Online Scenario Test Evaluation and Feedback Report

00162: Recorder

September 2023

Purpose

The purpose of this report is to provide an evaluation of the Recorder 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 and sharing more detailed comments in relation to each of the seven questions in the test.

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. Each competency heading was designed to reflect the skills and abilities that an effective Recorder 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 a Circuit Judge.

In common with all the selection tools developed for this exercise, the scenarios and 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 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 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 advice and guidance on the development of selection material, quality assures the material, and considers – and mitigates – 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 the structure and timings of the test, and then make any necessary amendments.

Structure of the test

The test was hosted on JAC digital platform. The test was 60 minutes long. Candidates were presented with two scenarios and seven questions.

The scenarios focused on candidates acting as an Independent Reviewer instructed by the Crown Prosecution Service (CPS) Appeals Review Unit (ARU) to determine appeals by complainants under the Victim Right to Review Scheme.

Candidates were required to provide narrative responses to each of the seven 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: 5 marks, a maximum of 100 words
Question 2: 12 marks, a maximum of 300 words
Question 3: 11 marks, a maximum of 300 words
Question 4: 2 marks, a maximum of 50 words
Question 5: 6 marks, a maximum of 150 words
Question 6: 7 marks, a maximum of 100 words
Question 7: 3 marks, a maximum of 50 words

Marking schedule

A marking schedule was provided to the panels. A maximum of **46** marks were available.

Marking of the test

The candidate's test submissions were anonymised and marked between a panel of judicial members. There were ten judicial members. JAC staff provided a full briefing to the markers at the outset of marking the papers.

539 candidates took the test. A **18**% sample of the test scripts were selected for moderation. Those selected included the scripts identified as candidates for moderation by markers; samples of the high, low and mid scoring test papers; all test papers close to the prospective cut off point for invitation to selection days; and a further random sample.

Moderation took the form of marking judges cross checking each other's work. The moderation process concluded that the panels had been consistent and fair.

In line with JAC Policy, a Senior Selection Exercise Manager and the JAC Commissioner assigned to the selection exercise undertook separate quality assurance checks. Their independent conclusion was that marking had been robust and consistent.

Distribution of scores

550 candidates were invited to take the test
11 candidates withdrew from the process or did not take the test
539 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 above. All candidates were then ranked in order of merit from first to last based on their percentage score (further outlined below).
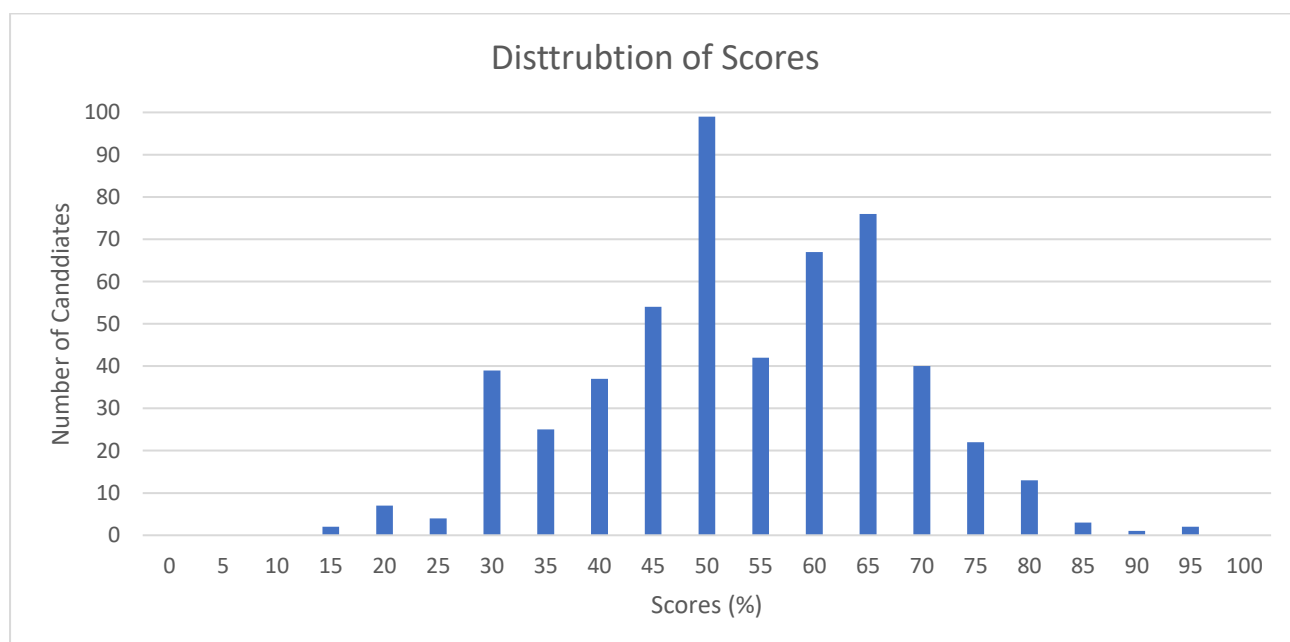
This provided a merit list determining how many candidates would be invited to the next stage of the exercise based on the approach outlined. The highest **234** scoring candidates from the scenario test were shortlisted through to selection days.

