

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

Contents

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

**Paper I, Question 1
Compulsory Purchase**

You act for The Right Hon Herbert Pratt (HP). HP has various farming and business interests, all of which are directly affected by the route of a new High Speed Rail Link (HSRL) which will be proceeding to construction following a recent public inquiry and the granting of planning consent for the scheme. HP has sacked his previous advisors following their failure to persuade the Inquiry to reroute the scheme off his property.

His interests include:

- *The ownership of Pratt Towers, a large mansion set in 200 acres of parkland used as a hotel and golf club let to a limited company on a 50 year lease (30 years unexpired), the directors and shareholders of which are HP, his wife and 3 children.*
- *An Agricultural Holdings Act (AHA) tenancy in his name on an adjoining 2,800 acres including house and buildings where HP and his family live and which HP farms.*
- *A contract farming arrangement in his name whereby HP is the contractor on 1,500 acres of bare arable land for his neighbour, Mr Branston.*
- *Ownership of an area of land identified by the Inquiry as being suitable for the freight terminal exclusively for the new HSRL owned by him personally.*

HP has advised you that the route of the HSRL will pass within 1km of the hotel and directly affect the golf course layout and will pass directly through the AHA and contract farming land. HP wishes to meet with you to discuss in principle his rights to compensation with a view to instructing you to act on his behalf with regard to any claims he may or may not have.

In advance of that meeting please prepare notes outlining in brief terms your advice on the following – please quote relevant statutes and case law but do not produce a valuation.

- a) *What are the compensatable interests and where do those rights derive from in statute? (5 marks)*
- b) *What will be the date of valuation? (2 marks)*
- c) *Outline the basis of valuation quoting relevant case law (6 marks)*
- d) *Outline the heads of terms of the claims in respect of the leasehold interest in Pratt Towers and the freehold interest in the freight terminal. (4 marks)*
- e) *What rights of appeal does HP have if you cannot agree the quantum of his claim with the acquiring authority? (3 marks)*

No of Candidates answering question: 40
No of Candidates achieving pass mark (65%): 4
Highest Mark: 14.5 (72.5%)
Lowest Mark: 4.5 (22.5%)
Average Mark: 8.9 (44.5%)
Pass Rate: 10%

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

Examiner's Report

This question was, I believe, a straightforward question on compulsory purchase. Its aim was to test candidates' knowledge and competence with regard to the core issues surrounding compulsory purchase.

The scenario set was a new high-speed rail link (HSRL) affecting the Right Honourable Herbert Pratt and various interests in property that he had, all of which were clearly set out in the question.

The question was in five parts.

The first element required candidates to be able to identify the compensatable interests set out in the question and where those rights to compensation derived from in statute i.e. the relevant Act and/or section thereof.

The second element required candidates to advise on the date of valuation.

The third element required them to address the basis of valuation and quote relevant case law.

The fourth element to the question asked candidates to outline heads of terms for claims in respect of the two stated compensatable interests.

The last element of the question asked candidates to advise the client the rights of appeal Herbert Pratt had if the quantum of the claim could not be agreed.

To answer this question candidates had to have a basic understanding of the core principles of compulsory purchase and hence I was surprised that only 40 out of 129 candidates answered the question and that only 4 passed it.

The answers to the first element of the question were generally poor. There was a failure to identify all the compensatable interests and an even greater failure to identify the statutory base for those compensation rights. Where statutes were identified then generally the statutes and dates were muddled and mixed. Where the right statute was referred to there was a failure to refer to any detail thereof.

The second element of the question was generally answered well.

The third element was again answered poorly. There was a general failure to demonstrate knowledge of the basic rules covering the basis of valuation to any competent degree and an even poorer knowledge of relevant case law.

The fourth element of the question was generally answered with a greater degree of competence although few candidates were able to demonstrate knowledge relating to betterment and Pointe Gourde.

The fifth element of the question was answered poorly. If candidates were able to identify that the relevant rights of appeal were to the Lands Tribunal then that was the extent of most of their knowledge.

It was extremely worrying and disappointing that only 31% of those sitting the written paper chose to answer this question and that of those only 10% passed. Compulsory purchase and compensation is a core part of the syllabus and all this question was addressing was the principles thereof.

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

Paper I, Question 2

Rent Review and non-agricultural use of farm building

You have been asked to advise the tenant of a holding leased on an Agricultural Holdings Act tenancy about a forthcoming rent review. A valid notice has been served by the landlord for a rent review as at 25th March 2011.

The farm comprises the following:

- *A 4 bedroom period farmhouse which the tenancy agreement obliges your client to occupy.*
- *250 acres of arable land used for combinable crops*
- *100 acres of grassland supporting a suckler herd with progeny sold as stores.*
- *Range of modern buildings for cattle and machinery storage provided by the landlord.*
- *Range of traditional stone farm buildings no longer suitable for modern farm practices.*
- *Modern grain storage building provided by the tenant with landlord's written consent.*

Overall the holding produces a gross margin of £80,000 from its agricultural activities and £26,000 from the Single Payment Scheme claim.

In addition, there is a 2 bedroom cottage let on an assured shorthold tenancy (short assured tenancy in Scotland) with landlord's consent at £600 per calendar month. The landlord takes 40% of the gross rent.

In advance of your meeting with your client prepare bullet points explaining how the rent will be assessed at review. Your client is keen to fully understand his position and the mechanisms involved. Your notes should cover:

- a) *The statutory basis for the review and the items to be taken into account in determining the rent properly payable, including the information you will be seeking from your client.*
(5 marks)
- b) *An example rental calculation based on the information given above.*
(6 marks)
- c) *A brief explanation of what happens if negotiations have failed to agree a new rent by the review date and timescales.*
(3 marks)

Landlord and tenant have for some time been discussing a re-use of the traditional buildings. The landlord and tenant are content that they remain within the agricultural tenancy. The landlord has encouraged the tenant to obtain the necessary planning consent, building regulation approval and other permissions for their conversion to workshops. The capital cost of conversion is approximately £100,000 and the net rental income is estimated at £10,000 per annum.

- d) *Both parties are keen to formalise the intended arrangement as part of the rent review. Advise how this might be structured.*
(6 marks)

No of Candidates answering question: 121

No of Candidates achieving pass mark (65%): 13

Highest Mark: 17.5 (87.5%)

Lowest Mark: 4 (20%)

Average Mark: 10 (50%)

Pass Rate: 11%

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

Examiner's Report

This question was the most popular in the two papers, being answered by 93% of candidates, but although it was on a subject that should be familiar to most candidates, it had one of the lowest pass rates.

General Comments

The question was in four parts, the first being worth 5 marks, the second 6 marks, the third 3 marks and the last part 6 marks and it was clear that a number of candidates did not consider the relative number of marks available when writing their answers.

