



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 9

ETHICS AND PROFESSIONAL PRACTICE

This is the **summative (formal) assessment** for **Module 9** of this course and is compulsory for all candidates who **selected this module as one of their elective modules**.

The mark awarded for this assessment will determine your final mark for Module 9. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.
2. All assessments must be submitted electronically in **Microsoft Word format**, using a standard A4 size page and an 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).
4. You must save this document using the following format: **[studentnumber.assessment9]**. An example would be something along the following lines: 202021IFU-314.assessment9. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentnumber” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
6. The final submission date for this assessment is **31 July 2021**. The assessment submission portal will close at **23:00 (11 pm) GMT on 31 July 2021**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
7. Prior to being populated with your answers, this assessment consists of **8 pages**.

ANSWER ALL THE QUESTIONS

QUESTION 1 (multiple-choice questions) [10 marks in total]

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

Please choose the **most correct answer** from the options below.

INSOL International's *Ethical Principles for Insolvency Professionals*

- (a) are mandatory and apply to all its members.
- (b) creates a set of rules which all jurisdictions have to incorporate into their insolvency frameworks.
- (c) creates a set of rules by which stakeholders and the public in most jurisdictions would be able to determine whether insolvency practitioners are acting in accordance with ethical principles.
- (d) creates a set of best practice principles to inform and educate insolvency practitioners and stakeholders by providing ethical and professional guidance on issues of importance.**

Question 1.2

The "Enlightened Creditor Value" approach to insolvency proposes the following with regard to the protection of competing interests in insolvency proceedings:

- (a) creditors' interests are of paramount importance and as such only these interests should be protected in insolvency.
- (b) The interests of stakeholders should be regarded in the same manner as those of creditors.
- (c) Creditors' interests are of paramount importance, however, the interests of other stakeholders should also be considered where this would be in the creditors' interests.**
- (d) Only the shareholders of the company and the creditors of the company should be protected by the insolvency law (and in that order).

Question 1.3

All insolvency professionals are fiduciaries.

- (a) True
- (b) False**

Commented [JL1]: TOTAL: 49 out of 50
Excellent!!

Commented [JL2]: 10 out of 10

Question 1.4

Being truthful and being honest is **not** the same thing.

(a) True

(b) False

Question 1.5

Tony has been appointed as a liquidator of Company X. Company X has several major creditors, including ABC Bank. A year prior to the liquidation of the Company, Tony was acting in an advisory capacity for ABC Bank in litigation against Company X where he attempted to advance ABC's position as a creditor.

This situation is an example of a/an _____ threat.

(a) self-review

(b) self-interest

(c) advocacy

(d) intimidation

Question 1.6

A lack of independence and impartiality due to a prohibited relationship with a stakeholder can always be remedied by disclosing the relevant relationship to the relevant parties and issuing a declaration of independence.

(a) True

(b) False

Question 1.7

Julie is a well-known insolvency practitioner and is often sought out for her knowledge and expertise. She currently has ten ongoing insolvency matters (most of them quite complex) and has been feeling somewhat overwhelmed. Due to her impressive *curriculum vitae* she is contacted by a very large designer company in distress inquiring whether she would be able to take an appointment as an administrator. Julie should:

(a) Accept the appointment as it will boost her career even further.

(b) Accept the appointment as she can get one of her junior associates to take over all her other cases.

(c) Accept the appointment because as a professional she will have the ability to give all of the cases she is involved in some attention, although some of them will now only be overseen by her.

(d) Refuse the appointment as she will not be able to give all of the cases she is involved in the requisite level of attention.

Question 1.8

Johnson has been appointed as a new associate at the firm where he is employed. In his new role he has to meet certain targets in relation to the fees he earns for taking appointments. Johnson is currently appointed as a liquidator for a small company. He realises that he will not meet the firm's target for fees. The most ethical thing for Johnson to do would be to:

- (a) Call a creditors' meeting requesting an adjustment to his agreed fees due to unforeseen circumstances.
- (b) Ask his administrative assistant to invoice the estate for the use of the firm's conference venue for meetings held there at a 50% increased fee.
- (c) Carry out his duties in a timely fashion and complete the appointment efficiently and without undue delay, only invoicing for work properly performed.
- (d) Ask his administrative assistant to double check all the calculations in the case file and then bill the hours as part of his invoice.

