

**Post Selection Day Evaluation and Feedback Report  
037- Employment Appeal Tribunal Lay Members, for  
England, Wales & Scotland**

**March 2021**

## **Purpose**

The purpose of this report is to provide an evaluation of the selection days for **Employment Appeal Tribunal Lay Members, for England, Wales & Scotland** as well as capture general feedback on candidate performance. The report describes how selection days were undertaken by both panels and candidates; including what characterised stronger and weaker demonstrations of the competencies needed to fulfil the requirements of this role.

## **Framework**

At selection day, the situational questions and competency-based questions were 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 assessment criteria were developed so that candidates could demonstrate the proficiency and capability transferable to the role from other contexts. The specific behavioural indicators under each competency were designed to reflect the aptitude and faculty that an effective Employment Appeal Tribunal Lay Member is expected to have. This enabled us to assess candidates in a fair and consistent way.

## **Performance of candidates**

200 candidates applied for this exercise. Following the online situational judgement qualifying test and eligibility sift, 37 candidates who met the eligibility criteria were invited to selection days. One candidate subsequently withdrew prior to selection days.

Up to 13 candidates are being recommended by the Judicial Appointments Commission to the Lord Chancellor for appointment. In making these decisions the Commission takes into account all relevant character checks and all evidence provided by the candidates at selection day as well as the candidates' independent assessments.

23 candidates were assessed as 'not presently selectable'

## **Selection day**

Selection days were held remotely via MS Teams, between Monday 8 March and Tuesday 16 March 2021. All candidates were offered a one-to-one tutorial with a member of the JAC team to ensure they were comfortable with using MS Teams and knew what to expect.

## **Situational questions**

### **Development**

The situational questions were drafted by a judge from the Employment Appeal Tribunal (England and Wales). In common with all the selection tools developed for this exercise, the situational 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 situational questions for this exercise tested Exercising Judgement, Possessing and Building Knowledge, Assimilating and Clarifying Information, and Working and Communicating with Others.

The materials developed for this exercise were reviewed internally by Operations, Policy, and Diversity and Engagement teams to quality and equality assure the material to ensure it was an effective tool to assess candidates. The teams also ensured that the materials did not unfairly advantage or disadvantage any potential candidates undertaking the selection days on the basis of their diversity characteristic or professional background.

Following this internal quality assurance, the material was then reviewed by the JAC Advisory Group. The Advisory Group is composed of members of the judiciary and representatives of the legal professions and chaired by a lay JAC Commissioner. It offers its advice and guidance on the development of selection material and looks at material in terms of quality and whether it would have any negative impacts on diverse groups.

The effectiveness of the situational questions was assessed by means of a dry run with volunteers from relevant candidate groups. This provided an opportunity to trial the test material and make any necessary amendments.

### **Structure of the situational questions**

There were three written scenarios with a series of questions on each scenario.

Candidates were asked to take on the role of an Employment Appeal Tribunal Lay Member and consider issues that are typical of those likely to arise in this post.

During their preparation time candidates were required to review the three scenarios and prepare their answers to the situational questions.

### **Advance preparation**

The candidates invited to selection days were asked to familiarise themselves with the Tribunal Judgment and Reasons, Grounds of Appeal and the Law and the first of the three scenarios. The reading materials were provided one week in advance of selection days.

### **Assessment of candidates' responses to the situational questions**

The evidence for each competency is assessed as either outstanding, strong, sufficient or insufficient. The panels then make a final overall assessment of candidates as either outstanding, strong, selectable or not presently selectable.

### **Scenario 1**

Sufficient evidence included:

1. Correctly identifying whether the Judge had applied the correct section of the Employment Rights Act 1986 and explaining why this is relevant; and identifying whether there may have been an error of approach.
2. Clearly identifying whether the Tribunal has a discretion as to how much compensation to award; identifying the key requirements when assessing a compensatory award; and distinguishing between a basic award and a compensatory award.
3. Clearly identifying whether a reasonable tribunal would have correctly identified perversity; and whether the appellate court should substitute its view for the Tribunal.
4. Giving a clear answer for whether the case should be listed with lay members.

