



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).**
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- 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 2023. The assessment submission portal will close at 23:00 (11 pm) BST (GMT +1) on 31 July 2023. 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

**Unethical behaviour by insolvency practitioners can undermine the entire insolvency framework of a country due to a lack of trust and confidence in the insolvency profession.**

(a) **True**

(b) **False**

Question 1.4

**Being an officer of the court requires a person to act with integrity and to not mislead the court in acting on behalf of a client. An officer of the court recognises the importance of dishonesty in the justice system and as such would act in a manner which would further the administration of justice to the best of their ability.**

(a) **True**

(b) **False**

Commented [LJ3]: b

Question 1.5

**Select the correct answer:**

**Ho 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, Ho 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

**John was appointed as the liquidator of DebtCO. One of DebtCO's suppliers and major unsecured creditors, S. Panesar, is very friendly towards John. Mr Panesar has heard in passing that John enjoys sport and managed to procure tickets to several events in the recent Tokyo 2020 Olympic Games, which John accepted. John realises that this will be deemed questionable behaviour and he fears that Mr Panesar will make the offer and acceptance of the gift public. This would certainly create a threat to his perceived objectivity.**

**This situation is an example of a / an \_\_\_\_\_ threat.**

**(a) familiarity**

**(b) self-review**

**(c) advocacy**

**(d) intimidation**

Commented [LJ4]: d

Question 1.7

**Select the correct answer:**

**Thembi 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. Thembi 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

Select the correct answer:

**Rajesh 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. Rajesh 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 Rajesh 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

Select 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.**

Please choose the most correct answer.

- (a) This statement is false since the practitioner might have carried out more work and invested more resources than is reflected in the fee.**
- (b) This statement is true since jurisdictions always allows for an adjustment of fees where it is necessary.
- (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

Select the most correct answer from the options below.

**Timothy has been appointed as the judicial manager of a large public company. As a result of his appointment, he has been privy to confidential information regarding the company and its stakeholders. Timothy is aware that there is a duty on him to maintain confidential information and is very careful when he speaks to the press and members of the public. However, he often discloses work related information including sensitive information to his brother-in-law when they see one another over weekends and Timothy believes the information will be kept confidential by him.**

Please select the statement that best describes Timothy's situation.

- (a) Timothy is not in breach of his duty to confidentiality. He maintains confidentiality when engaging with the press and public. His disclosure to his brother-in-law poses no risk as he trusts him to keep the information to himself.
- (b) Timothy is in breach of his duty to act in the best interests of the beneficiaries of his duties. Timothy's disclosure of confidential information to his brother-in-law will pose a conflict of interest and create bias in the exercise of his duties.
- (c) Timothy is in breach of his duty to confidentiality. As an IP he should maintain confidentiality even in a social environment and should be alert to the possibility of inadvertent disclosure to an immediate family member like his brother-in-law.**
- (d) Timothy is not in breach of his duty to act with good faith. He maintains confidentiality when engaging with the press and public. His disclosure to his brother-in-law poses no risk as disclosures to immediate family members are not regarded as threats to compliance.

QUESTION 2 (direct questions) [10 marks]

Commented [LJ5]: 10/10

Question 2.1 [maximum 3 marks]

**What are the most common elements associated with the existence of a fiduciary relationship generally?**

*The three most common elements are:*

- *that the fiduciary acts on behalf of the beneficiary - there is a relationship between the two parties and the fiduciary must act in the best interest of the beneficiary;*
- *the fiduciary has some kind of power or control over the destiny of the beneficiary - the fiduciary is responsible for acting for and on behalf of the beneficiary; and*



- *there is an element of vulnerability of the beneficiary - the beneficiary must trust the fiduciary to use their powers in the best interest of the beneficiary and is therefore naturally vulnerable to abuse of that power.*

Commented [LJ6]: 3/3

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 is that the IP must act with independence and impartiality in fact and in perception.*

*To act with independence and impartiality in fact the IP must ensure he is not unduly influenced or biased towards or against a stakeholder because of any prior or existing relationship and should not take the appointment if such a relationship could give rise to a conflict of interest. The IP must be able to act in the best interest of the beneficiaries of the estate. Taking a joint appointment or disclosing any relationships that exist may not be sufficient to remove the threat to independence or integrity.*

