



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms C Rodgers

**Respondent:** Ministry of Defence

## JUDGMENT

1. The claimant's complaint of sex, age and sexual orientation discrimination in claim number 1800233/2022 are hereby struck out, the claimant having been given an opportunity to show cause why they should not be in the absence of any such pleaded complaints in her grounds of complaint.
2. This does not affect the other complaints brought in this claim, nor the claim pursued under case number 1806784/2021, the issues in such complaints having been identified at a preliminary hearing on 19 August 2022.

## REASONS

The claimant has been given an opportunity to show cause why complaints of discrimination on the basis of sex, sexual orientation and age ought not to be struck out on the basis that such complaints are not identified or identifiable within her grounds of complaint. This opportunity given to the claimant must be seen in the context of it coming after a lengthy discussion at a private preliminary hearing with the claimant where she was unable to articulate such complaints (at all).

The claimant struggles to contain herself and to show focus in writing. Her grounds of complaint and the submissions now made are no exception.

The claimant has been advised by the tribunal to express herself succinctly and to ensure that she does not make her own case unmanageable for her as a litigant in person or, by seeking to over plead her case, risk the primary issues of complaint she has becoming hidden or lost. The tribunal's guidance has not thus far been followed.

The context is also of the claimant having already submitted a first employment tribunal claim. The complaints extant within that claim and the current second claim were

identified by the tribunal at the same preliminary hearing. They include complaints of direct sex discrimination, discrimination arising from disability, a failure to make reasonable adjustments, harassment related to sex and disability and victimisation. These are all now proceeding to a final hearing.

This second tribunal claim was lodged after the claimant's employment had been terminated and in particular (and perhaps unsurprisingly) included the complaint of unfair dismissal and that the act of dismissal amounted to victimisation, it being because of her raising her first tribunal complaint. It might be expected also that any second complaint included incidents which had occurred after the first complaint, but not matters already covered by the first complaint or which could have been included within that first complaint.

The tribunal provided as follows at paragraph 11 of its case management orders made at the preliminary hearing on 19 August 2022:

*"Insofar as the tribunal was able to identify any complaint of unlawful discrimination based on any other protected characteristic, these were already contained in the first tribunal claim and again contained within the Case Summary below. The complaints of sex discrimination, as articulated by the claimant today, are in respect of a witness statement made in the internal process by Mr Watkins and again already covered in the first tribunal complaint. This was after her being taken to references to her sex at pages 3 and 14 of her grounds of complaint. There was no identifiable complaint based on age and/or sexual orientation in the second claim. In the circumstances, therefore, the claimant is ordered below to show cause why the complaints in the second claim of age, sex and sexual orientation discrimination ought not to be struck out on the basis that no pleaded case is advanced in respect of any such allegations other than as already raised and identified in respect of the first tribunal complaint. Any complaint of discrimination must identify the specific act complained of, when it occurred, by whom it was conducted, explain how it related to a relevant protected characteristic and indicate where it appears in the existing grounds of complaint."*

It ordered as follows at paragraphs 19-21:

19. *"The claimant shall by 8 September 2022 write to the tribunal (copied to the respondent) showing cause why her complaints in her second tribunal claim (brought under case number 1800233/22) of age, sex and/or sexual orientation discrimination ought not to be struck out on the basis that there are no such discernible pleaded complaints in that claim.*
20. *The respondent must write to the tribunal (copied to the claimant) by not later than 22 September 2022 with their submissions, if any, on the claimant's attempt to show cause as to why the above complaints ought not to be struck out.*
21. *In the absence of the claimant seeking to show cause why the aforementioned complaints ought not to be struck out, such complaints will indeed be struck out on the basis that they are neither part of the claimant's pleaded complaint and/or are no longer being actively pursued. Otherwise, the file shall be referred to*

*Employment Judge Maidment to determine on the papers and without a further hearing whether those complaints ought to be struck out.”*

The claimant emailed the tribunal on 5 September with a further 8 page document seeking to showing why her complaints ought not to be struck out. The respondent submitted its response on 21 September 2022. The tribunal has considered both submissions.

The tribunal is seeking to understand whether there are pleaded complaints. It understands the directives of the Employment Appeal Tribunal to roll its sleeves up in the case of a litigant in person and interrogate the grounds of complaint. It is not, however, for the tribunal to invent a claim which is not there and the Tribunal’s overriding objective to deal with cases fairly and justly must guide its exercise. The tribunal is not here determining an application to amend. It is not basing its decision on any evaluation of the merits of any claim which is pleaded. That might be a further stage of consideration if a claim was identified.

### **Age discrimination**

The claimant relies on statements made at page 5 of her grounds of complaint. There she maintains that she has made this claim “because of how I have been treated, written about, and spoken to throughout a prolonged Formal Complaints process of Bullying & Harassment that I made on 18 October 2020 against Lee Moore...” She now maintains that, as part of that Formal Complaint, she raised that she felt she was prejudiced and discriminated against because of her age by Rebecca Burrows stating on the claimant’s arrival in post that she had seen “how old you are”. There is no reference to such alleged comment by Ms Burrows in the claimant’s grounds of complaint. Again, the wording of the grounds of complaint highlighted by the claimant refer to mistreatment after her having made a Formal Complaint, not about the substance of that Complaint.

