Evaluation and Feedback Report

Fee-paid Judge First-Tier and Employment Tribunal

June 2019

Purpose

The purpose of this report is to provide general feedback on candidate performance in the Fee-paid Judge First-Tier and Employment Tribunal online scenario 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 three questions in the test.

Competency Framework

The test was designed to assess the following competencies:

• **Exercising Judgement**
• **Assimilating and Clarifying Information**
• **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 First-Tier and 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 an experienced Deputy Chamber President and a Tribunal Judge.

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 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.

Timings and Structure of the test

The test was hosted on Google Forms. Candidates accessed the test using a unique numeric code, issued to them by email with the test instructions. The test was 60 minutes long. This test was a self-timed test in line with all of the tests that the JAC have run on the Google Forms platform. The tests are automatically timed by Google's software and we use these timings to remove candidates who have exceeded the time limits of the test. All tests that are submitted after the allotted time are void, irrespective of the amount of time exceeded, to ensure fairness to all candidates. This was clearly communicated to candidates in the exercise instructions.

A key component of the test is being able to manage the time effectively and that was especially relevant in relation to this test, which required candidates to manage their time carefully in order to allocate enough time to the different questions and scenarios.

Candidates were presented with a scenario and three questions. The situations used in the questions were based on potential real-life situations that may be encountered by a fee paid judge sitting at first instance in any jurisdiction, tribunal or court (whether alone or with non-legal members). Candidates were provided with instructions which included a list of reading material, 1 week in advance of the test.

The candidate acted as a Fee paid Tribunal Judge sitting alongside a medical member (a consultant psychiatrist) and a specialist lay member hearing a case in relation to someone detained in hospital under the Mental Health Act. The candidate was firstly asked whether they would grant a public hearing. They were then asked to consider which tribunal rules were relevant in making a decision on whether to allow the patients friend to attend the hearing. The candidate was then required to make a decision about whether to allow an adjournment application setting out the three rules most relevant to their decision.

Candidates were required to provide narrative responses to each of the three 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: 26 marks, a maximum of 600 words
Question 2: 14 marks, a maximum of 250 words
Question 3: 10 marks, a maximum of 200 words

Marking schedule

A marking schedule was provided to the panels. A maximum of 50 marks were available.

Marking of the test

The candidate's test submissions were anonymised and marked by a panel of judicial members. JAC staff provided a full briefing to the markers at the outset of marking the papers. There were eight judicial members involved in the marking process.

710 candidates sat the test. A 25% 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 the 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

731 candidates were invited to take the test.
21 candidates withdrew from the process or didn't take the test
710 candidates took the test.
619 candidates completed the test within the allotted time
91 candidates were removed as they went over the allotted test time.

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 the combined average percentage score (further outlined below).

This provided a merit list determining how many candidates would be invited to the next stage of shortlisting based on the approach outlined. The highest 369 scoring candidates from the scenario test were shortlisted through to selection days.

We do 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 50% 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	21/26 (2 candidates)	13/14 (1 candidate)	10/10 (8 candidates)	41/50 (1 candidate)
Lowest score	3/26 (3 candidates)	0/14 (25 candidates)	0/10 (3 candidates)	7/50 (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 170 posts. We therefore planned the selection exercise based on inviting around 370 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 first stage of shortlisting, the online qualifying test. Candidates who passed were invited to take the second stage of shortlisting, the online scenario test. The scenario test was marked by a panel of judicial members. 710 candidates were invited to take the online scenario test. 619 candidates completed the test.

The average percentage score for each candidate is used to rank all candidates into a merit list, with the highest combined 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.

Where there are candidates with the same score at the cut off line, the Equal Merit Provision may be applied. If the EMP 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 exercise being conducted is a proportionate means of achieving the aim of increasing judicial diversity in the judiciary as a whole or within the level of judiciary for which the selection is being made.

