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RECOVERY SUPPLEMENT

R3, the Association of Business Recovery Professionals

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Career progress

Two of the 2012 JIEB award winners offer tips for study and talk about their career progression in the last 12 months.

Andrew Waudby

Since attaining his JIEB qualification last year Andrew has been made a partner at his firm, Clough Corporate Solutions. He won the R3 Smaller Practices Group (SPG) prize and the BPP prize, awarded to the candidate with the highest mark in the personal paper.

How important was the JIEB in your career progression?

Attaining the JIEB qualification was a huge step in my career as it allowed me to become a licensed insolvency practitioner. Furthermore, studying for the examination allowed me to gain a much broader and deeper technical knowledge of all aspects of insolvency, which has enhanced my ability to provide the best and most appropriate advice to all stakeholders and fully appreciate the circumstances surrounding each case.

The JIEB exams are notoriously tough – how did you juggle study commitments with maintaining work/life balance?

Obviously there has to be some give and take. I made sure that I still allowed myself some social time, but I had to adopt a more regimented approach to my time management. Work commitments can sometimes interrupt study, but you need to learn that one missed study session isn't the end of the world.

You need to be realistic about what you can do without tiring yourself out and need to allow yourself some well earned relaxation time. Earlier starts mean that you don't need to burn the midnight oil and can enjoy an evening with your feet up.

What advice would you give future students?

Start your study early. Having my revision notes completed by early August allowed me to move on to practising past exam questions and get to grips with what the examiners are looking for. Continuing to bulk up your notes as you do this allows you to incorporate key words and phrases in to your notes, which often come up over and over again in the past answers.

Gaining exposure to a broad range of case work prior to and during my studies gave context to the learning materials.

By working to a structured day plan in the last month of my study I could work for eight quality hours and always felt that I had a productive day. I was lucky enough that my employer allowed me plenty of time off before my exams to implement this plan.

What have been your year's highlights since learning of your success?

I became a licensed insolvency practitioner in 2013, which was the whole point of taking the exams! More recently I have been promoted to partner within my firm.

On a personal note I got engaged in May 2013 and am now planning for our wedding later this year. After a hard year of studying resulting in not seeing as much of each other as we would have liked, getting down on one knee was the least I could do.

What do you most enjoy about your job?

I enjoy the new challenges that each day brings. I feel that I am constantly learning and strive to constantly improve. The variety of insolvency work that I am exposed to within my firm allows me to test the scope of knowledge that I picked up while taking the JIEB qualification.

Have you taken up any new hobbies, now you're no longer studying?

During my exams I thought that it was important that I continued with my hobbies of football, squash and the gym, although I did have to compromise now and again. After my exams I allowed myself a bit of downtime and a few well deserved holidays.

Lorna Mode

Since winning both the ICAEW prize (awarded to the ICAEW member with the highest mark) and the PwC prize for second place overall, Lorna, who is assistant director of restructuring services at Deloitte LLP, has enjoyed refocusing on work commitments and home life.

How important was the JIEB in your career progression?

A lot of my day-to-day role involves technical compliance, so without the JIEB I would struggle to progress further. Ultimately I would like to take appointments and therefore it is a necessity. However, regardless of career progression I also wanted to pass the JIEB to achieve my own personal goals and it has given me greater confidence in my abilities.

The JIEB exams are notoriously tough – how did you juggle study commitments with maintaining work/life balance?

It becomes more of a work/study balance, and in my case I also have two young children so I needed to factor in some time for parenting as well! I had to be incredibly organised and disciplined with my study time. I had a study planner from the start of the year so I studied regularly rather than cramming at the end. This also enabled me to have every Saturday free to spend time with my family, and I relied heavily on my husband for support with the children. Deloitte also offers a very supportive study package so I was able to take the two months prior to the exams as leave.

What advice would you give future students?

Be realistic about how you personally study and tailor your study plan accordingly; have a study buddy; listen to your tutors; know the 'Book'; don't leave it to the last minute.

What have been your year's highlights since learning of your success?

Receiving my JIEB qualification and sailing to America on the QM2.

