



042 Recorder 2017

Telephone assessment and self-assessment feedback report

Published 5 October 2017

Purpose and background

The purpose of this report is to provide general feedback to candidates regarding Stage 3 (self-assessment and telephone assessment) of the current Recorder exercise.

- We received 2,425 applications for the Recorder exercise for 150 vacancies across England and Wales
- Every candidate who applied for this exercise was invited to take a scenario test following a server failure that affected the administration of the planned first stage, a multiple choice test.
- The Stage 2 test feedback report can be found on the [JAC website](#)

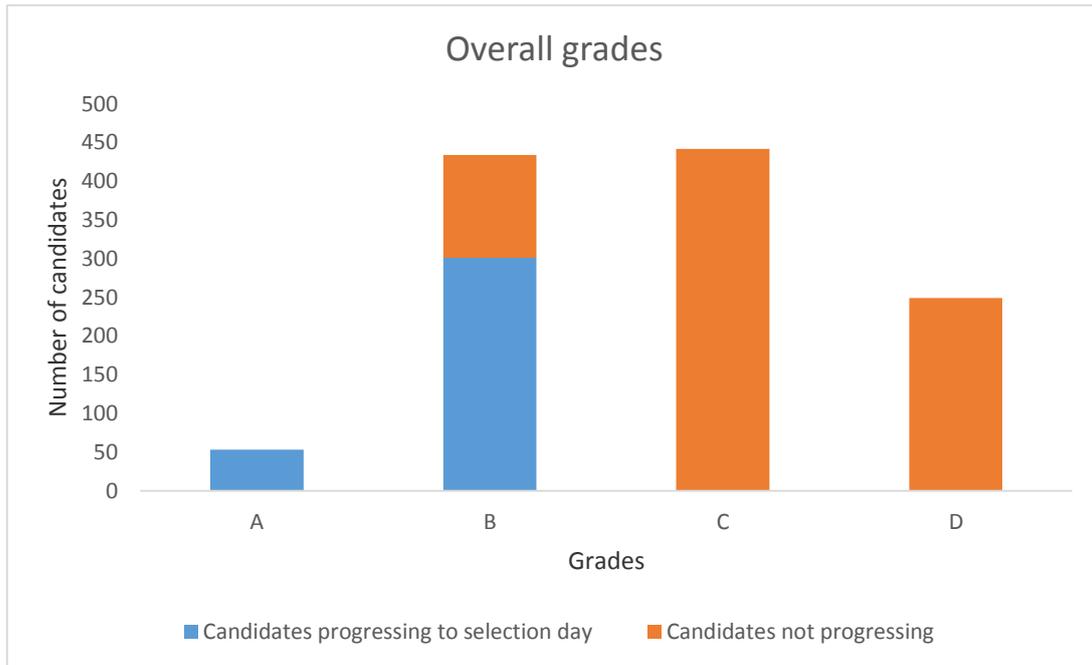
Stage 3

This report provides information on the performance of candidates at Stage 3 of the exercise. As published at the beginning of the exercise, no individual feedback will be given for this stage of the process.

At Stage 3 candidates took a telephone assessment and submitted a competency based self-assessment. The selection panels assessed the evidence provided in the telephone assessment alongside the evidence in the self-assessment, with both elements weighted equally. The combined grades for each of the five competencies were considered, and candidates graded an overall band within which the panels ranked candidates in merit order.

Candidates that progressed to selection day obtained as a minimum for each of the five competencies four B grades, or three B grades or above (including at least one A), with none scoring D grades.

13 candidates invited to Stage 3 failed to submit a self-assessment, and one further candidate invited to Stage 3 submitted a self-assessment but declined to take the telephone assessment.



1,192 candidates took the telephone assessment, with 356 of those progressing to selection day.

Competency framework

The telephone assessment was designed to assess the following competencies in the competency framework for the post of Recorder, which is published on the [JAC website](#):

- Exercising Judgement (EJ)
- Assimilating and Clarifying Information (ACI)
- Working and Communicating with Others (WCO)

The self-assessment assessed applicants against the above competencies and additionally:

- Possessing and Building Knowledge (PBK)
- Managing Work Efficiently (MWE)

Development of the telephone assessment

The test and assessment guidance were devised by a team of three high court judges, three senior circuit judges and three circuit judges across various disciplines (chancery, civil, commercial, crime and family).

