Online Scenario Test Feedback Report Recorder 2018

11 September 2018

Purpose

The purpose of this report is to provide general feedback on candidate performance in the Recorder 2018 online scenario test. The report describes how the Judicial Appointments Commission (JAC) developed the test and marking schedule, and how the test was structured.

Additionally, it provides information on the overall performance of candidates in the test, identifying areas where they performed well and where they performed poorly and gives more detailed comments in relation to each of the 4 questions in the test.

Competency Framework

The test was set to assess:

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

Development of the test

The test and marking schedule were devised by a team of judges which included one retired Senior Circuit Judge and one retired High Court Judge.

The JAC Advisory Group, which is composed of senior judiciary and representatives of the legal profession, offered advice and guidance during its 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. The effectiveness of the test was assessed by means of a dry run with a range of volunteer lawyers and judges.

Structure of the test

The 90- minute test presented candidates with a scenario based on an appeal to the Appeal Panel of the Board for the Royal Institute of Maritime Engineers (RIME). The scenario situated the candidate as the legally qualified Chair of the Panel, sitting with 2 accredited Board Members, one a Maritime Engineer and the other a Master Mariner. No advance reading material was required for the test.

Candidates were presented with the outline of the scenario, 4 questions to consider, and reading material relating to the scenario. Candidates were required to provide narrative responses to the 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, 6 marks, a maximum of 200 words
Question 2, 13 marks, a maximum of 350 words

Question 3, 28 marks, a maximum of 1000 words
Question 4, 5 marks, a maximum of 250 words

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 markers at the outset of marking the papers.

Marking schedule

A marking schedule was provided to the panels. It allowed for all answers that demonstrated the required competencies to be rewarded. A maximum of 52 marks were available for responses against the marking schedule.

Moderation

726 candidates sat the test. A 20% sample of the test scripts were selected for moderation. 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 markers had been consistent and fair during the first round of marking, and that marking overall had been fair and robust.

It is JAC policy for a Senior Selection Exercise Manager and the JAC Commissioner assigned to the selection exercise to undertake separate quality assurance checks. Their independent conclusion was that marking had been robust and consistent.

Distribution of marks

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

	Question 1	Question 2	Question 3	Question 4	Total
Highest score	5/6	13/13	25/28	5/5	48/52
	(50 candidates)	(2 candidates)	(2 candidates)	(179 candidates)	(1 candidate)
Lowest score	0/6	0/13	2/28	0/5	9/52
	(227 candidates)	(5 candidates)	(1 candidate)	(107 candidates)	(1 candidate)

The charts below show the spread of total scores

Spread of Scores

Spread of Scores
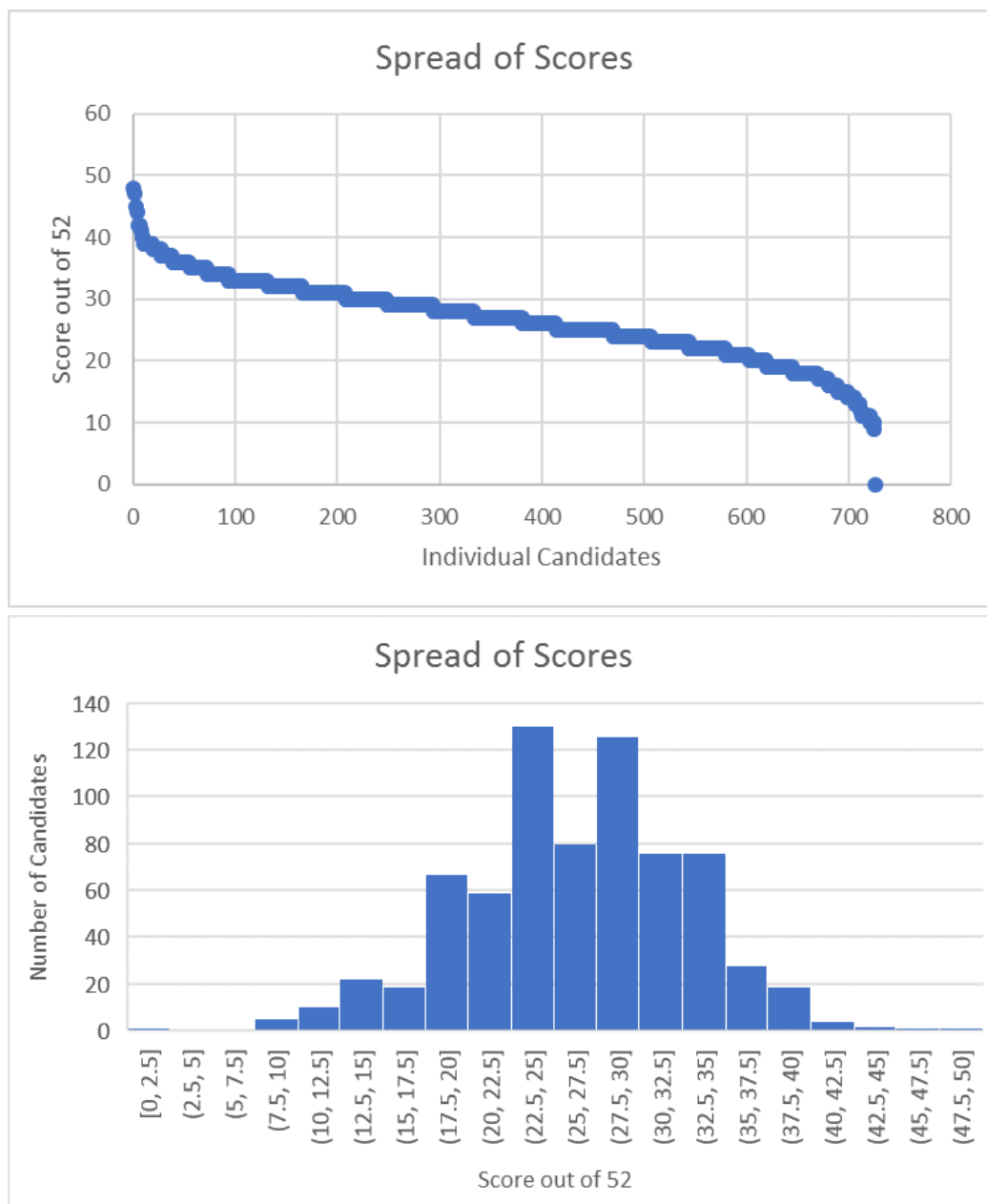
Approach to shortlisting

