



Qualifying Test Feedback Report

090 Deputy District Judge

17 April 2018

Purpose

The purpose of this report is to provide general feedback on candidate performance in the **090 Deputy District Judge** qualifying 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 there were weaknesses.

The qualifying test for this exercise is designed to test a candidate's transferrable skills and their potential to work effectively as a fee paid Deputy District Judge rather than to assess their jurisdictional knowledge. Irrespective of the jurisdiction(s) candidates were interested in sitting in, all candidates underwent the same selection process; qualifying test selection tools were not divided by jurisdiction at any stage throughout the process.

Competency Framework

The test was designed to assess the following competencies:

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

The competencies were developed so that candidates could demonstrate the skills and abilities which were transferable to the role from other contexts. The specific bullet points under each competency heading were designed to reflect skills and abilities that an effective Deputy District Judge 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 for each element of the test were devised by two experienced District Judges.

In common with all the test material developed for this exercise the test was designed to assess relevant transferable skills to minimise the extent to which candidates might be advantaged or disadvantaged by their professional background.

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 including review by our Head of Diversity and Engagement and our Advisory Group.

The effectiveness of the test was assessed by means of this dry run(s) with a range of volunteers from relevant candidate groups.

Structure of the test

The test was hosted on the JAC website and was accessed by candidates using their online account. The 110-minute test presented candidates with three parts:

Part 1 (multiple choice): Situational Judgement (40 minutes, 31 questions)

Part 2 (multiple choice): Critical Analysis (30 minutes, 18 questions)

Part 3 (narrative responses): Scenario Test (40 minutes, 2 questions)

In Part 1 all of the situations were hypothetical and no prior knowledge of rules or procedures was required. Candidates were not being assessed on whether or not they knew the right answer based on knowledge or experience. They were assessed on their reading of a situation and their ability to judge the effectiveness of different responses. Some questions only had one correct answer, which scored 3 points. Other questions had a best answer which scored 3 points and a sufficient answer which scored 1 point.

In **Part 2** the questions were based on a speech by Lord Neuberger, President of the Supreme Court, in 2015 called “Magna Carta: the bible of the English constitution or a disgrace to the English nation?” Each question had one correct answer which might be scored as 3, 2 or 1 point for that answer depending on the question.

In **Part 3** candidates were required to read and refer to the following materials:

- Civil Procedure Rules – CPR Part 1
- Civil Procedure Rules – CPR 3.9 and the notes to that provision in the White Book
- Denton v TH White Ltd [2014] EWCA Civ 906
- Civil Procedure Rules – CPR 44.2 and the notes to that provision in the White Book
- Kupeli v Cyprus Turkish Airlines [2016] EWHC 1478 (QB)

The test then introduced a scenario about an application for relief by the claimant’s solicitors from sanctions on account of the late service of their client’s witness statements. Candidates were required to provide a narrative response to two questions, each with a word limit of up to 600 words.

Marking of the test

Part 1 and Part 2 of the test was marked automatically. Part 3 was marked by one panel consisting of a JAC panel chair and an experienced District Judge.

JAC staff provided a full briefing to the markers at the outset of the marking of papers. All test papers were anonymised but cross referenced by a unique reference to the candidate.

We increased the number of candidates progressing, as we have done in similar circumstances, to the marking of Part 3 of the test. In this way, anyone who had

suffered substantial disadvantage (despite working with us to try to complete their application) then had Part 3 of their test assessed, in addition to Part 1 and Part 2, and if their overall test result was acceptable we added them to the candidates invited to selection day. We are satisfied that all candidates that were affected have been considered and as a result we have taken a larger number of candidates through to selection day than we had planned.

Marking schedule

In Part 1 (situational judgement) each question had four answers. Some questions only had one correct answer, which scored 3 points. Other questions had a best answer which scored 3 points and a sufficient answer which scored 1 point.

