

JOINT INSOLVENCY EXAMINATION BOARD

SENIOR MODERATOR'S COMMENTS ON THE NOVEMBER 2020 SITTING

Introduction

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

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

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

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

The purpose and nature of the Examination

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

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

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

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

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

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

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

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

Candidates and the Examination: the application of knowledge

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

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

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

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

Candidates and the Examination: the checklist approach

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

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

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

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

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

Candidates and the Examination: holistic marks

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

How holistic marks are awarded and the range of holistic marks available for each answer are explained in part 10 of the Regulations. The award of 4 or 5 holistic marks indicates that a candidate's answer is good or excellent. The award of 0 or 1 holistic mark is a clear indication that the answer is at best poor. At an individual question level when the marks give a clear pass or a clear fail, the distinctions between 0 and 1 and 4 and 5 holistic marks do not alter that decision.

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

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

This contrasts with the award of 3 holistic marks for:

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

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

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

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

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

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

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

Candidates and the Examination: numbers questions

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

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

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

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

The 2020 sitting

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

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

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

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

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

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

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

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

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

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

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

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

This seems particularly to be the case with the Personal Insolvency paper where candidates are not showing that they have practical experience. Is this because many, perhaps the majority, of those who sit this paper have no experience of working on bankruptcies or individual voluntary arrangements, now almost always the territory of specialist teams and the "IVA factories" respectively? Even in corporate insolvency work it will, for some

candidates, have been difficult for them to get practical experience across the board. Those candidates who cannot bring practical experience to the table will find themselves at a disadvantage.

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

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

JOINT INSOLVENCY EXAMINATION BOARD
CORPORATE INSOLVENCY PAPER SCOTLAND
EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2020 SITTING

General comments

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

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

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

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

There still tends to be a struggle around setting out an answer based on what the question is asking. Candidates tend to drift off into areas which are not relevant to that question or answer something that has not been asked. Candidates should take time to read and re read the question initially and think prior to answering what is being asked of them. Again, candidates are reminded that there is no extra credit for simply regurgitating what is already in the question and this only appears to waste time which would be better spent answering the question asked.

Question 1

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

Requirements

Explain the steps that you would take to deal with:

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

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

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

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

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

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

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

The majority of candidates identified the issue and stated that the fees already drawn should be repaid into the estate immediately and then attempted to explain the next steps in investigating this and seeking approval. Despite an issue with the question most candidates applied a sensible practical approach and scored well.

Question 2

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

Requirements

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

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

Most candidates struggled with his question however one candidate did score full marks. Calculating gross margin appeared to be an issue and also failing to recognize the correct stores to close. Most candidates used the existing rent position as their starting points and most did not carry forward previous losses.

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

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

Generally candidates set out some of the basic information that creditors may require but quite a large number of candidates were unable to tailor their answer to information that landlords would be interested in or what was stated within the BPF guidance. Some candidates also tended to focus on the contents of a CVA proposal which was not what was asked.

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

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

The majority of candidates generally identified the heads of claims but forgot to put down the basic information on what was required under each. Some candidates focused on what they would do rather than what information was required. In relation to the claims for rent, most candidates achieved marks for seeking copies of the lease and supporting documentation for arrears but generally there appeared to be a lack of depth of knowledge as to other information required to agree claims.

Question 3

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

Requirements

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

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

The question asked candidates to look at a recommendation which would generate the best value for Mr Oldenburg, however most ended up simply stating putting Garrano into an insolvency process would be the recommended option when this would ultimately have a detrimental effect to the value of this business and therefore the return to Mr Oldenburg.

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

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

Question 4

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

Requirements

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

Candidates were asked to set out a trading cash flow for the business. Generally candidates were able to make a reasonable attempt but struggled with some of the more complex areas. In particular candidates found the calculation of VAT difficult and no candidate identified VAT bad debt relief.

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

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

This question was poorly answered beyond the basic input of figures for assets and IP. Most candidates failed to identify trading and sale would be the best outcome. Several candidates assumed either no realisations from trading in the closure scenario or that trading realisations on closure would be the same as on sale.

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

This sought out ways in which an Insolvency Practitioner could market a business for sale and identify potential purchasers. Most candidates got the basics of what to do in relation to identifying other parties. Some candidates focused on SIP 16 which is not what was asked.

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

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

Generally candidates were able to identify a few ways of reducing the risks associated with non-payment of deferred consideration. Some easy marks were lost through failing to apply the answer to the individual entities for example stating it may be possible to obtain security in both the acquiring company and its parent would achieve a higher mark than stating a general 'obtain security'. Most candidates forgot basic things like reviewing accounts or credit reports. Most candidates also failed to comment on what they would do to satisfy themselves that the risk was acceptable compared to price.

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

This part of the question tested the candidates understanding as to how intellectual property may be valued. The default position for candidates on this question as appoint specialist agents. No candidate commented on the adverse factors which might affect the valuation i.e. key employee/licenses lapsing.

**Corporate Insolvency Exam
November 2020
Mark plan**

QUESTION 1

(a)

Potential unlawful distribution under CA 2006 Part 23					
Check and review articles of association to check if interim dividends can be made					
Obtain statutory records and establish if ordinary resolution passed to make distribution					
Must have distributable reserves					
Check level of share capital included in net assets as this is not distributable. Table below assumes no material share capital					
	Net asset position b/f	Loss during period	Net	Dividends	Net assets c/f
28-Feb-19	n/a	n/a	n/a	(10,000)	£50,000
31-Mar-19	50,000	(5,000)	45,000	(15,000)	30,000
30-Jun-19	30,000	(15,000)	15,000	(30,000)	(15,000)
30-Sep-19	(15,000)	(15,000)	(30,000)	(5,000)	(35,000)
31-Jan-20	(35,000)	(20,000)	(55,000)	(10,000)	(65,000)
28-Feb-20	(65,000)	(5,000)	(70,000)	-	(70,000)
Check accounting treatment for the calculation of reserves					
First 2 dividends there were distributable reserves					
Third distribution only had £15,000 of reserves. Entire dividend unlawful.					
Thereafter all appear to have insufficient reserves					
Obtain any management accounts for the period in between annual accounts					
Write to directors setting out					
<ul style="list-style-type: none"> • Directors jointly and severally liable to repay unlawful dividends • Repayable with interest • Solvency irrelevant • Breach of duty • Potentially Transaction at an undervalue • Potentially a Transaction defrauding creditors 					
Write to the shareholder					

- If received in the knowledge that they were unlawful or had reasonable grounds to believe they were unlawful, liable to repay them.