What do you most enjoy about your job?

I really enjoy the technical challenge of insolvency and the variety of work and cases. I'm currently working on Blockbuster and we also have Comet and HMV in my team, so there are lots of interesting issues to resolve. I also work with a great team of people.

Have you taken up any new hobbies, now you're no longer studying?

All the time I spent studying has now been refocused back on to my family, plus a few more sessions at the gym.

Editor recovery@r3.org.uk | Recruitment recovery@r3.org.uk/recruitment

Joint Insolvency Examination – November 2013

Congratulations to all the successful candidates.

JIEB 2013 prize winners

Insolvency Practitioners Association Prize for First Place
Tim Armstrong

PricewaterhouseCoopers Prize for Second Place
Sarah England

Leonard Curtis Prize for Third Place
Lee Green

Association of Chartered Certified Accountants' Prize (awarded to the ACCA member with the highest mark)
Peter Anderson

ICAEW Prize (awarded to the ICAEW member with the highest mark)
Tim Armstrong

Insolvency Lawyers' Association Prize (awarded to the lawyer with the highest mark)
Laura Baker

Institute of Chartered Accountants of Scotland Prize (awarded to the candidate in the Scottish papers with the highest and sufficiently meritorious marks)
Adele Macleod

BPP Prize (awarded to the candidate with the highest mark in the Personal paper)
Sarah England

R3 Smaller Practices Group Prize (awarded to the candidate with the highest mark from a smaller practice)
Lee Green

A

Andersen (8272) Walton-On-Thames
Anderson P (8180) Macclesfield
Armstrong T (8261) Norwich

B

Baker L (8183) Altrincham
Baker N (8175) Oldham
Ball E (8143) Leicester
Baluchi S (8135) Shoreham-By-Sea
Bateson T (8265) Nottingham
Battrick D (8091) Epsom
Bingham L (8013) Motherwell
Bower E (8205) Sheffield
Brookbanks J (8051) London
Bucknall S (8102) Hove
Bulloss J (8216) Leeds
Burns J (8045) London

C

Camp J (8079) London
Carter M (8140) Cheltenham
Chan S (8238) High Wycombe
Childs A (8048) Oxted
Cooper P (8138) London
Culbert N (8030) Dromore
Curran R (8206) Pudsey

D

Dhalla S (8056) Ruislip
Diss C (8067) Chelmsford
Donacien F (8134) London
Donaldson J (8022) Belfast
Dowson C (8255) Sheffield
Dumville D (8071) Loughton
Dyer B (8263) Cambridge

E

England S (8050) Harpenden

F

Fletcher M (8073) Borehamwood
Fox T (8015) Clydebank

G

Gardner S (8234) Leeds
Glen J (8006) Glasgow
Goschalk J (8271) London
Green L (8262) Norwich
Gurung Y (8090) London

H

Hammond J (8229) Sheffield
Hargreaves G (8190) Altrincham
Harris N (8259) Exeter
Harris A (8087) St. Albans
Haughton K (8197) Bolton
Herridge K (8228) Leeds
Higham P (8176) Chorley
Holmes C (8040) London
Horner C (8252) Saltburn-By-The-Sea
Howells R (8168) Knutsford

J

James D (8231) Bristol
Jenkins M (8225) York

K

Keddie P (8039) London
Kelly J (8089) Gravesend
Kelsall D (8217) Leeds
Khaki A (8065) Northwood
Knight J (8068) Beckenham
Koumettou Y (8104) London

L

Lau S (8152) Birmingham
Lawson A (8109) George Town
Leach J (8060) Rickmansworth
Lee G (8244) Eastleigh
Luxford B (8108) Hornchurch

M

Macleod A (8009) Glasgow
Maisey G (8055) Welwyn Garden City
Mallatratt P (8267) Sidmouth
Manyande N (8113) Beckenham
Mcclenaghan L (8209) Leeds
Mehers A (8188) Bury
Mennim N (8001) South Queensferry
Monks M (8187) Stockport
Moulds V (8181) Salford
Myatt A (8208) Tadcaster