Also on page 5 of the claimant’s grounds of complaint, she maintains that a subsequent witness statement provided by Lt Col Watkins referred to the claimant resenting being managed “by younger females”. The claimant maintains that this is information he must have gleaned from Ms Burrows. Indeed, the claimant says that the comment by Ms Burrows was not a one-off, but without any details provided of any other instances. Again, such information is not within the claimant’s grounds of complaint which at page 5 makes no specific allegations of age discrimination.

The tribunal would note that any complaint of age discrimination which the claimant now seeks to articulate is significantly out of time.

At page 8 of the claimant’s grounds of complaint, she refers to issues she had regarding a need to work from home as a clinically vulnerable individual during the coronavirus pandemic. The complaint centres on Lt Col Moore. The tribunal notes that she already has within her claims that are proceeding complaints of discrimination arising from disability, a failure to make reasonable adjustments and harassment which relate to the alleged treatment of her by Mr Moore in the context of home working. The claimant at page 8 refers to Mr Moore’s alleged management failings being for reason of “incompetence, negligence, discrimination and a military mindset of being intolerant to

criticism, challenge, complaint, the weakness and vulnerability of a middle-aged woman at home shielding because of medical conditions during a pandemic.” The tribunal is within this unable to identify a pleaded claim of age discrimination. The claimant appears to be describing herself as a middle age woman at home shielding because of medical conditions and asserts that Mr Moore was intolerant to her. The complaint is that she was not enabled by Mr Moore to work from home. The tribunal cannot from the claimant’s pleaded case identify an allegation that he did not enable her to work from home because of her age, if indeed that is the nature of the age discrimination complaint the claimant is now seeking to articulate and pursue in this second tribunal complaint - the tribunal does not know whether that is her complaint.

The claimant maintains that she was at a higher risk of the effects of Covid because of her age and, if she had been younger, she would have been at work. That is a factual assertion but not the basis of a claim of age discrimination.

At page 10 of the grounds of complaint, the claimant asserts that she was put at risk by being required to attend work, referring to herself as “being clinically vulnerable and my age then being 56.” Again, in common with much of what the claimant seeks to raise in her second tribunal claim, this would have been expected to have been included in her first claim and, as already referred to, a number of complaints are included relating to her not being enabled to work from home. In any event, no discernible complaint of age discrimination is contained within the extracts at page 10 which references the alleged impact of the respondent’s conduct on her and comes closest, if anything, to perhaps articulating a complaint alleging a failure to make reasonable adjustments (a complaint of disability rather than age discrimination) which is already within the claims identified in the first tribunal complaint. The tribunal would be overstepping its permissible role if a complaint of indirect age discrimination was said to be identified, the constituent parts of which are simply not sufficiently pleaded.

At page 11 the claimant refers to the severe impact of the situation on her as set out in more detail in her first tribunal complaint. That is a reference indeed to an alleged impact, rather than the basis of a claim of age discrimination that is said to have led to that impact.

At page 12 the claimant refers to a witness statement made by Mr Watkins and Ms Burrows indicating a hostile environment towards her and discrimination. There is no discernible complaint of age discrimination within those words. The claimant does not within her pleaded case highlight any comments within those witness statements (as she now seeks to do) indicative of a hostile environment towards her and/or discrimination because of age.

At page 13, the claimant refers to herself as having just hit the menopause at the age of 53. Her referenced breakdown compounded by her menopause is an effect the alleged mistreatment is said to have had on her. The claimant now seeks to relate this to the aforementioned comment allegedly made by Ms Burrows regarding her age, but that is not within the grounds of complaint themselves.

The claimant refers the tribunal to pages 15, 18, 24 and 27 of her grounds of complaint. She has not pointed to any statement of any adverse treatment being related to her age within any of those pages. None can be discerned. In her attempt to show cause, the

claimant relates her health vulnerability to her age, but again no complaint of age discrimination is set out and it was certainly not pleaded within the grounds of complaint.

**Sex**

The claimant has not pointed to any particular words within her grounds of complaint containing a pleaded complaint of sex discrimination or any basis for the tribunal being able to give label any statement of facts with a legal cause of action. The claimant, within her letter seeking to show cause, refers to comments attributable to Lt Col Watkins already contained within the first tribunal complaint and identified as complaints of direct sex discrimination and harassment related to sex which are already proceeding to be heard at the final hearing.

**Sexual orientation**

The claimant, in her letter showing cause why the claim should not be struck out, maintains that Lt Col Watkins calling her “a clever woman” is a comment which would not have been made to a woman who was not heterosexual, as she classifies herself. She does not assist with asserting any facts which might be relied upon to show that to be the case. She also seeks to compare herself to a person who has undergone gender reassignment in a wholly new claim, not identified anywhere in her original grounds of complaint.

Employment Judge Maidment

14 October 2022