

## **Online Scenario 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)**

**November 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 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 four questions 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 effective Fee-paid Judges of the First-tier Tribunal and Fee-paid Judges of the Employment Tribunals (England and Wales) are 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 three tribunal judges.

In common with all the selection tools developed for this exercise, the scenario and the associated 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 the JAC Operations, Policy, and Diversity and Engagement teams for quality and equality assurance purposes and to ensure the tools were an effective means by which to assess the merit of 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 the structure and timings of the test, and then make any necessary amendments.

## **Structure of the test**

The test was hosted on the JAC Digital Platform. The test was 70 minutes long. Candidates were presented with a scenario and four questions.

The scenario involved two organisations competing for a single grant available from the Department for Cultural Affairs (DCA). As the Judge of the fictional 'Cultural Awards Tribunal', candidates were required to deal with a number of procedural issues and then decide who would receive the grant.

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: 13 marks, a maximum of 200 words

Question 2: 22 marks, a maximum of 250 words

Question 3: 32 marks, a maximum of 300 words

Question 4: 58 marks, a maximum of 650 words

The JAC Digital Platform provides an on-screen 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 after the allotted time expires. All tests are marked, including those that were not completed and were automatically submitted. A word limit is also set for each question, preventing candidates from submitting answers that exceed the limit.

## **Marking of the test**

**774** candidates were invited to take the test

**23** candidates withdrew from the process prior to the test taking place or didn't take the test

**751** candidates took the test

The candidates' test submissions were anonymised and marked by a panel of tribunal judges. The judges were provided with a marking schedule setting out the number of marks available for each question and how the marks should be attributed. JAC staff provided a full briefing to the panel at the outset of marking the papers, and calibration was undertaken throughout to ensure fairness and consistency.

Upon completion of the marking, a 15% sample of the test scripts were selected for moderation. Those selected included scripts identified for moderation by panellists; samples of the high, low and mid scoring test papers; all test papers close to the prospective cut off point for invitation to the next stage; and a further random sample.

Moderation took the form of panellists 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 assigned to the selection exercise undertook separate quality assurance checks. Their independent conclusion was that marking had been robust and consistent.

## **Determining the order of merit**

The scoring process was as follows: all candidates were scored on their answers to the test based on the marking schedule; all candidates were then ranked in order of merit from first

to last based on their percentage score. This provided a merit list determining how many candidates would be invited to the next stage of the exercise.

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, before considering the Equal Merit Provision, was **45%** and above.

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

<b>Distribution of marks</b>	<b>Question 1</b>	<b>Question 2</b>	<b>Question 3</b>	<b>Question 4</b>	<b>Overall</b>
<b>Highest score</b>	13/13 (1 candidate)	21/22 (2 candidates)	26/32 (6 candidates)	46/58 (1 candidate)	99/125 (1 candidate)
<b>Lowest score</b>	0/13 (8 candidates)	0/22 (6 candidates)	0/32 (8 candidates)	0/58 (29 candidates)	0/125 (3 candidates)

### **Approach to shortlisting**

When the JAC receives notification from HMCTS confirming the final number of vacancies for the requested post/s, calculations are made to establish how many candidates will be taken to selection day (usually at a ratio of two or three candidates per vacancy). This allows us to estimate the number of candidates we need to progress after each shortlisting stage 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 online qualifying test, which involved a situational judgement and critical analysis test. 774 candidates were invited to take the online scenario test. 751 candidates completed the test.

To identify the top 400 candidates to proceed to selection day (subject to completing a full application form and eligibility checks), the percentage score for each candidate was used to rank all candidates into a merit list, with the highest percentage score as the most meritorious and the lowest percentage score as the least meritorious. A cut off line was then drawn at the 400<sup>th</sup> candidate.