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 was **25 marks (54%)** and above.

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

Distribution of marks	Question 1	Question 2	Question 3	Question 4
Highest score	5/5 (166 candidates)	12/12 (47 candidates)	11/11 (3 candidates)	2/2 (214 candidates)
Lowest score	0/5 (43 candidates)	0/12 (9 candidates)	0/11 (44 candidates)	0/2 (120 candidates)
Distribution of marks	Question 5	Question 6	Question 7	Total
Highest score	6/6 (94 candidate)	7/7 (1 candidate)	6/6 (12 candidates)	44/46 (2 candidates)
Lowest score	0/6 (42 candidates)	0/7 (97 candidates)	0/6 (136 candidates)	6/46 (2 candidates)

The overall candidate scores for this test were as follows: lowest percentage candidate score was 13%, highest percentage candidate score was 96%. The average candidate score was 50%.

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 **100** posts. We therefore planned the selection exercise based on inviting around **225** candidates to selection day. To prevent a significant drop from the substantial number of candidates who applied to fill the much smaller number of selection day slots, we planned to have shortlisting stages as part of the selection process.

All candidates who applied for the exercise were invited to sit the online qualifying test, which involved a Situational Judgement and a Critical Analysis test. 550 of those candidates were then invited to take the online scenario test. 539 candidates completed the test.

We plan to take 234 candidates to selection days.

The percentage score for each candidate is used to rank all candidates into a merit list, with the highest percentage score as the most meritorious and the lowest percentage score as the least meritorious.

The number of slots available in the next stage of the process is then applied onto the merit list to create the initial cut off line.

Equal Merit Provision

Where there are candidates with the same score at the cut off line, an Equal Merit Provision (EMP) may be applied in line with the JAC's published policy, 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.

An EMP was not applied at this stage of the selection process.

Feedback from the marking panels

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.

<u>Question One</u>

Candidates who scored well

- Were able to go straight to the point.
- Systematically identified all of the factors in the evidential stage of the code. Those who scored highest gave succinct examples of how the code applied to the scenario.
- Set out the principles from the evidential stage of the Full Code Test and gave one concrete example of other material that might affect the sufficiency of the evidence.

Candidates who performed less effectively:

- Had not read the correct section of information and repeated themselves using different words for the same material.
- Spent too much time on facts rather than applying them to the code.
- Set out evidence without relating it to the principles from the evidential stage of the Full Code Test.
- Misunderstood the question, referring to law or irrelevant facts in the scenario without applying them to the code.

Question Two

Candidates who scored well

- Were able to discern the relevant criteria to consider and relevantly applied the criteria to the factual scenario in the correct order, ensuring nothing was missed.
- Set out the principles from the public interest stage of the Full Code Test and related them to the evidence.
- Applied the public interest stage of the code in a structured way citing pertinent, relevant facts from the scenario.

Candidates who performed less effectively:

- Did not follow the logical order of matters to be considered, so missed out some points and then many did not relate the specified criteria to the actual scenario facts.
- Did not set out the principles from the public interest stage of the Full Code Test in a clear way but left it to the marker to try and relate them to the relevant principles.
- Adopted an unfocussed approach and discussed or considered irrelevant matters without justifying their application to the criteria in the code.

Question Three

Candidates who scored well

- Were able to apply general principles of law to the question and discern what matters were relevant to the whole decision (not just the part they were overturning).
- Logically went through the various stages from beginning to end of their decision.
- Approached the question as analogous to an exercise in judicial review, albeit the question was whether the original prosecutor was wrong, not whether the prosecutor was unreasonable.
- Set out clearly their decision at the start or end of their answer.
- Demonstrated understanding of the case law and applied it to the scenario correctly to justify their decision.
- They identified matters which had not been taken into account on the public interest stage.
- They recognised their role was to review the correctness of the original decision not substitute their own and applied the criteria for the public confidence test, to reach a clear decision.

Candidates who performed less effectively:

- Did not apply law effectively to questions. Many did not consider the public confidence/ fairness of trial/ abuse of process point.

