements should be provided together with a copy of the PCP agreement, log book and insurance cover for the car verifying ownership should be provided.

In relation to the credit card debt, is this all owed to one company or to more than one company? Details to be provided together with confirmation of whether the minimum payments are being met. If not, has any enforcement action been taken or is threatened?

What does the PCP agreement relate to? When does it end? Is it a vehicle that is needed for work? If he has a work vehicle in addition to the vehicle on PCP, why does he need two vehicles? How much is paid each month and what would the cost be if the agreement was to be terminated early? Does the agreement terminate on insolvency/ what would the impact of Mr Quinn entering into an IVA be on the PCP? Has anyone provided a guarantee in relation to the PCP agreement?

Further details should be provided regarding the liability to his ex-wife. Is the £60,000 owed pursuant to an order made in divorce proceedings or has it arisen as a result (for example) of a loan being made. Documentation evidencing the nature of the debt and how it has arisen should also be provided to establish whether it is a debt that can be included in the IVA.

If it is not a debt that can be included in the IVA, does he still want to/ is it worthwhile still proposing an IVA? what is his relationship like with his ex-wife? How does he intend making payment to her if all surplus income is made available to creditors through the IVA? Does Mr Quinn know what the likely attitude of creditors will be to the IVA?

Has he had any previous insolvencies?

A short personal history should also be provided which sets out his background to and reasons for an IVA being proposed.

(b)

Where an IVA is to be proposed, an insolvency practitioner has to be satisfied that it is achievable and that a fair balance is struck between the interests of the debtor and the creditors.

If a Nominee forms the view that creditor interests will be materially prejudiced by non-disclosure he/ she should decline to act.

A Consent to Act is required and this can be withdrawn in the event that there are material concerns regarding non-disclosure.

If the non-disclosure is not so serious as to undermine the validity of the proposal, the non-disclosure can be reported in the Nominee's report along with the nominees views.

SIP 3 requires an IP to be satisfied that an assessment can be made of whether the debtor is being sufficiently co-operative, the debtor's understanding of the process and commitment to it.

A nominee has to be able to explain the extent to which the information contained in the IVA has been verified, with a nominee required to carry out a reasonable and proportionate investigation into the debtors affairs.

A nominee also has to be satisfied that the debtor's true position as to his assets and liabilities is not materially different from that which it is represented to the creditors to be.

A nominee has to consider whether the IVA has a reasonable prospect of being approved and implemented.

(c)

Has Mr Quinn received his discharge from bankruptcy? Check the Individual Insolvency Register to see whether his discharge has been suspended and if it has, on what terms. If not, check whether the bankruptcy order has been annulled or rescinded.

If the bankruptcy order remains in place and Mr Quinn has not had his discharge, his Trustee in bankruptcy could still pursue an IPO/A as any surplus income should be properly payable to his Trustee. Is there already an IPO/A in place that Mr Quinn has not disclosed? Has Mr Quinn declared this surplus income to his Trustee? If he has not received his discharge, he is under an obligation to do so.

Assuming that Mr Quinn did receive his discharge in June 2020, when were his liabilities incurred?

If all the liabilities pre-date the bankruptcy and have not survived the bankruptcy, they are debts in the bankruptcy and he should not be pursued now.

If Mr Quinn has not had his discharge, he could still propose an IVA in respect of the bankruptcy debts but not in relation to both pre and post bankruptcy liabilities.

Did Mr Quinn enter into an IPA/IPO following the making of the bankruptcy order? If he did, has he disclosed his surplus income to his Trustee? You would expect that the Trustee would require any surplus income to be made available through the IPO/A, not used to propose an IVA.

The credit card liabilities are significant. Were they built up after his discharge? If not, it is an offence to obtain credit of more than £500 without disclosing the fact that you are an undischarged bankrupt.

Assuming that the credit card debt was incurred after Mr Quinn received his discharge, how was the money spent? Are there assets that he has not disclosed?

If he has spent £20,000 on credit cards in the last 17 months, is it realistic to expect that he can change his spending habits such that he can make money available from his income each month? Has expenditure been on day to day living expenses?