There was also quite a lot of information given in the question, in particular about the fact that candidate was advising the tenant, the details of the houses, buildings and land and the actual figures for the gross margin and the Single Payment Scheme. Many candidates ignored some or all of this information and used their own assumptions which resulted in lost marks and/or wasted time.

In general the question asked for bullet points and notes to be used to advise the tenant about how the rent was to be assessed and for him to understand the mechanisms involved. This did not require candidates to write an essay or report but simply required all the relevant facts to be noted. However, it also required an explanation of those facts so that they were understandable by the tenant. Many candidates lost marks by simply listing quotes and phrases from the statutes, without making any attempt to explain what they meant, thereby demonstrating the candidates' understanding of the subject.

Many candidates gave good answers to the first parts of the question but gave very short or in some cases no answers to parts 3 and 4. Given the spread of the marks between the questions and the 65% pass mark this made it very difficult for these candidates to pass. Timekeeping is still key.

Part 1

There were three principal elements here; the statutory basis for rent review, the items to be taken into account in determining the rent and the information you would be seeking from your client in order to advise him. In the first part references to the relevant statutes were expected including the notices that would have been served, the frequency of rent reviews and the basic definition of the rent 'properly payable', with some explanation of what this means to the tenant.

Secondly the various elements which should be included in the rental calculation were required such as productive capacity of the holding and the related earning capacity and the rents for comparable holdings. As important however were the things not to be included; the 'disregards' such as scarcity and marriage value in comparable rents and many candidates missed these out and lost marks. Again an explanation of these terms to the tenant was required, but rarely given.

Thirdly, a simple list of the information required from the tenant about his holding was asked for. This basically boiled down to all the details about the farm and the system the tenant ran, including accounts, plans, copies of the leases and rental agreements etc.

Part 2

This should have been an opportunity for a relatively straightforward accumulation of marks on the basis that all candidates being presented for the written examination should have a clear notion of how calculate a rent for a tenanted holding. Many candidates gave part of the answer but few covered the two main parts which were firstly the analysis of the productive capacity and the related

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

earnings capacity of the holding i.e. a budget with a rental assessment of the other relevant matters and secondly an analysis of comparable rents.

The information on the gross margin and SPS were given in the question and although no comparable rents were given candidates were expected to use their own knowledge to give some example comparables. Many did give rents per acre but failed to say that these had been derived from comparables and there was very little evidence of any analysis of the comparables, for example to disregard scarcity, marriage value or to adjust for such practical issues as quality of soil, drainage problems etc. and few candidates commented on the use of FBT rents as to whether they were appropriate to use or not.

Many however ignored the use of comparable rental evidence all together and only based their answer on an analysis of the earnings capacity, thereby removing the chance to score half the marks for the question. The variation in the methods of analysing the earnings capacity was surprising as was the number of candidates who took the gross margin figure in the question and used it as the total profit for the holding, completely ignoring the requirement to deduct fixed costs. The implication being that many candidates did not have even a basic grasp of the principles of determining a gross margin. Others spent a great deal of time deriving their own gross margin figures while ignoring the figure given in the question and few gave any explanation of how the split in the surplus before rent between the landlord and the tenant was arrived at.

Many candidates also failed to reflect in the rental assessment the rental value of the tenant's improvement or address how the farmhouse is treated in a 1986 Act rent. If they did, they gave no explanation as to why they used the figures they did. What was also surprising was how many dealt with the cottage incorrectly. Having been told that an agreement had been reached to split the income at 40% to the Landlord, often this 40% was then split again with the Landlord.

In general this question was answered very poorly and many were distracted by the Scottish 'Morrison-Low v Paterson' case. This case in fact has very little impact at this stage as it is under a different legal jurisdiction from England & Wales and in any case is subject to appeal. It also principally dealt with the Scottish SFP which is different to the English system. A knowledge of the basic facts relating to SFP was relevant but too many candidates spent a great deal of time analysing the Morrison-Low v Paterson case, usually incorrectly and with little relevance to this question. For example –many candidates argued that the SPS should be excluded from the budget and then included naked acres at a very low rent – sometimes at 10% at what would be the rental value in England.

Part 3

All that was required here was an explanation to the tenant of what happened if the parties could not agree on a new rent prior to rent review date. This included the procedure for reference to arbitration, the relevant statutory references and, as the question mentioned timescales, reference to fact that the arbitrator no longer sets the time limits for statements of case and determination. Many candidates were confused between the requirement to appoint an arbitrator by agreement before the term date or to submit an application to the RICS by that date. Several candidates still referred to the old AHA 1986 Act Schedule 11 requirements and not the arbitrator's duty under the Arbitration Act 1996. Candidates often referred to the Regulatory Reform Order (Agricultural Tenancies) (England & Wales) 2006 but did not understand the changes it brought about. Several candidates clearly demonstrated they did not understand how a rent is determined by arbitration, confusing the duties of the parties with the arbitrator (e.g. some stated that the arbitrator would prepare the statement of case!) and what and how a Calderbank offer could be used.

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

Few candidates demonstrated practical understanding of the likely timescale of a reference to arbitration with preliminary meeting and oral or written representation hearing.

This question was generally answered better than Parts 1 & 2 and most candidates displayed a knowledge of the basics.

Part 4

Candidates were informed that both parties were agreed on the basis for this diversification, which was that the buildings should remain within the agricultural tenancy. However, as the tenant was being advised it was not unreasonable for the candidates to point out to their client that there are other options, such as taking the buildings out of the agricultural lease and letting on a 1954 Act basis. This should however, have been accompanied by an explanation as to the reasons for this advice.

The advice requested was on how the agreement might be structured and what was required was an analysis of the options open with a description of the relevant advantages and disadvantages. This included mention of formal written agreements but it was not just sufficient to say this. The arrangements that could be considered included different types of split of capital and income between Landlord and Tenant e.g. to reflect the initial capital outlay, risk and entrepreneurial skill, or a phased rent or a write down arrangement. Some candidates assumed that the landlord would give rent reduction on the farm whilst the tenant recouped his outlay which, whilst sounding very honourable, is not likely to be found in practice! Any correct and relevant references to the tax implications of the conversion and subsequent letting, treatment of the tenant's expenditure on improvements for compensation at the end of the tenancy and the significance of landlord's consent post the Reform Order 2006 for succession could gain additional marks.

Candidates in this question displayed a reasonable degree of knowledge of the basics involved but many of the answers were very brief and lacked sufficient detail. Many in fact only considered one option.

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

**Paper I, Question 3
Re-use of buildings for retirement income**

After a lifetime as a livestock farmer your client, Ron Davies, has decided to retire. His only child has a successful career elsewhere.