### **Equal Merit Provision**

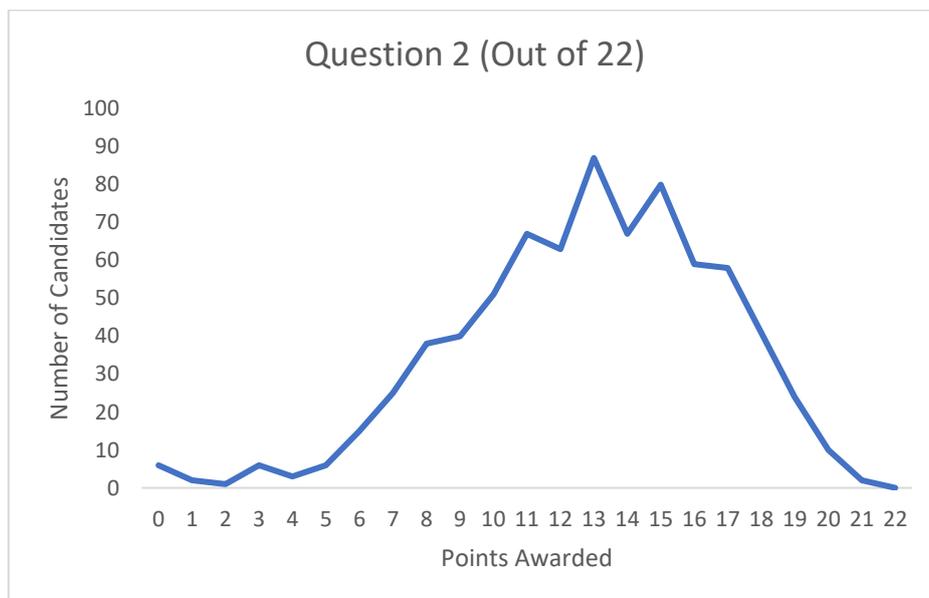
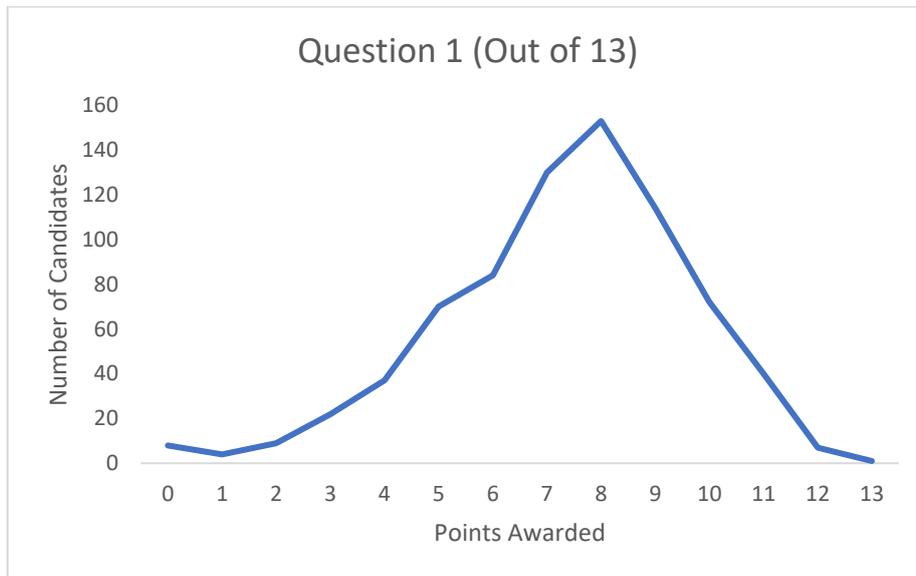
Where the cut off line falls between two or more candidates with the same percentage score, the Equal Merit Provision (EMP) may be applied in line with the JAC's published policy, which is available [here](#). If the equal merit approach is applied, this will be after the consideration of a sub-committee 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:

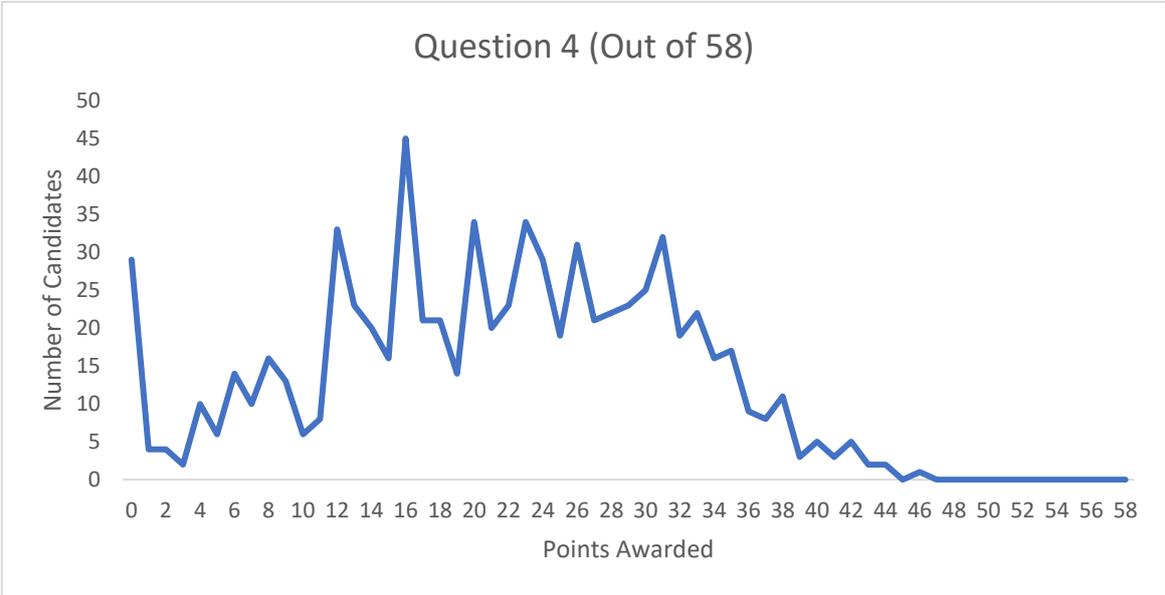
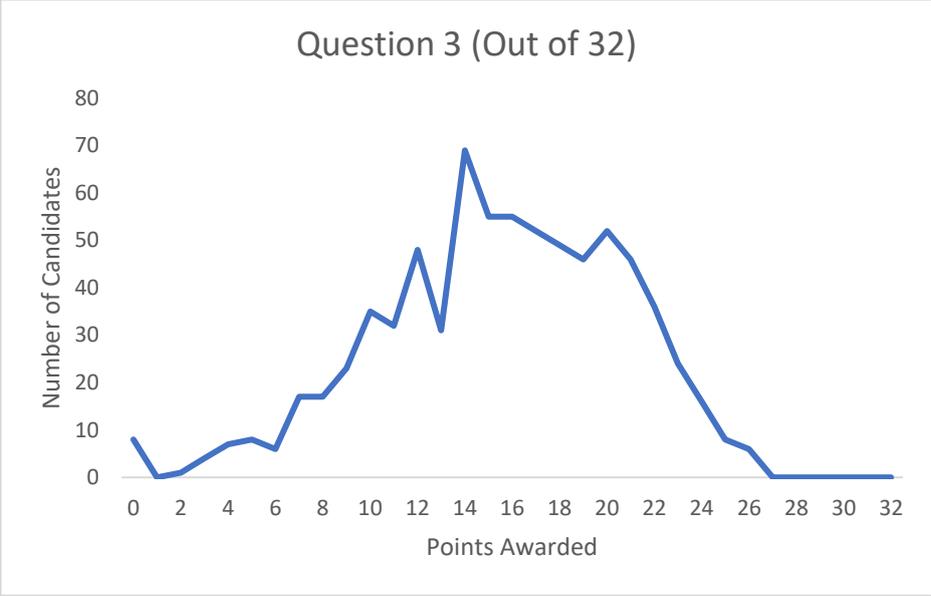
- The candidates about whom a decision is being taken are of equal merit.
- The particular protected characteristic is underrepresented either in the judiciary as a whole or at the relevant level of judiciary.
- Reliance on EMP in the shortlisting process being conducted is a proportionate means of achieving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

For this exercise, the cut off line was drawn amongst candidates with a score of 45% and the sub-committee agreed that all 413 candidates who scored 45% 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 44% and agreed that those with relevant underrepresented protected characteristics within this group would also proceed to the next stage. Therefore, an additional 11 candidates who scored 44% proceeded to the next stage of the selection exercise. Following the sub-committee’s decision, **424** candidates were invited to the next stage of the selection exercise.