In common with all of the test material developed for the Recorder exercise, and with the agreement of the Lord Chief Justice and Lord Chancellor, the test was designed to be accessible to candidates regardless of the area of law practised.

The telephone assessment was subject to an extensive quality and equality assurance process. The JAC Advisory Group, which is composed of members of the judiciary and the legal professions, reviewed the telephone assessment materials during their development. Comments were also drawn from a wide pool comprising academics, JAC Commissioners and in-house operational, policy and diversity teams.

The assessment was also subject to a dry run using volunteer candidates. The volunteers were drawn from a mix of barristers and solicitors from a range of jurisdictions.

Structure of the telephone assessments

Telephone assessments were held from 11 May 2017 to 12 June 2017 and were assessed by panels, each comprised of a lay JAC panel chair and a judge. Instructions were issued to candidates 7 days in advance.

Candidates were required to read the judgment in *Ben Nevis (Holdings) Limited and another v. HMRC* [2013] EWCA Civ 578, and were asked to give a presentation on: **Why did the Court of Appeal reject Ben Nevis's submission that enforcement of its tax liability involved breaching the presumptions against domestic legislation having retrospective effect and/or removing vested rights in the absence of express words?** Candidates were asked supplemental questions on the content of the judgment which were not limited to the subject matter of the presentation question, but also did not require knowledge of material that was not contained within the judgment. Candidates were not tested on any principles of tax law.

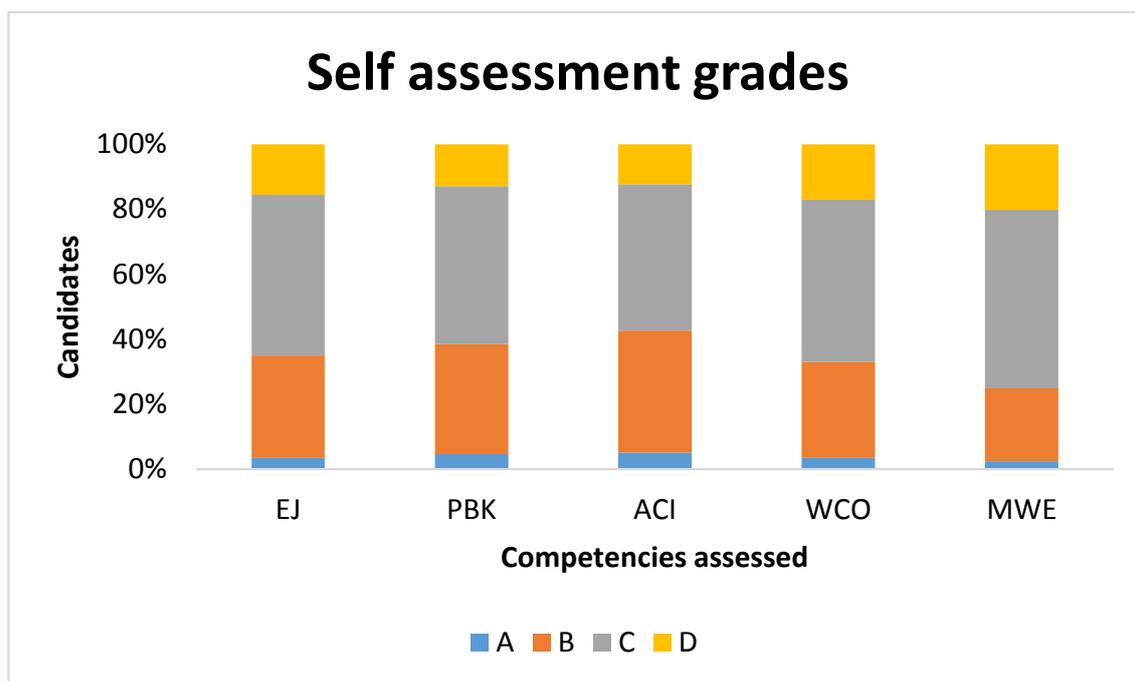
Calibration and moderation

The evidence from candidates' telephone assessments and self-assessments were evaluated against the relevant competencies. An overall grade for each of the competencies was given, and then an overall band for the candidate. The grades used were:

- A** Outstanding information provided to demonstrate the competency with regard to suitability for the role
- B** Strong information provided to demonstrate the competency with regard to suitability for the role
- C** Sufficient information provided to demonstrate the competency with regard to suitability for the role
- D** Insufficient information provided to demonstrate the competency with regard to suitability for the role

A weekly calibration meeting was held between all the panels to ensure that they were maintaining consistency in their approach and were applying the same standard of assessment to all candidates. Additionally, a moderation was conducted once all telephone assessments had been concluded. Those candidates selected for moderation included candidates who were close to the prospective cut-off line, candidates who experienced technical difficulties due to a phone outage at the Thistle Hotel where some panels were sitting, and a general sample from the various different panels.

