

Chartered Secretaries Qualifying Scheme – Level Two

Chartered Secretaries Case Study

Sample paper

Time allowed: 3 hours and 15 minutes
(including reading time)

Do not open this examination paper until the presiding officer or an invigilator tells you to.

You must not take this paper out of the examination room.

The examination paper contains **four compulsory** questions.

Pre-seen material

Haligen plc – establishment, industry background and operations

Haligen plc ('Haligen') is a company listed on the London Stock Exchange which manufactures and markets pharmaceuticals, speciality chemicals and other related consumer products.

Haligen was established in 2002 when a group of venture capitalists purchased the speciality chemicals business of a long-established UK manufacturing company. The new owners made swingeing cuts in overhead costs, expanded the business reasonably successfully and disposed of their investment three years later by selling the shares in a public offering. A large number of the current senior management team joined the company shortly before, and in anticipation of, the public offering.

Haligen continued to grow by organic growth and small acquisitions for a further two years, and achieved a large step change in its size and scope in 2007, when it acquired the pharmaceuticals and chemicals businesses of Alpha Consumer Products plc (ACP). ACP is a very large multinational company whose main business is in household and consumer products. ACP disposed of its pharmaceuticals and chemicals businesses, which were reasonably profitable, in order to focus on what it considered its core activities. Although they represented only a small fraction of ACP's total operations, the pharmaceuticals and chemicals businesses were large enough to make Haligen a constituent of the FTSE 100 share index when it acquired them.

Haligen has three operating divisions: Pharmaceuticals, Speciality Chemicals and Consumer Products.

The Pharmaceuticals Division operates four plants in the UK, two in France (as the result of the acquisition of a French pharmaceutical company in 2007), three plants in the USA and one large plant in Puerto Rico that gives it preferential access to the US market. Most of the Pharmaceutical Division's business is prescription pharmaceuticals (products that are prescribed for patients by qualified medical practitioners). Most of Haligen's prescription business is in branded products: unique products that Haligen has developed itself, and for which it can charge prices that allow it to recover the research and development costs. A small but growing amount of Haligen's sales of prescription pharmaceuticals is of generic (unbranded) products, not protected by patents, where other companies are free to make products that are essentially the same. The Pharmaceuticals Division also makes non-prescription products that the public can buy from pharmacists and other retail outlets.

The Chemicals Division has three manufacturing plants in the UK and two in France (also as a result of the acquisition in 2007) and sells speciality chemicals in niche markets to industrial customers, almost all of them in the European Union (though sales to China and India are growing rapidly). The Chemicals Division produces industrial chemicals including chlorine, ethylene, propylene, and butylenes, as well as products and materials used in filters and pollution control devices in vehicles and industrial processes. Markets for the latter groups of products are growing as the global vehicle market grows, and in developing countries, particularly China, where the need to reduce harmful emissions from power stations and factories means that demand for such products is growing even faster than industrial output.

The Consumer Products division operates four plants in the UK. It produces and markets products such as health drinks and snack foods.

Since its inception, Haligen has never disposed of any businesses, though the nature and focus of its business has changed due to the type of organisations it has acquired. The company has gained considerable experience in acquiring and integrating new businesses.

The synergies that it has achieved in the course of its growth have been mainly due to cutting overheads where duplication has been clearly apparent. Organic growth was fairly impressive in the first two years of the company's existence, but has slowed since then. Almost all of the sales growth has come from acquisitions. Haligen has tended to pride itself on its ability to spot when potential acquisitions represent undervalued assets, but this ability has come under question since it acquired the pharmaceuticals and chemicals businesses of ACP. Many analysts consider that Haligen overpaid.

Haligen borrowed heavily to pay for the businesses that it took over when it was first set up, and has continued to borrow, as well as using retained funds for investment, to fund its continuing acquisition and capital investment programme. It issued new ordinary shares in a rights issue, and took on a large amount of new debt, to fund its acquisition from ACP. It consolidated its long term borrowing in 2007 by issuing loan stock, redeemable in 2013, at an interest rate of 15%. The loan stock is quoted on the London Stock Exchange.

Business development

The sales history of Haligen over the past seven years is shown below:

Sales turnover (£m)							
	2003	2004	2005	2006	2007	2008	2009
Prescription pharmaceuticals	54	108	173	227	1,354	2,872	2,971
Non-prescription pharmaceuticals	60	120	150	192	401	408	414
Other consumer products	45	89	91	121	284	665	671
Speciality chemicals	42	85	90	117	218	461	543
Total	201	402	504	657	2,257	4,406	4,599

Haligen's business was originally mainly in the UK, with some sales in the rest of Europe, and little business outside Europe. The major acquisition in 2007 increased sales outside Europe, with additional significant sales in the USA and Canada and some sales in the rest of the world, and shifted the balance in Europe away from the UK.

The geographic and product breakdown of sales and operating profit in 2009, shown in the 2009 annual report and accounts, was as follows:

	Sales £m	Operating Profit £m
Pharmaceuticals		
Europe		
Prescription	1,028	671
Other	86	57
	<u>1,114</u>	<u>643</u>
North America		
Prescription	1,143	821
Other	171	93
	<u>1,314</u>	<u>914</u>
Asia Pacific	386	200
Rest of world	571	143
Pharmaceuticals R&D		(656)
Pharmaceuticals other unallocated expenses		<u>(336)</u>
Total Pharmaceuticals	3,385	908
Consumer Products		
UK	471	56
Non-UK (mainly Europe)	200	16
Total	<u>671</u>	<u>72</u>
Speciality Chemicals		
UK	300	77
Non-UK (mainly Europe)	243	24
	<u>543</u>	<u>101</u>
Total	4,599	1,081

Customers

Since most of Haligen's business is in prescription pharmaceuticals, Haligen's most important customers are institutional health providers and entities that purchase drugs on behalf of doctors. Some sales are made direct to general practitioners. Some sales (about 10% of the total for pharmaceuticals) are made to medical products wholesalers, who purchase from Haligen and then sell to individual hospitals, clinics and medical practices.

Non-prescription drugs and other consumer products are sold direct to larger retailers and retailing groups and indirectly, through wholesalers and cash and carry outlets, to smaller retailers.

Speciality chemicals are sold to industrial customers, usually direct.

A note issued by the company's Corporate Planning Department on changes in UK government policies that may affect Haligen following the UK General Election in May 2010 is given in Appendix 1.

Financial results

Appendix 2 shows a summary of Haligen's 2009 financial results, together with the dividend history and a note on the company's dividend policy.

