



042 Recorder 2017

Scenario test feedback report

Published April 2017

Purpose

The purpose of this report is to provide general feedback to candidates regarding the scenario test for the Recorder exercise. Every candidate who applied for this exercise was invited to take the test after a server failure affected the administration of the first stage multiple choice test. As the root cause of the server failure had not been identified and resolved, the Judicial Appointments Commission (JAC) decided to administer the scenario test by email.

The report describes how the JAC developed the scenario test and marking schedule and how the test was structured.

Additionally, it provides information on the overall performance of candidates in the scenario test, describing the information assessors were looking for in relation to each question, and outlining the areas where some candidates could have improved their performance.

Competency framework

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

- Possessing and Building Knowledge
- Assimilating and Clarifying Information
- Managing Work Efficiently

Development of the test

The test and marking schedule were devised by a team of circuit judges, who are experienced in all aspects of this role.

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 minimise the extent to which candidates might be advantaged by their professional background.

The JAC Advisory Group, which is composed of members of the senior judiciary and representatives of the legal profession, offered advice and guidance during its development.

Both the test and marking schedule were subject to an extensive quality and equality assurance process. The effectiveness of the test was assessed by means of a dry run using volunteer candidates. The volunteers were drawn from a mix of barristers, solicitors and judges.

Structure of the test

The test was administered by email on 7 March 2015.

The test presented candidates with one scenario, in which the candidate assumed the role of the legal chair of a Fitness to Practice Panel of the Royal College of Psychological and Psychiatric Practitioners.

Candidates were asked to respond to 10 questions, exploring how they would respond in the situation. A total of 60 marks were available. The marks available for each question were as follows:

- Question 1: 5 marks
- Question 2: 5 marks
- Question 3a: 10 marks
- Question 3b: 5 marks
- Question 3c: 5 marks
- Question 3d: 2.5 marks
- Question 3e: 2.5 marks
- Question 4: 10 marks
- Question 5: 10 marks
- Question 6: 5 marks

Marking of the test

Every test paper was assessed by a panel consisting of an independent JAC lay panel chair and a circuit judge.

A marking schedule and set of model answers were provided to the panels. At the outset of the marking of papers, the panels were briefed by the judges who produced the test and JAC staff. Any questions on the interpretation of the marking schedule were resolved only 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. This formed a precedent for the marking of subsequent test papers.

Individual panel members marked each paper, and all marks were then discussed within the panel to achieve consensus.

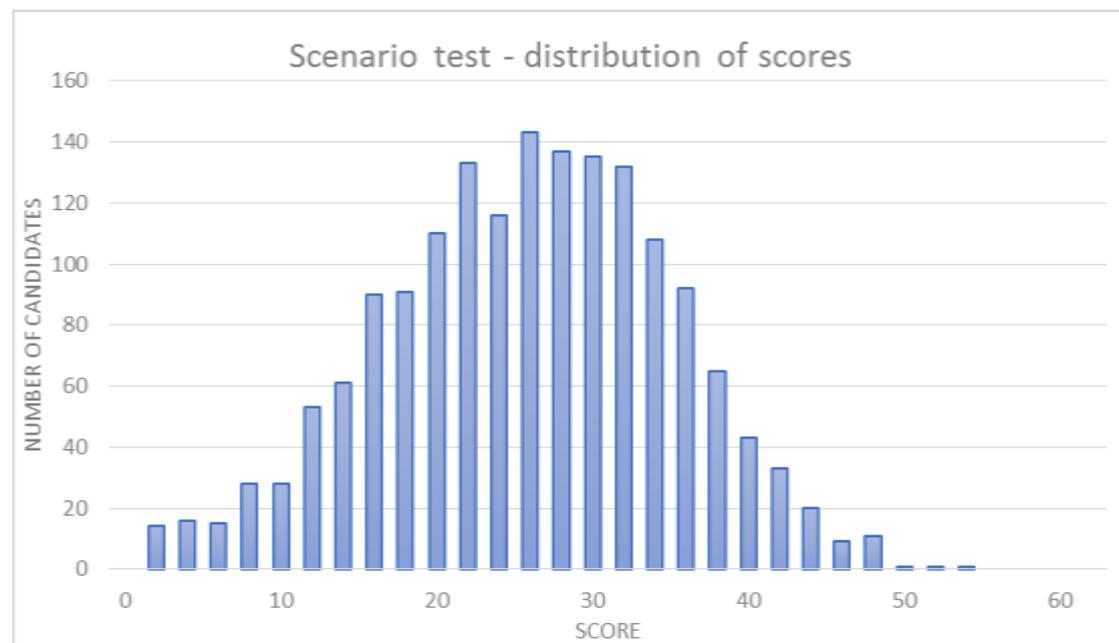
Calibration and moderation

During the marking of the test papers, panels marked a small selection of each other's test papers to ensure consistency of marking. The spread of scores given by each panel were also compared throughout the marking process.

Additionally, a sample of the test scripts were selected for moderation. Those selected included papers close to the prospective cut-off point for invitation to the telephone assessments, and those identified by panel members as in need of validation. At moderation stage, each paper selected for moderation was re-assessed and validated by a panel other than the panel which first marked the paper.

Distribution of marks

60 marks were available. There was a normal distribution of scores, with half of all candidates scoring between 20 and 33. 10% of candidates scored 14.5 or lower, and 10% of candidates scored 38 or higher. The highest mark awarded was 56 out of a possible 60 marks available and the lowest was 0.



General candidate performance

Stronger candidates scored a range of marks across the paper, underpinned their answers with a knowledge of legal principles and adopted a logical approach to the scenario.

