Joint Insolvency Examination

November 2022 sitting

Senior Moderator's Report

Introduction

This report is written following the publication of the results of the November 2022 sitting of the Joint Insolvency Examination ("the Examination"). It should be read in conjunction with the reports prepared by the examiners for the two papers in England and by their counterparts in Scotland.

Following the 2020 sitting of the Examination I prepared a comprehensive report which set out what candidates needed to do to succeed in passing any of the papers in the Examination. I recommend that all candidates and those helping them in their studies should have regard to what is said in the 2020 report: the messages are still relevant.

How candidates fared at the 2022 sitting

Dealing first with some statistics, the number of candidates sitting one or more papers in 2022 was essentially unchanged from 2021. The vast majority of these sat the English versions of the papers. I was very pleased to see that the proportion of those who were successful having attempted the corporate insolvency paper in England continued its recent upward trend, with 47% of those who sat the paper being awarded a pass. Very worrying was the fact that only 28% of those who attempted the personal insolvency paper were awarded a pass. This percentage has been on a downward trend for some while, but 28% is by some margin the lowest pass rate for this paper.

It is very difficult to determine the reason(s) for this very low pass rate. One undoubted issue is the fact that the majority of candidates sitting the personal insolvency paper are not demonstrating that they have practical experience in the subject. It is not entirely clear why this is. All the papers set in the Examination are practical papers and the examination team is looking to candidates to demonstrate that they can assimilate facts, to think round a problem and to come up with a practical solution. This reflects the approach of insolvency practitioners in their day-to-day work. Candidates who do not demonstrate that they have sufficient knowledge of insolvency law and practice to enable them to carry out the functions of unauthorised insolvency practitioner are putting themselves at a significant disadvantage. Approximately 40% of the overall marks available on each paper are for applying the law (i.e. actually solving the problem) and candidates who are unable to do this are missing out.

In my 2021 report I referred to the unwelcome increasing trend in the percentage of candidates who unfortunately did not pass any of the papers that they attempted. I am pleased to report that in 2022 the percentage of those who were wholly unsuccessful fell slightly. Since the introduction of the two paper format in 2018, each year on average 53% of candidates have not passed any of the papers attempted by them.

In Scotland, the very low number of candidates who sit the papers makes year on year comparisons difficult, but the results for 2022 were commensurate with those for 2021.

Helpful pointers

Away from statistics, the examination team and I welcome that fact that at least some candidates appear to have taken heed of the detailed comments in my 2020 report. However, I have continuing concerns about how some candidates approach questions. The reports written by the four examiners this year are essential reading as they point out where candidates did well and where they struggled. There are a number of useful pointers, of which future candidates would do well to take careful note.

For my own part, and echoing some of the comments made by the examiners:

- candidates should not go off at a tangent but stay true to answering the question set. Straying into presenting irrelevant information (often at great length) can never earn marks and wastes precious time. Time taken to read the question and to appreciate the specific requirements should help candidates to structure and plan their answers and to avoid wasting time. No marks can be awarded for explaining what the office holder should do later at some later date when the requirement asks for a list of actions that would be taken in the first seven days;

- reading the question and understanding the requirements should help candidates to avoid being put off by questions. A question set within the context of, for example, a solicitors' partnership will usually be able to be answered to some degree without any knowledge or either legal practices or partnerships;

- candidates must be sure that they are clear from the question scenario the role that they are adopting and who it is they are interacting with. Answering a question from the point of view of an insolvency practitioner as officeholder is very different from answering a question from the point of view of a insolvency practitioner who has been approached for help by a creditor of an insolvent entity. Advising the spouse of the bankrupt on their position vis-à-vis the matrimonial home requires a different approach from that that would be adopted by the trustee. It is vital that candidates appreciate who they are and who they are dealing with and then stick to this throughout their answer and do not default to answering the question as if they were an insolvency practitioner holding a formal insolvency office;

- if the requirements ask for an email or letter to be prepared, candidates must do this. Candidates who either ignore the requirement, or who start off by following the requirement but then revert to a generic answer, are at the very least likely to be marked down holistically;

- in questions where candidates are asked to advise on the options available, they should not waste time setting out in detail those options which are theoretically available but which, given the facts of the question, could never be adopted as a solution. There is no point in writing pages about Members' Voluntary Liquidation if the company in question is clearly insolvent. Briefly mention irrelevant options, explain why they are not relevant in the context of the question, and move on;

- in "numbers" questions it is important that candidates do not simply insert a figure into their answer without explaining from where the figure derives. A note or assumption should be provided so that the examination team is made aware of the candidate's thinking. Even if the figure given in the answer is wrong, some marks can sometimes be given by the examination team for the workings behind it;

- candidates sitting the personal insolvency paper are of course free to use their knowledge of insolvency generally, including corporate insolvency, when attempting a personal insolvency question. However, care must be taken to ensure that law and/or practice usually relevant to corporate insolvency is not imported into the personal insolvency arena without thought. Candidates sitting the personal insolvency paper who refer in their answers to law and/or practice that could only ever be relevant in the corporate arena run the risk of demonstrating to the examination team that they lack the requisite personal insolvency experience; and

- there is a continuing tendency of some candidates to adopt what the examination team calls the “checklist approach”. By this is meant answering questions by rote, setting out information learned during studies in a mechanical way without ensuring that the question context requires this to be done. The Examination is very largely comprised of questions which require focussed practical answers. Regurgitation of long lists of what has been learned while studying often misses the point, in part or entirely, and does not give the examination team any confidence that candidates have appreciated the issue in hand or identified the solution. Even when candidates succeed in making relevant points, if they have done this by taking the checklist approach, happening upon mark-worthy points along the way, it will usually be obvious to the examination team that this is the case and it can be difficult to conclude that the candidate really knows what they are doing.

JOINT INSOLVENCY EXAMINATION BOARD

CORPORATE PAPER

EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2022 SITTING

General comments

In this year's paper there was a number of questions that required the presentation of numeric answers and generally these were well answered. Whilst candidates were able to demonstrate their understanding of these areas, the level of supporting notes, workings and assumptions were often lacking, restricting the marks awarded. Candidates should ensure that they cover all aspects of the question to maximise the opportunity to achieve a good overall mark.

Whilst candidates appeared generally to be confident with numeric and process driven questions, where the answer required the application and consideration of practical aspects of an insolvency situation many candidates struggled. The ability to apply knowledge and experience to practical scenarios is an important skill for any Insolvency Practitioner.

Candidates should ensure that they are addressing the specific requirements of each question and not simply answer the question they would have liked to have been asked. In some situations candidates had provided a significant level of detail on irrelevant, tangentially related topics, time which would have been better spent on other questions. In addition, where the requirements ask for a comparison, candidates should relate the attributes to each other and identify differences

Corporate Insolvency England Exam
November 2022
Examiner's Comments

Question 1

Requirements

(a) Set out the key steps that Buddrose would take to place the Company into compulsory liquidation. (5 marks)

The first part of the question asked candidates to set out the steps required to place the company into compulsory liquidation.

As candidates were required to copy extracts from the open book, overall a high mark was achieved. There were however a small number of candidates that either didn't attempt the question or achieved a low mark, which was surprising.

(b) Explain how you would respond to this request. (5 marks)

Candidates were presented with a situation where a creditor was unhappy with the actions of the administrator and wished for a replacement administrator to be appointed.

Whilst some candidates achieved a high mark, generally the question was not well answered. There appeared to be a general lack of understanding as to the circumstances in which an administrator can be replaced and the process required. Many candidates incorrectly suggested that an administrator could be replaced through a Qualifying Decision Procedure or by creditors 'voting out' the incumbent officeholder.

A number of candidates provided a long list of general questions regarding the marketing process instead of setting out the creditors' rights in relation to the specific circumstances.

(c) Explain to Buddrose the circumstances in which they would have been asked to approve the remuneration of the Administrators and, given the circumstances, set out what action they can take if they are dissatisfied with the level of the fees charged. (5 marks)

This part of the question required knowledge of the process for approval of an Administrator's remuneration and creditors' rights in relation to challenging this, in situations where they were dissatisfied.

Whilst a small number of candidates achieved full marks for this part of the question, overall it was answered poorly and there appeared to be a lack of understanding of this important topic. A proportion of candidates had not properly read the question or did not understand the implications of a Paragraph 51(1)(b) statement on fee approval, incorrectly suggesting that the general body of creditors had the right to not approve the Administrator's remuneration.

(d) Explain how Buddrose could protect itself from another bad debt arising in the event that Hemphill Limited were to fail to pay (5 marks)

For this final part candidates were asked to provide a list of actions that could be taken to reduce the risk of a bad debt. Generally this was answered well, however some candidates fixated on one particular aspect, for example Reservation of Title, providing large amounts of unnecessary detail .

There were a number of responses where candidates appeared to be under the impression that factoring the debt would eliminate the bad debt risk. This is only the case if it is a non-recourse factoring arrangement or the debt is covered by trade credit insurance.

There were a few candidates that outlined aspects that were not relevant to the question such as areas associated with a company trading whilst in administration and the regulations relating to the provision of essential supplies to administrators. Candidates should ensure that they read and answer the specific question as irrelevant answers will achieve no marks and waste valuable time.

Question 2

Requirements

(a) Draft a statement of affairs for the LLP as at 30 September 2022, together with relevant notes explaining to Mrs Butani how the figures have been determined. Explain what other information you will require in order to finalise the statement. (20 marks)

There was only a single part to this question and candidates were expected to present a statement of affairs and explain the figures included within it.

Generally candidates achieved good marks for completing the statement of affairs but any explanations regarding how the figures had been determined were often lacking. Overall there appeared to be a lack of understanding as to how the value of Work in progress is determined within a balance sheet but otherwise candidates appeared to have a good grasp of the Statement of Affairs.

Question 3

This was a practical question requiring the identification of potential issues within the given scenario and how this could impact on an insolvency situation.