In Part 2 (critical analysis) each question had four answers. Each question had one correct answer which might be scored as 3, 2 or 1 point for that answer depending on the complexity of the question.

In Part 3 (scenario) papers were anonymously marked by panels consisting of an independent JAC panel chair and a district judge. A marking schedule was provided to the panels. Any question on the interpretation of the marking schedule were resolved after full discussion between the panels and the judges who produced the test. Such decisions were agreed at a calibration meeting once all markers had marked a sample of the same test papers. Individual panel members marked each paper and all marks were then discussed within the panel to achieve consensus.

Distribution of scores

1,601 candidates took the test.

The scoring process was as follows¹:

- all candidates were scored on their answers to Part 1 and Part 2 of the test; all candidates were then ranked in order from first to last based on the combined outcome of Part 1 and Part 2
- a very small number were then **sifted out** because on either Part 1 or Part 2 they had not met the minimum score of 30% (these were the **lowest scoring** candidates of all)
- the **highest scoring** 507 candidates went straight through to selection day
- the next 430 highest scoring candidates had Part 3 of their test marked. Their scores from Part 3 were then used to provide a new ranked order to determine on merit which of them were best suited to proceed to the next stage. Of those, 180 candidates were shortlisted
- so in total **687 candidates went through to selection day**
- the remaining candidates (those candidates whose Part 3 had been marked but who had scored less than those selected based on Part 3 scores, and

¹ See later section regarding **Qualifying Test technical problem** for more details

those who met the minimum in both tests but whose Part 3 had not been scored because their Part1 and Part 2 scores were ranked lower than the 929th place overall) were then sifted out.

In summary, the highest scoring **687 candidates went through to selection day** and the remaining **910 candidates were unsuccessful**.

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

Part	Highest score	Lowest score
1. Situational Judgement	87/93 (1 candidates)	6/93 (1 candidate)
2. Critical Analysis	33/33 (365 candidates)	2/33 (2 candidates)
3. Scenario	235/240 (2 candidates)	15/240 (1 candidate)

The test was clearly quite challenging because:

- no candidate scored the maximum possible marks on Part 1
- no candidate scored the maximum possible marks on Part 3
- of those marked, not all candidates used their full word limit on Part 3

Approach to marking Part 1 and Part 2

When we receive a vacancy request from HMCTs we calculate how many candidates we need to take to selection day to fill the vacancy request (usually 2 or 3 candidates for each vacancy). This allows us to estimate the number of candidates we need to progress after the qualifying test to selection day (usually around twice the number of vacancies). If 2 or more candidates have the same score we will take all those candidates through, this is what we call 'bunching'.

Usually on qualifying tests we do not use a simple score to rank candidates, instead we apply statistical analysis tools, such as an averaged standard deviation across both online tests for each candidate, to scores before they are ranked into a merit order for decisions to be made about progression to the next stage of the exercise. This ensures tests with more points available than others don't disproportionately affect outcomes. For example, so 30/40 (75%) in one test isn't better than 9/10 (90%) in another test just because the first test had 30 points scored compared to 9 points in the second. This also allows us to compare how far your score varies from the average candidate, best candidate over both parts of the online test for example.

We also do not have a fixed pass mark as such, our line is determined by how candidates' scores bunch once that analysis is complete, for example, a score of 30

points out of a possible maximum of 40 points in both part of the test might mean there are 2 people with higher scores above you, or 30 people above you or 600, it depends on how strong your competitors were how much bunching there is at the highest merit points, so the "pass mark" is relative, not fixed. Such tests routinely involve over a thousand candidates so bunching around a score can be quite considerable.

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

Approach taken by the panel to marking Part 3 (scenario test)

After consultation with the JAC Commissioner assigned to the selection exercise, the panel agreed that they would overlook minor errors made by candidates where the meaning was obvious, for example spelling mistakes and typographical errors.

The comments below are from the panel chair, and including comments from the panel Judge, on Part 3 of the test.

