



EMPLOYMENT TRIBUNALS

Claimant: Ms M Bogdan
Respondent: The Cabinet office (Government Digital Services)
Heard at: East London Hearing Centre
On: 20, 21, 22 & 23 January 2026
Before: Employment Judge S Iman
Member: Mr M Wood

Representation

For the Claimant: In person
For the Respondent: Mr Chegwidan (Counsel)

JUDGMENT

The claims that were remitted back to the Tribunal in respect of race discrimination are not well-founded and are dismissed.

REASONS

Background

1. A six-day hearing of the Claimant's case took place in 2022. She brought 17 allegations of direct race discrimination, as well as other claims. The Claimant achieved a determination on appeal that two of the direct race discrimination allegations (Issues 6.1 and 6.2) should be remitted to be re-heard, on the basis that the original Tribunal had construed the issue as being limited to her formal requests for job re-evaluation (i.e. her submission of the JEGS form in March 2020), whereas the issue as formulated in the List of Issues was not limited to formal requests but was wide enough to include informal requests as well.

2. It is agreed between the parties that the Claimant requested role evaluation of Ms Healey expressly in writing in February 2020, and that this led to the preparation of a formal JEGS form in around March 2020 and this ultimately resulted (after five attempts) in a re-evaluation of the Claimant's role to HEO grade. The question now outstanding for determination concerns whether any additional informal requests were made prior to this formal submission of a JEGS form and if they were disregarded.
3. The matters that were before us were therefore narrow namely that the matters that were remitted related to whether the Claimant had been repeatedly making requests for job evaluation 'throughout' her employment and there had been a failure to deal with those requests which had left her 'wrongly graded' for 5 years. She was alleging that these requests had not been addressed or accepted because she is a Romany Gypsy. The Tribunal was quite properly reminded that the other matters that were determined by the previous Tribunal could not and should not be redetermined as that would be us acting outside the jurisdiction afforded, namely that it was specified that the Tribunal consider issues 6.1 and 6.2 of the List of Issues dated 15 July 2021:
 - 6.1 The Respondent refused to carry out the job evaluation for the Claimant several times which she has been requesting throughout her employment despite the fact it is her contractual right.
 - 6.2 From the beginning of her employment she made several requests to her line manager as it has been admitted by Timothy Marcus on 27 July 2020 during the investigation: "she has tried with every line manager that her role should be a higher grade." He took this to SLT (Senior Leadership Team), and it was not agreed. This was set out in the focused bundle at pages 172 and 173.
4. Following the provision of further and better particulars, the following issues were identified to be determined also at this Tribunal:

Did the Claimant make the alleged requests to her line managers for job re-evaluation as now alleged in her FBPs?

If so, did the Respondent treat the Claimant on those occasions less favourably than it treated or would treat others by refusing to carry out a job re-evaluation for her?

If so, did the Respondent so refuse because of the Claimant's race?
5. The Respondent's position is that only one re-evaluation request was made on 11 February 2020 by email to Susie Healey and that the Respondent did not 'refuse' that request but in fact considered and in due course approved it.
6. The Claimant joined the Civil Service in response to an advertisement, and following a formal application process, she was appointed through the Fast-Track Apprenticeship scheme as a Digital Engagement and Policy Business Administrator at Grade B1, equivalent to 'EO' (Executive Officer), on 14 September 2015. She subsequently secured a post within the Government Digital Service in the Standards Assurance Team from early December 2015, at the same salary and grade. Her initial performance management review in March 2016 was positive.

7. The Tribunal previously found that the two main roles of the Standards Assurance Team were to ensure that Government departments followed the correct digital strategy and to provide support, with the overall aim of achieving costs savings. Prior to the engagement of the Claimant, the task of gathering evidence and providing calculations of costs savings from departments had been given to individuals whose job title was 'Digital and Technology Advisor'.
8. The Tribunal found that the Claimant's role included gathering costs-savings information but also comprised general administrative tasks, such as keeping on top of information relating to technology and digital spend enquiries from government departments, providing administrative support to the assessment managers and supporting the GOV.UK role with administrative tasks and intermittent cover.
9. At the end of 2016, the Claimant completed her apprenticeship and was taken on as a substantive EO. It was also common ground at the previous hearing that one of the Digital Engagement Manager roles was vacant and that on occasion the Claimant also covered some aspects of the Service Assessment Manager role. However, the Tribunal found, that at no point did the Claimant cover the full duties of the Digital Engagement Manager role. It accordingly rejected her contention that her work at the relevant time was comparable to the substantive Digital Engagement Managers (whose roles were graded at HEO level).
10. The Claimant was successful in due course in securing an evaluation of her role at the HEO (B2) grade in July 2020. She remains currently employed in that role. Additionally, since the re-grading, she has asserted that the evaluation ought to be retrospective, meaning that she would be owed 'back-pay' at the higher grade since the inception of her employment in 2015. She raised complaint about the job evaluation process and outcome regarding these points in January 2021. On 28 August 2020, the Claimant started these proceedings in the employment tribunal.

