



EMPLOYMENT TRIBUNALS

Claimant: Mr M Hussain

Respondents: Luton Borough Council

Heard at: Watford Tribunal On: 16, 17 March 2026

Before: Employment Judge Cowen
Mr L Hoey
Mr D Sagar

Representation

Claimant: Mr Hussain (in person)

Respondent: Mr Harris (counsel)

JUDGMENT

1. The Claimant's claims for direct discrimination on grounds of race and/or religion and victimisation are dismissed.

FULL WRITTEN REASONS

1. Judgment was sent to the parties on 17 April 2026. The Claimant requested full written reasons on 20 April 2026.
2. The following Judgment contains the reasons given by the Tribunal in the oral judgment provided at the time, together with an explanation of the legal principles relied upon, in order that the parties may understand the decision of the Tribunal and the reasons why that decision was made.

Background

3. The parties did not agree a bundle of documents for use at the final hearing, despite previous applications and preparation time orders being made. The bundle had two sections, one from each party and a supplementary bundle which was unpaginated. The full bundle was over 1000 pages long, was presented to the Tribunal with no index and held together with a treasury tag. It therefore took the Tribunal extra time to find relevant documents. They also understood that the Claimant felt placed under pressure by the fact that the bundle was delivered to him a week prior to the hearing in this poor condition. An apology was received from the Respondent via their counsel.
4. The Tribunal made sure, during the hearing, that all parties and witnesses were able to find the relevant documents which they wished to refer to, despite the fact that this slowed down the progress of the hearing.
5. The Claimant was given breaks between parts of the hearing and was asked whether he was willing to continue, as he appeared nervous and anxious. He assured the Tribunal that he was ok to continue at various stages of the process.
6. Case management of the claims had been 'light' and the list of issues was described in the order of 1 October 2025 as "The principal question for determination at the final hearing (which is limited to matters of liability) will be whether the decision to pause recruitment made by Sinead McNamara was affected to any relevant degree by the claimant's race, religion or his protected act (bearing in mind the provisions in relation to the burden of proof in claims under the Equality Act 2010)". These issues were discussed once again at the start of the hearing and both parties confirmed that they understood the issues to be considered.
7. Witness statements were received from the Claimant and Ms Zaman, Ms McNamara and Mr Lambert on behalf of the Respondent. All of them provided their oral evidence and were cross examined.
8. Closing submissions were heard from both parties, before the Tribunal made their decision. A summary oral judgment was provided to the parties on 17 March 2026.

The Facts

9. The following relevant facts were found by the Tribunal. Not all facts were considered or included in this decision, as only those relevant to the issues to be decided have been included.

10. The Claimant worked for the Respondent in the past but was dismissed in 2014. He brought ET proceedings which were settled. The parties agreed that this amounted to a protected act for the purposes of a victimisation claim under s.27 Equality Act 2010.
11. In or around April 2024 the Claimant applied for a position as a Programme manager – Business & Investment. He was shortlisted on 4 May 2024 by Ms Zaman for interview, along with one other person. Ms Zaman was tasked with the recruitment process.
12. On 3 April 2024 the CEO sent out an email telling all budget holders that the council was in a financial difficulty and that only business critical spending should be authorised. He asked budget holders to consider whether the money needed to be spent in order to deliver services. If it did not, then the spending should be stopped. It is an agreed fact between the parties, which the Tribunal accepted, that the Respondent was in financial difficulty at that time.
13. Ms McNamara was Director of Inclusive Economy at the Respondent. Her role was taken up predominantly between February and May 2024 with arranging the Radio1 Big weekend which was hosted in Luton. She therefore left the running of her department to her managers, save for the matters which really needed her attention. Ms Zaman also had a role in organising the Radio 1 event, although she also continued to carry out her daily tasks, including this recruitment.
14. She had approved the position for recruitment when covering a role which was not hers, but was vacant and therefore she had the authority to approve the role.
15. When it came to her attention on 10 June 2024 that Ms Zaman was going to carry out interviews on 11 June, she told Ms Zaman that, in line with the orders of the CEO, she could not go ahead with this recruitment and the interview was then cancelled that evening by email.
16. The Claimant spoke to Ms Zaman the following day, who gave him some explanation of why it had been cancelled, but was reluctant to go into detail about it. The Tribunal considered that she failed to give the Claimant clear answers in either her call to him or the email she sent.

The Law

Direct Discrimination

17. Section 13 of the Equality Act provides 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.”

18. Section 23 of the Equality Act goes on to provide that:
“(1) On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case.”
19. In the House of Lords decision of *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11, [2003] IRLR 285, ICR 337, it was held by Lord Scott 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”.
20. The test as to whether there has been less favourable treatment is an objective one. Furthermore, 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).
21. Where there is less favourable treatment, the key question to be answered is why the claimant received less favourable treatment: was it on grounds of race/religion or for some other reason (*London Borough of Islington v Ladele* [2009] ICR 387). As Mr Justice Linden said in *Gould v St John’s Downshire Hill* 2021 ICR 1, EAT “The question whether an alleged discriminator acted “because of” a protected characteristic is a question as to their reasons for acting as they did. It has therefore been coined the “reason why” question and the test is subjective. For discrimination to have occurred, it is sufficient that the protected characteristic had a “significant influence” on the Respondent’s decision to act as it did. It need not be the sole ground for the act.
22. In *Nagarajan v London Regional Transport* 1999 ICR 877, HL, Lord Nichols said that “discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phrases, as well as subtle distinctions, are better avoided so far as possible. If racial grounds...had a significant influence on the outcome, discrimination is made out”.
23. Where there is no clear direct evidence of discrimination on racial grounds, the Tribunal will have to explore the mental processes of the alleged discriminator and draw inferences. It is for the claimant to prove facts from which a Tribunal could properly conclude that the respondent had committed an unlawful act of discrimination, and this can include the drawing of inferences (see burden of proof section below). 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.