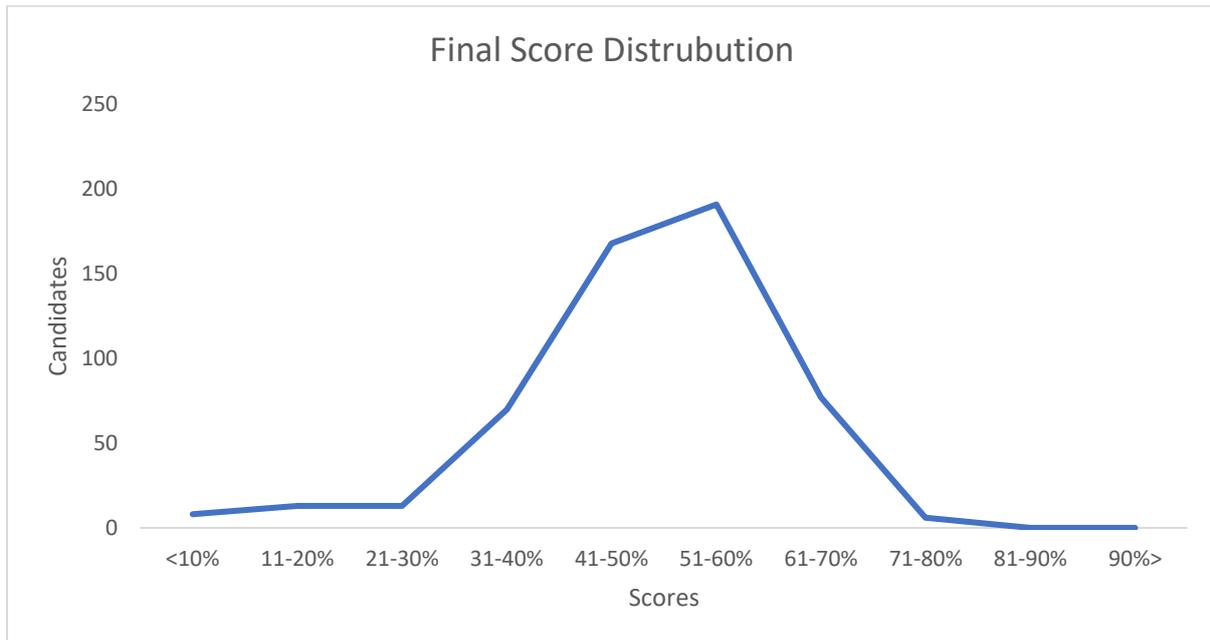
### Distribution of the scores

The charts below show the spread of scores for each question:





The chart below shows the spread of the final percentage scores:



The lowest candidate score was **0%** and the highest candidate score was **79.8%**. The average candidate score was **46.4%**.

### **Feedback from the marking panels**

In advance of marking the test the marking panels were instructed to consider any themes in the candidates' answers that could be included in the feedback report which can be seen below.

#### Question 1

Candidates who scored well:

- Understood the need to reference/quote the relevant tribunal rules when deciding on whether to list the matter for a final hearing.
- Identified and addressed the possible jurisdictional issue, namely that Rule 1 states the appeal panel hears appeals from decisions but, arguably, no decision was made by the DCA.
- Considered and balanced the above point against Rule 8, to allow for procedural fairness.
- Made a definite decision, clearly articulating their reasoning.
- Acknowledged the urgency of the matter.
- Made clear and relevant case management orders

Candidates who performed less effectively:

- Had a lack of reference to the tribunal rules.
- Did not identify the possible jurisdictional issue, arising from, arguably, no decision being made by the DCA.
- Did not balance the above point with the relevant rule, to allow for procedural fairness.

- Reached ambivalent or ambiguous decisions, lacking the decisiveness being sought from the answer.
- Reached a decision that was unclear and at times confusing.
- Lacked clear and relevant case management orders.

### Question 2

Candidates who scored well:

- Understood that the tribunal rules did not provide for playing the video, but the flexibility within the tribunal rules allowed for playing the video in the interests of justice.
- Recognised that it is a fundamental principle for the opposing party to be copied into the application, addressing the point of procedural fairness.
- Made a definite decision on whether to include or exclude the video with clear reasoning.
- Identified and balanced the relevant tribunal rules in making this decision.
- Understood that “equal footing” meant having equal access to justice, giving practical directions to support this.

