



Qualifying Test Feedback Report

084 Fee-paid Judge of the First-tier Tribunal

6 March 2018

Purpose

The purpose of this report is to provide general feedback on candidate performance in the **084 Fee-paid Judge of the First-tier Tribunal** 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.

A qualifying test for this exercise was used as a shortlisting tool to enable the JAC to shortlist an appropriate number of candidates for selection day in relation to the number of vacancies for the post. There are 250 vacancies for the post, and the JAC planned to assess around 500 candidates at selection day.

The qualifying test was designed to test a candidate's transferable skills and their potential to work effectively as a Fee-paid Judge of the First-tier Tribunal 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 Fee-paid Judge of the First-tier Tribunal 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 Tribunal leadership judges from a range of jurisdictions including Immigration and Asylum, Health, Education and Social Care, Social Entitlement, Employment and War Pensions and Armed Forces Compensation.

In common with all the test material developed for this exercise, the test was designed to assess relevant transferable skills and therefore to minimise the extent to which candidates might be advantaged or disadvantaged by their specific 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 the JAC Head of Diversity and Engagement and JAC Advisory Group. The effectiveness of the test was assessed by means of a dry-run 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 120-minute test presented candidates with 3 parts:

Part 1 (multiple choice) – Situational Judgement (40 minutes, 21 questions)

Part 2 (multiple choice) – Critical Analysis (40 minutes, 20 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 were 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.

In **Part 2** the questions were divided into Part A and Part B:

- Part A: Questions 1 to 12 were based on the speech by the Lord Chief Justice given to JUSTICE on 3 March 2014
- Part B: Questions 13 to 20 were based on the case of *Mengiste and Another v Endowment Fund for The Rehabilitation of Tigray and Others* [2013] EWCA Civ 1003

In **Part 3** candidates were introduced to 2 scenarios about case management issues arising from an interference claim. Candidates were referred to an imaginary piece of primary legislation, the Community Relations Act 2016, which was part of the pre-reading material ahead of the test.

Candidates had to provide a narrative response to 2 questions, each with a word limit of up to 600 words. Candidates were advised that they should aim to spend no more than 25 minutes answering question 1 and 15 minutes on question 2.

Marking of the test

Part 1 and Part 2 of the test was marked automatically. Part 3 was marked anonymously by 4 marking panels, each comprising a JAC panel chair and a tribunal leadership judge.

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

Marking schedule

In Part 1 (situational judgement) each correct answer was scored as one point. Each question had 4 answers of which only one was correct (so for each question there were 3 incorrect answers).

In Part 2 (critical analysis) each question had 4 answers. For each question 4 marks were given for a strong answer, 2 marks for a good answer, 1 mark for an acceptable answer, and zero marks for a wrong answer (so for each question there was one incorrect answer).

A marking schedule was provided for the scenario test (Part 3). It allowed for all answers that demonstrated the required competencies to be rewarded. A maximum of 40 marks were available for responses against the whole marking schedule (during this test, the marks were allocated as follows: 30 total points for Question 1 and 10 total for Question 2).

Distribution of scores

1,591 candidates took the test.

The scoring process was as follows:

- 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** 411 candidates went straight through to selection day
- the next 199 highest scoring candidates had Part 3 of their test marked. Their scores from Part 3 were added to their scores from Parts 1 and Part 2 to provide a new ranked order to determine on merit which of them were best suited to proceed to the next stage. Of those, the top 90 candidates were shortlisted to provided sufficient candidates overall for the required number of selection day slots
- so in total **501 candidates went through to selection day**
- the remaining candidates (those 109 candidates whose Part 3 had been marked but who had scored less than the 90 selected based on Part 3 scores, and those who met the minimum in both tests but whose Part 3 had not been scored because their Part 1 and Part 2 scores were ranked lower than the 605th place overall) were then sifted out

In summary, the highest scoring **501 candidates went through to selection day** and the remaining **1,091 candidates were unsuccessful**.