The law

11. Section 13 of the Equality Act states:

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.

12. The EAT set out the law within their determination of the Claimant's appeal and it is repeated below:

The House of Lords has considered the test to be applied when determining whether a person discriminated "because of" a protected characteristic. In some cases the reason for the treatment is inherent in the Act itself: see *James v Eastleigh Borough Council* [1990] IRLR 572. The council's motive, which had been benign, was besides the point. In that case the council had applied a criterion, though on the face of it gender neutral in that it allowed pensioners free entry, was inherently discriminatory because it required men to pay for swimming pool entry between the ages of 60 and 65 whereas women could enter the swimming pool free of charge. Sex discrimination was thus made out. In cases of this kind what was going on in the head of the putative

discriminator - whether described as his intention, his motive, his reason or his purpose, will be irrelevant.

13. If the act is not inherently discriminatory, the Tribunal must look for the operative or effective cause. This requires consideration of why the alleged discriminator acted as he did. Although his motive will be irrelevant, the Tribunal must consider what consciously or unconsciously was his reason? This is a subjective test and is a question of fact. See *Nagarajan v London Regional Transport* [1999] 1 AC 502. See also the judgment of the Employment Appeal Tribunal in *Amnesty International v Ahmed* [2009] IRLR 884.

Comparators

14. For the purposes of direct discrimination, section 23 of the Equality Act 2010, provides that on a comparison of cases there must be no material difference between the circumstances relating to each case. In other words, the relevant circumstances of the complainant and the comparator must be either the same or not materially different. Comparison may be made with an actual individual or a hypothetical individual. The circumstances relating to a case include a person's abilities if on a comparison for the purposes of section 13, the protected characteristic is disability.
15. In constructing a hypothetical comparator and determining how they would have been treated, evidence that comes from how individuals were in fact treated is likely to be crucial, and the closer the circumstances of those individuals are to those of the complainant, the more relevant their treatment. Such individuals are often described as "evidential comparators"; they are part of the evidential process of drawing a comparison and are to be contrasted with the actual, or "statutory", comparators; see, *Ahsan v Watt* [2007] UKHL 51.
16. Whether there is a factual difference between the position of a claimant and a comparator is in truth a material difference is an issue which cannot be resolved without determining why the claimant was treated as he or she was; see: *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337.

Documents

17. The Tribunal had before it the following documents:
 - a) the focused bundle;
 - b) the original hearing bundle;
 - c) the original witness statement bundle;
 - d) The supplementary witness statement bundle;
 - e) the claimant's supplementary bundle.

Tribunal findings and conclusions

18. The Tribunal were asked to consider the failure to follow the following processes:

The Performance Management structure, including End of Year and Mid-Year marking, and bonus awards;

Temporary Duty Allowance ("TDA");

Promotion;

JEGs evaluation.

19. We accept that these were separate processes that required different policies/avenues to be followed. The Claimant also accepted in cross-examination that each of these were separate matters and processes.
20. We were referred to the relevant policy documents which explained that 'Job Evaluation and Grading Support' (JEGS) was available in one of four situations, namely on creation of a new post, when a manager considers that the requirements of an existing post had changed significantly, when internal restructuring has significantly altered a post and where a member of staff requests their post be evaluated because they consider it sits more appropriately in a different pay band. In respect of the latter scenario, the policy states: 'the line manager must agree to this.' The process itself involves completion of a form and provision of information. The Tribunal was also taken to the good practice guide and a handbook which are consistent with the policy.
21. The Claimant raised a grievance in October 2019. In February 2021, the Claimant was sent a letter detailing the outcome of her grievance which stated:

"I note that a JEGS process has been completed, with the outcome that your role should be re-graded to a higher grade. However, I concur with the finding in Simon Dadd's [the investigating officer's] report that it is not possible to accurately determine at which point the role would have ceased to have been correctly graded, and I am therefore not able to make a determination on the aspect of your complaint where you request back-pay. However, I consider that the business unit would be well-placed to make this judgement, and I recommend that GDS managers investigate the point at which your job ceased to be correctly graded."
22. We also satisfied ourselves that the only reference to a request for job evaluation in the Particulars of Claim is one in which the Claimant alleges she made during a meeting which took place on 16 December 2019 to discuss her performance management grievance.
23. The Claimant states that she was told by Ms Healey that she could submit a job evaluation request form in February 2020 and complained that Ms Healey's response was delayed deliberately. The particulars of claim also referred to a subject access request, which the Claimant made of the Respondent, which she says revealed documents that indicated Chad Bond, the Deputy Director, had acknowledged that the role I have been carrying out is higher than the grade and that she had been categorised at and paid for 4 years and 9 months. She also submitted that: 'On 22 May 2020 there was an email conversation with Chad Bond confirming that the role I do is above my grade.'