5. Clearly explaining actions where a possible conflict of interest has arisen.

Strong evidence included:

1. Points covered in 'sufficient' and also considering whether the Judge made an 'all or nothing' conclusion and balancing the arguments for that contention.
2. Points covered in 'sufficient' and also clearly identifying the correct statutory provisions and explaining the reasons for a reduction to the compensatory award.
3. Points covered in 'sufficient' and also referencing whether the Judge was asked to make a decision without the expert evidence.
4. Points covered in 'sufficient' and additionally identifying how unfair dismissal and discrimination claims are heard; identifying the ambiguity of the claim; and articulating the benefits of a panel of three.
5. Points covered in 'sufficient' and also articulating the test for determining apparent bias.

Outstanding evidence included:

1. Points covered in 'sufficient' and 'strong' and additionally identifying the relevance of the date the Claimant's conduct was discovered and whether this would have an impact on the award; also showing a broader grasp of the statutory provisions.
2. Points covered in 'sufficient' and 'strong' and additionally articulating a view on whether there was an error of law.
3. Points covered in 'sufficient' and 'strong' and additionally providing a clearly articulated reason for the response given.
4. Points covered in 'sufficient' and 'strong' and also providing a detailed answer and discussion on the lack of reasons from the Judge; and showing understanding of the different aspects of the overriding objective.
5. Points covered in 'sufficient' and 'strong' and additionally providing clear and reasoned actions that he/she would take; identifying whether it would be appropriate to raise the matters with the parties; and identifying when a judge should recuse themselves.

Insufficient evidence included:

1. Significant confusion about which statutory provisions are relevant; an inability to articulate a view about the issue; and a lack of understanding of the issues.
2. Failing to identify whether the award involves a broad discretion which must be exercised judicially.
3. Giving a different interpretation without identifying the points needed to be covered as 'sufficient' evidence.
4. Lack of awareness of when lay members may sit with Judges in employment tribunals.
5. Not identifying or dealing with the possible conflict of interest.

## Scenario 2

Sufficient evidence included:

1. Identifying whether the member's attitude to training is appropriate; and identifying the importance of training.
2. Identifying whether comments made may suggest a pre-determined view and the appropriateness of that view.
3. Identifying whether remote hearings can be permitted and how recording should be dealt with.

Strong evidence included:

1. Points raised in 'sufficient' and additionally reflecting on whether statements made mean the member was not participating or benefitting; and some reflection on the personal importance of training.
2. Points raised in 'sufficient' and additionally articulating what they would do in this situation; and an awareness of whether aspects of training had been understood.
3. Points raised in 'sufficient' and identifying who usually has responsibility for recording and who is responsible for decisions on alternative arrangements.

Outstanding evidence included:

1. Points covered in 'sufficient' and 'strong' and additionally encouraging a different approach with the individual; and reflection on whether the issue should be raised with anyone else.
2. Points covered in 'sufficient' and 'strong' and additionally evidencing the ability to work constructively to deal with the issue.
3. Points covered in 'sufficient' and 'strong' and additionally identifying changes resulting from the COVID-19 pandemic; referencing the default position regarding remote hearings; and identifying whether recordings are covered in the practice direction.

Insufficient evidence included:

1. A lack of engagement with the key points regarding the benefits of training.
2. A tendency to not deal with the issue; and getting bogged down in the legal issues rather than focussing on whether the colleague has a pre-determined view.
3. A lack of awareness on whether remote hearings can take place and unawareness on the formal procedures.

### Scenario 3

Sufficient evidence included:

1. Describing a planned approach for preparing for an appeal and demonstrating how they would seek to build knowledge.
2. Demonstrating calmness and patience.

Strong evidence included:

1. Expanding on points raised in 'sufficient' to provide more detail on planning; and demonstrating an understanding of different functions of Tribunal members.
2. Points covered in 'sufficient' and also identifying whether fault lies with the member or staff.

Outstanding evidence included:

1. Points covered in 'sufficient' and 'strong' and additionally showing real intention to work collaboratively.
2. Points covered in 'sufficient' and 'strong' but developing responses in more detail.

Insufficient evidence included:

1. Not adequately preparing and dealing with difficulties and not demonstrating an interest in developing relevant legal knowledge.
2. Becoming angry or impatient with staff.