Stronger candidates demonstrated that:

1. They read the scenario carefully, absorbing and accepting the relevant facts.
2. They planned their approach, made good use of time, and prioritised questions requiring more explanation (as indicated by the word count and potential marks available).
3. They heeded the instruction to identify and set out the relevant legal principles in their responses.
4. Beyond this, they set out the legal principle(s), identified the relevant facts, and explained how both the principles and the facts were applied in reaching a decision.

5. Where a decision was required, they were able to give this unequivocally and with an explanation of the reasons for their view.
6. They used the word count to provide a suitably detailed answer. Despite the time pressure, stronger candidates provided structured, cogent responses that were of the appropriate length and detail.

Conversely, weaker responses were characterised by:

1. Signs that candidates had failed to read the scenario with sufficient care or to accept the contents at face value. In these instances, incorrect facts were applied or answers such as “I would seek agreement of the parties” were given incorrectly as the rules in the scenario did not allow for this option.
2. Signs that candidates had failed to plan their time. In these instances, responses to early questions were often too detailed and lengthy while later questions – representing more potential marks - lacked sufficient detail and explanation. For example, question 1 was often ‘over-answered’ with a long explanation of legal tests, followed by a failure to reference or repeat this content in response to later questions.
3. Failure to identify relevant legal principles, although the instructions clearly set out this requirement. In particular, it was noted that some candidates did not refer to legal principles, even though the scenario concerned, “...a disciplinary hearing which is (a) required to be ECHR Article 6 compliant, (b) amenable to Judicial Review & (c) is conducted before a panel with a legally qualified chair”. Generally, a failure to identify and refer to relevant principles at the outset undermined the ability to score full marks.
4. Making ineffective use of limited time and word count by repeating the facts set out in the scenario. For example, a high number of candidates repeated the fact that the Tribunal had to be Article 6 compliant without providing any analysis of what this meant in relation to the question posed.
5. Failure to make decisive judgments where required. A high number of candidates described the process of seeking submissions and rehearsing the possible considerations facing the panel, but without coming to a reasoned conclusion. Some questions asked for a decision to be made, and it was insufficient merely to rehearse the points for or against without coming to a view. Weaker responses suggested that the process required complex balancing when this was not the case.
6. The use of generalisations such as “justice must be done and must be seen to be done” without identifying the relevance of the statement to the principles relating to a specific question.
7. Failure to consider who had the onus of proof and the tests that had to be satisfied evidentially. For example, a small amount of candidates identified where the burden of proof lay in relation to the alleged reluctant witness.

8. Making material syntax and grammatical errors that made it difficult for the answers to be understood. Simple typing errors and spelling mistakes were disregarded and did not affect scores. However, some candidates failed to structure or communicate their answers clearly, and in these instances, where answers were not comprehensible, marks could not be awarded.
9. Answering questions by posing a list of questions. This approach was not effective in conveying that the candidate had analysed the material and formed a reasoned view.
10. Failure to manage time effectively and therefore providing very brief answers or, in some cases, no answers to some questions.

Performance by question

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

Question 1

This was a straightforward question. The strongest answers were clear and specific in confirming the information should be disclosed at the outset of the hearing and to all parties and their representatives.

Weaker answers gave verbose descriptions of Tribunal processes and failed to state that disclosure was necessary. Some candidates spoke of disclosing to only one representative.

There were many, overly-lengthy answers to this question. Some candidates provided significant detail in response to question 1, then failed to reference their answers later when the detail should more appropriately have been provided.

Question 2

All candidates appeared to understand this question although many simply got the answer wrong.

Question 3a

Strong answers set out the fundamental legal principles involved as well as the relevant facts gleaned from the scenario.

Weaker answers dealt almost exclusively with the procedure to be adopted and gave a lengthy explanation of the steps the panel would go through without reference to principles.

Question 3b

Most candidates identified that apparent bias could not be established. A minority of incorrect responses were received.

Question 3c

Most identified that Dr X should recuse himself. Very few candidates picked up the significance of the nature of the allegations to the case. Weak answers described the process as a balancing exercise and did not provide a clear decision.

Question 3d

Strong answers demonstrated that the candidate had accepted this question at face value and answered it decisively, based on a factual reading of the scenario.

Weaker answers demonstrated that the candidate thought this was a trick question or opted to present their answer as a complex balancing exercise. Poor answers were characterised by a failure to apply the rules as set out in the paper and a failure to make a decision.

Question 3e

Strong responses accepted this question at face value and answered it decisively based on a factual reading of the scenario.

Weaker answers reflected an incorrect reading of the scenario which called for application of a clear rule. Poor answers represented the question as debateable and a matter for the parties to consider.

Question 4

Strong answers identified and set out the relevant principles clearly. From this flowed an appropriate consideration of the facts and a clear decision. This was one of the more technical and challenging questions in the paper, requiring legal knowledge and a well-reasoned approach.

Weaker answers failed to identify principles and leapt into the detail of the issue without a structured approach. Many candidates took valuable time and word count fruitlessly repeating facts set out in the scenario. Many answers quickly labelled the witness as vulnerable and went too far in accommodating her without pausing to consider underlying principles such as minimum derogation and the requirement to treat the other party fairly.

Question 5

Strong answers correctly identified the key principles as well as the practical arrangements that could be made to ensure the hearing was completed within the allotted time.

Weaker answers failed to make adequate reference to the principles involved and focused on practical adjustments without mentioning the need to conclude the hearing within the time allowed. Some answers reflected a poor grasp of the scenario facts, concluding, for example, that there had been a request for an adjournment when this was not the case.

Question 6

Most candidates identified the issue involved in the first part of this question. Very few candidates correctly identified the issue involved in the second part of the question which required a decision to secure a fair hearing. A number of candidates did not respond to this question.