Question 1.9

Please choose the **most correct answer** from the options below.

An insolvency practitioner using a fixed fee calculation method for determining the amount of remuneration owed to him, will receive a fair amount of remuneration.

- (a) This statement is true since jurisdictions always allow for an adjustment of fees where it is necessary.
- (b) This statement is false since the practitioner might have carried out more work and invested more resources than is reflected in the fee.
- (c) This statement is false since the practitioner will always receive more remuneration than what is reflected in the work carried out.
- (d) This statement is false since the only way to receive a fair amount of remuneration is to calculate the remuneration on an hourly rate.

Question 1.10

Please choose the **most correct answer** from the options below.

Fathima has just completed Module 9 of INSOL International's Foundation Certificate. She works as a junior insolvency practitioner at a large firm. Her firm is contemplating the acquisition of a new information technology system to help ease the administrative burdens of the practitioners at the firm. This new system will digitise all of the documents in relation to insolvency appointments. All the practitioners and administrative personnel employed by the firm will have access to these files as long as they have access to an internet connection. Fathima should advise someone in the office to implement procedures and policies on _____ in relation to this proposed new system.

- (a) quality Control
- (b) risk Management

(c) compliance management

(d) fidelity insurance

QUESTION 2 (direct questions) [10 marks]

Commented [JL3]: 9 out of 10

Question 2.1 [maximum 4 marks]

What are the main fiduciary and other duties usually associated with insolvency professionals?

[As discussed in the Guidance Text for this module, insolvency professionals (“IP”) ¹ have an obligation to three main fiduciary duties². These are as follows:

1. the duty to act in good faith – this duty involves elements such as honesty, integrity, acting reasonably, and in fairness, with respect to the interests of all related parties of the company;
2. the duty to act in the best interest of the beneficiary to whom fiduciary duties are owed – the main beneficiaries in this context are the creditors of the debtor; and
3. the duty to exercise the powers of the office with independence and impartiality – in their fiduciary capacity, an IP has an obligation to refrain from making decisions in their own best interests.

Directors have an obligation to these fiduciary duties whether it is explicitly agreed prior to accepting the office or not.]

Commented [JL4]: 3

You have only mentioned the fiduciary duties – missing the duty of care.

Commented [JL5]: ?

Question 2.2 [maximum 4 marks]

Briefly explain the two-pronged nature of the duty to act with independence and impartiality.

[The two-pronged nature of the duty to act with independence and impartiality is fundamentally based on matters of fact and matters of perception. Essentially, the conduct of an IP should be, and perceived to be, without conflict and impartiality. Therefore:

- IPs should refrain from circumstances and relationships that would constitute as a conflict of interest; and
- IPs should avoid circumstances that involve inappropriate cash or asset exchanges, accepting bribes or receiving special discounts. These instances will compromise the independence of an IP (whether the circumstance is factual or perceived to be.)]

Commented [JL6]: 4

Question 2.3 [maximum 2 marks]

What is the preferred method of calculation of insolvency practitioner remuneration? Name one ethical issue in relation to this method of calculation.

[The approach used to calculate the remuneration of an insolvency practitioner, varies from jurisdiction to jurisdiction. There are a variety of methods used to calculate the remuneration of an IP, and each method has its own set of pros and cons. Nevertheless, the preferred method of calculation of an IP’s remuneration is the time-based fee method. This is because “it is believed to provide for a fair compensation for work done”³.

¹ Throughout this assessment, this abbreviation will be used with reference to an Insolvency Practitioner.

² Jacobs, Dr. Lézelle, INSOL International Module 9 Guidance Text, Ethics and Professional Practice (2020/2021), p.5. Hereinafter, this text will be referred to as “the Guidance Text”.

³ Idem, section 5.6.1.3 (Time-based fees), p.31.

One ethical issue associated with the time-based method of calculation is, the fact that time-based costing has the potential to result in fees being charged that do not necessarily reflect the actual work being performed. This applies particularly with respect to prescribed fees.]

Commented [JL7]: 2

QUESTION 3 (essay-type questions) [15 marks in total]

Commented [JL8]: 15 out of 15

Question 3.1 [maximum 8 marks]

Which elements of insolvency proceedings are especially prone to create or give rise to threats to independence and impartiality? Please elaborate.