Stronger candidates scored a range of marks across both questions and underpinned their answers with a good grasp of the relevant civil procedure rules. They adopted a logical approach to their decision making.

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

Question 1

The first question is procedural and relates to the late service of witness statements. Candidates were asked to decide whether they would grant relief from sanctions.

The strongest answers were clear and specific and identified the following factors:

- Rule 3.9
- The Denton 3 stage test setting out each of these stages
- Referring to the overriding objective and setting out the two factors in 3.9:
 - The need for litigation to be conducted efficiently and at proportionate cost
 - The need to enforce compliance with rules and practice directions
- Marks were awarded for consideration of each of the following points
 - Lack of prejudice to the defendant
 - That the unsigned statements were served on time
 - That the court time table was not delayed
 - That the defendant's stance was neutral
 - That there had not been an application for an extension
 - Promptness of application
 - Other breaches
 - The impact on the claimant of not granting the application would disproportionate
- In reaching a conclusion that the breach was serious and or significant
- That there was no good reason for the breach

- Granted relief from sanctions

Weaker answers failed to reach a conclusion or came to the wrong conclusion on the evidence provided. They often did not demonstrate a clear process to their decision making and may not have considered all the relevant factors when reaching their conclusions.

Question 2

This question related to the legal costs of the claim and who should pay them.

The strongest answers were clear and specific and identified the following factors:

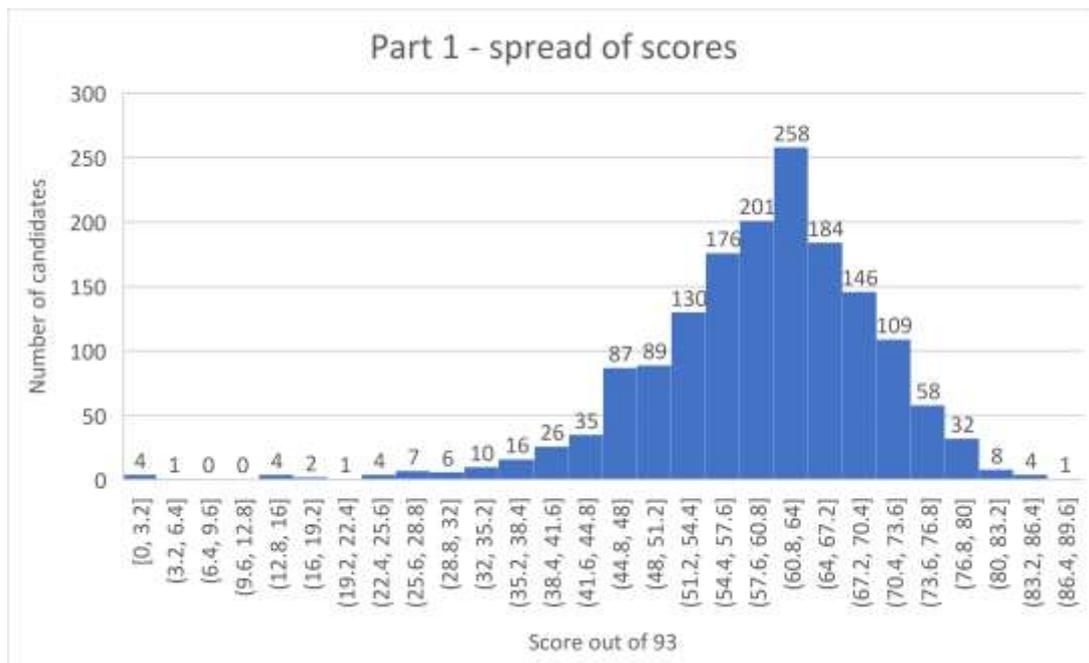
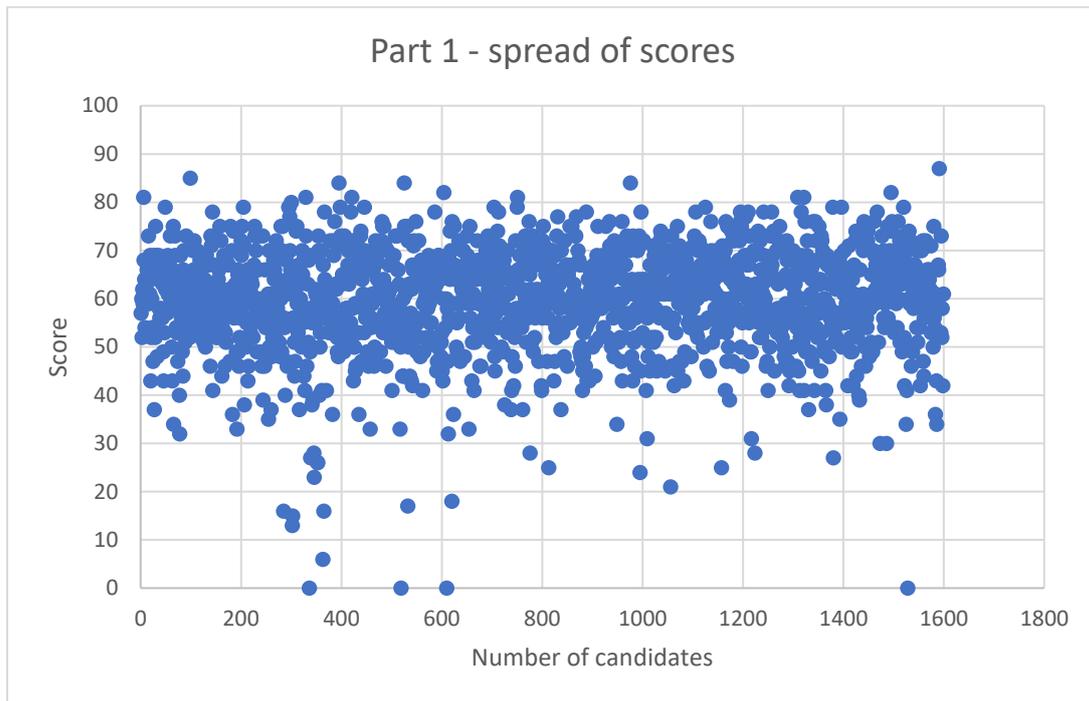
- That costs are at the discretion of the court
- That the relevant civil procedure rules were to be found in CPR 44.2
- Set out the general rule that the unsuccessful party would pay the costs.
- Identified that the claimant was still the successful party despite only winning a fraction of the damages and noting the relevant case law supporting this proposition
- Explicitly identifying that whilst the court usually awards costs to the successful party it may make a different order
- Identifying the factors that a court would consider when making a different order and recognised that the two relevant factors in this case were conduct and partial success
- Reaching a clear pragmatic decision backed by clear rationale