The holding, known as Manor Farm, Shipcote, is situated adjoining an A road on the outskirts of a major town. It consists of 300 acres of pasture land together with a range of modern buildings. There are no traditional buildings. The complex includes the following buildings:

- *30m x 10m fully enclosed concrete block building with a concrete floor and slate roof. It is a former calf house, 3m to eaves in good condition and with many window and door openings.*
- *21m x 21m building constructed from a steel portal frame, reinforced concrete panel walls to 2.4m with space boarding above, concrete floor and fibre cement roof. Openings for doors at both ends.*
- *24m x 14m machinery/straw barn constructed from a steel portal frame under a fibre cement roof. The building is open on all sides and has a hardcore floor.*

Mr Davies still needs to generate income from the farm and he has arranged with an arable farming neighbour to contract farm the land. He is unsure what to do with the buildings and as the planning and diversification specialist within the firm he has asked you for your advice and assistance in respect of the buildings.

Prepare notes for a feasibility report for Mr Davies addressing the following areas:

- a) *Summary of planning issues for business re-use. (5 marks)*
- b) *Detail the factors that you would take into account when assessing the potential alternative use for the site and each individual building and recommend a use for each. (5 marks)*
- c) *Rental values and projected rental income for your recommended use for each building. (4 marks)*
- d) *Assessment of conversion requirements and breakdown of approximate costs for your recommended use for each building. (5 marks)*
- e) *What yield would your scheme produce for Mr Davies. (1 mark)*

No of Candidates answering question: 97

No of Candidates achieving pass mark (65%): 34

Highest Mark: 17.5 (87.5%)

Lowest Mark: 5.5 (27.5%)

Average Mark: 11.7 (58.5%)

Pass Rate: 35%

Examiner's Report

The primary intention of the question was to test the candidates' knowledge of core issues primarily centred around planning, presenting a client with a suitable and remunerative scheme to fit in with his personal circumstances.

The sections of the question allowed the successful candidate to answer in a logical sequence requiring an answer in note form in readiness for a meeting with the client. The questions were as follows:-

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

1. Discuss planning issues and requirements for business re-use.
2. Answer site specific issues relative to the site and the individual buildings and indicate alternative uses from the evidence provided within the question.
3. Consider the relative income.
4. Consider the capital costs relative to the proposals put forward in Part 2 of the question.
5. Return - This was principally to test the candidates knowledge of how to establish a rate of return and thus the worth whileness of the proposals to the client.

Dealing with each part of the question in turn, the Examiner has the following comments.

1. Planning issues - The best candidates dealt with the planning issues but many did not identify the need for planning permission for a change of use for each of the buildings where alternatives were suggested. The provisions of PPS7 were an equally important consideration. One candidate in fact did not mention either aspect.

The best answers went well beyond the basic planning guidance from Local Plans and Planning Statements, it being necessary to consider other aspects which could have affected the planning including Highways, issues under the Wildlife and Countryside Act and specific statutory designations, building quality, flexibility of conversion and sustainability of the location.

2. Site specific issues – This part of the question was intended to test the more practical considerations. It was not intended to allow candidates to repeat the planning issues. The issues included the impact upon the existing farm and Ron Davies in particular. The access within the farm, the availability of space for car parking and circulation. Proximity to markets and the availability of services to enable conversion and subsequent use.

Suitability for intended use and more over suitability of the intended mix of uses was important to the client. Mixing residential and industrial uses or holiday and industrial uses was unlikely to be successful.

Uses requiring Ron Davies to be involved on a day to day basis when the question quite clearly stated Ron Davies had decided to retire would, in my view, be likely to be poorly received by Ron Davies.

The elections made by candidates to alternative uses varied greatly, however, it would be expected that candidates would seek to maximise return for Ron Davies in his retirement.

3. Income Levels – The income levels proposed varied wide of the mark for each of the uses. It was unfortunate to see in many cases that the capital works expenditure was much lower than a single year's income. This is unlikely to be a realistic level of income for the investment or lack of investment proposed.

A few of candidates produced budgeted rental projections or made allowances for start up period, void periods, bad debts or management.

4. Capital matters – In keeping with the income levels, capital costs varied considerably from candidate to candidate. There seemed to be little relationship between capital expenditure and income earned.

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

Few candidates detailed the required works for each building and failed to appreciate the level of capital input as a result. It was not unusual for candidates to have misjudged capital requirements by as much as 10 times the required level.

5. Return – Many knew what the likely range of rate of return was but failed to provide from the income and capital budgets a simple calculation to establish the yield in their particular circumstance.

General

Acting for a retiring client who is marshalling his resources should have alerted candidates to the fact that he would look to maximise his income return for his future retirement.

In some cases, the mix of uses was incompatible which, as a result, would fail to give Ron Davies the desired retirement income and likely lead to wasted capital expenditure.

Within the exam as a whole, this question was in comparative terms answered better than most questions. The best answers came from candidates who had thought through their answers by means of planning notes, having thought through the structure of the questions. This in turn could be gained from thoroughly reading the questions prior to commencing.

The best candidates answered the questions in the order of the questions which sounds an obvious matter however many candidates did mix up sections presumably in an attempt to save time making marking more difficult.

A number of candidates whether through mistake or poor time keeping only completed three or four sections of the questions thus missing valuable marks. I would advocate that candidates should attempt all sections of the question to attempt to obtain at least some marks from each section as attempting to pass the exam on only three parts of a question for example, a, b and c of the current question requires a near perfect answer to pass even at 65% pass rate overall.

If candidates had provided a detailed planning note in advance but had been unable to complete the question, then I, as an Examiner, would have been prepared to look at the notes and glean the basics of the candidate's understanding to assist their mark.

Finally on a positive note, I was pleased to see more candidates providing question notes and plans and substantially better handwriting on the whole.

I would add that generally questions which required briefing notes follow a simple and golden rule that is "less in most cases is more".

This is far easier achieved with a sketch plan in advance of commencing the question and saves candidates time in the long run when order and structure are provided within the answer.

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

**Paper II, Question I
Possible Sale of Inherited Let Farm**

Your client, Colonel T Wit, has recently inherited Manor Farm. He has no knowledge of agriculture and needs to raise capital.

Manor Farm comprises:

- *Manor Farmhouse a 5 bedroom grade II listed dwelling*
- *Manor Farm Cottages – a pair of 3 bedroom semi-detached dwellings*
- *A range of modern farm buildings suitable for the holding*
- *700 acres of arable land*

The holding is surrounded by other farm land and is at least 1 mile from the nearest village or other settlement.

The farm is let to Victor Smart who is aged 65 and was granted a written tenancy agreement in 1975. Mr Smart farms the holding in partnership with his son, Alec. Alec has worked exclusively on the holding since he left agricultural college over 10 years ago. They do not farm any other land and the rent was recently reviewed and is now £45,000 per annum.