Shareholders' action group

The Haligen Shareholders' Action Group ('Hasag') has recently been expressing concern about Haligen's share price and about what it considers to be the company's lack of success in delivering investment returns to shareholders. A recent press article on Haligen shares' investment performance included a summary of brokers' views and echoed Hasag's critical stance on the current management of the organisation.

Further comparative information on Haligen's share prices is given in Appendix 3, together with more information on Hasag, the press article and a summary of brokers' views.

Key staff

Ben Short is the Chief Executive Officer (CEO). He is a dynamic, ambitious executive who leads from the front and engenders great personal loyalty in his colleagues.

He was recently profiled in the Sunday News, a widely respected UK Sunday newspaper (an extract from a recent article by Ben Short in the same newspaper is reproduced in Appendix 4). He sets high standards for his colleagues, but does not monitor their performance closely. He is willing to intervene, though, when he believes that the circumstances warrant it. Ben Short has a large number of contacts, particularly in political circles. He has friends in both the Conservative Party and the Liberal Democrats, who are members of the recently formed coalition government. He believes in taking a high profile, both inside and outside the company. As a result, he spends a lot of time away from the company's headquarters.

The Chairman is Sir Edward Parker. He joined the company at the beginning of 2009, towards the end of the most unsettling phase of the world financial crisis. He exerted a calming influence when many people, inside Haligen and outside, were close to panic. In the normal course of events, Sir Edward avoids intervening in the day-to-day management of the business, which he leaves to the executive directors.

The Chief Operating Officer (COO) of Haligen is Joe Burton. He has been with the company only three months. His background is not in one of Haligen's industries but in construction. Joe does not suffer fools gladly, and his working relations with some of his colleagues – many of whom are by no means fools – have not started well. The sense of unease that this situation engenders with his colleagues is compounded for some people at Haligen's corporate headquarters by Ben Short's frequent absences.

Harry Fisher is the Engineering Director. He is an outstandingly capable engineer, but tends to spend almost all of his time on technical issues concerned with all of Haligen's operating divisions, where his input is valued and in great demand. This leaves him little time for other responsibilities that he has acquired as a result of his promotion to the main board. Some of the Non-Executive Directors (NEDs) have reservations about his performance as a main board director. He seems reluctant to express independent opinions, and very rarely disagrees with what Ben Short says. Ben Short, for his part, is willing to give Harry the benefit of the doubt, and to give him time to work himself into the job. He believes that there are good reasons why what Harry has to do is not easy.

Pam Carter is the Finance Director. She is younger than the other directors, but has come to Haligen after a rapid rise in her area of expertise, with a history of successful performance in other companies. Her board colleagues are impressed by what they have seen so far. For her part, Pam is not impressed by much of what she has seen concerning the management of the company. Privately, she sympathises with the concerns that shareholders have been expressing about the investment performance of the company's shares. She knows that this, like several other problems related to the financial management of the company, is one that needs to be tackled, and that she will need to deal with.

Until early 2010, Haligen had a Corporate Communications Director, Charlie Martin. Charlie was not a member of the main board, but reported to the CEO. He left to take up a senior position in the campaign management team of one of the main political parties in the UK general election. Charlie had always maintained close communications with all the Haligen directors, particularly the Finance Director, who has always had responsibility for day-to-day investor relations. Until a replacement is found for Charlie Martin, Ben Short is dealing personally with corporate communications, but in matters concerning investor relations he is relying even more heavily on Pam Carter than did Charlie Martin. He has made Pam wholly responsible for all aspects of communications with investors, including public statements by the company. In this she is assisted by Haligen's external Investor Relations consultants.

Pam Carter is also concerned about the achievement of the company's financial targets for the year, and about the fact the company does not have any basis for judging whether the performance, including the profitability, of its businesses is satisfactory.

The post of Human Resources (HR) Director is currently vacant. Before the previous HR Director retired about six months ago, the company set processes in motion to select a replacement. But a debate about the scope and responsibilities of the job, centred in particular on how far the operating divisions should be responsible for their own staffing and recruitment, was precipitated by new NEDs (and not discouraged by the Chairman). As a result, the recruitment process was suspended. Since the previous HR Director retired, group-wide responsibility for HR management has been shouldered by Terry True, the Senior Group HR Manager. Terry is a seasoned professional who is highly regarded by his colleagues. He has in effect been the acting HR Director for the past six months, and attends board meetings, though he is not a Director. The Chairman wishes to make a permanent appointment from outside the company, but has made it clear that he does not wish to do so until the question of the scope of the HR Director's job has been resolved. There have been accidents at different plants during the past couple of years which have resulted in prosecutions under the Health and Safety at Work etc Act 1974. Terry believes that these can be attributed to lax safety procedures, but his diplomatic instincts tell him that now is not the time to make an issue of this. His judgment is that he does not at present have the authority to take decisive action to deal with the problem, since safe operating is the responsibility of the production line management, reporting through divisional directors to the COO and the CEO.

Reeta Patel is the Company Secretary and General Counsel. She is also Secretary to the board's audit, remuneration and appointments committees. Reeta's team includes a Deputy Secretary, a lawyer and a Trainee Company Secretary as well as a Personal Assistant. The company secretarial team carries out all of the usual functions expected of such a department in a FTSE 100 company. Since she joined Haligen, she has carried out a detailed review of Haligen's governance framework and its board and committee terms of reference. The review is now complete, but few of the recommendations have yet been accepted or implemented.

Appendix 5 gives biographical details of all the directors, including the four NEDs. Of these, Marcus Bond is the Senior Independent Director ('SID'). Appendix 6 shows an organisation chart and the composition of board committees.

Current developments

It is mid July 2010. Marcus Bond, the SID, has been having urgent discussions with the Chairman, Sir Edward Parker, and other NEDs about problems in a number of areas.

During their conversation, Sir Edward tells Marcus that he had requested informal due diligence checks on Joe Burton prior to his appointment as COO. These checks had raised several concerns about his suitability for the role, but Ben Short, the CEO, had brushed these aside and persuaded Sir Edward that Joe was exactly the person that the Haligen board needed.

Sir Edward also lets Marcus know something he has heard about Ben Short. Sir Edward's reliable contacts in the financial services sector have let him know that Ben has been telling people he is planning to oust Sir Edward as Chairman and assume that role himself, with Joe Burton stepping up to become CEO. Sir Edward tells Marcus that he has not taken these reports too seriously. In his view, Ben is a capable CEO and, although he might feel that he could do a good job as Chairman, Ben would not enjoy the reduction in pay and benefits that would result from him giving up his current position. Ben does not have a large shareholding so his personal financial interest in Haligen is likely to be dominated by his salary, bonus and share options. Sir Edward does admit though, that the reports imply that Ben has a poor perception of his own performance as Chairman.