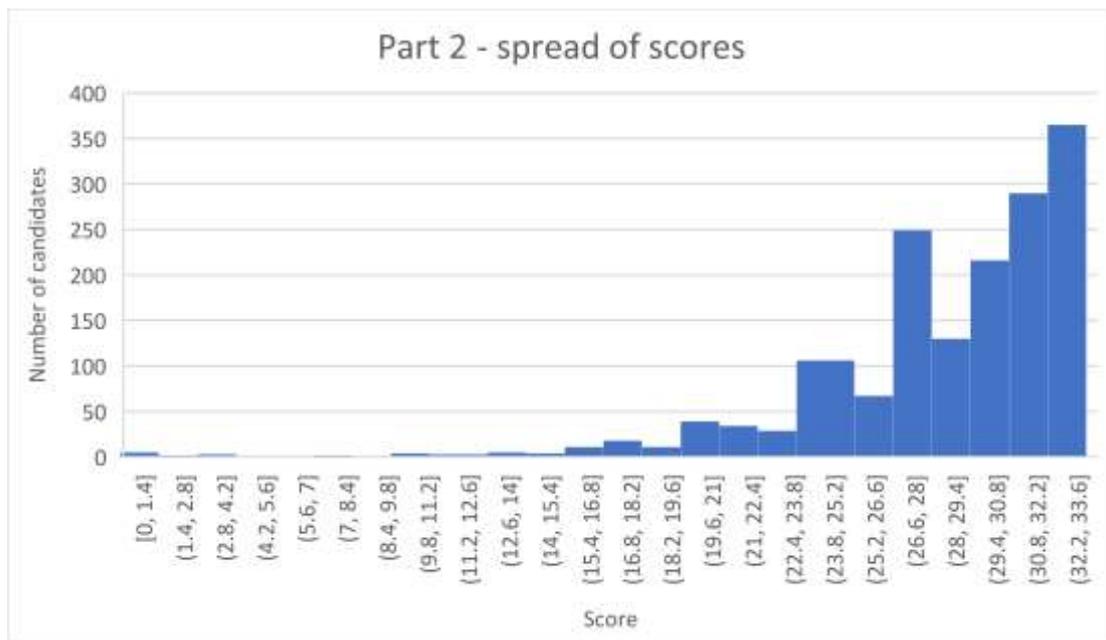
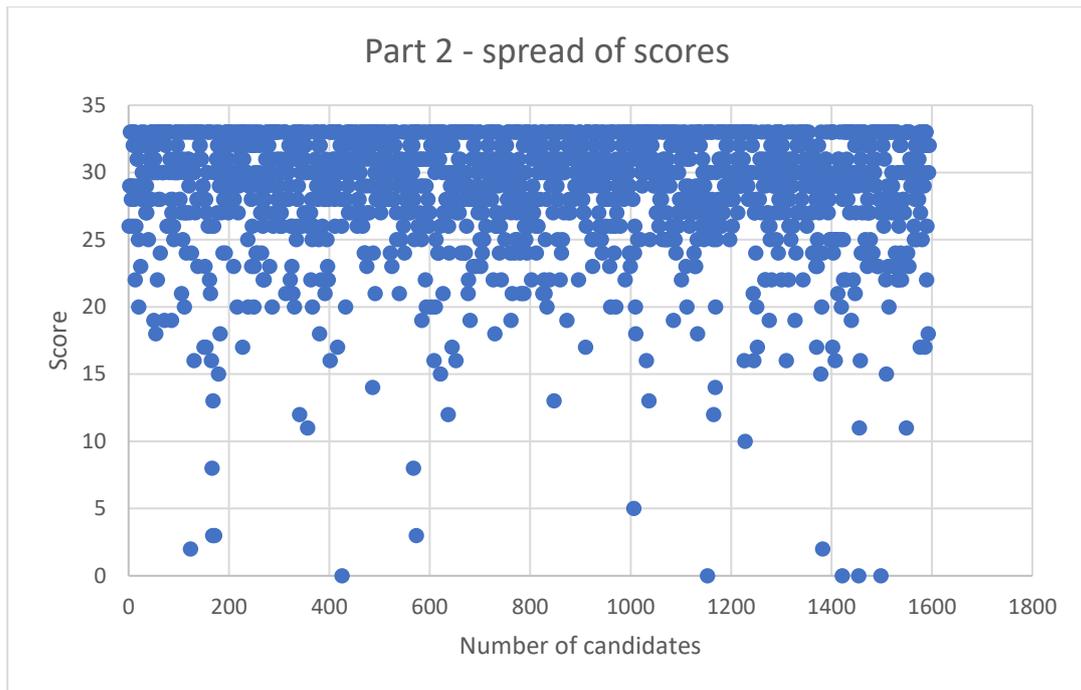
Candidates were also rewarded for identifying that costs were at the discretion of the court.

