

Online Qualifying 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)**

April 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 qualifying test and general feedback on candidate performance in the test. This test comprised two elements, a situational judgement test and a critical analysis 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. The qualifying test for this exercise was designed to test a candidate's transferrable skills and their potential to work effectively as a Fee-paid Judge of the First-Tier Tribunal and Fee-paid Judge of the Employment Tribunal (England and Wales).

Competency Framework

Both parts of the tests were designed to assess the following competencies:

- Exercising Judgement (EJ)
- Possessing and Building Knowledge (PBK)
- Assimilating and Clarifying Information (ACI)
- Working and Communicating with Others (WCO)
- Managing Work Efficiently (MWE)

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 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 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 the 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 characteristics 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 and also looks at material in terms of quality and whether it would have any negative impacts on diverse groups.

The effectiveness of the test was assessed by means of a dry run with a range of volunteers from relevant candidate groups. This provided an opportunity to trial the test material and make any necessary amendments.

Structure of the test

The test was hosted on the JAC Digital Platform. Candidates were presented with both parts of the test and could opt to take them in their preferred order. The overall time allocated for both tests was 1 hour and 20 minutes:

- Part 1 (multiple choice): Situational Judgement (40 minutes, 20 questions)
- Part 2 (multiple choice): Critical Analysis (40 minutes, 20 questions)

In **Part 1** of the test candidates were presented with a range of different situations they might experience in the job as a Fee-paid Judge of the First-tier Tribunal and Fee-paid Judge of the Employment Tribunal (England and Wales).

Candidates were assessed on their reading of a situation and their ability to judge the appropriateness of a number of different responses provided under each question. Candidates needed to identify both a most appropriate and least appropriate answer from the five options presented.

In **Part 2** of the test candidates were provided with the following reading material, one week in advance of the test: *Regina v Bow Street Metropolitan Stipendiary Magistrate and Others*. The questions and answer options were based on the content of the reference material. Candidates were required to use their critical and logical thinking skills to decide upon the correct answer from 4 options for each of the 20 questions.

Marking of the test

The JAC Digital Platform marks both parts of the test automatically. The pass mark is determined by the number of candidates needed at the next selection stage, which varies between different exercises. Candidates who score below 30% in either part of the test do not proceed.

The platform provides an onscreen timer, visible at the top of the screen throughout the test. The timer turns red during the last minute of the test to provide a warning to candidates that their time is about to expire. The test is automatically submitted if it has not been completed. All tests, including those that have not been completed, are marked. This means that no candidates go over the allocated time.

In Part 1 of the test each question had 5 answer options. It was necessary for the candidate to identify the most appropriate and least appropriate response, with 1 point scored for each answer. Therefore, candidates could score a maximum of 2 points for each question.

In Part 2 of the test each question had 4 answer options. It was necessary for the candidate to identify the correct answer, which scored 1 point. Therefore, candidates could score a maximum of 1 point for each question.

In order to ensure parts 1 and 2 of the test contributed equally to a candidate's overall score, the two sections of the test were equally weighted by way of calculating a composite score.

Distribution of marks

- **2147** candidates were invited to take the test.
- **381** candidates withdrew from the process, didn't take the test or only did one part of the test.
- **1766** candidates took both parts of the test.

The process of scoring the qualifying test was as follows:

- All candidates were scored on their answers to the test based on the marking scheme above;
- Candidates who scored less than 30% in one or both parts of the test were removed from consideration;
- A composite score was then calculated for all remaining candidates;
- Candidates were then ranked in order of merit from first to last based on their composite score (further outlined below).

A merit list was created, which allowed us to determine how many candidates from the top portion of entries would be invited to the next stage of the selection process, based on the approach outlined.