[Among the various threats to the ethical standards of independence and impartiality are self-interest, self-review, advocacy, familiarity, and intimidation. Moreover, there are certain elements of an insolvency proceeding that give rise to these threats. In line with the discussion points contained in the Guidance Text, these elements are explained below.

Nature of pre-commencement/appointment involvement – Prior to an insolvency proceeding, consultations between a Corporate Insolvency Practitioner (“CIP”⁴) and the company’s stakeholders are vital to the success of the process. Notwithstanding this fact, it is the nature of these consultations that could give rise to threats to the ethical standard of independence and impartiality. Any discussion outside of the scope of the company’s financial position, its solvency, the potential effects of insolvency and any alternatives to insolvency could impair the independence of the CIP.

Appointment – The appointment of a CIP by the company’s board of directors or the creditors, can give rise to threats to independence and impartiality. Under these circumstances, expectations to prioritise the interest of the stakeholder or the perception that the stakeholder has an influence over the actions of the CIP are the basis for these threats- it is therefore imperative that the CIP remain cognizant of his duties. Promises to any stakeholder is in direct contravention to the fiduciary duties of a CIP.

Subsequent appointments – A CIP who is requested to serve in other capacities post-appointment, may be subject to self-review and self-interest threats. For instance, a CIP who is first appointed as the administrator of a corporate rescue process and thereafter accepts the appointment as liquidator with the same debtor. In this instance, the CIP could be conflicted and the ability to provide an objective evaluation (with respect to previous judgements) of the previous administration could be impaired.

Secret monies and personal transactions with the company – Secret profits including special discounts from the company, gifts, commissions from the company, bribery, under-cover deals, are among the many forms of conflicting transactions with which an CIP should not be party to. While the list of instances in these circumstances is extensive, the fundamental rule, “If his judgement was influenced by the fact that he stands to gain personally from a decision, it cannot be said that he was acting in the best interests of the beneficiaries of his duties”⁵ prevails.

The global business landscape is dynamic and as such, instances that give rise to threats to the independence and impartiality of an CIP will continue to expand. The need for diligence with respect to the duties of an CIP must be at the forefront of the decision-making process, before accepting an insolvency appointment.]

Commented [JL9]: 8

⁴ Refers to the role of an insolvency practitioner in a corporate setting.

⁵ The Guidance Text, section 5.3.4 (Secret monies and personal transactions with the company), p.19

Question 3.2 [maximum 7 marks]

As insolvency appointments often involve complex legal issues, it is common practice for insolvency practitioners to rely on the advice and services of legal professionals. What ethical considerations should be borne in mind, especially regarding the fees of these legal professionals?

[Some insolvency appointments are complex in nature (particularly high-profile appointments and those with cross-border issues) and warrant the need for legal opinions and other legal services. These services may result in significant legal fees and disbursements. Whether these fees are settled as disbursements directly from the company, third-party costs or claimed as part of the IP's costs, the net effect is a reduction in the amount returned to the beneficiaries of the insolvency. It is therefore imperative that the IP exercise his/her commercial judgement when engaging legal professionals, closely monitor their activities and meticulously review their billings to ensure that the fees are proportionate and justifiable.

Where a legal professional's services are engaged, it is important that the engagement rate for each professional working on the project is pre-negotiated, an itemized billing reflecting the specific activities and applicable hours spent completing the activity is clearly indicated on the invoice. Legal billings itemized in this fashion make it easier to spot instances of duplicate billing or billing for activities which were either not performed or not instructed to be performed. Ultimately, the onus is on the IP to justify to the company, its stakeholders or in some cases to the court, the legal work performed.

In addition to the aforementioned issues, the Insolvency Code of Ethics by the Institute for Chartered Accountants of England and Wales (ICAEW)⁶ recommends that the IP submit a full disclosure of the professional relationship between the legal team and the IP and the rationale for engaging their services to the stakeholders in the insolvency. The Code also suggests certain factors be considered when undertaking the services of legal professionals. These factors are⁷:

1. The cost of the service, the expertise and experience of the provider;
2. Whether the provider holds appropriate regulatory authorisation; and

The professional and ethical standards applicable to the service **provider**.