Generally this was not well answered with a number of candidates going off topic or not understanding the scenario. For example, some candidates outlined general concerns regarding whether the company needed to buy the additional equipment and some suggested that all containers should be immediately recalled.

A number of candidates mentioned points relevant to part (a) in part (b) and vice versa. Due to the nature of the question and the potential for cross over, candidates were awarded relevant marks no matter where they had placed the point..

Requirements

(a) Provide a summary of the issues that may affect the value of the Company's assets and the Bank's recovery, specific to the circumstances set out above and in the event the Company entered an insolvency process. (12 marks)

This asked candidates to identify risks and issues that would affect the value and return to the bank. Whilst a minority of candidates achieved a good mark, generally the responses were poor and the average mark for this part of the question low.

Whilst candidates were generally able to identify certain key risks, they often failed to address the question set and did not relate it back to how it would affect the Bank's recovery in an insolvency situation. This limited the amount of marks certain candidates were able to achieve.

Some candidates spent time on areas where no marks would be available for example several went into detail about disclaiming leases and some responses covered assets that the company did not have.

(b) In the event that the Bank wished to appoint you as Administrator of the Company, set out the key considerations and legal and practical steps that you would take prior to appointment. It is not necessary for your response to cover issues identified in requirement (a).

This part of the question asked candidates to set out steps they would take prior to accepting the appointment as Administrator.

This was better answered than the first part of the question but overall marks were low.

Whilst many recognised potential ethical issues, these were rarely related back to having advised the bank in part (a) of the question. Very few candidates considered the general requirements for an administrator to be appointed and many candidates went into detail about matters following appointment rather than pre-appointment.

Some candidates provided a generic list rather than relating them to the question. For example several candidates had "check you are an authorised insolvency practitioner" as a point where the question states that you are one.

Question 4

There were 5 parts to this question. The overall average mark was relatively high however there were some parts of the question that were not particularly well answered.

Requirements

(a) Explain the principal differences between an Administration moratorium and a moratorium under the provisions introduced by the Corporate Insolvency and Governance Act 2020. (4 Marks)

Candidates were asked to set the differences between the moratoriums provided by an Administration and Corporate Insolvency and Governance Act 2020. There was a wide range of responses with some candidates achieving full marks and some scoring zero or not attempting the question at all.

Generally candidates missed out on marks because they simply listed attributes of a moratorium without any element of comparison between the two.

(b) Outline the procedure necessary to obtain a moratorium under the provisions introduced by the Corporate Insolvency and Governance Act 2020. (5 Marks)

This asked candidates to set out the process to obtain a moratorium. It was generally well answered but there were a number of candidates that achieved no marks or even attempted the question.

(c) Using the above information, and assuming trading ceases at the end of week 6, set out an 8 week cash flow forecast. Identify the peak funding required from the Bank, the point at which this funding can be repaid and the overall benefit to creditors of continuing to trade. (18 marks)

The question provided additional information for a weekly cash flow to be prepared. Some candidates achieved very high marks in this part of the question and most candidates achieved a reasonable mark.

(d) Set out the key steps required to distribute the prescribed part to unsecured creditors. (8 marks)

Candidates were asked to set out the process for paying a dividend to creditors. Given that the process is generally set out in the open book there was a surprisingly high proportion of candidates that were unable to list the steps required.

(e) In these circumstances, explain how you would ensure that there is sufficient time to arrange for the remaining funds to be distributed and the steps you would take in this regard. (5 marks)

Candidates had been presented with a situation where there was insufficient time for a distribution to be arranged and paid prior to the expiry of the Administration. Despite having set out the process and timescales required for a distribution in part (d) a relatively high proportion of candidates failed to identify that it was not possible to complete the dividend process and close the case by its anniversary. As such these candidates failed to identify that a court extension would be required.

There seemed to be a general lack of understanding as to when it is possible to place a company into voluntary liquidation following an administration with many candidates setting this out as an option. The question outlined that this was a prescribed part distribution only and as such a CVL exit was not available.

MARK PLAN

1a Set out the key steps that Buddrose would take to place the Company into compulsory liquidation.

Issue Statutory demand under Rule 7.3
S123 – unable to pay debts if neglected to pay or to secure/compound to creditors satisfaction.
Debt over prescribed minimum to present a winding up petition
..or can prove unable to pay debts as they fall due; which based on facts should be possible
Prepare a petition (rule 7.5)
Verify petition by statement of truth
Filed in court
Deposit paid to OR or alternative arrangements made
Court fee paid
Serve sealed copy of petition on the company
Handed to person (employee, director, other officer, authorised to accept service) at registered office or failing that attached to fixture or fitting
Certificate of compliance (rule 7.12) to be filed at court at least 5 business days before the hearing date
Rule 7.9 - Check FCA/PRA/existing voluntary liquidator/CVA supervisor/ Administrative receiver/ administrator position and if necessary send them a copy of petition within 3 business days of service
Notice of petition placed in Gazette not less than 7 business days after service of the petition on the company nor less than 7 business days before the hearing date

1(b Explain how you would respond to this request.

Ethics – existing client of firm; would have to consider if able to take appointment
Burden on creditor to show why Administrator should be removed
An effective, unbiased and honest Administrator will usually not be removed.
Review SIP 16 statement to understand extent of marketing
Consider discussions with Administrators to establish the facts of the case and air any concerns
Establish if pre-pack regulations apply and whether appropriate process undertaken in this respect
Para 97 Sch B1 creditors can only remove by QDP if no floating charge holder so does not apply
Para 88 Sch B1: the court may by order remove an administrator from office
VE VEGAS INVESTORS IV LLC V SHINNERS [2018]; Only one purchaser came forward Difficulties in obtaining information Led to a conflict of interest
Brewer and another (as joint liquidators of ARY Digital UK Ltd) v Iqbal Assets not sold at full value due to defective marketing Administrator liable for loss of value
SIP 16 should have involved consultation with creditors
Will be a cost implication of an application to court

1(c) Explain to Buddrose the circumstances in which they would have been asked to approve the remuneration of the Administrators and, given the circumstances, set out what action they can take if they are dissatisfied with the level of the fees charged.

Budd likely to be unsecured, non-preferential
If Budd was a member of a creditors' committee in relation to this matter they would be asked to approve the basis and quantum of remuneration.
If there was likely to be a distribution to Budd as an unsecured, non-preferential creditor other than by virtue of the prescribed part then, in the absence of a committee, the Administrators would have asked for remuneration approval from this body of creditors: If there was only to be a distribution to secured and/or preferential creditors or just a prescribed part distribution as in this case then it would be the secured and/or preferential creditors that would approve the basis and quantum of remuneration.
If dissatisfied
Consider why dissatisfied and whether any challenge is likely to be successful
Discuss concerns with the officeholder.
Is additional information required to establish if fees reasonable?
Within 21 days of receipt of a progress report, a creditor may request the administrator to provide further information about the fees and expenses
A request must be in writing
An unsecured creditor with the concurrence of at least 5% in value of unsecured creditors; Budd as the largest creditor may fulfil this criteria.
Otherwise permission of the court
The administrator must provide the requested information within 14 days, unless they consider that: • the time and cost involved in preparing the information would be excessive, or • disclosure would be prejudicial to the conduct of the administration or might be expected to lead to violence against any person, or • the administrator is subject to an obligation of confidentiality in relation to the information requested
Any creditor may apply to the court within 21 days of the administrator's refusal to provide the requested information, or the expiry of the 14 days' time limit for the provision of the information
If a creditor believes that the administrator's fees are excessive, the basis is inappropriate, or the expenses incurred by the administrator are in all the circumstances excessive, the creditor may, provided certain conditions are met, apply to the court
Application may be made to the court by any secured creditor, or by any unsecured creditor provided at least 10% in value of unsecured creditors (including themselves) agree, or they have the permission of the court.

Any such application must be made within 8 weeks of the applicant receiving the administrator's progress report in which the charging of the fee or incurring of the expenses in question is first reported
Application would set out reason for dissatisfaction and evidence available.
If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the administrator a copy of the application and supporting evidence at least 14 days before the hearing.
If the court considers the application well founded, it may order that the fees be reduced, the basis be changed, or the expenses be disallowed or repaid.
Unless the court orders otherwise, the costs of the application must be paid by the applicant and not as an expense of the administration.
Future expected costs cannot be challenged until incurred but the basis may be changed by the court.
A complaint could be made to the relevant authorising body.

1(d) Explain how Buddrose could protect itself from another bad debt arising in the event that Hemphill Limited were to fail to pay.

Payment in advance
Deposit
Limited credit terms
Reservation of title clause if any goods are provided
Personal guarantees off the director/shareholders
Security to support the PGs
Increase in price to reflect additional risk
Credit insurance if available
Debenture/charge against Hemphill Limited
Requirement to provide financial information on an ongoing basis.
Related party guarantees (if any)
Bank guarantee
Don't supply newco

2. Draft a statement of affairs for the LLP as at 30 September 2022, together with relevant notes explaining to Mrs Butani how the figures have been determined. Explain what other information you will require in order to finalise the statement.