When the JAC receives a vacancy request from HMCTS confirming how many vacancies there are for a post, we calculate how many candidates we need to take 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 an initial vacancy request to fill up to 250 posts. We therefore planned the selection exercise based on inviting around 500 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 2 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](). 733 candidates were successful following the qualifying test and were invited to sit the online scenario test.

726 candidates proceeded to sit the online scenario test, which was marked as outlined above. The scores of the candidates were ranked into a merit list order. The highest 500 scoring candidates from the scenario test were considered for shortlisting through to selection days.

We do however have a lower line below which candidates are automatically sifted out of the competition, this is usually 30% or less.

In the interest of fairness to all candidates however, if 2 or more candidates have the same score on the merit list at the line of shortlisting, we will take all those with the same score through to the next stage. When candidates have the same score on a merit list, we call this bunching. Once any bunching is taken into account, the final line of shortlisting is determined.

After applying the above process, 506 candidates were invited to attend selection day.

We therefore do not have a pre-determined pass mark for the test; the line of shortlisting on the merit list 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 shortlisting. For this exercise, the score at which the line of shortlisting fell was 24 out 52 (46%).

The Commission has a published policy on the process for considering the [Equal Merit Provision]() at shortlisting stages. On this occasion, no zone of equal merit was identified.

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.

Overview

The panel agreed, with the approval of the assigned JAC Commissioner, that the substance of the answers would be paramount and that minor errors made by candidates would be overlooked where the meaning was clear. Spelling mistakes and formatting of answers were not considered important. It was also agreed that marks should be awarded where the correct answer, while not explicit, was clearly implicit. It was also agreed that a candidate's understanding and application of the Charter, Rules and Regulations (included in the reading material imbedded in the test) was of greatest importance. Where a candidate demonstrated understanding of

these matters generally within their script, marks would be awarded when relevant to the answer to any question. In this way no candidate was penalised for including correct answers in the 'wrong' place.

The panels have provided feedback on each question. Reference made to A1, and B1 to B4 are in relation to the reading material imbedded in the test.

Question 1

Question 1 was designed to test the candidate's ability to consider 5 issues in an order which would avoid an inappropriately constituted board making any decisions in the appeal whilst best ensuring fairness to the parties and the press. It was considered essential that a potentially biased member should not participate in the decision making without prior resolution of his status. Thereafter, additional marks were available to candidates who identified that they should resolve procedural issues before substantive issues.

Question 2

Question 2 tested the candidate's ability to identify the procedural steps which were necessary to manage the appeal fairly and appropriately for all concerned. The strongest candidates addressed the question fully and identified from whom they would hear submissions and how they would engage their colleague on the board in order to be able to announce a decision. In relation to the more difficult issue of bias, the candidate was expected to identify the enquiries and decisions which they should make before involving the parties. The candidate was also expected to identify that the parties should be invited to make submissions on continuing with a board of two members before a decision was made, on the issue, by the candidate and their fellow board member.