*The IP should also not personally acquire or otherwise remove assets from the estate except for any properly authorised remuneration. A purchase in the ordinary course of business from an estate which is a retailer who supplies to the public must be done on the same terms as any other customer and the IP should not take advantage of any staff discounts or other special payment terms as this could give the impression of a lack of independence.*

*The IP must also not accept any special kick-backs or secret commissions.*

*To act with independence and impartiality in perception is about avoiding any actions that may give a reasonably informed observer reason to doubt the independence or integrity of the IP. This is of vital importance in maintaining the trust and confidence the estate's beneficiaries in both the IP and the insolvency process.*

Commented [LJ7]: 4/4

Question 2.3 [maximum 3 marks]

**Explain the difference between professional and fidelity insurance and elaborate on why it is of particular importance for Insolvency Practitioners to obtain this type of insurance.**

*Professional indemnity insurance protects the IP from financial claims by stakeholders taking action against him for acting negligently.*

*Fidelity insurance protects the stakeholders should there be an event of fraud or dishonesty by the IP or someone working for him.*

*The practitioner needs to ensure that he has the means to meet any claims awarded against him.*

*The IP also has a duty to protect the assets of the estate against embezzlement or misfeasance and fidelity insurance is one of the actions the IP can take to fulfil this duty.*

Commented [LJ8]: 3/3

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

Commented [LJ9]: 13/15

Question 3.1 [maximum 6 marks]

***The ethical principle that requires insolvency practitioners to act with integrity also states that he should adhere to high moral and ethical standards. Explain what is meant by this and provide examples to illustrate the difference between these concepts.***

*Morals are internal personal beliefs on what is right or wrong and ethical standards are external standards of what the group that person belongs to considers to be acceptable conduct. The group in this case being the insolvency profession.*

*Morals can differ between different people because they are based on how the person has been raised and their education and culture and they can change over time as that person's circumstances and experiences change.*

*Many jurisdictions and insolvency bodies have produced Codes of Ethics that the IPs within the jurisdiction or who are members of the bodies must adhere to.*

*The INSOL Principle of Integrity has both high morals and ethical standards included because they are not the same but both are important for the IP to be deemed as acting in good faith. A moral action could be considered unethical and should a conflict between the two arise for an IP the professional standards should take precedence.*

*Lying by omission could be considered immoral by an IP who then finds himself in a situation where full disclosure would breach the ethical code of confidentiality. He would have to find a way to be as honest as truthful as possible without breaching any confidentiality or trust.*

*Equality is a moral; equitability is an ethic. As an individual the IP may believe that all people should be treated equally but as a practitioner he must treat them equitably, i.e. with fairness and impartiality. An example would be treating creditors within a creditor group equally while certain creditor groups are given priority when there are funds to be distributed. The IP is required to treat all creditors equitably but he can't treat them all equally.*

Commented [LJ10]: I would have liked to see a little on the connection between ethics and morals.  
4/6

Question 3.2 [maximum 9 marks]

**Which elements of insolvency proceedings are especially prone to create or give rise to threats to independence and impartiality? Please elaborate with reference to primary and secondary sources of law.**

Pre-appointment Involvement

*While it can be beneficial for the outcome of a case for the IP to have prior knowledge about the insolvent's situation and insolvents are encouraged to get prompt advice, IPs must be careful to avoid a potential advocacy threat to independence and impartiality.*

*The ICAEW Code of Ethics ("English Code") uses the term significant professional relationship and sets out some examples where pre-appointment work can give rise to a conflict of interest and the Australian Code of Professional Practice ("COPP") sets out the type of pre-appointment advice that won't generally give rise to a threat; that being the restriction of advice to the financial position of the company, the potential insolvency options, including alternatives, and the effects of these options.*

*In the Australian case Re Korda, Ten Network Holdings Ltd, ("Re Korda") the administrators firm had carried out pre-appointment work for several months before being appointed and the question before the court was whether they should be allowed to continue as administrators.*

