

CAAV 2008 NATIONAL EXAMINATIONS

WRITTEN BOARD'S REPORT ON QUESTIONS

Paper 1 Question 1 – Single Payment Scheme

The question was attempted by 105 candidates out of a total of 122 written candidates.

The Single Payment Scheme and Entry Level Scheme have been in place for over three years and it was expected that candidates should be well versed/experienced in dealing with the day to day matters. Death is not considered to be such an unusual situation and in fact, even if you hadn't dealt with a death situation, the practical issues of land transfer to be dealt with were logical.

The overall pass rate was 47% (48 out of 105 with average mark for all candidates of 12.3 but the range of marks was 6-18.5) and the pass rates for the individual sections of the question are given below:

Part A – pass rate 68%

This part was to be answered in the format of notes for a meeting. It did not require an essay but the answer was expected to follow a logical sequence to assist in advising the client in the meeting.

The principle points to cover (English Scheme):

- Introduced under CAP and mid term review with effect from 1st January 2005
- Dynamic hybrid scheme - Part historic (HRA) and part regional (RAP) based on previous IACS claims 2000 – 2002
- Paid at a sliding rate as follow:

	2005	2006	2007	2008	2009	2010	2011	2012
RAP %	10	15	30	45	60	75	90	100
HRA %	90	85	70	65	40	35	10	0
- Entitlement units were established with the 2005 claim.
- Land had to be eligible and registered on RLR.
- Payments in Euros with the rate fixed as at 30th September 2008.
- With effect from 2008 claimant has to have land at their disposal on 15th May
- Claimant has to be a farmer and comply with GAEC and SMRS.

Welsh candidates **who said that they practised in Wales** were expected to deal with either the Welsh scheme or the English one but didn't have to deal with both. Border candidates could also answer for either the English or Welsh scheme.

Unfortunately a lot of candidates could not demonstrate that they fully understood the basis of the scheme and therefore the implications. This answer did not have to be a technical briefing note but the fundamental points had to be explained concisely but clearly.

Part B – pass rate 70%

It was surprising how many candidates failed to appreciate that the receipt dated 10th May 2008 almost certainly was a receipt for the 2008 SP5 claim form. Admittedly, it is possible it could have been a receipt for other correspondence and candidates were

not marked down for raising this possibility. However, those who automatically assumed that it could not have been the SP5 form did not help themselves as they appeared to demonstrate that RPA send out a receipt for a form and you should always ensure that this is received.

Other essential information to look for would be

- RLR plans and details of deductions for SPS claim, Entitlement statements, Payment statements, any RLE1 Forms, CReg 01 Form/ confirmation that RPA had bank details, any SP9 Forms
- Copy of ELS scheme with plans and option agreements. Confirmation of payments

Part C – Pass rate 65%

Candidates were expected to earn 5 marks out of 20 which indicates they should have spent 25% of time on this part of the question. Merely stating brief headings was not sufficient. Specific GAEC and SMR numbers were not essential to show that the candidate knew the facts but vague references to the requirements of the GAEC/SMRs were not sufficient. Candidates who gave concise comment on what cross compliance is did help themselves.

Part D – Pass rate 64%

Candidates were not expected to be able to calculate the precise payment as they were specifically not given sufficient historic information to do this. However, candidates (English or Welsh) should have been able to estimate a payment. Any indication within a sensible range was expected - but there was no reason for candidates to automatically assume no historic element!

Very few (a couple!) candidates identified that Set-aside entitlements (although set-aside management is not currently not required) are still paid at regional level. Most candidates did comment on exchange rates and modulation. Most candidates knew when payments could be expected (hopefully!) but not all could quote the payment period. Some candidates referred to payment in two instalments (assumed they actually referred to the repayment of modulation payment!) but this was not essential

Part E – Pass rate 48%

Inevitably, the last part of any question can suffer from candidates running out of time but this was not the reason for the lower pass rate. This question required a timetable – either chronological sequence or list of work to be done with time limits specified alongside. Few candidates properly took into account the need to settle probate (and the timescale potentially involved) and therefore assumed immediate transfer of units etc to Mr Lucky. Candidates who dealt with the issue of settling probate but assumed it would be settled in time for the RLE1 for to be submitted in March 2009 were not marked down.

