

**Fee-paid Judge First-tier Tribunal Social Entitlement Chamber
(Social Security and Child Support) January 2011**

Qualifying Test Feedback Report

Purpose

The purpose of this report is to provide general feedback on candidate performance in the qualifying test for this selection exercise.

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.

Qualities and Abilities

The test was set to assess:

Intellectual Capacity, specifically:

- 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.

Personal Qualities' specifically:

- Objectivity
- Decisiveness

Efficiency, specifically:

- Ability to work at speed and under pressure
- Ability to organise time effectively and produce clear and reasoned judgements expeditiously

Part 1

Development of the Test

The test and marking schedule were designed by a Regional Tribunal Judge from the Chamber nominated by the Chamber President and assisted by a District Tribunal Judge. The test designer had significant experience of sitting judicially in this jurisdiction having previously held a senior academic appointment. The District Tribunal judge also has extensive experience and background as an academic lawyer. Both have previously designed examinations for academic purposes. The JAC Advisory Group, composed of senior judiciary and representatives of the legal profession, supervised the development of the test.

In common with all qualifying tests used by the JAC, both the test and the marking schedule were subject to an extensive quality and equality assurance process. Its fitness was assessed by means of two dry runs with a range of volunteers who had no prior experience in the jurisdiction. The range of marks established that the test was good at assessing the generic legal skills indicated above and that candidates

with no previous experience in the jurisdiction could score highly on the test. Some volunteer candidates scored very highly indeed. There were no complaints from the 24 participating that there was any inherent unfairness in the test. The time allowed for the test was originally 70 minutes but as a result of feedback, the time was then extended to 80 minutes for the second test. Although some of the volunteers regarded this as quite a challenging timescale, most did not and almost all finished the test within the time allowed.

Structure of the Test

The 80 minute test consisted of two parts, Part A and Part B.

Part A was a multiple choice test based on the Tribunal Rules applicable to the jurisdiction. This was the first time that a multiple choice question had been included in any of the recruitment exercises for this Chamber and the marks for the answers were quality assured by two further Regional Tribunal Judges. The link to the Rules was provided in advance and candidates could be sent hard copies in advance on request. Candidates could have regard to their copy of the Rules in answering the questions. The questions did not require access to any other legislation in order to provide an informed answer.

This part consisted of 12 scenarios, each related to a different tribunal rule, with a range of answers giving between three and five options. The majority, six, had four options. The best option scored 5 points in all the procedural scenarios giving a maximum number of marks of 60. In order to introduce a subtlety in the answers some options which were reasonable answers but less than optimal also scored marks between 1 and 4. In all questions there was at least one answer which attracted no points.

The Advisory Group had expressed some concerns that the multiple choice format would be too easy to score high marks as almost all the answers could be obtained from a careful reading of the Rules. However some of the answers did require an exercise of an element of judicial discretion as well as having regard to the relevant rule. The range of marks for this part of the Qualifying Test was between zero and 60. This demonstrates that the test was sufficiently challenging to assess the qualities and abilities to be addressed.

Part B was a substantive tribunal scenario question requiring a four part answer. Each question was structured to address a staged approach to decision making. Candidates were not provided with any materials in advance but the instructions to candidates in the Information Pack indicated that *“Part B of the paper will be a scenario from which narrative answers will be required. The scenario will be provided at the venue on the day you come to sit the test. The reference material for the scenario question will also be provided on the day of the test.”*

The topic chosen for Part B, the test of severe mental impairment for an award of the higher rate of the mobility component, was one not very commonly encountered in tribunals in order to ensure that it would be less likely to give an inherently unfair advantage for those already working within the jurisdiction. Materials were provided at the test consisting of two commissioner (now judge of the Upper Tribunal of the Administrative Appeals Chamber) decisions, a copy of the relevant section of the primary legislation and a copy of the applicable regulations. This information amounted to nine and a half pages.

Question 1

This question attracted a total of 10 marks and simply asked candidates to identify fully the relevant statutory tests to be applied to severe mental impairment and the stages to be addressed. There were nine marks awarded for the content of the answer by making reference to the correct provision in the primary legislation; Regulation 12(5) and Regulation 12(6) and a further point where the answer was well structured.

Good candidates obtained the full 10 points. Those candidates who scored less well mostly failed to identify the further applicable test in Regulation 12(6) and did not read beyond regulation 12(5). Those candidates who scored very poorly only quoted the section numbers and did not set out fully the statutory test to be applied or they apparently failed to understand what was meant by “statutory” and proceeded to refer to the commissioner decisions provided or discuss the facts in the scenario.

Question 2

This question - which also attracted 10 marks - asked candidates to identify the key legal points of each of the commissioners’ decisions with regard to the severe mental impairment test. This question was much less well answered. The main errors were from candidates who either described the factual circumstances pertaining in each decision rather than highlighting the legal points of principle and those who described routes, other than the severe mental impairment route, to qualify for the mobility component. Clearly the question did not seek this information and points could not be awarded where answers were full but not relevant to the question asked.