(b)

<ul style="list-style-type: none"> • Fee resolution likely to be invalid
<ul style="list-style-type: none"> • Risk that new resolution will not be passed
<ul style="list-style-type: none"> • Previous fees drawn should be immediately repaid
<ul style="list-style-type: none"> • Will require new fee approval
<ul style="list-style-type: none"> • Establish if valid committee on the case
<ul style="list-style-type: none"> ○ If so seek fee approval from committee
<ul style="list-style-type: none"> • Qualifying decision procedure if no committee – No deemed consent process
<ul style="list-style-type: none"> • Consider correspondence, virtual meeting or electronic voting (most likely former)
<ul style="list-style-type: none"> • Voting form and proof of debt required
<ul style="list-style-type: none"> • Invite formation of committee
<ul style="list-style-type: none"> • Delivered when uploaded to portal, next business day if email, second business day if 1st class post and fourth business day if 2nd class post
<ul style="list-style-type: none"> • Minimum 3 days' notice
<ul style="list-style-type: none"> • If request for physical meeting <ul style="list-style-type: none"> ○ Within 5 days of delivery of notice ○ 10/10
<ul style="list-style-type: none"> • If committee formed seek approval from them once constituted
<ul style="list-style-type: none"> • Review claims for voting purposes
<ul style="list-style-type: none"> • Consider votes for remuneration
<ul style="list-style-type: none"> • If resolution passed then can draw fees in accordance with resolution
<ul style="list-style-type: none"> • If resolution rejected consider application to court

Question 2 (a) see next page

Store Number	Turnover (p.a.)	Rent (p.a.)	Market rent	Contribution
1	500,000	125,000	125,000	75,000
2	450,000	85,000	65,000	40,000
3	750,000	175,000	125,000	(15,000)
4	600,000	140,000	150,000	50,000
5	400,000	95,000	75,000	30,000
6	400,000	100,000	90,000	100,000
7	250,000	60,000	50,000	20,000
Total	3,350,000	780,000	680,000	300,000
Distribution centre		100,000	100,000	(175,000)
Head office costs		50,000	50,000	(300,000)
				(175,000)

Rent difference	Contribution with adjusted rent	Additional margin from sales	Adjusted contribution	Costs
-	75,000	30,000	105,000	(100,000)
(20,000)	60,000	27,000	87,000	(145,000)
(50,000)	35,000	45,000	80,000	(290,000)
10,000	50,000	36,000	86,000	(170,000)
(20,000)	50,000	24,000	74,000	(115,000)
(10,000)	110,000	24,000	134,000	(40,000)
(10,000)	30,000	15,000	45,000	(70,000)
	410,000		611,000	

Loss	(175,000)
Rebate	50,000
Agency cost savings	25,000
Additional contribution	192,000
General costs - Head office	50,000
Redundancy	40,000
	182,000
Store capital	(25,000)
Head office and distribution centre capital	(10,000)
Available funds	147,000
Number of years	3
% Available	75%
Total available for creditor	330,750

From above

Less:

Nominee costs	(15,000)	Any reasonable assumption
Supervisor costs	(30,000)	Any reasonable assumption
Legal costs	(10,000)	Any reasonable assumption

Available for creditors 275,750

	CURRENT					REVISED			
	Stores	HO	DC	Total		Stores	HO	DC	Total
Turnover	3,350,000			3,350,000		2,970,000	50,000		3,020,000
Cost of sales	(1,340,000)			(1,340,000)		(1,188,000)			(1,188,000)
Gross margin	2,010,000		-	2,010,000		1,782,000	50,000	-	1,832,000
Other costs	(930,000)	(250,000)	(75,000)	(1,255,000)		(745,000)	(160,000)	(50,000)	(955,000)
Rent	(780,000)	(50,000)	(100,000)	(930,000)		(545,000)	(50,000)	(100,000)	(695,000)
Contribution	<u>300,000</u>	<u>(300,000)</u>	<u>(175,000)</u>	<u>(175,000)</u>		<u>492,000</u>	<u>(160,000)</u>	<u>(150,000)</u>	<u>182,000</u>

Store capital	(25,000)
Head office and distribution centre capital	(10,000)
Available funds	147,000

Number of years 3

% Available 75%

Total available for creditor 330,750

Less:

Nominee costs	Any reasonable assumption	(15,000)
Supervisor costs	Any reasonable assumption	(30,000)
Legal costs	Any reasonable assumption	(10,000)

275,750

(b)

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

(c)

Arrears of rent
<ul style="list-style-type: none">• Copy invoices
<ul style="list-style-type: none">• Statement
<ul style="list-style-type: none">• Details of any deposit held
<ul style="list-style-type: none">• Details of any controlled goods orders
Dilapidations
<ul style="list-style-type: none">• Initial condition schedule
<ul style="list-style-type: none">• Schedule of current condition
<ul style="list-style-type: none">• Schedule of costs incurred
<ul style="list-style-type: none">• Copy invoices for rectification work
Future rent
<ul style="list-style-type: none">• Landlord calculation of loss
<ul style="list-style-type: none">• Details of any new leases entered into; rent, premium, etc
<ul style="list-style-type: none">• Details of steps taken to mitigate loss
General information
<ul style="list-style-type: none">• Details of guarantors
<ul style="list-style-type: none">• Copy of lease
<ul style="list-style-type: none">• Copy of any variations to the lease
<ul style="list-style-type: none">• Valuation of lease
<ul style="list-style-type: none">• Professional advice

QUESTION 3

Campeiro
<ul style="list-style-type: none">• Company appears insolvent as evidenced by the loan arrears
<ul style="list-style-type: none">• CVL – requires special resolution so will not be possible
<ul style="list-style-type: none">• CVA – not possible
<ul style="list-style-type: none">• Directors' Out of court Administration – not possible as requires directors' approval
<ul style="list-style-type: none">• No QFC in Campeiro so no out of court route available to Mr Oldenburg
<ul style="list-style-type: none">• In court Administration
<ul style="list-style-type: none">○ Mr Oldenburg could apply to court for an administration order as a creditor
<ul style="list-style-type: none">○ Objective most probably that a distribution can be made to secured creditor
<ul style="list-style-type: none">○ Additional costs associated with court application
<ul style="list-style-type: none"><ul style="list-style-type: none">▪ For appointment
<ul style="list-style-type: none"><ul style="list-style-type: none">▪ For ending administration
<ul style="list-style-type: none">○ Mr Oldenburg could choose the administrator (subject to court approval)
<ul style="list-style-type: none">○ Reasonably quick process
<ul style="list-style-type: none">○ Costly statutory matters compared to Liquidation○ Review Directors Conduct○ Moratorium protection
<ul style="list-style-type: none">• Compulsory liquidation
<ul style="list-style-type: none">○ Could apply to court as a creditor on the basis that the company is insolvent
<ul style="list-style-type: none">○ Just and equitable as minority shareholder may be possible but not required due to insolvency.
<ul style="list-style-type: none">○ Could appoint Provisional Liquidator quickly to gain control
<ul style="list-style-type: none">○ Could nominate insolvency practitioner
<ul style="list-style-type: none">○ Additional costs associated with court and legal fees
<ul style="list-style-type: none">○ Perception on property and marketability and may affect value property
<ul style="list-style-type: none">○ Directors contracts terminate
<ul style="list-style-type: none">• Receivership