Issues to be addressed should have been focussed on SPS/ELS – and the principal matters should have dealt with the requirement to notify RPA & Natural England of the death and set in motion the appropriate transfer mechanisms. Inevitably, this means dealing with the time delay of grant of probate and the fact that the Executors would need to continue for the time being.

Surprisingly few candidates realised that 18 months took the timetable through to February 2010 – i.e. opportunity for two SP5s, payment and entitlement statements etc, two ELS payments etc! Frighteningly, a number of candidates advised Mr Lucky to submit the claim for the **2008** SPS payment!

Unfortunately, some candidates tried to expand the scenario and devote too much time to side issues e.g. IHT, feeding cattle etc, planning future cropping rotations! The clue was in the question as to what to focus on! Whilst there are lots of practical issues to deal with on death, this was clearly a question focussing principally on SPS. There simply wasn't enough time in this question to deal with all other practical issues and if candidates had properly read the question then this would have been obvious – the examiners are not that cruel!

General comment:

This was a straightforward question enabling candidates to answer in the format of notes/bullet points – which did not require time wasting waffle! However, you did need to spend the appropriate amount of time on the question – time saved from not having to write copious amounts could have been spent in logically structuring the points and thinking through practical requirements.

Paper 1, Question 2 – Arbitration

Overall, Part 1 of the question was better answered than Part 2. Most, but not all, candidates successfully identified the relevant legislation (Arbitration Act 1996 and Regulatory Reform Order 2006) and explained the options and timescales for appointing an arbitrator. There was less awareness of the likelihood of the arbitrator holding either a Directions or Preliminary meeting and in some cases there was no mention at all of preparing and submitting Statements of Case. The matter of costs was addressed in virtually all answers.

There was a wider variation in the standards of answers to Part 2 with few candidates demonstrating in-depth knowledge of the contents or purpose of a Statement of Case. Many answers for instance, did not include any Details of the Parties despite these being included within the question and some made no mention of the Terms of the Tenancy. The headings of Determination of Rent (productive capacity and related earning capacity) appeared in most answers with detailed explanations but the headings of Tenant's Improvements and Landlord's Equipment generally had no details, again despite these being included within the question. Those candidates with the best answers set out a document with a title of Statement of Case and then a list of headings with a line or two of brief explanatory notes.

In summary, candidates generally seemed to understand and have a good awareness of how and by when an arbitrator needs to be appointed. Thereafter, there was less understanding of how the arbitration process proceeded and only limited experience in preparing a Statement of Case.

Paper 1 Question 3

Freehold & Rental Valuation for Marketing, Selling & Letting Rural Property

Question attempted by 93 candidates:

- passed by 46 candidates
- failed by 47 candidates
- highest mark = 82.5% lowest mark 7.5 = 37.5%
- average mark = 12.38 61.9%

Part 1(a) (6 marks)

Average mark = 4.2 (70%)

Candidates needed to identify information to collect from their client in order to clarify matters for a potential sale. They needed to have regard particularly to items that might affect value. Ideally, candidates will have started by questioning whether Lord Broke was the sole freehold owner and occupier or if there were any family trusts, tenancies, contract farming agreements or licences affecting the land. Ascertaining whether the land was registered would identify any restrictions or covenants affecting it. Fuller details would include listing of farmhouse, designations (both planning and otherwise), any current or historic planning consents, crop rotations and yields, Single Payment scheme information including entitlements, types and values, any environmental schemes, wayleaves, easements, drainage and similar. The best candidates expanded on the relevant points.

The question outlined that the site had in part been used during the war. Some queried the extent of the use and if there were any potential contamination issues.

Generally candidates demonstrated that they were used to the type of the information required and it was well answered.

Part 1(b) (3 marks)

Average mark = 2.1 (70%)

The best candidates ran through the public options available to Lord Broke: private treaty, auction, informal tender and formal tender and the advantages and disadvantages of each.

They then related the circumstances in the case and outlined the possibility of dealing privately with Mr Ronn but also outlined dealing privately with others and the pros and cons of this approach.

Part 1(c) (3 marks)

Average mark = 1.99 (66.5%)

The candidates were asked for indicative values.

Ideally there would be a breakdown of the different elements of the property with some possible values or range of values attached. The best briefly qualified their figures.