24. The Tribunal was referred to the comment of Thom Beckett made in the Claimant's performance review for the reporting year 2020/2021 in which he stated:

"The regrading of her job is a good reflection of the level of work she has done, and I wish her well as she has the opportunity to apply for that job permanently. Overall, I agree an 'achieved' marking at HEO grade, bearing in mind she's been formally at that grade for six months, and that there's recognition that the job was actually at that grade prior to that point."

25. We have borne in mind that the Claimant was acting as a litigant in person at the time she issued her claim, however, there was no reference in the pleaded claim that the Claimant had 'made several informal requests' to management over time for her job to be re-evaluated, formally or informally. In her summary of claims, she did not suggest that she has been subjected to race discrimination by having requests for re-evaluation of her role ignored, mishandled or refused. Nor did she allege that the response to her request for job evaluation made during the grievance meeting on 16 December 2019 was an act of discrimination.
26. The Claimant's case now is that her line manager, Tim Marcus, (and others) knew that she had made repeated requests to have her job re-evaluated which were ignored due to her race.
27. The Claimant in her subsequent statement helpfully sets out that she had requested job evaluation throughout the course of her employment as she felt that the work was above her pay grade.
28. In her evidence, she stated that the grievance email of 3 October 2019 was her requesting a job evaluation. That her email of February 2020 was her 'chasing the outcome' of the job evaluation request which she had made in October 2019.
29. We considered that it was relevant that at no point in her first witness statement did the Claimant address the grievance investigation meeting on 16 December 2019. She gave no evidence in that statement that supported her position that she requested a job evaluation at that meeting.
30. There were no other documents which were said by the Claimant to contain a job evaluation request other than the email of 3 October 2019. The Claimant at no point prior to this matter being remitted and indeed during the hearing gave any specific details as to when she had made her job evaluation requests, nor did she say what the response, if any, had been.
31. We found that having heard the oral evidence that it remained inherently vague and were not persuaded that any other requests had been made. We considered that the claimant was very articulate in her discussions with her line managers in respect of explaining her position and the consideration of her working additional duties and what she wanted in respect of acknowledgement. We did not find any evidence within the minutes of the meetings or any of the documentation that corroborated what the claimant was saying that she had made several requests.
32. The original tribunal considered whether the Claimant's allegations of discrimination as to TDA, the End-of-Year Mark, and promotion evidenced any discrimination. The

tribunal dismissed the Claimant's claims as to these, and the Respondents considered those parts of the judgment are not remitted before us.

33. There were no exceptional reasons before us to substantiate looking behind the Tribunal findings and extending beyond our remit.
34. The Respondent accepted that discussion of these matters would, in effect, involve conversations that explored the duties the Claimant was undertaking in her role.
35. The Respondent submitted and we accepted it was important to consider whether she was in fact speaking about her role generally, or about TDA, promotion, her EOY mark, or role re-evaluation and only where the last is clearly raised that the remitted Issues 6.1 and 6.2 are engaged.
36. In the Respondent's submission, they stated that it is not enough for the Claimant simply to point to general discussions about being competent to, and in fact doing, work above grade, since this could be relevant to any of the four categories - it would not be for a manager to guess which outcome the Claimant wanted in any such scenario without her being explicit.

Tribunal conclusions

Was a request made to Evans Bissessar verbally between March 2016 - March 2017 and then between October 2017 and November 2018?

37. Having heard the evidence, we found Mr Bissessar's evidence to be clear and compelling. He was clear that if such a request had been made, he would have recollected it as it would have been unusual as the Claimant was struggling throughout much of her time with him to fulfil the requirements of her current role. His evidence was that it was extremely unlikely that an apprentice struggling at her current grade would seek to be evaluated by reference to the higher standards of a higher grade.
38. The Claimant accepted in cross-examination of a positive relationship with Mr Bissessar; and had no issue with him on race and Mr Bissessar also confirmed this in his evidence to the Tribunal. We concluded and found that no request was made and further, there was no evidence of race discrimination before us. We were persuaded that Mr Bissessar considered that his relationship with the Claimant was positive and that if such a request had been made, he would have discussed the matter with the Claimant in respect of any appropriate steps that would be required.

Was an informal request made to "Timothy Marcus verbally between April 2017 and October 2017?"