Self-assessment



Self-assessments were on the whole reasonably well prepared; most applicants followed JAC guidance and provided examples to demonstrate their competence in the areas being assessed.

The panels found that exceptional candidates provided examples that focused on decisions taken in complex, sensitive or highly charged cases or where the approach taken was novel.

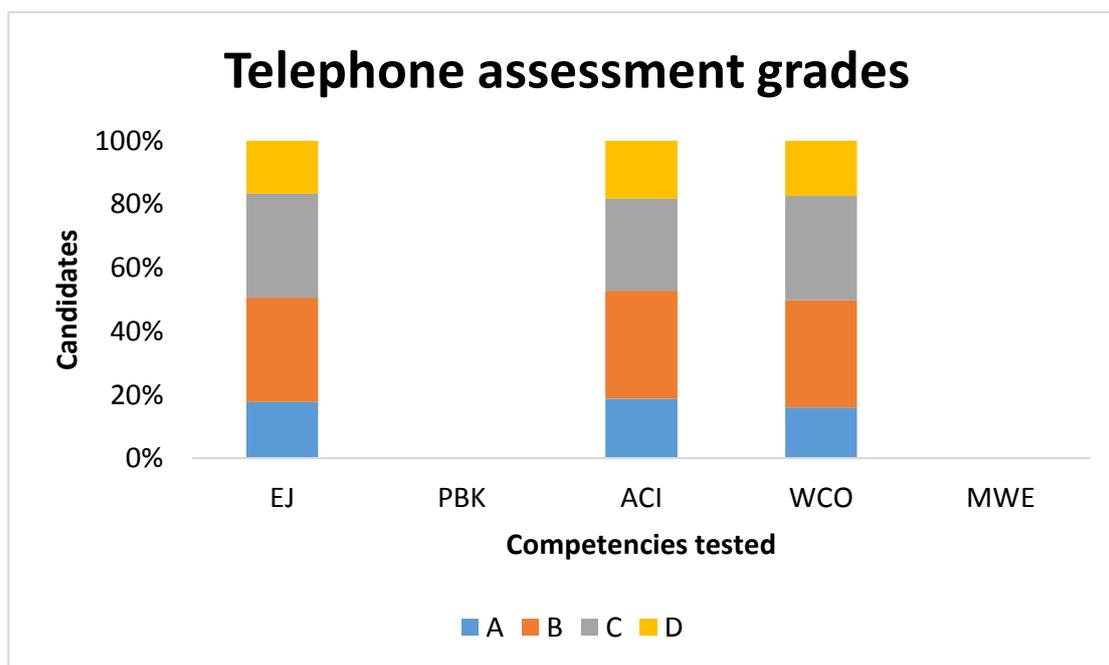
Exceptional candidates developed their examples well and clearly explained the nature and scale of the challenges they faced and that the situations described often required the candidate to consider a number of different factors, which made the circumstances more testing.

Examples taken from the applicant's work experience tended to yield better evidence than those taken from elsewhere as they presented greater opportunity to demonstrate skills in a similarly challenging setting. However, there were occasions when candidates were able to support their competence with particularly rich and well developed examples taken from outside their current professional career, such as when working as a school governor or from a former military career.

The best examples were taken from recent experience and demonstrated the candidate's current skill set.

Some candidates provided just one example under each heading and others provided two or three. Both approaches were capable of presenting exceptional evidence in the limited space available. However, candidates who provided numerous very short examples to demonstrate competence in each area, were often unable to develop these examples sufficiently.

General candidate performance in the telephone assessment



Possessing and Building Knowledge (PBK) and Managing Work Efficiently (MWE) were not tested by the telephone assessment.

Assessing the telephone assessment

A panel guide containing assessment guidance and a set of model answers were provided to the panels.

