

Online Scenario Test Evaluation and Feedback Report

**00117 Fee-paid Judge of the First-tier Tribunal and
Fee-paid Judge of the Employment Tribunal
(England and Wales)**

July 2023

Purpose

The purpose of this report is to provide an evaluation of the Fee-paid Judge of the First-tier Tribunal and Fee-paid Judge of the Employment Tribunal (England and Wales) online scenario test as well as 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 3 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. The specific bullet points under each competency heading were designed to reflect the skills and abilities that an effective Fee-paid Judge of the First-tier Tribunal and Fee-paid Judge of the Employment Tribunal (England and Wales) 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 four Tribunal Judges.

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 its 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 volunteer mock candidates 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 the JAC digital platform. The test was 70 minutes long. Candidates were presented with a scenario and three questions.

The scenario focuses on a tenant who has damp issues in their house and the landlord refuses to fix the issues following a review. The tenant decides to take the landlord to court due to the impact of the damp issues on him and his two children.

Candidates were required to provide narrative responses to each of the 3 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: 25 marks, a maximum of 300 words

Question 2: 15 marks, a maximum of 200 words

Question 3: 60 marks, a maximum of 600 words

Marking schedule

A marking schedule was provided to the panels. A maximum of **100** marks were available.

Marking of the test

The candidates' test submissions were anonymised and marked by a panel of judicial members. There were 11 judicial members in total. JAC staff provided a full briefing to the markers at the outset of marking the papers.

731 candidates sat the test. A **10%** 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 markers cross checking each other's work. The moderation process concluded that all 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

752 candidates were invited to take the test

21 candidates withdrew from the process or didn't take the test

731 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).

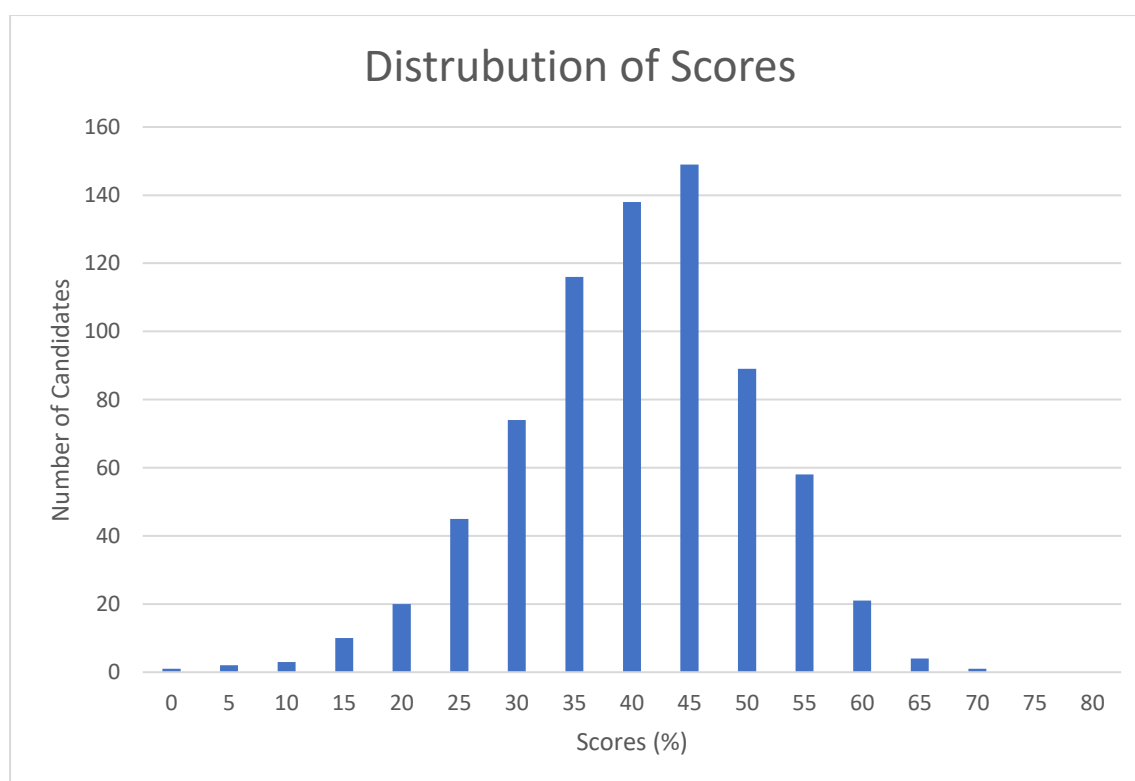
This provided a merit list determining how many candidates would be invited to the next stage of the exercise based on the approach outlined. The highest **390** scoring candidates from the scenario test were shortlisted through to selection days.

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 **41** and above.