<ul style="list-style-type: none"> ○ No option to appoint
<p>Garrano</p>
<ul style="list-style-type: none"> • QFC appointment of administrator
<ul style="list-style-type: none"> ○ Quick appointment
<ul style="list-style-type: none"> ○ Could significantly adversely affect the profitable business
<ul style="list-style-type: none"> ○ Debtor book could be jeopardised
<ul style="list-style-type: none"> ○ Possible sale as a going concern
<ul style="list-style-type: none"> ○ Could be costly
<ul style="list-style-type: none"> • Call up Guarantee and appoint a Liquidator
<ul style="list-style-type: none"> ○ As above
<ul style="list-style-type: none"> ○ Trading would cease and value destroyed
<ul style="list-style-type: none"> • Enforce share pledge and sell the shares in Garrano as a trading business
<ul style="list-style-type: none"> ○ Could be costly and no control over Campeiro
<ul style="list-style-type: none"> • Enforce share pledge and could potentially place company into MVL/CVL
<ul style="list-style-type: none"> ○ Significantly adversely affect realisations
<p>Conclusion</p>
<ul style="list-style-type: none"> • Administration of Campeiro and sale of shares in Garrano
<ul style="list-style-type: none"> • Gives control to an Administrator and removes directors
<ul style="list-style-type: none"> • Moratorium protection
<ul style="list-style-type: none"> • Doesn't directly affect subsidiary preserving value
<ul style="list-style-type: none"> • Removes the cost of the directors allowing for returns to be made to Mr Oldenburg
<ul style="list-style-type: none"> • Not time pressured – maximise value for the property and shares

Q4 ANSWERS

(a) and (b) – see spreadsheets on next two pages

(a)

	Pre-pack sale £'000	5 week sale £'000
Intellectual property	750	1500
Fixed Assets	250	450
Debtors	Excluded	Excluded
Stock	60p in £	90p in £
Total	<u>1,000</u>	<u>1,950</u>

	4 week period £'000	Notes
Sales	6,000	<p>The Directors expect sales to decline by 20% due to the uncertainty created by the administration. In addition a lack of product warranty would reduce the price by 10%. Sales accrue evenly over the period.</p> <p>The debtor book at the start of the 4 week period will be £10,800,000 and customers receive at least 4 week's credit. The debtor balance is expected to be received; week 1: 15%, week 2: 10%, week 3: 15% and week 4: 35%, week 5:15%, week 6: 10%.</p>
Cost of sales (stock)	(2,500)	<p>Current stock levels are £10 million. The only purchase required is for £1.8m relating to a shipment of goods from China that is due to arrive in port on 4 December 2020. There is no duty payable on these items but VAT must be paid at the point of import.</p>
Gross profit	<u>3,500</u>	

80%

10,800

Overhead costs

Directors' remuneration	(100)	Includes non-executive directors; could reduce by 50%. Net pay was £60,000
Wages and salaries	(2,000)	Would need to retain staff to preserve value. Net pay was £1.5 million. Normal payroll date for December would be 23rd
Rent	(450)	Rent paid quarterly in advance on normal quarter days and paid up to date. The amount is the equivalent of £15,000 per day.
Rates	(200)	Annual rates liability is £2.6m and paid over 10 months; £200,000 is the amount accrued for the 4 week period.
Heat, light and power	(150)	Payable by direct debit on 15th of each month
Other costs	(100)	Expected to be paid in the week to which they relate. Subject to VAT.
Depreciation	(400)	Relates to equipment and capitalised costs associated with development.
Profit/(loss)	<u>100</u>	

		1	2	3	4	Continuity		No continuity	
						After	Total	After	Total
Income from debtors	See workings	1,620	1,080	1,620	3,780	7,884	15,984	5,913	14,013
Stock on water	Per q	(1,800)					(1,800)		(1,800)
VAT on stock on water	20% x £1,500	(360)				360	-		(360)
VAT on sales						(864)	(864)	27	27
VAT on debtors							-	113	113
Directors' remuneration	-60*50%				(30)		(30)	-	(30)
PAYE and NI on directors' remuneration	-100*50%+30					(20)	(20)	(20)	(20)
Wages and salaries					(1,500)		(1,500)		(1,500)
PAYE and NI on wages and salaries						(500)	(500)	(500)	(500)
Rent	28 Feb next rent due (paid up to that date)						-	-	-
Rates	Amount accrued for the 4 week period					(200)	(200)	(200)	(200)
Heat light and power	Payable once bill arrives for administration period - outside 4 weeks					(150)	(150)	(150)	(150)
Other costs	100/4x1.2	(30)	(30)	(30)	(30)		(120)	-	(120)
VAT on other costs						20	20	20	20
Depreciation	Not a cash item								
Change in cash		(570)	1,050	1,590	2,220	6,530	10,820	5,203	9,493
Cash balance		(570)	480	2,070	4,290	10,820		9,493	
Funding required from Bank		570							

WORKINGS

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

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

(b)

	Pre-pack £'000	Trading Closure £'000	Trading Sale £'000	
Intellectual property	750		1,500	
Fixed assets	250	250	450	Assumed closure = pre-pack
Stock	6,000	11,400	8,550	
	<u>£10m x 60%</u>	<u>See workings</u>	<u>9500x90%</u>	
From sale	7,000	11,650	10,500	
Trading position (inc Debtors)	-	9,493	10,820	
Debtors on pre-pack	10,800			
Total realisations	<u>17,800</u>	<u>21,143</u>	<u>21,320</u>	

Alternative presentation for trading position/bad debt

Trading position (excl debtors)		2,576	2,936
Debtors	7884x75%	5,913	7,884
Bad debt relief		1,004	
		<u>9,493</u>	<u>10,820</u>

Stock

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

Gross margin	58%
Sales price	22,800
Realisation %	<u>50%</u>
	<u>11,400</u>

(c)

Interested parties
<ul style="list-style-type: none">• Discuss potential acquirers with the Directors
<ul style="list-style-type: none">• Identify potential trade buyers
<ul style="list-style-type: none">• Use PR releases to seek potential interested parties
<ul style="list-style-type: none">• Circulate details internally to colleagues to identify whether they have any contacts or clients that may be interested
<ul style="list-style-type: none">• Ask the existing bank as to whether they have any contacts that may be interested.
<ul style="list-style-type: none">• Stock market announcement to seek interested parties
<ul style="list-style-type: none">• Establish if agents have any contacts in the sector
<ul style="list-style-type: none">• Place on agent's website
<ul style="list-style-type: none">• Contact parties that have expressed an interest in such opportunities in the past (interested party register)
<ul style="list-style-type: none">• Advertise online
<ul style="list-style-type: none">• Place on firm's website
<ul style="list-style-type: none">• Consider advert or article in trade press/trade websites
<ul style="list-style-type: none">• Outline opportunity in first letter to creditors
<ul style="list-style-type: none">• Review customer list and contact any that may be interested
<ul style="list-style-type: none">• Review supplier list and contact any that may be interested
<ul style="list-style-type: none">• Discuss with management whether they have any interest in the business
<ul style="list-style-type: none">• Discuss with employees/representatives to seek if they could be interested
<ul style="list-style-type: none">• Establish from the Corporate Finance Boutique what interest there was and what parties they contacted.