This element was generally well answered and candidates felt comfortable with figures on land values but in some instances were not able to provide figures for the grain store or war time runways.

Indicative figures only were required and account was taken of the area of practice of the candidate.

Part 1(d) (3 marks)

Average mark = 1.4 (46.6%)

Candidates should have started by thinking about their terms of business with their client and likely fee arrangements.

Many candidates raised whether it may be appropriate to sell an alternative site, the impact on the estate, future arrangements for grain storage and possible future farming arrangements if the land were to be sold. Many also raised taxation issues, both CGT and future IHT requirements, and the need to contact the client's solicitor.

The best candidates also mentioned the possible need for a Home Information Pack, the personal requirements of the seller and whether it may be appropriate to impose clawback/uplift provisions.

Part 2. (5 marks)

Average mark – 2.68 (53.7%)

The question required an initial formal letter to go to Mr Ronn from the candidate as a professional. It should have been marked “subject to contract” and set out a brief description of the property, refer to a fictitious plan so the potential bidder could assess the area and formulate his views. An offer to view the property at an agreed time would also have been sensible.

Whilst the candidates were acting on behalf of Lord Broke and knew something of his financial circumstances, nothing in the letter should indicate that he was a keen seller or give an indication of a possible price.

From the information given in the question, it is clear that Mr Ronn is a wealthy individual who has made an unsolicited approach to your client and he should be encouraged to put forward his own value.

Candidates who set out a brief, well structured letter scored well.

Paper 2, Question 1

Rural Planning

This was a popular question with 90 candidates choosing to answer it. The question was straightforward and so a sound working knowledge of rural planning and negotiation skills with local planners should have stood examinees in good stead to pass. There are some 'musts', however, when the examiners ask for a letter. An appropriate salutation and valediction was expected – it was most concerning that many candidates either excluded one or both or got them mixed up. It was good to see good use of grammar in some scripts but there were some notable ones which were really quite poor in this area.

The size of the barn was given and, whilst most candidates were able to multiply one measurement by another and make an addition of the small lean-to, some candidates failed to achieve the correct areas and, in a few instances, by a large margin.

There were a number of useful hints in the question to prepare candidates to produce a structured answer i.e. the barn 'could seat around 200 and still have room for a dance floor, toilets, kitchen and bar' and 'You have been called in to advise Mr Gawn on the feasibility of the scheme and to give some indications of the likelihood of planning permission, ball-park costs of putting the barn into repair, conversion costs, timescale, estimates of income per event and the advisability or otherwise of setting up partnerships with caterers, photographers and the like .

The examiners asked for the letter to be written in three parts – the process, your professional view in the light of current planning policy and the route your client should follow. The candidates who scored higher marks followed the examiners' request and compartmentalised the letter into these areas. Examiners were not seeking anything technical but a straightforward letter giving a reasoned view – any reference to some case studies that the candidate's practice had been involved in would score well. Those who suggested that the barn has a very good chance of gaining planning approval included reference to PPS 7 and words like the planners are likely to suggest that approval would not be unreasonably refused.

A check list should have include much of the following.

- informal discussions with the LPA are desirable/these likely to be positive/more formal discussions with the LPA advised/should be entered into – with sketches in the first instance
- appointment of a good architect and or planning consultants recommended
- national planning policy references – PPS7 etc
- costs of planning applications
- possibility of presence of preservation order
- mention that other societies/organisations need to be informed CPRE etc,
- Listed Building consent may be needed
- local opposition, Parish Council
- possible discussions with the local Parish Council planning sub-committee
- possible Highways Authority objections
- discussions with Water Authority important but unlikely to be a problem

- access to the barn up the existing farm road – good access – unlikely to be an issue – may be objections from neighbours
- LA Building Control will need to be satisfied that the property has the potential to serve as a wedding venue – are the roof timbers capable of withstanding the weight of the possible new roof
- structural integrity of the existing timber barn is vital and an initial structural survey will, almost certainly, be needed
- need to put property in repair first.

In terms of the professional view of the proposed scheme it is suggested that candidates give some guidance that, say, in a number of ‘similar’ cases known to the candidate this sort of development has been reasonably executed at a figure which has been profitable within a timescale and that in his or her professional opinion, if funding can be achieved, the venture should go ahead without delay.