After following our published process the EMP was not applied at this stage of the selection process

After applying the above process, 369 candidates 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 the selection exercise.
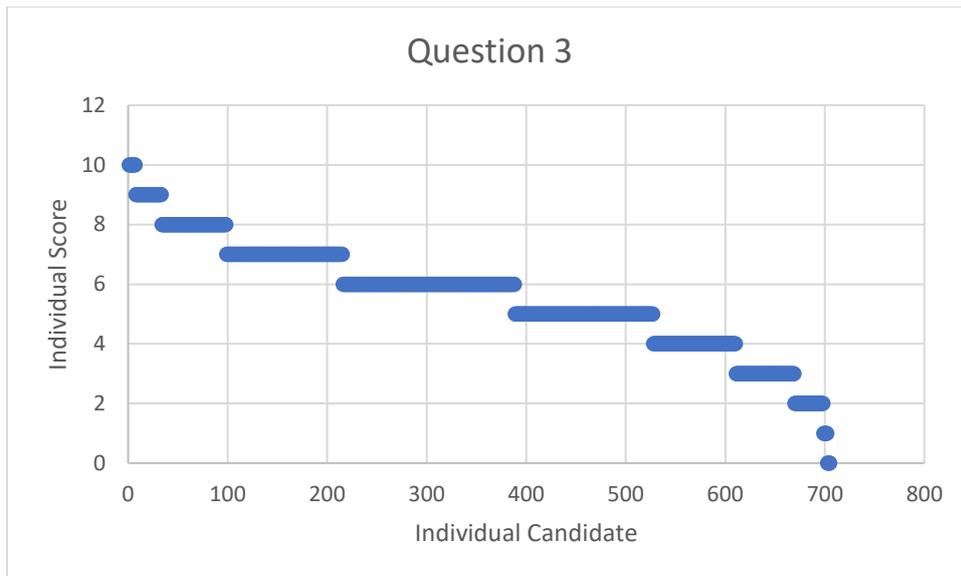
The below charts show the spread of scores across each of the questions.
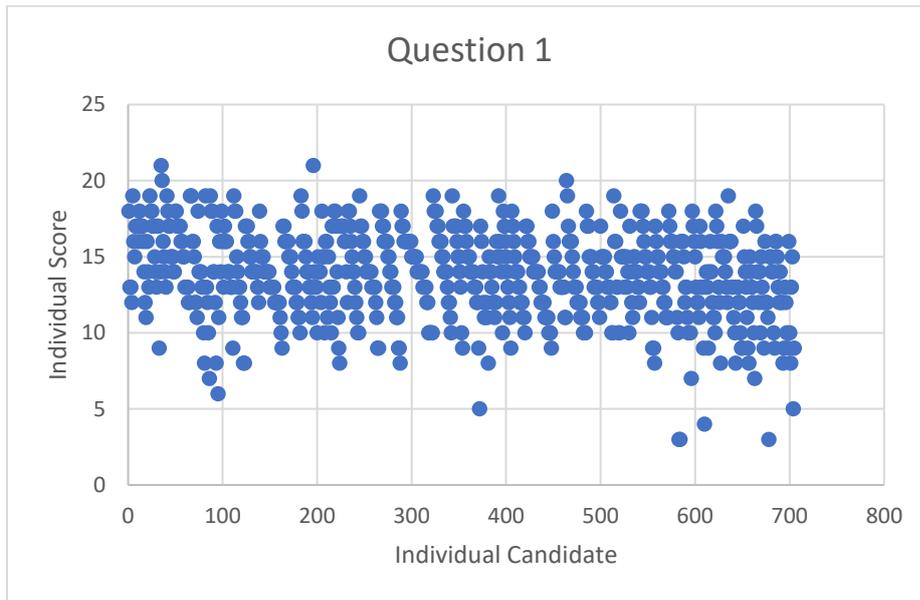
Question 1