Marcus Bond chairs the remuneration committee. (Details of directors' pay and benefits are given in Appendix 7). As a precaution, prompted by experience, he asks Terry True to let him see the personal files for Ben Short and Joe Burton. When he reads them, he finds that:

- Sir Edward has entered into a legally binding unfunded pension promise to Ben Short.
- Ben Short has arranged for substantial mortgage assistance for Joe Burton as part of his relocation package, at a level which significantly exceeds the level of assistance allowed for new executive directors under the company's relocation scheme. The liability on Haligen would be significantly increased if Joe Burton's employment ever had to be terminated.
- Haligen has a bonus arrangement which grants both the CEO and the COO each a £1.5 million bonus if the 2010 operating profit exceeds the target of £1,130 million.

Even though he has been SID since 2007, Marcus knew nothing of these matters before. The remuneration committee has not been advised or asked to approve the pension arrangements for Ben or the relocation package for Joe. Marcus has a quiet word with Reeta Patel, who confirms that she also knew nothing about either of these matters.

Marcus is concerned by what he has been told by the Chairman, what he has read in the HR files, and what he has been hearing about Joe Burton's relations with his colleagues.

Loan stock

On 20 July, Pam Carter is considering the possibility of refinancing the company's 15% loan stock. She has already received approaches from several investment banks, offering to arrange a refinancing issue. She has asked a member of her team to produce a report for the board, detailing:

- The financial risk and cost of capital of the current capital structure.
- The potential impact of the proposed change on the company's balance sheet.

- The consequences of refinancing with another, longer term, loan at a lower rate of interest.
- The consequences of raising new equity to replace the debt.

Pam has not yet received this report.

2010 profit and dividend

On 22 July, Pam Carter is reviewing notes she made of a recent meeting with Joe Burton at which they discussed the latest profit projections for the year to 31 December 2010. Joe raised the following issues:

- (i) Joe, in his role as COO, asked Pam to reduce the estimate of warranty expense on catalytic systems manufactured by the Chemicals Division to £20,000,000. The current estimate of warranty expense included in the profit projection for 2010 is £32,000,000. Haligen provides warranties, on all parts, for three years from the date of shipping and/or installation. Joe said "...there's no need for such a large estimate because we can always argue that damage is down to the customer not using or servicing the catalytic systems properly...", adding that "...the warranty isn't worth the paper it's written on and we can always void it by claiming that the customer has misused or damaged the unit...".
- (ii) Joe expressed concern that the 2010 operating profit may be lower than target, and that the Chairman may ask for costs to be reduced by cutting staff. Staff in Pam's own department may not escape such cuts. Joe suggested it may be useful to review how certain costs are estimated. For example, Haligen currently uses the reducing balance method of depreciation for accounting purposes and he suggested that it might be appropriate to change to the straight-line method. Whilst he acknowledged that such a major change might have to be highlighted in the notes to the accounts, he suggested that this could be avoided if the estimated useful lives and residual values of the assets were increased. This could reduce the depreciation expense and increase operating profit. These changed estimates could be handled prospectively and not be highlighted in the profit statements for 2010 or future years. Joe pointed out that this approach could save head office jobs, including jobs in the Finance Department.

Pam Carter knows that the 2010 operating profit target will be difficult to achieve, and that some directors' bonuses depend on profit targets being met. Now, since she feels a sense of responsibility to her staff, she has more than a purely professional reason for wanting targets to be met. Or at least, she knows that Joe wants her to believe this.

Pam also has a brief conversation with the Chairman, Sir Edward Parker, when he drops into her office. Sir Edward is aware of shareholder dissatisfaction with Haligen's share price performance and the dividend history. He suggests that an interim dividend of something like 24 pence could signal to investors that the company's progressive dividend policy is back on track after the difficulties associated with the credit crunch and the subsequent recession. Pam does not respond directly to this suggestion, but knows that it will need to be addressed. She wants to confirm her calculations about the feasibility of the dividend and get more information about how investors and the financial press are likely to respond to a dividend announcement. She makes a mental note to speak to the company's external investor relations advisors and to Ben Short before responding to Sir Edward.

Chlorine gas leak

At 8.30 am on 27 July, Joe Burton receives a telephone call from the manager of Haligen's Humberside chemical plant. An explosion at the plant has caused a major leak of chlorine gas. Three Haligen production workers have been taken to hospital, two of them in a serious condition, and people living near the plant have been evacuated from their homes. Joe Burton reports this to Ben Short, who informs the other directors as well as Reeta Patel and Terry True.

At midday on 27 July, an item on the accident is broadcast on a local television station. Early in the afternoon, press, radio and television journalists start calling the head office asking for information. Later in the afternoon, Ben Short goes to Humberside, where he talks to the plant manager and other staff at the plant, visits hospitals to see the people who have been affected by the leak and gives media interviews.

In the afternoon of 27 July, Sir Edward Parker comes in to the head office from his home in the countryside. He speaks to several of the directors, to Reeta Patel and to Terry True. He does not give any specific guidance or instructions, but provides reassurance to colleagues, some of whom are visibly shocked by the events of the day. As he leaves Reeta Patel, he tells her that he has some reading to do. Reeta guesses what this reading is. She has already taken a quick look at the company's Crisis Management Plan, which is kept in the safe where the board minutes and the company's memorandum and articles of association are kept. When she speaks to directors shortly after the Chairman has left, she learns that several of them have reached the same conclusion, and are planning to refer to their copies of the Crisis Management Plan which are kept in safes in their homes. The company's risk management policies are outlined in Appendix 8.

Ben Short, now at the Humberside plant, has put Joe Burton in charge of dealing with the production consequences of the accident. This includes the reinstatement of damaged equipment at the Humberside plant, the effects of the loss of production capacity on supplies to industrial customers and the effects on other Haligen plants that use materials produced at Humberside. Ben is tempted to hand over all responsibility for handling the crisis to Joe Burton, but does not do so for two reasons: firstly, he considers it vital that the outside world should see that the person in charge of the company is dealing with the crisis. This could mean the Chairman instead of the CEO, but Sir Edward has made it clear that he is unwilling to fulfil this role. Secondly, despite what he said in support of Joe Burton at the time of his appointment, and since then in conversations with Sir Edward, Ben does not believe that this is the kind of task to which Joe's talents are best suited.

Ben is interested to hear from Terry True, in the course of a regular briefing meeting, that Harry Fisher has been pressing people hard at the Humberside plant in his enquiries about the causes of the accident, while Joe Burton seems to have been showing little interest in this. He wonders why Joe is not showing more interest in an issue where he has a line management responsibility.