The standard of test answers was high. For example, based on automatic scoring of Part 1 and Part 2 only, only one candidate was unsuccessful because they did not meet the minimum standard of a 30% score in both Part 1 and in Part 2 of the test.

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

Part	Highest score	Lowest score
1. Situational Judgement	15/21 (3 candidates)	2/21 (1 candidate)
2. Critical Analysis	74/80 (3 candidates)	41/80 (1 candidate)
3. Scenario	34/40 (1 candidate)	6/40 (1 candidate)

Nevertheless, the test was clearly quite challenging because:

- no candidate scored the maximum possible marks
- on Part 1 the average score is less than half of the maximum score available
- of those marked, not all candidates used their full word limit on Part 3

Approach to marking Part 1 and Part 2

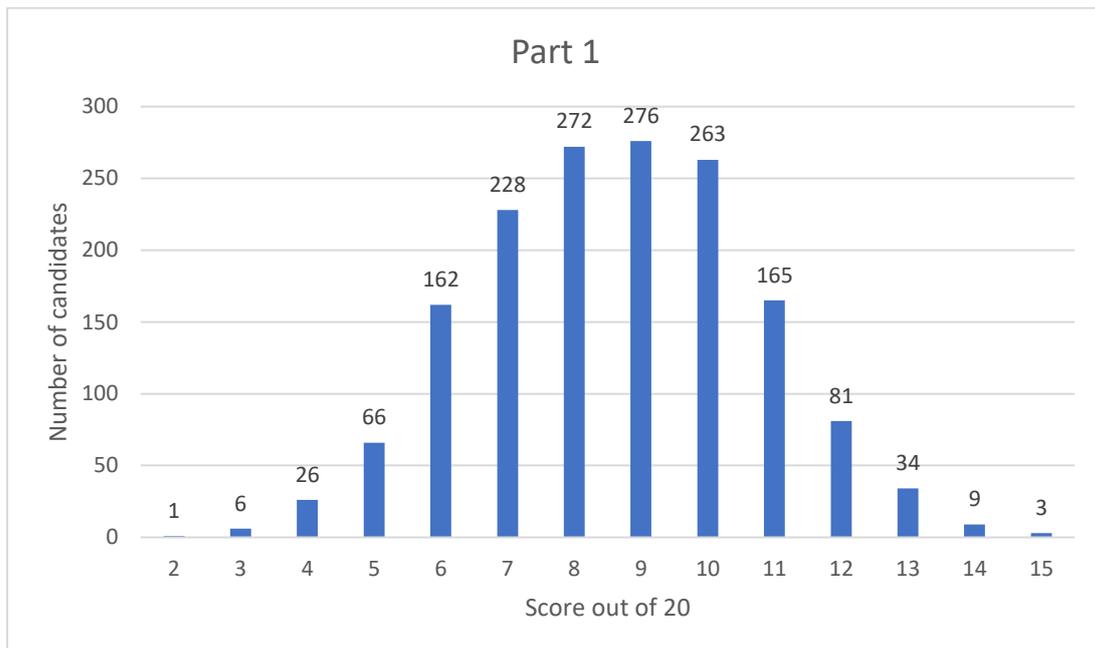
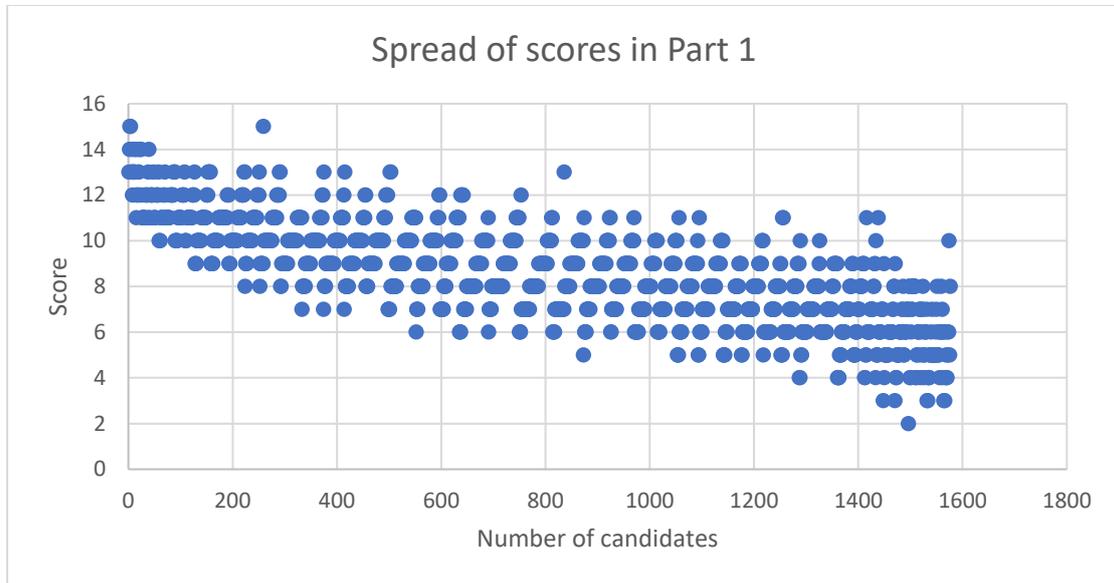
When the JAC receives a vacancy request from HMCTS, it calculates how many candidates it needs to take to selection day to fill the vacancy request (usually around 2 to 3 candidates for each vacancy). This allows us to estimate the number of candidates who should be shortlisted after the qualifying test. If 2 or more candidates have exactly the same score however, we will take all those candidates through; this is what we call 'bunching'.

