

# District Judge (Magistrates' Courts) 2010 Family Qualifying Test

## Feedback Report

January 2011

### Purpose

The purpose of this report is to provide general feedback on candidate performance in the District Judge (Magistrates' Courts) 2010 Family qualifying test. The first part of the Report describes how the Judicial Appointments Commission (JAC) developed the test and marking schedule, and how the test was structured. The second provides information on the overall performance of candidates in the test, identifying areas where they performed well and where they performed poorly. The third part gives more detailed comments in relation to each of the ten questions in the test.

### Qualities and Abilities

The test was set to assess:

- Outstanding Intellectual Capacity – the ability quickly to absorb and analyse information
- Authority and Communication Skills – the ability to explain procedure and any decisions reached clearly and succinctly to all those involved

### Development of the test

The test and marking schedule were written by a serving District Judge nominated for the purpose by the Senior District Judge (SDJ). The draftsman judge has extensive experience in the Family Proceedings Courts. A second serving District Judge, who took the lead on drafting the Crime test used in this selection exercise, reviewed and provided comment on early drafts of the test. The JAC Advisory Group, which includes senior judiciary and representatives of the legal professions, offered advice and guidance during its development. In common with all qualifying tests used by the JAC, both test and marking schedule were subject to an extensive quality and equality assurance process. The effectiveness of the test was assessed by means of two dry runs with a range of volunteer lawyers and judges.

### Preparation material

The JAC notified candidates three weeks in advance that the test would present a single scenario based on an application for an Interim Care Order. Candidates were told which statute, practice directions and case law would form the basis of the test

and were invited to prepare for the test by familiarising themselves with these materials. Candidates were also told that they would not be allowed to refer to copies of these materials or any other materials during the sitting of the test.

The materials included nine sections from the Children Act 1989; The Allocation and Transfer of Proceedings Order SI 2836 (L. 18) 2008; and Practice Direction: Guide to Case Management in Public Law Proceedings [2008] 2 FLR 668 and the Public Law Outline as revised from 6 April 2010 (PLO).

On the day candidates had 90 minutes to complete the test.

### **Marking schedule**

The marking schedule provided suggested answers and marks for each question amounting to a total of 123 marks. It allowed for all answers that demonstrated the qualities of outstanding intellectual capacity and authority and communication skills to be rewarded. A further 10 discretionary marks were available to the markers to award for good points raised by candidates not anticipated by the schedule.

### **Marking of the test**

The Deputy SDJ nominated four currently serving members of the judiciary to mark the test. Each judge-marker had extensive experience in the Family Proceedings Court.

JAC staff provided a full briefing to the markers at the outset of the marking exercise.

Decisions on the interpretation of the marking schedule and use of discretionary marks were taken only after full discussion with other markers. Such decisions were recorded and formed a precedent for the marking of subsequent scripts. All scripts were marked anonymously.

### **Moderation**

Markers were invited to identify and put forward for moderation any scripts which they felt that a strict application of the marking schedule either over- or under-rewarded. Once marking was complete, a twenty per cent sample of the scripts was selected for moderation. Those selected included samples of the high, low and mid scoring scripts; all scripts close to the prospective cut-off point for invitation to selection days; and a further random sample. Moderation took the form of markers cross checking and re-marking each other's work.

The moderation concluded that the original marking had been consistent and fair.

It is JAC policy for a Director and the Judicial Appointments Commissioner assigned to a selection exercise to undertake separate quality assurance checks. Their independent conclusions were that marking had been robust and consistent.

### **Distribution of marks**

The highest mark awarded was 67 out of a possible 133 and the lowest 11. A small number of candidates achieved a score of greater than 60. There was a broadly even distribution of marks between 59 and 30. A small number of candidates scored fewer than 29 marks.

## **General comments on candidate performance**

### **General approach taken by markers**

Markers did not deny candidates marks for minor errors where the meaning was obvious and they chose to interpret answers as favourably as possible for the candidate.

10 discretionary marks were available for good points not covered by the marking scheme. In the event, no candidate identified such a point and the markers were not called on to award any discretionary marks.

### **Overall standard of the scripts**

The markers noted that the overall standard of the scripts was not particularly high and this was reflected in the range of the scores awarded.

### **Areas where candidates could have attracted more marks**

#### Pressure of time

Almost all candidates were able to attempt all 10 questions which suggests that the time allowed to complete the test was adequate. Very few candidates appeared to suffer from miscalculating the time available to provide answers.

#### Content

The first three questions required candidates to demonstrate an understanding of the provisions of the Practice Direction: Guide to Case Management in Public Law Proceedings [2008] 2 FLR 668 and the Public Law Outline as revised from 6 April 2010 (PLO).

Although candidates had been given advance notice of the necessary pre-reading it appeared to the markers that the majority had either not prepared sufficiently, or failed to read the questions, or failed to appreciate what was being asked of them.

A number of questions called for a decision to be made. Some candidates recited arguments for and against but did not come to a decision of any kind, thus failing to attract as many marks as they could have done.

#### Approach to providing answers

Other candidates did not provide answers of sufficient detail or repeated points they had already made in answer to other questions. This was particularly noticeable in response to questions 2, 9 and 10 all of which carried high marks which most candidates failed to achieve.