(d)

Potential safeguards
<ul style="list-style-type: none">• Floating Charge in Esperia 2020 Limited
<ul style="list-style-type: none">• Cross Guarantee from Esperia Limited
<ul style="list-style-type: none">• Floating Charge in Esperia Limited
<ul style="list-style-type: none">• Personal guarantee from the owners of Esperia Limited
<ul style="list-style-type: none">• Security to support Personal guarantees

<ul style="list-style-type: none"> • Consider cross guarantee and security in any other group companies
<ul style="list-style-type: none"> • Reservation of title over certain goods
Risk
<p>Review financial position of</p> <ul style="list-style-type: none"> • Esperia 2020 Limited • Esperia Limited • Other guarantors
<p>Obtain</p> <ul style="list-style-type: none"> • Accounts • Credit references • Asset statements
<p>Compare to alternative</p> <ul style="list-style-type: none"> • Trading closure total realisations c. £850,000 lower than sale • There would be additional claims from creditors; employees in particular

(e)

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

JOINT INSOLVENCY EXAMINATION BOARD
PERSONAL INSOLVENCY PAPER (SCOTLAND)
EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2020 SITTING

Summary

This was the third year of both the new format of the Personal Insolvency Exam and the use of electronic examinations.

This was another straightforward paper. The numbers element which often concerns candidates, required the preparation of a relatively simple cash flow and statement of affairs. The marks on the numbers questions, particularly the statement of affairs were high and generally gave candidates the opportunity to improve their average.

From an Examiner's perspective the marking of the exam continues to be significantly easier due to the speed of transmission of scripts (hours after sitting the exam) and no issues with legibility of handwriting. The structure of answers continues to be good with very little repetition of points already made. Points made were also mainly relevant to the question asked.

In terms of overall themes, however, there continues to be a weakness in the advice given about options available to an individual facing difficulty. Candidates need to show that they properly understand the situation a person is in, know when an option is appropriate and that they can adapt their answers to the scenario given in the question.

In previous Examiner's Reports the issue of workings buried in cells not being visible to the Examiners was raised. There were no similar issues in this year's sitting.

**Personal Insolvency Exam
November 2020
Examiners' comments**

Question 1

This question explored a situation where Mrs Enys had approached you for advice following the death of her husband. The financial position was not what Mrs Enys had previously believed it to be. The question required a response in the format of a letter of advice and I am pleased to report that without exception all candidates responded in a letter format. Candidates also took the opportunity to express their condolences to Mrs Enys and on the whole made good attempts at structuring their letters.

There was though quite a variation in the content of the letters and after initially expressing their condolences some candidates gave little consideration to the fact that their audience was recently bereaved and may not be familiar with the terminology used or may be shocked by the concept of losing their home. The simple answers that Mrs Enys requires are that Mr Enys' debts are not written off following his death and that the level of equity currently in the property is essential to establishing whether his estate is insolvent or solvent and therefore what to do next. The better answers followed this logical route.

Others were simply a random string of "facts" leaving the reader no wiser at the end about what Mrs Enys should do.

Requirements:

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

- (a) the options that are available to Mr Enys's creditors to pursue the amounts that are due to them and the potential implications for Mrs Enys if her late husband's debts are not discharged;**

(8 marks)

As noted above not all of the candidates started by clarifying that Mr Enys' creditors were entitled to pursue their debts after his death and missed obvious marks for failing to do so. Candidates were on the whole able to correctly explain the process for a creditor to petition for the sequestration of Mr Enys' deceased estate.

- (b) your advice on the next steps which you recommend should, in all the circumstances, be taken by Mrs Enys.**

(12 marks)

Most candidates correctly identified that the most important first step was to establish the level of equity currently in the property, who owned it and as a result whether Mr Enys' estate was solvent or insolvent. Some candidates were not particularly helpful in their approach to how this could be established given that they were providing the advice.

Some candidates were able to obtain marks for considering practical points in relation to Mrs Enys' current situation, for example, who is paying the mortgage and council tax and the implications if these are not met on an ongoing basis.

Question 2

This question required candidates to advise an individual, Mr Hanson, whose business had recently suffered a loss of income on the best way to deal with his debts. It first required candidates to prepare a cashflow for a 6 month period to show the surplus cash which Mr Hanson had available to service his debts.

Requirements

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

(12 Marks)

This was a very simple cashflow and it should have been feasible to score close to or actually achieve full marks. However, on the whole, candidates failed to do so. On the positive side, layout was generally good, with workings well laid out and calculations easy to follow. It wasn't clear however, that all candidates understood what number they were aiming to calculate. Generally easy marks were achieved for repeating the information in the question in a table format. There were mixed attempts to the calculation of the finance payments with a number of candidates ignoring interest entirely. A number of candidates also made the calculation of the payments in relation to wages much more complicated than they needed to be and through silly calculation errors dropped easy marks. The VAT position was simple but few candidates correctly addressed this and no candidates flagged the need for a provision to be made by Mr Hanson for personal tax on the trading profit.

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

(8 marks)

This type of question is the crux of what is required of an Insolvency Practitioner, when presented with financial information and facts; to make sensible observations, give advice and draw conclusions. It has been a recurring theme in recent years that candidates are not able to do this. Unfortunately, this year was not an exception.

Very few candidates commented on what the cashflow they had just prepared told them, which essentially was that Mr Hanson had a reasonable prospect of paying his debts in full within 12 months. The key to the answer was how Mr Hanson could secure agreement/ protection from his creditors while doing so and to look at the other considerations he needed to address to allow this to happen. It is worrying that less than half of candidates made any sensible comment about the use of the Debt Arrangement Scheme.

None of the points to be made about this scenario are difficult or complex and to be fair the brevity of some answers suggests that candidates ran out of time rather than content.

Question 3

This question involved an unco-operative debtor about whom there was very little information. The first parts of the question examined candidates' knowledge of a Trustee's position in relation to divorce proceedings. The final part of the question examined the steps which should be taken if there was the potential that the debtor had alienated a property to his spouse or former spouse.