N

Nicholls P (8046) Guildford

O

O'Boyle P (8241) Reading

P

Parry C (8008) Glasgow
Patel S (8093) Aylesbury
Paxton A (8077) London
Poole V (8184) Prescot

R

Rawlings J (8235) Bristol
Regon D (8024) Belfast
Reilly A (8132) George Town
Robinson J (8213) Leeds
Ross M (8111) London
Rupping J (8128) Bedford

S

Sharp J (8127) Twickenham
Simmons A (8095) London
Stafford N (8232) Gloucester
Stanyon B (8085) London
Strowger J (8066) London

T

Taylor P (8182) Tarporley
Thompson O (8177) Manchester
Tomson J (8178) Preston
Townsend V (8076) London
Townsend I (8257) Northallerton

V

Venner L (8258) Crediton

W

Warnock D (8028) Belfast
Watkins A (8072) London
Watson P (8019) Belfast
West N (8156) Shrewsbury
Whalley K (8094) Egham

Y

Young K (8246) Alton

Analysis of November 2013 results

Papers sat	Papers passed				
	3	2	1	0	Total
3	51	23	11	13	**98**
2	–	26	29	31	**86**
1	–	–	44	33	**77**
Grand total	**51**	**49**	**84**	**77**	**261**

Do you know your WPSATC from your simple WP?

The world of 'litigation headings' made easy…

To non-lawyers, documents written by lawyers can often seem unnecessarily complicated, pernickety, convoluted and difficult to understand. Added to that, many documents are often headed with strange phrases such as 'Attorney-Client Work Product', 'Privileged', 'Subject to Common Interest Privilege', 'Without Prejudice', 'Subject to Contract' and so on. What do these mean exactly and why are they used? This short article will provide a quick and simple summary of each of the most prevalent of these phrases so that they can be better understood and used correctly by readers.

'Privileged' or 'subject to privilege'

The most common of these headings is an assertion that a document is 'privileged'. The effect of a document being 'privileged', once established, is that it does not have to be disclosed to the other side or to the court during legal proceedings (most commonly, during disclosure). Privilege is a very large topic of its own and this article can only deal with the subject in outline, but at its simplest there are two forms of privilege: legal advice privilege and litigation privilege. In brief, the first category covers confidential communications between lawyers and their clients, which are made for the primary purpose of offering legal advice; the second covers confidential communications between lawyers and clients or between lawyers or clients and a third party, which are made in connection with actual or imminent litigation. Adding the heading 'privileged' to a document does not actually make the document privileged but makes it easier to identify documents that are intended to be privileged. When assessing whether or not a document is covered by privilege, the court will have regard to its nature and purpose and will consider its actual substance rather than the label attached to it.

> "Adding the heading 'privileged' to a document does not actually make the document privileged"

'Without prejudice'

The label 'without prejudice' is only used when efforts are being made to settle a dispute between the communicating parties (though there is no requirement for actual court proceedings to have been commenced). Labelling a letter or an email in this way provides a degree of protection for the writer insofar as any statements made in that correspondence (such as, for instance, a statement that could be construed as an admission of liability) cannot be used by the other party in any subsequent court proceedings. The reasoning behind the principle of 'without prejudice' communication is ultimately to encourage parties to make reasonable and realistic attempts to resolve a dispute as soon as possible. Parties are understandably far more incentivised to make an offer of settlement when they can be safe in the knowledge that there is no risk that the contents of their offer might be used to their detriment further down the line. To the extent that 'without prejudice' correspondence cannot be used by the parties in legal proceedings, it is said to be covered by 'privilege'.

'Without prejudice save as to costs'

In what can be viewed as an extension to the 'without prejudice' principle, it is also common for parties to mark certain correspondence as being 'without prejudice save as to costs'. As with correspondence simply marked with the shorter phrase, communications bearing this longer expression cannot be used in court or in an arbitration while the relevant dispute is being determined. However, such communications can be brought to the attention of the judge or arbitrator after the matter has been settled when he or she is making an order as to which party will bear the cost of the proceedings. Evidence of a genuine willingness to settle a dispute earlier can be very influential over a judge or arbitrator exercising his or her power to make an order for costs; to this end, 'without prejudice save as to costs' offers can potentially be of real benefit to any party who chooses to make one by potentially placing a risk of adverse costs being awarded against the other side. Again, the aim of their existence is to encourage active attempts to settle a dispute outside of court.

