



Scenario Test Evaluation and Feedback Report

00066 Deputy District Judge 2021

Test Date: 18 October 2021

Purpose

The purpose of this report is to provide an evaluation of the 066 Deputy District Judge online scenario test and general feedback on candidate performance in the 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 in the test. The scenario test for this exercise was designed to test a candidate's transferrable skills and their potential to work effectively as a Deputy District Judge.

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 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 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 were devised by two District Judges.

In common with all the selection tools developed for this exercise, the 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 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 taking the test on the basis of their diversity characteristics 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 also looks at material in terms of quality and whether it would have any negative impacts on diverse groups.

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.

Structure of the test

The scenario test was hosted on the JAC Digital Platform. Candidates were presented with the test and the time allowed was 80 minutes.

The test contained a challenging scenario, similar to one which candidates might experience in the job as a Deputy District Judge. The scenario consisted of three questions.

Candidate instructions were sent by email, a week in advance of the test. Included in this email, were the following pre-reading materials:

- Civil Procedure Rule 31.16; <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part31>
- Civil Procedure Rule 31.17; <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part31>
- Civil Procedure Rule 44.2; <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part-44-general-rules-about-costs>
- Civil Procedure Rule 46.1; <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part-46-costs-special-cases>
- Civil Procedure Rule 1.1; <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part01>

Candidates were allowed to refer back to the material during the test.

In the scenario test, candidates were asked to hear an application and were expected to identify and apply to the facts any relevant procedural issues. Candidates were required to provide narrative responses to three questions. Each question had a word limit and a maximum number of marks available. The word limit and marks for each question were as follows:

Question 1: 35 marks, a maximum of 400 words;

Question 2: 4 marks, a maximum of 100 words;

Question 3: 26 marks, a maximum of 400 words.

The JAC Digital Platform provides an on-screen timer, visible at the top of the screen throughout the test. The timer turns red during the last minute of the test to provide a warning to candidates that their time is about to expire. The test is automatically submitted after the allotted time expires. All tests, including those that have not been completed, are marked. This means that no candidate is removed from the test for going out of time. A word limit is also set for each question, preventing candidates from submitting answers that exceed the limit. This information was communicated to candidates in the test instructions.

Marking of the test

The pass mark is determined by the number of candidates needed at the next selection stage, which varies between different exercises. The candidate's test submissions were anonymised and marked by a panel of District Judges. JAC staff provided a full briefing to the panel at the outset of marking the papers and moderation and calibration exercises were completed to ensure fairness and consistency.

In this exercise, all candidates scoring 69% and above were taken to the next selection stage.

Distribution of marks

844 candidates were invited to take the test

23 candidates withdrew from the process or did not take the test

821 candidates took the test

The scoring process was as follows: all candidates were scored on their answers to the test, based on the marking schedule. All candidates were then ranked in order of merit, from first to last. This provided a merit list determining how many candidates would be invited to the next stage of the exercise. 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, before considering the Equal Merit Provision, was 45 marks (69%) and above.

A maximum of 65 marks were available in this test. A marking schedule was provided to the marking judges, which made it clear the number of marks available for each of the three questions, and the maximum number of words. This provided a merit list determining how many candidates would be invited to the next stage of the selection process based on the approach outlined.

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

Distribution of marks	Question 1	Question 2	Question 3	Total
Highest score	34/35 (2 candidates)	4/4 (437 candidates)	26/26 (13 candidates)	60/65 (1 candidate)
Lowest score	6/35 (2 candidates)	0/4 (35 candidates)	0/26 (2 candidates)	11/65 (1 candidate)

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 150 posts. We therefore planned the selection exercise based on inviting around 375 candidates to selection day.

All candidates who applied for this exercise were invited to sit the first stage of shortlisting, the online qualifying test. We then invited 844 candidates to the second stage of shortlisting, the online scenario test.

To identify the top 375 candidates from the scenario test, who will be invited to selection day, the score for each candidate is used to rank all candidates into a merit list, with the highest score at the top of the list, and the lowest at the bottom.

