Qualifying Test Feedback Report
Scenario Test

109 Salaried Judge of First-tier Tribunal

15 January 2019

Purpose

The purpose of this report is to provide general feedback on candidate performance in the **109 Salaried Judge of the First-tier Tribunal** online scenario test. The report describes how the Judicial Appointments Commission (JAC) developed the test and marking schedule, and how the test was structured.

Additionally, it provides information on the overall performance of candidates in the test, identifying areas where they performed well and where there were weaknesses.

The online scenario test was designed to test a candidate's transferable skills and their potential to work effectively as a Salaried Judge of the First-tier Tribunal rather than to assess their jurisdictional knowledge. Irrespective of the jurisdiction(s) candidates were interested in sitting in, all candidates underwent the same selection process; qualifying test selection tools were not divided by jurisdiction at any stage throughout the process.

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 skills and abilities which were transferable to the role from other contexts. The specific bullet points under each competency heading were designed to reflect skills and abilities that an effective salaried tribunal judge is expected to have. This enabled us to assess candidates in a fair and consistent way.

Development of the test

The online scenario test was devised by the Chamber President of the General Regulatory Chamber and the Deputy President of the First-tier Tribunal (Mental Health). In common with all the test material developed for this exercise the online scenario test was designed to assess relevant transferable skills to minimise the extent to which candidates might be advantaged or disadvantaged by their professional background.

The JAC Advisory Group, which is composed of members of the judiciary and representatives of the legal profession, offered advice and guidance during its development.

In common with all qualifying tests used by the JAC, both the test and marking schedule were subject to an extensive quality – and equality – assurance process including review by the JAC Head of Diversity and Engagement and Advisory Group.

The effectiveness of the test was assessed by means of a dry run with a range of volunteers from relevant candidate groups.

Structure of the test

The scenario test was hosted on the JAC website and was accessed by candidates using their online account.

The 45-minute test presented candidates with a scenario about a Notice of Appeal that had been lodged with the Tribunal relating to a request for anonymity by the appellant. The Registrar had made some directions but the appellant wanted these to be considered afresh by a judge as soon as possible.

Candidates were presented with the outline of the scenario and 4 questions to consider. Candidates were required to provide narrative responses to the 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: a maximum of 200 words – maximum of 30 marks
- question 2: a maximum of 200 words – maximum of 30 marks
- question 3: a maximum of 250 words – maximum of 40 marks
- question 4: a maximum of 250 words – maximum of 50 marks

Advanced reading

The candidates invited to sit the online scenario test were asked to familiarise themselves with the following in advance of the test

- Parts 1, 2 and 3 of the 'Tribunals Rules' (this is, up to and including rule 24)
- Decision of Mr Justice Charles in *Adams v SSWP and Green* [2017] UKUT 0009 (AAC)

Marking of the test

The scenario test was marked by five panels consisting of a JAC panel member and an experienced First Tier Tribunal Judge. In any selection exercise where more than one panel is used we use calibration, sampling, Senior Selection Manager oversight and moderation to ensure consistency between panels. The Assigned Commissioner also oversees the process.

JAC staff provided a full briefing to the markers at the outset of the marking of papers. All test papers were anonymised but cross referenced by a unique reference number to the candidate.

Marking schedule

A marking schedule was provided to the panel. Any questions on the interpretation of the marking schedule were resolved after full discussion between the panels and the judges who produced the test. Such decisions were agreed at a calibration meeting once all markers had marked a sample of the same test papers. Individual panel

members marked each paper and all marks were then discussed within the panel to achieve consensus.

Distribution of scores

505 candidates were invited to complete the scenario test.

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

	Highest score	**Lowest score**
Scenario	120/150 (1 candidate)	0/150 (1 candidate)

The test was clearly quite challenging in particular question 4 where 18 % of candidates failed to score any marks.

Approach taken by the panel to marking the scenario test

The scenario test was designed to assess candidates' skills in the judicial competences of Exercising Judgement, Possessing and Building Knowledge, and Assimilating and Clarifying Information.

The scenario was based on one that could typically be encountered as a First Tier Tribunal Judge. The candidates were asked to familiarise themselves with the following materials, Parts 1, 2 and 3 of the Tribunals Rules (that is, up to and including rule 24) – these were fictitious rules developed specifically for this generic online scenario test. They were also asked to read the Decision of Mr Justice Charles in *Adams v SSWP and Green* [2017] UKUT 0009 (AAC). The scenario was designed to be broad and complex enough to enable candidates to demonstrate a range of the competencies required for the role.

The test lasted 45 minutes. Timing was based on an assumption that candidates would spend 10 minutes familiarising themselves with the scenario and the remaining time answering the four questions.