In an initial meeting between your client and the Smarts the subject of the tenant buying the farm was briefly discussed. Victor Smart stated he would be interested provided the price was right.

Colonel T Wit has asked for your advice. Please draft a letter to:

- a) *Outline to your client, with reasoning, the legal position of both parties. (10 marks)*
- b) *Outline in valuation terms what price your client should ask the tenant to pay for the farm. Show your workings and reasons and state any assumptions. Value to your own area. (10 marks)*

No of Candidates answering question: 66

No of Candidates achieving pass mark (65%): 16

Highest Mark: 16 (80%)

Lowest Mark: 3 (15%)

Average Mark: 10.6 (53%)

Pass Rate: 24%

Examiner's Report

The question was designed to test candidates' knowledge about Agricultural Holdings Act tenancies, in particular the succession rules and the valuation of land subject to such tenancies.

Part A

This called for an outline with reasoning of the legal position of both parties. The question was worth 10 marks. To score well candidates needed to demonstrate a good understanding of the succession rules. This included a knowledge of the relevant Acts that provided rights of succession to the tenancy. There also needed to be detail as to why the tenant's son was likely to succeed and thus an understanding of the principal tests and an application of them to this particular scenario. The answer should therefore have included that the tenant not only needed to be eligible but also suitable, and give details on the close relationship test, the principal source of livelihood test, the commercial unit test and the suitability test. Good candidates would have also referred to the landlord's right to give their opinion on the suitability of the applicant.

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

In addition to this the question was looking for a demonstration of the ability to think wider in advising the client who had little knowledge about agriculture and therefore whether there might be any other alternatives open to the landlord for obtaining vacant possession of the farm. Good candidates also gave a brief comment on the important aspects of an Agricultural Holdings Act tenancy, particularly the restriction on the rent that can be charged.

Whilst most candidates arrived at the principal thrust of the question, being that the tenant's son was both eligible and suitable and would therefore potentially qualify to succeed to the tenancy, there were a few who stated this but were unable to detail the qualifying tests. There were also a number of candidates who knew what the principal tests were called but did not know the detail. There was a general lack of understanding about suitability where the tests include training, practical experience, age, health and financial standing. Good answers also detailed that the livelihood test was not just one of income but could also take account of other benefits such as the occupation of a cottage. Very few candidates detailed the right of the landlord to comment on the suitability of the applicant. There were also a limited number of candidates who gave consideration to the fact that their client had little knowledge of agriculture and therefore would require further advice on the implications of an Agricultural Holdings Act tenancy.

Part B

This part of the question required the candidate to consider what a tenant might potentially pay for the farm and to give reasons for arriving at that value. This involved a four-step process: calculation of the vacant possession value of the farm; calculation of the investment value of the farm using the vacant possession and investment values to calculate the vacant possession premium; an apportionment of the vacant possession premium which added to the investment value provided the end figure.

In order to calculate the vacant possession value it was necessary to break down the farm into the elements of house, cottages, buildings and land and give a value for each element. The investment value should have been arrived at by capitalising the rent. A good answer would have referred to the fact that a tenant potentially only has to pay just over what an investment purchaser would however it would be sensible in the first instance bearing in mind the tenant is a willing purchaser to ask for 50% of the vacant possession premium in addition to the investment value. There then needed to be a reasoned division of the vacant possession premium

There were a wide range of vacant possession values, and the marking especially allowed for latitude in figures for the farm house and cottages. Candidates however needed to be realistic on the value of the farm buildings and the farm land bearing in mind the current market. There were some candidates who provided values for the buildings of in excess of £500,000 with no reasoning. A general failing was the ability to provide an investment value as a large proportion of candidates merely divided the vacant possession value by two. This generally arrived at a wrong figure. Capitalising the rent with reasoning as to the multiplier and the period is the correct way as this is how an investment purchaser can weigh this up against other investments, albeit that currently purchasers are prepared to pay high values on the basis of low yields. Whilst a number of candidates could calculate the vacant possession premium, there was a general division of the resulted figure by two with no reasoning given

Generally it seemed there were quite a number of candidates who were able to answer either one or other part of the question reasonably but were not able to answer both parts well and this resulted in a disappointing pass rate.

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

**Paper II, Question 2
Investment in rural property and terms of business**

You have recently been introduced to a potential new client, Mr Lotterdosh. He has been advised by others that investing in agricultural property could be a sensible option in these turbulent economic times and that it could be advantageous in passing on his wealth to his children. Mr Lotterdosh is happily married and has two adult children. Mr Lotterdosh has no knowledge of agricultural investments and generally favours investments that he can easily dispose of.

Having received this advice Mr Lotterdosh made some informal enquiries and has recently been offered a small estate. The estate comprises:

- *300 acres of arable land with a modern grain store farmed in hand by the current owner*
- *200 acres of arable land which is let on an Agricultural Holdings Act tenancy. There are no dwellings or buildings on the holding*
- *An industrial estate which has planning permission for B1/B8 use. The buildings are all let and the total rent is £30,000 per annum. The tenants pay all rates and outgoings.*

Please write to Mr Lotterdosh setting out:

- a) *The advantages and disadvantages of Mr Lotterdosh adding the estate to his existing investments. This should include advice regarding his long term tax position. (8 marks)*
- b) *What price he might expect to pay for the estate and the returns he might expect to receive from the various investments. Value to your own area. (8 marks)*
- c) *Your fees and terms of business for acting on his behalf in buying the estate. (4 marks)*

No of Candidates answering question: 79

No of Candidates achieving pass mark (65%): 31

Highest Mark: 16.5 (82.5%)

Lowest Mark: 5 (25%)

Average Mark: 11.5 (57.5%)

Pass Rate: 39%

Examiner's Report

This question sought to examine, firstly, a candidate's understanding of the advantages and disadvantages of investing in the agricultural market for a new speculator. Secondly, it endeavoured to seek out the examinee's ability in estimating the likely cost of purchasing an asset of 300 acres of in-hand land, 200 acres of land held on a 1986 AHA tenancy together with some industrial buildings let at £30,000 pa and the returns the candidate might expect to receive once the asset was purchased. Thirdly it sought to look for the candidate's knowledge on what should be asked for in fees and terms of business in dealing with the instruction. The entirety of the answer should have been set out in letter form to the prospective client.

This question was in three parts: part (a) had a maximum score of 8 marks, part (b) had a maximum score of 8 marks and part (c) had a maximum score of 4 marks. The question was tackled by 79 out of a total of 129 taking the written examination. Of the 79 answering the question, 39% achieved the 13+ marks out of 20 to gain a pass.