Equal Merit Approach

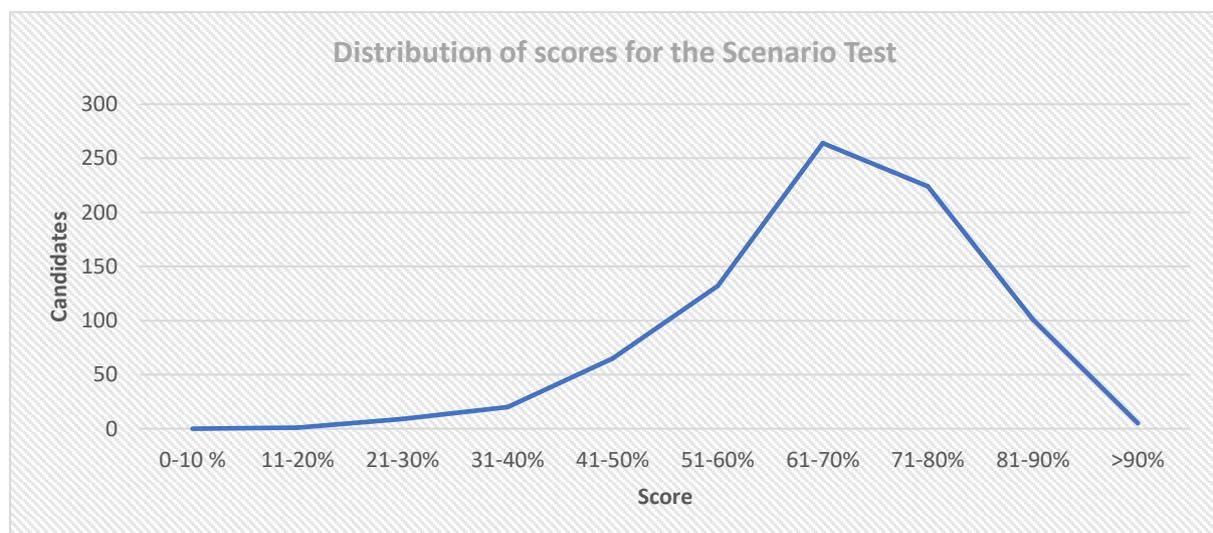
Where there are candidates with the same score at the cut off line, the Equal Merit Provision (EMP) may be applied in line with the JAC's published policy for the purposes of increasing judicial diversity, which is available [here](#). If the equal merit approach is applied, this will be after the consideration 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 is underrepresented either in the judiciary as a whole or at the relevant level of judiciary.
- reliance on EMP in the shortlisting process being conducted is a proportionate means of achieving the aim of increasing judicial diversity.

The Equal Merit Provision was applied at this stage of the selection process. After applying the above process, 30 candidates identified within this zone scoring 68% were invited to progress to the next stage of the selection exercise, making 392 candidates in total.

Distribution of the scores

A summary of candidates' scores is as follows: lowest candidate score was 17%, highest candidate score was 92%. The average candidate score was 65%.



Feedback from the Marking Judges

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.

Q1

Candidates who scored well, included most or all the following in their answers:

- Candidates were required to 'set out your decision in a reasoned judgment as you would deliver it in Court'. This required a structured approach, briefly setting out what the application before the Court was about, the relevant background facts, and the position of each party.
- Then identifying the correct rule which the Court must apply and also referencing the overriding objective.
- Also, setting out in terms each element of the rule and explicitly identifying that the Court had a discretion.
- Then applying the rule to the facts
 - Photographs: making a clear decision either to order disclosure or to refuse it, giving a clear reason for the decision. A decision, with proper reasons, to refuse or to order disclosure of the photos was equally acceptable.
 - Candidates making the correct decision on RIDDOR, risk assessments, and the accident book;
 - Refuse to order disclosure of correspondence between HSE and their Solicitors on the grounds that it was privileged;
 - Refuse to order disclosure of correspondence between HSE and other Enforcement Authorities, on the grounds that it was not necessary because it concerns an evaluation of the evidence, not evidence itself or that it would run the risk of inhibiting the function of the statutory authorities.
 - Giving a clear unambiguous decision.
 - Using plain and accessible language scored marks.