Burden of Proof

24. Section 136 of the Equality Act sets out the relevant burden of proof that must be applied. A two-stage process is followed. Initially it is for the Claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the Respondent, that the Respondent committed an act of unlawful discrimination.
25. At the second stage, discrimination is presumed to have occurred, unless the Respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the Respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the Claimant's race. The Respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory.
26. Guidelines on the burden of proof were set out by the Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258 and we have followed those as well as the direction of the court of appeal in the Madarassy case. The decision of the Court of Appeal in Efobi v Royal Mail Group Ltd [2022] UKSC 33 confirms the guidance in these cases applies under the Equality Act 2010.
27. The Court of Appeal in Madarassy, states:
"The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that on the balance of probabilities, the Respondent had committed an unlawful act of discrimination." (56)
28. It may be appropriate, on occasion, for the tribunal to take into account the respondents' explanation for the alleged discrimination in determining whether the Claimant has established a prima facie case so as to shift the burden of proof. (Laing v Manchester City Council and others [2006] IRLR 748; Madarassy v Nomura International plc [2007] IRLR 246, CA.) It may also be appropriate for the tribunal to go straight to the second stage, where for example the Respondent assert that it has a non-discriminatory explanation for the alleged discrimination. A Claimant is not prejudiced by such an approach since it effectively assumes in his favour that the burden at the first stage has been discharged (Efobi v Royal Mail Group Ltd [2019] ICR 750, para 13).

29. It is important to remember that at all times, our focus “must at all times be the question whether or not they can properly and fairly infer...discrimination.” (Laing v Manchester City Council, EAT at paragraph 75) In addition, allegations of discrimination should be looked at as a whole and not simply on the basis of a fragmented approach (Qureshi v London Borough of Newham [1991] IRLR 264, EAT). We must “see both the wood and the trees” (Fraser v University of Leicester UKEAT/0155/13 at paragraph 79.)

Victimisation

30. Section 27 of the Equality Act provides:
“(1) A person (A) victimises another person (B) if A subjects B to a detriment because – a) B does a protected act, or b) A believes that B has done, or may do, a protected act. (2) Each of the following is a protected act: a) Bringing proceedings under this Act; b) Giving evidence or information in connection with proceedings under this Act; c) Doing any other thing for the purposes of or in connection with this Act; and d) Making an allegation (whether or not express) that A or another person has contravened this Act. “
31. If the person who carried out the detrimental act was not aware of the protected act, then there can be no victimisation (Essex County Council v Jarrett EAT 0045/15, and Deer v Walford and anor EAT 0283/10 where awareness of “some sort of legal case” was insufficient to establish knowledge).
32. The detriment does not need to be solely because of the protected act to amount to victimisation, but it does need to have a significant influence (Nagarajan v London Regional Transport 1999 ICR 877, HL). This means an influence which is “more than trivial” (Igen Ltd v Wong, above.).

Decision and Conclusion

33. This is a discrimination claim. The claimant says that the reason given for cancellation – the financial position of the council, was not the real reason. He says that it was because he was of Pakistani origin, or possibly due to his religion – as he is a Muslim, or alternatively because Ms McNamara was aware of his previous Tribunal proceedings.
34. The burden of proof is on the Claimant to prove facts from which we could at least infer that the reason was to do with his race or religion, or previous Tribunal.
35. The Tribunal have read the statements and listened carefully to the evidence provided by all the witnesses. This Tribunal finds that the Claimant has not provided any evidence to suggest that there was any link between Ms McNamara’s decision to stop the recruitment and his race or religion, or the

presenting of a previous Tribunal claim. The Claimant did not put this to any of the Respondent's witnesses in his cross examination. When asked by the Tribunal whether race or religion played any part in the decision not to continue with the recruitment exercise, all the Respondent's witnesses denied this.

36. Ms McNamara was not aware until 10 June 2024 that Ms Zaman had gone ahead with the process. The Tribunal consider that the evidence of the Respondent's witnesses was not persuasive in saying that Ms McNamara was not aware of the Claimant's name on the list of interviewees. We find that Ms McNamara and Ms Zaman had worked closely for a long time and therefore it was likely that they discussed who was being interviewed.
37. However, given that Ms McNamara had recently shortlisted, interviewed and rejected the Claimant in relation to two other posts (and the Claimant had not complained on either of those occasions of any discrimination), the Tribunal considered that there was no evidence to link her decision to cancel the recruitment to the Claimant's race or religion.
38. Ms McNamara's decision to call a halt to the process was, on balance, due to the advice of the CEO to consider carefully any spending, and/or her previous experience of the Claimant in interview.
39. The Tribunal therefore concluded that the Claimant has failed to discharge the burden of proof in this case and has failed to show us any link between the decision and his race or religion.
40. The Tribunal did not consider that the comparator raised by the Claimant was appropriate as his recruitment happened a year later after the financial position of the Respondent had altered and was for a different job requirement. It also arose as an internal recruitment and therefore was materially different from the Claimant's situation as to not constitute a suitable comparator.
41. The victimisation claim does not succeed either as there was no evidence to support the contention that the protected act was the reason Ms McNamara made the decision. It was not clear to the Tribunal that Ms McNamara was aware of the previous Tribunal proceedings at all, nor the fact that the Claimant had claimed discrimination in that case.
42. All the Claimant's claims are dismissed.

Approved by

Employment Judge Cowen
11 July 2026

JUDGMENT SENT TO THE PARTIES ON

15 July 2026

FOR THE TRIBUNAL OFFICE

Notes

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:

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