Online Qualifying Test Evaluation and Feedback Report

00129 Judge of the First-Tier Tribunal

March 2023

Purpose

The purpose of this report is to provide an evaluation of the 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 stronger and weaker performance. The qualifying test for this exercise was designed to test a candidate's transferrable skills and their potential to work effectively as a Judge of the First-Tier Tribunal.

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 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 and marking schedules were devised by two 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 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 Judge of the First-tier Tribunal. No previous knowledge of rules and procedures was expected of candidates and no advance reading was required. 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, text of the judgment titled: *Secretary of State for Justice (Respondent) Vs MM (Appellant)*. 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 four 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 five 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 four 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 see Annex A for an explanation of composite scores.

Distribution of marks

358 candidates were invited to take the test.
18 candidates withdrew from the process, didn't take the test or only did one part of the test.
341 candidates took 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 JAC have adopted this approach in order to ensure that candidates' performance on both parts of the test are weighted equally. The standard score gives a standardised measure of performance on each test and combining the two standard scores by taking an average gives the fairest reflection of each candidate's overall performance relative to the field.

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 the two sections of the test were equally weighted.

The highest composite score was 1.69. The lowest composite score was - 2.42.

In this exercise candidates with a composite score of -1.15 or higher were progressed to the next selection stage.

Distribution of Composite Scores
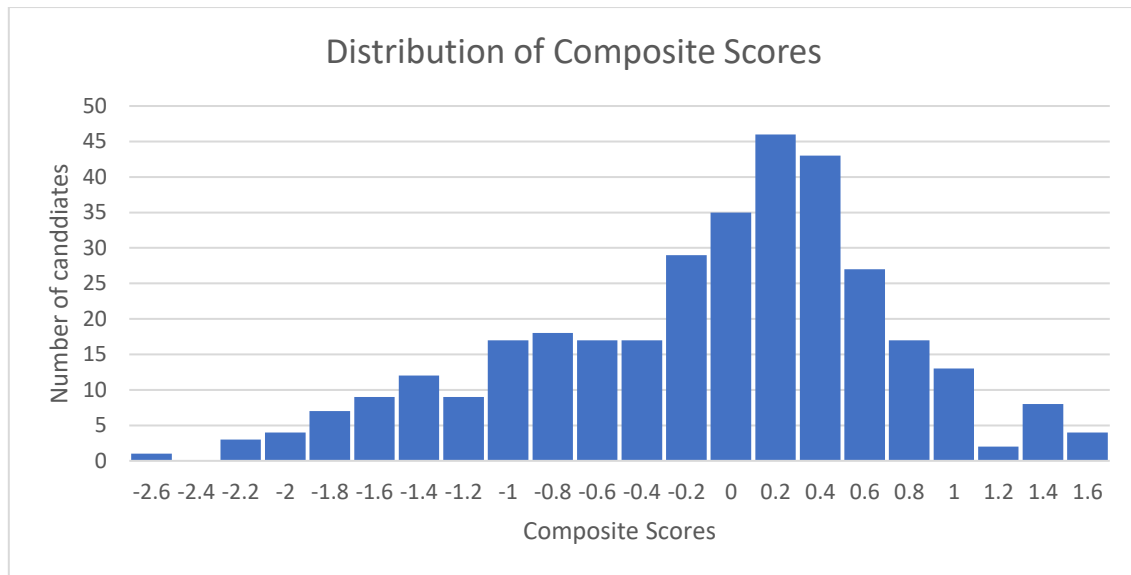
Approach to shortlisting

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 **70** posts. We therefore planned the selection exercise based on inviting around **175** candidates to selection day.

All candidates who applied the for exercise were invited to sit the online qualifying test. We planned to take around **300** candidates to the second stage of shortlisting, a name-blind sift.

To identify the top **300** 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. 300 candidates achieved a composite score of **-1.15** 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 **82.5%**. The average candidate score was **61%.**

Distribution of scores for Part 1 Situational Judgement
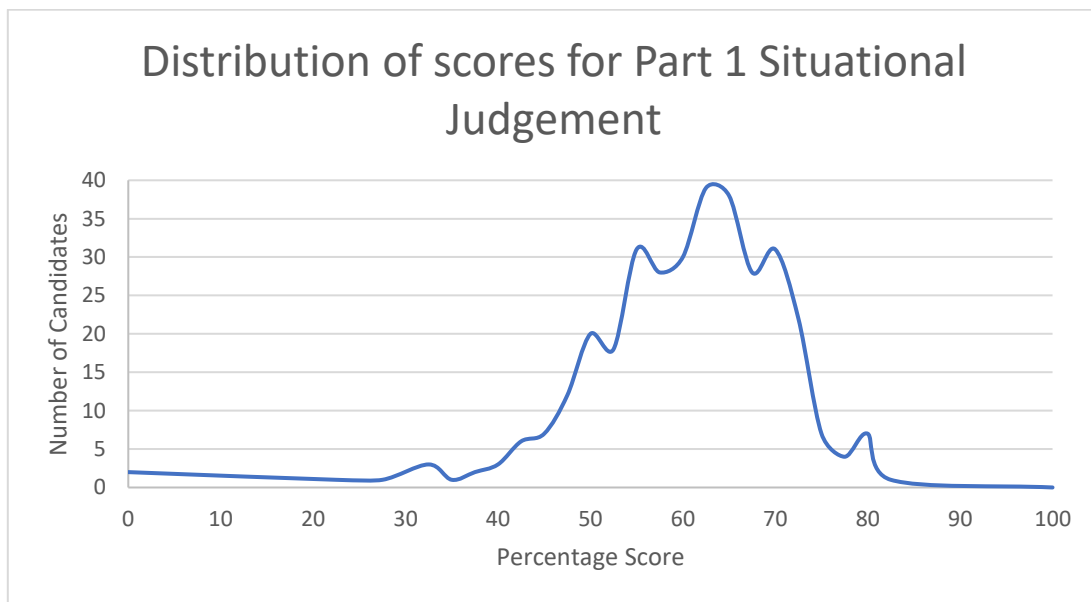
A summary of candidates' scores over Part 2 (Critical Analysis) of the test is as follows: lowest candidate score was **5%**, highest candidate score was **95%**. The average candidate score was **72%**.

