

Online Qualifying Test Evaluation and Feedback Report

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

October 2021

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 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.

The qualifying test for this exercise was designed to test a candidate's transferable skills and their potential to work effectively as a Fee-paid Judge of the First-tier Tribunal and Fee-paid Judge of the Employment Tribunals (England and Wales).

Competency Framework

The tests were 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 tested in the situational judgement test included:

- Exercising Judgement
- Working and Communicating with Others
- Managing Work Efficiently

The competencies tested in the critical analysis test included:

- Possessing and Building Knowledge
- Assimilating and Clarifying Information

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 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 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 two separate dry runs 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 the overall time for the test 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 Tribunals (England and Wales). Candidates were assessed on their reading of a situation and their ability to judge the effectiveness 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 presented with the text of the lecture '*Justice in a Crisis*' given by the Rt Hon Sir Ernest Ryder at Pembroke College, Oxford, on 21 January 2021. The text was provided to candidates a week before the test. The test question 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

Both parts of the test were marked automatically by the online platform. The pass mark is determined by the number of candidates needed at the next selection stage, which varies between different exercises. In any two-part online test, those candidates who score below 30% in either part of the test do not proceed.

In this exercise the pass mark was a combined average score of **64%**, and all candidates scoring that percentage or higher were taken to the next selection stage.

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 one point scored for each answer. Therefore, candidates could score a maximum of two 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 one point. Therefore, candidates could score a maximum of one point for each question.

Distribution of marks

- 1619** candidates registered to take the qualifying test
- 273** candidates withdrew from the process before the qualifying test or did not take part
- 5** candidates took only one part of the test

- 1341** candidates completed the qualifying test
- 1323** candidates scored more than 30% in both parts of the test
- 18** candidates scored less than 30% in either part of the test

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 the selection process based on the approach outlined.

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

Distribution of marks	Part 1 Situational Judgement	Part 2 Critical Analysis	Overall Total
Highest score	30/40 (2 candidates)	20/20 (34 candidates)	48/60 (1 candidate)
Lowest score	0/40 (1 candidate)	0/20 (1 candidate)	0/60 (1 candidate)

Approach to shortlisting

When the JAC receives a 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 two or three 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 the exercise were invited to sit the first stage of shortlisting, the online qualifying test. We planned to take around 730 candidates, potentially increasing up to 800 candidates to allow for the potential use of the equal merit provision, to the second stage of shortlisting, the online scenario test.

To identify the top 730 candidates from the qualifying test, the following method was used:

- Each candidate had their score for each part converted into a percentage.
- The two percentages were then added, and a combined average score calculated.
- The combined average score for each candidate was used to rank all candidates into a merit list, with the highest combined average score at the top of the list, and the lowest at the bottom. (Using the combined average score to rank candidates in order of merit ensures tests with more points available in one of the two parts do not disproportionately affect outcomes. For example, 30/40 (75%) in one part isn't better than 9/10 (90%) in another part just because the first part had 30 points scored compared to nine points in the second part.)
- 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.

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 published policy for the purposes of increasing judicial diversity, 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:

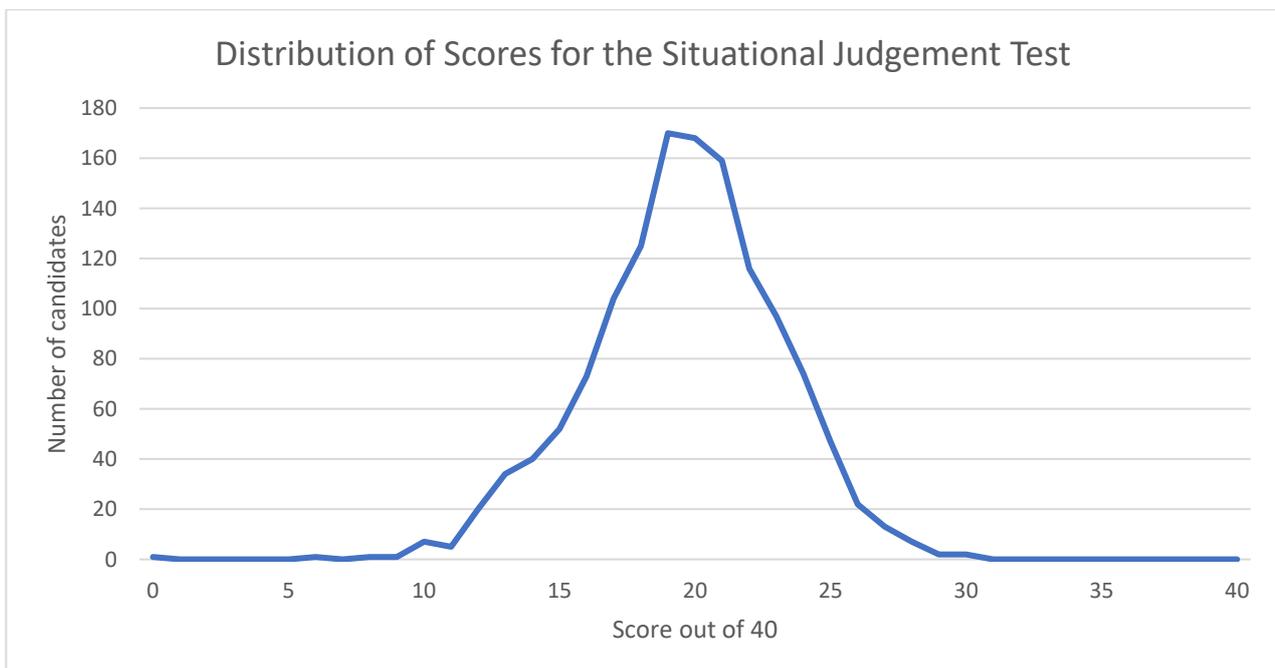
- The candidates about whom a decision is being taken are of equal merit.
- The particular protected characteristic is underrepresented either in the judiciary as a whole or at the relevant level of judiciary.
- Reliance on EMP in the shortlisting process being conducted is a proportionate means of achieving the aim of increasing judicial diversity.