*The court accepted that the work carried out did not involve advising the company or its directors or any stakeholders and was restricted to forming an understanding of the financial position and operations of the company in order to be able to develop a rescue plan and, in case rescue may not be possible, a draft administration plan.*

*The court held that safeguards could include the proper recording of all meetings and tasks carried out and it being made clear to the directors that should the rescue plan not succeed the person carrying on the pre-appointment work could become the administrator and what duties the administrator would have in respect to the company and the directors.*

*In such circumstances IPs should also disclose the consultations and their extent & nature. The English Code sets out a list of matters that the IP shall document and the Australian Corporations Act 2001 ("ACA") has various sections setting out the requirements for an IP to declare relevant relationships and indemnities.*

*Other safeguards include internal firewalls through the use of different teams and in the case of Re Korda the appointed administrators were not involved in the pre-appointment work nor had they met with any company officers prior to appointment.*

*The English case Re 1 Blackfriars Limited (in liquidation) ("Blackfriars") highlights the care IPs should take in their pre-appointment communications. The Joint Liquidators ("JLs") alleged that the Former Administrators ("FAs") had agreed with the appointing creditor that the administration would be "light touch" and that the appointing*

*creditor “would guide the administration”. The court concluded that although the pre-appointment budget was on the basis of a “light touch” administration the FAs had not surrendered any of their powers or their discretion to perform their duties as administrators.*

#### Appointment

*The appointee of the IP, be it the directors or a stakeholder, may believe that they have the ability to influence the IP or direct their actions. The IP must be very clear with the appointee that their duty is to act in the interests of all beneficiaries of the estate. The Blackfriars case mentioned above also highlights the potential of a perceived threat to independence of the IP that can surround an appointing stakeholder.*

*Another case that specifically raised the relationship issue was Ventra Investments Ltd v Bank of Scotland PLC (“Ventra”). Administrative Receivers (“ARs”) were appointed over Ventra from a lender’s insolvency panel of preferred firms. These firms get regular work from the lender and the ARs were accused of being too closely linked to the lender and “effectively being under the control” of the lender. The case highlighted the self-interest threat of a relationship with an appointing creditor because the subsequent liquidators of Ventra believed that the ARs had been unwilling to challenge the lender’s potential wrongdoing in selling Ventra’s secured assets at undervalue.*

*The English Code defines a self-interest threat as one where a financial or other interest may influence the IPs judgement and goes on to give a close relationship with a creditor as an example. Even if the relationship is not close the IP must beware of any perceived influence and even more so if the appointing stakeholder has underwritten the IP’s remuneration. Both the ACA and the COPP have sections regarding the declaration of indemnities and upfront payments.*

*Documentation and declaration of the potential threat and any safeguarding measures put into place will be important in maintaining the trust in the IP’s independence but he must always consider withdrawing from the appointment and / or the termination of the business relationship with the creditor if the threat cannot be mitigated to appropriate level.*

#### Subsequent appointments

*Being appointed to act in relation to the same debtor company on subsequent appointments, for example as liquidator of the company where the IP previously acted as administrator, is allowed in some jurisdictions (e.g. England or Singapore) but can give rise to a self-review threat.*

*Both the English Code and the Insolvency Practitioners Association of Singapore Code of Professional Conduct and Ethics (“IPAS”) define a self-review threat as being the threat that the IP will evaluate prior judgements or services inappropriately because they were performed by themselves or a colleague. The English Code goes on to provide suggested responses to specific subsequent appointment scenarios.*

*The IP must also be mindful of appointments to act in relation to different entities that are controlled or owned by the same persons. These can also be thought of as subsequent appointments and threats could arise through an actual or perceived significant relationship with these persons.*

*Had the IPs appointed as FAs and ARs (respectively) in the Blackfriars and Ventra cases above then been appointed as the liquidators they would have found themselves in a situation where they should have considered challenging their own prior judgements and actions. No reasonable person would be able to believe their objectivity in such a situation.*