Generally, candidates with the highest marks had read and absorbed the scenario making specific references to the correct issues and directions to evidence their understanding of the matters that needed addressing. They referenced the relevant legislation making effective use of their time and word allocation.

Weaker candidates failed to manage their time effectively and therefore were not able to deal with the second question in enough detail. Some candidates failed to structure or communicate their answers clearly making their intent ambiguous. They failed to make a decision or set out their reasoning in sufficient detail and on occasion chose to separate out the costs of the care claim where that would not be expedient in this matter.

The charts below show the spread of scores:



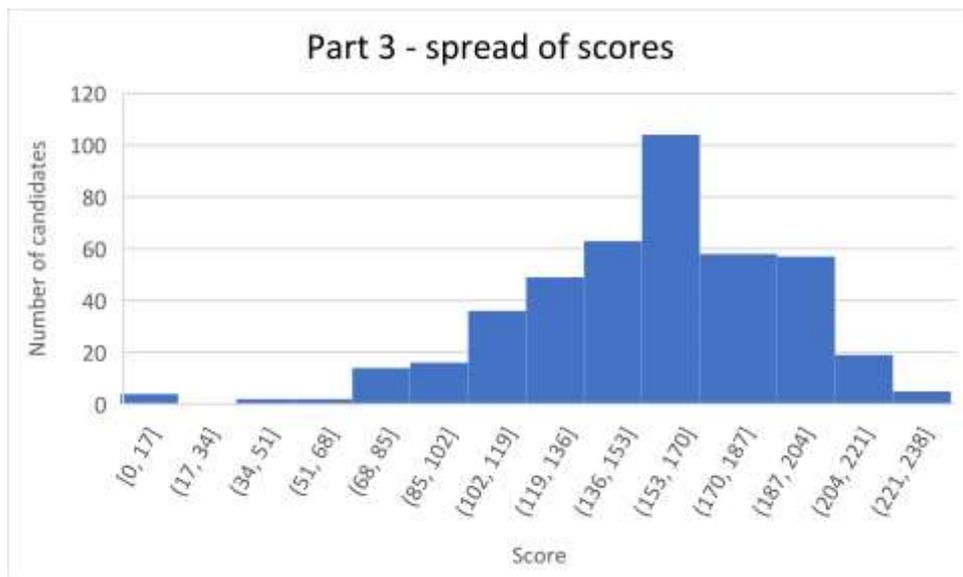
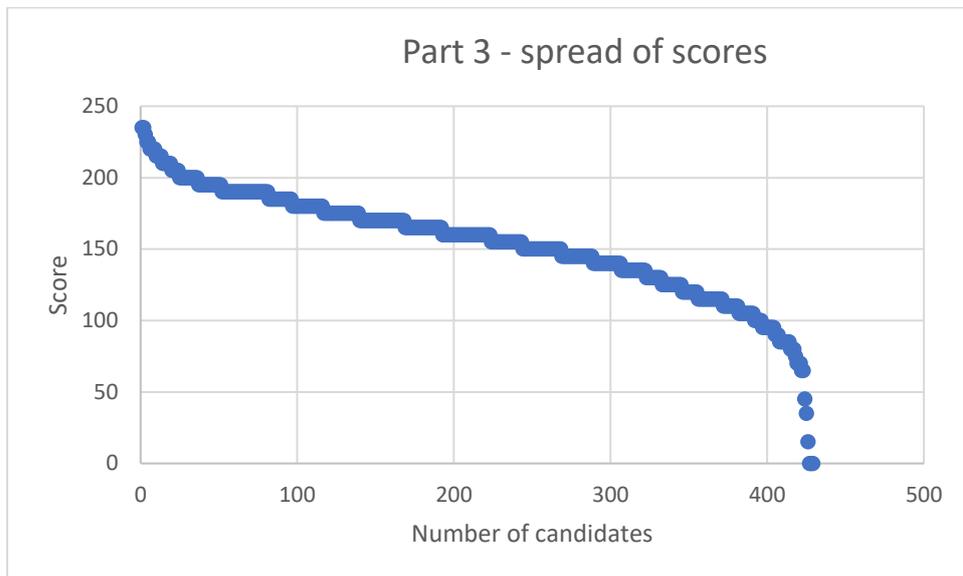


The lowest candidate score averaged over Part 1 and Part 2 combined for this test was 11%, the highest was 96% and the average was 22%.

