

Deputy District Judge (Civil) Qualifying Test - January 2010 Feedback Report

Purpose

The number of applicants for judicial appointment has increased dramatically over recent years. In the last full year for which statistics are available (2008-09) there was a 40% increase on the previous year. In light of this increasing volume of applicants, the current policy of the Judicial Appointments Commission (JAC) is to interview between two and three candidates per post. This makes the qualifying test very competitive: the mark an individual gets may be high in itself, but may still be outside of the top tranche of candidates who will be invited to the selection day.

The purpose of this report is to provide feedback on the performance of candidates as a body in the Deputy District Judge (Civil) qualifying test, taken in January 2010 to shortlist the candidates to progress to selection day. 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 and marked. 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 three questions in the test.

It is intended that these observations – together with candidates' own knowledge of what they wrote in their test – will provide useful information to such candidates. It should, in particular, help inform those candidates who on this occasion were not invited to selection day, and may be uncertain whether it would be worth their while applying for future tests.

1) Development and Marking

Qualities and Abilities

The test was set to assess primarily Intellectually Capacity – the ability quickly to absorb and analyse information. It also tested elements of:

- Personal Qualities – sound judgement and decisiveness;
- Authority and Communication Skills – the ability to explain the procedure and any decisions reached clearly and succinctly to all those involved; and
- Efficiency – the ability to work at speed and under pressure, organise time effectively, and produce clear reasoned judgements expeditiously.

Test development and review

The test and marking schedule were written by two serving District Judges, with experience in both the Civil and Family jurisdictions. The JAC Advisory Group,

composed of senior judiciary (including representation from the Association of District Judges) and representatives of the legal profession, 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 and timing of the test was assessed by means of a dry run with a range of suitably qualified volunteers from the profession.

Structure and marking of the test

The 90 minute test consisted of three different case scenarios, with a maximum of 140 marks available in total: 50 for Question 1; 50 for Question 2; 30 for Question 3; and 10 discretionary marks available for displaying focus and clarity of thought, logical reasoning, and making good points not anticipated in the marking schedule.

Marking of the candidate answer scripts was done by 12 current or recently retired District Judges, according to a detailed marking schedule prepared by the drafters of the test. To ensure consistency of marking approach, each judge marked only the same one or two questions on each answer script, and 20% of all scripts were moderated by a second judge to verify the original markers' marks and general approach to marking. JAC staff also undertook quality assurance checks, overseen by a JAC Commissioner.

2) General Comments

General approach taken by markers

It was generally agreed that any doubt be resolved in favour of the candidate and that minor errors, where the meaning was obvious, would be overlooked, e.g. mixing up claimant and defendant.

Where candidates were asked to draft an Order, some marks were generally given, even if the Order did not reflect the anticipated answer, provided some at least of the Order was correct.

Overall comments

A wide range of ability was demonstrated by the candidates, with marks ranging from 10 to 111 (out of a maximum of 140).

The number of high quality test papers meant that in practice it was not possible to be selected for the selection day stage by simply doing well on any one question. However, those selected for interview tended to do better at some questions than others, with very few candidates performing very well across all three questions (i.e. securing over 70% of the available marks in each question).

Pressure of time did not seem to be an issue, with the vast majority of candidates completing all three questions.

The best candidates scored reasonably high across all three questions. Of the 26 candidates scoring a total of 100 or more, the lowest mark on Question 1 was 35, on Question 2 was 24, and on Question 3 was 17.

Question 1 seemed to be the most high-scoring generally, with 262 candidates securing at least 40 out of the 50 marks available. Next was Question 3, with 61 candidates securing at least 24 marks out of the 30 available. The lowest-scoring question was Question 2, with only a single candidate scoring at least 40 marks out of 50 available, and only 81 securing at least 30 marks.

Areas where candidates could have attracted more marks

Many candidates failed to deal with the subject matter and tended to look for hidden problems that did not exist.

Some candidates simply failed to answer the question and therefore were at a disadvantage from the very beginning.

Other candidates failed to address the obvious themes within a question and failed to make the appropriate cross reference.

A basic but important point to make is the need to submit papers that are legible. If the handwriting is difficult to read then candidates ought to consider submitting typed versions of their answers (which many candidates did).

3) Individual Questions

Question One

The question dealt with an application to set aside a default judgment, which is a common application before a Deputy District Judge in the County Court.

Candidates were supplied with extracts from the relevant Civil Procedure Rules (CPR) and the question tested the ability of the candidate to apply the CPR to the facts of the case in a logical and clear manner. If they did so, then this should have led them to refuse the application, even though the debt had been satisfied in the interim.

Some candidates dealt with the issue of whether they could deal with the matter without the attendance of the parties, which was unnecessary, as the question and supporting materials (correspondence from the claimant and defendant) had already indicated that this would be the case.