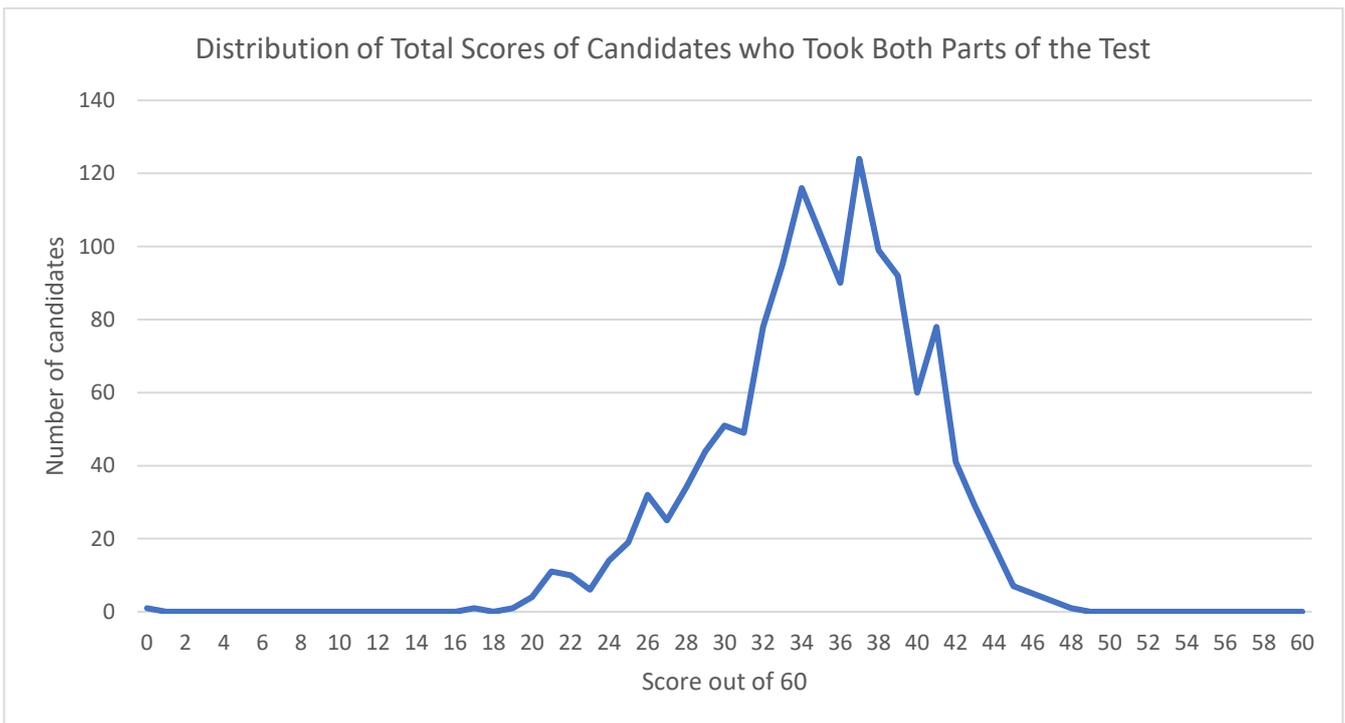
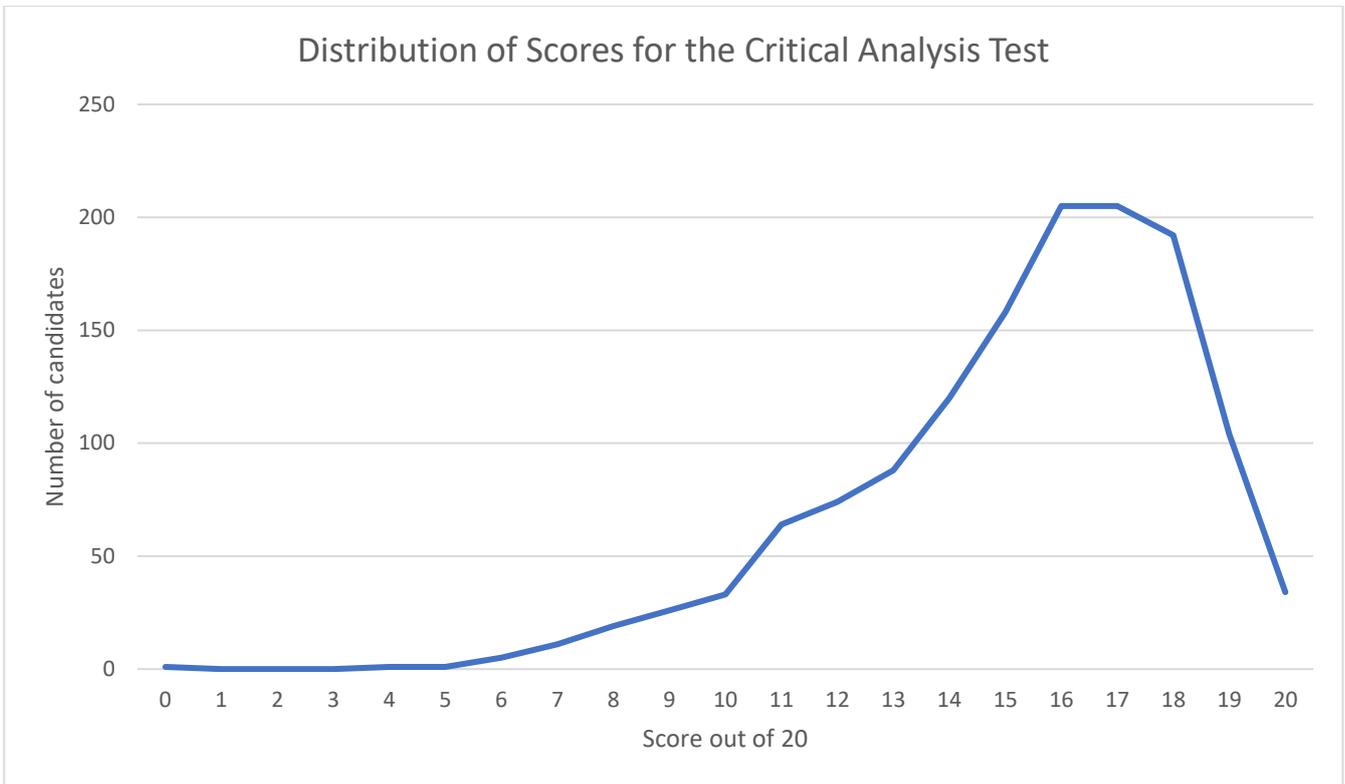
For this exercise, the cut-off line was drawn at a combined average score of 64% and the sub-committee agreed that all 734 candidates who scored 64% or above would proceed to the next stage. However, for the purposes of increasing judicial diversity, the sub-committee also considered the next set of candidates who scored 63% and agreed that those with relevant underrepresented protected characteristics within this group would also proceed to the next stage. Therefore, an additional 40 candidates with relevant underrepresented protected characteristics who scored 63% proceeded to the next stage of the selection exercise. Following the sub-committee's decision, **774** candidates in total were invited to progress to the next stage of the selection exercise.