Candidates who performed less effectively:

- Did not read or understand the question which stated the hearing was going ahead.
- Did not consider or provided limited evidence in the interests of fairness to the opposing party.
- Failed to make a clear decision on whether to admit the video.
- Gave confusing and/or incomplete rationale in their decisions.
- Did not understand what “equal footing” meant in this situation, resulting in either irrelevant or impractical directions.
- Did not reference the relevant tribunal rules, or the flexibility within these in the interests of justice.

### Question 3

Candidates who scored well:

- Recognised that there were two separate applications, one for a revised budget and the other for reasonable adjustments.
- Linked both of the applications to the appropriate rules.
- Applied a flexible approach to making reasonable adjustments, referencing the Dyslexia guidance on page 399 of the Equal Treatment Bench Book, as well as the tribunal rules.
- Recognised that the applications are out of time and considered whether it is in the interest of justice to allow them.
- Made a definite decision, providing a clear, succinct and well-reasoned rationale.
- Decided on whether the revised budget is relevant and recognised that the opposing party was unaware of the new budget.

Candidates who performed less effectively:

- Did not recognise that there were two separate applications on which to decide.
- Did not recognise the applications were out of time and to treat them accordingly.
- Failed to make a definitive decision on either one or both applications.

- Did not reference the Dyslexia guidance on page 399 of the Equal Treatment Bench Book.
- Did not recognise that allowing extra time to the party who did not require it as a reasonable adjustment could place the party who did require it at an unfair advantage.
- Failed to apply the relevant tribunal rules.
- Lacked the compassion or flexibility required in this situation.

#### Question 4

Candidates who scored well:

- Demonstrated open mindedness by carefully weighing up the pros and cons of both organisations.
- Identified both the relevant issues for and against each organisation, and the potential benefits of the grant to each organisation.
- Understood from the tribunal rules that a high standard of work was crucial when deciding on the most deserving project.
- Recognised that the role of the tribunal was not to decide which is the most discriminated group as this was not an adversarial matter.
- Referred to relevant sections of the Equal Treatment Bench Book.
- Made a clear and definite decision in favour of one party or the other.

Candidates who performed less effectively:

- Did not refer to the relevant sections of the Equal Treatment Bench Book.
- Failed to make a definite decision and/or failed to provide relevant rationale as to which party will receive the grant.
- Failed to take into the account the competing factors from the evidence.
- Decided to split the available grant, despite the scenario requiring them to rule in favour of one of the parties.
- Made statements about the strengths or weaknesses of either party which was not based on the evidence provided in the scenario.
- Appeared to be biased towards one of the parties.
- Referred the matter back to the DCA, despite the scenario requiring a decision must be made in favour of one party.

#### **Feedback from candidates**

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

**190** candidates responded to the survey. Based on the results of the survey:

- I understood from the instructions what was expected during the scenario test.
  - Around 81% of candidates agreed or strongly agreed
  - Around 7% of candidates neither agreed nor disagreed
  - Around 11% of candidates disagreed or strongly disagreed
- I was provided with sufficient preparatory material to answer the scenario test.
  - Around 57% of candidates agreed or strongly agreed
  - Around 19% of candidates neither agreed nor disagreed
  - Around 23% of candidates disagreed or strongly disagreed

- The scenario test gave me the opportunity to show how I would deal with the type of situation that could arise with this role.
  - Around 55% of candidates agreed or strongly agreed
  - Around 16% of candidates neither agreed nor disagreed
  - Around 23% of candidates disagreed or strongly disagreed
- The scenario test was accessible in terms of format, language used, and topics covered.
  - Around 77% of candidates agreed or strongly agreed
  - Around 7% of candidates neither agreed nor disagreed
  - Around 14% of candidates disagreed or strongly disagreed
- I am confident in the scenario test as a JAC selection tool.
  - Around 44% of candidates agreed or strongly agreed
  - Around 28% of candidates neither agreed nor disagreed
  - Around 27% of candidates disagreed or strongly disagreed
- The scenario test was easy to complete.
  - Around 23% of candidates agreed or strongly agreed
  - Around 15% of candidates neither agreed nor disagreed
  - Around 62% of candidates disagreed or strongly disagreed