Requirements

Prepare a memorandum to the Trustee. Explain:

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

Most candidate were able to make a reasonable attempt at setting out what the Trustee should do now he was aware that there were divorce proceedings ongoing.

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

This part of the question was not answered well. A number of candidates seemed to be unaware of the principle of Scots Law that bankruptcy proceedings take precedence over matrimonial ones and that it is not possible to dispose of assets to a spouse if you are insolvent. Some candidates actually took the opposite view and appeared to believe that fundamentally if assets had been transferred under a divorce agreement then Mr Despard's creditors would lose out.

- (c) In the light of this further information, set out the additional enquiries that should be made and possible actions which may be taken regarding the property if you establish it was previously owned by Mr Despard. (5 marks)**

This part of the question was the best answered and candidates were clearly able to set out the information they would need and the possible steps they could take.

Question 4

This question considered a scenario where an individual wanted to enter a Trust Deed and examined some topical issues, including the treatment of the equity in his property and the options available should his circumstances change and he not fulfil the terms of the Trust Deed. Trust Deeds have not been examined in any detail in recent sittings and it was pleasing to note that this was the best answered question in the paper. Candidates were able to cope well with the larger number of lower mark questions and appeared to use their time effectively to focus on those parts of the question where they were more confident in their response.

Requirements

- (a) Set out the ethical issues you should consider and the steps you should take prior to accepting the appointment as Trustee.**

(6 marks)

Most candidates were able to identify the Ethical issues to be considered. However, not all commented to any great extent on the practical steps they would take.

- (b) Explain how the property should be dealt with in the Trust Deed and the information which the Trustee is required to disclose to creditors regarding the property.**

(10 marks)

There were a number of excellent answers to this question. However, it was also clear that a number of candidates had little knowledge of how a property should be dealt with in a Trust Deed and had a vague awareness at best of the guidance provided in both the SIP and the Notes for Guidance (section 2.9). A number of candidates did not recognise that this property could not be excluded as it was not Dr Paynter's sole or main residence, some because they did not consider this, whilst others concocted arguments as to why it could be excluded.

- (c) Prepare a Statement of Dr Paynter's Affairs which shows the estimated dividend for creditors in the Trust Deed. Clearly state any assumptions that you have made.**

(10 marks)

This was a simple statement of affairs and marks were on the whole very high. It did however, cause presentation issues for some candidates, particularly the treatment of the heritable property.

- (d) Set out, giving your reasons, which objections should be accepted and which should be rejected.**

(5 marks)

This part of the question was on the whole answered well. The most common issues were identifying whether an objection was too late to be included as a number of candidates were unclear on the starting date for the 5 week period. Some candidates were also against accepting objections if not supported by a claim form even where the debt had been disclosed by the debtor and supporting evidence provided.

- (e) Explain whether the objections received were sufficient to prevent the Trust Deed becoming protected.**

(2 marks)

Most candidates were able to correctly assess their own workings and applying the legislation assess whether the objections received were sufficient to prevent the Trust Deed becoming protected.

- (f) Set out the various options available to Dr Paynter and the potential consequences of each option.**

(7 marks)

Again there were some good answers to this question, however, some candidates talked about the Trust Deed failing with no clear understanding of how this would happen or what it meant. When answering this question a number of candidates failed to consider the heritable property and how it would impact on what happened next.

**Personal Insolvency Exam
November 2020
Mark Plan**

QUESTION 1

(a) 8 marks

An individual's debts are not automatically written off when a person dies. Creditors can still pursue repayment from their estate.

There is no Will here. Mr Enys' interest in the heritable property will have passed to his wife through laws of intestacy and the claim for prior rights (it appears to be worth less than £473,000), however, creditors can still look to Mr Enys' assets for payment if they take action.

If the unsecured debts are not paid, a creditor could petition for the sequestration of Mr Enys estate. In order to petition, the creditor must be owed £3,000 or more.

The Council and Payday lender cannot currently petition but the unsecured loan and credit cards are likely >£3,000. Creditors owed more than £3,000 together could petition jointly.

To petition at any time, Apparent Insolvency must have been constituted in the form of an expired charge for payment 4 months before the date of death. If this was not done then 6 months must elapse following death before a petition can be presented to the court.

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

If Mrs Enys' inheritance was used to reduce the debt to Dark Bank, then she may have a claim to the property which would be important if the equity is limited and is likely to go directly to Mr Enys creditors. Establish if there was any Minute of Agreement entered into or registered about the use of the funds and obtain a copy.

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

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

Mrs Enys would be required to submit a statement of the deceased affair's to the Trustee

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

As the property appears to be the only asset of value, the Trustee would need to establish the value of Mr Enys interest in it and then take steps to realise it for the benefit of creditors. During this process, Mrs Enys would have the opportunity to acquire the Trustee's interest in the property however, if she doesn't have the means to do so, she could be removed from the property and the property sold.

The cost of the sequestration, Trustee's fees and statutory interest at 8% etc means that the amount needed to pay off Mr Enys' liabilities (£33,200) will increase quite significantly if they are not paid off. Therefore if there is significant equity in the property it makes sense to attempt to come to an agreement with creditors to avoid sequestration.

(b) 12 marks

Mrs Enys should write to all of the creditors to formally advise them of her husband's death and to explain that she is currently seeking advice on the position and requesting that they take no further action for the next 4-6 weeks to allow her time to consider her position.

If the creditors don't already have an expired demand they would be unable to take immediate action anyway, However, Mrs Enys may not know the extent of any action already taken and it is helpful to open communication with the creditors.

If there is a creditor who has constituted apparent insolvency then an Executor of the estate could make an application for a moratorium which would allow 6 weeks where creditor action could not be taken to consider the position.

Mrs Enys should provide the Dark Bank with a certified copy of the death certificate and proof of her identity as next of kin to obtain a copy of the redemption statement.

If this is not sufficient then she should seek clarification from the Dark Bank of what information is required. An Executor could be appointed and Confirmation could be applied for via the Sheriff Court, however, to do so would require information to be provided about the value of the Estate which can't be done until a redemption is obtained. Mrs Enys may wish to avoid the costs of a professional Executor at this stage. Mrs Enys to obtain valuation.

Investigate whether any other creditors

Dark Bank should also be asked to confirm when funds were advanced, how much was advanced etc. Enquiries should then be made to establish how the funds (either the inheritance or funds from Dark Bank) were utilised by Mr Enys.

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

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

Mrs Enys will also need to consider the position of Dark Bank and ensure that the Bank is kept up to date. The Bank may agree to some level of payment break following Mr Enys death, but is unlikely to agree to repayments being frozen indefinitely.

If payments are not maintained and no alternative agreement made with Dark Bank then they would be entitled to call up their security and take possession of the property.