Candidates who performed less effectively, included/ excluded most or all the following in their answers

- An unstructured approach was likely to result in lower marks. Some candidates 'jumped in' to decision-making without addressing the issue they were required to decide, or the rule which applied, or the broad nature of each party's case.
- Some candidates referred to the incorrect rule or referred to the correct rule but did not identify the contents of that rule.
- Some candidates failed to identify that the court had a discretion.
- Some candidates made an incorrect decision on disclosure of the RIDDOR, risk assessments, and accident book, either by reason of a failure to recognise the 'necessity' test or failure to apply that test.
- It was apparent that some candidates failed to read the scenario/question e.g. referring to pre action disclosure or being mistaken as to what the application was for and who was involved. A number of candidates did not appreciate that the application was made against a non-party; a number did not appreciate - or chose to ignore - that no application was made against Westchester and made orders against Westchester.
- Some candidates gave conditional or unclear decisions; some adjourned

Q2

Candidates who scored well, included most or all the following in their answers:

- This question simply required candidates to identify what the rule requires.
- Many candidates achieved 4 marks by setting out fully what is required.

Candidates who performed less effectively, included/excluded most or all the following in their answers:

- Some candidates failed to state a time/date for disclosure or to state the respondent should state what had happened to documents no longer in his control.
- Some candidates added unnecessary provisions such as adding a notice under Civil Procedure Rules 23.10.

Q3

Candidates who scored well, included most or all the following in their answers:

Again, candidates were asked to 'set out your decision in a reasoned judgment as you would deliver it in Court' A structured approach, briefly setting out what the application before the Court was about, (i.e. the costs of the application, and compliance with the order), and the position of each party was required.

Candidates who scored well:

- Identified the correct rule was a bespoke rule for this type of application.
- Identified the general rule that the respondent will recover their costs of the application AND their costs of complying with the Order made BUT that the Court may make a different Order.
- Identified the procedural test and provided details of the test - all the circumstances of the case, and the reasonableness of the opposition to application, and compliance with any pre-action protocol.
- Identified the partial success of both the Applicant and Respondent and awarded some costs to HSE or made no order for costs.

Used plain and accessible language. **Candidates who performed less effectively, included/excluded most or all the following in their answers:**

An unstructured approach was likely to result in lower marks. Some candidates 'jumped in' to decision-making without addressing the issue they were required to decide, or the rule which applied, or the broad nature of each party's case.

Some candidates:

- Rehearsed the facts of the dispute, when that had been decided and the issue was now costs.
- Failed to specify that the issue now before the Court was costs.
- Identified the wrong rule or became muddled between 44.2 and 46.1.
- Tried to merge 44.2 into 46.1 or vice versa.
- Failed to identify that there is a starting position - i.e. that the costs will be awarded in favour of a Respondent for the application AND for the costs of compliance.
- Failed to address the criteria for exercise of discretion to make an order - the reasonableness (or otherwise) of the application, and the reasonableness (or otherwise) of opposing the application.
- Failed to address the extent to which the application had succeeded; or the extent to which opposition to the application had succeeded.
- Made an order against HSE or indeed Westchester.

Feedback from candidates

After the scenario test, candidates were invited to complete an anonymous candidate survey. **212** candidates responded to the survey. Based on the results of the candidate survey:

When completing the test:

- around 72% of candidates were confident in the test as a JAC selection tool
- around 7% of candidates were not confident in the test as a JAC selection tool
- around 21% of candidates neither agreed nor disagreed with the above.

- around 94% of candidates agreed the test was accessible in terms of format, language and topics
- around 2% of candidates disagreed that the test was accessible in terms of format, language and topics
- around 4% of candidates neither agreed nor disagreed with the above.

In terms of the difficulty of the test:

- around 42% of candidates thought the test was easy to complete
- around 24% of candidates thought the test was difficult to complete
- around 34% of candidates neither agreed nor disagreed with the above.