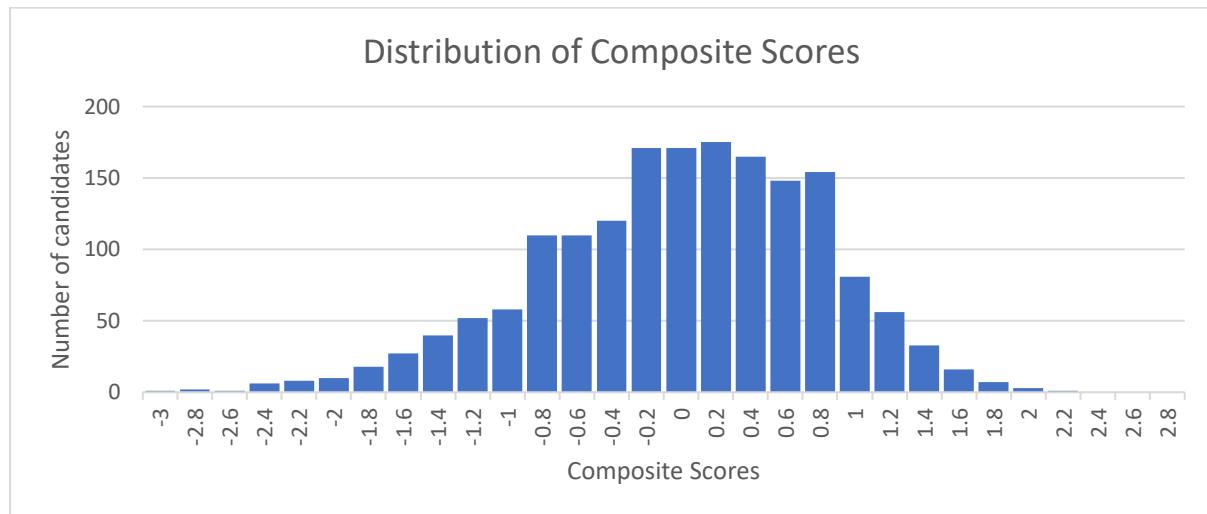
Calculating the Composite Score

The composite score was calculated in two steps. Firstly, a standard score was calculated for each part of the test. The standard score represents how high or low a candidate's score is in relation to the scores of all other candidates. For more details on standard scores please click [here](#).

Secondly, an average was taken of the standard scores for parts 1 and 2 to calculate the composite score. This ensured performance on the two sections of the test were equally weighted.

The highest composite score was 2.74. The lowest composite score was - 2.97.

In this exercise candidates with a composite score of 0.23 or higher were progressed to the next selection stage.



Approach to shortlisting

When the JAC receives notification from HMCTS 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. We therefore planned the selection exercise based on inviting around **400** candidates to selection day.

All candidates who applied for exercise were invited to sit the online qualifying test. We planned to take around **730** candidates to the second stage of shortlisting, a scenario test.

To identify the top **730** candidates from the qualifying test, candidates scoring 30% or more on both parts of the test were ranked based on their composite score, as described above. **752** candidates achieved a composite score of **0.23** or higher, so this was used as the initial cut-off line.

There is no pre-determined cut-off line for the test; 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 shortlisting.

Equal Merit Approach

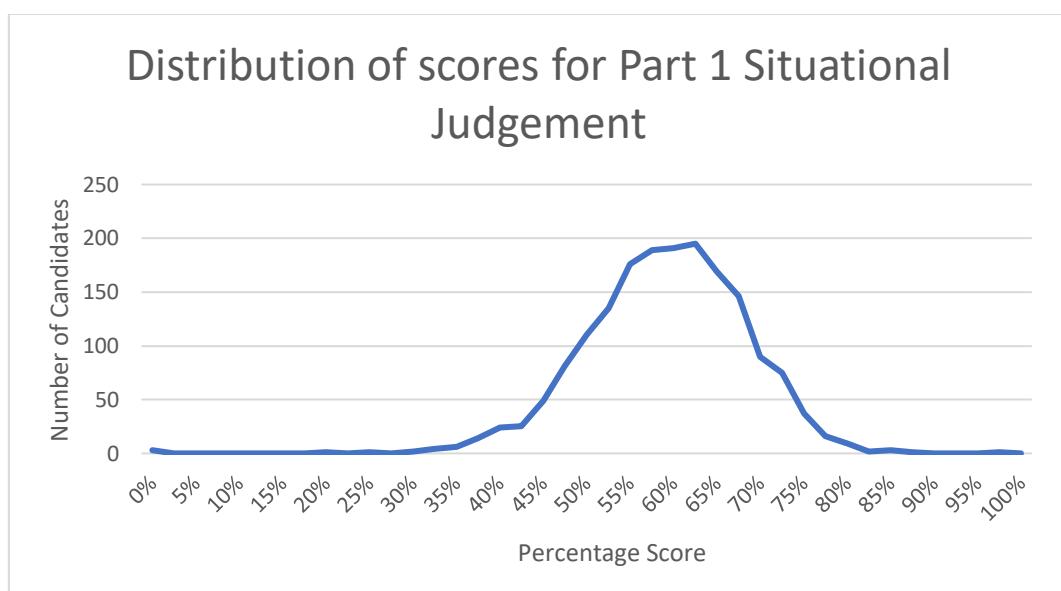
Where there are candidates with the same score at the cut-off line, an Equal Merit Provision (EMP) may be applied in line with the JAC's published policy, which is available [here](#). If the equal merit approach is applied, this will be after the consideration of a sub-committee of Commissioners; consisting 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.