Shortly after Sir Edward leaves the head office on the afternoon of 27 July, a BBC current affairs programme calls Haligen to request that someone is made available later in the evening for a televised interview about the accident. The programme's interviewers have a reputation for asking searching questions and demanding answers. Ben feels that he has made the right decision not to ask Joe Burton to deal with these matters, though he realises that he will have to face these questions himself.

Appendix 1 – Note issued in July 2010 by Haligen Corporate Planning Department on the political and economic consequences of the UK general election in May 2010

(Each month, George Mikes, the Corporate Planner, circulates a briefing note on the political, economic and marketing environment to the senior staff of Haligen. From time to time, he circulates supplementary briefing notes on special events. This is one such supplementary note.)

The victory of the Conservative Party in the UK general election in May this year, and the formation of a coalition government by the Conservatives and Liberal Democrats, has implications for Haligen's business. This brief note is designed to outline some of these implications.

The new Cabinet includes five Liberal Democrat members, but the signs are that the Conservatives, the major partners in the coalition, will dominate government policy formulation.

There will be a change in the basis of government economic policy. The outgoing (Labour) government was committed to acting to maintain economic activity following the recession associated with the financial crisis that began at the end of 2008. The economy has just resumed positive growth after something over a year of recession. Growth in the UK has been weaker than in the USA and in other major European economies, partly because of the significance of the financial services sector in the UK economy. The Labour government incurred very large fiscal deficits by emergency spending to support banks and to maintain the level of economic demand. It was aware of the aversion of financial markets to fiscal deficits, and of the consequences in terms of the cost of credit if markets lost confidence in UK economic management, the performance of the UK economy, the liquidity of UK debt and the strength of sterling. Like the other major parties, it accepted the need for cuts in public spending, but it was determined not to put economic recovery at risk by cutting public expenditure too far or too soon.

The Conservative Party has fewer concerns on this count, and shows greater determination to do whatever is required to reassure the financial markets. The new coalition government has lost no time in announcing its intention to make drastic cuts in public expenditure, and announced £5 billion worth of cuts within days of taking office. In his budget speech at the beginning of July, George Osborne, the Chancellor of the Exchequer, announced that substantial expenditure cuts would be sought in every department of government except health and overseas development aid. These two areas will be 'ring fenced', but if this means that expenditure will be held constant, this could mean a cut in real terms in these areas even after allowance is made for inflation. The reduction in the government deficit of income against spending will be achieved mainly by spending cuts, but there will be important tax increases, including an increase in the rate of Value Added Tax (VAT) from 17.5% to 20% on most consumer and company expenditure on goods and services.

The government expects some of the reduction of economic demand arising from public expenditure cuts to be made good by private sector exports. World economic activity means that the size of export markets is likely to grow rather more slowly than might have been expected a couple of years ago. Sterling has fallen against the currencies of major customers (in particular the US dollar and the Euro) over the past two years, making UK exports more competitive. But a generally favourable response of financial markets to the new UK government has caused sterling to rise against both the US dollar and the Euro since the election. (In addition, governments in other countries are or will be taking action along similar lines to tackle fiscal deficits, so the volume of demand for pharmaceuticals from health procurement agencies abroad, and public sector health service providers in particular, will be under pressure. A separate note will be issued to go into this in more detail.) The prospects for improved exports are not particularly favourable.

In summary:

What the UK general election result means for Haligen is that UK government expenditure on prescription drugs will be constant at best, may be reduced and is likely to be reduced in real terms. Pressure on prices – which has been a fact of life for the pharmaceuticals industry in many countries in recent years – is likely to intensify in the UK.

Prospects for exports are not particularly good. Competition in all our main markets is likely to intensify. Our price competitiveness in export markets is likely to get worse.

Prospects for consumer spending on our other consumer products, with consumer spending power and sentiment likely to be adversely affected by tax increases and unfavourable employment prospects, are not good.

Prospects for speciality chemicals are also not good.

George Mikes
Corporate Planner
15 July 2010

Appendix 2 – Haligen financial results

The following information has been extracted from the accounts of Haligen as at 31 December 2009:

Consolidated income statement extract	£ million
Operating profit before interest and tax	1,081
Interest	397
Taxation	186
Profit after tax	498
Dividends	386
Transfer to reserves	92

Group balance sheet extract	£ million
Ordinary share capital	714 (in shares of £1)
15% loan stock 2013	2,680
Retained profits	1,511
Closing stock	531
Trade debtors	528
Balance at bank	471
Trade creditors	463

Note on Haligen's Dividend Policy

It is currently Haligen's policy to grow dividends in line with underlying earnings while maintaining dividend cover at about two-and-a-half times to ensure sufficient funds are retained to support organic growth. Dividend cover may vary from the long term target to enable the group to maintain dividends at a consistent level.

Dividend history (pence per share)

	2004	2005	2006	2007	2008	2009
Interim	18	19	20	22	23	18
Final	38	39	40	42	20	36
Total	56	58	60	64	43	54

Appendix 3 – Haligen Shareholders’ Action Group and external views on Haligen’s investment performance

Some of Haligen's shareholders are dissatisfied with the performance of the Haligen share price. A comparison of the share price with the FTSE 100 share index (of which the Haligen share price is a constituent part) and a global pharmaceuticals share index is shown below:

Haligen share price and comparative share price indices at 30 June

	2003	2004	2005	2006	2007	2008	2009
Share price*	£3.20	£5.01	£6.89	£7.63	£8.00	£3.53	£4.34
FTSE 100 share index	4031.2	4464.1	5113.2	6607.9	5625.9	4249.2	4916.9
Global pharmaceutical share index			5603	6251	6487	4302	5502

* Share price adjusted for rights issues

Some of the dissident shareholders have formed an action group: Haligen Shareholders' Action Group (Hasag). The shareholders represented by Hasag are all individual shareholders, and their shareholdings are smaller than average. The largest 190 shareholdings, which account for 76% of the company's shares, are almost all institutional. Institutional shareholders do not belong to Hasag, but several of them have expressed similar concerns directly to the Chairman.

Hasag has tabled a resolution to be discussed at the forthcoming Annual General Meeting criticising the board's performance, with particular reference to the share price, and is planning to lobby other shareholders to vote against the reappointment of three directors who are standing for re-election.

The shareholders' concerns are reflected in recent press comments. Extracts from an article in the city pages of the Daily News and from a stockbroker's website are reproduced below:

Extract from Daily News (17 July 2010)

“...Haligen: This company has failed to live up to the promise that it showed when it was created eight years ago. The share price has been languishing between 350 pence and 450 pence for the past two years, while its competitors' share prices have recovered to something like the levels seen before the credit crunch. Share markets have not done well over the three years since Haligen took over the pharmaceuticals business of consumer goods giant ACP, but Haligen has done particularly badly. Haligen's share price has recovered slightly over the past two months, and is 462 pence now. But its current level is still 44% down on the high of 825 pence that it reached in 2007. That was in the euphoric days when Haligen made its bid for growth with the ACP purchase.