Quite a few candidates applied the correct test of whether the original judgment had been entered properly, but came up with the incorrect answer, seemingly not applying the facts of this case accurately. Others came up with the correct answer as to whether the judgment was properly entered, but still set it aside, although there was no sound basis in the CPR for doing so.

There was no defence to the claim, as it was admitted by the defendant. As to setting aside the judgment, the fact the defendant had subsequently paid the debt was not in itself a good enough reason to set aside the properly obtained judgment.

A key issue was the length of delay in bringing the application, which made CPR 13.3(2) particularly relevant. A common fault was to misapply the dates given (and in

one case to assume there was a misprint), with some not appreciating that the application to set aside the judgment was made some 20 months after judgment was entered.

Many candidates correctly identified the various Rules that applied to the facts overall, although not all candidates did so in the appropriate section of the question. Specifically, section B of Question 1 should have provided an relatively straightforward 12 points for the candidates, as they had to set out the particular Rules that applied, having been supplied with the appropriate extracts of the CPR. Most candidates got this part of the question correct, although many missed out on a number of marks by failing to state – as the question had specifically requested - why those particular Rules applied.

Those candidates who had reached the correct conclusion tended to draft the correct Order.

Question Two

This question tested the candidates' case management abilities, by setting out a series of scenarios that might face a Deputy District Judge and present them with the decision of whether to proceed with a case. No knowledge of the law was required, but some lateral thinking and sound judgement would have assisted the candidates to arrive at the correct conclusions.

The scenarios included dealing with an application to adjourn a final hearing when:

- a) The claimant's medical expert cannot attend Court;
- b) The claimant is ill and unable to attend Court; or
- c) The parties want an adjournment to consider mediation.

In addition, the question dealt with:

- d) an application for permission to call a witness whose evidence has not been previously disclosed; and
- e) a potential conflict of interest situation, when the Judge discovers that he or she is a member of the same Golf Club as the claimant's main supporting witness.

As noted above, this was the question on which candidates generally found it hardest to secure marks.

Some candidates failed to recognise the importance of trying to preserve the trial date. In particular, they failed to raise questions that would help ascertain whether the issue of liability could be dealt with nevertheless.

Some candidates failed to raise fundamental questions as to presentation of the claimant's medical certificate, and importantly whether the nature of the illness justified the claimant's non attendance at Court.

Far too many candidates agreed to adjourn for the purposes of mediation, on the grounds of saving costs, when, of course, all the costs of that day's hearing - both to the parties and the Court - had already been incurred by mediation not having been considered earlier.

So far as the attempt to introduce late evidence was concerned, many candidates failed to ask the question whether the other party objected, and to what extent such evidence would actually prejudice the claimant.

In relation to the candidate knowing a witness, some jumped immediately to a decision to recuse themselves, without any consultation first with the parties. They failed to appreciate that the starting point should be to ascertain the parties views and then to decide how to proceed. Most candidates appreciated the importance of fairness and impartiality and the need for justice to be seen to be done.

Question Three

This question tested further the candidates' case management abilities, including how they would deal with cases where emotions were running high and the parties were in person. Again, no knowledge of technical law was required, but the same lateral thinking and application of sound judgement was applicable.

The background facts concerned a family situation, outlining a wife's application for an injunction against her husband. The first part of the question then sought the candidate's response to the wife's application to adjourn the hearing.

Some candidates began by failing to focus on the actual question. For example, they went into detail as to how they would resolve the substantive application for the injunction (quoting from the Family Law Act 1996), when no part of the question actually asked about this.

Resolving the application to adjourn involved the balancing of each party's needs, taking into account all the circumstances of the case, in particular the fact that this was already the third hearing, and the husband's accommodation position. The expected answer was to refuse the application to adjourn and to proceed to deal with the case, noting that both parties were unrepresented and therefore no one party was at an advantage as against the other party.

The second and third part of the question dealt with one party shouting and then losing control of his or her emotions. These questions were designed to ascertain the response of the candidates to such a situation, which should be by a graduated, stage-by-stage approach.

Ideally, candidates should begin by simply asking the party shouting to refrain from doing so, explaining to the parties that they appreciate emotions were running high, and that this sort of behaviour would not help. When this does not appear to have worked, a short adjournment ought to be granted to enable the party concerned to regain his or her composure, ensuring the safety of both parties during the adjournment.

A surprising number of candidates decided to actually exclude the party shouting, whilst allowing the proceedings to continue, ignoring completely their right to a fair trial. Of similar concern was some candidates' decision to make adverse findings simply on the basis that the party was shouting. A number of candidates decided to move too quickly to threatening the party shouting with the prospect of committal to prison, not recognising that any such action should be an act of the very last resort.

Evidence of the general approach of the candidate was important, and marks were therefore given, even if the approach did not follow with strict linearity the suggested steps for dealing with this situation, e.g. if a brief adjournment was granted in the first scenario as opposed to the second.

Judicial Appointments Commission
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