Question 3

This question attracted 15 marks which indicated it was the most demanding of the four questions posed. It asked candidates to decide whether the appellant in the scenario would meet the conditions for an award of the higher rate of the mobility component by reference to the severe mental impairment tests and to justify the answer with full reasons. The scenario was set out in just over one typed page of information. Even though the question was headed “decision making”, the first commonly encountered error was that candidates did not clearly identify whether the appeal should be allowed or disallowed resulting in a confused and unstructured answer. The scenario permitted either outcome but asked the candidate to demonstrate their ability to apply legal tests to a given set of facts.

Candidates who answered this question well set out clear and structured answers. Any candidate who answered the question from both possible outcomes was marked on the decision which attracted the highest score. A significant number of candidates discussed the factual circumstances given without any reference to the legal tests to be applied and this was reflected in their marks.

Question 4

The final question for which 5 marks were allowed, asked candidates to indicate from what additional sources evidence might have been obtained to have assisted the decision making. This question, where it was reached, attracted generally higher scores with a reasonable number of candidates scoring 3 - 5 points. Where it was poorly answered the candidate had failed to identify the source of the information although this was specifically requested.

In general this was probably the best answered question by those who actually completed the paper and there was general agreement that awarding five marks for this was appropriate as it reflected a fairly simple general question for lawyers, whether or not they were familiar with the jurisdiction. Many did identify the four prescribed sources specified in the marking schedule as well as another reasonable source for the evidence. A significant number of applicants identified just one source and generally this was the one source highlighted in commissioner decision which featured first in the model answer.

Marking Schedule

All scripts were identified by number and test centre only. A team of JAC staff marked part A of the script. All were double marked and quality assured. A team of six salaried judicial markers marked Part B of the scripts. Two of the markers had been involved in setting the test. All but one of the markers had previous marking experience.

At the outset of the marking the six markers all marked the six same scripts which had been copied and circulated and then compared their marking of those scripts. There was very little divergence and what there was, was thoroughly discussed to achieve consistency. The papers were all marked according to a very detailed marking schedule which proved to be robust and consistent in identifying the relevant issues which the candidate were expected to include. No marks were deducted for irrelevant or clearly wrong answers.

Moderation

Each script was subject to marking by a second marker. Where the two markers' marks varied by more than two points there was a moderation by a third marker ensuring a very high degree of consistency in the marking. There was no pairing of the markers so that all markers had a chance of double marking scripts from five different markers. At final moderation a large percentage of papers at either side of the cut off line were reconsidered. The benefit of the doubt was applied to all candidates and if markers' scores differed by more than 2 the candidate was given the higher score. Two candidates had been accidentally led to believe that in reference to Sections 72 and 73 applying to the care and mobility components respectively, one section was a misprint. The markers were alive to this and any misreading had no substantive effect on the scores.

Distribution of Marks

The multiple choice question, Part A, attracted 60 marks and the scenario question 40 marks. The multiple choice Part A mostly scored more highly proportionately than the scenario Part B. This was to be expected in view of (1) the issue of the core material in advance of the test (2) the fact that the question was first and on the whole it appeared that candidates had taken more time to answer this question which was almost always completed but some ran out of time for Part B, (3) it was easier to complete by ticking a given box than completing an open ended answer. (4) it was the first part of the test and in relation to Part B some candidates had not managed their time as efficiently as others.

Although Part B attracted just 40 marks candidates found this more challenging. There was no threshold and all candidates had both parts of the script marked. The average scores for Part A were 40.38 out of 60 and for Part B 14.29 out of 40 with just 7 candidates scoring 30 or more for this part.

Part 2

General Comments on Candidate Performance

In order to assess the effectiveness of any test it is necessary to consider the extent to which the test was successful in assessing the relevant competences.

About 60% of candidates elected to use a typed format for their answers. Very few problems were encountered by illegible hand written scripts. Most were clearly legible. Any answers which were struck out were wholly disregarded even where it was apparent that had the answer been retained higher marks could have been awarded. No marks were deducted for poor spelling, grammar or syntax.

It is evident that the quality of the test has been effective in distinguishing those who were able to work at speed and under pressure in the test environment distinguishing those who were able to produce very creditable answers and those who struggled with some basic aspects such as the ability to understand the question correctly or identify the relevant legal tests to be applied although these were provided in the copies of the statutory provisions supplied at the test and repeated in the commissioners' decisions.

It is inherently improbable that only those with a prior knowledge of this field of law could have performed well in the qualifying test. The highest scoring candidates included a number who had no prior knowledge or experience of this jurisdiction. This is borne out by having regard to the application forms from candidates. Had the test been "easy" or the specific legislative provisions supplied in advance, it is unlikely that it would have been as effective in isolating and testing the very qualities and abilities which are particularly relevant to the jurisdiction. Given the perception of multiple choice being easier, (and the concerns of the Advisory Board on this matter) it was especially important to have an exacting element to Part B.