The JAC does have a lower line below which candidates are automatically sifted out of the competition, this is usually 30% or less on any part of the test.

Moderation

A sample of reports was 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 and all test papers close to the prospective cut-off point for invitation to selection days. Moderation took the form of markers cross checking each other's work.

The moderation process concluded that the markers had been consistent and fair during the first round of marking, and that marking overall had been fair and robust.

It is JAC policy for a Senior Selection Exercise Manager and the JAC Commissioner assigned to the selection exercise to undertake separate quality assurance checks. Their independent conclusion was that marking had been robust and consistent.

Distribution of marks and comments from the markers

Question 1

The first question asked candidates to identify which of the Tribunal's procedural rules were in play.

11 candidates scored the maximum of 30 marks.

Only 1 candidate failed to score any marks.

The average score for Question 1 was 19 marks.

Candidates who scored highly listed the rules, the sub set and accurately described why they were applicable.

Candidates who scored less highly either listed just the rules or the rules and the sub rule, but failed to explain the context of each. For example, full marks were awarded to candidates in the question who correctly answered that the rule 4(3) 'power to consider the registrars directions afresh' was relevant here.

Question 2

The second question asked candidates what principles they derived from the decision in Adams and how they were applicable to the scenario.

No candidate scored the maximum 30 marks.

The highest scoring mark was 29 which 1 candidate achieved.

33 candidates scored 25 marks.

8 candidates failed to score any marks.

The average score for Question 2 was 15 marks.

Candidates who scored highly specifically identified that an application for anonymity involves an exercise of judicial discretion. Most candidates correctly identified the balancing exercise required as between open justice and the appellant's concerns.

Only some candidates correctly identified that the case law principles set out in Adams are not applicable as between the appellant and the Tribunal itself. Many

failed to refer to Adams at all. Candidates should have recognised that in Adams, the appellant and respondent were one and the same in regard to anonymity.

Question 3

The third question was in four parts asking the candidates did they agree with the registrar's decision, how they would approach the decision they were asked to make regarding case management, what factors should be considered and what their decision was.

No candidate scored the maximum 40 marks.

The highest scored mark was 39 which was scored by 1 candidate.

The overall average score for Question 3 was 14 marks.

Candidates who scored highly identified the requirement to invite submissions on a proposed strike out, and also for providing suggestions to avoid this, for example asking the applicant to provide a PO Box address or offering to restrict access to the Tribunal file.

Many candidates failed to answer this question specifically, i.e. 'do you agree with the registrar's decision?' Most candidates identified that the applicant may have a protected characteristic (or inferred) and that the overriding objective requires the Tribunal to consider how to ensure the applicant's participation in proceedings, also allowing for more time to consider his position in view of the medical appointment.

Many candidates failed to identify that this was a fresh consideration under rule 4(3) and not an appeal, and many also failed to recognise that rule 22 obligation is to provide 'an address' rather than a 'postal address'. Hardly any candidates identified reasons as to why it may be appropriate to interpret rule 22 as requiring a postal address (e.g. in order to send the applicant a hearing bundle or any requirement for personal service etc).

Question 4

The final question asked the candidates how they would decide the application and what reasons they would give in the decision if the appellant refused to provide more information.

1 candidate scored the maximum 50 marks for question 4.

For most candidates this was the lowest scoring of the 4 questions.

93 candidates failed to score any marks.

The average score for Question 4 was 11 marks.

This question appeared to be the most challenging for candidates. This question had the most available marks, and perhaps some candidates failed to set aside additional time to respond to it in full.

Most candidates correctly identified that the burden lies on the applicant for anonymisation, to show that the paramount objective of securing that justice is done would be rendered doubtful if anonymisation was not granted.

This particular question was looking for a decision <u>and</u> the candidate's reasons for deciding the application. A lot of candidates wanted more information as to why there should or should not be a strike out, but failed to address the application of anonymity which is what the question was driving at.

Many candidates ignored the reference to the Novichock attack in Salisbury and the fact that the applicant had not explained the connection, if any, to these events, and had therefore not shown that he was likely to come to serious harm if his name was published and, as such, justice could not be done without anonymisation.

Total scores

The total score summary for all four questions was as follows:

No candidate scored the maximum 150 marks available.

The highest overall score was 120 marks.

1 candidate scored 0 marks overall.

The average score overall was 60 marks.

Overview

The panels agreed, with the approval of the assigned JAC Commissioner, that the substance of the answers would be paramount and that minor errors made by candidates would be overlooked where the meaning was clear. Spelling mistakes and formatting of answers were not considered important. It was also agreed that marks should be awarded where the correct answer, while not explicit, was clearly implicit.