In relation to the debt due to his ex-wife, is this a pre-bankruptcy debt that has survived bankruptcy in whole or in part? If it is, has she received or will she receive any return through the bankruptcy? Can the debt be compromised through the IVA in any event?

What is the attitude of the creditors? If the ex-wife's claim can be compromised through the IVA, then her attitude is key. Do they remain on good terms despite the divorce?

Question 4

(a)

<p>Carry out a land registry search to check property is owned jointly by Mr and Mrs Charles and that charges position is as advised by Mr Charles.</p> <p>Obtain a copy of the form TR1 in respect of the purchase of the property to check whether the property is held as joint tenants or tenants in common.</p>
<p>Register a restriction in favour of the Trustee.</p>
<p>Instruct a valuation.</p>
<p>Arrange insurance</p>
<p>Obtain an up to date redemption statement from the mortgage lender and ask that the lender notes the Trustee's interest in the property.</p>
<p>Obtain a copy of the charging order. Check whether the charging order was made final prior to the making of the bankruptcy order. If not, it will be unsecured rather than secured against the debtor's interest in the property.</p>
<p>It appears that there is significant equity in the property. Once the valuation and redemption statement have been obtained, the equity position can be calculated. Establish whether Mr Charles has any proposal to make regarding the equity in the property. From the information available this seems unlikely.</p>
<p>Write to Mrs Charles to advise her of the Trustee's appointment and that Mr Charles share of the property vests in the Trustee. Explain that equity in this half share will need to be realised for the benefit of creditors. Invite her to make a proposal.</p>
<p>Serve S283a notice on both Mr and Mrs Charles and note that steps will have to be taken to realise the Trustees interest within 3 years.</p>
<p>Caravan S283A IA86 relates to a bankrupt's interest in a dwelling house. Dwelling house is defined by section 385 as any building or part of a building which is occupied as a dwelling and any yard, garden, garage or outhouse belonging to the dwelling house and occupied with it.</p>
<p>A caravan could be classed as a dwelling house if for example it is fixed to a base and is connected to mains utilities. The caravan should be inspected to see whether it is permanently fixed at the caravan site. If it is, or following inspection the position is not clear, a s283a notice should also be served in relation to the caravan. Note that the steps would have to be taken by the trustee to realise the caravan within 3 years of the making of the bankruptcy order.</p>
<p>Establish the extent of the bankrupt's interest i.e. is it just in the caravan or does he have an interest in the pitch? If the bankrupt is registered as the owner of the pitch at the land registry ensure that a restriction is registered.</p>
<p>The terms of the site should also be checked. For example, does the owner have the right of first refusal regarding the purchase of any caravans.</p> <p>Check whether the ground rent is paid up to date. If not, what action could the site owner permitted to take? Would the arrears have to be paid prior to any sale proceeding?</p>
<p>Yacht Mr Charles' parents have offered the Trustee £15,000 for the yacht. However, Cyrus Bay Marina who are owed £70,135 in total according to their claim are claiming a lien over the yacht. This means it would be unable to leave the Marina and Mr Charles is unlikely to want to acquire it on this basis.</p>