*Subsequent appointments can also give rise to a self-interest threat, where the IP's judgement or behaviour could be inappropriately influenced (or seen to be) by the knowledge that they are likely to get the subsequent appointment and the associated remuneration. The IP appointed as liquidator following a failed rescue of the company could be accused of not making his greatest effort to effect the rescue, knowing that he would be appointed as liquidator and get paid again. There is also the potential issue that he may be seen as getting paid twice for the same work done. However those that advocate subsequent appointments hold the view that the benefits of the prior knowledge of the entity, its financial situation and not having to do some of the same work again outweigh the risks.*

Secret monies / personal transactions

*The INSOL Ethical Principles for Insolvency Professionals states that secret payments to receive or provide work should be unacceptable.*

*It also states that members should not acquire assets of the estate except as duly authorised remuneration. In the commentary it does give an example where an IP may purchase items from a retailer in the ordinary course of business but he should not take advantage of any discounts.*

*Where a jurisdiction does allow the purchase of company assets by the IP (or those closely associated with the IP) he should get proper consent and follow the proper procedures required, including disclosure.*

*The IP has a fiduciary duty to act for the benefit of the estate's beneficiaries at all times and any personal transactions must be conducted in a manner that does not unduly enrich the IP nor give rise to a conflict of interest. This must apply to all personal transactions, including the IP's appointment.*

*In the case Commonwealth Bank of Australia v Irving, Irving was appointed the administrator of a company, NPC, where he was a close personal friend of a former director of NPC. The director had resigned only 2 weeks prior to the appointment. Irving had disclosed his relationship before taking the appointment and there was no evidence of impropriety but two of the creditors still challenged his appointment on*

*the grounds of lack of independence. As stated in many ethical codes, the IP must be independent in fact and in perception and disclosure may not be sufficient to remove the threat.*

*The court concluded that the relationship created a familiarity threat to independence. The court also noted that Irving had been an advisor to the company prior to his appointment, creating an advocacy threat and a self-review threat.*

Commented [LJ11]: 9/9

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

***WeBuild Ltd is a private company registered in Eurafriclia. The company specialises in construction and property development and is well known in the area where it conducts its 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 financial 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 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 and licensed insolvency practitioner, 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. An undertaking that he complies with by subsequently issuing a written declaration of independence.***

***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 difficulties 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.**

**Mr Relation's firm has been implementing a work-from-home arrangement for employees, and his secretary and associate have several sensitive documents pertaining to WeBuild Ltd in their possession and on their personal computers at home.**

#### **INSTRUCTIONS**

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

You are required to 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.

**References to the Principles and Commentary are to those within the INSOL International Ethical Principles for Insolvency Practitioners.**

Objectivity, Independence & Impartiality (Principle 2)

*Mr Relation ("Mr R"), the administrator, is related to Mr B Inlaw ("Mr B"), a director, and godfather of the director's daughter so there is a familial and close relationship between the two.*

*Principle 2 states that members should "exhibit the highest levels" of these three ethical standards and that they should avoid conflicts of interest. The Commentary goes on to say that a member "should not accept an appointment" if a lack of independence is possible or could be perceived. A reasonable and informed person would have no choice but conclude that Mr R is not independent and have doubt over his ability to be objective and impartial.*

*The ICAEW Insolvency Code of Ethics ("English Code") defines the Familiarity Threat to independence as the IP being too sympathetic or antagonistic to others' interests and their work due to a close or long term relationship.*

*The Australian Code of Professional Practice (the ARITA "COPP") expressly states that a member "must not" accept the appointment where there is a "close or immediate family relationship" with a list of stakeholders, one of which being an employee of the debtor company who has control or significant influence over the company. The English code also gives a list naming directors and senior management, including shadow and former directors.*

*Mr R did attempt to mitigate the threat by issuing a written declaration of independence and stating that he believed he could still act impartially and independently. If the written declaration had been like the Australian DIRRI, which is also required by law, the purpose of the declaration is transparency that there is a relationship but that it is not a threat then the declaration has not been used in the manner intended. The Commentary also clearly says that disclosure is not a guaranteed cure to the conflict of interest.*

*Mr R should not have accepted the appointment.*

*The reason the relationship is an ethical issue is that an IP must carry out his duties and powers in the best interests of the beneficiaries and they can only trust him to do so if there is no question of bias or a conflict of interest that could override his judgements when exercising his obligations and duties.*