Commented [JL10]: 7

QUESTION 4 (fact-based application-type question) [15 marks in total]

Commented [JL11]: 15 out of 15

WeBuild Ltd is a private company registered in Eurafriodia. The company specialises in construction and property development and is well known in the area where it conducts business. Mr B Inlaw, Dr I Dontcare and Mrs I Relevant are the directors of the company. The company has ten shareholders, with Mr B Inlaw and Dr I Dontcare also holding shares in the company.

The company traded profitably for the last 10 years but recently started to experience financial difficulties. One of the main reasons for the decline is the fact that several of the company's employees have instituted a class action claim against WeBuild for workplace related injuries due to faulty machinery. This also resulted in bad publicity that led to a decline in contracts. The directors of the company were made aware of the issues relating to the machinery but chose not to take any action to remedy the situation. When the company's financial position started to decline the directors continued to trade as if nothing was amiss and even made several large payments to themselves by way of performance bonuses. When they received

⁶⁶⁶ ICAEW Insolvency Code of Ethics, (Specialist Advice and Service), 2320.6 A6(b), p.33.

⁷ Idem, section 5.6.2.4 (Legal professionals), p.37.

a letter of demand from the company's major secured creditor, ABC Bank, the directors decided to call a shareholders' meeting to discuss the company's options.

Present at this meeting were the shareholders, the directors and Mr Relation, a lawyer, to provide them with information and advice in relation to their options. Some of the shareholders recognised Mr Relation as Mr B Inlaw's brother-in-law and godfather to his daughter. During the meeting, Mr Relation suggests that the company enter into a voluntary administration procedure. Mr B Inlaw suggests that the company appoint Mr Relation as administrator. He accepts the appointment, ensuring that he discloses his relationship with Mr B Inlaw and says that he will declare that he believes that he will still be able to act with the required independence and impartiality.

After the meeting adjourns, Mr B Inlaw requests the other directors and Mr Relation to stay behind for a brief "planning" meeting. During this subsequent meeting the directors inform Mr Relation that they are concerned about their personal liability for breach of duty. Moreover, they are worried that they might land in hot water due to their decision to continue trading when the company was clearly in dire financial straits. Mr Relation assures them that his focus will not be on them but on trying to rescue the company.

In the weeks that follow, Mr Relation conducts a superficial investigation into the affairs of the company and the circumstances leading to the financial difficulty of the company. He relies on detailed reports drafted by Mr B Inlaw regarding the company's business and drafts a strategic plan for recovery based on his investigation and the reports he received.

At a meeting of creditors to consider the plan, Mr Relation states that he has found no evidence of any wrongdoing or maladministration by the company's directors. Mrs Keeneye, a lawyer attending the meeting on behalf of ABC Bank, the major secured creditor, recognises Mr Relation from a television interview where Mr Relation expressed the opinion that banks should be more accommodating in restructuring proceedings and that he thinks that the interests of lower ranking creditors should sometimes outweigh "big money" (referring to financial institutions). She immediately feels uncomfortable with his appointment as administrator.

Several months later the administration fails due to a "lack of funding" to finance the rescue. The administration is subsequently converted to liquidation proceedings and Mr Relation is appointed as the liquidator.

INSTRUCTIONS

There are at least THREE major ethical issues in this factual scenario.

Please identify these ethical issues and explain in detail why they are in fact ethical issues. Your answer should include reference to the ethical principles and the commentary thereon. Where appropriate and suitable, you should also endeavour to elaborate on possible remedies or safeguarding mechanisms to minimise or remove the ethical threats.

You may also make use of case law and secondary sources to substantiate your answer.

[ETHICAL ISSUE #1 – Mr. Relation's Appointment as Administrator and as Liquidator

Ethical Principle 2 – Objectivity, Independence, and Impartiality⁸

⁸ INSOL International Ethical Principles for Insolvency Professionals, October 2018

- Members should exhibit the highest levels of objectivity, independence and impartiality in the exercise of their powers and duties.
- Members should avoid circumstances likely to result in a conflict of interest.

(Secondary Source) ICAEW Ethical Fundamental Principle – Objectivity⁹

An IP should not allow, bias, conflict of interests or undue influence of others to override his business or professional judgement.