<p>As the offer has come from Mr Charles' parents, they are a connected party and as such, if a sale was to proceed, SIP13 would have to be complied with.</p>
<p>Request a copy of the documentation which entitles Cyrus Bay to claim a lien. Establish whether the lien is valid and if it is whether it only applies to the unpaid mooring fees or all sums claimed to be outstanding.</p> <p>Check what fees are being incurred as a result of the yacht being kept in the dry dock. Are these fees being paid?</p>
<p>Cyrus Bay's claim may reduce significantly on the basis of funds paid by the Insurer.</p>
<p>Consider the extent of the sums covered by any lien before instructing a valuation for the yacht to establish if Mr Charles' parents offer is reasonable.</p>
<p>Carry out a search to establish whether there is a marine mortgage registered against the yacht / obtain specialist legal advice</p> <p>Verify ownership.</p>
<p>Shareholding</p> <p>Review information held about Dream Yachts Limited at Companies House and check the Memorandum and Articles of Association to determine the process for realising the shareholding.</p>
<p>Obtain original share certificates from the Bankrupt.</p>
<p>Write to the Dream Yachts Limited to advise them of the appointment of the Trustee and that the shares vest in the Trustee. Ask that the Trustee be entered into the register of members. Request that they provide up to date management accounts to help establish the current value of the company. Obtain a valuation of the Bankrupt's shareholding.</p> <p>Check whether any dividends have been declared and paid since the last accounts were filed. If a dividend has been paid, what effect has this had on the shareholder funds? Notify Dream Yachts that any future dividends should be paid to the Trustee and not to the bankrupt.</p>
<p>Follow the process set out in Articles to attempt to sell the shares, which is most likely to be to offer them for sale to the other shareholders in the first instance.</p>
<p>Car</p> <p>A vehicle will only be treated as exempt if it is necessary for use in employment, business or vocation or to meet the basic domestic needs of the bankrupt and their family. The bankrupt is not currently working so the vehicle may vest in the estate subject to confirmation being provided by the bankrupt of whether it is needed for the purposes of gaining and retaining employment. Check online whether the value of the vehicle is £2,500.</p> <p>Carry out an HPI check to see if there is any finance secured against the car.</p> <p>Obtain documents of title, V5 etc.</p> <p>If it is worth £2,500 an offer could be sought in relation to the excess value if applicable or alternatively instruct your agent to sell the vehicle but remit sufficient funds to the bankrupt (£1,000?) to buy a replacement vehicle.</p>
<p>Other business assets</p> <p>Lease on business premises – There is a short period left on the lease. If the premises are still being rebuilt, there seems to be no possibility to assigning the premises at a premium.</p>
<p>Query whether divorce proceedings have been commenced and whether Mr Charles has claimed any assets owned by Mrs Charles if divorce proceedings progress ?</p>

(b)

Email format to Susan Eden

Mr Charles is required to pay his surplus income to the Trustee by way of an Income Payment Agreement or Order for a maximum period of 36 months. His surplus income must be assessed and an IPO/A put in place prior to discharge

Mr Charles estimated annual Income and expenditure is roughly

Income – Year 1

9* €3,250

Assume exchange rate of 1:1.16 = £2,800*9 = £25,200

We should assume that Mr Fawkes remains resident in the UK for tax purposes. With a Personal Allowance of £12,500. He would have an annual tax liability of c £12,700*20% = £2,540.

His net income would be £22,660 which divided by 12 months is £1,888.

Expenses – Year 1

His known expenses are ground rent on the caravan - £1,500;

Assume ongoing mooring fees on the Marina are met by his parents;

Running costs for the Volkswagen;

Food in the 3 months of the year when not employed (assuming that alternative employment is not obtained during this period);

He has intimated that his wife wishes maintenance of £750 per month for two boys. It does not appear that this has been ordered to be paid by the Court. However a Trustee would allow a reasonable deduction to be made in order to provide maintenance for children.

Consider an allowance in accordance with the relevant CSA guidelines.

Consider allowing a reasonable amount each month for expenses.

Clarify whether Mr Charles has to fund the costs of travelling to / from the boat or if travel is arranged by his employer.

Taking the above into account it would appear that a monthly IPA could be set at around £800+ per month which would be subject to verifying these figures.

This figure could rise in the second and subsequent years if an increase in salary is secured.

Issues

As it is a new job, it is likely to have a probationary period and his employment could therefore be terminated if he doesn't pass probation or if his services are no longer required due to decreased demand caused by the COVID-19 pandemic. In addition, Mr Charles may not ultimately receive the promotion.

Payment is being made in another currency so allowance would have to be made for currency fluctuations and conversion costs.

Issues are whether Mr Charles would be prepared to work away if all his surplus income had to be contributed to the bankruptcy, albeit it would facilitate maintenance payments for his sons.

A further issue is enforceability. An employer based in England can be required to deduct the sums due under an IPO/A at source if the debtor failed to make payment to the Trustee. It is unlikely that this would be similarly enforceable against a Russian employer.