Haligen has managed to increase its 2009 dividend to 54 pence – including a proposed final dividend of 36 pence – which is an increase of 14 pence over the crisis level of 2008, but still two pence lower than its first dividend in 2004. The dividend for 2009 is still 10 pence below the best-ever payout of 64 pence for 2007. And this latest increase leaves Haligen increasingly dependent on further borrowing to fund the investment on which it depends for its future products.

What has gone wrong? A lack of initiative and strategic direction on the part of top management seems to be at the heart of the problem. We knew when the company took over the ACP businesses that the pipeline of new pharmaceutical products was almost empty – both in Haligen's existing pharmaceuticals businesses and in the businesses that it

acquired. But the management has done little if anything to deal with this problem, which is crucial for any pharmaceuticals business, or to put reliable arrangements in place for funding future development.

In the short term, Haligen looks safe. It is highly geared, but loan interest was covered 2.7 times by operating profit in 2009. However, the dividend for 2009 was only covered 1.29 times by earnings, far less than the company says it aims for, so it would not take much of a downturn in business to make the dividend look unrealistic. The company has come through the 2008 credit crunch and the recession that followed it, but who can say how tough things might get if we had a double dip recession?

The marketing razzmatazz that accompanied Haligen's initial public offering and subsequent rapid expansion has evaporated, leaving increasingly disillusioned shareholders. Is Haligen a pharmaceuticals business or an overgrown hotchpotch of barely related chemicals, pharmaceuticals and consumer goods companies? Haligen seems to have lost its way, if it ever knew it. Sell.”

Extract from research pages of Beta Stockbrokers website:

Other brokers' recommendations for Haligen:

Strong buy	0
Buy	2
Neutral	2
Sell	5
Strong sell	3

Appendix 4 – Extract from ‘Ethics in Global Pharmaceuticals’, an article by Ben Short, CEO of Haligen, published in ‘The Sunday News’, 28 June 2010

Multinational manufacturing companies, including Haligen, operate in a global commercial environment which has led to a mixing of cultures and socioeconomic systems. Increasingly, managers understand that behaviour that is considered appropriate in one market or one country may not be acceptable in another. This creates a business environment that is full of pitfalls. In a competitive world, where scrutiny of the actions of companies and their managers is becoming ever more intense, the consequences of getting it wrong are becoming ever more serious. The growth of technology has made more transparent the effects of corporate unethical and even illegal decision making. This has fuelled rising public expectations that corporate behaviour should meet ethical standards. The standards by which companies are judged are becoming more demanding. Companies are more likely than in the past to be held to account in one country for what they do in another. More and more, it is true that we cannot afford to get it wrong. Yet the risk of mistakes always exists. There is always the possibility of human error – or worse.

How can we avoid making mistakes?

Part of the solution, part of the time, is to rely on people’s professionalism. Professional bodies require their members to observe the highest standards of professional conduct and ethical behaviour in all their activities. By maintaining these standards, members enhance their reputation as corporate advisors and increase confidence in the management and administration of private and public sector organisations. So behaving ethically can be a profitable business! But it isn’t as easy as that. Not every manager is the member of a professional organisation. How do we encourage – no, expect – no, demand – similar standards of behaviour from all the people in an organisation? At Haligen, we think we have found the answer.

Part of the story is that we need to make it clear what is expected of people. Particularly in multinational companies, it is easy to fall foul of local customs, regulations and laws simply because you don’t know what is required of you. Many people want to do it right, and simply want to know what is expected of them. So at Haligen we tell people. We provide training and guidance, not just for our staff who are relocating or doing business abroad, but to all our staff, in the behaviour and standards that are expected.

Accounting standards have shown the way. There are laws that require companies to produce accounts that are not misleading. But people producing accounts, and that means professionally qualified people, on whom we rely to behave straightforwardly and honestly, often need guidance on what is and is not appropriate and acceptable. And if they get that guidance, they are not only more confident about what they should be doing – they are more confident in sticking to it when put under pressure to do something that they know isn’t right.

Of course you may say that standards and guidelines aren’t enough. Remember Enron. It is true that there will always be a few people who, knowing full well what they should be doing, bend or break the rules. We think we have a way of coping with that problem.

What we do at Haligen is turn the ever-increasing public scrutiny that is a growing fact of modern life to our own advantage. We make a virtue, not a problem, of transparency. By making our communications and decision making as transparent as possible, we make it harder for would-be wrongdoers to get away with it. To the conventional commercial mind, this is counter-intuitive. Why make it easier for our competitors to get hold of commercially valuable information? We believe that for every occasion where openness gives a competitor valuable information there are dozens – hundreds – where clearer and better communication and decision making gives us the advantage.

While I believe that what we are doing now at Haligen is consistent with the way in which the company has always worked, I have been giving this approach special emphasis, and putting resources into the communication and training that it needs since I joined the company as CEO. That means we've only been at it for a year or so, and it's a little early to be sure how well it works. But my colleagues are supporting this approach enthusiastically – they really are! And I believe the early signs are encouraging.

At Haligen we really do believe that 'honesty is the best policy'.

Appendix 5 – Haligen key personnel: biographical details

Sir Edward Parker (69) Chairman

Sir Edward Parker was educated at Eton and served in the Grenadier Guards. His family is part of the landed aristocracy. He served briefly as a junior minister in a Conservative administration some years ago. He is very well connected politically as well as socially, and has good contacts in the City of London. He is a NED of two other FTSE 100 companies. Sir Edward joined Haligen as a NED towards the end of 2008 and became Chairman early in 2009. Some of Haligen's NEDs consider that Sir Edward does not assert sufficient authority over Ben Short, the CEO. Sir Edward is aware of this view, but is unconcerned by it. He believes in allowing his colleagues sufficient scope to allow them to use their skills and initiative, and that they should stand or fall by the results.

Ben Short (43) Chief Executive Officer

Ben Short was educated at Birmingham University, where he studied biochemistry. He worked as a research biochemist at Cambridge University for four years before joining the pharmaceutical industry, as the research manager of a young biotechnology company. He showed aptitude in sales as well as research, and rose rapidly to become a director of this company. After four years as a director, during which time he played a leading role in the AIM listing of the company, he joined a FTSE 100 pharmaceutical company (one of Haligen's largest competitors) as a divisional director responsible for new product development group-wide. He joined Haligen as CEO in the second half of 2009 when the previous CEO retired.

