

Online Qualifying Test Evaluation and Feedback Report

00203: Fee-paid Judge of the First-tier Tribunal

July 2024

Purpose

The purpose of this report is to provide an evaluation of the Fee-paid Judge of the First-tier Tribunal 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 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 is expected to have. This enabled us to assess candidates in a fair and consistent way.

Development of the test

The test contained a mixture of questions selected from the JAC's approved bank of questions and questions which were newly devised by two Tribunal Judges, who acted as the drafting judges for this exercise. The questions in the bank were devised by a range of judges from across a range of jurisdictions, and those selected for this exercise were reviewed and agreed by the drafting 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 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 advice and guidance on the development of selection material, quality assures the material, and considers – and mitigates – any negative impacts on a diverse range of groups.

The effectiveness of the test was assessed by means of a mock assessment 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 online platform and consisted of two parts:

- Situational judgement: 40 minutes, 20 questions
- Critical analysis: 40 minutes, 20 questions

For the situational judgement test, candidates were presented with a range of different situations they might experience in the role of a Fee-paid Judge of the First-tier Tribunal. Candidates were assessed on their reading of a situation and their ability to judge the effectiveness of a number of different options provided under each question. Candidates needed to identify both the most appropriate and least appropriate answer from the five options presented.

For the critical analysis test, candidates were presented with the following reference material one week before the test: *Lord Toulson Memorial Lecture 2024 “Precedent and Overruling in the UK Supreme Court”* presented by Lord Burrows. The questions and answer options in the test 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 the four answer options presented for each question.

Marking of the test

The tests were marked automatically by the JAC online platform. Candidates who did not finish their tests within the allotted time had their tests automatically submitted by the online platform, and these tests were also marked.

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.

For the situational judgement test each question had five answer options. It was necessary for the candidate to identify the most appropriate and least appropriate answer, with one point scored for each correct answer. Therefore, candidates could score a maximum of two points for each question.

For the critical analysis test each question had four answer options. It was necessary for the candidate to identify the correct answer, which scored one point. Therefore, candidates could score a maximum of one point for each question.

The situational judgement test contributes 60% to the candidates' overall score and the critical analysis test contributes 40%. The difference in weighting reflects the fact that the situational judgement test assesses candidates on three competencies (Exercising Judgement, Working and Communicating with Others and Managing Work Efficiently) and the critical analysis test assesses candidates on two competencies (Possessing and Building Knowledge and Assimilating and Clarifying Information).

Distribution of marks

1,839 candidates were invited to take the test

299 candidates withdrew from the process or did not take the test

1,540 candidates took the test

The process of scoring the qualifying test was as follows:

- all candidates were scored on their answers to the tests based on the marking schedules
- 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 the remaining candidates
- candidates were then ranked in order of merit from first to last based on their composite score (further outlined below)

