Online Scenario Test Evaluation and Feedback Report

0021: Fee-paid Judge of the First-tier Tribunal and Fee-paid Judge of the Employment Tribunals (England and Wales)

September 2020

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 Tribunals (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 the questions in the test.

Competency Framework

The test was designed to assess the following competencies:

- Exercising Judgement
- 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 Tribunals (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 two 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 subject to an extensive quality and equality assurance process as they were reviewed internally by the JAC Operations, Policy, and Diversity and Engagement teams. 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 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 the structure and timings of the test, and then make any necessary amendments.

Structure of the test

The test was hosted on Google Forms. Candidates accessed the test using their registered email address and a unique alpha numeric code, issued to them by email with the test instructions. The test was 70 minutes long.

Candidates were presented with a scenario and four questions. The scenario involved candidates being listed to sit as the legal chair of an independent three-person panel to hear the appeal by a member against his expulsion from the Willows Cricket Club.

Candidates were required to provide narrative responses to each of the four questions. Each question had a word limit and a maximum amount of marks available. The word limit and marks for each question were as follows:

- Question 1: 14 marks, a maximum of 200 words
- Question 2A: 17 marks, a maximum of 250 words
- Question 2B: 7 marks, a maximum of 250 words
- Question 3: 37 marks, a maximum of 600 words

Marking schedule

A marking schedule was provided to the panels. A maximum of 75 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. JAC staff provided a full briefing to the markers at the outset of marking the papers.

A 10% sample of the test scripts were selected for moderation in addition to those already discussed at the calibration meetings. Those selected included the scripts identified as candidates for moderation by markers; samples of the high, low and mid scoring test papers; 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 the panels had been consistent and fair.

In line with JAC policy, a Senior Selection Exercise Manager undertook separate quality assurance checks. Their independent conclusion was that marking had been robust and consistent.

Distribution of scores

1106 candidates were invited to take the test
88 candidates withdrew from the process or didn't take the test
1018 candidates took the test
936 candidates completed the test within the allotted time
82 candidates were removed as they went over the allotted test time (their test was not marked).

The scoring process was as follows: all candidates were scored on their answers to the test based on the marking schedule. Their scores were converted into a percentage. 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 **401** highest scoring candidates from the scenario test were shortlisted through to the application stage.

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 **47.3%** and above.

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

Distribution of marks	Question 1	Question 2A	Question 2B	Question 3	Total
Highest score	13/14 (1 candidate)	15/17 (2 candidates)	7/7 (1 candidate)	31/37 (1 candidate)	56/75 (1 candidate)
Lowest score	1.5/14 (2 candidates)	2/17 (4 candidates)	0/7 (49 candidates)	2/37 (2 candidates)	13.5/75 (1 candidate)

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. 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 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. 1106 candidates were invited to take the online scenario test. 1018 candidates completed the test.

We planned to take 400 candidates to selection days.

The percentage score for each candidate is used to rank all candidates into a merit list, with the highest score as the most meritorious and the lowest 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.
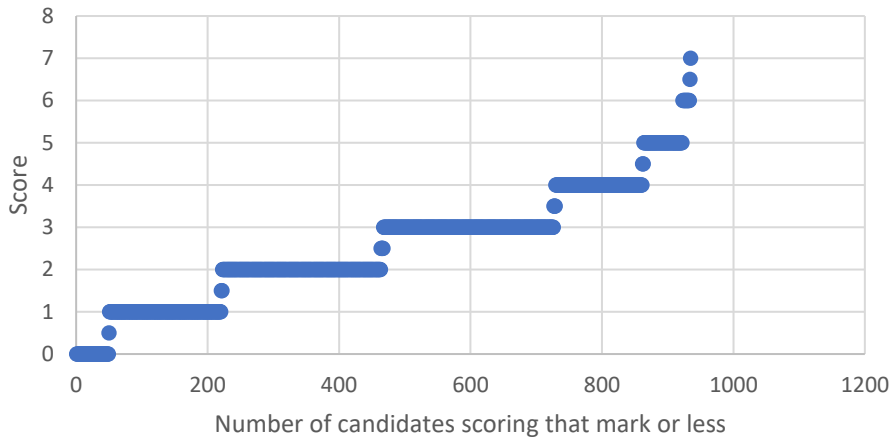
The Equal Merit Provision was applied at this stage of the selection process.