Distribution of scores for Part 2 Critical Analysis
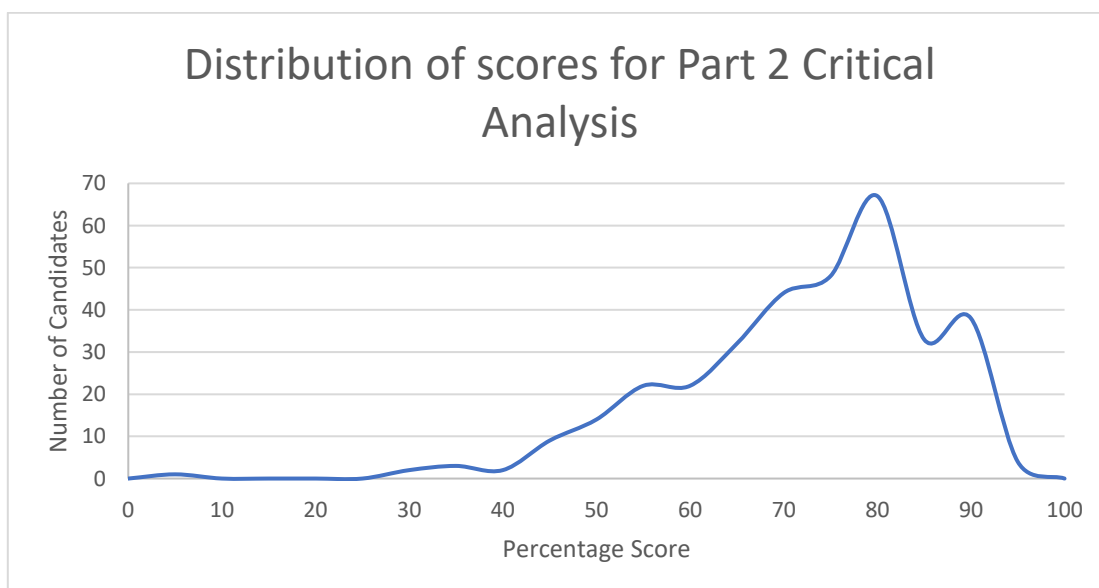
In Part 1 (Situational Judgement) there was:

- 1 question where over 75% of candidates chose both parts of the answer correctly and 5 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 in the courtroom from dealing with inappropriate comments, claimants with anxiety issues and accusations of being denied justice.

- 3 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 legal representative implying you have misunderstood key facts; dealing with a two day hearing in which both parties are stuck in traffic and dealing with a party who shouts personal abuse at your court clerk.

In Part 2 (Critical Analysis) there were:

- 5 questions where over 90% of candidates gave a correct answer (easier questions according to the results). These were regarding the period of time a patient is detained; the consequences of a patient breaking a conditional discharge; what a social supervisor must report after a patient is conditionally discharged; interpretation of the decision in Storck v Germany (2005) 43 EHRR 6 and the irony in a comment made by Lady Hale.

- 1 question where over 75% of candidates gave an incorrect answer, and 3 further questions where 50% or more gave an incorrect answer (harder questions according to the results). These are regarding the rule of legality in *R v Secretary of State for the Home Department, Ex p Simms;* the arguments advanced by Lord Hughes; the Upper Tribunal decision in the case of *Secretary of State for Justice v RB* [2010] UKUT 454 (AAC) and the conditions on when a First-tier Tribunal and the Secretary of State can conditionally discharge a patient.

Feedback from candidates

After the qualifying test, candidates were invited to complete an anonymous candidate survey. **116** candidates responded to the survey. Based on the results of the survey:

- **94%** of candidates understood from the instructions what was expected during the qualifying test;
- **82%** of candidates thought the qualifying test was accessible in terms of format, language used, and topics covered;
- **54%** of candidates thought the qualifying test was easy to complete and a further **25%** neither agreed nor disagreed;
- **65%** of candidates classed the quality of customer service they received as excellent or good with **25%** of candidates where it was not applicable;
- **95%** of candidates did not experience technical difficulties during the test.

Part 1 – Situational Judgement

In terms of the purpose of the test:

- **66%** of candidates thought the situational judgement test enabled them to demonstrate how they would tackle challenges when working in a court;

- **47%** of candidates were confident in the situational judgement test as a JAC selection tool. A further **27%** neither agreed nor disagreed.

Part 2 – Critical Analysis

In terms of the purpose of the test:

- **66%** of candidates thought the critical analysis test enabled them to demonstrate how they would analyse facts to form a judgement;
- **61%** of candidates were confident in the critical analysis test as a JAC selection tool with around **26%** neither agreeing nor disagreeing.