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

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

It appears that Council Tax payments have not been met. In the short term Mrs Enys should arrange for payment to be made and apply for the single person discount or any other reliefs available depending on her circumstances.

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

Consider whether family members (children) might assist in discharging the creditors to allow Mrs Enys to remain in the house. This would also require the mortgage payments to be maintained.

If there is no equity in the property and no prospect of recovery of the sums she received from the inheritance then an Executor could submit an application for sequestration of the estate to the Accountant in Bankruptcy. This would formalise the write off of the debts and let the Trustee deal with the creditors.

Question 2

(a) 12 marks

Mr Hanson - monthly cashflow forecast
6 months ending 31 May 2021

	Dec-20 £	Jan-21 £	Feb-21 £	Mar-21 £	Apr-21 £	May-21 £	Total £	
Income								
F&L Scotland	45,000	45,000	45,000	45,000	45,000	45,000	270,000	
Hamish Warleggan	18,000	18,000			18,000	18,000	72,000	
	63,000	63,000	45,000	45,000	63,000	63,000	342,000	Of which £57,000 is Output VAT
Expenditure								
Salaries	6,333	6,333	6,333	6,333	6,333	6,333	38,000	
Employers NIC	633	633	633	633	633	633	3,800	
Pension - 3%	190	190	190	190	190	190	1,140	
Insurance	475	475	475	475	475	475	2,850	No Input VAT
Vehicle expenses (inc fuel)	240	240	240	240	240	240	1,440	Input VAT
Other	120	120	120	120	120	120	720	Input VAT
Finance payments	17,959	17,959	17,959	17,959	14,539	14,599	100,974	No Input VAT
Business Loan repayment	1,500	1,500	1,500	1,500	1,500	1,500	9,000	No Input VAT
Business Loan arrears	1,000	1,000	1,000	1,000	1,000	1,000	6,000	No Input VAT
	28,451	28,451	28,451	28,451	25,031	25,091	163,924	No Input VAT

VAT Payment			31,320			24,820	56,140
<hr/>							
Cash generated by the business	34,549	34,549	14,771	16,549	37,969	13,089	121,936
Provision for taxation	9,096	9,096	9,096	9,096	9,096	9,096	54,576
Provision for drawings	1,250	1,250	1,250	1,250	1,250	1,250	7,500
Provision for 50% of mortgage	1,600	1,600	1,600	1,600	1,600	1,600	9,600
Monthly payment for Maserati	922	922	922	922	922	922	5,532
<hr/>							
Available for unsecured debt	21,681	21,681	27,639	3,681	25,101	221	44,728
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Finance Payments

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

VAT calculation

Q/e 31 December due on 7 February

Output VAT 3* £10,500 less 3*£60

Q/e 31 March due on 7 May

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

Provision for taxation - for 6 month period

Sales =£342,000 net =£285000

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

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

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

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

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

Assumptions

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

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

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

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

(b) 8 marks

Mr Hanson's cashflow for the next 6 months shows that after meeting his ongoing liabilities, including settling his VAT liabilities and personal tax his business can generate cash which could be paid to his unsecured debts of c£45,000 over the next 6 month period.

Mr Hanson's unsecured debts are currently HMRC £81,532 and credit card £14,500 = £96,032.

The 6 month period included the Winter shut down period. If Mr Hanson is confident of securing further short term contracts from the F&L Scotland and retaining the work with Sir Hamish, then it is feasible that his unsecured debts could be paid in around 12 months.

It is recommended that the total amount due to HMRC is confirmed. Does the £81,532 fully account for the full personal tax liability or is there a portion missing for the first 6 months of 20/21 ?

Mr Hanson should seek to come to an arrangement with HMRC regarding the repayment of this debt demonstrating that he can both pay his debt and maintain his ongoing liabilities with reference to the cash flow.

At this stage the statutory demand does not seem to have expired and therefore HMRC may be prepared to negotiate an informal plan.

When making a proposal it should be recognised that there are some months when the business does not have cash available and therefore the level of monthly repayment will vary.

He should consider a Moratorium application to prevent further diligence by HMRC and allow him 6 weeks to refine his cashflow and discuss his proposal with HMRC.

If HMRC appear unwilling to enter an informal arrangement then Mr Hanson should consider a DPP under the Debt Arrangement Scheme. This would give him protection from his creditors and freeze interest and charges while he repaid the full amount of his debt. HMRC would receive 78% of their debt once the costs of the process have been deducted. It would be in their interests to agree to an informal arrangement.

HMRC would be entitled to object to the DPP in which case AIB as DAS administrator would consider under the Fair and Reasonableness test. On the information available, they would be likely to approve this proposal.

Mr Hanson should maintain his secured loan payments to ensure that his property is not repossessed by the secured lender.

He should seek to come to an agreement with the secured lender regarding the arrears. The cashflow has assumed that these will be cleared in the next 6 months.

While the Maserati payments are high, giving the car back would immediately crystalize an unsecured liability which is higher than the payments he will make. Mr Hanson needs to think carefully about whether he can realistically retain a car at this level. He could maintain the repayments in the short term and consider the position when the balloon payment is due in 2021.

It would also be essential that Mr Hanson kept his VAT and Tax returns up to date and maintained payments to HMRC avoid the DPP being revoked.

He should consider whether all assets are required in the business, for example Harvester II and the Pick up both have equity in them which if sold could make a significant initial payment towards his debts

Could any additional funds be raised against the equity in the property - £35k in total 1/2 share - £17,500.

Does wife have any funds that she could offer.

Question 3

(a) 8 marks

Contact Mr Despard to ask that he provides further information regarding the divorce proceedings to include:-

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

Once the above information has been provided, contact Mr Despard, his ex-wife and the Court to notify them of the Trustee's appointment and of the Award of Sequestration and that Mr Despard's assets have vested in his Trustee.

If there is a forthcoming hearing, consider instructing legal agents to attend the hearing on behalf of the Trustee

If a final order has not been made request that the ex-wife provide you with details of any known assets

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

Check whether Mrs Despard herself is subject to insolvency proceedings and if so, contact her Trustee to make them aware of your appointment.

(b) 7 marks

A bankrupt's assets vests in his/her Trustee in Bankruptcy upon his/ her appointment.

A longstanding principle in Scots Law is that Bankruptcy law trumps matrimonial law. One spouse can only receive assets from the other insofar as there are net assets of the other spouse to transfer.

Spouses are not creditors of one another in relation to an order for matrimonial property. Any distribution of that property must take into account the parties respective debt position.

The Trustee can seek authority from the Court to set aside any order made in matrimonial proceedings. Section 100 of the BSA gives the Trustee the right to apply to the Court for any capital award (capital sum, transfer of property, or pension sharing order made to an ex spouse to be recalled. Providing that:

On the date the order was made, the debtor was absolutely insolvent or was rendered so by the order and Bankruptcy was awarded within 5 years of the order.