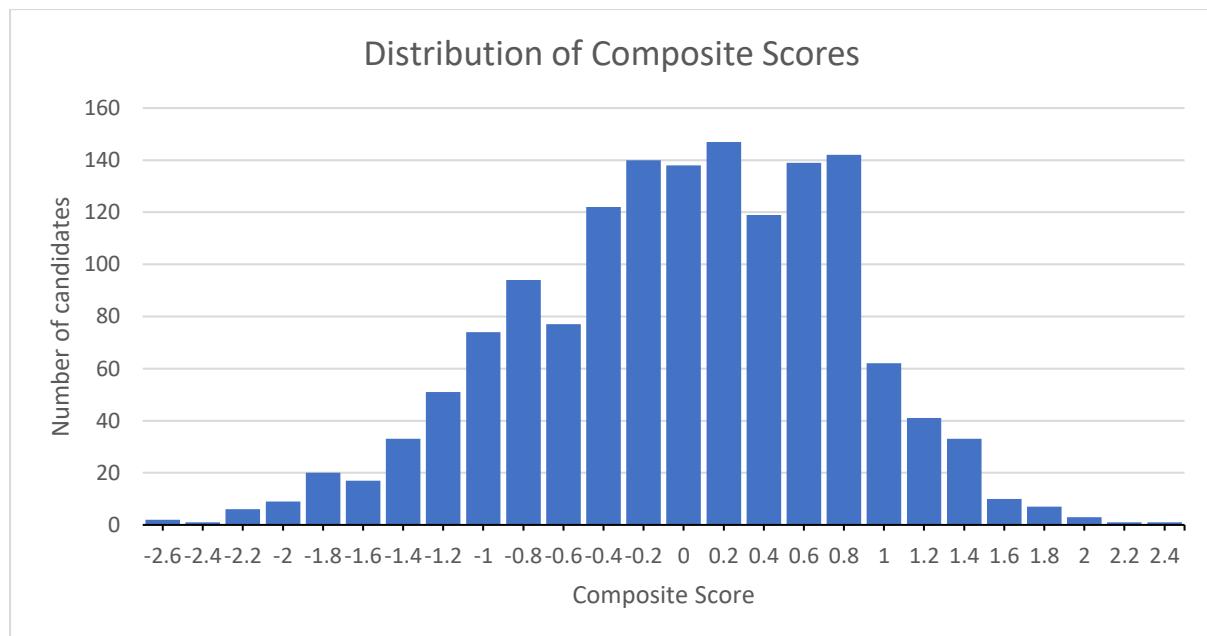
This provided a merit list determining how many candidates would be invited to the next stage of the selection process.

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. Further details on [standard qualifying test scoring](#) can be found on the JAC website

Secondly, the composite score was produced by taking a weighted average of the two standard scores, with 60% of the weight in this average given to the situational judgement test and 40% to the critical analysis test.

In this exercise, the highest composite score was 2.34 and the lowest composite score was -2.57. Candidates with a composite score of 0.36 or higher were progressed to the next selection stage. The distribution of composite scores is shown in the graph below, with composite scores grouped by rounding to the nearest 0.2.



Approach to shortlisting

When the JAC receives notification from HM Courts & Tribunals Service (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 an initial vacancy request to fill 120 posts. Vacancy requests are generated by HMCTS based upon the needs of the courts and tribunals. Following notification from HMCTS in August 2024 that the vacancy request for this exercise was increased to 150 posts, we planned the selection exercise based on inviting around 270 candidates to selection day.

All candidates who applied for the exercise were invited to sit the online qualifying test. We planned to take 544 candidates to the second stage of shortlisting, the scenario test.

To identify the top 544 candidates from the qualifying test, the candidates' composite scores were placed on a merit list with the highest score placed at the top and the lowest at the bottom. The number of slots available in the next stage of the process was then applied onto the merit list to create the initial cut off line, after which the equal merit approach was applied as detailed below.

Equal Merit Approach

Where there are candidates with the same score at the cut off line, the Equal Merit Provision (EMP) may be applied in line with the JAC's [Equal Merit Policy](#). 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