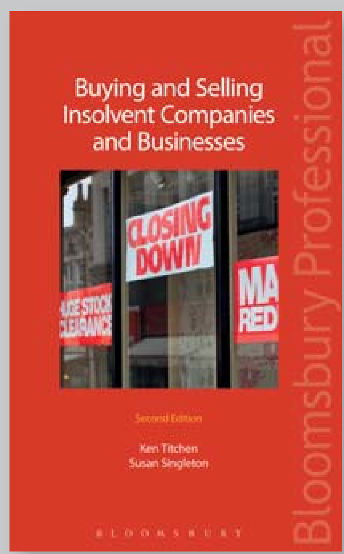
'Subject to contract'

The phrase 'subject to contract' is often employed between parties in general commercial situations since it allows a greater degree of freedom when negotiating the provisions of a contract. For instance, the effect of labelling the proposed terms of a sale agreement as being 'subject to contract' is to ensure that neither party will be bound until a formal contract is executed. In a litigation context, for example, when negotiating a settlement agreement, the term can be used to ensure that the general terms of settlement that have been agreed are not binding on the parties unless they can agree the final form of a written contract of settlement. The matter is effectively deemed to be still under negotiation while this expression is used, meaning that either party could withdraw or alter its position without having the danger of incurring liability.

> "The aim… is to encourage active attempts to settle a dispute outside of court."

In addition to labelling their communications 'without prejudice', parties in a dispute may also choose to state them to be 'subject to contract'. As in the general commercial context, the use of such a label on a settlement offer means that the parties will not be bound by its terms until a formal agreement to that same effect has been entered into. Once again, the result is that disputing parties are in theory pushed to be more willing to explore alternative ways of resolving their issues without the need to resort to a judge or an arbitrator. ■

DANIEL HENNIS is an associate at Jones Day.



- **Edition** Second
- **Authors** Ken Titchen and Susan Singleton
- **Publisher** Bloomsbury Professional
- **ISBN** 978 1 78043 201 4
- **PRICE** £95

> "This book sits squarely within the category of academic text that serves both sides of the experience divide."

Buying and Selling Insolvent Companies and Businesses

As any experienced restructuring practitioner will know, the sale of the business of an insolvent company has a number of nuances that do not arise in a solvent transaction. The ease in which a transaction is completed will often depend on the recognition of those nuances by the professionals acting on either side of the transaction. In this second edition of their book, Ken Titchen and Susan Singleton have sought to produce an authoritative text that deals with each stage of a sale and purchase transaction, with the law current as at 1 April 2013.

With the first chapter of the text dealing with basic corporate insolvency principals, it might at first appear that this text is pitched at the inexperienced, rather than the seasoned, professional. It is clear, however, from the remainder of the text that with issues such as financial support direction (FSD) notices being addressed (albeit in short form) that this book sits squarely within the category of academic text that serves both sides of the experience divide.