39. This was not mentioned in the Claimant's original witness statement.
40. Mr Marcus is clear in his evidence that as to request to him, no such request was made in the period. We found his evidence also clear and compelling.

41. The Claimant in her original statement states that she had no 1:1 meetings with anyone. We therefore find that no such requests were made. Mr Marcus, line management of the Claimant, was covering a short period and had come to an end by October 2019, the Claimant stated to Susie Healey as recorded in the documentation that her grievance about her EOY mark was “nothing personal to Tim”. There was no evidence before us that related to race even if we had found that a request had been made and ignored.

In December 2018, following the departure of her line manager, Evans Bissessar, the Claimant discussed with Simon Everest that she was undertaking responsibilities beyond her grade.

42. We entirely accept that mentioning “undertaking responsibilities beyond one’s grade” does not amount to a request for role re-evaluations. The Claimant explained this conversation took place in December 2018 when Mr Bissessar and she considered that she was covering for his tasks. The Respondent explained that this could have been relevant to the EOY mark or seen as raising a compliant and/or relating to TDA.
43. The Claimant’s position was that she did raise this and wanted a job re-evaluation, but the Tribunal were not persuaded. We find the Claimant to be an articulate lady who was clearly able to assert her complaints. She did in fact raise other complaints such as other complaints as to her duties throughout the same period (i.e. as to TDA, promotion, EOY). The expectation is that the request for a JEGS is raised through the line manager. We do not consider that it was likely that the Claimant raised an informal request in such a manner that did not specifically request a job evaluation.
44. Having considered the Claimant’s supplementary statement we accept that it suggests strongly that what was actually discussed was TDA (because she was covering for Mr Bissessar at the time); while TDA was discussed and promised as an immediate financial measure, the underlying purpose of my request was to initiate a regrade of my role.
45. Furthermore, there was no evidence before us that even if a request had been made it was ignored on the basis of race.

Susie Healey June 2019-June 2020: in her email dated 18 November 2019, in a follow-up email on her grievance raised October 2019, the Claimant made written reference to her grading concerns.

46. We have carefully considered the email dated 18 November 2019 in the bundle titled “A formal complaint re End of Year marking”. Having carefully considered the contents and heard from Miss Healey who we found to be a fair, reasonable witness, we concluded that the complaint related to the Claimant’s performance review mark for 2018/19 – not job re-evaluation.
47. The Claimant stated that “In conclusion, the desired outcome will be as follows:

My paygrade will be adjusted back to 2017 according to all the work I have been carrying out as these tasks are over and beyond my current job title.

The mark I received for my Mid Year and End of Year Review for 2018/19 will be reviewed and re-evaluated based on all the evidence I have just enclosed to you.

This is clearly a request for (a) TDA ("my paygrade will be adjusted back to 2017"); and (b) for her EOY marking to be reviewed. It is not a request for job re-evaluation and Miss Healey could not be found to have erred in not treating it as one.

48. She also maintained that she discussed this at the grievance hearing that took place on 16 December 2019, where the Claimant specifically stated she was performing duties above her grade.
49. The Tribunal had the benefit of a full transcript of the grievance hearing of 16 December 2019. The Claimant mentions she is or has been performing duties above her grade. The meeting is lengthy in itself, but there is no specific request for job evaluation.
50. Miss Healey asks the Claimant and covering all of that work, how did it go?
51. The Claimant responded and says: "it was stressful but I did it well. I really enjoyed when I got involved with more tasks and hoped that I might get promoted or more money".
52. We accept and found that this is a reference to requesting 'more money', namely TDA. A reference to promotion is also not a reference to job re-evaluation, which is re-evaluation relates to re-evaluation of the same job and raises the possibility herself in her meeting with HR to nominate person to reassess job role. Miss Healey's requests recommend that the role is "looked at." Therefore, this is evidence of her giving careful consideration to the matter and not blocking or ignoring a request. Therefore, there is no evidence of any racial discrimination.
53. In an email dated February 2020, the Claimant reminded Susie Healey that she would like to have her role re-evaluated as previously mentioned to her. In response, Ms Healey responded that the Claimant had already made this request as part of her grievance."
54. We have looked at the email dated the 11 February 2020, and we conclude that this is the first request for job evaluation which then resulted in the filling in of the JEGS form by March 2020. The Claimant completed the form in March 2020. The Tribunal considered the circumstances at the time in respect of Covid and do not consider that there was any deliberate or unreasonable delay in dealing with the request by Miss Healey and/or others which was eventually granted and for the avoidance of doubt in our determination, we found no evidence of any decisions being related to the Claimant's race.

55. Accordingly, the claims that were remitted back to us are not well-founded and are dismissed.

Employment Judge S Iman

Dated: 07 July 2026