It will be necessary to fully understand the debtor's assets and liabilities to establish if he is now insolvent and whether he was rendered so by the order.

When setting a DCO for the debtor, child maintenance would be included within essential expenditure. In the CFT Guidance, the Trustee is required to obtain evidence of payments being made and consider whether these are reasonable in all of the circumstances. In practice, this can be done with reference to the payments which the CSA would assess as being due.

However, if an order has been made by the Court it may be difficult to challenge given the time the Courts have already invested in setting the amount of maintenance.

Mrs Despard would be entitled to make an unsecured claim for any sums due to her at the date of sequestration whether in arrears of aliment or in respect of any sums awarded on divorce.

If there are jointly owned assets, it would be preferable to have Mrs Despard's co-operation to deal with the sale of these. However, should she prove to be unco-operative the Trustee could apply for an order from the Court by raising action for division and sale.

(c) 5 marks

Further Enquiries

- Review the property search to establish how long Mrs Despard has owned this property;
- If this was transferred to her within the last 5 years, request a copy of the disposition to check who transferred it to her and what the consideration was.
- If this was previously owned (or part owned) by Mr Despard, instruct agents to provide a valuation of the property now and a valuation at the time of the transfer to Mrs Despard.
- Establish from the Search whether there was a security over the property at the time of transfer and currently.
- You are trying to establish the value of any equity transferred and the value of any equity in the property now for recovery purposes.
- If you believe Mr Despard transferred the property to his wife. Request that he contact you to discuss the reasons for this and the consideration paid.
- Depending on his response, request proposals for repayment to the Estate.
- If he fails to make a proposal this could be challenged as either a capital award on divorce or if done prior to divorce as a gratuitous alienation under section 98 BSA 2016
- Prior to instructing legal agents consider the likely recovery
- Comment on steps you would take in advance of legal action to protect position.

Question 4

(a) 6 marks

An IP is required to comply with the Insolvency Code of Ethics.

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

In particular, will there be any threats to objectivity as a result of a conflict of interest or as a result of any significant professional or personal relationship.

The IP should carry out checks and make enquiries to establish what, if any relationships exist between the debtor and his Firm.

Steps should be taking to verify the debtor's identity for Anti Money Laundering purposes.

As set out in SIP 3.3, the IP should differentiate clearly to the debtor his role in giving initial advice to his role as Trustee. He should advise the debtor of his requirement to maintain independence and that once the Trust Deed is signed he cannot be influenced by the wishes of the debtor.

An IP should ensure that the advice, information and explanations available to a debtor are such that the debtor can make an informed decision on which process is appropriate in his circumstances. An IP must also explain the debtor's responsibilities and the consequences of signing a Trust Deed.

An IP must ensure that when a Trust Deed is proposed, a fair balance is struck between the interests of the debtor and the creditors.

(b)

How property should be dealt with in Trust Deed

To achieve protected status the Trust Deed must convey all property to the Trustee which would vest in a sequestration.

The exception to this is that a Trust Deed may still become protected where the debtor's dwelling house is excluded under the Act. This being defined as the debtor's sole or main residence over which there is a secured loan. In this case Dr Paynter does not reside in the property and it is unable to be excluded.

In any event there is a risk that the creditors would not agree to the exclusion of the property, and would object to it becoming protected given the significant level of equity in the property.

A property search should be done to confirm that Dr Paynter owns the property and to confirm that it is solely owned.

A valuation of the property should be obtained from a chartered surveyor or other suitably qualified individual. This should be specified as the RICS, Red Book equivalent of "Open Market" and should not impose other restrictions such as Forced sale or a truncated marketing period.

A redemption statement should be obtained from the mortgage lender.

It appears that having considered the costs which would be otherwise incurred in a sale that there is equity of £20,000 in the property. Dr Paynter should be advised that it will be necessary for this value to be realised by the Trustee for the benefit of his creditors.

The Trustee should aim to reach an agreement as soon as possible regarding how this will be done. The Trustee should aim to achieve the best return possible to creditors based on the circumstances of the case.

If Dr Paynter wishes to retain the property then the value in the property will have to be realised. This could be done by a third party making payment of £20,000 during the term of the Trust Deed, or Dr Paynter considering whether he could remortgage at the of the Trust Deed term. The term of the Trust Deed could also be extended to allow £20,000 to be paid through additional income contributions, however at the rate of £700 per month this could take 29 months, a total term of 6 years and 5 months which may not be acceptable to the creditors.

If an agreement is reached between the debtor and the Trustee to avoid the sale of the property then this should be recorded on Form 1B.

Alternatively the property could be sold to realise the equity.

Prior to agreeing to a sale the Trustee should ensure that an internal inspection has been carried out to be confident in the equity value.

He should also consider whether there would be a CGT liability which would have to be met by the estate as this is not Dr Paynter's PPR and has been let out.

Information which should be disclosed to creditors

The Statement of Affairs must show the Valuation and the redemption figure. As emphasised in the Notes for Guidance, it is important that 100% of the difference between these figures is disclosed.

Creditors should be advised that a copy of this valuation is available on request.

If agreement is reached a copy of the Form 1B must be sent to the creditors (and the AIB). Any difference between the full amount of equity in the statement of

affairs and the amount to be realised in the Form 1 B must be fully explained.

If agreement has not yet been reached then the following should be disclosed to creditors:-

- The Trustee's intentions regarding a sale of the property;
- Plans for remortgaging and when it is intended this would take place;
- Details of the contributions intended to be accepted in lieu of equity including timing and duration of these.

A comparison should be provided to creditors of the dividend should the equity be realised in full compared to if additional contributions are accepted in lieu of equity.

(c) Statement of Affairs 10 marks

Trust Deed of Dr Paynter Statement of Affairs as at 25 September 2020	Note	Value to the Estate £
Contribution from future income	1	33,600
Property at xxxx	2	
Valuation		150,000
Due to Cornish Bank		-128,000
Costs which would otherwise be incurred in a sale		<u>-2,000</u>
		20,000
		<hr/>
Total estimated realisations		53,600
Costs of realisation		
Trustee's fee	3	10,900
Outlays	4	791
		<hr/>
Funds available for unsecured creditors		41,909
Unsecured creditors	5	110,697
Shortfall to unsecured creditors		-68,788
Unsecured creditors will receive an estimated dividend of		0.38 which equates to 38 pence in the £1