Usually on qualifying tests the JAC does not use a simple score to rank candidates. Instead it applies 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. This will determine progression to the next stage of the exercise and ensure that tests with more points available than others do not disproportionately affect outcomes. For example, 30/40 (75%) in one test is not 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 the JAC to compare how far your score varies from the average candidate and the best candidate over both parts of the online test for example.

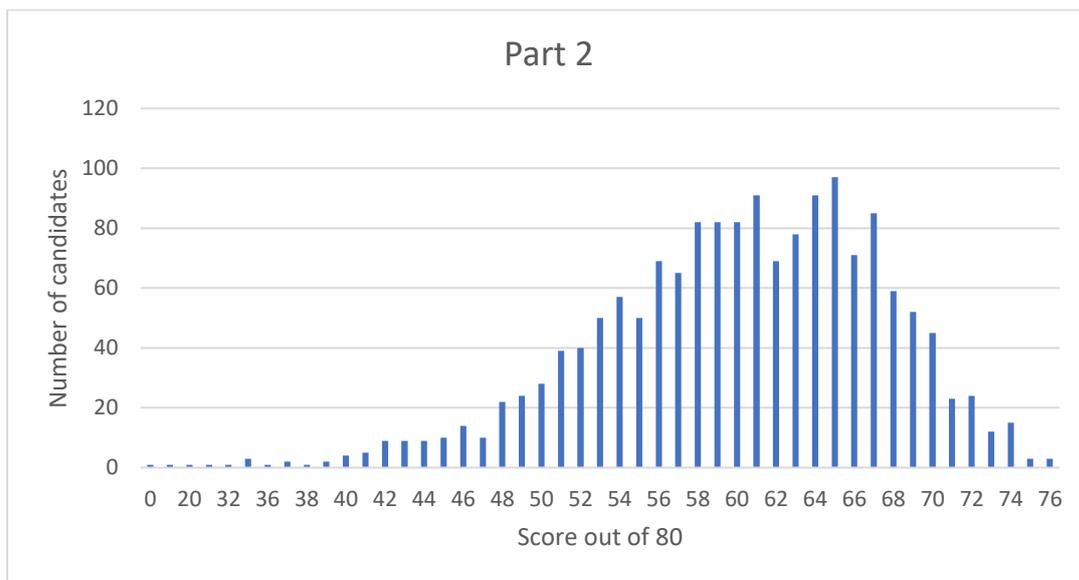
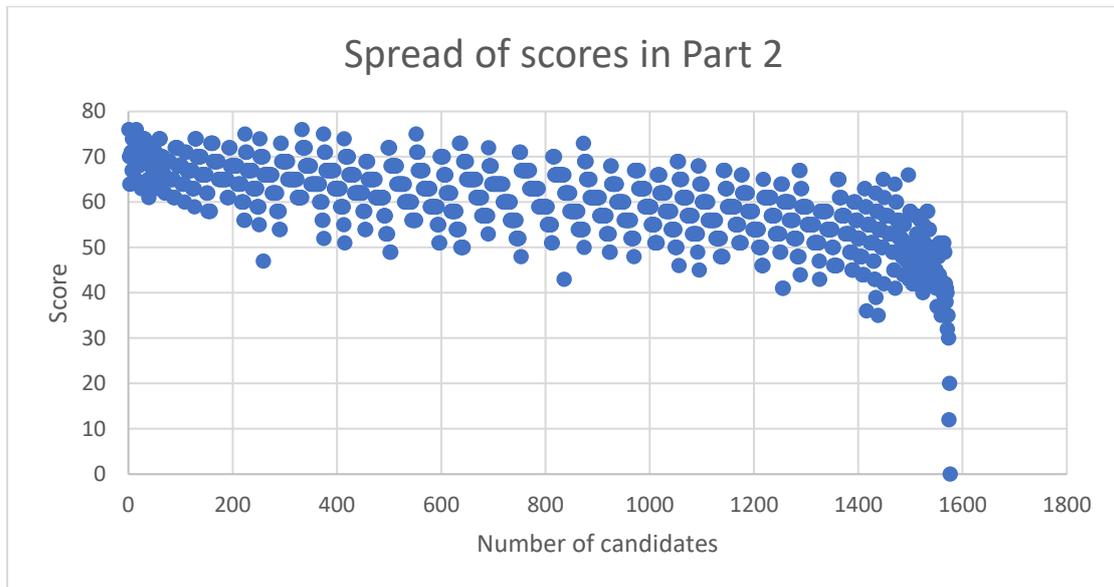
The JAC also does not have a fixed pass mark as such, our 'line' is determined by how candidates' scores bunch once that analysis is complete, for example, a score of 30 points out of a possible maximum of 40 points in both parts of the test might mean there are 2 people with higher scores above you, or 30 people above you or 600. This depends on how strong your competitors were and 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.

The JAC does 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.

The chart below shows the spread of scores for Part 1:



The chart below shows the spread of scores for Part 2:



The lowest candidate score averaged over Part 1 and Part 2 combined for this test was 19%, the highest was 78% and the average was 58%.

In Part 1 (where candidates could score either zero points or one point per question) there were only 2 questions where over 90% of candidates gave an incorrect answer (hard questions) and no 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 41%.

In Part 2 (where candidates could score zero, 1, 2 or 4 points per question) there were 6 questions where more than 10% of candidates gave an incorrect answer (hard questions) and only 2 questions where 90% or more of candidates gave the

best answer available (easy questions). The average candidates getting an answer wrong in any question in Part 2 was 7% and the average candidates giving the best possible answer in Part 2 in any question was 62%.

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

After consultation with the JAC Commissioners 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 chairs, and include comments from the panel judges on Part 3 of the test.

Structure of the test

The test was based on a fictitious *Community Relations Chamber of the First-tier Tribunal* (which operates on a similar basis to the chambers of the real life First-tier Tribunal) which is governed by the fictitious *Community Relations Act 2016*. It dealt with issues or complaints raised by neighbours against other neighbours and whether these complaints amounted to 'unreasonable interference'. Question 1 of the test covered a number of issues which had been raised by residents in a claim and a counter-claim and the candidate was required to apply the law to the circumstances and the issues. This question tested Assimilating and Clarifying Information and Exercising Judgement. Question 2 dealt mainly with case management in deciding how a second case to be heard was managed alongside the first case. It tested Working and Communicating with Others, Managing Work Efficiently and Exercising Judgement.