Additional information
Any creditors with reservation of title claims over the LLP's assets (r3.30(c)(ii))
Name and address of partners
Names and address of each creditor including employees
Details of security held by creditors (bank)
Date on which security was given
Value of any security
Schedule setting out number of employees and total debt owed to them (r3.30(5)(a)
Front page of Statement of affairs • Details of the matter • Statement of truth signed

	Book Value			Estimated to realise	Note
	£			£	
Assets subject to a floating charge					
Leasehold improvements	75,000			-	Assumed that the leasehold improvements cannot be realised
Office equipment	25,000			-	As returned to the lessor at point of liquidation, assumed lease
Work in progress	60,000				
Project Pumpernickel		£40,000 (60% complete) but deposit of £40,00	-		Any reasonable assumption: see note below
Project Penguin		£20,000 (40% complete)	20,000	20,000	Any reasonable assumption: see note below
Debtors	150,000			95,000	
Hill Snacks Limited - Customer dispute		£50,000*50%	25,000		
Other debtors		£100,000*70%	70,000		
Prepayments and other debtors	40,000			17,500	
Landlord deposit		£30k p.a. x 6 months = £15k	-		Assumed set off against liability
Professional indemnity insurance		£10k per question	10,000		Assumed unused premium can be recovered. May be subject
Marketing events	50% per ques	£40k - £15k - £10k = £15k @ 50%	7,500		
Estimated total assets available for preferential creditors				132,500	
Primary Preferential creditors					
Employees - arrears of pay		10 employees at £800	(8,000)		Due to quantum assumed full pref claim for arrears of pay
Employees - holiday pay		Per question	(20,000)	(28,000)	
Secondary Preferential creditors - HMRC					
VAT (Quarter to September 2022)		per question	30,000		
Bad debt relief on uncollectable debtors		150000-25000-70000=55000/1.2=45833x0.2	(9,167)		Question states that invoices raised in same period as the VAT debt and therefore VAT not paid over; therefore reduction in claim rather than realisation.
PAYE deductions		per question	15,000		
Employee National Insurance		per question	10,000	(45,833)	
Estimated surplus as regards preferential creditors				58,667	
Estmated prescribed part of net property				(14,733)	Or recognition that the floating chargeholder will be paid in full
Estimated total assets available for floating chargeholders				43,933	
Debts secured by floating charges					
Bank overdraft		Per question		(50,000)	
Estimated deficiency of assets after floating charge				(6,067)	
Estmated prescribed part of net property				14,733	
Available for creditors				14,733	

Available for creditors			14,733
Employees			
Redundacny pay			(150,000)
Pay in Lieu of notice			(100,000)
Arrears of pay	£50,000 per question less preferential element		(42,000)
Landlord			
Rent invoices	Quarter in advance	(7,500)	
Less deposit	£30k p.a. x 6 months	15,000	
Future rent	6 years less quarter already invoiced	(172,500)	
Dilapidations	As per question	(30,000)	(195,000)
Mrs Butani - CAD	Subrogated claim		(10,000)
Finance leases	Settled as part of the CAD claim		-
Trade creditors	balance per question less landlord invoice		(42,500)
Deposit/deferred income creditors			
Project Pumpernickle	Assumed work completed and therefore no lial	-	
Others		(35,000)	(35,000)
HMRC-Employer National Insurance			(15,000)
Estimtaed deficit as regards unsecured, non preferential creditors			(574,767)
Estimated deficiency of assets after floating charge			(6,067)
Estimated deficiency as regards creditors			(580,833)
Members' interests			(20,000)
Estimtaed total deficiency as regards members			(1,181,667)

Note: personal tax provision is not an LLP liability
Note: Liquidator may have a s214A claim against Mrs Butani (potentially £60,000 cash received in the last 2 years) and other partners. Not included as success of such a claim is uncertain.

Project Pumpernickle

The work in progress balance is £40k, which would be the cost of the inputs to date. In addition to this one would assume that there is a profit element. The Company has received a deposit which would be £40,000 net of VAT as it is within accrued income at that value. Therefore there may still be a profit element within the Work in progress balance; however if the work had not been completed it is unlikely that this would have been realised. Given that the only element potentially recoverable would be the profit element assumed no realisations.

Project penguin

The work in progress balance of £20,000 plus a profit element may be recoverable either from the partner wishing to complete the work or from the customer. A copy of the contract is required to undertsand this and determine whether the other member of staff should be pursued if they have completed the work and received payment. Assumed that just the £20,000 work in progress balance is recoverable.

3(a) Provide a summary of the issues that may affect the value of the Company's assets and the Bank's recovery, specific to the circumstances set out above and in the event the Company entered an insolvency process.

Containers
Original cost £8m plus £1.6m if additional containers purchased
Liens in warehouses
Liens with hauliers/shippers
Insurance post appointment may prove problematic which could affect realisations if there are any stolen/lost
Cost of recovery would be high reducing net realisations
Ongoing storage costs • In UK at leased warehouse • Overseas
Complex international law may apply adding to the cost but also affecting the ability to realise the assets
Fixed or floating charge asset; this will affect the recovery to the bank?
Value of a second hand container may be limited
Currently high transportation costs including shipping containers would impact on recovery.
Debtors
Delays in shipping process could lead to claims
Demurrage charges if containers stuck in ports
Claims for losses from customers if there is disruption
Concentration of customers presents a risk if one of the top customers does not pay
Paper trail from hauliers that have not been paid may be difficult to obtain; proof of delivery for realising the debts.
Potential contra with customer who is also a supplier
If unable to complete order book there may be a claim against debts outstanding
International customer so may be difficult/costly to enforce payment and recover debt
Many small debtors (297 accounting for 50%) which will add to costs
There may be foreign exchange differences and losses

Goodwill/business
Disruption to the supply chain may adversely affect the ability to sell the business as a going concern.
Long term supply agreements in various jurisdictions may terminate on insolvency or not be capable of assignment.
May be challenging to trade the business in an insolvency process due to above issues and profitability, potentially restricting value.
General
Risk of action against the Company by foreign creditors in foreign jurisdictions could impact on assets available in the UK for the bank.
Preferential creditors (employees and HMRC) will reduce net realisations available for the bank
Costs of managing the process as office holder would potentially be high due to the above issues reducing the amount available for the bank.
Prescribed part will apply as the Bank's charge must be dated 2018 or later. This will reduce the amounts available under its floating charge.

3(b) In the event that the Bank wished to appoint you as Administrator of the Company, set out the key considerations and legal and practical steps that you would take prior to appointment. It is not necessary for your response to cover issues identified in requirement (a).

Consider ethics/conflicts of interest especially in light of previous work for the bank.
Establish if one of the administration objectives can be achieved.
Ensure that the lender has undertaken an appropriate process; default, serving demand in accordance with facility agreements, etc.
Establish if there is any reason to believe the charge may not be valid.
Ensure the bank has the right to appoint an administrator
Establish if there are any other QFCs.
Consider if there are any environmental or health and safety issues that should be taken into consideration.
Discuss with insurers to determine likely cover and any actions required.
Obtain legal advice in relation to assets residing in multiple jurisdictions.
Discuss strategy with management to determine if any of the risks can be mitigated through timing/planning.
Establish a strategy for the administration and any funding requirements.
Can a sale be achieved
Trade?
Closure/shut down
Establish what employees need to be retained
Statutory
Complete consent to act
Establish if multiple administrators are to be appointed and agree their respective roles.
Consider and if relevant obtain indemnity from QFC.
Consider capability/staffing resources, etc.
Obtain a valuation of the company's assets

4(a) Explain the principal differences between an Administration moratorium and a moratorium under the provisions introduced by the Corporate Insolvency and Governance Act 2020.

A QFCH can select their own administrator whereas the monitor is the company's choice.
Directors remain in control under the 'new moratorium' whereas in a Sch B1 their powers are restricted.
Notice has to be provided to the QFCH for an Administration appointment but not for a new moratorium.
The new moratorium provides a payment holiday for most pre-commencement debts similar to an administration but there are differences in terms of debts incurred during the moratorium such as redundancy payments that remain payable in the new moratorium.
New moratorium initially lasts 20 business days compared to an administration moratorium which initially lasts up to 1 year.
An administration moratorium can last up to 2 years with creditors' consent compared to 1 year for the new moratorium.
Outcome of an Administration moratorium can be the rescue of the company or other outcomes whereas the new moratorium results in a solvent outcome.
Under paragraph 44, a moratorium can come into effect prior to the appointment of an administrator if an application to court has been made or a Notice of intention to appoint an administrator under paragraph 14 has been filed. The new moratorium only comes into effect on filing the relevant documents in court or the court making the order.

4(b) Outline the procedure necessary to obtain a moratorium under the provisions introduced by the Corporate Insolvency and Governance Act 2020.

Establish if the Company is an eligible company
Establish if there is an outstanding winding up petition
Prepare relevant documents:
A notice that the directors wish to obtain a moratorium,
a statement from a qualified person ("the proposed monitor") that the person is a qualified person, and consents to act as the monitor in relation to the proposed moratorium.
If more than one proposed monitor a statement setting out which functions (if any) are to be exercised by the persons acting jointly, and which functions (if any) are to be exercised by any or all of the persons.
a statement from the proposed monitor that the company is an eligible company,

a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its debts
a statement from the proposed monitor that, in the proposed monitor's view, it is likely that a moratorium for the company would result in the rescue of the company as a going concern.
If no winding up petition - file the above documents in court
If winding up petition outstanding • application to court • Information to satisfy the court that a moratorium for the company would achieve a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being subject to a moratorium)
Moratorium comes into effect on the documents being filed in court or the granting of an order by the court.

4(c) Using the above information, and assuming trading ceases at the end of week 6, set out an 8 week cash flow forecast. Identify the peak funding required from the Bank, the point at which this funding can be repaid and the overall benefit to creditors of continuing to trade.