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

Distribution of marks	Question 1	Question 2	Question 3	Total
Highest score	21/25 (3 candidates)	14/15 (2 candidates)	43/60 (1 candidate)	71/100 (1 candidate)
Lowest score	0/25 (1 candidate)	0/15 (9 candidates)	0/6 (15 candidates)	0/100 (1 candidate)

The candidate scores for this test were as follows: lowest percentage candidate score was **0%**, highest candidate score was **71%**. The average candidate score was **40%**.



Approach to shortlisting

When the JAC receives notification from HM Courts & Tribunals Service 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 **200** posts, 150 immediate vacancies for Fee-paid Judge of the First-tier Tribunal and 50 immediate vacancies for Fee-paid Judge of the Employment Tribunals (England and Wales). We therefore planned the selection exercise based on inviting around **400** 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 multiple 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 Critical Analysis tests. 752 candidates were invited to take the online scenario test. 731 candidates completed the test.

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.

EMP was applied at this stage of the selection process.

After applying the above process, 10 candidates were invited to progress to the next stage of the selection exercise.

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.

Question 1

Candidates who scored well

Candidates who scored well, included most or all the following in their answers:

- Provided reasoned, structured easy-to-read answers.
- Planned their time effectively so that they allocated time based on the number of marks that could be awarded per question.
- Referred to the documents provided in the pre-reading (for example the Equal Treatment Bench Book (ETBB), The Rules and the Overriding Objective) citing specific paragraphs, provisions, or rule numbers which were relevant.
- Read the question carefully and answered the question asked.
- Made a clear and definite decision, giving reasons.
- Thought about the competencies when answering the question.

Candidates who performed less effectively:

- Did not offer a well-structured, reasoned answer to enable the panel to follow the candidate's line of thinking.
- Did not make a clear decision.
- Did not make specific reference to rules to explain their decision.

Question 2

Candidates who scored well

- Provided reasoned, structured easy-to-read answers.
- Planned their time effectively so that they allocated time based on the number of marks that could be awarded per question.
- Thought about the competencies in their answer, particularly Working and Communicating with Others (WCO) and Managing Work Efficiently (MWE).
- Referred to specific rules and ETBB paragraphs when explaining their decision making.
- Read the question carefully and provided a realistic decision given the facts of the case.
- Balanced the interests of both parties in reaching their decision.

Candidates who performed less effectively:

- Did not offer a well-structured, reasoned answer to enable the panel to follow the candidate's line of thinking.
- Made no (or very limited) reference to the rules.
- Proposed a solution that was not possible in the circumstances of the scenario.
- Based their decision on the interests of one party alone.
- Did not give full consideration to the competencies when answering the question.
- Did not make a clear decision.

Question 3

Candidates who scored well

- Provided reasoned, structured, easy-to-read answers.
- Planned their time effectively so that they allocated time based on the number of marks that could be awarded per question.
- Dealt with the issues in the case in a logical order.
- Applied the appropriate legal tests to the facts of the case, including reference to specific rules, sections of the legislation and provisions of the overriding objective when explaining their decision-making process.
- Balanced the interests of both parties.

- Gave clear, reasoned decisions on each aspect of the case.

Candidates who performed less effectively:

- Did not offer a well-structured, easy to read, reasoned answer to enable the panel to follow the candidate's line of thinking.
- Did not manage their time effectively and ran out of time to answer the highest scoring question.
- Spent too long repeating the facts of the case.
- Did not approach the issues in a logical order.
- Did not make clear decisions on the issues in the case.
- Made no reference to (or did not identify) the relevant legal tests, the overriding objective or other provisions when explaining how they balanced the evidence and reached their decision.

Feedback from candidates

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

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

Of the 70-minute time limit for the test:

- **65%** of candidates thought the time allocated was too short
- **25%** of candidates thought the time allocated was just right

In terms of the test questions being easy to understand:

- **83%** of candidates agreed or strongly agreed the test was easy to understand
- **6%** of candidates disagreed or strongly disagreed that the test was easy to understand
- **11%** of candidates neither agreed or disagreed that the test was easy to understand

When answering Question 1:

- **20%** of candidates thought the test was not challenging enough
- **49%** of candidates thought the test was challenging or very challenging
- **34%** of candidates neither agreed or disagreed

When answering Question 2:

- **20%** of candidates thought the test was not challenging enough
- **44%** of candidates thought the test was challenging or very challenging
- **36%** of candidates neither agreed or disagreed

When answering Question 3:

- **5%** of candidates thought the test was not challenging enough
- **77%** of candidates thought the test was challenging or very challenging
- **18%** of candidates neither agreed or disagree

When completing the test:

- **64%** of candidates were confident in the test as a JAC selection tool
- **15%** of candidates were not confident in the test as a JAC selection tool
- **21%** of candidates neither agreed nor disagreed with the above.

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

- **85%** of candidates agreed or strongly agreed the test was accessible in terms of format, language and topics covered
- **9%** of candidates disagreed that the test was accessible in terms of format, language and topics covered
- **6%** of candidates neither agreed nor disagreed with the above.