*His familiarity with Mr B does appear to have overridden his professional judgement and he only carries out superficial investigations into the company's affairs and circumstances surrounding its failure. This is followed by his statement at the creditors meeting that he had found no evidence of wrong doing or maladministration. A reasonably informed person could easily conclude that Mr R is not acting independently or objectively and the Commentary is very clear that IPs must be independent and "be seen to be" independent.*



*Mr R's television interview criticising financial institutions and suggesting that the "interests of lower ranking creditors should sometimes outweigh" the banks could also indicate a lack of objectivity and Mrs Keeneye feeling uncomfortable about Mr R's appointment indicates that she is not confident in any lack of bias on Mr R's part. Again, the perception of bias can be just as damaging to the trust in the IP to carry out his duties and obligations in an ethical manner.*

Integrity (Principle 1)

*Mr R brushes aside the directors' concerns that they are in breach of duty for not remedying the faulty machinery situation and that they may have traded while the company was insolvent, by telling them he would not be focusing on them. He is also ignoring potential evidence that the wrongdoing took place.*

*Many jurisdictions require the IP to investigate the causes of insolvency and any breaches of duty that bring it about. In the UK, IPs must report on a director's fitness to be concerned with the management of a company under the Company Director Disqualification Act and to consider whether there may possible recoveries for the insolvent estate because of any maladministration of the company or its assets. A director can be personally liable for the company's debts if he is found guilty of wrongful trading (trading when he knew or ought to have known that the company could not avoid insolvency) or fraudulent trading (intentionally deceiving and defrauding creditors).*

*While Mr R did not focus on the directors as he stated, he should have advised them of any duties an administrator has to investigate and report on their conduct and the circumstances surrounding the insolvency of the company. He should also have advised them of the consequences of any subsequent liquidation should the administration plan not succeed. By not doing so he is in breach of the integrity Principle to be straightforward, honest and truthful.*

*Mr R's statement at the creditor's meeting that he had not found any evidence of wrongdoing also calls into question his integrity as, if he purposefully avoided the investigations (as opposed to just being incompetent), he is implying that his investigations were thorough enough to have found evidence if it had been there while knowing that they were not. The Commentary mentions honesty and truthfulness and if Mr R is misleading the meeting he is mis-representing the information and not adhering to "high moral and ethical principles".*

Professional Behaviour (Principle 4)

*This principle focuses on communication, both with stakeholders and the wider world, and making sure members are accurate and honest and avoid bringing the profession into disrepute. The Commentary highlights that keeping creditors informed needs to be balanced with the fiduciary duty to act in good faith and maintain confidentiality.*

*The comments in Mr R's television interview could not only cause a creditor to doubt his objectivity but also raise doubts about his professional behaviour as it could be*

*seen as him criticising the profession and implying that sometimes the rules could be bent to achieve improved outcomes for lower ranking creditors.*

*It also risks increasing confusion and misunderstanding by stakeholders. Although Jennifer Dickfos is discussing the gaps in creditor understanding in the context of remuneration in her paper "The Costs and Benefits of Regulating the Market for Corporate Insolvency Practitioner Remuneration" the loss of trust in the insolvency profession and the risks of complaints because the creditor is not insolvency literate spans all elements of communications with creditors. These communications are opportunities to close the gaps in creditor knowledge and public comments with confusing messages does not aid the profession in helping creditors to improve their understanding.*

*There is also a risk of a breach in confidentiality with Mr R's firm implementing work-from-home arrangements for employees. As also covered in Principle 6 - Practice Management, there should be policies and procedures in place to ensure their risk management is robust.*

*Staff should not have any work related documents on personal computers. The firm should ensure that all work related matters are carried out on firm issued laptops that are supported with IT security systems and policies. Staff should also have full training in the policies and procedures pertaining to the security and confidentiality of meetings and documentation. The removal of documents from the secure office environment (including on memory sticks) should be kept to a minimum in order to reduce the risk of them being left in a public place or being visible to a third party.*

**Commented [LJ12]:** An excellent and well-structured discussion.

15/15

**\* End of Assessment \***