Some candidates would have benefited from a more considered approach to providing answers, by

- reading the question and ensuring it was fully understood and all the points to be answered taken account of;

- prioritising questions according to the number of marks available, and citing the relevant facts or supporting documents to support conclusions reached;
- answering decisively; and
- using bullet points to give reasons for decisions. This generally resulted in being able to get more information across in the allotted time and score higher marks.

### **Question by question comment**

#### **Question 1**

This question asked candidates to list the five principles that should be applied to ensure that public cases are dealt with justly and in accordance with the 'Public Law Proceedings Guide to Case Management' Practice Direction, issued by the President of the Family Division. A significant number failed to list the principles or only managed it in part.

#### **Question 2**

This question asked candidates to state what must be done to ensure that public law cases are actively case managed. It required a more detailed knowledge of the PLO. Few candidates demonstrated this and many referred to general Children Act principles. Candidates who did so were awarded only few marks for a question which attracted a maximum of 20 marks.

#### **Question 3**

The question asked candidates to give permissible timescales for the Case Management Conference, Issue Resolution Hearings, Advocates Meeting and Final Hearing in the Public Law Outline. Most candidates did reasonably well although the majority failed to gain full marks by not knowing that there is no longer a maximum time limit in which the final hearing has to take place or that the reason for any departure from the PLO must be recorded on the case management record.

#### **Question 4**

The question asked candidates to describe what they would do in relation to the father's absence from the Interim Care Order hearing. This was probably the question on the paper on which candidates scored best. Most candidates scored 4 out of a possible 6 marks.

### Question 5

Candidates were asked to identify preliminary issues that they would consider in the absence of the father, other than allocation and adjourning the case; what they would decide in relation to the issues; and what factors their decisions would take into account when making decisions.

Many candidates failed to identify the preliminary issues despite these being set out in the scenario itself. The majority of candidates correctly identified the joinder of the grandmother as a party to the proceedings but few went on to support their decision by reference to case law or the statutory criteria in section 10(9) Children Act 1989. Even fewer candidates recognised the non-allocation of a Children's Guardian and/or the issue of whether the care proceedings should be adjourned until after the conclusion of the father's criminal trial. Consequently, the majority of candidates scored low marks for a question which carried a maximum of 15 marks.

### Question 6

This question asked candidates to say what they would do in relation to allocation of the case. This was a straightforward question which required candidates to have a knowledge of The Allocation and Transfer of Proceedings Order 2008 and the Practice Direction: Allocation and Transfer of Proceedings [2009] 1 FLR 365. The majority of candidates scored reasonably well although a significant number believed that a ground for the transfer of proceedings is a conflict in the evidence of witnesses generally as opposed to 'there being a real possibility of **difficulty in resolving conflicts** in the evidence of witnesses' or there being conflicting evidence of two or more expert witnesses both of which are valid reasons to transfer cases.

Some candidates demonstrated a lack of understanding of the jurisdiction believing the Family Proceedings Court to be a separate entity to the magistrates' court.

A small number of candidates wrongly believed that this case was too complex to be dealt with in the Family Proceedings Court.

### Question 7

This question related to issues candidates would raise in relation to the care plan relating eldest child in the family and the baby. Most candidates provided good answers to this question. However, the majority failed to recognise the importance of inter-sibling contact as an issue in the local authority's interim care plan.

### Question 8

This question asked candidates to identify the threshold one should apply before an interim care order could be made; on whom the burden of establishing the interim threshold criteria exist; the standard of proof; and the maximum period of time the order for which such an order could be made. It was a straightforward question with the majority of candidates scoring highly.

### **Question 9**

This question related to writing a judgment in the case presented by the scenario. It asked candidates to say whether they would make findings of fact; which sections of the welfare checklist they would refer to; and what factors in the case they would take into account when considering the welfare checklist. It was a potentially high scoring question requiring candidates to demonstrate their knowledge of the welfare checklist set out in section 1(3) Children Act 1989 and to be able to apply it to the facts of the scenario. The majority of candidates achieved the former but not the latter and thus failed to achieve high marks for a question which carried a maximum of 17 marks. A significant number of candidates indicated that they would make findings of fact when hearing an application for an interim care order.

### **Question 10**

The question asked candidates to identify what other principle or principles they were obliged to consider before making an order in the case presented by the scenario. It asked what orders the candidate would make in relation to each child, and the reasons for each order

The markers were dismayed by the significantly large number of candidates who failed to demonstrate knowledge or understanding of the three basic principles of the Children Act 1989, namely, the paramountcy of the child's welfare, the 'no order' principle and the concept of the least interventionist approach to any order made.

The majority of candidates correctly made interim care orders for the three oldest children and recognised the need to consider the youngest child separately. However, few cited their reasons for making these orders and many failed to address the issue of contact, either parental or inter-sibling.

Many candidates demonstrated a lack of understanding as to the court's powers and/or nature of the orders available for example, the suggestion that the court could make concurrent care orders alongside, variously, supervision orders, residence orders and education supervision orders.

A significant number of candidates suggested that it was appropriate to make an exclusion order pursuant to section 38A Children Act 1989 notwithstanding the fact that in the scenario it was suggested that the mother had colluded with the father in allowing him back into the family home in breach of his bail conditions, in which event any exclusion order would have been ineffectual.