## **Competency based interview**

Each candidate then had a competency-based interview. Here the panel was seeking further evidence and examples from the candidate of the required competencies and in the context of the role of Employment Appeal Tribunal Lay Members. The panel drew upon relevant evidence provided in the candidate's Statement of Eligibility to inform their questioning. When coming to their final assessment of the candidate, the panel considered evidence from their independent assessors. Three competencies were assessed in the interview, Working and Communicating with Others, Managing Work Efficiently, and Possessing and Building Knowledge.

### **Working and Communicating with Others**

Outstanding evidence included:

- Clearly demonstrating a strong collaborative approach when dealing with challenging individuals in a complex situation.

Strong evidence included:

- Providing structured, articulate and well-developed answers.
- Describing the strategies used in dealing with a difficult colleague and overcoming personality conflicts to achieve a consensus.
- Dealing with resistance and showing sensitivity to others' views.

Sufficient evidence included:

- Describing some sensitivity and patience when challenged.
- Providing a generic approach, rather than a specific example, of dealing with aggression.
- Providing responses which were sometimes lacking in focus.

Insufficient evidence included:

- Providing routine examples with which only described actions at a superficial level.
- Focussing on the organisation of engagement groups rather than providing clear evidence of skills of persuasion.
- Providing a poorly articulated answer which did not explain effective collaboration.

### **Managing Work Efficiently**

Outstanding evidence included:

- Describing managing a workload with limited means of communication and while juggling other responsibilities and demonstrating calmness, resilience and flexibility under pressure.

Strong evidence included:

- Using a range of tools to effectively manage priorities during a very busy period.
- Clearly demonstrating planning and delegating to meet tight deadlines.
- Demonstrating flexibility in a changing environment.

Sufficient evidence included:

- Demonstrating a methodical approach in dealing with issues.
- Remaining focussed on key tasks.
- Delegating appropriately.

Insufficient evidence included:

- Providing generic descriptions of how to organise work.
- Not providing any evidence of effective prioritisation.
- Being unable to provide any specific examples.

### **Possessing and Building Knowledge**

Outstanding evidence included:

- Explaining a comprehensive approach to keeping up to date with employment law.
- Demonstrating an impressive understanding of employment law.

Strong evidence included:

- Keeping abreast of developments in employment law.
- Demonstrating a good understanding of employment law.

Sufficient evidence included:

- Updating knowledge of employment law in response to specific requirements.
- Demonstrating an adequate understanding of employment law.

Insufficient evidence included:

- Not keeping abreast of developments in employment law.
- Failing to demonstrate an understanding of aspects of employment law

## **Feedback from Candidates**

After the selection days, candidates were invited to complete an anonymous candidate survey. 21 candidates responded to the survey. The results of the survey are as follows:

### **The instructions provided beforehand enabled me to prepare for the selection day.**

- 95.2% of candidates either agreed or strongly agreed
- 4.8% of candidates neither agreed nor disagreed

### **I understood what was expected on the selection day.**

- 76.2% of candidates either agreed or strongly agreed
- 14.3% of candidates neither agreed nor disagreed
- 9.5% of candidates disagreed

### **The situational questions discussed in the situational questioning were realistic and relevant to the role.**

- 100% of candidates either agreed or strongly agreed

### **The situational questioning gave me a chance to display how I would react to various situations.**

- 85.7% of candidates either agreed or strongly agreed
- 4.8% of candidates neither agreed nor disagreed
- 9.5 of Candidates disagreed

### **I am confident in the situational questioning as a JAC selection tool.**

- 71.5% of candidates either agreed or strongly agreed
- 19% of candidates neither agreed nor disagreed
- 9.05% of candidates strongly disagreed

### **The interview questions gave me the opportunity to demonstrate my skills, abilities and competence for this role.**

- 71.4% of candidates either agreed or strongly agreed
- 9.5% of candidates neither agreed nor disagreed
- 19% of candidates disagreed

### **The panel behaved professionally and treated me with respect.**

- 100% of candidates either agreed or strongly agreed

### **I am confident in the interview as a JAC selection tool.**

- 85.7% of candidates either agreed or strongly agreed
- 14.3% of candidates disagreed