The average candidate score for this question was 14.
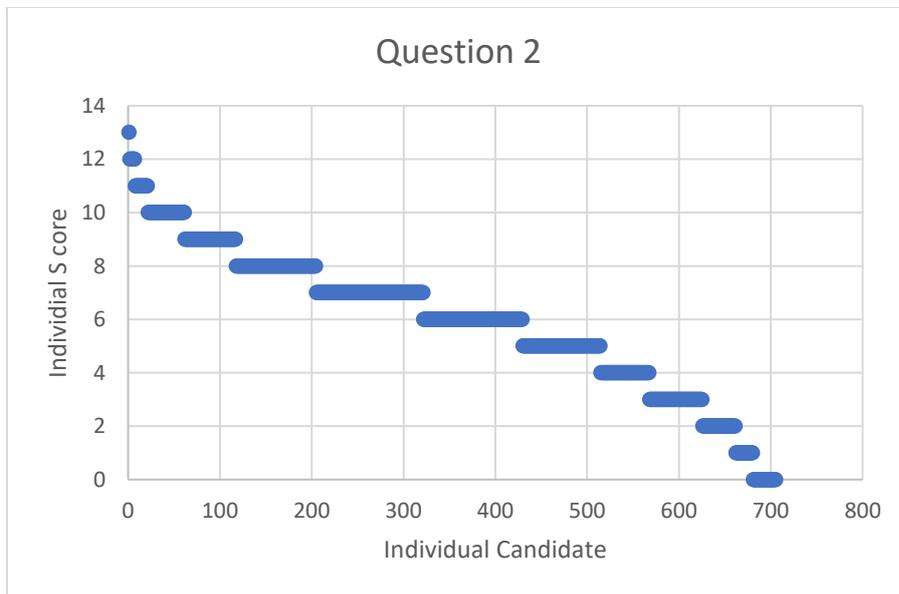
Question 2

The average candidate score for this question was 7.

Question 3

The average candidate score for this question was 6.

The average candidate scores for this test were as follows:

- the lowest average candidate score was 14%.
- the highest average candidate score was 82%.
- the average candidate score was 50.7%.

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 were required to make a decision on whether they would grant a public hearing and give reasons for their decision.

Candidates who scored well included the following in their answers:

- Applied the law to the particular fact they had been given
- Balanced the factors for and against a public hearing
- Reached a coherent decision

Question 2

Candidates were required to identify which tribunal rules were relevant to their decision on whether or not Ms Foster should attend, giving their decision, setting out the factor they have taken into account.

Candidates who scored well included the following in their answers:

- The relevant Tribunal Rules to be considered when making their decision
- Detailed reasons for their decision

Question 3

Candidates were required to identify the 3 Rules which are most relevant to their decision on whether to allow the adjournment application, what their decision would be and why.

Candidates who scored well included the following in their answers:

- The relevant Tribunal Rules to the specific facts of the case

Feedback from candidates

After the online scenario test, candidates were invited to complete an anonymous candidate survey. 266 candidates responded to the survey. Based on the results of the survey:

When asked if they had sufficient preparatory material:
• around 94 % of candidates agreed/strongly agreed they had
• around 4 % of candidates disagreed/strongly disagreed they had

When asked if the scenario test gave them an opportunity to prove their suitability for the role:
• around 82 % of candidates agreed/strongly agreed it had
• around 7 % of candidates disagreed/strongly disagreed it had

When asked if they are confident in the scenario test as a JAC selection tool:
• around 67 % of candidates agreed/strongly agreed it had
• around 8 % of candidates disagreed/strongly disagreed it had

When asked if the scenario test was easy to complete:
• around 31 % of candidates agreed/strongly agreed it was
• around 32 % of candidates disagreed/strongly disagreed it was
• around 37 % of candidates neither agreed nor disagreed it was

When asked if the word count was a helpful guide:
• around 47 % of candidates agreed/strongly agreed it was
• around 19 % of candidates disagreed/strongly disagreed it was

When asked if the word count was a helpful guide:
• around 47 % of candidates agreed/strongly agreed it was
• around 19 % of candidates disagreed/strongly disagreed it was

When asked if it was useful to see how many marks were available for each question:
• around 80 % of candidates agreed/strongly agreed it was
• around 5 % of candidates disagreed/strongly disagreed it was