It is also unclear whether payment would be made cash in hand each month to the Bankrupt. If this is the case there could be issues in banking and accounting with funds each month.

Pursuing repayment from Mr Charles whilst he is out of the country and travelling on a yacht will be practically impossible. If Mr Charles chooses not to pay his IPA/O there will be little which can be done to force him to do so.

(c)

HMRC

VAT to quarter ended 31 July 2020 would be a secondary preferential claim. Since trading appears to have continued to the fire in September 2020, it is likely that there will be an increase to this claim. Establish if the books and records are available to submit a return for this trading period or if it will need to be based on assessment. Once the VAT 426 is submitted it is likely that HMRC will increase their claim on an assessment basis in the absence of a return.

PAYE/NIC will be a secondary preferential claim irrespective if the sums claimed relate to payments withheld from sums claimed under the JRS or otherwise. If the book keeper brought the payroll records up to date then it is likely that this will be accurate.

Employers' NIC Contributions are unsecured. Check the payroll records to verify information. Excess payments under the Coronavirus JRS that are paid to businesses in error are not preferential. Check records to see how the overpayment occurred.

Self-assessment taxation for Mr Charles would be an unsecured claim. It will be necessary to establish what periods this covers. It is possible that this claim is complete as Mr Charles will not have had earnings since September 2020 and may have submitted his tax return for 20/21 already.

Check whether the claim is estimated or if tax returns have been filed and the claim is based on those returns .

Using the figures provided to date the claim can be split:-

Secondary Preferential

- VAT - £36,800;
- PAY/NIC - £3,250
- Total secondary preferential - £40,050.

Unsecured

- Overpayment on JRS - £600;
- Employers NIC - £2,200;
- Self assessment - £6,500
- Total unsecured - £9,300.

Employees

Pay in lieu of notice £850 – Unsecured claim

Holiday pay £1,400 – Preferential claim

The RPS will then have a subrogated claim in the bankruptcy

Cyrus Bay Marina Limited

Bankruptcy Order was made on 21 October 2021.

Check whether there is a rent deposit which has been offset against the arrears. Assuming that any rent deposit has been taken into account. arrears as at the date of the bankruptcy can be claimed for. Admit for £7,500.

Cyrus Bay are entitled to claim for future rent. However, they have a duty to mitigate this sum by attempting to re let the premises. However, the premises are still in the process of being

rebuilt, and this should be taken into account when considering how long it should take to re-let the premises.

Dilapidations £50,000. It appears that Pinnacle Insurance are claiming £45,000 for the rebuild costs. Check whether any further sums will be due. Cyrus Bay cannot also claim this sum. The facts on this point need to be established to allow the Trustee to determine who can claim this sum.

Unpaid mooring charges as at the date of the bankruptcy order of £4,662 can be claimed for on an unsecured basis. Request copy supporting documents. In relation to ongoing mooring fees, to prevent any argument that these should be paid as an expense of the bankruptcy, the Trustee will need to determine whether or not the yacht can be realised. If not, the mooring agreement should be disclaimed.

Exclusive Yacht Supplies Limited

Goods were supplied prior to the date of bankruptcy. However, a charging order was subsequently obtained. Check when the charging order was completed. S346IA86 provides that a creditor can only retain the benefit of a charging order if it was completed (i.e. made final) prior to the date of the bankruptcy order. Obtain a copy of the final charging order to check the date that it was made and also the amount that it secures. Does it extend to the full amount outstanding?

If prior to the date of the bankruptcy order, then given the equity in the property, it appears that the liability is fully secured. Exclusive Yachts cannot retain the benefit of the charging order and claim as an unsecured creditor. If the charging order was made final prior to the date of the bankruptcy order, they will have to confirm whether they will be relying upon the charging order. If the charging order was made final after the date of the bankruptcy order, it does not bind the Trustee and an unsecured claim can be admitted.

Pinnacle Insurance

You would require Bacons Solicitors to submit a completed claim on behalf of their client. This should include a copy of the policy and refer to the relevant part of the terms and conditions which would entitle the insurer to claim back the cost incurred in rebuilding the premises and the damage to the yachts. A loss adjusters report should be provided if available together with any supporting documents evidencing any consequential losses. Assuming the terms and conditions entitle the insurer to pursue Mr Charles, the likelihood is that the full claim for **£125,000** will be admitted.

