



## **Scenario Test Feedback Report**

**133 Recorder 2019**

**October 2019**

## **Purpose**

The purpose of this report is to provide general feedback on candidate performance in the 133 Recorder online scenario test.

The report describes how the Judicial Appointments Commission (JAC) developed the test and marking schedule, how the test was structured, and how the number of candidates shortlisted for progression was attained. Additionally, it provides information on the overall performance of candidates in the test, identifying areas of good and poor performance and sharing more detailed comments in relation to each of the 9 questions in the test.

## **Competency Framework**

The test was designed to assess the following competencies:

- Exercising Judgement
- Assimilating and Clarifying Information
- Working and Communicating with Others
- Managing Work Efficiently

The competencies were developed so that candidates could demonstrate the proficiency and capability transferable to the role from other contexts. The specific bullet points under each competency heading were designed to reflect the skills and ability that an effective Recorder is expected to have. This enabled us to assess candidates in a fair and consistent way.

## **Development of the test**

The test and marking schedules were devised by 2 experienced Judges, a High Court Judge and a Senior Circuit Judge.

In common with all the selection tools developed for this exercise, the scenario questions were designed to assess relevant transferable skills and to minimise the extent to which candidates might be advantaged or disadvantaged by their professional background.

The JAC Advisory Group, which is composed of members of the judiciary and representatives of the legal professions and chaired by a lay JAC Commissioner, offered advice and guidance during their development. In common with all qualifying tests used by the JAC, both the test and marking schedule were subject to an extensive quality, and equality, assurance process including review by JAC Diversity and Engagement Teams and the Advisory Group

The effectiveness of the test was assessed by means of a dry run with a range of volunteers from relevant candidate groups. This provided an opportunity to trial the test material and make any necessary amendments. The timing of the tests are also considered as part of the dry run.

## **Structure of the test**

The test was hosted on Google Forms. Candidates accessed the test using a unique numeric code, issued to them by email with the test instructions. The test was 75 minutes long. Candidates were presented with a scenario and 9 questions.

## Timings

This test was a self-timed test in line with all of the tests that the JAC have run on the Google Forms platform, and reflects the approach in relation to the more recent Deputy District Judge scenario test and the Fee-Paid First-tier Tribunal and Employment Tribunal scenario test, that were both run in 2019. The tests are automatically timed by Google's software and we use these timings to remove candidates who have exceeded the time limits of the test. All tests that are submitted after the allotted time are void, irrespective of the amount of time exceeded, to ensure fairness to all candidates. This was clearly communicated to candidates in the exercise instructions.

A key component of the test is being able to manage the time effectively and that was especially relevant in relation to this test, which required candidates to manage their time carefully in order to allocate enough time to the different questions and scenarios.

The situations used in the questions were based on potential real-life situations that may be encountered by a Recorder.

The candidate was required to act as the chair on a disciplinary appeal committee and hear a number of appeals against the findings of the disciplinary panel.

Candidates were required to provide narrative responses to each of the 9 questions. Each question had a word limit and a maximum amount of marks available. The word limit and marks for each question were as follows:

**Question 1: 5 marks, a maximum of 100 words**

**Question 2: 13 marks, a maximum of 400 words**

**Question 3: 5 marks, a maximum of 150 words**

**Question 4: 13 marks, a maximum of 400 words**

**Question 5: 7 marks, a maximum of 200 words**

**Question 6: 9 marks, a maximum of 300 words**

**Question 7: 14 marks, a maximum of 400 words**

**Question 8: 2 marks, a maximum of 100 words**

**Question 9: 9 marks, a maximum of 250 words**

## Marking schedule

A marking schedule was provided to the panels. A maximum of 77 marks were available. The schedule provided details to the marking panel of the number of marks available for each question and the maximum word count.

## Marking of the test

The candidate's test submissions were anonymised and marked by a panel of judges. JAC staff provided a full briefing to the panel at the outset of marking the papers.

