

**Lawyer Chairman of the Residential Property Tribunal Service
Qualifying Test Feedback Report
November 2010**

Purpose

This report provides general feedback on the qualifying test (the test) for candidates who applied to be considered as fee paid Lawyer Chairman of the Residential Property Tribunal Service (RPTS) in the selection exercise run by the Judicial Appointments Commission in November 2010. The report describes how the test was developed and structured. It explains the marking and moderation process, and gives information on the overall performance of candidates, including some detailed comments on each of the eight questions in the test.

Qualities and Abilities

The test was designed to assess particular elements of the qualities and abilities required in successful candidates for the available positions, in particular:

Intellectual Capacity

- Ability quickly to absorb and analyse information
- Appropriate knowledge of the law and its underlying principles, or the ability to acquire this knowledge where necessary

Authority and Communication Skills

- Ability to explain the procedure and decisions reached clearly and succinctly to all those involved

Efficiency

- Ability to work at speed and under pressure

Development of the test

The test was written by an experienced Vice President of the RPTS and was further developed by a team headed by the Senior President of RPTS. The other development team members are existing lawyer chairs of the RPTS with current experience in setting and marking academic and vocational tests in the university sector. The effectiveness of the test and the marking scheme was assessed in two separate dry-runs with the assistance of a number of volunteer professionals and existing tribunal office holders.

Background documents

Several weeks before the test, candidates were supplied with background legal information consisting of relevant extracts of the Housing Act 2004, the Residential Property Tribunal Procedure (England) Regulations 2006, and materials on conflicts of interest and the Human Rights Act 1998. A copy of the RPTS guide on licensing of houses in multiple occupation (HMOs) and Selective licensing of other residential accommodation was also provided.

Structure of the test

The test was based on a scenario involving an appeal against a decision of a local authority to refuse to grant a licence to an applicant under the HMO licensing scheme in ss64-66 Housing Act 2004. The background documents were chosen to give sufficient information to a competent lawyer who was not an expert on the RPTS jurisdictions, to grasp the essential legal points that were raised in the test.

Candidates were required to analyse the case scenario, to identify the issues, and to apply the relevant substantive law and procedural rules to give reasoned answers. The markers found that it was the quality of the reasoning, and the extent to which it was clearly supported by relevant authority, which distinguished the best of the candidates.

The test was divided into two parts. Part A was designed to test responses to common procedural issues met in RPTS tribunals, but also familiar in many other judicial situations. Part B concentrated on the specific issues raised in the scenario about the merits of the appeal, to establish the extent to which candidates were able to demonstrate an ability to engage with a specific area of law dealt with by RPTS.

Marking scheme

The marking scheme was developed alongside the test itself, and it was further amended as a result of the dry run assessment results referred to earlier. It provided a skeleton answer to each question and an allocation and distribution of the marks available for each question. There were 85 marks available altogether, with 42 marks allocated to Part A and 43 marks to Part B. The allocation of marks was clearly indicated on the qualifying test paper.

Marking of the test

The marking and moderation team consisted of the same personnel who developed the test together with one additional marker who is a current RPTS Chair. The Senior President of RPTS acted as moderator. The other three members of the marking team each marked complete scripts on an anonymous basis. The markers collaborated closely during the marking process to ensure consistency, and at appropriate points discussed issues with the moderator.

Moderation

Markers were invited to identify for moderation any scripts that they considered warranted second marking. Such scripts were moderated, for example, where the marker considered that a strict application of the marking scheme had resulted in a candidate being under-rewarded.

In addition, approximately 20 percent of scripts were second marked by the moderator. Such scripts were sampled and identified by the Judicial Appointments Commission. This ensured that all markers were assessed for consistency within papers, and between markers. Further moderation took place after all scripts had been marked. The scripts of candidates close to the cut off point for shortlisting were all second marked by the moderator. Throughout this process all scripts remained anonymous.

Separate quality assurance checks were undertaken by the Judicial Appointments Commission during the process, who were satisfied that the marking had been fair, robust and consistent.

Distribution of the marks

There was no pre-set pass mark for the qualifying test. The Judicial Appointments Commission aimed to invite approximately two candidates to interview for each vacancy. Therefore, the candidates who were invited to selection day were those scoring highest in the test.

The highest mark achieved by any candidate was 58 (out of 85), and the lowest was 13. Within this range the distribution of marks was as follows:

13-19 marks	1% of candidates
20-29 marks	15% of candidates
30-39 marks	33% of candidates
40-49 marks	44% of candidates
50-58 marks	7% of candidates

General approach taken by the markers

The eligibility criteria did not require candidates to have experience in the jurisdiction. The questions were designed to enable candidates to demonstrate their general legal and procedural skills and the capacity to acquire relevant knowledge.

The test was designed to be capable of being completed within the 90 minutes allowed. The scenario, the supporting materials and questions set were carefully chosen and refined to achieve that purpose.

The aim of the marking scheme was to ensure fair treatment and objectivity for all candidates and consistency between all markers. Markers therefore had little or no discretion to vary the marking scheme. However innovative and novel points raised by candidates were discussed between the markers and referred to the moderator for marks when appropriate.

Comments on each question

Part A

Question 1

This question raised the issue of an application for joinder of a party at the hearing on the main appeal. Awareness of Regulation 10 (of the Residential Property Tribunal Procedure (England) Regulations 2006 (Regs)) was essential. Most candidates answered this question well, identifying Reg 10 and realising the weight of argument in favour of allowing the application. However, most answers did not fully take into account that there are competing arguments against joinder in the form of additional complexity and delay, and that a balancing exercise therefore needed to be undertaken.