		1	2	3	4	5	6	7	8	After	Total	
Sales				150,000	200,000	175,000	150,000	250,000	225,000		1,150,000	
VAT on sales				30,000	40,000	35,000	30,000	50,000	45,000		230,000	
Total income				180,000	240,000	210,000	180,000	300,000	270,000		1,380,000	
Trade debtors												
Memo: Sales		*150,000*	*200,000*	*175,000*	*150,000*	*250,000*	*225,000*				*1,150,000*	
Memo: VAT on sales		*30,000*	*40,000*	*35,000*	*30,000*	*50,000*	*45,000*				*230,000*	
Costs												
Stock (GM)	35%	(97,500)	(130,000)	(113,750)	(97,500)	(162,500)	(146,250)				(747,500)	
Existing stock		50,000									50,000	
Purchases		(47,500)	(130,000)	(113,750)	(97,500)	(162,500)	(146,250)				(697,500)	
VAT on purchases		(9,500)	(26,000)	(22,750)	(19,500)	(32,500)	(29,250)				(139,500)	
Total purchases		(57,000)	(156,000)	(136,500)	(117,000)	(195,000)	(175,500)				(837,000)	
Delivery costs	5%		(7,500)	(10,000)	(8,750)	(7,500)	(12,500)	(11,250)			(57,500)	
VAT on delivery costs			(1,500)	(2,000)	(1,750)	(1,500)	(2,500)	(2,250)			(11,500)	
		-	(9,000)	(12,000)	(10,500)	(9,000)	(15,000)	(13,500)	-		(69,000)	
Weekly paid staff	10%	(20,000)	(15,000)	(20,000)	(17,500)	(15,000)	(25,000)	(22,500)			(135,000)	
	arrears per question											
Net	65%	(13,000)	(9,750)	(13,000)	(11,375)	(9,750)	(16,250)	(14,625)			(87,750)	
												Assumed paid over monthly (3 weeks after week 4) - by 22 of month
Payroll deductions	35%							(25,375)		(21,875)	(47,250)	Pension at same time as dedeuctions
Direct payroll cash flow		(13,000)	(9,750)	(13,000)	(11,375)	(9,750)	(16,250)	(40,000)	-	(21,875)	(135,000)	
Salried staff					(40,000)				(20,000)		(60,000)	Assumed paid for 6 weeks.
Saving (5 staff x £24k /12)					10,000				5,000		15,000	Timing of second payment disrectionary if
Gross cost					(30,000)				(15,000)		(45,000)	
Deductions	40%				12,000				6,000		18,000	
Net pay		-	-	-	(18,000)	-	-	-	(9,000)	-	(27,000)	
Salareid staff deductions								(12,000)		(6,000)	(18,000)	Assumed paid over monthly (3 weeks afte
Landlord					(25,000)				(12,500)		(37,500)	Discretion over timing
VAT on landlord					(5,000)				(2,500)		(7,500)	Assumed subject to VAT
		-	-	-	(30,000)	-	-	-	(15,000)	-	(45,000)	
Other costs		(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)				(30,000)	
VAT on other costs		(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	-	-	-	(6,000)	
		(6,000)	(6,000)	(6,000)	(6,000)	(6,000)	(6,000)	-	-	-	(36,000)	
VAT	See below									(65,500)	(65,500)	Assumed quarterly so outside trading per
Total payments		(76,000)	(180,750)	(167,500)	(192,875)	(219,750)	(212,750)	(65,500)	(24,000)	(93,375)	(1,232,500)	
NET CASH FLOW		(76,000)	(180,750)	12,500	47,125	(9,750)	(32,750)	234,500	246,000	(93,375)	147,500	

Bank										
b/f	0	(76,000)	(256,750)	(244,250)	(197,125)	(206,875)	(239,625)	(5,125)	240,875	-
c/f	(76,000)	(256,750)	(244,250)	(197,125)	(206,875)	(239,625)	(5,125)	240,875	147,500	**147,500**
PEAK FUNDING		**(256,750)**								
REPAYMENT										
BENEFIT TO CREDITORS										
VAT Workings										
On sales	(30,000)	(40,000)	(35,000)	(30,000)	(50,000)	(45,000)	-	-	-	(230,000)
On purchases	10,500	28,500	25,750	27,250	35,000	32,750	2,250	2,500	-	164,500
	(19,500)	(11,500)	(9,250)	(2,750)	(15,000)	(12,250)	2,250	2,500	-	(65,500)

Week 8

Overall cash flow	147,500	
Stock used	(50,000)	Assumed that full value w ould be obtainable
Wages arrears	(20,000)	Would reduce preferential claims
Overall benefit	77,500	

4(d) Set out the key steps required to distribute the prescribed part to unsecured creditors.

Administrator has the power to distribute under s176A without court approval (para 65(3)(a).
Consider if the provisions should be disapplied if net property less than the prescribed minimum
Consider if a court application to disapply the provisions is relevant if costs disproportionate to benefits
Establish amount of distribution
Gazette notice of intended dividend
Consider wider publication if appropriate
Deliver notice to creditors
Include required information (14.30)
Value of prescribed part (14.29(3))
Intention to pay dividend within 2 months of the last date for proving
Whether interim or final
Last day for proving (21 days or more)
Where proofs to be sent
Small debts information including information in rule 14.31
Review claims; admit or reject within 14 days of last date for proving
Declare dividend (14.34) Within 2 months of last date for proving Sent to all creditors that have proved for debts Include asset realisations and expenses paid Amounts retained for particular purposes Total amount to be distributed Whether any further payment expected.

4(e) In these circumstances, explain how you would ensure that there is sufficient time to arrange for the remaining funds to be distributed and the steps you would take in this regard.

CVL exit not available
Therefore court extension required
Application to court:
Witness statement explaining reason for extension
Period of extension required
Recent progress report
Details of previous extension
Agreement of secured creditors to extension (not mandatory)
Proposals
Filed in court at least 4 weeks before end date
Court hearing would determine extension period
Notify creditors of extension
Notify companies house of extension.
Compulsory liquidation an alternative option

JOINT INSOLVENCY EXAMINATION BOARD
PERSONAL PAPER
EXAMINERS'S REPORT AND MARK PLAN FOR THE NOVEMBER 2022 SITTING

Question 1

This question sought to test the candidates' knowledge of how to deal with potentially trading a convenience store in bankruptcy, in circumstances when the bankrupt has disappeared.

On the whole, this question was answered reasonably well, although it was clear many candidates were using their knowledge / experience of trading a company in administration and hoped that similar principles could be applied to trading in bankruptcy.

a. **Having regard to the specific circumstances of this case, identify the legal and other issues you would need to consider prior to deciding whether to continue trading the general store. (4 marks)**

It was pleasing to see that a number of candidates identified that the store should be traded if there was a better outcome for creditors as a whole, rather than if trading ceased and any assets were realised in due course. In order to determine this, a Trustee would need to prepare / review financial forecasts and accounting records.

Many candidates identified the need to engage with the landlord and the risk of suppliers trying to remove stock, in the event that they had Retention of Title clauses. Some candidates considered using a Special Manager to assist in the trading of the business.

Some candidates noted that the petrol pump could give rise to health and safety issues and with only one pump at the premises, consideration needed to be given whether / how any risks could be mitigated.

b. **Assuming that trading continues, what actions would you need to take in the first seven days of your appointment as Mr Hunter's Trustee in Bankruptcy? (16 marks)**

Many candidates took this as an opportunity to write down everything they knew about the start of a bankruptcy matter, rather than focusing on the central issue of trading a convenience store. Much time and effort was wasted by candidates wanting to write to creditors, deal with bonding, notify HMRC, review bank statements for antecedent transactions, open case files, etc. Whilst important in a bankruptcy case, these matters are not pertinent to the facts of the question.

The question specifically requested to note the 'actions' within ' seven days'. Therefore this was to draw out the practical aspects of being a Trustee in bankruptcy within a specific time-limit. Whilst in most bankruptcy cases you would notify the bankrupt of your appointment and request various pieces of information, in this case, Mr Hunter's whereabouts were not confirmed and at best, an employee understood he might be in Spain. Therefore, one of the first action points in the seven days would have been to try and locate Mr Hunter in order to then elicit as much of the information as you required.

A good number of candidates were able to demonstrate their understanding of dealing with suppliers, landlords and employees. A number of candidates identified the other issues that would need to be dealt with regarding the flat at the rear of the store.

Many recognised the petrol pump as a concern. Almost everyone proposed to carry on trading, keeping the petrol pump in existence. An alternative option would have been to require the supplier of the petrol to empty the tank, thereby removing any risk of harm to the premises or customers.

Action points surrounding insurance, licensing of certain products, accounting records and security of the premises were noted by many.

What was disappointing was the high number of candidates who believed that the appointment of a Trustee in Bankruptcy should be advertised in the London Gazette or in other such matter as the Trustee thinks fit. The question confirmed the appointment was made via The Secretary of State and advertising the appointment in the London Gazette is not required. Only appointments made via a decision of the bankrupt's creditors require advertising, as per Rule 10.74 Insolvency (England and Wales) Rules 2016.

Question 2

In general candidates did not perform well on this question.

a. **Prepare a briefing note for the Trustee which explains, for the various entries on the title, the potential impact that this entry may have on the Trustee's interest in the property and her ability to realise this. The Notice should set out what further enquiries should be made by the Trustee in respect of each entry (15 marks)**

Only a very small minority of candidates had an understanding of the effect of a home rights entry on the register. Most candidates assumed incorrectly that it meant that there had been a separation/divorce order from the Family Court, and that Mr Arnott's wife therefore had a beneficial interest in the property. T

Whilst some candidates seemed to understand that an interim charging order was not sufficient to be a completed enforcement prior to the bankruptcy, there was still a large portion of candidates who did not know this. Again very few candidates understood the impact of the freezing order. The POCA question was also generally poorly answered with few candidates understanding the fundamental point that the property did not vest where there was a restraint order in place, but equally that a restraint order is different from a confiscation order.

b. **What action should the Trustee in Bankruptcy take following the review of the bank statements? (5 marks)**

Candidates mostly did well on this question and were able to set out the key actions to be taken.

Question 3

a. **The options available to Mr Hastings and your recommendation for the most appropriate course of action. (15 marks)**

The majority of candidates correctly identified that a breathing space moratorium may be an appropriate option open to Mr Hastings. Where they had identified this, most candidates distinguished between the two types, and explained the criteria for each of them and the effects of having each type in place. Most of those candidates recognised that further action would be needed for Mr Hastings to deal with his financial situation, and correctly recommended applying for a Debt Relief Order.

Points were given to candidates who not only identified the potential options that were available to Mr Hastings, but also demonstrated that they had considered his situation in relation to those options. For example maximum marks were given to those discussing an Individual Voluntary Arrangement ("IVA") as an option, if the criteria and procedure for an IVA was explained and that option was discounted on the basis that Mr Hastings was on benefits and would have no surplus income to give to his creditors.