678 candidates sat the test. A 10% sample of the test scripts were selected for moderation in addition to those already discussed at the calibration meetings. Those selected included the scripts identified as candidates for moderation by markers; samples of the high, low and mid scoring test papers; all test papers close to the prospective cut off point for invitation to selection days; and a further random sample.

Moderation took the form of markers cross checking each other's work. The moderation process concluded that the panels had been consistent and fair.

In line with JAC Policy, a Senior Selection Exercise Manager and the JAC Commissioner assigned to the selection exercise undertook separate quality assurance checks. Their independent conclusion was that marking had been robust and consistent.

## Distribution of scores

695 candidates were invited to take the test

17 candidates withdrew from the process or didn't take the test

678 candidates took the test

538 candidates completed the test within the allotted time

140 candidates were removed as they went over the allotted test time.

The scoring process was as follows: all candidates were scored on their answers to the test based on the marking schedule as outlined above. All candidates were then ranked in order of merit from first to last based on the combined average percentage score (further outlined below).

This provided a merit list determining how many candidates would be invited to the second stage of shortlisting based on the approach outlined. The highest 235 scoring candidates from the scenario test were shortlisted through to selection days.

We did not have a pre-determined pass mark for the test; however, candidates must score a minimum of 30%. The line of shortlisting is determined by the relationship between the relative performance of candidates against each other in any given test, and how many slots there are for the next stage of the selection exercise. For this exercise the score at which the line of shortlisting fell was 39% and above.

The highest and lowest marks awarded are shown in the table below:

Distribution of score	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Overall Total
<b>Highest score</b>	5/5 5 people	13/13 3 people	5/5 7 people	12/13 6 people	7/7 2 people	9/9 1 person	12/14 1 person	2/2 160 people	7/9 1 person	51/77 1 person
<b>Lowest score</b>	0/5 63 people	0/13 20 people	0/5 51 people	0/13 6 people	0/7 159 people	0/9 66 people	0/14 70 people	0/2 341 people	0/9 434 people	0/77 1 person

## Approach to shortlisting

When the JAC receives notification from HMCTS confirming the final number of vacancies for the requested post, calculations are made to establish how many candidates will be taken to selection day (usually at a ratio of 2 or 3 candidates interviewed for each vacancy). This allows us to estimate the number of candidates we need to progress after the shortlisting stages until we reach the selection day ratio.

For this exercise we received a vacancy request to fill up to 100 posts. We therefore planned the selection exercise based on inviting around 235 candidates to selection day. To prevent a significant drop from the substantial number of candidates who applied to fill the much

smaller number of selection day slots, we planned to have shortlisting stages as part of the selection process.

All candidates who applied for the exercise were invited to sit the first stage of shortlisting, the online qualifying test. Candidates who passed were invited to take the second stage of shortlisting, the online scenario test. The scenario test was marked by a panel of judicial members. Six hundred and ninety-five (695) candidates were invited to take the online scenario test. 538 candidates completed the test.

We planned to take 235 candidates to the second stage interview.

The average percentage score for each candidate is used to rank all candidates in order of merit, with the highest combined score as the most meritorious, and the lowest score as the least meritorious.

The number of slots available in the next stage of the process is then applied to the merit list to create the initial cut off line.