Question 3

Question 3 required the candidate to give their decision on each of the 5 issues. The candidates were expressly required to identify "all rules, procedures and matters" that they had taken into account for reaching their decisions. Some candidates failed to reach decisions on some issues, instead identifying competing considerations which they did not resolve. Some candidates reached decisions without identifying the relevant rules, procedures and matters which they had taken into account. The 5 issues were:

- Bias: the candidate should have identified that regardless of, or in addition to, general legal principles, Procedures B1 and A1 expressly require the Board to be unbiased and that, in the context of a female appellant, the views expressed about women amounted to actual or apparent bias requiring recusal. The candidate should then have considered B4 and reached a decision that the circumstances were exceptional justifying continuing with 2 members as there was nothing in the grounds of appeal which required a Master mariner to be part of the Board. A smaller number of candidates who

identified that the Chair did not fall within the definition of Member, thereby preventing the Board continuing with 2 Members, were not disadvantaged and were awarded marks for identifying the appropriate criteria.

- Reporting: even if a candidate referred to Convention rights, they should have identified the competing obligations, under paragraph 5 of The Charter, for the Board to be transparent and to protect privacy and family life. The strongest answers went on to deal with the Board's obligation to act fairly and proportionately and its responsibility to control attendance, finally reaching a decision which appropriately balanced the Charter obligations.

- Representation: the candidate should have identified that B3 creates a presumption in favour of self-representation and that the Board was bound, in the absence of cogent reasons, to refuse representation. The strongest candidates analysed whether there was anything in the grounds of appeal which necessitated representation. There was not and no cogent reason had been advanced by the appellant. The candidate, having reached this decision, should have considered whether to exercise their discretion to allow the appellant to be supported by Professor Smith pursuant to B3.

- Character: the strongest candidates identified most of the following – that the Board was reviewing the Committee's decision; that the Charter states that membership shall be based on exacting standards of the highest order; that the Board must act in accordance with Rule A1; the test of gross unfairness; all relevant circumstances relating to the injunction and their relevance to the appellant's ability to meet the standards for accreditation.

- Impermissible material: again, the candidate should have identified that this was a review and not a rehearing in which evidence would be given. The Charter's requirement of exacting standards was again relevant. The candidate should have considered, in the context of exacting standards and in circumstances in which the Committee had heard evidence from the appellant and had not concluded that she had acted dishonestly, whether the Committee's decision was grossly unfair.

Question 4

Question 4 required the candidate to reach a disposal consistent with the decisions they had made. The candidate should have considered the Board's duties and powers under Procedure B2 and, having reviewed the Committee's decisions, reached a logical conclusion as to whether any decision taken by the Committee was grossly unfair and, if so, whether it should be set aside in whole or in part. In the event of a decision being set aside the candidate should have considered whether there was any value in ordering a rehearing before a new Committee or whether, in view of the established factual position, decisions of the Board could be substituted.

The strongest candidates demonstrated that they had assimilated and applied the relevant Rules and Regulations and applied them to the known facts. Relevant matters were clearly identified and time was used effectively to answer all questions

and to reach a reasoned disposal of the appeal. Weaker candidates failed fully to address the questions or to justify their answers. They also failed to manage their time so as to provide complete answers to all 4 questions. Some failed to reach decisions, preferring to identify competing considerations.

Feedback from candidates

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

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

Of the 90-minute time limit for the test around:
- 66% of candidates thought the time allocated was too short
- 33% of candidates thought the time allocated was just right
- 1% of candidates thought the time allocated was too long

In terms of the difficulty of the test around:
- 2% of candidates thought the test was not challenging enough
- 47% of candidates thought the test was challenging
- 46% of candidates thought the test was very challenging
- 4% of candidates thought the test was too challenging

In terms of reading through the scenario and related material around:
- 80% of candidates spent up to 30 minutes reading the material
- 17% of candidates spent between 30 to 40 minutes reading the material
- 3% of candidates spent between 40 and 50 minutes reading the material

When answering Question 1 around:
- 43% of candidates spent less than 10 minutes answering the question
- 53% of candidates spent between 10 to 20 minutes answering the question
- 4% of candidates spent more than 20 minutes answering the question

When answering Question 2 around:
- 17% of candidates spent less than 10 minutes answering the question
- 70% of candidates spent between 10 to 20 minutes answering the question
- 13% of candidates spent more than 20 minutes answering the question

When answering Question 3 around:
- 5% of candidates spent less than 10 minutes answering the question
- 28% of candidates spent between 10 to 20 minutes answering the question
- 67% of candidates spent more than 20 minutes answering the question

When answering Question 4 around:
- 58% of candidates spent less than 10 minutes answering the question
- 35% of candidates spent between 10 to 20 minutes answering the question
- 7% of candidates spent more than 20 minutes answering the question