Notes

- (1) Dr Paynter's Income and Expenditure has been assessed using the CFT. He has agreed to make a contribution of £700 per month for the 48 month Trust Deed period
- (2) Dr Paynter solely owns a property at xxx. This has been professionally valued by XXX surveyors at £150,000 on an open market value basis. Cornish Bank have a security over the property and the sum due to them is shown. The costs which would be incurred in a sale are estimated to be £2,000. The estimated value of the property to the estate is £20,000. A third party will make payment of this sum during the first 6 months of the Trust Deed in order to relinquish the Trustee's interest in the property.
- (3) The Trustee's fixed fee for the administration of this case will be £2,500. In addition the Trustee will charge fees as a % of contributions and assets realised. These are estimated to be 15% of sums recovered and therefore total fees are estimated to be £10,900
- (4) Outlays are estimated as follows:-

Valuation	150
TD supervision fees	500
ROI - Initial & Protection	71
Bond	10
Searches	30
Inhibition	<u>30</u>
	<u><u>791</u></u>

(4) My estimate of unsecured creditors claims is based on information provided by the debtor. I estimate creditors as follows:

Student Loans Company	27,400	Although SLC debt will not be written off, they are entitled to claim
Bodmin Bank	7,800	
Credit cards	12,200	
Overdraft	6,425	Assume this is not secured
Shortfall on car	3,980	
Car Rental	9,972	translated to £
Wife	6,000	
Mother	36,400	
Edinburgh City Council	<u>520</u>	
	<u><u>110,697</u></u>	

(d) 5 marks

In order to be counted an objection must be received in the relevant period. AIB Guidance states that the day following publication in the ROI is the first day of the relevant period. If published on a Tuesday, creditors have until midnight on the 5th following Tuesday to submit their objection.

Dr Paynter's Trust Deed was advertised on the ROI on 29 September. Creditors have until midnight on 3 November 2020 to lodge an objection.

7 Objections were received;

- Deborah Paynter's objection was received significantly in advance of the deadline and should be accepted.
- XYZ's objection was submitted well in advance of the deadline via ASTRA, it was not supported by a proof of debt, however, as you are aware of the existence of the debt and there is no dispute, it should be accepted at the SOA balance.
- ABC's objection was received out with the relevant period and should not be included;
- 123 is a claim you were not previously aware of but is supported by proof of debt and evidence. It is also within the deadline and should be accepted.

Easy Drive's claim needs to be converted to £ at the date the TD was signed. It was received within the deadline and has an accompanying proof of debt and unless their claim is obviously unreasonable this objection should be included.

- Cornish Bank's vote was not received until 8.30pm on the decision date. However, the cut off is effectively midnight for receipt so the objection would be allowed.

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

Where a debt is wholly secured, the objection would not be accepted. Here it has been assumed that the overdraft is unsecured.

Edinburgh City Council's vote was received out with the time period and should be rejected.

(e) 2 marks

Creditors are deemed to have acceded to the Trust Deed becoming protected unless objections are received, in writing, in the relevant period, from a majority in number or no fewer than 1/3 in value that they object to the Trust Deed.

There are 11 creditors. The 10 originally disclosed plus the additional credit card debt. 7 objections have been received but only 5 of these are valid. This is not a majority in number.

The total value of creditors is £122,665, based on accepting the credit card debt with supporting evidence and the revised claim from the car rental company.

The total value of objections received is £31,565. This represents 26% and is therefore less than 1/3 in value. The protection documents should therefore be sent to AIB.

Question 4 (d) and (e)							
Creditor	Statement of Affairs balance £	Response to circular received	Objection	Proof of debt		Creditor claim £	Valid Objection £
Student Loan	37,400	None	None	None		37,400	
Bodmin Bank	7,800	Via ASTRA at 2pm on 3 November 2020	None	Yes		7800	
Sarah Paynter (mother)	36,400	By post on 4 November 2020	None	Yes		36400	
Deborah Paynter (ex wife)	6,000	By post on 14 October 2020	Yes	Yes	Valid	6000	6000
XYZ (credit card)	7,200	Via ASTRA at 1pm on 2 November 2020	Yes	None	Valid	7200	7200
ABC (credit card)	5,000	By fax on 5 November 2020	Yes	Yes	Invalid	5000	
123 (credit card)		Via ASTRA at 12 noon on 3 November 2020	Yes	Yes	Valid	2000	2000

Easy Drive car rental	\$13,121	Email on 2 November 2020	Yes		Valid	9940	9940
Cornish Bank (overdraft)	6,425	Via ASTRA at 8:30pm on 3 November 2020	Yes		Valid	6425	6425
X Finance car lease	3,980	None	None			3980	
Edinburgh City Council	520	Post on 4 November 2020	Yes	Yes	Invalid	520	
11 known	110725					122,665	31565
7 objections							
5 valid objections is not a majority in number of 11 creditors							
Value of creditors - £	122,665						
Value of objections - £	31565						
	26%						
Represents 26% and is therefore less than 1/3 in value							

(f) 7 marks

Prior to signing the Trust Deed the Trustee would have asked Dr Paynter if he expected his circumstances to change during the 4 year term. Dr Paynter's creditors agreed to his Trust Deed becoming protected on the basis that he made the agreed contributions. The Trustee is unlikely to take a positive view of what appears to be a voluntary change in circumstances.

If Mr Paynter goes travelling and simply stops paying his monthly contributions, it is possible that the Trustee will take steps to terminate the Trust Deed.

Most Trust Deeds have provision within them for termination on the grounds of non payment of contributions for a specified period/non co-operation.

If the Trust Deed is terminated then Dr Paynter would no longer have protection from his creditors who will be able to pursue him for the debts at the date of signing. These debts will not be discharged.

It is likely that a significant proportion of the contributions paid to date will have covered the fixed costs of the process and the level of distribution to creditors will be relatively low.

Dr Paynter would still have to deal with these debts.

The Trustee's position will be influenced by the agreement which has been reached in relation to the property. If the property has not been realised, and Dr Paynter had agreed to make additional income contributions and co-operate with the Trustee, then this will put him in breach of the agreement. The Trustee could then take steps to realise the property within the Trust Deed.

Alternatively, the Trustee in the Trust Deed could take steps to petition for Dr Paynter's sequestration. This would mean that the equity in the property if already realised would have to be dealt with again in the sequestration. Dr Paynter would need to make contributions from surplus income for another 48 month period.

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

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

Dr Paynter would not receive his discharge from sequestration until he had co-operated with the Trustee and agreed a DCO, even if this was nil. The Trustee in sequestration is unlikely to bring the case to a conclusion within the 48 month period if he believes that there is a prospect that Dr Paynter will earn enough to generate a surplus income.

Dr Paynter would still be liable for his student loans and potentially also in respect of the fines in any of these scenarios.

A Trust Deed would normally only be brought to a close early if creditors are being paid in full. However, Dr Paynter could make a proposal to the Trustee to pay a lump sum equivalent to the contributions which would have been received (and to buy out any remaining equity).

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

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

When the Trustee becomes aware that the projected dividend will be less than 80% of that originally projected he should write to creditors setting out the options available and allowing them the opportunity to object to his recommended course of action.