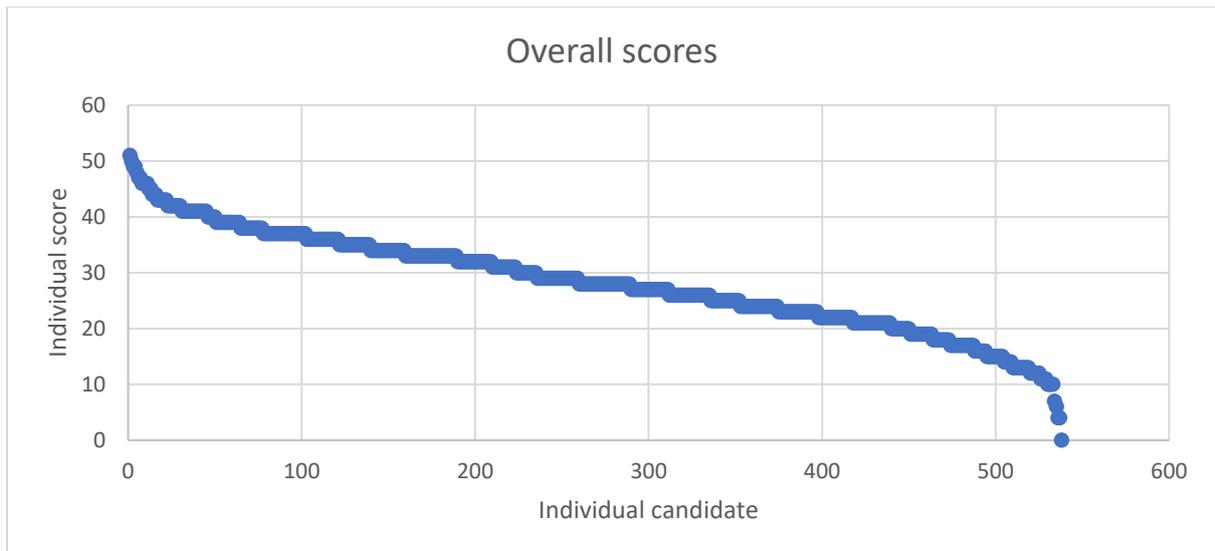
### **Equal merit provision**

Where there are candidates with the same score at the cut off line, the Equal Merit Provision (EMP) may be applied. If the EMP is applied, this will be after the consideration of a sub-committee of Commissioners; consisting of a legal Commissioner, a lay Commissioner and the Assigned Commissioner for the exercise. The sub-committee will consider and will need to be satisfied that:

- the candidates about whom a decision is being taken are of equal merit.
- the particular protected characteristic(s) of each candidate are underrepresented at the relevant level of judiciary.
- reliance on EMP in the shortlisting exercise being conducted is a proportionate means of achieving the aim of increasing judicial diversity within the level of judiciary for which the selection is being made.

After following our published process, the EMP was not applied at this stage of the selection process

We do not have a pre-determined pass mark for the test; the line of shortlisting is determined by the relationship between the relative performance of candidates against each other in any given test, and how many slots there are for the next stage of the selection exercise.



The average candidate score for this test was 28 out of 77 (36%).

### Feedback from the marking panels

In advance of marking the test the marking panels were instructed to consider any common themes in the candidates' answers that could be included in the feedback report, which can be seen below:

Question 1 and 3 were generally well answered with most candidates identifying that the procedural issues had to be considered before the merits of the appeal. Stronger candidates identified the need to consider disposal where the appeal allowed and the need to make a note (although the last point was missed by most candidates in these questions and others). In relation to the procedural matters, most candidates identified that the composition of the panel (Q1) and the issue of recording (Q3) needed to be addressed first.

Question 2 required the candidates to accurately analyse the rules concerning the composition of the panel and the issue of further evidence, in particular whether appropriate notice been given and relevance.

The substantive appeal should then have been considered. Some candidates treated this as a rehearing rather than a review. Candidates should have identified that the Disciplinary Officer's reasoning was insufficient and that the Disciplinary Officer had even failed to address the burden and standard of proof. Candidates should also have considered whether the decision was "plainly wrong" in the context of whether there was sufficient evidence of plagiarism. Finally, consideration should have been given to "substituting" decisions on guilt/penalty.

Question 4 required candidates to consider whether recording should be permitted in the absence of express provision about it but in a process which was private and in which any note would be anonymised.

Candidates should then have considered the admissibility of supporter evidence in the context of all the provisions of rule 6. Many candidates missed the point that the

rules prevent a supporter being an advocate but do not prohibit a supporter being a witness.

Candidates should then have considered whether there had been a procedural irregularity in the Disciplinary Officer's failure to allow the supporter to give evidence and whether the decision had been plainly wrong. The issue of whether the decision had been plainly wrong could be successfully argued either way.