Pam Carter (37) Finance Director

Pam Carter is a Fellow of CIMA, and has held a series of jobs in accounting and financial management roles in different companies, performing with great success in all of them and steadily advancing in her career. Her previous job was as CFO in a smaller pharmaceutical company, where she spent three months as interim CEO, following the death of the previous CEO, before moving to Haligen in the spring of 2010. She has already impressed her colleagues, including her fellow directors, with her competence, judgment and confidence. She combines a mastery of detail with the ability to see the big picture.

Joe Burton (42) Chief Operating Officer

Joe Burton worked in the construction industry, where he was a divisional director responsible for special development projects, before joining Haligen in the first half of 2010. The 19 plant managers all report to Joe Burton, and he spends a lot of his time in their plants. He also works closely with Harry Fisher, the Engineering Director. Joe Burton has an abrasive management style, but prides himself on his ability to get things done. His colleagues, in particular a number of the plant managers and Harry Fisher, do not all recognise this virtue, or give Joe the credit for it that he believes he deserves. His other board colleagues have seen much less of him so far, since he has spent a lot of time with suppliers and customers as well as at the Haligen plants.

Harry Fisher (54) Engineering Director

Like Ben Short, Harry Fisher was also educated at Birmingham University, where he studied chemical engineering. He has worked in the chemical industry all his life, and joined Haligen in 2005 when it took over a UK company that manufactured speciality chemicals. While many of the staff in the company that Haligen took over lost their jobs in the post-merger rationalisation, Harry Fisher, who had been the Chief Engineer of the company, was kept on because his technical and managerial competence were universally recognised. Seen as a steady pair of hands in a technical job, Harry was promoted to the board as Engineering Director in 2009. While he has coped successfully with the company's shift from a chemicals-centred business to a pharmaceutical company, Harry has not yet become comfortable with the additional responsibilities of a main board director of a multinational company. He tends to take his cue from Ben Short, for whom he has a great admiration and to whom he is extremely loyal.

Marcus Bond (62) NED (and Senior Independent Director)

Marcus Bond is a NED of several large companies, including a major UK-based bank (that survived the 2008 financial crisis relatively unscathed) and two other FTSE 100 companies. He was the finance director, and then CEO, of a major international food company. He has excellent contacts in the City. He has been a NED of Haligen since 2006 and became Senior Independent Director in 2007.

Baroness Marlowe (48) NED

Baroness Marlowe started her career as a business researcher for a large UK-based international food company. She has always been interested in politics, and was a strong supporter of Tony Blair's Labour government. She considers herself to be a technocrat rather than an ideologue, and her political beliefs are based on pragmatism rather than dogma. Before being appointed as a NED of Haligen in 2007, she was the CEO of a UK hospital trust. She has very good contacts in the health service as well as the political world.

Lord Andrews (65) NED

Lord Andrews is a public relations veteran. He built up one of the largest corporate communications businesses in the UK, with a strong emphasis on corporate and financial PR and related businesses, during the years of the Thatcher government between 1979 and 1991, and his company has continued to thrive in later years under both Conservative and Labour administrations. His company expanded during and after his period of active involvement as CEO to become a major global player. He has now given up his executive role to become Chairman of his company, in which he retains a major shareholding. He is an active Conservative Party supporter, and an important financial contributor. He joined Haligen as a NED in 2006.

George Thorn (56) NED

George Thorn was a research biochemist at a leading UK university. He was also an outstandingly successful head of department. His standing in his university was extremely high, not only because of his research abilities but also because of his success in developing research contracts with the pharmaceutical industry. George Thorn is plain-speaking and takes pride in solving practical problems. As well as his formal qualifications and professorship from his own university, he has honorary degrees from universities in Germany and the USA. But, despite his distinguished academic record, he chooses not to refer to his qualifications in business life and prefers to be known simply as 'George Thorn'. He joined Haligen as a NED in 2005.

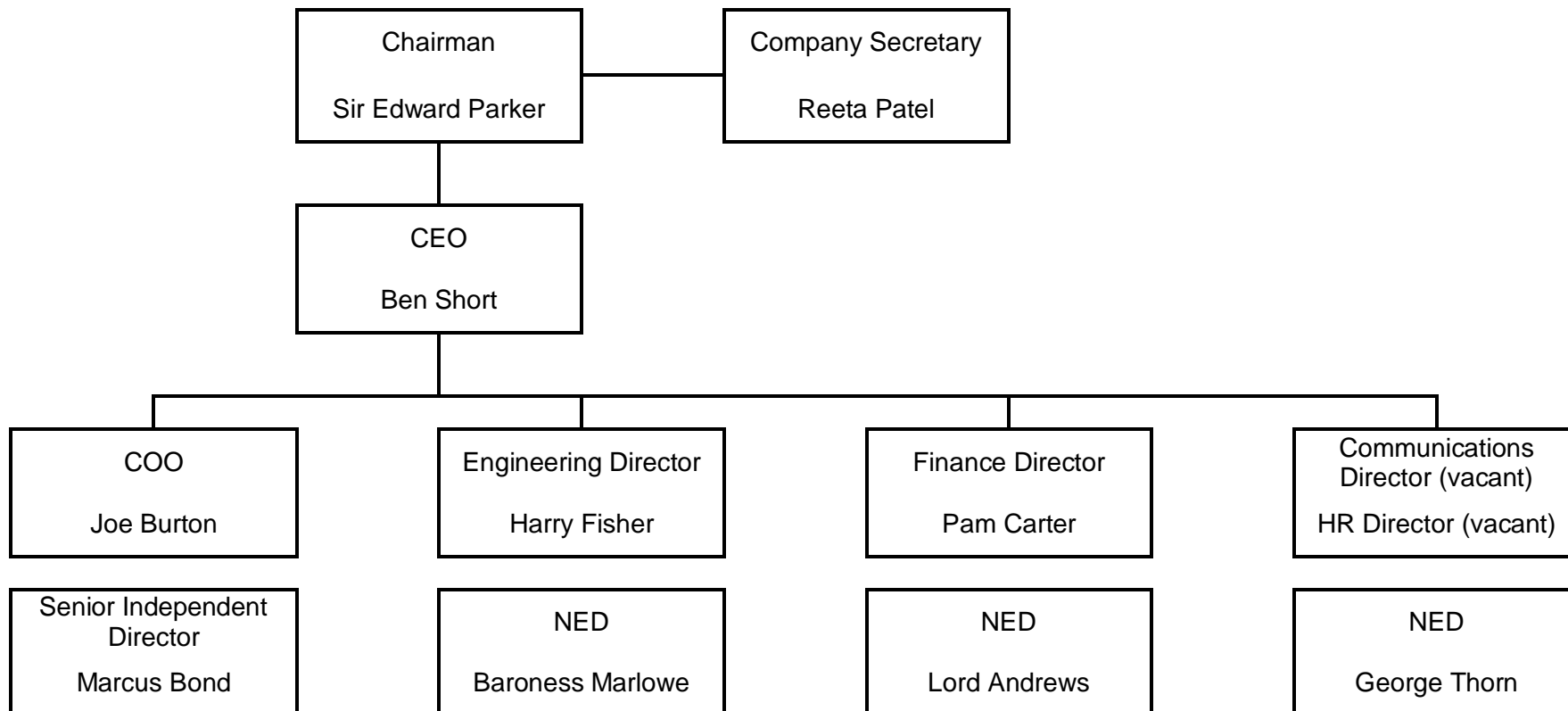
Reeta Patel (35) Company Secretary and General Counsel