 The charts below show the spread of scores:

Spread of Scores

Spread of Scores
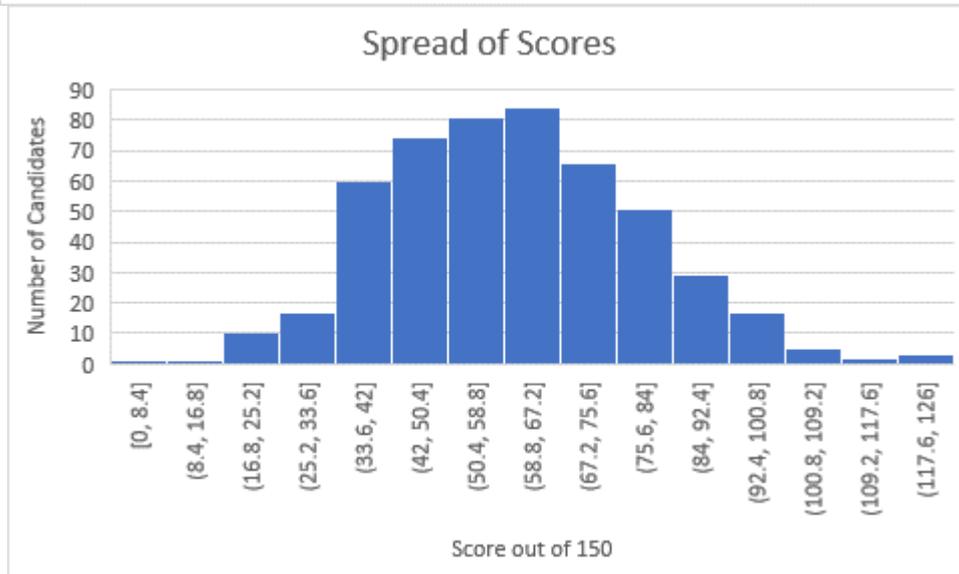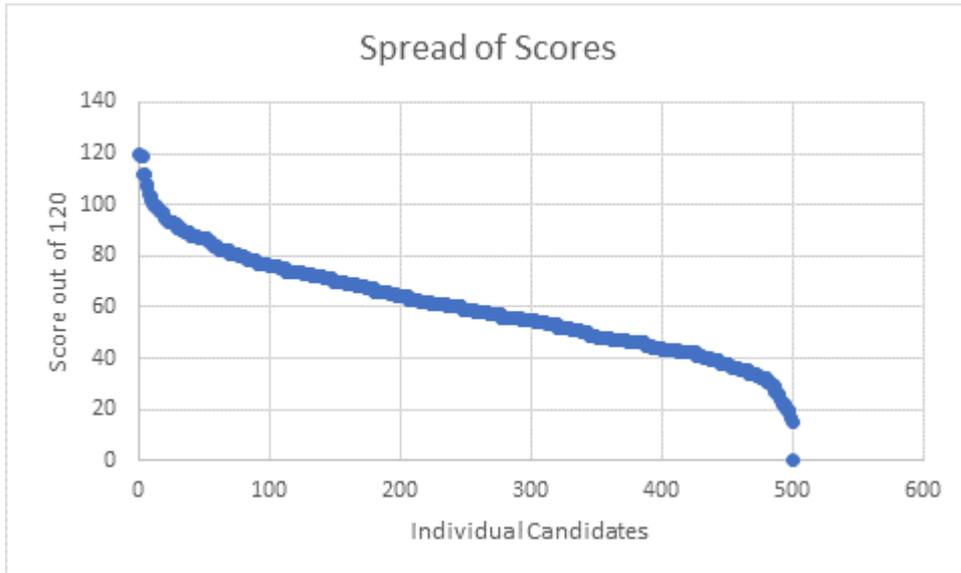
Approach to shortlisting

When the JAC receives a vacancy request from Her Majesty's Courts and Tribunals Service confirming how many vacancies there are for a post, we calculate how many candidates we need to take to selection day (usually at a ratio of 2 to 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 100 posts. We therefore planned the selection exercise based on inviting around 250 candidates to selection day.

All candidates who applied for the exercise were invited to sit the first stage of shortlisting, the online qualifying test. 505 candidates were successful following the qualifying test and were invited to sit the online scenario test. The scores of the

candidates were ranked into a merit list order. The highest 250 scoring candidates from the scenario test were considered for shortlisting through to selection days.

If 2 or more candidates had the same score on the merit list at the line of shortlisting, we took all those with the same score through to the next stage. When candidates have the same score on a merit list, we call this bunching. Once any bunching is taken into account, the final line of shortlisting is determined.

After applying the above process, 255 candidates were invited to attend selection day.

We therefore do not have a pre-determined pass mark for the test; the line of shortlisting on the merit list 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. For this exercise, the score at which the line of shortlisting fell was 60 out of 150 (40%).