In Part 1 (where candidates could score either zero, 1 or 3 points per question) there were no questions where over 90% of candidates gave an incorrect answer (hard questions) and 3 questions where 90% or more of candidates gave the right answer (easy questions). The average candidates getting an answer right in any question in Part 1 was 33%.

In Part 2 (where candidates could score zero, 1, 2 or 3 points per question) there were no questions where more than 10% of candidates gave an incorrect answer

(hard questions) and 12 questions where 90% or more of candidates gave the best answer available (easy questions). The average candidates getting an answer right in any question in Part 2 was 87%.



In Part 3 (where candidates could score a maximum of 120 in each of the two scenarios) the average score for scenario 1 was 81/120 and the average score for scenario 2 was 72/120. The average score when both scenario scores were added together was 154/240 points.

Feedback from candidates

Most candidates who responded to the candidate survey said they spent two or more hours preparing for the test. 97% had a copy of the preparation material to hand whilst sitting the test. Just over 97% of candidates found the test instructions were satisfactory, good or excellent.

78% of candidates found the test challenging or very challenging. Most candidates found the time allocated to complete Part 1 and Part 2 of the test to be about right, whilst over 70% felt they had too little time to complete Part 3 of the test. In Part 3 of the test about half of all candidates spent longer than the advised 25 minutes answering question 1 but most candidates completed question 2 within the time limit.

The drafting judges and those quality assuring the test and the material thought the test should be challenging on time to demonstrate a candidate's ability to assimilate and clarify the facts under pressure, and to ensure they can communicate in writing the salient points.

Qualifying test technical problem

On Tuesday 17 April 2018 the qualifying test for Deputy District Judge went live on our website at 7am. At about 9am we experienced a technical problem which caused the test to quickly freeze, preventing some applicants from completing some or all of the 3-part test and others from starting their test.

While we identified the cause, and recovered the test system, we told candidates by email that we needed to temporarily take the test offline from 10.30am to 12 noon. The initial freeze was caused by an oversight by our contractors. Had the server settings been thoroughly reviewed we would have identified a database server on our website was running out of disk space and could have resolved the error before the test went live. Following a thorough review, we have now changed how we manage our contractors, enlarged our server space, asked the contractor to resolve the problem that required extra server space to be needed and sought independent expert technical assurance for future tests.

Once the test was brought back online later that day, we extended the test window from 9pm to 11pm and staff assisted many candidates to complete their partial tests. In total 1,470 tests were submitted that day but some remained incomplete when the test closed. The extension was not entirely smooth and a number of candidates who were taking the test at 9pm experienced problems, but these were resolved quickly (within 20 minutes). We subsequently contacted any candidate who had informed us, either by phone or email, of any technical problem experienced on the day.

As further mitigation we re-opened the test again (as we usually do for exceptional reasons) on 24 April and on 26 April for the candidates who had informed us that they could not complete the test on Tuesday 17 April and for anyone else whose test still appeared to be incomplete. In a very few exceptional cases, where these additional dates were also impossible for the candidate, another very limited period was also offered.

In line with our previous approach we asked any candidates who had indicated to us that they may have been disadvantaged to complete the test and to set out their circumstances and the impact the problems had had on them. We then asked a

panel of two Commissioners to moderate these tests to decide whether the candidate had been materially disadvantaged.

We are sorry for the inconvenience and concern caused to candidates by this issue.