The brevity of many of the answers was disappointing, and marks were lost by many of the candidates as a result. Simply listing all the informal and formal personal insolvency options in

response to this question was insufficient. Similarly listing options such as applying for a consolidation loan, where Mr Hastings is unemployed and in poor health, received no credit due to the fact trying to obtain personal finance in these circumstances is unrealistic.

b. **In light of the new information, what would you advise Mr Hastings to do? (5 marks)**

This part of the question was poorly answered by most candidates, again with very brief responses being given by a large number. A very small number recognised that the option of applying for a breathing space moratorium was no longer available to Mr Hastings.

Most candidates recognised the need to cooperate with the Official Receiver, and the better candidates advised Mr Hastings to make sure the Official Receiver was aware of his health issues.

A large number of candidates did identify the need to provide the enforcement officer with a copy of the bankruptcy order, if he returned.

Many candidates discussed applying for annulment but a disappointing number of candidates failed to consider that continuing with the bankruptcy may be the better option for Mr Hastings in the circumstances.

Question 4

Question 4 presented candidates with a scenario where they were asked to advise one of the two partners of a trading solicitors practice following an accident suffered by the other partner. The question was divided into five sections, firstly, the preparation of a cashflow statement for the subsequent five months of trading; secondly, setting out the partnership's debts, and how these could be managed, whilst seeking further information from the partner; thirdly, explaining the options available to the partner to deal with the partnership's difficulties; fourthly, outlining concerns relating to unexplained transactions identified from the firm's client account, and advising the partner on what they might do; fifthly, explaining the responsibilities once appointed trustee of the partners' bankruptcy estates in respect of the partnership records. All candidates found this question challenging, particularly when it came to advising the partnership about its options for managing cashflow and its creditors. Almost all candidates also failed to recognise that a trustee in bankruptcy has no direct authority over the records of a partnership. Consequently the vast majority of candidates scored poorly in these areas.

a. **Preparation of a cashflow projection for 5 months from 1 November 2022. (10 marks)**

Most candidates were able to construct a well-presented cashflow statement, and carry out the basic workings required to calculate cash generation. However, the majority struggled with the more complex calculations required to work out the costs the partnership would incur in the period, and the final net cash position. A worrying number input annual costs on a monthly basis. This then impacted how they advised the partnership as required in the later parts of the question, resulting in some significantly mis-directed advice.

b. **Set out the debts currently due by Lakewell Taylor and explain how these could be managed by reference to the cashflow. (9 marks)**

A good proportion of candidates were able to provide an explanation of cashflow management and in particular HMRC and the bank; however very many failed to consider the wider options available, such as negotiations with the landlord, and dealing expeditiously with the arrears of pension contributions.

c. **Explain the options available to Ms Huntly to deal with Lakewell Taylor's financial difficulties. (11 marks)**

It was concerning that most candidates dealt poorly with this part of the question, where they were required to advise the partnership on options available. Few candidates scored well and most launched into "checklist mode", setting out the formal and statutory options a partnership and the individual partners could enter into, again without considering the serious regulatory implications that formal insolvency proceedings would entail. As a result, most candidates missed the marks available for discussing and exploring non-statutory options, including injecting funds, refinancing, reductions of outgoings, or a managed sale of the business. Worryingly, some candidates also recommended CVA and CVL as potential options.

d. **Outline any concerns that you may have in relation to the client account transactions and advise on what, if anything, Ms Huntly should do. (5 marks)**

Candidates were generally able to answer the question relating to unexplained transactions passing through the firm's client account and identified the risks and potential consequences to both the partnership and the partners. As a result candidates scored relatively higher marks on this section.

e. **Giving your reasons, explain your responsibilities for the various books and records held by Lakewell Taylor and how these responsibilities should be discharged. (5 marks)**

The final part of the questions was answered almost universally poorly by the candidates, as nearly all failed to recognise that in the absence of the formal winding up of the partnership, the trustee in bankruptcy was unable to deal with the partnership records and needed to involve the SRA. Most candidates again went into "checklist mode" with some stating the need to involve the Official Receiver and report on the bankrupts' co-operation in delivering up the records, missing the point of the question completely. As a result, few marks were generally awarded for this part of the question.

Personal Insolvency England Exam
November 2022
Mark Plan

Question 1

Part (a) Legal and other issues to be considered in deciding whether to trade the general store. (4 marks)

A Trustee's powers pursuant to Schedule 5 provide that a Trustee can carry on the business so far as may be necessary for winding it up beneficially. A Trustee will not therefore allow the trading of a business to continue unless thought beneficial to do so and unless satisfied that there will be a benefit to the creditors as a whole.

The Trustee will need to consider whether given the circumstances of this case, trading may lead to a better outcome for creditors as a whole than if trading ceased and any assets were realised in due course (ie through a sale as a going concern or through higher values being achieved for the stock).

Is it possible to establish from the accounting records whether the business has been trading profitably? Obtain agent's advice about the sale of the business as a going concern and whether value could be maximised if trading were to continue.

Threatened forfeiture of the lease. Check whether the lease was in fact forfeited prior to the making of the bankruptcy order. Ongoing trading would suggest not but position should be clarified.

Suppliers. Consider the extent to which the stock has been paid for and could be subject of ROT claims (review invoices/ terms and conditions of supply etc). If the majority of stock could be the subject of a valid ROT claim, then there will be little to sell unless the Trustee purchases stock for the business.

Petrol pump at premises. A Trustee should have regard to any potential health and safety/ environmental issues. There is only one pump at the premises and consideration should be given to whether/ how any risks can be mitigated.

An individual who has been made bankrupt but has a trading business which he wishes to continue may wish to urgently propose an IVA. Here the location of the bankrupt is not known so this will not be a viable option.

Special Manager – could the appointment of a special manager be necessary / appropriate to help with the trading of the business?

Part (b) Actions to be taken in the first 7 days if trading were to continue (**16 marks)**

<u>Bankrupt</u>

The bankrupt needs to be located. Is there anything within the office that could give you an indication of his whereabouts. Do any of the other employees have useful information?

Make contact with the petitioning creditor/ their solicitor to establish whether they have contact details for the bankrupt. Check whether the bankrupt is aware that he has been made bankrupt (did he attend the hearing, has the outcome been communicated to him?).

<u>Funding/ control</u>

Contact supplier of existing banking and merchant services facilities. Request that the old account is frozen and receipts be directed into the Trustee's account with immediate effect.

Prepare a cashflow projection for the proposed period of trade, whether to a close or sale and understand any funding requirement.

Review the security features in place, CCTV and daily reconciliation of takings. Put in place process to ensure that the takings are reported and monitored on a daily basis.

Count opening balance of cash in till.

Employees

Although you met with one employee at the general store, you need to establish whether the bankrupt had any other employees. All employees need to be notified of the making of the bankruptcy order.

Assuming that the employees were employed by the bankrupt, the effect of the making of the bankruptcy order is to terminate their employment.

You need to establish which staff are required to enable trading to continue, how they are paid and when. You should also establish whether any arrears of wages are due to them.

If staff are not required, they should be notified and the RPS informed that their employment has been terminated.

Is there a pension scheme? If there is, a section 120 notice should be sent to the pension protection fund within 14 days of the date of the bankruptcy order. Steps would therefore need to be taken to establish the existence of the scheme within the first 7 days.

Ensure that any staff that are retained are aware that no other creditors should be allowed to collect goods that have not been paid for without prior approval by the Trustee.

Flat

Who is in occupation and on what terms? Need to make contact so if no answer, leave notice on the door with Trustee's/ agent's contact details and ask the occupiers to make contact as soon as possible.

Do the terms of occupation prevent access by the Trustee?

Is the only means of access the door at the rear of the premises or do the occupants of the flat also have access to the general store? If they do, take steps to prevent access to store through changing locks etc subject to any provisions in their tenancy agreement.

Does the flat form part of the premises that are leased by the bankrupt? If it does, was the flat let in breach of the terms of the lease? Has landlord taken any action to require sub-tenant to pay rent directly to the landlord?

Petrol Pump

Immediate steps should be taken to ascertain the level of fuels in the pumps. If the tanks are full, details of the supplier of the petrol should be obtained with the supplier asked to empty the tank as soon as possible.

Given the risk of fire, specialist advice should be obtained on how to mitigate this risk with the insurers notified of the petrol pump to ensure that any specific requirements are met.

Leased premises (forfeiture)

Have all sets of keys been located (other employees?)? Consider whether the locks to the premises should be changed.

Make contact with the landlord. Advise them of your appointment and ask for details of the current status of the proceedings.

Request a copy of the lease in order to understand the level of rent payable in respect of the use of the premises together with any other charges. Check whether the lease is held in the name of the bankrupt.

Seek to reach agreement with the landlord regarding the terms of your occupation of the premises.

Creditors / suppliers

Take an inventory of all the goods that remain at the premises.

Ascertain who supplies the bankrupt at the general store and send notice to them of the making of the bankruptcy order. Ensure no further goods are supplied unless essential for continued trade and ensure that processes are in place to ensure that only the Trustee or members of his/her staff can place orders.

Are there perishable goods at the store? If so, sale of these items should be prioritised and agent's advice sought regarding options if sale of these items is unlikely to be achieved through ordinary course of trading.

Ensure that any stock which is out of date is removed from the shelves. Check the terms and conditions applicable to other goods that have been supplied. Are there any creditors who may be entitled to claim retention of title? If there are, consider on how this might impact upon trading strategy. Should the creditor be allowed to remove their items or should terms be agreed to enable the stock to be sold.

Obtain details of the creditor who attended the store after the making of the bankruptcy order and obtained payment. Do they have a valid retention of title claim? Is it commercially viable to seek to recovery sums paid if the retention of title claim is not valid.

Take meter readings for any gas, electric and water meters on day 1.

Contact critical suppliers and put in place arrangements for continued supply (s372 IA86)

Bank account

Notify bank of the making of the bankruptcy order. Check business related payments made from the account and whether there are any business critical payments that would need to be made during trading.

Ensure that any cheque books are secured.

Other issues

Obtain open cover insurance for trading, public and employee liability cover including cover for the flat which is believed to be occupied.