The panel felt that it was a well-constructed and very effective test – confirmed by the wide spread of marks – and allowed the panel to differentiate between weak, sufficient and strong candidates. There were jurisdiction issues to be considered, issues and incidents which needed to be analysed and applied to the law, and decisions or judgments made. Efficient case management and a pragmatic approach were also required.

Panel marking process

The panel found that the test allowed candidates to be fairly and effectively scored. Most of the marks awarded were related to the jurisdiction and individual issues and were prescribed, removing the possibility of wide marking variances between panels. However, a few marks could be awarded on a more subjective basis after taking a more holistic view of the candidate's approach. These areas were agreed by all the panels in a calibration meeting as follows:

- fairness: whilst it was suggested that fairness had to be mentioned, panels agreed that if a generally fair approach was demonstrated, a mark could be awarded for this

- analysis: where the candidate showed good analysis, an additional mark could be awarded in the appropriate section
- local authority role: while the model answer suggested that there were no issues which required involvement of the Local Authority, a number of candidates suggested that they should be joined to the proceedings. If candidates showed a good knowledge of the process and a reasoned decision, they could be awarded a mark for this
- case management: if the candidate showed good instincts in relation to efficient use of time and a pragmatic approach, they could be given an additional mark

The objective structure of the test and the limited – but nonetheless important – number of holistic/subjective marks meant that all four panels marked consistently with each other.

Candidates who scored well

These candidates included most, or all, of the following:

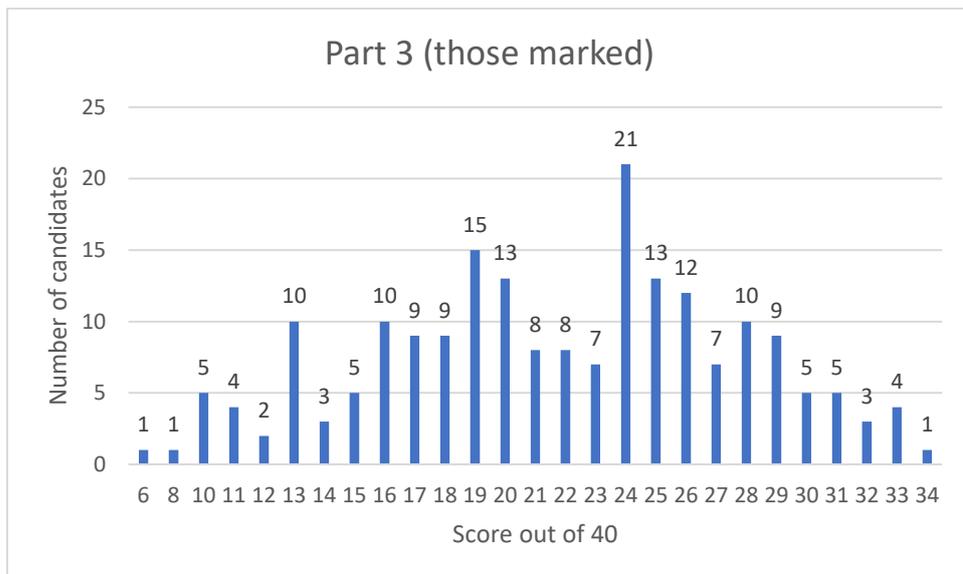
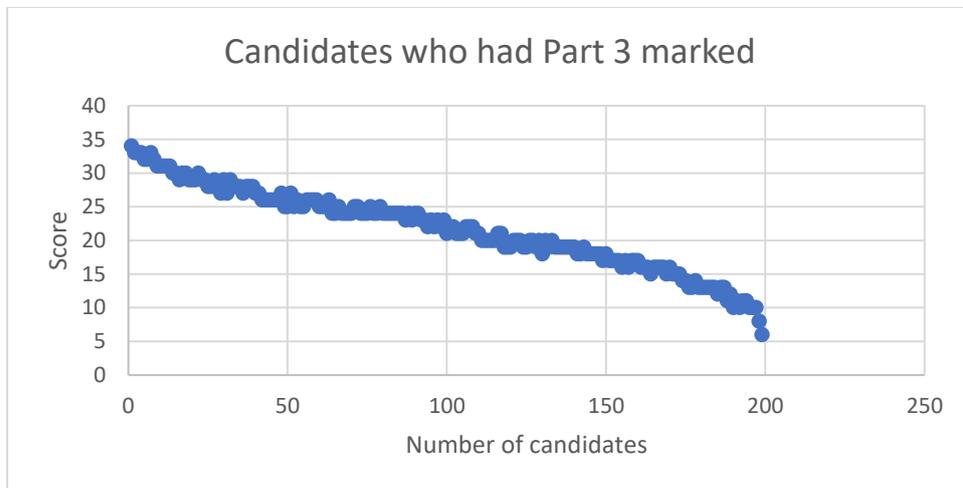
1. Identified what constituted interference, patterns of interference, the relevant time limits and the definition of a 'neighbour' in the terms of the Act. They did this for both the claim and the counter-claim and quoted the appropriate sections of the Act
2. Identified all the issues involved
3. Provided a good or strong analysis of the issues and whether they amounted to unreasonable interference, specifically covering:
 - highlighting Section 3(1)(c) and importantly, that it was not an exhaustive list
 - the issue of dog defecation and trespass and how the former could be covered by the Act
 - a good analysis of the other issues, for example whether bins put out on the wrong night was not littering but a matter for the local authority
4. Quoted the burden of proof
5. Covered remedies briefly, but referred to banning orders and social media constraints
6. Recognised the overall objective of the Act to be social cohesion and took account of this when dealing with the current case
7. Were aware that the tribunal had no jurisdiction to deal with defamation or breach of Article 8