Question 5 first required consideration of the candidate's relationship with other panel members. S/he had information which was confidential and which they had not seen. The better course was to inform the panellist's of the existence of the information but explain that it could not be disclosed to them or the university's representative unless and until the student had authorised this at the start of the hearing. The student should be assisted by a reminder on the provisions as to confidentiality and also told that the material could not be considered unless disclosed.

Question 6 required candidates to carry out a review of the Disciplinary Officer's decision and not to conduct a rehearing. This required consideration of the inadequacy of reasoning in relation to mitigation and the failure to address the provisions in rules 9, 10 and 11. There was no single correct answer as to what to do on allowing the appeal.

Question 7 required candidates to consider whether to proceed in the appellant's absence. Attendance was not mandatory.

Again, candidates should have carried out a review of the Disciplinary Officer's decision and identified a procedural irregularity in the Disciplinary Officer's considering mitigation relevant to the issue of guilt. Candidates should also have considered whether the decision was plainly wrong in light of paragraph 12 and the evidence of the extent of the injury. Consideration should then have been given to substitution of a finding of guilt and penalty (having considered mitigation).

Question 8 simply required candidates to identify that the disciplinary process only applied to students and should not have been applied to a member of staff.

Question 9 required consideration of the sufficiency of the Disciplinary Officer's reasoning and the consequences of the Disciplinary Officer failing to identify the aspects of the conduct which had been proved. This had the potential to be relevant to whether the decisions on guilt and sanction were plainly wrong.

Many candidates who submitted the test within the time allowed had not completed all nine questions but good quality answers to the earlier questions often led to a total mark which allowed a candidate to progress to selection days.

### **Feedback from candidates**

After the online scenario test, candidates were invited to complete an anonymous candidate survey.

157 candidates responded to the survey. Based on the results of the survey:

**I was provided with sufficient preparatory material to answer the scenario test**

- around 24% of candidates either disagreed or strongly disagreed
- around 18 % neither agreed nor disagreed
- around 51% either agreed or strongly agreed and
- around 7% chose not applicable

**The scenario test gave me the opportunity to show how I would deal with the type of situation that could arise with this role**

- around 34 % of candidates either disagreed or strongly disagreed
- around 14 % neither agreed nor disagreed and
- around 51% either agreed or strongly and
- around 1% not applicable

**The scenario test was accessible in terms of format, language used and topics covered**

- around 17% of candidates either disagreed or strongly disagreed
- around 10% neither agreed nor disagreed and
- around 73% either agreed or strongly agreed

**The word limit was a useful guide to help me plan my responses**

- around 28 % of candidates either disagreed or strongly disagreed
- around 32 % neither agreed nor disagreed and
- around 40 % either agreed or strongly agreed

**I am confident in the scenario test as a JAC selection tool**

- around 33 % of candidates either disagreed or strongly disagreed
- around 31 % neither agreed nor disagreed and
- around 36 % either agreed or strongly agreed

**The scenario test was easy to complete**

- around 69 % of candidates either disagreed or strongly disagreed
- around 19 % neither agreed nor disagreed and
- around 12 % either agreed or strongly agreed

**Other issues**

**Policy Changes**

At the launch of this exercise, it was JAC policy not to share the marks of the tests for candidates who went over the allotted time as tests that have exceeded the allotted time are treated as void. However, in response to feedback from candidates who undertook online qualifying tests on other selection exercises, we revised this policy to agree that we would share the indicative marks for candidates who went over the allotted time. This policy was implemented to be applicable to all online qualifying tests that the JAC runs, as such scripts of this test were marked and a percentage score was provided to candidates. We have subsequently revised this policy, for judicial resource reasons, to apply this policy only to those tests which are automatically marked; i.e. situational judgement and critical analysis tests.

## **Digital Issues**

A number of users flagged to us that they experienced issues in relation to scrolling up and down the test in order to view the scenario information. It was apparent that for some users this resulted in a breaking up of the text on the screen, which made reading and assessing the information more difficult. All of the candidates who flagged this issue with us were moderated and this issue was taken account of in those discussions.

As a consequence of the feedback we have received, we will in future provide any large reading documents such as the scenario to candidates in advance of the test day – allowing candidates to print or save the document in their preferred format.