Reeta Patel is a Fellow of the Institute of Chartered Secretaries and Administrators. She was recruited as Company Secretary from another FTSE 100 industrial company (where she had been identified early on as a high flyer and was one of the youngest company secretaries of the companies represented in the FTSE 100 share index) late in 2009, and was made General Counsel at the beginning of 2010. Reeta is ambitious and extremely hard working. Appointed for her professional skills, she has made it her business to familiarise herself with the industry that she has joined. She leads by example: when Reeta was carrying out her review of Haligen's governance structures, the members of her small team found themselves, without explicit encouragement or requirement, rising to the challenge and working extra long hours.

Terry True (59) Senior Group HR Manager

Terry True joined Haligen when it was founded, and has been the mainstay of the Human Resources function at Haligen ever since. Terry started his career in the Royal Navy, where he became a Chief Petty Officer, but has worked for the last 25 years as a personnel professional in commercial and industrial companies. As well as being expert in the legal aspects of HR management, his leadership experience in the Navy helps him to empathise with the staff at all levels of the organisation. He is regarded with affection for his humanity as well as respect for his technical competence and professionalism by his colleagues.

Appendix 6 – Diagram of the board of Haligen



Board Committees

Audit Committee

Marcus Bond (Chairman)
Baroness Marlowe
Lord Andrews
George Thorn

Remuneration Committee

Marcus Bond (Chairman)
Baroness Marlowe
Sir Edward Parker
George Thorn

Appointments Committee

Sir Edward Parker (Chairman)
Marcus Bond
Baroness Marlowe
Lord Andrews
Ben Short
George Thorn

Notes

The vacant HR Director role is currently filled informally by the Senior Group HR Manager, Terry True.

The directors of the three operating divisions (Pharmaceuticals, Speciality Chemicals and Consumer Products) report to the COO, and are not main board directors.

Appendix 7 – Senior staff pay and benefits

The remuneration report in Haligen’s 2009 annual report and accounts shows the following amounts paid to directors in the year ending 31 December 2009:

	Salary/fee	Bonuses	Benefits	Total
	£000	£000	£000	£000
Executive Directors				
Jules Natron	507	600	14	1,121
Charles Smith	282	405	8	695
Ben Short	304	416	9	729
Benjamin Russell	412	183	12	607
Harry Fisher	280	55	11	346
James Peddy	315	65	11	391
NEDs				
Sir Edward Parker	244	-	-	244
Marcus Bond	53	-	-	53
Baroness Marlowe	37	-	-	37
Lord Andrews	37	-	-	37
George Thorn	47	-	-	47

Notes (not forming part of the annual report and accounts)

Charles Smith (who was CEO before Ben Short) left the company on 13 July 2009.

Benjamin Russell (who was Finance Director before Pam Carter) retired on 31 January 2010.

Jules Natron (who was COO before Joe Burton) left the company on 15 March 2010.

James Peddy was the HR Director, and retired on 1 April 2010.

Share options granted to directors at dates between July 2003 and July 2008 are exercisable at prices between 310 pence and 860 pence. If exercised today, the total value of options granted to directors (determined by the excess of the market price of the shares over the exercise prices) would be £1.2 million. About two thirds of this value would be for options granted to the CEO, and the remainder to other executive directors. The company does not grant share options to NEDs.

Many of the share options granted to directors in the past two years have been at exercise prices, which mean that the options currently have no value. The CEO has raised with the chairman the possibility of rebasing these options so that they would be worth exercising at prices close to the current share price. The Chairman has so far withheld his agreement to this suggestion.

For 2009, Haligen had a bonus arrangement whereby executive directors qualified for bonuses if the 2008 operating profit exceeded the target figure of £1,050,000.

Note: Haligen has a profit-sharing scheme, which was set up when the company was first established, but discontinued for people joining the company after 2005. It applies to about 8% of all employees, at all salary levels. The total paid out by this scheme last year was £2.1 million.

Appendix 8 – Haligen’s risk management policies

The annual report and accounts of Haligen include the following statement on risk management:

While it is sensible and responsible to identify risks and develop policies so as to manage risk and to be seen to be doing so, events of the past two years demonstrate that this can provide no guarantees against large scale events about which the company can do nothing.

Nevertheless, the company sets out principles that it applies, and steps that it takes, to deal with risk.

The principles are that the company should try to limit the extent of any individual risk and the cost associated with it (including the size of the risk and its probability) and to limit the total value at risk, meaning the total scope for loss from all risks facing the company. The company also regards it as essential to have a clear financial goal, which is to increase shareholder returns in the medium to long term. The company's chief internal auditor reports twice a year to the audit committee of the board on the main risks facing the company.

The company assesses risks and devises strategies to deal with them that are designed to be consistent with the company's culture and ethos. The company also tries to make its assessment of risks, and its plans to deal with them, appropriate in terms of what it considers to be its responsibilities to different stakeholders.

Haligen deals with risk under the following headings:

- Strategic risk.
- Market risk.
- Credit risk.
- Financial risk.
- Operational risk.
- Regulatory and legislation risk.

As part of its risk management programme, Haligen has identified a range of possible crisis scenarios, and has developed generic contingency plans (“Crisis Management Plans”) to deal with each kind of crisis. This means that it has outline plans ready to put into action in the event of (for example) a serious computer failure, a product failure or the sudden incapacity or death of key staff. These outline plans, for each kind of crisis, to deal with such things as:

- Who will take charge in an emergency.
- What the backup will be in the event of that person not being available.
- What decisions need to be made.
- What people or groups need to be communicated with – what they need to be told and what their contact details are, at the office, on a mobile and at home.
- Who needs to be called on for help.
- Setting up a communications centre.

- Handling communications with the media.
- What the organisation needs to do in order to learn from the crisis and prevent a repetition.