Reasons why this is an ethical issue:

- Given the company's challenges, Mr. Relation is invited to the initial meeting of the shareholders and directors, where he provided legal advice to those present. Although Mr. Relation had not yet been engaged as the administrator, consultations of this nature should be limited to discussions regarding the company's financial position is recoverable and the alternatives or whether insolvency is the only feasible solution. Consultations outside of this scope could present independence issues for Mr. Relation.
- Mr. Relation has a close personal relationship with one of the directors who is also a shareholder of the company. This is could impair his objectivity and impartiality.
- Mr. Relation is appointed by the board as the administrator in the company's voluntary procedure and the directors have previously expressed concern about potential personal liability for their actions. As the administrator, it appears that Mr. Relation may be expected to 'prioritize their interests'¹⁰ over the interests of the company and its beneficiaries.
- Immediately after accepting the appointment as administrator, a 'planning meeting' with the board is convened and Mr. Relation promises the directors that he intends to focus on the rescue of the company rather than the breach of their fiduciary duties. As an IP, Mr. Relation has a duty to be objective in all circumstances and he should not to allow the influence of the board to supersede his business judgement.
- Due to 'lack of funding' the restructuring plan for the company fails and Mr. Relation is subsequently appointed as liquidator for the procedure. In addition to independence, objectivity and impartiality issues, this occurrence presents a mirage of other ethical issues including a conflict of interest where Mr. Relation may be placed in the position of evaluating his previous 'failed' decisions as the administrator.

The threats identified in the scenario above:

- Familiarity threat – As a result of Mr. Relation's close personal relationship with Mr. Inlaw.
- Self-review threats – It would be inappropriate for Mr. Relation in the capacity as the liquidator to review his own previous actions and judgements in his previous office as administrator.
- Self-interest threat – As administrator Mr. Relation would have incurred fees. The rescue collapsed due to lack of funding and it is possible that not all fees owed to Mr. Relation in his capacity as the administrator were not settled. Therefore, Mr. Relation is potentially a creditor in the liquidation, and he has a financial interest in the liquidation. Clearly, this is a self-interest threat.
- Advocacy threats – Mr. Relation had significant involvement with the board prior to his appointment and in this advisory role Mr. Relations objectivity may be compromised.

Safeguards

- Prior to Mr. Relation's initial consultation meeting with the shareholders and the directors, he should prepare a disclosure statement outlining the nature of his discussions and also disclosing his close relations with Mr. Inlaw.
- Prior to any indication of an insolvency event, it is common for large corporations to consider its options for appropriate insolvency professionals and restructuring options- this

⁹ The Guidance Text, Section 5.3 (Objectivity, independence and impartiality), p.14.

¹⁰ Idem, section 5.3.2 (Appointment), p.18.

is usually outlined in the company's risk assessment plan and should be considered by WeBuild.

- Because of Mr. Relations close relationship with Mr. Inlaw, he should consider a Joint IP appointment that could reduce the familiarity threat to an acceptable level.
- All IP's are encouraged to seek legal advice in certain circumstances. Mr. Relation should seek legal advice on the appropriateness of both appointments.
- Mr. IP may also consider seeking advice from the local Regulatory Professional Body on the appropriateness of the appointment and whether he is in compliance with the statutory regulations.
- A disclaimer (in the form of a disclosure statement) which outlines the extent and nature of these pre-commencement consultations will create an 'air' of transparency between the parties.

Relevant Case law

[Re Korda, Ten Network Holdings Ltd (Admin Apptd) (Recs and Mgrs Apptd) [2017] FCA 914 [Australia] – it was held that safeguards should be implemented to avoid the existence or appearance of conflict should an IP appointment be necessary.

ETHICAL ISSUE #2 – The report concealing evidence of misconduct by the directors.

Ethical Principle 1 - Integrity¹¹

In addition to complying with applicable law, Members should endeavor to demonstrate the highest levels of integrity by being straightforward, honest, and truthful; and by adhering to high moral and ethical principles in all aspects of their professional practice.

(Secondary Source) ICAEW Ethical Fundamental Principle - Integrity¹²

An insolvency practitioner should be straightforward and honest in all professional and business relationships.