Question 2

This regarded refusal of entry for an inspection. The question was answered well, candidates generally referring to Reg 21 and/or to Art 8 Human Rights Act 1998 and giving a good reason for the tenant being entitled to refuse entry. Candidates who scored well also commented on whether inspection of this room was really necessary, and whether the Housing Officer was content with the condition of the house.

Question 3a

This question was about failure of a party to attend, and the application of Reg 30, which gives the Tribunal the discretion to proceed in any event.. As per the comments on Q1, and as a developing theme of this feedback report, the best answers explained both the 'pros' and the 'cons' of proceeding in the absence of a party, and demonstrated clarity of analysis in assessing the merits of these arguments. A practical comment attracted credit here too – the simple expedient of contacting the missing party and seeking to establish whether there was a good reason for their delay.

Question 3b

Attracting the smallest number of marks of all the questions, this question on what would happen if the missing party turned up and all other parties were still present at the hearing venue was simply to test the candidate's practical approach to the administration of justice. In the interests of speed and the achievement of the overriding objective (Reg 4), the hearing would start (if the answer to 3a was no) or restart (if the hearing to 3a was yes). A number of candidates gave over-complex answers requiring reasons, apologies and making costs orders (there is a very limited costs jurisdiction in RPTS).

Question 4

In order to answer this question well, candidates needed to identify the issue of conflict of interest and bias raised in the question, show a clear understanding of the law on the subject (an adequate summary of which was contained in the background papers), and then apply this to the scenario so far as it is possible to do so on the basis of the limited information which can be communicated in a test such as this one. A good number of candidates made a clear decision on whether to withdraw from the case, but there was sometimes insufficient explanation of the meaning of bias. In a number of answers, the distinction between actual and perceived bias was not adequately explained, and a small number of candidates offered the suggestion that because they were sure they would not in fact be biased, the problem did not arise.

Question 5

This 3 part question on adjournments was again designed to test candidates initial views in practical situations encountered in tribunal settings. A knowledge of the legal principles to apply was required (Art 6, Reg 4(2)(b), Reg 27(1)(b) in particular), but then some analysis of the merits in the circumstances of each individual application for an adjournment was needed. In particular, good answers required:

- (a) Commentary was expected on exactly why the applicant's lawyer might not have been able to get to grips with a bundle of documents within one week,

and what issues were so fundamental that a detailed cross-examination of the local authority housing officer was required.

- (b) What was the architect expected to add to the Applicant's case?
- (c) Why had Mr Norman not dealt with obtaining advice (and representation) earlier, and would the tribunal not be able to guide and assist him? Was his interest any different from that of the Applicant, of which he was a director?

A small number of candidates failed to disentangle the facts correctly at this stage of the test, so that there was occasionally confusion with question 3 on proceeding without a party present. Even though the rubric of the question clearly stated that the candidate was to assume that the lawyer for the missing party had now arrived, some answers proceeded on the basis that this was not the case.

Part B

Question 6a

RPTS tribunals nearly always conduct inspections, and an understanding of how information gleaned is treated by the tribunal is an important aspect for a Lawyer Chairman of the RPTS to understand. Here, candidates needed to show their understanding that the appeal was by way of re-hearing, and so their observations at the inspection (though not any commentary or evidence on them) were relevant for the appeal. Candidates understood this well and good marks were generally scored on this question.

Question 6b

The rubric for this question confirmed that marks would be awarded for more than one question in more than one subject area. The very best candidates realised that the tribunal's function was to determine, in relation to Mr Norman, whether he was a fit and proper person to manage the property, and whether the proposed management arrangements were satisfactory. In considering these two issues, and under the pressure of a time constrained assessment, the best answers showed an ability to think widely about all areas of questioning that might address the "fit and proper person" test. Less good answers were too narrowly focussed on the issues that had been brought to the fore in the test to that point, particularly issues around Mr Norman's lack of experience or inability to manage the fire exits and extinguishers properly.

Question 7

Many candidates answered this question well, by identifying that the allegation that Mr Norman had been convicted of an offence under the Sexual Offences Act 2003 was a significant allegation that the tribunal should not ignore. The question therefore focussed on process. A number of aspects of process could have been raised, including the possibility of holding the hearing in private, the necessity for Mr Norman to be able to consider and answer the allegation, and issues on control of tribunal proceedings.

Question 8

This question attracted the highest number of marks of all the questions in the test. It was a challenging question, particularly as it was the last question in a timed assessment. High scoring answers on this question were not particularly common.

Similar to question 6b, the best candidates were able to show an ability to step back from the detail of the scenario, and demonstrate an ability to make a well structured decision, this being the tribunal's task in the retiring room. So the starting point was to consider the statutory framework and identify the questions the Housing Act 2004 required the tribunal to decide. This ranged beyond merely whether Mr Norman was a fit and proper manager (s64(3)). Having identified all aspects that the tribunal needed to consider, good answers then applied the statutory framework to the facts of the scenario, and identified where the scenario and the questions in the assessment raised issues that were likely to impinge upon the decision by the tribunal.

It was not necessary to come to a decision on the appeal, though some candidates answered this question by effectively writing a decision. This was a perfectly valid approach as it generally meant there was a clear logical structure to the answer. What was necessary was to evidence clarity of logical analysis. Other ways in which this could be shown included using headings and/or bullet points.