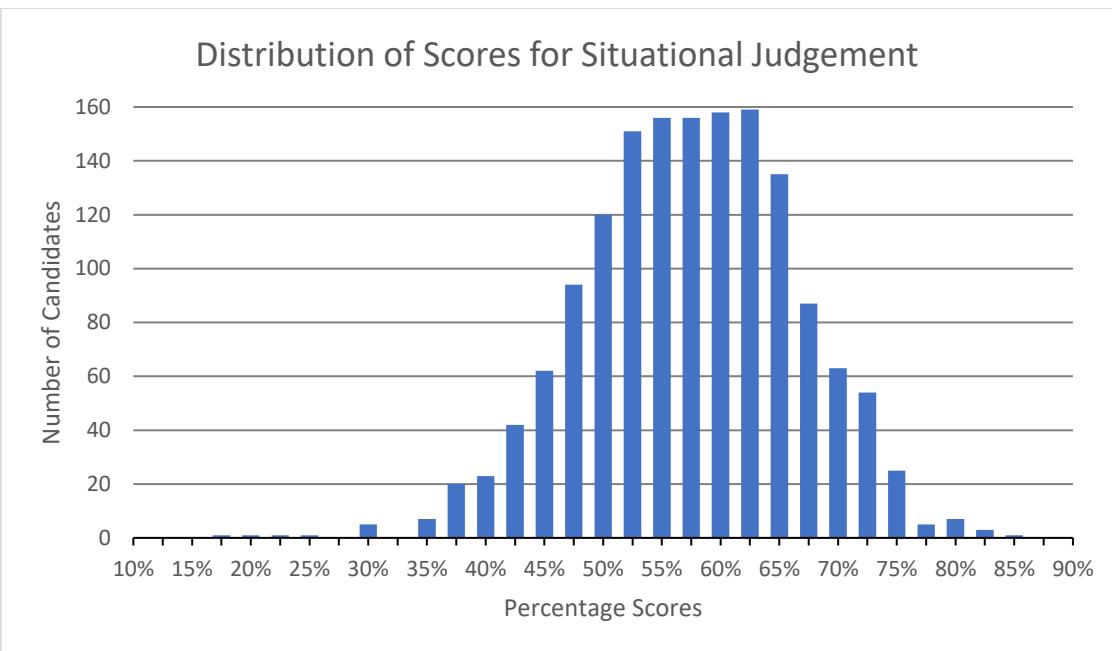
The EMP was applied at this stage of the selection process.

After applying the above process, 550 candidates in total were invited to progress to the next stage of the selection exercise.

We therefore do not have a pre-determined pass mark 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.

Candidates' performance in the two tests

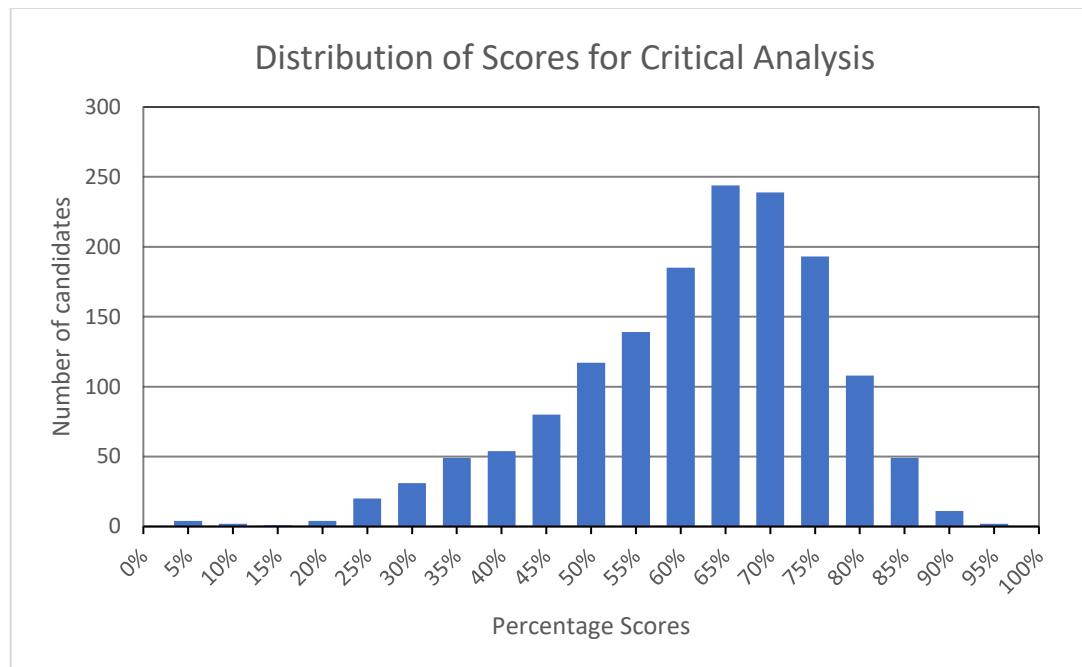
The range of candidate scores for the situational judgement test were as follows: the lowest candidate score was 17.5% and the highest candidate score was 85%. The average candidate score was 57%.