Reasons why this is an ethical issue:

- During Mr. Relation's presentation to the creditors, he lied, indicating that there was no 'wrongdoing and maladministration' by the directors of the company. As an IP Mr. Relation has a duty to be honest in his dealings with stakeholders.
- Mr. Relation concealed facts from the creditors and misrepresented information contained in the company's plan for reorganization. The content of the plan was based on a 'superficial' investigation and incredible reports drafted by Mr. Inlaw and therefore, could not accurately determine a true method of recovery for the company. Mr. Relation's standard of integrity was called to question because he intentionally omitted critical information from the creditors report.
- Mr. Relation was aware of the directors' breach of their fiduciary duties (via payment of performance bonuses and wrongful trading) and the potential personal liabilities. As a IP, Mr. Relation has a duty to transparency and to report the misconduct of the directors as well as circumstances surrounding the class action claims. The fact that he was made privy to this immediately after his appointment, implies that Mr. Relation was not honest and truthful in citing this as a possible implication that the director's actions materially contributed to the decline of the company's financial position. Furthermore, Mr. Relation has also breached his fiduciary duty to exercise the powers of the office with independence and impartiality and to act in the best interest of the creditors to whom fiduciary duties are owed. "If an IP has extensive powers and responsibilities, yet lacks integrity, ethics and

¹¹ The Guidance Text, Section 5.2 (Integrity), p.12

¹² Idem, re footnote 8

basic morality, it will not be of much benefit to the debtor, its stakeholders or society at large”¹³.

The threats identified in the scenario above:

- Mr. Relation is not demonstrating professional competence and behaviour and due care by making his determination that no investigation is required, having only used a report provided by the director, rather than seeking independent documents to evidence his findings.
- Mr. Relation did not divulge relevant information regarding the wrongful trading, performance bonuses and the class action suit that would be damaging in reporting the financial position of the company. Because of Mr. Relation's close relations with Mr. Inlaw, there was a financial interest on both parts to progress a successful restructuring of the company. This raised self-interest and familiarity threats.
- Mr. Relation is not demonstrating integrity by failing to be honest and straightforward with creditors about the company's financial position.

Safeguards

- It would be difficult to remedy this threat. However, Mr. Relation could maintain detailed records that would enable an informed third party to reach a view of the appropriateness of his actions.
- Furthermore, as an IP, Mr. Relation should take immediate steps by implementing risk management systems to identify scenarios that would pose a threat (whether the threat is pre or post appointment).
- Extensive due diligence on the client prior to engaging their services or accepting the appointment is crucial.

ETHICAL ISSUE #3 – The perception of the television interview

Ethical Principle 4 – Professional Behaviour¹⁴

Communication with stakeholders should be used to inform and educate them on the progress of a case. Members should strive to be accurate, honest, clear, succinct and timely.

(Secondary Source) ICAEW Ethical Fundamental Principle - Integrity

An insolvency practitioner should comply with relevant laws and regulations and should avoid any action that discredits the profession. Insolvency practitioners should conduct themselves with courtesy and consideration towards all with whom they come into contact when performing their work.

Reasons why this is an ethical issue:

- Due to Mr. Relation having publicly advocated in favour of small creditors over 'big business', he is being perceived as not being impartial in his treatment of creditors. As an IP, Mr. Relation has a duty to treat the claims of all creditors fairly and objectively.
- The nature of the discussions on the television interview with Mr. Relation could also be 'seen and perceived' to be independent and impartial in the context of the restructuring and liquidation proceedings.
- It is possible that as a result of this interview, the 'trust and reliance' of the IP to act in the best interest of ABC bank is not plausible. The lawyer for ABC Bank has already expressed her discomfort regarding Mr. Relation's position regarding financial institutions and it is likely that the bank could become uncooperative, reject to the plan for recovery and repossess its secured asset.

¹³ Idem, The Guidance Text, section 3.2 (the nature of an insolvency appointment) p.3

¹⁴ Idem, Section 5.5 (Professional Behaviour), p. 25

The threat identified in the scenario above

— Advocacy threat: Mr. Relation's comments on the television interview promoted an opinion that suggest he may not be capable of acting objectively when considering the position of all creditors. The comments could be perceived as a direct threat to the interest of the bank and other creditors involved in the insolvency proceedings of the company.

Safeguards

IP's should use the media as a vehicle to educate and inform stakeholders of their performance and duties in the insolvency procedure, rather than 'sow' seeds of controversy that could be damaging to the [procedure.]

Commented [JL12]: Thank you for this excellent and well-reasoned answer!
I think that I might use this as my model answer for this question in future!
15

*** End of Assessment ***