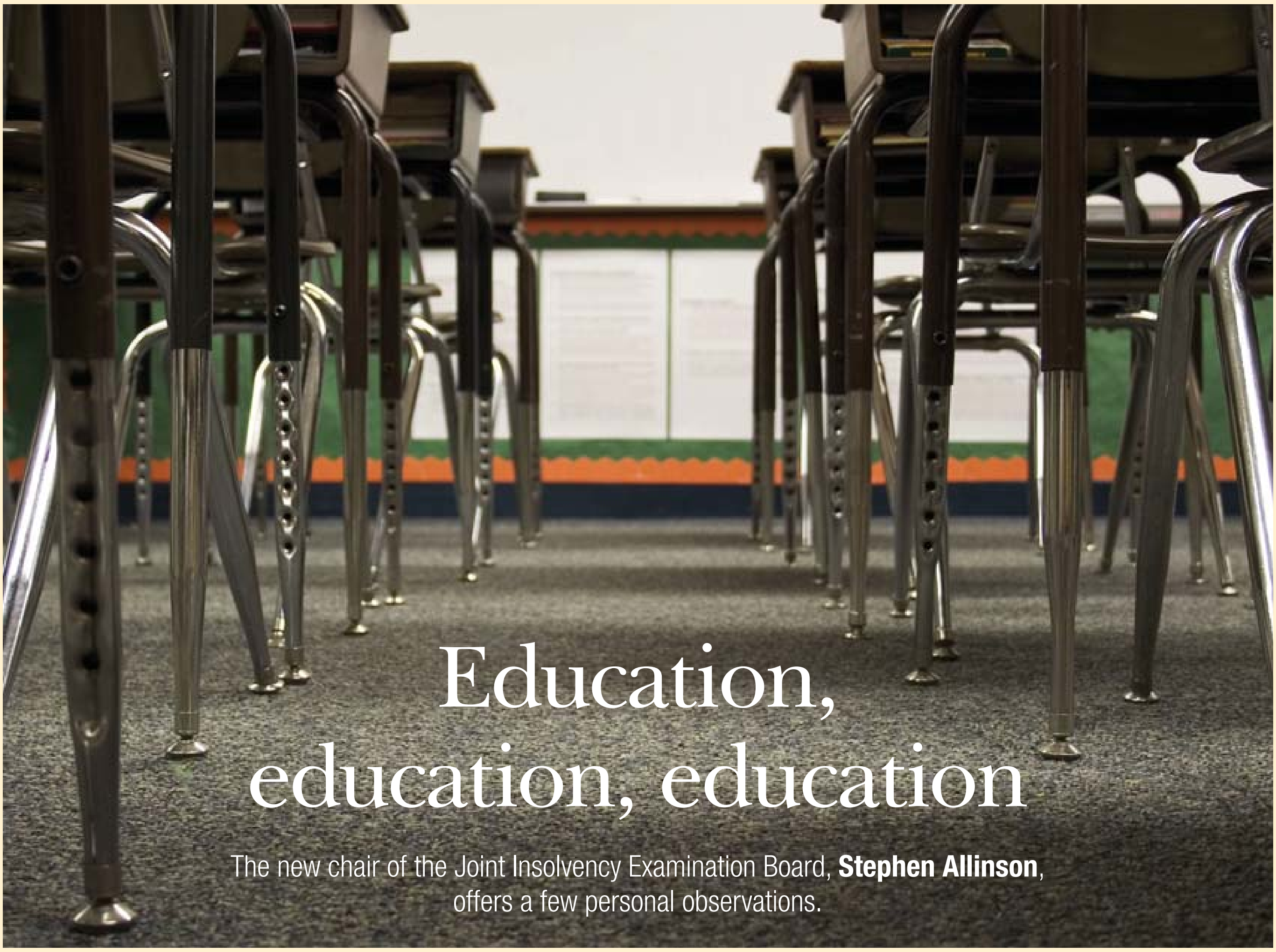
Topics covered include pre-pack sales, due diligence, security issues, employees, pensions, property matters and issues affecting particular classes of assets. Each chapter is thoughtfully set out and well supported by a good index.

Included within the appendices is a useful sale precedent and some common annexures, eg assignment of intellectual property rights (IPR) which have been adapted from practical law company precedents. For straightforward transactions, most issues have been well covered.

Needless to say, it is impossible to refer to all transaction eventualities in a text of this length. For the more complex transaction, reference may need to be made elsewhere for more detailed academic coverage. That said, there are plenty of pointers within this book to at least recognise that a more comprehensive analysis of a particular issue may be required.

Having set out to produce an authoritative text on the sale and purchase of the business of insolvent companies, Titchen and Singleton have done just that, certainly within the 'straightforward' category of transaction type. This book will serve as a useful resource for lawyer and IP alike, whether advising the acquirer or acquiree.

KEVIN HAWTHORN is an associate in the corporate recovery and insolvency team at DAC Beachcroft LLP.



Education, education, education

The new chair of the Joint Insolvency Examination Board, **Stephen Allinson**, offers a few personal observations.