8. Recognised the overall objective by showing flexibility, that is, demonstrating an objective of completing the case on that day by for example, getting the parties to look at unseen evidence (photographs) and resume later when this has been done. This required taking a similar view to one candidate who said that 'as it had already become heated, resolution the same day would be the priority'. This included sympathetic treatment of the individual who was clearly upset
9. Stated an aim to ensure fairness and an absence of bias or prejudice
10. Produced a well-structured answer for Question 1, covering introduction, jurisdiction, relevant issues, analysis and application of the law and potential remedies, and case management of each case under Question 2
11. Provided a well-presented, easy-to-read answer, for example, given the number of issues to deal with, bullet points made the document easier to read

Candidates who performed less effectively:

1. Listed some of the issues but did not identify all of them
2. Did not provide strong analysis or reasoning to show whether the issues amounted to unreasonable interference
3. Lacked flexibility and took too rigid an approach, for example too readily taking the view that as disclosure had not been properly adhered to the case would be adjourned. Some decisions were vague or uncertain
4. Showed little sensitivity towards the upset individual. There was no recognition that the individual was recently bereaved and particularly attached to the dog
5. Did not offer a well-structured answer. Some had densely-packed paragraphs which were difficult to read and interpret
6. Had numerous spelling mistakes – some to the extent that it was not possible to interpret what was being said
7. Showed poor time management. This was apparent in:
 - a much longer and considered answer for Q1 and running out of time for Q2 so that the latter was restricted to 2 or 3 lines
 - very short paragraphs for each question, suggesting too long taken over reading and assimilation
8. Demonstrated little appreciation of the objective of the Act of social cohesion by making every effort to complete the case in one day

The chart below shows the spread of scores for those who had Part 3 marked:



Feedback from candidates

Most candidates who responded to the candidate survey said they spent 2 or more hours preparing for the test. Almost all candidates had a copy of the preparation material to hand during the test. Over 98% of candidates rated the test instructions excellent, good, or satisfactory.

Over 90% 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, while over 90% felt they had too little time to complete Part 3 of the test. In Part 3 of the test the majority of candidates spent longer than the advised 25 minutes answering question 2.

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.

A few candidates experienced technical problems. Once the test was submitted an error message appeared to some candidates stating that the answers were not saved. On calling the helpdesk, JAC staff were able to confirm to candidates that their answers had in fact saved correctly. Of those that contacted the helpdesk about the issue and those who later gave feedback, 90% said they received either good or excellent service.