In more detail, the examiners were expecting the following for a good pass:

Part (a) Advantages of owning the mix of assets:

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

A comment on market conditions - values increasing year on year for agricultural land.

Agricultural element - relatively stable & tangible asset.

Potential uplift in value on let land – planning or obtaining VP in the future.

IHT

Business Property Relief a possibility but APR probably more relevant.

APR - Must own asset for 7 years or farmed it for 2 years, each prior to death

'In hand' land potentially qualifies for 100% relief.

Let land potentially qualifies for 50% relief.

Possibility let land qualify for 100% where a tenancy commences on or after 1st September 1995 (perhaps succession or a deal with tenant for surrender and re-grant tenancy).

Income tax – 'in hand' land possibility off-setting any losses on farming against other income.

CGT – Gains can qualify for rollover relief where it is a disposal of a business asset.

Holdover relief on gifts where disposal of a business asset.

Disadvantages of owning the mix of assets:

Relatively illiquid.

Costs of disposal.

The assets would need management time and therefore additional costs.

Agricultural land has, traditionally, produced relatively low returns.

Income from let land and buildings would be treated as property income.

For in hand land will need working capital to farm even on a contracting arrangement

Risk of losses of farming in hand as must be trading.

Industrial lets – potential for bad debts as market for commercial property lettings is poor.

Additional costs of maintenance and insurance.

The vast majority of candidates concentrated on the tax advantages and omitted any market comment. Few candidates mentioned any disadvantages of owning agricultural land or industrial property. There were many references to the defunct schedules A and D, rather than to property and trading income.

Part (b) What the client may expect to pay and what returns may be expected.

Expected make-up of proposed offer to purchase in hand land

300 acres value between £6,000 and £7,000 per acre

Add cost for the grain store – say between £100,000 and £150,000

Possible additional cost for ingoing valuation – depends on assumptions but could be £100 per acre.

Let land

200 acres assume rent of between £55 and £65 per acre

Capitalise at rate of 2-3 %

Industrial Estate

Rent of £30,000

Capitalise at rate of 8-12% and possibly higher.

In valuation some may allow for costs of management, repairs and insurance.

Returns:

In hand land

300 acres – depends on how the client will farm but if let on FBT rent would be £100-120 per acre plus say £2,000 per annum plus for the grain store. For contract farming arrangement it would be slightly higher but would be riskier.

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

Let land

200 acres on AHA at rent between £55 and £65 per acre.

Industrial Estate

Rent £30,000 per annum

Allowance for void periods

Allowance needs to be made for insurance, maintenance and management fees.

Some candidates had a real problem with the difference between rates per cent and YP. Many got very confused and used YP instead of rates per cent and vice versa. Several candidates thought that the industrial element was as low a risk as agricultural land. The whole concept of valuation for some examinees appeared to be a mystery. Very few examinees grasped the idea that the examiners were looking for an guide to a purchase price and then an idea as to what return could be expected from the capital employed.

Part (c) Fees expected and terms of business

The examiners were looking for a detailed set of criteria along the following lines:

Parties

Extent of work – i.e. does the fee include an ingoing valuation and work involved in the transfer of single payment entitlements?

Basis and calculation of fee

Any additional costs – i.e. disbursements

Timing and payment of fee

Money laundering regulations

Termination of contract

Complaints procedure

Data Protection Act (DPA)

Some candidates merely stated a fee and mentioned that the firm's terms of business were enclosed without setting out what the terms of business were. Very few examinees mentioned a complaints procedure, money laundering regulations, the DPA, the extent or scope of work or disbursements. This part of the question, which was a very basic part of professional life for most rural surveyors, could have given those vital extra marks.

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

Paper II Question 3a

Advice on Agri-environment Schemes (Notes on English Answer)

You have been approached by Mr. Rex Less (RL), the new owner of Blooming Fields Farm, a 50 hectare lowland farm with a range of habitats. RL purchased the farm to downsize with a view to cutting down his workload and has heard that agri-environment schemes offer payments for extensive management.

The farm is subject to an Entry Level Stewardship (ELS)/Rural Stewardship agreement (*as appropriate to whether your answer is based upon a scheme in England or Scotland) which is due to come to an end on 30 November 2011. Special conditions were included in the sales contract obliging RL, as the new owner, to take on the existing agri-environment agreement. The agreement relates to Blooming Fields Farm only and was transferred in its entirety.*

RL is not that familiar with such agri-environment schemes but has indicated that he would wish to continue with an enhanced agri-environment agreement relating to the holding after November 2011 and now requires your advice.

- a) *Outline to RL in broad terms only what his obligations are under the **current** agri-environment scheme agreement and the penalties if he does not meet those obligations. (4 marks)*
- b) *RL has asked you to prepare a short briefing note on the proposed **new** agri-environment scheme agreement in terms of entry requirements, brief management details and possible payment levels for his consideration.
If answering based on England assume the new agri-environment scheme agreement would be Higher Level Stewardship (HLS) or in Scotland Rural Priority. (8 marks)*
- c) *Assuming that RL does wish to pursue a **new** agri-environment scheme agreement when the existing agreement expires in November 2011 he requires your assistance with preparing the application. Write a short letter to your client outlining the application process and timescales for each of the stages.
If answering based on England assume the new agri-environment scheme agreement would be Higher Level Stewardship (HLS) or in Scotland Rural Priority. (8 marks)*

No of Candidates answering question: 57

No of Candidates achieving pass mark (65%): 16

Highest Mark: 15.5 (77.5%)

Lowest Mark: 6 (30%)

Average Mark: 11.2 (56%)

Pass Rate: 28%

Examiner's Report

(a) (4 marks)

Average mark = 2.36 = 59%

The candidates needed to advise the client on his current agri-environment scheme obligations and the penalties for not meeting those obligations.

A number of candidates gave a brief outline of the basic entry requirements and payment level offered by the ELS scheme which was not necessarily required to answer the question.

Whilst candidates identified that the new owner had to meet scheme obligations until expiry of the current agreement, only some went on to detail that these related to maintaining Farm Environment Record (FER) features and adhering to the specific prescriptions as per the options selected by the previous owner and that the original agreement/contract needed to be consulted.

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

The majority of candidates noted that a breach of agreement could result in financial penalty with the better answers providing some detail on the scale of such penalty depending on the type, nature and severity of the breach. Only very few candidates noted that other penalties could be applied such as termination or prevention from participation in schemes for a 2 year period in cases of a severe breach. A minority of answers also noted a link to cross compliance and GAEC requirements and possible SFP penalties.

(b) (8 marks)

Average mark = 4.48 = 56%

This section of the question provided candidates with the opportunity to demonstrate their basic knowledge of the Higher Level Scheme.