In terms of the best route to follow a typical timed development process was expected by the examiners. The timing would be entirely up to the candidate to justify but it needed to be sensible. Something along these lines, with timings, was anticipated:

- architect approved
 - planning now assumed
 - building regulation approval
 - tenders to go out
 - approved main contractor appointed
 - main contractor to start work/list of approved sub-contractors agreed
 - choose schemes
 - consider business partners – caterers, drinks contractors, bands, photographers, florists, photographers
 - publicity material set up
 - main work completed
- first trial event – showcasing the venue.

The appendix, covering costs and outgoings, needed to be a fairly full answer as it was awarded the same marks as the letter. Some candidates’ answers were very well produced, including properly justified ball-park costs which included a full section on outgoings and expected fees from events to make the venture work. Several missed out all or some of the major components here and some answers omitted the second part of the question completely.

For the examiners to award full marks they were looking for the following components:

Value of venue as completed/cost of venue/cost of refurbishment (per m² – with justification)/all professional fees on repair refurb.

No of events per year (with some justification, but say, 40 – 60)/income per event/less services (oil, electricity etc)/less rates (some form of calculation would assist)/salaries/pension contribution/NI/to give a net profit of venture/suggestion for a caterers charge a price per head inclusive of VAT.

Paper 2, Question 2 Development

45 candidates attempted this particular question of which 26 candidates passed the question.

It may interesting for the candidates to know that the range of marks varied from 7 to 17 out of 20 marks.

The question was designed to test the following:-

- [a] The candidates' ability to recognise the essentials of private arrangements between land owners who have a joint goal of obtaining planning permission. This should take into account the potential for *Stokes v Cambridge*, services, access and relative geographical locations which may be potential bargaining points between the land owners.

The relative size of the land owners with the positioning of Mr. Small adjacent to the conurbation should also have been a consideration. Candidates should have suggested consulting the Highways Authority in advance of negotiating a potential *Stokes v Cambridge* position. This approach showed a more practical and less risky professional attitude on behalf of their client.

- [b] The question was also intended to lead to the ultimate realisation that, based on the information in the question both parties needed to promote the site jointly, in the interests of demonstrating deliverability to the local planning authority through the local development framework.

- [c] The question was also designed to draw out the candidates' taxation knowledge. The preference was for a loose or strictly conditional alliance for the furtherance of the planning opportunity which is infinitely preferable (in CGT liability terms) to a joint venture or partnership for the sale purpose.

The question required a basic common sense view of ensuring that your client was not likely to incur a tax liability before the project had borne fruit; in real practice this is a near absolute pre-requisite.

Few candidates recognised this point. In particular, those who suggested a loose alliance of the two land owners did not specify any particular reason for making that recommendation.

- [d] The question was also designed to test the candidates' knowledge of the primary constituent parts of an option agreement. On the whole, this should have offered fairly easy points for most candidates even if they had not experienced settling an option agreement.

The range of marks was unexpected in this particular part of the question. Many candidates forgot to include such important topics such as forfeiture, assignability,

dispute clauses, obligation clauses (as to submission of a planning application), definition of the price to be paid and the basis of assessment and payment.

Many identified Capital Gains Tax as the primary taxation liability in part 3 of the question. Few considered potential mitigation though most did discuss the available reliefs.

The majority of candidates suggested joint ventures or forming development companies which as I have already indicated would lead to a taxable event for CGT purposes before funds were available for payment of such a liability and without the guarantee of success.

Few candidates mentioned any reference to potential Inheritance Tax and its mitigation.

A short note on VAT would have been helpful if either land owner had opted to tax.

Stamp Duty Land Tax, of course, is levied on the purchaser but would have been levied in the event of either person's land reaching the relevant transfer threshold in the event of a joint venture.

Conclusion

While the majority of candidates demonstrated some understanding and there were some very good answers, most failed to stand back and look at the situation and its ultimate deliverability by considering the need for good promotion without financial union. The need for both land owners to be pragmatic in accepting that, while various advantages one against another may exist, for example, *Stokes v Cambridge*. There was not at that point in time a guarantee of the point of access; it could, for example, have been from adjacent housing.