Regulation 26 of the Insolvency Regulations 1994 states that where the trustee carries on any business of the bankrupt, he shall (a)keep a separate and distinct account of the trading, including, where appropriate, particulars of all local bank account transactions; and (b) incorporate in the financial records required to be kept under regulation 24 the total weekly amounts of the receipts and payments made by him in relation to the account kept under paragraph (a). The Trustee should therefore ensure that adequate records in compliance with the Regulation are kept and maintained.

Assuming that the general store sells alcohol, check in whose name the licence to sell alcohol is held.

Agent's advice should be sought regarding the potential sale of the business and identification of prospective purchasers. If the business is traded to allow a sale as a going concern, then swift action should be taken to market the business and identify prospective purchasers.

Are any of the items at the premises under third party ownership? If so, these items should be identified.

National lottery terminals. If there is a terminal, make contact with National lottery to notify them of the making of the bankruptcy order. Consider whether the store should continue to sell tickets given risk of liability for the trustee for post-bankruptcy sales.

Secure and collect all accounting records. If there are computer records which are password protected, are you able to obtain details from any of the employees?

Did the retailer have an account with the bank for the processing of credit or debit card transactions? If they did, the bank should be notified of the making of the bankruptcy order.

If there are any chip and pin machines, these should be secured pending instructions from the processing bank as to how these machines should be dealt with.

Check whether there are any alarms/ security systems at the premises. If there are, obtain codes from employees/ records. Notify security company of new key holders.

If cigarettes are sold at the general store, ensure compliance with Tobacco Advertising and Promotion (Display) Regulations 2010.

Question 2

Part (a) The FLA notice. A notice filed pursuant to the FLA 1996 does not mean that the spouse has an interest in the property but does mean that they have a right to occupy the property and have a right not to be evicted without an order of the court. (20 marks)

If they are not in occupation of the property, they have the right, with leave of the court, to enter and occupy the property.
The right to occupy the property is only brought to an end by:

1. An order of the Court;
2. Through the voluntary release of the rights in writing
3. Upon death; or
4. By the ending of the marriage or civil partnership

If the Trustee wishes to realise her interest in the property through a sale of that property, Mrs Arnott would either need to voluntarily release her rights or the Trustee would need to include, within any application for possession and sale, provision for the FLA notice to be removed from the title.

The Trustee should establish whether Mrs Arnott is currently residing at the property and also who else is in occupation of the property. Do any children reside at the property?

Does the bankrupt live at the property? If not, what are his current contact details?

Whilst the notice does not mean that Mrs Arnott has a beneficial interest in the property, the Trustee should ascertain whether she is claiming to have an interest in the property by virtue of contributions to the purchase or improvement of the property, or whether there is a declaration of trust pursuant to which she has a declared beneficial interest in the property.

The Interim Charging Order

Pursuant to Section 346 IA86 where a creditor has issued execution against the goods or land of that person, that creditor is not entitled as against the Official Receiver or Trustee to retain the benefit of that execution unless it was completed before the commencement of the bankruptcy.

Bankruptcy commences on the date that the bankruptcy order is made.

Pursuant to section 346(5) IA86 execution is completed by the making of a charging order under section 1 of the Charging Orders Act 1979.

Here, only notice of an interim charging order has been registered against the title. Enquiries should be made of Cottan Credit Ltd to establish whether their charging order was made final prior to the making of the bankruptcy order. If it was, a copy of the final charging order should be requested to establish the amount that is secured by it.

If the charging order was not made final prior to the making of the bankruptcy order, Cottan Credit should be advised to lodge an unsecured claim in the bankruptcy. They should also be advised that as the property has now vested in the Trustees, a final charging order cannot be sought as the bankrupt no longer has a beneficial interest in the property.

The property register should also be checked to see whether a pending action in bankruptcy was entered following the bankruptcy petition being presented. If it was, check whether Cottan Credit were on notice of the petition. If they were, and a final charging order was sought, they ought to have drawn the existence of the petition to the attention of the Court.

The application for a Freezing Order

The restriction gives notice that an application for a freezing order has been made. This prevents a potential defendant in criminal or civil proceedings from dissipating assets. It does not give the applicant any proprietary right in those assets.

The application suggests that proceedings may still be ongoing. The Trustee should contact the applicant's solicitors to advise them of the making of the bankruptcy order and of her appointment as Trustee.

A copy of the freezing order should be sought as this may identify other assets which belong to the bankrupt.

The creditor should be asked to confirm the current status of the proceedings. As the property has (subject to the position in relation to the restraint order being clarified) vested in the bankruptcy estate, the creditor should be notified that they cannot take any action against the property.

Assuming that notice of the making of the bankruptcy order is showing against the title to the property, the creditor should be asked to withdraw their restriction as the bankrupt is now prevented from dealing with the property in any event. Whilst the freezing order does not preclude the property from vesting in the Trustee, it does prevent the Trustee from dealing with the property. Agreement would need to be reached for the discharge of the freezing order prior to the Trustee dealing with any assets caught by it.

The Restraint Order

An application for a restraint order will be made where there is evidence to suggest that an individual has obtained a benefit from or in connection with criminal conduct.

A restraint order is an order which prevents the disposal of assets. A restraint order can be made before the individual is charged as long as he/she is to be charged.

Where a restraint order is made prior to the making of the bankruptcy order, then any property which is the subject of the restraint order does not form part of the bankruptcy estate. See section 417 POCA 2002

The Trustee should contact the relevant prosecuting authority and request a copy of the restraint order. The fact that a restriction has been entered against the title to the property would suggest that it extends to the property but this should be checked establish exactly what assets the restraint order covers.

The Trustee should request confirmation of the current position as regards the restraint order and any ongoing criminal proceedings.

The prosecuting authority should be asked to note the Trustee's interest in the property and that the Trusteee be notified should the restraint order be discharged. If the restraint order is discharged, the property will vest in the bankruptcy estate to be dealt with by the Trustee.

The Trustee should also ask for confirmation of the current position as regards any criminal proceedings being instigated against the bankrupt. If the bankrupt is ultimately found not guilty, the restraint order will be discharged.

If the bankrupt is found guilty and a confiscation order is made, the Trustee will be entitled to any surplus from the sale of that property following the confiscation order being discharged.

The Trustee should ensure that she is aware of when the criminal trial will be taking place, the verdict and the value of any confiscation order that is made.

If the property is a property caught by s283A, regard should be had to the 3-year period within which the Trustee has to take steps to realise their interest in the property. If the criminal proceedings are unlikely to have concluded within 3 years of the making of the bankruptcy order, legal advice should be sought to ensure that the Trustees' interest is protected.

Potential money laundering?

In this case whilst it appears that Mr Lomax is already the subject of criminal proceedings, there is still a requirement the Ips report suspicions of any criminal activity.

The entries on the bank statements do raise concerns regarding potential money laundering offences.

The IP's firm is obliged to have a money laundering reporting officer (MLRO). The suspicions should be notified to the MLRO pursuant to the internal reporting procedures.

A suspicious activity report should be made to the National Crime Agency where there is knowledge or suspicion of money laundering.

Once a report has been made, care should be taken to ensure that the bankrupt does not become aware of that report. Care should be taken when drafting reports to creditors to ensure that there is no disclosure of information which could amount to tipping off.
Whilst the bankrupt should be asked to explain the source of the cash deposits and reasons for payments to overseas accounts, as above care should be taken when communicating with the bankrupt.

Where an IP is aware that the assets of an individual may have been tainted by criminality, selling those assets without consent may constitute an offence under s327 POCA

Enquiries should also be made of the banks with a request made for copy cheques in respect of funds deposited into the account, together with full details of the accounts into which payments were then made. The banks located overseas should also be contacted and asked to confirm whether Mr Lomax held any accounts with them. If he did, copy statements should be requested for review.

Question 3

Part (a) Potential options available to Mr Hastings and recommendations re course of action

Take no action

If you take no action it is likely that creditor pressure will increase. The bailiff will return to your property with a view to seizing personal goods/ property to satisfy the judgment debt and any further creditors may start contacting you which could become increasingly stressful. As such it is recommended that you now take positive action to deal with your affairs.

Negotiate with creditors

You will need to establish the total level of your liabilities and the assets/ funds that are available to you to meet those liabilities.

There is little to be gained through dealing with one creditor, if other creditors remain unpaid and will take their own action in due course in order to secure repayment.

Negotiating with all of your creditors to try and reach agreement regarding repayment terms/ amounts could be stressful and time consuming.

You could consider approaching a debt charity to discuss whether a debt management plan could be an option. This will require a monthly payment to be made to creditors so will only be an option if some funds can be made available.

It would appear preferable for steps to be taken to safeguard your position and to apply for a breathing space moratorium to allow the full extent of your liabilities to be determined and for a debt advisor to assist in deciding how best to deal with those liabilities.

Breathing space moratorium

Based on the information that has been supplied, a breathing space moratorium may be the most appropriate option.

There are two types of breathing space. The mental health breathing space and the standard breathing space. Whilst it appears that Mr Hastings may be eligible for the mental health breathing space, further information would be required in relation to the current treatment that he is receiving.

Eligibility

To be eligible for a standard breathing space, the debtor must be an individual, owe a qualifying debt to a creditor, live or reside in England and Wales, not have a DRO, IVA, interim order or be an undischarged bankrupt at the time they apply. The debtor cannot already have, or have had a standard breathing space in the last 12 months.

The eligibility for a mental health crisis breathing space is the same as for a standard breathing space but the debtor must also be receiving mental health crisis treatment at the time that the application is made.

Mr Hastings is receiving mental health treatment and as such, a mental health crisis breathing space could be appropriate. If an approved mental health professional certifies that a person is receiving mental health crisis treatment, that evidence can be used by a debt adviser to start a mental health crisis breathing space without first needing to give debt advice.

Process

A breathing space can only be started by a debt advice provider who is authorised by the FCA to offer debt counselling or a local authority, where they provide debt advice to residents.