Each panellist independently assessed the self-assessment and telephone assessment against the competencies. All grades from both the self-assessment and telephone assessment were then discussed within the panel to achieve a consensus as to the overall grades and the final band.

Outstanding candidates demonstrated:

1. A very clear grasp of the judgment they had been presented with.
2. They answered all of the questions correctly and explained their answers in a well-structured, coherent way.
3. A profound understanding of the information provided to them and regularly recognised issues and ambiguities that other candidates had missed.
4. Consistent carefulness and precision beyond the required standard.
5. Communicated concise and wholly persuasive answers confidently.

Strong candidates demonstrated that:

1. They had absorbed the facts and had a solid grasp of the information provided to them.
2. Their analysis was precise, and they demonstrated a thorough understanding of the essential points in the opposing arguments.
3. Their views were well-reasoned, well-structured and easy to follow. They identified the salient issues quickly and applied them appropriately.
4. They communicated clearly and in a coherent manner, with confidence and authority throughout.
5. On occasion some views could have been expressed a little more concisely but the vast majority of answers were correct and the panel would have been in no doubt about the candidate's comprehension of the judgment.

Selectable candidates demonstrated that:

1. Their answers were mostly correct and explained clearly with structure but lacked the same depth of analysis and understanding as stronger candidates.
2. A good understanding of the key issues applying a robust analysis but performances were diminished by inclusion of irrelevant detail.
3. Answers were clearly communicated but lacked a degree of confidence and authority.
4. They did not possess a full awareness of the need to manage their time by providing overly verbose answers.

Weaker responses were characterised by:

1. Providing incorrect or ambiguous conclusions.
2. Answers that lacked precision or structure and failed to provide clear justification for the statements that they made.
3. Focusing on peripheral matters, or introducing irrelevant issues.
4. Making ineffective use of limited time by labouring points and using longwinded explanations.
5. Communication which lacked clarity of expression, confidence and authority.

Telephone assessment - performance by question

With reference to each question, the following characterised stronger and weaker answers:

Presentation question

Most candidates demonstrated that they understood that the presentation was concerning Ground 2 of the appeal and were able to demonstrate a reasonable understanding of the reasons why the Court of Appeal rejected the appellant's submissions both in respect of retrospective effect and vested rights. They demonstrated that the Double Taxation Convention 2002 was amended by a Protocol requiring the relevant states to assist in the collection of revenue claims as opposed to creating new tax liabilities.

Supplemental questions

In relation to the questions that were in two parts, some candidates only answered one part correctly. Although there were 6 questions, there were 8 correct answers. Partial answers were acknowledged positively and scored accordingly, i.e. a partial answer did attract marks albeit of a lower number.

Why was the first instance Judge wrong to conclude that the Vienna Convention on the Law of Treaties was immaterial?

Most candidates answered this question correctly and explained that the Vienna Convention contains rules of interpretation that are rules of customary international law which are binding on all nations irrespective of whether they are parties to the Convention.

Did it make any difference to the outcome and why?

Only stronger candidates were able to give a clearly reasoned answer to this question and explain that there was no material conflict between the principles set out in the Convention and those relied on by the Judge which were derived from domestic authorities.

What was the objective of the Protocol signed by the governments of the UK and the RSA on 8 November 2010?

Most candidates understood, and clearly explained, that the purpose of the new protocol was to assist with international tax collection.

Why was that objective relevant to the true construction of the protocol?

This question was poorly answered overall with most responses lacking clarity and structure. Strong answers demonstrated an understanding that the construction of the Article contended for by the Appellant, if adopted, would obstruct the purpose of the protocol by introducing an entirely arbitrary back stop against enforcement for which there was no legitimate purpose, or any purpose other than to prevent enforcement of its tax liabilities against the tax payer.

Why were the Appellants wrong to attempt to rely on expert evidence and how did the Appellants seek to avoid the consequences of this ruling?

Most candidates got this right and explained that questions of construction were for the Court but the Appellants relied on written texts from academics who were specialists in the area as opposed to those academics being called to provide expert opinion.

Why did the Court of Appeal consider the Respondents' conduct in relation to the Memorandum of Understanding to be unfair?

This question was answered well overall. Candidates tended to understand that the Court of Appeal had criticised that the Memorandum of Understanding had not been made public necessitating recourse to the Freedom of Information Act.