In practice, perhaps it is better to achieve a consent without an apparently greedy approach and ensure deliverability rather than fall at the first hurdle over such arguments.

The examiner believes it is a valuer's duty to advise the client of the various arguments such as *Stokes v Cambridge* ransom strips/servicing matters and similar but then stand back and advise to ensure a deliverable scheme.

Paper 2, Question 3

Local Taxation – Empty Property Rates

Note: the examination was taken before the temporary relief on empty rates given in the 2008 Pre Budget Report.

This question was a relatively straightforward one and was not included in the examination to exclude any candidate who had little or no knowledge of local taxation issues. Empty Property Rates is a current topic, particularly troublesome to the rural community and has been mentioned several times in the News Letter over the last twelve months together with almost continuous coverage in the property and national press.

In order to have achieved full marks, the **check list** ought to have included the majority of the following points to consider. This was a ‘things to do’ or ‘things to think about’ list.

- Does the client have the means to pay the debt?
- Is the client in hardship?
- State of the planning permission (temporary or permanent) – if temporary when does it expire and if so could the property resort back to agricultural use?
- Is there a requirement for the client to use the barn for agricultural purposes?
- Suggestion to contact the Local Authority to request a stay on proceedings – offer, in the interim, to pay something towards the outstanding debt.
- If possible set up some form of standing order arrangement (a very small monthly amount to satisfy the LA’s Revenue Department).
- Establish whether there is any demand for this type of property in this particularly rural location.
- If the demand is very poor or non-existent then this may demonstrate that, at the valuation date, the assessment may be too high.
- Suggest lodging an immediate proposal to alter the Valuation List, on behalf of the client, with the Valuation Officer and cite (a) lack of demand (if there is no demand) for commercial use and (b) the need for it to be brought back into agricultural use despite the extant planning permission (if there is a clear need).
- Suggest a claim for hardship on the proposal (if there is hardship).
- If there is a need, suggest your client starts using the barn for agricultural purposes even though there is a commercial planning permission extant.
- Establish whether the building is in tenantable repair or if not whether it is beyond what is considered to be ‘economic reasonableness’.
- If it is considered to be beyond reasonable repair, supply estimates of the cost of putting the property into repair.
- Consider whether the Rateable Value could be below £2,200 (unlikely) as, if the RV is below this, there will be no Empty Property Rates to pay.
- If all else fails, consider getting your client to write to the local MP to urge a revision in the legislation.
- Is a charity interested in taking on the property for a nominal rent? Your client would not achieve much rental income but he would not have to pay the rates.

A well-ordered argument citing the re-using the barn even though planning permission is still currently in force for a commercial store/warehouse would add to the marks.

Even if the candidate had not been involved in a similar case, most of the above is fairly straightforward and would have been acceptable in layman's terms.

There was some confusion in a number of answers as to whom an appeal should be made. Some candidates thought that appeals about the rating assessment should be made to the Local Authority. Whilst most candidates suggested that the barn should be reverted to agriculture a significant number missed other important initiatives.

The **briefing note** should have included

- ♦ The legislation on the rating of empty property changed from 1 April 2008 and was included in statute as the **Rating (Empty Properties) Act 2007**
- ♦ Empty property rate increased to 100% (previously most types were 50% of the normal charge).
- ♦ EPR extended to industrial and warehouse properties (such as the Archer's former barn) with the difference that the initial void period is 6 months rather than the normal 3 months.
- ♦ This period runs from the actual date of vacation, not 1 April 2008, so if the barn was already unoccupied for 6 months the charge will start straightaway (1 April 2008).
- ♦ Properties belonging to charities and the like are not normally liable to empty rates.
- ♦ Empty property belonging to a company in administration is not liable to empty rates.
- ♦ If a building is in very poor repair (beyond economic repair) it may be deleted from the Rating List – one of the assumptions for rating is that *immediately before the 'tenancy' begins the property must be in a state of reasonable repair – if it isn't it must be in a state which a reasonable landlord would consider uneconomic to undertake repairs.*
- ♦ If a property is an agricultural building it is exempt from rating but it must be 'held with' agricultural land (not a problem with the Archers' former barn).
- ♦ If the RV is below £2,200 no EPR will be levied by the LA.