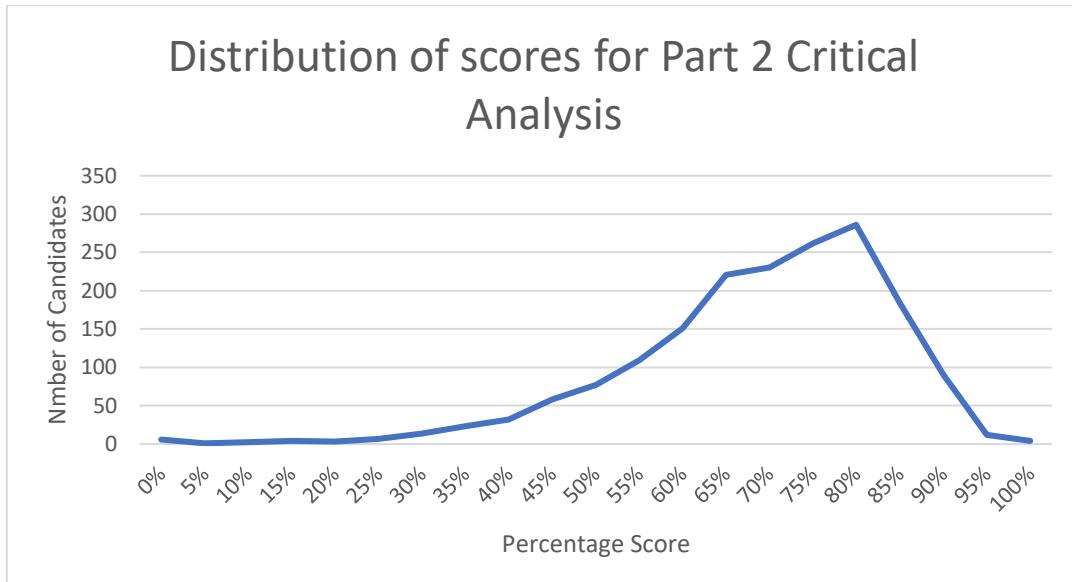
The Equal Merit Provision was not applied at this stage of the selection process.

Candidates' performance in the two tests

A summary of candidates' scores over Part 1 (Situational Judgement) of the test is as follows: lowest candidate score was **0%**, highest candidate score was **98%**. The average candidate score was **59%**.



A summary of candidates' scores over Part 2 (Critical Analysis) of the test is as follows: lowest candidate score was **5%**, highest candidate score was **100%**. The average candidate score was **69%**.



In Part 1 (Situational Judgement) there was:

- 3 questions where over 65% of candidates chose both parts of the answer correctly and 2 further questions where over 50% or more chose both parts of the answer correctly (easier questions according to the results). These included a range of different situations that may occur in a Tribunal such as being a newly appointed judge and having to manage a heavy workload, managing circumstances where the media has made comments that damage the credibility of the claimant appearing before you, and dealing with unforeseen circumstances that cause disruptions to your already heavy workload.
- 2 questions where 40% or more chose neither the least nor most appropriate responses correctly (harder questions according to the results). These related to dealing with a situation where a lay tribunal member had a negative past experience with the appellant in the case, and managing inappropriate behaviour in the courtroom by a McKenzie Friend, who was there to assist the defendant, but ended up causing disturbance and left the defendant fearful.

In Part 2 (Critical Analysis) there were:

- 4 questions where over 90% of candidates gave a correct answer (easier questions according to the results). These were regarding: decisions made in the House Lords, allegations of bias on a previously upheld decision, the Divisional Court granting a warrant, and disclosure to the discussions in an Appellate Committee being denied.
- 1 question where over 80% of candidates gave an incorrect answer, and 1 further question where 60% or more gave an incorrect answer (harder questions according to the results). These were regarding: the position of the petitioners in relation to Lord Hoffmann not disclosing his connection with Amnesty International prior to the first hearing, and the disagreeing position of the Crown Prosecution Service relating to a decision made in the Divisional Court.

Feedback from candidates

After the qualifying test, candidates were invited to complete an anonymous candidate survey. **528** candidates responded to the survey.

Based on the results of the survey:

- **93%** of candidates understood from the instructions what was expected during the qualifying test;
- **89%** of candidates thought the qualifying test was accessible in terms of format, language used, and topics covered;
- **56%** of candidates thought the qualifying test was easy to complete and a further **23%** neither agreed nor disagreed;
- **67%** of candidates classed the quality of customer service they received as excellent or good with **26%** of candidates where it was not applicable;
- **92%** of candidates did not experience technical difficulties during the test.

Part 1 – Situational Judgement

In terms of the purpose of the test:

- **64%** of candidates thought the situational judgement test enabled them to demonstrate how they would tackle challenges when working in a court;
- **46%** of candidates were confident in the situational judgement test as a JAC selection tool. A further **23%** neither agreed nor disagreed.

Part 2 – Critical Analysis

In terms of the purpose of the test:

- **74%** of candidates thought the critical analysis test enabled them to demonstrate how they would analyse facts to form a judgement;
- **68%** of candidates were confident in the critical analysis test as a JAC selection tool with around **18%** neither agreeing nor disagreeing.