Steinbeck Bank Limited – Bounce Back Loan

Loan repayments would have been due to commence on the BBIL in April 2021. The loan would be interest free for first 12 months. Steinbeck Bank will be entitled to recover 100% of their debt from the government, with the British Business Bank entitled to claim in full for £12,500 plus any accrued interest on a subrogated basis as an unsecured debt

Other Unsecured creditors

Assuming that proofs of debt together with any necessary supporting documentary evidence have been submitted you would admit **£12,600** of the other unsecured claims. If any creditors are owed less than £1,000 the claims can be accepted without supporting evidence.

(d)

Sequestration of Mr
Albert Fawkes

Charles

Estimated Outcome Statement

	Notes	Estimated to realise	
		£	£
Villa	312,000		Layout Based on purchase price. Will be confirmed by valuation. Still give mark if sensible estimate has been given of likely increase in value since purchase.
Due to secured lender	-75,000		Estimated. Will be confirmed with secured lender
Costs of sale	-5680		Assume Estate Agency 1.5% plus c£1,000 for conveyancing - still give mark for sensible estimate. Allowance given for costs of sale but not litigation on assumption consensual settlement reached.
Net proceeds of sale	231,320		
Proceeds to be split	231,320		
Mr Charles' share	115,650		
Less Charging order	23,200		This could be deducted from Mr Charles' share if made final prior to the making of the bankruptcy order
		92460	Although Mrs Jones contributed £50,000, property is jointly owned. Assume the property is held 50/50 and no right to be repaid £50,000 from sale proceeds.
Caravan		0	Assumed not realised as mobile and sole residence
VW Golf		0	Assume not realised but give mark if sensible reasoned decision given regarding sale and allowance for cheaper replacement vehicle
Yacht - Westerly 33		11,115	Assume that valuation confirms that 15,000 is an acceptable price for yacht and that the lien relates only to the mooring fees which are paid in full
Shareholding		28,050.00	Assume that shareholders funds have not materially changed and the other shareholders are willing to buy the 33% share
IPA/ IPO		41,400	Assume 12 months at £800 = £9600 and 2 years at c £15900 per year
			This is simply bringing the total from calculation in question
Total Realisations		173,025	
Petitioning creditor's costs	3000		For sensible assumption re petitioning creditors costs
Secretary of State fee	8775		

Banking fees (3 years)	284	
Trustee's Fees	20,000	WIP at present £4,250. Assume total fees £20,000 and that VAT will be recoverable
Trustee's disbursements (valuation etc)	1,000	Including valuations
	-33,059	
Sums available for creditors	139966	
Prefential creditors		
Employees	1350	£725 + £625 holiday pay
Avaialble for secondary preferential creditors	138616	
Secondary preferential creditors		
HMRC	40050	
Available for unsecured creditors	98566	
Unsecured creditors		
Employees	850	
HMRC	9300	
Cyrus Bay Marina	16250	Assume Rental and Future rent but not dilapidations. Mooring charges paid in full to release boat
Pinnacle Insurance	125,000	
Exclusive Yacht Supplies	23200	
Steinbeck Bank	12,500	
Other Unsecured Claims	12,600	
Total unsecured creditors	199,700	

Dividend available to unsecured creditors (98566/199700 = 49.35p in the £1

HMRC Position

HMRC presently have a claim of £49,350. This may increase when the final VAT return is submitted and depending on how upto date Mr Charles s/a returns were.

At present the split is £40,050 secondary preferential which we would be confident will be recovered in full.

Our EOS shows that they would receive a dividend of 49.35p on their residual claim of £9,300 =£4,590
However, it is worth highlighting that this dividend is less certain and will be affected if Mr Charles does not wish to take up employment or does not co-operate re the IPA.

The estimate re the shareholding is also potentially optimistic.

HMRC petitioning costs will be recoverable in priority to their other claims.