Unseen material

Haligen has been conducting trials of a new antiviral drug, Antivose, in the African state of Freeland. The normal procedure for gaining regulatory approval for a new drug includes a series of carefully monitored field trials in which, after testing on animals, a new drug is tested on humans. The trials are being run on behalf of Haligen by Medical Knowledge Services plc, a UK-based medical research company.

Freeland is a Commonwealth country, and ACP, the company that originally owned Haligen's pharmaceutical business, has operated there (in other fields of business) since the early 20th century. Freeland is a poor country: while its GDP per head is at the 70 percentile level of all African countries (that is, 30% of African countries have a higher GDP per head than Freeland), it is well below the level of all countries in Western Europe. Freeland's main industry is agriculture. Much of this is subsistence farming, but there are some large farms, some of which are still owned by farmers whose forbears came from Britain. Some of these farms produce high quality vegetables that are sent by air freight to markets in the UK and other European countries. Tourism is a small but growing contributor to the economy and to foreign exchange earnings. Freeland's official languages are Swahili and English. Four other African languages are spoken. Most of Freeland's citizens speak Swahili or English. A large minority speaks neither Swahili nor English.

Charitable aid workers in Freeland have recently reported cases of unexplained deaths in villages where Antivose is being tested. Similar reports have appeared in the local press in Freeland. These reports were picked up by Haligen's press monitoring service.

Haligen, like ACP, has always set and maintained standards of behaviour, in the UK and abroad, which explicitly exclude the use of improper inducements, and does all that it can to ensure that such things are avoided by people working for it. When events in countries in which the company operates, or actions by other companies in the same industry sectors have made it appropriate, the company has reiterated its stance on this matter. Its approach in Freeland is the same as in all other countries in which it operates. While the United States Foreign Corrupt Practices Act (which makes it an offence in US law to do anything in a foreign country that would be illegal in the United States) does not apply to Haligen in Freeland, Haligen believes that its actions in Freeland would be judged acceptable by the standards of this law.

Haligen does not make any payments to individuals in the Freeland administration. However, it does provide drugs free and at reduced prices to the health authorities in Freeland (as it does in other poor countries) and Haligen makes financial contributions to the costs of setting up and operating health clinics in Freeland. It is possible that this support for health services in Freeland has been a factor affecting the willingness of the Freeland authorities to allow Haligen to carry out trials of new drugs in the country.

Haligen is also aware that, irrespective of its corporate policy concerning improper inducements, corruption is rife in Freeland.

Late in the afternoon of 27 July, Haligen's Chairman, Sir Edward Parker, receives an invitation from the Freeland High Commission in London to come to see the High Commissioner the following week. No reason has been given for the invitation, but Sir Edward thinks that it may be related to the local press reports.

In the early evening of 27 July, Reeta Patel learns that Sir Edward's Personal Assistant has received a telephone call from a journalist who wants to see copies of the service contracts for all of the executive directors. Sir Edward wants Reeta Patel's advice about what to do.

Reeta is finding it difficult to keep up with all the urgent matters which are finding their way to her desk. She decides, for the moment, to concentrate on the crisis created by the leak of chlorine gas. She takes Haligen's Crisis Management Plan from the safe and sits down to check it carefully.

As she starts to read, Reeta remembers how calm and unflustered Sir Edward appeared to be when he came in to the head office a few hours ago. She has always known him as somebody who seems to cope with problems without any signs of panic, but she is struck forcibly by the contrast between his response to the crisis and the demeanour of some of her senior colleagues.

On 28 July, Joe Burton reports to Ben Short that production at one of Haligen's other UK chemicals plants, which uses raw materials supplied by the Humberside plant to make one of its products, will have to be reduced in two days' time. He also reports that one of Haligen's French plants, which is also supplied by the Humberside plant, will shortly be affected. It is currently closed for the annual holiday, and keeps larger raw material stocks than the UK plants, but its stock levels are such that it is also likely to have to reduce output in about three weeks' time unless alternative suppliers can be found. Major customers who depend on supplies from Haligen's Humberside plant are expecting to have to reduce output within the next three to 10 days.

Also on 28 July, Marcus Bond, the SID, tells Sir Edward that he needs to call an emergency meeting of the board to review the situation; and that two of the NEDs, George Thorn and Lord Andrews (who is currently in the USA), are of the view that Joe Burton must be removed as COO. Their view is based on the history of recent accidents, which suggests to them that the senior production management is not up to the job, and the falling share price, which they believe to be the result of poor operational management. George Thorn tells Marcus that, when the search was being made by the Appointments Committee to recruit a Chief Operating Officer, Sir Edward asked him, as a member of the Appointments Committee, to make discreet enquiries about Joe Burton among senior industrialists in Joe Burton's former industry. The comments that George received were mixed, but were consistent with a picture of Joe as a rough-mannered but effective manager. Marcus, who is also on the Appointments Committee, was not aware of this.

On 31 July, Sir Edward Parker is spending the weekend at home in the countryside. He knows that he has work to do in the evening, but finds time to go for a walk with his wife. During their walk, he tells her that he has been talking to Ben Short, at length and in a degree of detail that some people might find surprising, about further major change which is soon to take place at Haligen.

Questions

(Compulsory – answer **all four** questions)

1.
 - (a) As part of the preparations for his meeting at the High Commission, the Chairman has asked Reeta Patel to advise him on the possible implications for Haligen of the events in Freeland and the actions that the company should take. The Chairman has made it clear that he expects Reeta's advice to cover all aspects of the situation, and not be limited by the issues that may be discussed with the High Commissioner, or even the matters that the Chairman may wish to put to the board. Draft a detailed briefing note for the Chairman.
(20 marks)
 - (b) Draft an agenda for an emergency board meeting on the chlorine gas leak (together with notes on what is likely to be discussed under each item).
(5 marks)
 - (c) Prepare a briefing note for the Chairman on the directors' service contracts to help him in dealing with the question posed by the journalist.
(5 marks)

(Total: 30 marks)

2. Identify the actual and potential financial and ethical problems associated with the setting and achieving of the 2010 profit target.
(20 marks)

3.
 - (a) Identify Haligen's stakeholders and suggest (saying how far the information in the case allows you to do this) what their expectations are in relation to the company.
(10 marks)
 - (b) Discuss to what extent the objectives of the Haligen management may be in conflict with those of the shareholders.
(15 marks)

(Total: 25 marks)

4.
 - (a) Comment on the performance and prospects of Ben Short, Joe Burton, Sir Edward Parker and Terry True.
(10 marks)
 - (b) Discuss the case for making changes in the businesses in which the company operates and the organisational structure of the company.
(15 marks)

(Total: 25 marks)

The scenarios included here are entirely fictional. Any resemblance of the information in the scenarios to real persons or organisations, actual or perceived, is purely coincidental.