If Mr Hastings does wish to put a breathing space in place, he would need to seek advice from a debt adviser. They will consider whether a breathing space is appropriate.

Mr Hastings would have to provide the debt advisor with his full name and address, details of the debts that he owes and the contact details for his creditors.

The breathing space includes all qualifying debts. However certain debts are excluded debts. Mr Hastings would need to confirm whether he has any debts which would not be caught by the breathing space. These include secured debts, liabilities to pay a fine imposed by a court for an offence, a crisis or budgeting loan from the social fund, child maintenance or other obligations pursuant to an order made in family court proceedings, advance payments of universal credit and any council tax liabilities which have not yet fallen due.

The breathing space starts the day after the debtor's details are put on the breathing space register.

Creditors will receive an electronic notification which confirms the debt(s) which are covered by the breathing space and the date that the breathing space started. The creditor is required to stop any enforcement or recovery action that has been taken in respect of the debt. The debtor should not be charged interest, fees, penalties or charges in respect of the debt during the breathing space. The creditor cannot make contact with the debtor to request payment of the debt unless they have the permission of the court.

For a standard breathing space, a midway review will be carried out by the debt adviser between day 25 and 35. If the debt adviser thinks that the debtor has been meeting their obligation and communicating with them, the breathing space can continue until the end date. If not, the breathing space can be cancelled in respect of some or all of the debts.

A mental health crisis breathing space does not have a midway review but the advisor will check that the individual is still receiving mental health crisis treatment. The MHCBS will remain in due for the duration of the treatment plus 30 days.

Effect

A SBS lasts for 60 days from the date on which it starts.

A breathing space is not a payment holiday. A debtor is still legally required to pay their debts and liabilities. Mr Hastings should therefore still make payments as they fall due.

Ongoing liabilities, which include rent that falls due, water, electricity and gas should be paid by the debtor if they can. If the debtor cannot pay these ongoing liabilities, the debtor adviser might cancel the standard breathing space.

Debt Relief Order

If total debts are below £30,000 and you have surplus income of less than £75 a month (after paying tax, national insurance and household expenses) and assets worth £2,000 or less, have lived or worked in England for the last 3 years and have not previously had a DRO in the last 6 years, you would be eligible for a DRO.

A DRO has to be applied for through an authorised intermediary. The application can be made online and will attract an application fee of £90.
If the application is accepted, you do not have to pay certain debts for the specified period which is usually 12 months. At the end of the DRO period the debts covered by the DRO will be written off.

If your circumstances change during the DRO period, the DRO may be revoked so that arrangements can be made to pay your creditors. You are obliged to inform the Official Receiver if there are any changes to your income or if you receive any money or assets.

You have to continue paying regular outgoings such as rent and bills during the DRO period and are subject to certain restrictions whilst the DRO is in force. This includes not being allowed to obtain

credit of more than £500 without first telling the lender you are the subject of a DRO or applying for an overdraft without telling your bank that you are the subject of a DRO.

Individual Voluntary Arrangement

This is a statutory scheme supervised by an Insolvency Practitioner pursuant to which a fixed sum is paid each month and/or assets are realised in order to pay a dividend to creditors bound by the IVA. At least 75% of your creditors would have to approve the IVA. If the IVA is approved, as long as you maintain the payments required by the IVA/ comply with its terms, your debts will be written off at its conclusion.

However, as you are not working at this time an IVA is unlikely to be a appropriate as you will not be in a position to make fixed monthly contributions.

Bankruptcy

You could apply for bankruptcy through making an online application. Your application will be considered by the adjudicator who will determine whether you should be adjudged bankrupt. Details of your assets and liabilities have to be provided. An order will be made if the adjudicator is satisfied that you are unable to pay your debts.

Upon a bankruptcy order being made, all assets vest in your trustee in bankruptcy. Your trustee has a duty to investigate your affairs and determine whether there are any assets that could be realised for the benefit of creditors. You would have to notify the Trustee of your income and any changes in the level of that income prior to receiving your discharge (which is generally granted 12 months after the making of the bankruptcy order). If the Trustee considers that you have surplus income i.e. income over and above that required to meet your reasonable domestic needs, you can be required to make a contribution from income for a maximum of 3 years.

You would be subject to the restrictions of bankruptcy for a period of 12 months. Once you have received your discharge you are no longer subject to the restrictions of bankruptcy and the debts are written off.

Recommendation

Credit to be given for any sensible, reasoned recommendation.

Given current situation it might be appropriate to seek a breathing space moratorium to allow time to Mr Hastings to assess his current situation and establish what course of action would be most appropriate given financial position to include DRO (if eligible) or bankruptcy (if not eligible for a DRO).

Part (b) In light of new information, what should Mr Hastings be advised to do.

An undischarged bankrupt is not eligible to apply for a breathing space.

As a bankruptcy order has been made against him, Mr Hastings is under a duty to co-operate with the Official Receiver (and any subsequently appoint trustee) and to provide him with such information in connection with his affairs as the Official Receiver may reasonably require.

Mr Hastings should advise the Official Receiver of his recent stay in hospital and that he was unaware of the making of the bankruptcy order until now. He should confirm that he is taking advice and ask the Official Receiver to put a hold on matters for 14 days to allow him to take advice and consider his position.

Pursuant to section 285 IA 86 the enforcement agent cannot take any further action. If he returns to the premises Mr Hastings should provide him with a copy of the bankruptcy order and state that any future correspondence in relation to the debt should be directed to his Trustee in Bankruptcy / Official Receiver. Alternatively contact should be made with the enforcement agent's office to advise them of the making of the bankruptcy order.

Applying for an annulment of the bankruptcy order pursuant to Section 282(1)(a) IA86 on the basis that the order ought not to have been made might be an option given that Mr Hastings may have lacked capacity to deal with his affairs at the time that the bankruptcy order was made. Alternatively, prior to discharge annulment could be sought pursuant to s261 IA86. This could become an appropriate option if Mr Hastings secures employment and a regular income.

However if Mr Hastings has no assets of any significant value, does not currently work and lives in rented accommodation, query the extent to which he will be impacted as a result of the bankruptcy order having been made.
Mr Hastings should consider whether, notwithstanding his potential ability to seek an annulment, he would be best served remaining bankrupt and this means that he will no longer have to worry about his financial position or have creditors chasing him for payment.

If annulment is sought, Mr Hastings would still have to deal with his liabilities. If he has no immediate way of repaying those debts, query whether it would be appropriate to try and annul the bankruptcy even if grounds for doing so could be made out.

Question 4
Part (a) (10 marks)

Lakewell Taylor

Projected cashflow

5 months to 31 March 2023

	November	December	January	February	March	Total
	£	£	£	£	£	£
Income						
Conveyancing	25,800	17,200	25,800	25,800	25,800	120,400
Executry		15,000		7,500		22,500
Other	2,400					2,400
	28,200	32,200	25,800	33,300	25,800	145,300
Expenditure						
Salaries	8,762	8,762	8,762	8,762	8,762	43,811
PAYE/NIC	3,311	3,311	3,311	3,311	3,311	16,557
Pension	626	626	626	626	626	3,131
PI Insurance	1,162	1,162	1,162	1,162	1,162	5,810
Rent		2,500			2,500	5,000
Rates	-	-	-	-	-	-
Utilities/Water	450	450	450	450	450	2,250
Phone/Internet	250	250	250	250	250	1,250
Software licensing	750	750	750	750	750	3,750
Stationery	35	35	35	35	35	175

Professional fees - Law Society			1,365			
Accounting and payroll	500	500	500	500	500	2,500
	15,847	18,347	17,212	15,847	18,347	84,233
Drawings	9,375	9,375	9,375	9,375	9,375	46,875
Net cash inflow /(outflow)	2,978	4,478	-787	8,078	-1,922	12,827
Opening overdraft	-24,300	-21,322	-16,844	-17,630	-9,552	
Cash in/outflow	2,978	4,478	-787	8,078	-1,922	
Closing overdraft	-21,322	-16,844	-17,630	-9,552	-11,473	

Part (b) Debts due by Lakewell Taylor (9 Marks)

Debts due by Lakewell Taylor

HMRC have served a statutory demand for £43,329 of unpaid PAYE/NIC. This represents around 13 months' worth at the current rate. The balance sheet in the management accounts suggests that this debt has risen by a further two months of unpaid deductions which means that HMRC have now not been paid for over 15 months.

Check whether the statutory demand us based on actual returns. If any returns are outstanding , these should be brought up to date as soon as possible as this may result in a reduction of the overall level of debt.

Clarify when the statutory demand was served and when the 21 day period for making payment expires.

See whether HMRC would be agreeable to a TTP agreement being put into place pursuant to which the ongoing monthly payments are met and the arrears are cleared over a period of 1 to 5 years

Work Place pension

An employer should pay both their and employee contributions to a pension into the pension scheme by the 22nd of the month following deduction. The Balance sheet shows that these contributions have not been paid for 3 months.

These should be brought up to date urgently to avoid enforcement or statutory notices.

Rent

In the P&L rent is accruing at £833 per month (£10,000 pa). As 11 months are outstanding on the balance sheet it appears to be the case that rent has not been paid since the quarter ending November 2021.

What discussions, have there been with the landlord about this and has any arrangement been made?

If not, see whether the landlord would be willing to accept rent monthly with a contribution towards arrears?

Rates

Only 1 month of rates is accrued in the balance sheet and since these are paid twice yearly it appears that these are up to date and not due to be paid again until April.

Bank overdraft

An overdraft amount of £24,300 to Nevis Bank is shown in the management accounts. What is the overdraft limit, when is it due to be reviewed and is there any headroom on this facility. If there is no headroom, would it be possible to extend the limit?

Have any securities or guarantees been given by the partners to support this overdraft?

Management of cash

The cashflow shows that Lakewell Taylor will generate around £17,000 of cash in this 5 month period whilst maintaining their ongoing commitments. This could be increased if Ms Huntly is able to reduce her drawings (total drawings in 5 months £47,000).

With total creditors of more than £85,000, however, it is not going to be possible to pay all of these with the surplus available.