- Failed to recognise that the decision not to prosecute was an error of law. Some missed the R v J point altogether.
- Less successful candidates tended to focus exclusively on the public interest test. A few wrongly stated that the decision to prosecute was not wrong.
- Did not recognise their role was as an independent reviewer and simply repeated matters that were relevant to the original decision,
- They were not clear or explicit as to what decision they had made and how they had arrived at it.
- Some misunderstood the case law and considered either that all acts were time barred or that the digital penetration was also time barred.

Question Four

Candidates who scored well

- Those that looked at the whole picture and analysed the legal position correctly.
- Realised that as the reviewer it was for them to decide whether to prosecute.
- Candidates who merely said they would prosecute obtained full marks if the offences for which they would or would not prosecute were clear from their earlier answers.
- Gave a short explicit answer as to those offences which should be reinstated and those that should not.

Candidates who performed less effectively:

- Those that limited their answer and did not look at totality of offending (including the part they were not overturning and explaining why).
- Did not realise that the decision as to whether to prosecute was for them to make and referred the decision to another prosecutor.
- Upheld the original decision without clear reasoning in the previous answer and offered an apology and explanation.

Question Five

Candidates who scored well

- Those that logically applied legal principles to the scenario facts.
- Found that the decision to discontinue the prosecution was not wrong; mentioned Killick and/or Tsekiri; and gave a detailed analysis of the evidence in terms of the guidance given by one or both authorities.
- Understood their role was to review the decision to discontinue, not charge.
- Cited and applied the case law with reference to the scenario, in respect of sufficiency of evidence once bad character disallowed.

Candidates who performed less effectively:

- Got the wrong answer by misapplying the scenario facts to the two authorities principles.
- Found that the decision to discontinue the prosecution was not wrong, which rather skewed their analysis of the evidence.
- Cited some relevant factors of the case law or the scenario but failed to apply them to an analysis of why the original prosecutor discontinued and whether it was the correct decision.

Question Six

Candidates who scored well

- Had read and digested the correct material and had time managed better so could add the necessary detail.
- They addressed C's complaint that the burglary was a "right hassle".
- Understood their role as reviewer by reference to case law and / or the criteria for internal review.
- Considered C's representations with clear understanding that in their present form they were hearsay and further enquiries of the golf club would need to be made by the police to remedy that to satisfy the full code test.

Candidates who performed less effectively:

- Had not read relevant sections and just applied their own views.
- Failed to address the "right hassle" complaint.
- Did not consider there was an avenue to consider C's representations or did not consider they had the ability to request further investigation, but had to determine the review on the evidence available to the original prosecutor at the time.

Question Seven

Candidates who scored well

- Had time to answer and particularly understood the second part including a remedy (as was asked for).
- Recognised that as the reviewer it was for them to decide what to do. Most candidates recognised that if further evidence justified overturning the original decision, proceedings could be reinstituted.
- Understood that different remedies arose in the different circumstances and referred to in the Victim Rights to Review in P and G.

Candidates who performed less effectively:

- Many ran out of time or did not distinguish between the two processes, often not including a remedy (e.g. apology/explanation).
- Expressed no view about what should happen but simply referred the file to another prosecutor to make a decision.
- Some candidates thought that if a prosecution had been discontinued it could not be reinstated, or failed to appreciate that their answer should be different if the indictment had been left to lie on the file.
- Gave the wrong remedy.
- Directed the case be sent back to the CPS for consideration.

Feedback from candidates

After the online scenario test, candidates were invited to complete an anonymous candidate survey.

161 candidates responded to the survey. Based on the results of the survey:

I was provided with sufficient preparatory material to answer the scenario test

- **29**% of candidates strongly agreed.
- **52**% of candidates agreed.
- **9%** of candidates neither agreed or disagreed.
- **7%** of candidates disagreed.
- **3%** of candidates strongly disagreed.

The scenario test gave me the opportunity to show how I would deal with the type of situation that could arise with this role.

- **7**% of candidates strongly agreed.
- **36**% of candidates agreed.
- **17%** of candidates neither agreed or disagreed.
- **28%** of candidates disagreed.
- **12%** of candidates strongly disagreed.

The scenario test was accessible in terms of format, language used and topics covered.

- **6**% of candidates strongly agreed.
- **53**% of candidates agreed.
- **5%** of candidates neither agreed or disagreed.
- **21%** of candidates disagreed.
- **15%** of candidates strongly disagreed.

I am confident in the scenario test as a JAC selection tool.

- **9**% of candidates strongly agreed.
- **25**% of candidates agreed.
- **27%** of candidates neither agreed or disagreed.
- **27%** of candidates disagreed.
- **12%** of candidates strongly disagreed.

The scenario test was easy to complete.

- **4**% of candidates strongly agreed.
- **16**% of candidates agreed.
- **23%** of candidates neither agreed or disagreed.
- **40%** of candidates disagreed.
- **17%** of candidates strongly disagreed.