Answers along the above lines, with most of the above points would earn the candidate full marks.

Many candidates did not mention that a contribution, at least, to the Local Authority is required. Very few suggested any sort of dialogue with the Council.

27 candidates attempted the question and 50% of these gained a pass.

Paper II – Question 4.

Agri-environment Schemes, farm tenancies and Single Payment

The question was set to discover candidates' knowledge and their application of that knowledge in relation to Environmental Stewardship, the Agricultural Holdings Act 1986 and the Single Payment Scheme.

Part I of the question was intended to elicit fairly detailed information in relation to ELS (OELS) and HLS – or relevant Welsh schemes - including the term of the relevant agreement, the payments available, the interaction between the two and the relevance of these agreements in relation to the subject holding. The Examiners were also looking for candidates' views on the likely permissions that would be required from the Landlord before the Tenant entered into any of the schemes.

Advantages and disadvantages of the scheme gave the candidate the chance to bring into consideration the poor Single Payment and the opportunity for enhanced income, set against a 5-10 year term for the agreement (particularly as the tenant was elderly). This meant therefore enhanced income to the tenant in the short term against restricted re-letting possibilities for the landlord in the years ahead.

The second part of the question invited comments on an FBT re-let, open market rents and the widened possibility for diversification. It also looked to the candidates to mention the service of a Section 12 Notice, the service of a Section 6 Notice in relation to the lack of a written tenancy agreement and sought discussion on the changing face of Single Payment from historic to regional payments (in England) and the possible pending changes in 2012.

As to be expected, the best candidates picked up on these issues and provided good structured answers dealing with the issues in an ordered manner.

The poorer answers missed ELS and HLS altogether or provided very scant information in relation to them. They gave little by way of a comprehensive overview of the owner's requirements for advice and in particular made no effort to highlight the owner's needs for future flexibility and a written tenancy agreement in the short term.

Generally candidates failed to plan their answers. I suspect many actually had the knowledge to deal with the question but did not have the necessary experience to use that knowledge and provide appropriate briefing notes and an appropriate brief report to their client. If candidates had made notes and spent perhaps no more than 5 minutes thinking about it and planning their answers, I suspect many more would have achieved the appropriate pass mark on this particular question.

Paper 2, Question 5

Terms for a Wind Farm

This question was about general heads of terms for the granting of a lease for a wind farm and was generally approached well, but the heads of terms were often too sketchy with no or incorrect detail. In order to score well, we were looking for the salient heads of terms for a lease of this type together with the appropriate detail such as the actual length of term to be contemplated or the formula/basis for the rent payable. The addition of this small amount of extra detail makes the difference between pass and fail and examinees need to apply themselves to the question at hand.

Very few notes/outline drafts were appended to the answers which if used might well have helped, especially for those short of time.

The replies that might be expected should have encompassed the various bases used to arrive at the rent, supported by figures, but many gave a simple rate per turbine in pounds per annum without even relating that to turbine size. If rates are quoted like that, it is important to provide your assumptions, as otherwise they are meaningless.

Other options for taking the development forward often referred to the canvassing of local/parish councils or asking for the site to be included in the local plan. Given the question stated that a developer was interested in taking a lease of the site it was perhaps reasonable to assume that the site was both suitable and probably within any area designated for wind development. We were really looking for other ideas whereby the wind farm could be developed - a bit of lateral thinking, but a well reasoned answer scored marks in any event.

On the last part to the question, it did state that the developers might want to construct a road and lay cables to link the development on adjacent land. Very few people got the point that these facilities were directly linked to the wind farm development and that the most appropriate form of agreement would be a lease (of rights) linked to the term for the other leases for the wind farm. Many candidates went off on a tangent to state the basis for compulsory purchase compensation for the acquisition of land for a road and for laying cables under a standard wayleave agreement without applying themselves to the particular circumstances set out in the question, and relatively few considered the possibility of the owner holding the developers to ransom and the possible effect that that might have on the payments obtainable for the owner's agreement. Clearly the best answers took all of these points into consideration and a succinct answer with the salient points scored well.

The main message that examinees need to take on board is that they must think about the question as written and the need to provide as much relevant detail as possible to get high marks, again too many answers were of mediocre quality and lacking in appropriate detail.