Assuming that the overdraft facility can remain in place, then priority should be given to:-

Reaching an agreement with the landlord regarding the arrears of rent to prevent him from taking action in relation to the office premises;

Bringing the outstanding pensions contributions up to date to avoid statutory notices and fines and

Persuading HMRC to accept a payment plan in relation to the arrears (referred to above).

Mr Ifield has an overdrawn position. Future drawings could therefore be restricted.

Lakewell Taylor

Profit and Loss account

10 months to 31 October 2022

		£	£	
Turnover				
Conveyancing		258,000		
Executry		75,000		
Other		30,000	363,000	
Expenses				
Salaries		111,362		
Employer's Pension		3,131		
PI Insurance		14,520		M
Rent		8,333		
Rates		4,375		
Utilities/Water		4,500		M
Phone/Internet		2,500		M
Software licensing		7,500		M
Stationery		350		M
Professional Fees		1,971		
Depreciation		2,083		
Accounting and payroll		5,000		M
			165,625	
Profit			197,375	
Split				
T Ifield	60%		118,425	
R Huntly	40%		78,950	

	197,375

M - paid by monthly direct debit

Salaries	Salary pa £	Employers' NIC £	Employer Pension 4% £	Employee Pension 4% £	Employee's NIC £	Earnings above tax threshold	Tax at 20%	Uplift to 40%	Total Tax £
Newly qualified solicitor	43,500	5,584	1484	1484	4,455	30,930	6,186	1,160.0	7,346
Paralegal	30,000	3,552	944	944	2,666	17,430	3,486	0	3,486
Paralegal	25,000	2,800	744	744	2,003	12,430	2,486	0	2,486
Cashier/admin	21,000	2,198	584	584	1,473	8,430	1,686	0	1,686
Annual cost	119,500	14,134	3,757	3,757	10,597				15,004

Salaries paid at end of month
PAYE/NIC by 22 of month following if you pay monthly
Pension contributions by law must be paid in by 22 of following month

	Salary pa	Employers' NIC	Employer Pension 4%	Employee Pension 4%	Employee's NIC	Total Tax
Salaries	£	£	£	£	£	£
Newly qualified solicitor	43,500	5,584	1484	1484	4,455	5,939
Paralegal	30,000	3,552	944	944	2,666	3,610
Paralegal	25,000	2,800	744	744	2,003	2,748
Cashier/admin	21,000	2,198	584	584	1,473	2,058
Annual cost	119,500	14,134	3,757	3,757	10,597	13,979

Part (c) Options available (**11 marks**)

Lakewell Taylor
Balance Sheet as at 31 October 2022

		£	£	£	£
Fixed Assets		Opening	Depreciation	Closing	
Computer Equipment		7,500	1,563	5,938	
Funtiture & Fittings		2,500	521	1,979	
		10,000	2,083	7,917	7,917
Current Assets					
Trade debtors				3,000	
Prepayment Law Society Fees				394	
					3,394
					11,311
Current Liabilities					
Overdraft - Nevis Bank				24,300	
PAYE/NIC				49,862	
Workplace pension				1,878	
Accruals	Rent			8,333	
	Rates			438	84,811
					-73,500

Represented by

Capital Accounts

	Mr Ifield	Ms Huntly	Total	
Brought forward	-45,000	20,200	-24,800	
Profit/(loss) in 10 months to date	118,425	78,950	197,375	
Drawings	-171,075	-75,000	-246,075	
Carried forward	-97,650	24,150	-73,500	-73,500

The partnership is currently balance sheet insolvent with net liabilities of £74,163. This appears to have arisen because Mr Ifield has drawn more out of the business than he has earned as shown by the deficit on his capital account.

This has been done at the expense of not paying creditors.

What is known about Mr Ifield's financial position? Can he afford to repay his overdrawn capital account to help the partnership discharge some of its liabilities? Enquiries could be made to establish whether it is likely that Mr Ifield will receive any compensation or other payment as a result of the road traffic accident.

Lakewell Taylor has however been **historically profitable** and even without Mr Ifield is capable of generating cash of £17,000 in the next 5 months whilst maintaining a similar level of drawings for Ms Huntly.

Ms Huntly is personally jointly and severally liable for the debts of the partnership, notwithstanding that the position on the face of it appears to have been created by Mr Ifield.
Whilst Ms Huntly may have a claim against Mr Ifield in relation to the shortfall within the partnership, we have no information about his asset position and he is also very unwell.
As a practising solicitor, if made bankrupt, Ms Huntly is unlikely to be able to practice, other than possibly as an employee until she is discharged at the earliest.

Ms Huntly should consider ways to improve the profitability cash generation of the business:-

Mr Ifield carried out Executory and wills work, while Ms Huntly may not feel qualified to take this on herself, can she recruit someone who can, thereby increasing the revenue/income from the overhead base. This would need to be carried out in conjunction with negotiations with creditors to allow the liabilities to be paid off over a period of time.

Alternatively, can she sell the customer base of Wills/inheritance planning clients, which will provide a forward flow of executry work to another legal firm. Receiving a sum in return for these would contribute to the sums required to repay creditors.

Ms Huntly could **consider a sale** of Lakewell Taylor's entire business. It clearly has significant business particularly in conveyancing in Collersdale and may be an attractive acquisition.

A reduction in outgoings should also be pursued. For example, could the business move to cheaper premises? Could any staff have their hours reduced? Would HMRC agree to a TTP agreement to allow time for the arrears to be cleared?

Whilst a **PVA** could be considered, this could not be proposed without first having engaged with the SRA. In the absence of such engagement, there is the risk that the SRA would intervene in the practice following the proposals being sent out.

In order for a PVA to be proposed, Ms Huntly would have to demonstrate that there would be future cashflow management and that the business would be profitable. In addition, Mr Ifield's state of health would be a relevant consideration as be may not be well enough to be able to propose a PVA.

A similar consideration would apply in relation to interlocking IVAs. Mr Ifield may not be well enough to propose an IVA even if that could be appropriate, noting that we do not know anything about his personal financial position.

If Ms Huntly does not believe that continuing to trade to repay the unsecured debt which has built up is either feasible through a PVA being proposed or desirable then the partnership could be wound up as an unregistered company.

In such circumstances the SRA would intervene in the practice.

A liquidator would then realise any value in the client base and fixtures and fittings. Any outstanding sums due to Lakewell Taylor would be caught by the SRA's statutory charge and would be payable to them to mitigate the costs of intervention.

Ms Huntly would need to consider that both she and Mr Ifield would be jointly and severally liable for any shortfall to the partnership creditors and therefore, consider the implications for her personal financial situation.

If this were to result in her own personal bankruptcy she should consider the implications for her own ability to continue to work as a solicitor.

Part (d) Client account (4 Marks)

Lakewell Taylor
Client a/c

		Out	In	Bal
		£	£	£
14-Oct-22	Corbetts solicitor Mr S Railston - purchase of 22 Kingsgate		242,387.00	248,382.00
20-Oct-22	Hillside Bank - sums due under security	183,597.00		
	Collersdale Estate Agency	3,635.00		
	Lakewell Taylor Fees a/c	800.00		
	#573168 -Ifield	1,000.00		
	Ms J Taylor - sale of 22 Kingsgate	53,355.00		5,995.00

It appears that £1,000 from the sale of a property has been transferred to an account in the name of Ifield.

Details of the account to which payment has been made should be obtained and checked.
Speak with the firm's cashier to see if she can provide any further information and/or an explanation.

There does not appear to be a logical reason for this as the Lakewell Taylor fee has also been deducted from the sales proceeds. As Mr Ifield has been responsible for around 1/3 of conveyancing transactions, this may not be an isolated incident and other recent sales should be checked to see whether the same payments have been made. The firm's engagement letter should also be checked to see whether there is any mention of this £1,000 charge.

The £1,000 charge could relate to another matter on which Mr Ifield was instructed. Check details of the firm's instructions to see whether this charge did relate to services that had been provided pursuant to a letter of engagement.

Ignoring this transaction, there is also a balance of funds in the client account. Do we know what these funds relate to – a related purchase? It appears that the funds were paid into the account prior to the sale. Is the firm acting on another matter for the same client with the funds paid into the wrong account?

Check whether the balance held on client account accords with the client ledgers regarding funds due to clients. If not, it appears that Mr Ifield may been drawing funds from the client account as well as on his capital account which is concerning.

If once the various enquiries set out above have been made and it appears that there have been irregularities regarding the use of client funds, Ms Huntly should:
Notify the SRA, who if they believe there have been irregularities in the client account may intervene in the practice.

Notify Lakewell Taylor's Professional Indemnity Insurers;

Potentially notify the Police if it is believed that a theft has taken place; and

After taking advice from the Law Society and assuming that the practice has not been intervened, notify the clients believed to have been affected.

Part (e) Trustee's responsibility for Books and Records If bankruptcy order made against one or both partners, this will serve to sever the partnership. However, it does not appear that the partnership has itself been wound up. (5 Marks)

If appointed as Trustee in Bankruptcy of one or both partners, the Trustee has no authority to deal with the books and records of the practice, or its assets.

Client account – the funds in the client account will not vest in the Trustee. Any records pertaining to the client account should be secured and passed to the SRA or their intervention agents.

Client files – Lakewell Taylor will have client files including, Wills and Title Deeds. If the practice is intervened, this will be collected by the SRA who will appoint a firm to take over the client files and arrange for any closed files to be moved to their archives.

If an intervention has not taken place, the Trustee should obtain confirmation of the SRA of whether it is their intention to intervene as the files and wills/title deeds held etc need to be safeguarded. The Trustee should liaise with the SRA re collection of the files upon intervention. Where both partners have been made bankrupt and there is no-one running the practice, it seems highly unlikely that there would not be an intervention.

Debtor's ledger and supporting invoices to support the recovery of the outstanding book debts. – where the practice is intervened, the SRA is entitled to collect in the practice's book debts pursuant to its statutory charge. These records should be passed to the SRA if the practice has been intervened.