



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Khan

**Respondent:** London Bin Cleaning

**Heard at:** Watford **On:** 2 June 2025

**Before:** Employment Judge Cowen

## Appearances

For the claimant: Mr Khan (in person)

For the respondent: Mr Farooq (consultant)

# JUDGMENT

1. The claim for discrimination on grounds of sex, race and religion, in cancelling a job interview, was dismissed.

# REASONS

1. At an in person hearing on 2 June 2025, the Claimant's claim for discrimination was dismissed. An oral judgment was delivered. The short Judgment was sent to the parties on 25 June 2025. The same day, the Claimant wrote to the Tribunal, requesting written reasons. These are as follows:

## The Facts

2. The Claimant applied for a job with the Respondent, a cleaning company, as a personal assistant in May 2024. He describes himself as male, Muslim and British Pakistani.
3. On 22 May 2024, the Respondent sent the Claimant a zoom invitation to attend a "short video interview" online on 24 May 2024. The Claimant agreed to be interviewed at 4.45pm that day
4. On 23 May 2024 the Claimant sent the Respondent two documents exhibiting his ICT skills. Mr Sammon, a Director of the Respondent, replied saying he

was looking forward to seeing the Claimant at the interview.

5. On 24 May 2024 at 10.47am the Claimant was contacted by Mr Sammon and told that the position was no longer vacant.
6. The Respondent showed the Tribunal evidence of a similar email sent to another person, but this was dated July 2024 and therefore not relevant to the issues in this case.
7. The Claimant did not contact Mr Sammon further and crucially, did not ask the Respondent for the reason why the position had been filled without having interviewed him.
8. The Claimant chose to contact ACAS, something he has done on a previous occasion, to indicate a discrimination claim. He hoped this would illicit some explanation from the Respondent and some compensation. Neither were forthcoming.

## **The Law**

9. The Equality Act 2010, s.13 states that:  
(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others...."
10. In **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11**, Lord Scott said that the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects of the victim save that he, or she, is not a member of the protected class".
11. The test as to whether there has been less favourable treatment is an objective one: the claimant's belief that there has been less favourable treatment is insufficient. Likewise, the treatment must be less favourable, not merely different. Unreasonable treatment is not sufficient, although it may be evidence which supports an inference if there is no adequate explanation for the behaviour (Anya v University of Oxford and anor 2001 ICR 847, CA).
12. Lord Rodger at paragraph 125 of Shamoon, intimated that the key to a claim of direct discrimination will, generally be the determination of the reason for the treatment in issue: whether it was "because of" the relevant protected characteristic.
13. In determining claims under the EqA, the burden of proof operates as provided by section 136:  
(2) If there are facts from which the court could decide, in the absence

of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision

14. The approach to be adopted in applying section 136 is as laid down in **Igen Ltd v Wong; Chamberlin Solicitors v Emokpae; Brunel University v Webster [2005] EWCA Civ 142, [2005] ICR 931** (largely endorsing the principles set out in *Barton v Investec Securities Ltd* [2003] ICR 1205 EAT) and approved by the Supreme Court in **Efobi v Royal Mail Group Ltd [2021] UKSC 33**. In short, to the extent that the ET is satisfied (on a balance of probabilities) that the claimant has established facts from which it could, in the absence of an adequate explanation, conclude that the respondent had committed an act of unlawful discrimination (having regard to all the evidence, and drawing such inferences as are legitimate from its primary findings of fact at that preliminary stage), it will be for the respondent to prove (again, on the balance of probabilities) that the treatment was in no sense whatsoever because of the relevant protected characteristic. In discharging this burden, a respondent would normally be expected to adduce cogent evidence that the relevant protected characteristic was not the reason for the treatment in question.

15. In considering whether the claimant has established a prima facie case of discrimination, an ET must have regard to all the evidence, not just that adduced by the claimant (***Efobi***). However, simply establishing a difference in status is insufficient: there must be “something more” (*Madarassy v Nomura International plc* [2007] EWCA Civ 33 and *Igen Ltd v Wong* [2005] ICR 931). Likewise, unreasonable conduct alone is insufficient to infer discrimination.

16. In the case of **Reynolds v CLFIS (UK) Limited [2015] EWCA Civ 439** the Court of Appeal considered whether, for the purposes of establishing whether direct discrimination has taken place, a tribunal should consider the mental processes of those employees who have significantly influenced the alleged

discriminatory outcome, or only those of the actual decision-maker. The Court of Appeal stated,

*“...it is a fundamental principle of the discrimination legislation that liability can only attach to an employer where an individual employee or agent for whose act he is responsible has done an act which satisfies the definition of discrimination. That means that the individual employee who did the relevant act (that is, effected the dismissal) must have been motivated by the protected characteristic.”*

## **Decision**

17. The Claimant's case was based on the assertion that it was wrong to have offered the job to Magdalena Bieda, without having interviewed him first.
18. The Tribunal found that Magdalena was female, Polish and Catholic and therefore did not share the same protected characteristics as the Claimant.
19. The Claimant's evidence to the Tribunal indicated that he considered it discriminatory to have cancelled his interview; not the fact that Magdalena was chosen for the role over him. In response to Tribunal questions the Claimant said that if everyone had been interviewed and then Magdalena had been chosen, that would not have been discriminatory. The Claimant likened the situation to buying an item in the first shop you see it in, rather than shopping around.
20. The Respondent provided a list of a number of candidates for the job. The Respondent's witness Ms Showgy said that most, if not all the candidates had their interviews cancelled after Magdalena was considered appropriate for the role. The names on the list were a mixture of male and female appearing names.
21. The Tribunal therefore found as a fact that the Claimant's interview was not cancelled because he was male, as other female candidates were also cancelled.
22. The Tribunal could not be certain of the race or religion of any of the other names on the list, but statistically it was likely that some of them are not Muslim or British Pakistani. Furthermore, the Claimant did not show to the Tribunal that there were reasons which indicated that the reason his interview was cancelled was because he was Muslim, or British Pakistani. There was no basis on which it could be inferred that this was the reason why his interview was cancelled.
23. A difference in race or religion is not sufficient to succeed in a claim for discrimination, There needs to be facts from which it can be inferred, without further explanation from the Respondent, that the reason for the treatment was because of the race/religion. Where the interviews of a number of people were cancelled and where there is no evidence to suggest that they were all Muslim and/or British Pakistani, this cannot amount to race/religion discrimination.

24. The Claimant therefore failed to prove to the Tribunal that the reason for his treatment was the fact that he was Muslim and/or British Pakistani.
25. For the sake of clarity, even if the Claimant had shifted the burden, the Respondent has shown that they were satisfied with Magdalena's ability to do the job and that she was available immediately. Neither party showed any details about the difference between the applicants. The Tribunal therefore could not tell whether the Claimant was materially the same as other applicants/Magdalena in all aspects save for his protected characteristics. Put clearly, the Claimant did not show that his experience or availability was the same or better than Magdalena, or any other candidate.
26. The claims were dismissed.

Approved by:

**Employment Judge Cowen**

**4 August 2025**

JUDGMENT SENT TO THE PARTIES ON

5 August 2025

FOR THE TRIBUNAL OFFICE

## **Notes**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

[www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/](http://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/)