As I write this article, those who sat the Joint Insolvency Examination Board (JIEB) exams at the end of 2013 are anxiously awaiting their results. The pass list is always scrutinised carefully not only by those who have taken the examination but also employers and prospective employers, and, no doubt, the JIEB tutors!

Passing the JIEB is, quite rightly, considered a significant professional achievement and the June graduation ceremony is always a celebratory event for those who have been successful. It is very pleasing to see the joy and obvious pride of the candidates as their names are announced and they collect their certificates.

Of course, given the ever-revolving circle of life, as one set of students await their results, another group is commencing the study and courses that are necessary for the 2014 examination and beyond. As the year draws on they will be cranking up their efforts towards that demanding week. That is as it should be, the examination is considered a tough one, and many war stories are told about it in smoke-filled rooms by disgruntled candidates (I couldn't, of course, possibly comment any further on that).

Challenges ahead

I feel very privileged to have been asked to be chair of the JIEB and am looking forward to the challenges that will bring. I have a hard act to follow in my good friend and colleague Peter Windatt, who has served us for a number of years, and we have all benefited from his quiet authority and wise leadership.

No examination of professional standards can stand still, however, and as I take over the reins, I realise that the board and I face some significant challenges ourselves. I welcome the opportunity through the pages of *RECOVERY* magazine to share some of those challenges with the profession and would welcome further dialogue and debate over the coming months and, indeed, years.

> "Many war stories are told about it in smoke-filled rooms by disgruntled candidates."

Feedback and a forum

So, let's start with a bit of a hand grenade – is the examination the correct way to test a person's right to act as an insolvency practitioner? After all, this is a profession based upon pragmatism, practicality and judgements informed by experience. As such, it seems a fair debate to consider whether the examination should be more practically based – or should it have an element of continuous assessment or case study work in it? Should, for example, there be a practical exam to accompany it?

Before the jungle drums start beating that the qualification process is about to change, let me stress that no such changes are on the immediate horizon, but I do think it is right to discuss such questions and I would welcome a forum to consider these issues with relevant personnel from the regulatory bodies (RPBs). Perhaps this is something that R3 would wish to assist in facilitating?

These and many other questions are often fed back to those of us who sit on the board as, of course, we are the body which oversees the examination and the process surrounding it. Unfortunately, there are no easy answers. Nevertheless, I do believe the fact that the exams fuel an ongoing discussion on a number of fronts is healthy.

New faces

At the end of last year, we undertook for the first time an open advertisement and selection process to appoint a new senior moderator. Alan Katz has held that post for a number of years and has greatly assisted in ensuring that the process is very professional in its organisation and delivery. This article also gives me an opportunity to thank Alan and wish him all the best for his 'retirement'.

Two board members and I conducted

the interview and selection process and we were very impressed at the standard of applicants, and I am very pleased to welcome Steve Treharne as our new senior moderator. Steve will be well known to many of you as a former senior insolvency partner with KPMG and a very experienced practitioner.

We are always anxious to maintain the professional independence of the examinations team from the board, but similarly we meet regularly to ensure we are 'on the same page'. Again, if any reader wishes to discuss the opportunities that may exist to be part of the examinations team, please contact me at the email address below as we are adopting a streamlined process for future appointments.

New developments

The debates over how theory based or otherwise the examination should be does itself open several further branching debates and one element of this debate has even hit ministerial level. Last year, the insolvency minister Jo Swinson reignited the argument about whether there should be separate licences to practice personal and corporate insolvency. This then found its way into the draft Deregulation Bill and The Insolvency Service confirmed to me in January that it is very likely that these provisions will be passed into law.

On behalf of the JIEB, I submitted a response to the consultation that took place, but I also recognise that if this is the wish of parliament then the task of the board is to prepare an examination that reflects what is decreed. On this issue, I note that R3 has been campaigning diligently as well and there is no doubt that it is an important matter for our profession. We could, however, be seeing the introduction of these partial licences next year.