We 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.

The average candidate scores over Parts 1 and 2 combined for this test were as follows:

- Lowest candidate score was 0%;
- Highest candidate score was 85%;
- The average candidate score was 58%.





In Part 1 (Situational Judgement):

- There were three questions where 50% or more of candidates chose both parts of the question correctly (easier questions according to the results). These included different situations in court e.g. dealing with a party that experiences a technical issue during a remote hearing and dealing with a conflict of interest objection.
- There was one question where under 25% of candidates chose the most or least appropriate response correctly (harder question according to the results). This question dealt with a court situation in which the claimant was running overtime in cross-examining a witness.

In Part 2 (Critical Analysis):

- There were three questions where 95% or more candidates gave the correct answer (easier questions according to the results). These questions were about access to justice being initially excluded from requiring change following WWII, the collaboration between judges, legislators and the executive needed to enable the Rule of Law in response to a crisis, and the eligibility for legal aid becoming more restricted in the 2000s.
- There was one question where 50% or more candidates gave an incorrect answer (harder question according to the results). This question was about the several duties that the Senior President of Tribunals identified as key when operating our courts and tribunals in a crisis.

Feedback from candidates

After the qualifying test, candidates were invited to complete an anonymous candidate survey. **316** candidates responded to the survey. Based on the results of the candidate survey:

- 68.4% of candidates rated customer service as fair, good or excellent.
- 96.8% of candidates understood from the instructions what was expected during the qualifying test.
- 77.6% of candidates agreed that the Situational Judgement test enabled them to demonstrate how to tackle daily challenges working in a court.
- 60.1% of candidates were confident in the Situational Judgement test as a JAC selection tool.
- 60.7% of candidates agreed that the Critical Analysis test enabled them to demonstrate how they would analyse facts to form a judgement.
- 55.7% of candidates were confident in the Critical Analysis test as a JAC selection tool.
- 89.3% of candidates agreed that the qualifying test was accessible in terms of format, language used, and topics covered.
- 52.9% of candidates agreed that the qualifying test was easy to complete.