Most answers identified that entry into HLS was competitive unlike ELS, with some only detailing that Natural England has target area across the country and themes outside those target areas which along with value for money considerations are used to evaluate applications. There are key features to the scheme such as 10 year management control of the land, registration on RLR, preparation of a Farm Environmental Plan, 10 year Agreement with a 5 year break option, part farm agreement only with the need to be underpinned by ELS/OELS, agreement drawn up in consultation with NE adviser and payments for capital works. Candidates noted some of these features in their answers with only a few noting all criteria.

Many candidates noted that the scheme offered many management options to choose from but did not expand on this. Other candidates detailed some possible lowland options and the payment level with no explanation of the management required in return for payment. Some candidates also confused HLS with OELS and indicated the scheme offered a flat rate payment of £60/hectare.

(c) (8 Marks)

Average mark = 4.40 = 55%

The need for early consultation with NE and the preparation of a Farm Environmental Plan featured in most answers to this section. Only a few of the answers noted specifically that NE were prepared to undertake a pre-FEP consultation at no expense to assess whether the holding had potential to be accepted into the scheme before going to the expense of preparing a FEP, with this confirmed in writing. Some answers also failed to advise that FEP preparation requires a number of different skills such as the ability to identify environmental, archaeological and landscape features and protected species on the holding with NE prepared to contribute towards the cost of preparation as part of the scheme.

Relatively few candidates provided detail on the next stage where FEP features are used to prepare the options maps and application packs with no advice that consultation with a NE adviser would be key in this stage to prepare a valid application. Few candidates advised that a Capital Works Plan needed to be completed.

The suggested timescales for the process did vary considerably with some answers giving a stage by stage breakdown and others advising simply it could take up to 6 months from start to finish. Relatively few answers noted the possibility of discussing with NE the dovetailing of both the ELS and HLS applications. Some candidates also noted that HLS applications have been frozen until April 2011 due to a review of expenditure - a recent announcement which demonstrated that they had their finger on the pulse in such matters with these candidates advising continuing with preparatory stages to submit an early application. A minority of candidates felt obliged to give an indication of likely payment levels with little to no information to substantiate the payments noted.

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

**Paper II, Question 3b
Advice on Glastir**

You have been approached by Mr Steven Champion (SC), who purchased Green Meadow Farm in spring 2010. Green Meadow is a 50 hectare lowland farm with a range of habitats. SC downsized by purchasing the holding with a view to cutting down his workload and has heard that agri-environment schemes offer payments for extensive management.

The farm is not subject to any Agri-environment schemes at present and SC has no previous experience of such schemes. SC registered an expression of interest to join Glastir the new agri-environment scheme as part of the 2010 Single Application Form (SAF) return for Green Meadow. He has now received an application pack and requires your advice.

- a) *SC has asked you to prepare a short briefing note giving an outline of the new scheme to include entry requirements, brief management details and possible payment levels for his consideration.
(10 marks)*
- b) *SC requires your assistance with submitting his All Wales Element (AWE) application. Write a short letter to your client outlining the stages in the application process and timetable for these stages, together with an outline of what will be expected by the Welsh Assembly Government at each stage from submission of application through to signature of contract.
(6 marks)*
- c) *The farm contains a small hay meadow which is notified as a Site of Special Scientific Interest (SSSI). Outline to SC what the scheme rules are in respect of SSSI and what considerations he will need take in relation to the application.
(4 marks)*

No of Candidates answering question: 5

No of Candidates achieving pass mark (65%): 2

Highest Mark: 13.5 (67.5%)

Lowest Mark: 9 (45%)

Average Mark: 11.4 (57%)

Pass Rate: 40%

Examiner's Report

(a) (10 marks)

Average mark = 6.2 = 62%

This was an opportunity to demonstrate a basic knowledge of the new Glastir scheme in the form of a briefing note. Most candidates noted the key features of the All Wales Element of the scheme. Whilst many noted that there were 40 scheme options to gain a minimum 28 points/hectare entry threshold relatively few provided any detail on the options particularly in relation to the holding which was a lowland farm with a range of habitats.

Fewer candidates noted other elements of the scheme such as a Targeted Element. Whilst details of the Targeted Element are yet to be confirmed it is known that selected applicants will be offered contracts by the Welsh Assembly Government using GIS based targeting maps to assess whether the holding can contribute towards achieving scheme objectives such as carbon management and water quality and quantity matters. It is also known that this element of the scheme will offer higher payment levels and capital works payments. There was also the opportunity to provide some detail on ACRES which can provide capital grants towards projects aimed at energy, water or slurry/manure efficiency which relatively few candidates mentioned.

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

(b) (6 marks)

Average mark = 3.6 = 60%

Almost all answers to this section advised the client to take urgent action to submit the application by the deadline of 22 November 2010. The better answers suggested to the client that having visited/assessed the holding and using the maps and pre-printed application form details provided they would select suitable options in consultation with him using the points calculator provided by WAG to ensure the required threshold was exceeded. Some candidates noted WAG advice to exceed the points threshold for an application by 10% in case of future deductions at the assessment stage. They also noted that the application form only should be submitted at this stage with the scheme map kept for the customer review meeting.

Again whilst candidates mostly noted that applicants could be called to interview between January and October 2011 few noted that they will usually be given 4 weeks notice of the interview by letter which would include a copy of the application summary that will need to be carefully checked for any errors, changes or omissions with any to be notified to WAG prior to the interview. The letter will also list a checklist of documents which should be brought to the interview such as options map, consent from EA or CCW if required, copies of Organic certification if required. Candidates failed to advise their client of the importance of bringing the options map to the meeting as the data on the map would be transferred to an electronic scheme map for the holding. They also failed to inform their client that they would be expected to sign the Glastir AWE contract at the customer review meeting and that an authorised individual who can sign the agreement needs to attend. Advice given should also detail that WAG have noted that the interview is not an opportunity to renegotiate or discuss the application with all preparatory work needing to have been completed prior to the interview.

Finally most candidates noted that the contract offered would be for a 5 year period from 1 January 2012.

(c) (4 marks)

Average mark = 1.6 = 40%

This section required candidates to advise the client on the Glastir scheme rules in relation to the SSSI area on his holding and considerations for his application. This was generally poorly answered as candidates failed to answer in the context of the Glastir application.

Candidates should have advised the client that SSSI land is eligible for entry into Glastir. The client will need to decide whether to select a scheme habitat option on the land or not. If options are selected on the land then written consent will be required from the Countryside Council for Wales (CCW). If an option is not selected on the SSSI then CCW's consent is not required to enable the land to be entered into Glastir. However additional points may need to be secured on other land to ensure that the threshold of 28 points/hectare is met on the holding overall.