We do have firms that specialise in either personal or corporate insolvency solely, but I do still think that there is a core set of skills necessary for both, and so I am confident in saying that we will need to ensure that any new examination will need to reflect that fact.

There is no doubt that there is a move to increasing specialisation in our industry and, of course, the Insolvency Practitioners Association announced last year its new corporate insolvency examination, which is an equivalent qualification to the Personal Insolvency Certificate that it has run for a few years now. I am sure that the changes that may follow from separate licensing can also be very usefully discussed with the RPBs.

An even-handed approach

The truth is that we are meant to be all things to all men and women. We are expected to adopt this chameleon characteristic and act accordingly depending on the circumstances of the case and depending on for whom we are acting. Our approach is clearly different if we are acting for a debtor or a creditor and possibly also if we are acting for secured or unsecured creditors.

I feel that our skills are enhanced if we do have this mixed practice. As a very newly qualified solicitor I spent much time in the magistrates courts of the South West (purely professionally, you will understand) and initially it was before the advent of the Crown Prosecution Service, so I would be prosecuting one day and defending the next. I was always of the opinion that my abilities to do my best for my clients were enhanced by being on both sides of the fence.

Skills – soft, intellectual and ethical

If we are looking at examining the basis of an IP's work, then should we be looking at a 'soft skills' element of the qualification? Much of a practitioner's work requires people skills, and those skills at present seem to be learnt only through experience. Is this an area we need to develop for our future practitioners? If so, how should we go about it?

Perhaps it is not only professional knowledge and intellectual skills that should be measured. Other qualities go into the mix; for example soft skills in terms of empathy with those involved in the insolvency and recovery process. Again, a number of years ago a valued member of any insolvency team was the ubiquitous 'meetings man'. We would now know him as 'creditor services', I think. But this individual was often at the forefront of trying to develop client relationships for his or her firm through attendance at creditors' meetings and talking to other creditors and their representatives. Without doubt, in my opinion, people skills are a vital part of being a good practitioner. We can't easily measure that by examination, although in the JIEB it is recognised that we should try, wherever possible, to reward more than just academic and technical knowledge, and I hope we do that by the holistic marking process.

> "The profession has come a long way in terms of regulation and education."

Following through on some ideas of developing the scope of the examination should we consider a free-standing ethics paper in the JIEB suite? We do seek to examine such issues across all papers at the moment, but there is a strong argument for stating that ethics is the rock upon which all IPs must build their career and ethical principles are fundamental to every assignment undertaken, and possibly we need to think about giving these matters more weight.

The next generation

My final theme is the way that students are prepared for the examination. It is particularly pleasing to me to see that there is now a choice of training providers for students. That can only be a good thing, demonstrating that this is a qualification that merits organisations putting time and energy into the tutoring process. We meet annually with the tutors to discuss any concerns they may have and that dialogue has developed very positively in recent times.

I am conscious that perhaps the JIEB is not as visible as it should be. I am determined to develop that visibility in the near future. We are looking at ways we can use the internet and other communication methods to a much greater degree than we do at the moment. The profession has come a long way in terms of regulation and education. Especially given the big name insolvencies of recent years, we are in the public eye more often than not, and so the way new entrants to the profession are trained is not just important but vital in determining how we are viewed.

I want to see younger members of our profession being encouraged to qualify and provide us with the next generation of leading practitioners. I realise that is a challenge for firms, with many saying that they are seeing reducing work levels and facing other pressures in their practices. As someone who is now classed as an older practitioner, I realise the importance of being prepared to let go and accept that I have a crucial role to play in supporting more junior professionals. It is surely crucial for the future of our profession that senior professionals know when it is right to pass the baton on, and how satisfying it is to know that the profession is producing excellent new young practitioners.

I really hope that the JIEB can assist in that process and I am very excited at the part we can play. You can be assured that the board and I will work tirelessly to ensure the examination remains fit for purpose and an examination of which we can all be proud. □

The author is the first solicitor to be elected chairman of the Joint Insolvency Examination Board and can be contacted at **stephen.allinson@la-law.com**.

STEPHEN ALLINSON is a consultant solicitor and licensed IP with Lester Aldridge Solicitors.