In the situational judgement test, there were:

- **Two** questions where **73%** or more of candidates chose both parts of the question correctly (easier questions). These questions related to being a judge out with a partner to a social club for a meal and dance, but discovering it's a major political party's fundraiser and another about a three-day case that has been adjourned twice with the claimant declaring they are being denied justice.
- **Four** questions where under **20%** of candidates chose both parts of the question correctly (harder questions). These questions related to hearing a case for an unrepresented applicant that proceeds to eat and drink in the hearing due to diabetes type 1, conducting a 15-minute first case management hearing by telephone but the respondent is not attending as its 5am in New York, dealing with a possession claim on rent arrears but the mother cannot attend as she is in a psychiatric ward so the daughter has attended instead, and being told by administrative staff that a party in your hearing is a local gangster.

The range of candidate scores for the critical analysis test were as follows: lowest candidate score was 5% highest candidate score was 95% The average candidate score was 62%



In the critical analysis test, there were:

- **Two** questions where **89%** or more of candidates gave the correct answer (easier questions). These questions related to what transparency required and what Lord Touslon did in Patel v Mizra in 2016.
- **Two** questions where **35%** of candidates chose both parts of the question correctly (harder questions). These questions related to what Lord Burrows suggested, and correctly identifying that when deciding whether to overturn a previous decision of the Supreme Court or House of Lords, most of the Supreme Court judges will sit on the appeal.

Feedback from candidates

After the qualifying test, candidates were invited to complete an anonymous candidate survey. **372** candidates responded to the survey. The results of the survey are as follows:

How would you rate the quality of the customer service you received from JAC staff during the qualifying test process?

- Around 69% of candidates rated it as excellent or good.
- Around 5% of candidates rated it as fair.
- Around 1% rated it as poor or very poor.
- Around 25% rated it as non-applicable.

I understood from the instructions what was expected during the qualifying test.

- Around 94% of candidates agreed or strongly agreed.
- Around 2% of candidates neither agreed nor disagreed.
- Around 4% of candidates disagreed or strongly disagreed.

The situational judgement test enabled me to demonstrate how I would tackle daily challenges working in a court or tribunal.

- Around 63% of candidates agreed or strongly agreed.
- Around 17% of candidates neither agreed nor disagreed.
- Around 20% of candidates disagreed or strongly disagreed.

I am confident in the situational judgement test as a JAC selection tool.

- Around 50% of candidates agreed or strongly agreed.
- Around 25% of candidates neither agreed nor disagreed.
- Around 25% of candidates disagreed or strongly disagreed.

The critical analysis test enabled me to demonstrate how I would analyse facts to form a judgement.

- Around 67% of candidates agreed or strongly agreed.
- Around 16% of candidates neither agreed nor disagreed.
- Around 17% of candidates disagreed or strongly disagreed.

I am confident in the critical analysis test as a JAC selection tool.

- Around 57% of candidates agreed or strongly agreed.
- Around 26% of candidates neither agreed nor disagreed.
- Around 17% of candidates disagreed or strongly disagreed.

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

- Around 91% of candidates agreed or strongly agreed.
- Around 5% of candidates neither agreed nor disagreed.
- Around 4% of candidates disagreed or strongly disagreed.

The qualifying test was easy to complete.

- Around 59% of candidates agreed or strongly agreed.
- Around 23% of candidates neither agreed nor disagreed.
- Around 18% of candidates disagreed or strongly disagreed.