After applying the above process, 401 candidates were invited to progress to the next stage of the selection exercise.
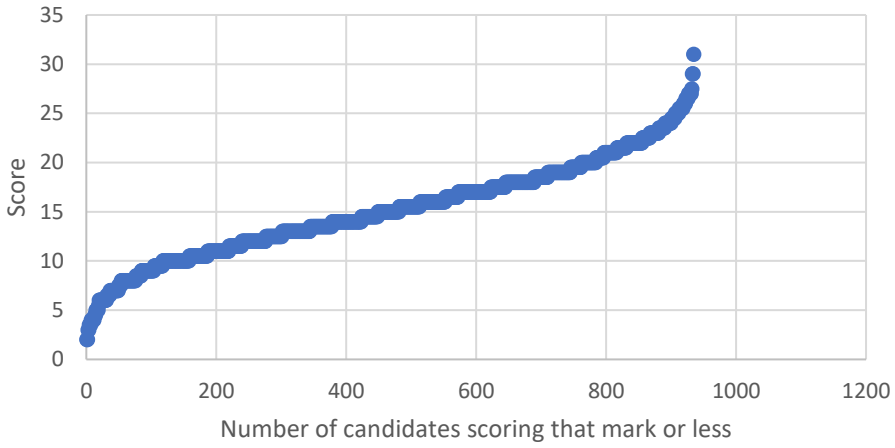
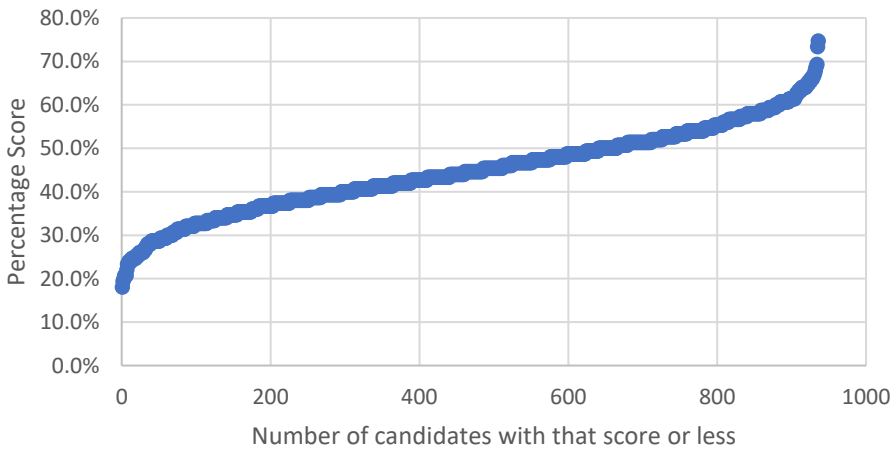The charts below show the spread of scores for each question:
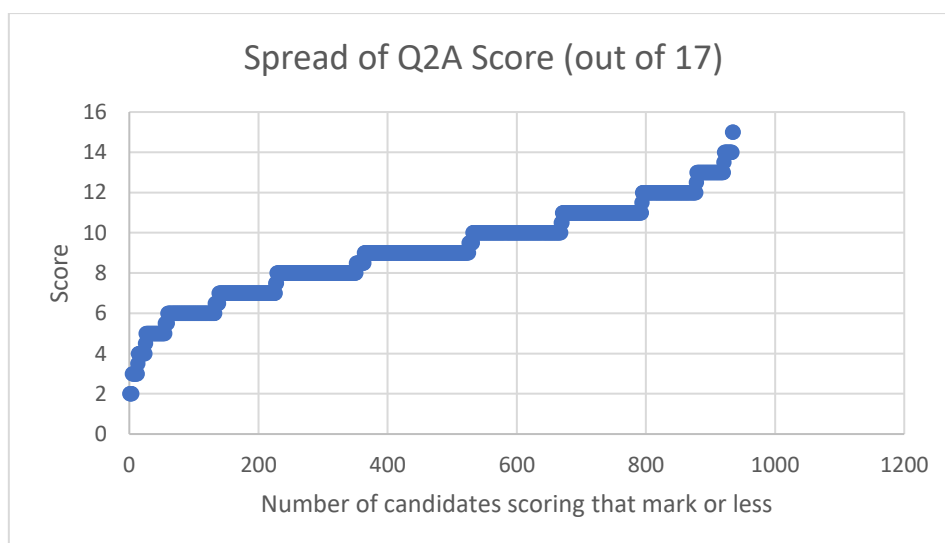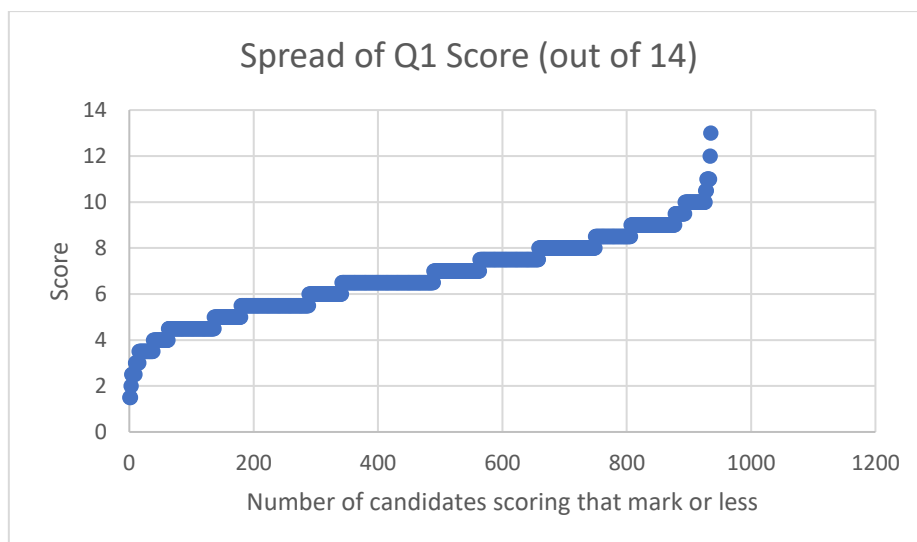
Spread of Q2B Score (out of 7)