If the SSSI area is subject to a Management Agreement with CCW then the area can be excluded or included from the application. If included no Glastir scheme options can be selected on the Management Agreement area as this land can not contribute to the points target. If the Management Agreement area is excluded from the application the area is excluded from land used to calculate the points threshold for the Glastir application. Management Agreement land excluded from the All Wales Element of Glastir may still be eligible for the Targeted element provided the management or work undertaken is different to that already being paid for under the CCW agreement.

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

**Paper II Question 4
Heads of Terms for agreement for access**

You act for the Golightly family who are owner occupiers of Minerva Farm, a 200 acre farm comprising farmhouse, buildings and land. In the 1950s the family sold a limestone quarry they owned adjoining their property to Jones Quarries who worked the quarry until the quarry closed in 1975, since when it has not been used for any purpose.

Jones Quarries now propose to make a planning application to use the quarry as a land-fill site for inert fill only but no longer have a suitable means of access other than through Minerva Farm. Advance discussions with the local planning authority indicate that the proposed use and access will be recommended for approval and that the proposed landfill operation from commencement to completed reinstatement will last 10 years.

Jones Quarries have approached your clients to acquire a temporary right of way over their land for a period of 10 years to facilitate the planning application for and use of their quarry for landfill and your clients have accepted in principle that this is how the matter should be dealt with.

Please write a letter to your clients setting out your advice to include:

- a) *How in principle should a right be granted. (3 marks)*
- b) *The terms and issues that such an agreement should cover. (13 marks)*
- c) *A brief outline of any alternative mechanisms that could be used. (4 marks)*

No of Candidates answering question: 28

No of Candidates achieving pass mark (65%): 4

Highest Mark: 14 (70%)

Lowest Mark: 3.5 (17.5%)

Average Mark: 9.2 (46%)

Pass Rate: 14%

Examiner's Report

This question was essentially asking for heads of terms for an access agreement. In my opinion it was one of the more straightforward questions on this year's written board papers.

The scenario set was of a quarrying company wanting to agree terms to take an access over clients land for the purposes of landfill.

The relevance of the quarrying and the landfill to the answer was only to set the scenario and I had anticipated that many candidates would answer this question. I was therefore very surprised when only 28 out of 129 candidates chose to answer the question (21.7%).

The answer sought advice in letter format asking candidates to advise on three separate elements. The first how in principle the rights should be granted; the second the terms and issues, i.e. the heads of terms that such an agreement should cover; and thirdly an outline of any alternative mechanisms that could be used.

Generally speaking the first element of the question was not answered well with too few candidates identifying the principles underlying the right to be granted.

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

The second element of the question was answered equally poorly. Candidates were able to identify the basic terms and issues to be addressed but there was a lack of depth of knowledge demonstrated and a failure to apply the scenario to the heads of terms.

Likewise, the third element of the question was answered equally poorly with most candidates unable to provide any worthwhile advice as to appropriate alternative mechanisms.

Of the 28 who attempted the paper 4 passed – 14.3%.

Even if candidates had had no personal experience of such access agreements then I had hoped that with a little common sense and experience in drawing up heads of terms in other scenarios, then application of that knowledge to the scenario set should have enabled candidates to answer this question competently in any event.

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

Paper II, Question 5

Wind Turbines - Non-Agricultural Uses – agreement for Development Including Option

Your longstanding client, Mrs Meg Watts, is the owner/occupier of Windy Ridge Farm, a 200 hectare mixed holding supporting a 500 ewe flock, 75 single suckler cows and growing 80 hectares of cereals. Following the death of her husband some 15 years ago she has been farming in partnership with her son. However, following her recent 65th birthday she would now like to take life a little easier but is not sure how the farming business will finance her semi-retirement. The farm is free of any borrowing.

Mrs Watts called you yesterday morning to say that she had received a visit from a smart young man who worked for a company called Green Generation Ltd. Apparently, he explained “part of Windy Ridge Farm may be ideally situated for wind power generation and Green Generation Ltd would like to carry out a site survey to develop a 1MW wind farm.” Your client has also been reading in the farming press that renewable energy production is being encouraged by both the European Union and UK central government and, following the visit from Green Generation Ltd, thinks wind turbines may be the answer to her dilemma.

“The young man said something about Feed-in Tariffs and an option”, Mrs Watts relayed to you over the telephone, “but I don’t really understand what he meant.” She went on to say that she and her son were a bit tied up with lambing at the moment but could you look into it for her?

- a) *Prepare briefing notes in readiness for a meeting with your client at which you will:*
- i) *provide an explanation of Feed-in Tariffs. (4 marks)*
 - ii) *outline the criteria for making an initial assessment of a potential wind turbine site. (2 marks)*
 - iii) *make your client aware of the advantages and disadvantages of the two principal approaches to wind turbine development (in-hand, farmer owned versus grant of lease to renewable developer). (4 marks)*
- b) *Prepare, on behalf of your client, draft Heads of Terms, including headings with brief explanatory text, for an Option Agreement for a Lease with Green Generation Ltd. (10 marks)*

No of Candidates answering question: 75

No of Candidates achieving pass mark (65%): 29

Highest Mark: 17.5 (87.5%)

Lowest Mark: 2.5 (12.5%)

Average Mark: 11.7 (58.5%)

Pass Rate: 39%

Examiner’s Report

This question was designed to test candidates’ knowledge of non-agricultural development using the topical issue of renewable energy and Feed-In Tariffs in connection with wind turbines.

Part a) of the question asked for briefing notes in readiness for a meeting with your client, yet some candidates provided a full commentary. All that was needed were bullet point items (sentences, phrases) to help you structure your meeting with your client.

Part a) i) of the question asked for an explanation of Feed-In Tariffs and 4 marks were available. To score well, candidates needed to demonstrate a good knowledge of Feed-In Tariffs and demonstrate an understanding of the reasons behind them. A mention of the statutory basis was required including reference to the EU Directive, requiring 15% of total energy in the UK to come from renewable sources by 2010. The answer should also include a reference to the primary UK legislation (Energy Act 2008) together with the enabling Feed-In Tariffs (Specified Maximum Capacity and Functions) Order 2010. Candidates also needed to demonstrate an understanding of the mechanism of feed-in tariffs with reference to the range of tariffs available, the different energy

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

sources included, the maximum size of energy installations covered, when they started, etc. Most candidates could describe what these were, when they started and how they worked but few were able to relate them back to UK and EU legislation and importantly, the aim of reducing the reliance on fossil fuels, trying to reduce global warming, etc.