Spread of Q3 Score (out of 37)

Spread of Overall Score (%)

The candidate scores for this test were as follows: lowest candidate score was **18%**, highest candidate score was **74.7%.** The average candidate score was **44.7%.**

Feedback from the marking panels

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.

Candidates who scored well

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

- Considered the competing interests of the Club, Mr Smith and the public interest when making each decision.
- Specified the factors for and against a particular application (e.g. the application for a public hearing, admitting late evidence and adjournment), applied the relevant rules, quoted the applicable rules and then gave a clear and definite decision.

Specifically, for question 3, which included the most marks:

- Listed all relevant rules and their contents and showed that they appreciated the difference between the rules justifying expulsion (in 2.4) and the allegations faced by Smith (i.e. 2.4 (b) must be about the club, its members or employees, difference between disrepute and serious disrepute).
- Reached a conclusion, demonstrating that they had considered the options available to them taking account of 2.1, 2.2 and 2.6(d) and explained why they reached the outcome they did.

Candidates who performed less effectively

- Failed to grasp the detail of the Club Rules.
- Provided answers which only addressed one part of the equation, in terms of justifying the decisions they reached. They could have scored higher, had they written their decisions with the losing party in mind.
- Spent too long reciting the facts in the scenario instead of using the limited amount of time to demonstrate their grasp of the rules and their application.

Specifically, for questions 1 and 2:

- Did not demonstrate that they appreciated the overriding principle in 2.6(c)
- Did not demonstrate that they appreciated this was a private club rather than a public body;
- Did not appreciate that there was no separate power to control "tweets" or otherwise control what was reported if the reporter was allowed to attend.
- Did not identify factors which went against the conclusion they had reached, concentrating instead on those supporting their conclusion.

Feedback from candidates

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

The survey was split into two parts. The first four questions were related to the Combined Qualifying Test which took place in June 2020 and the remaining questions were related to the Scenario Test.

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

When asked how much time candidates spent reading the preparation material for the Combined Qualifying Test

- around **41**% of candidates said they spent more than 2 hours
- around **30**% of candidates said they spent between 1 and 2 hours
- around **30**% of candidates said they spent up to 1 hour

In terms of which format candidates had the pre-reading material for the Combined Qualifying Test

- around **32**% of candidates had it in an electronic format
- around **68**% of candidates had it in a printed format

When asked how clear the instructions were regarding taking a break between Part 1 Situational Judgement and Part 2 Critical Analysis of the Combined Qualifying Test

- around **37**% of candidates said it was very clear
- around **48**% of candidates said it was clear
- around **15**% of candidates said it was not clear

(The next set of results are all based on the Scenario Test)

When asked if they were provided with sufficient preparatory material to complete the scenario test

- around **90**% of candidates either agreed or strongly agreed they were
- around **8**% of candidates either disagreed or strongly disagreed they were

When asked if the scenario test gave them the opportunity to show how they would deal with the type of situation that could arise with this role

- around **86**% of candidates either agreed or strongly agreed it did
- around **6**% of candidates either disagreed or strongly disagreed it did

When asked if the scenario test was accessible in terms of format, language used, and topics covered

- around **94**% of candidates either agreed or strongly agreed it was
- around **4**% of candidates either disagreed or strongly disagreed it was

When asked if the word limit was a useful guide to help them plan their responses

- around **67**% of candidates either agreed or strongly agreed it was
- around **18**% of candidates either disagreed or strongly disagreed it was

When asked if they were confident in the scenario test as a JAC selection tool

- around **69**% of candidates either agreed or strongly agreed they were
- around **9**% of candidates either disagreed or strongly disagreed they were

When asked if the scenario test was easy to complete

- around **28**% of candidates either agreed or strongly agreed it was
- around **40**% of candidates either disagreed or strongly disagreed it was

When asked if the time allocated was sufficient to complete the test

- around **45**% of candidates either agreed or strongly agreed it was
- around **35**% of candidates either disagreed or strongly disagreed it was