Part a) ii) (with only 2 marks) asked candidates to outline the criteria for making an initial assessment of a potential wind turbine site. It was essential that candidates mentioned wind speed and hopefully a minimum figure. Other important criteria included landscape impact, proximity to a grid connection, statutory designations (AONB, SSSI, etc), the closeness of neighbours, proximity to MOD installations, airports, telecommunications and access to the site. All candidates mentioned wind speed and most but not all, proximity to the national grid. Thereafter, candidates' understanding of site requirements diminished with too many answers omitting impact on the landscape, protected species, natural habitat and affect on neighbours/local communities. Impact on the landscape and neighbours are hugely important issues when assessing potential wind turbine sites.

Part a) iii) sought to test candidates' understanding of the different wind farm development options open to their clients and the merits and drawbacks of each. Important aspects of the answer were the differences in terms of control, risk, finance and maintenance/repairing responsibilities. Whilst most candidates seemed to appreciate some of these issues, few candidates demonstrated a comprehensive understanding with again too few candidates acknowledging the importance of good relations with neighbours and the local community.

50% of the marks for the whole question were allocated to Part b). This asked for draft Heads of Terms (including headings and brief explanatory texts) of an Option Agreement for a Lease. The function of Heads of Terms is for an agent to provide his client's solicitors with various items of information that have been agreed, (eg the option area, the option fee/rent, the option period, any extension to the option period, etc) in readiness for preparation of the Option Agreement for a Lease. The Heads of Terms are not the option itself and too many candidates wasted time in preparing detailed clauses that would not normally be negotiated by agents.

Most candidates set out the Heads of Terms in the correct manner, i.e. in a tabular format but it was disappointing to see candidates missing out simple but essential information such as the names and addresses of land owners and developers' agents and solicitors and often what the proposed development (planning consent for the wind turbines) actually was.

The question specifically asked candidates to prepare Heads of Terms for an Option Agreement for a *Lease* and candidates were expected to include headings for the demised premises, the lease period, any agreed extension to the lease period, the lease fee/rent and reference to de-commissioning/reinstatement. Very few candidates set out separate sections dealing with the Heads of Terms of the Option Agreement and the Heads of Terms of the Lease. One or two candidates even made reference to an option to *purchase* the site rather than to enter into a *lease*, as stated in the question.

Overall, candidates didn't seem to grasp two important points. Firstly, that the purpose of the Option Agreement is to allow the developer time to obtain planning consent for the proposed development and secondly, once the developer obtained planning consent and exercised the option, the Landlord was already committed to entering into a lease.

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

**Paper II Question 6
Professional Practice**

Your Principal of three years has decided to resign and set up his own firm of Chartered Surveyors and Property Consultants. He has offered you the opportunity to work with him and you have accepted. Having arrived at the new office the first item on your desk is to assist in preparing the new Office Procedures Manual.

Make notes on what you consider to be the main issues to be included within the Office Procedures Manual on the following issues:

- a) *Professional Indemnity Insurance.* (5 marks)
- b) *Clients' complaints procedure.* (5 marks)
- c) *Principal points of the office health and safety policy in relation to employees within the office.* (5 marks)
- d) *Money laundering and clients' money procedures.* (5 marks)

No of Candidates answering question: 77

No of Candidates achieving pass mark (65%): 49

Highest Mark: 17.5 (87.5%)

Lowest Mark: 6.5 (32.5%)

Average Mark: 11.7 (58.5%)

Pass Rate: 64%

Examiner's Report

The question was formulated in order that candidates had to write notes on four matters to be included within an Office Procedures Manual. The topics were all subjects that they should be conversant with, particularly if they had recently taken the Royal Institution of Chartered Surveyors (RICS) Assessment of Professional Competence.

- a) Professional Indemnity Insurance (5 marks)
Average mark = 2.90 (58%)

Ideally candidates would have started by setting out that it was an RICS/CAAV requirement to hold professional indemnity insurance to practice and who that cover is to protect. The best candidates detailed that the level of cover required was linked to turnover and set out the different bands. They also set out who was protected and that there had to be a run-off period for those who had left the firm or when the firm ceased trading.

Few candidates stated that cover had to be on a retroactive claims made basis, i.e. that the claim was made against the policy in place at the time the claim was made rather than the policy in place at the time of the breach occurred. Few mentioned that cover must be with an RICS approved insurer and the policy must allow the ability to claim up to the limit on each and every claim.

- b) Clients' Complaint Procedure (5 marks)
Average mark = 3.28 (65.6%)

This section was answered well by many.

The best candidates stated that there needed to be a written complaints handling procedure (CHP) which was essentially a two stage process – the first stage being an internal review by a senior

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

member of staff or complaints handler and the second stage external review for redress, usually to the Ombudsman.

Candidates generally stated that details of the CHP would be issued with terms of business and again if clients indicated dissatisfaction and that the process should set out timescales for responses.

Many candidates failed to identify that the individual against whom the complaint was made should not deal with it, that a log should be kept of complaints and regularly reviewed to see if there are weaknesses within internal procedures and that if the matter escalates into legal proceedings then the complaints handling procedure ceases.

- c) Principal points of office health and safety policy in relation to employees within the office (5 marks)
Average mark = 3.34 (66.9%)

Strongly answered by many candidates and it was not difficult to score marks if thought was given to different procedures within the office.

The best candidates started by stating the legislation covering employees in the workplace and then moved on to talk about risk assessments for different processes within the office. Many gave detailed notes on fire procedures, practices, extinguishers and similar as well as identifying the need for suitably qualified first aiders and a first aid kit which should be easily available. Many also mentioned the requirement for an accident book and portable appliance testing. Many stated that the office policy should be communicated to staff in writing with an individual appointed to oversee the matter. There should be regular training of staff and a record kept to show that matters had been communicated to staff.

The areas that many candidates failed to address were the treatment of visitors within the office, workstation/VDU provisions and employers' liability insurance.

Many candidates talked about lone working out of the office and procedures related to it although the question clearly stated procedures within the office.

- d) Money laundering and clients' money procedures (5 marks)
Average mark = 3.16 (63.2%)

The majority of candidates correctly stated the regulations and the need for them. They also stated the requirement for photographic identification and recent proof of address in verifying clients. The best candidates set out the need for a procedure to appoint an individual within the firm to oversee processes but many failed to give them the correct title of Money Laundering Regulation Officer and to identify who the MLRO informed should there be suspicious activity.

Many candidates failed to identify the type of work that is covered by the regulations – regulated activities – and that the guidance recommends a risk based approach is applied to clients and their activities.

In respect of clients' monies most candidates stated that correct procedures were required as part of RICS/CAAV by-laws to preserve clients' money and stated the types of money that this may include. The majority correctly identified that the bank account must have "client" within the title, it should be separate and identifiable from office accounts and should never go overdrawn. Only authorised staff should handle clients' money.

**CAAV 2010 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

Overall the question was well answered with perhaps candidates who had read the recently published CAAV guidance on office procedures and who also may have been studying for RICS APC and who were clearly well versed in these areas.