



EMPLOYMENT TRIBUNALS

Claimant: Matthew Coverley
Respondent: Ministry of Defence
Heard at: Cambridge Employment Tribunal
On: 28, 29 and 30 April, 1 and 2 May 2025
Before: Employment Judge Freshwater
Tribunal Member Mr Grant
Tribunal Member Mr Scott

Representation

Claimant: Ms L Millin (counsel)
Respondent: Mr S Crawford (counsel)

JUDGMENT having been sent to the parties on 4 June 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction

1. The claimant is Mr Matthew Coverley and the respondent is the Ministry of Defence.
2. The parties will be referred to as the claimant and the respondent throughout these reasons. Witnesses will be referred to by name.
3. The claimant's complaint is that the respondent discriminated against him by reason of race and sex contrary to section 13 of the Equality Act 2010.

Issues

4. The issues in the case were agreed between the parties. In summary, the tribunal was asked to consider if the rejection of the claimant's applications for employment in 2020 and 2022 was because of his race and/or his sex.

5. The list of issues was amended to reflect that the jurisdiction of the tribunal was not in dispute, time limits had been dealt with at an earlier hearing and that the claimant withdrew the particulars of his claim relating to his service complaint in 2023.

Procedure and hearing

6. The hearing took place remotely by CVP over the course of 5 days.
7. The tribunal was referred to a bundle of documentary evidence of 1215 pages.
8. The claimant submitted a witness statement and gave oral evidence.
9. The respondent submitted 9 witness statements, and 6 witnesses gave oral evidence. Those witnesses were: Mr Tomala, Mr Udall, Mr Aston, Mr Morris, Mr Harford and Mr Coleman. The witnesses were cross-examined in detail, with the exception of Mr Coleman whose evidence was not challenged by the claimant.
10. The tribunal received written closing submissions from both parties, which were expanded upon orally.
11. The tribunal found that the claimant's complaint of direct race discrimination was not well founded, and it was dismissed.
12. The tribunal found that the claimant's complaint of direct sex discrimination was not well founded, and it was dismissed.
13. The tribunal gave an oral judgment and reasons for the decision on the final day of the hearing. The claimant requested written reasons.

The law

14. Section 13(1) of the Equality Act 2010 states that "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."
15. Section 136 of the Equality Act 2010 deals with the relevant burden of proof:
 - "(1) This section applies to any proceedings relating to a contravention of this Act.
 - (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.
 - (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule."

Findings of fact

16. The claimant served in the Army from 28 February 1996 until 4 March 2018. He was seconded to the RAF from 2014 until 2018. He was a pilot and flying instructor. He held the rank of Warrant Officer Class 2. This means that he was not a commissioned officer.
17. The rank of pilots in the RAF is different from those in the Army. All RAF pilots are commissioned officers. Becoming a commissioned officer includes completing two phases of training, one of which the claimant had not completed.
18. The witness statement of Mr Coleman explains the different ways in which someone may be commissioned in the RAF: "Since 1 April 2013 there have been 13 means to commission in the Royal Air Force. Of these, the most common are for those with no previous service and are referred to as Direct Entry. After this is the Internal Commissioning Scheme for those already serving as enlisted personnel. Those serving in other forces are Transfers, those that served previously seeking return are referred to as Re-Joiners and those that have no previous service but have acquired skills that the Service requires are termed Lateral Entry. These categories are distinct and follow different and discrete recruitment processes."
19. Mr Coleman went on to explain: "When Transfer, Re-Joiner and Lateral Entry applicants apply for an RAF Commission, they complete an online application form which requires disclosure of previous service in the Armed Forces and their skills. They sit separately from Direct Entry candidates. It has been normal policy for Warrant Officer 2nd Class to require full officer training since the Claimant's applications in 2020. Only through a discrete Service need, normally urgent operational necessity, will this be waived."
20. The rules about commission are found in Air Publication 3393 ["AP 3393"]. This is found in the bundle. It can be seen on page 1083 that there is a footnote saying serving Warrant Officers may be permitted to commission via the Commissioned Officers Warrant Scheme. This is important because the claimant was not serving at the time of his application.
21. Candidates who are currently serving in the RAF may apply to commission through the Internal Commissioning Scheme ["the ICS"]. The ICS will also be used to assess the rank and seniority of re-joiners or transferees. Details of the Scheme and minimum qualifications are set out in Chapter 2, Sections 1 and 2. (See para 1304 of AP 3393).
22. In March 2020, the claimant applied to rejoin the RAF. The use of the word "rejoin" is important in this context. His application was processed by Mr Morris, who was part of the rejoiners team. That team processed applications from people seeking to rejoin the RAF or transfer from the Army or Navy.
23. The claimant's application was closed by Mr Morris. There was a dispute as to whether the claimant received notification that his application had been closed. The claimant said that he had not been informed. Mr Morris said that the online portal had been updated and that the claimant would have been prompted to log on to see a message informing him that his application was

rejected. Mr Morris also said that the claimant telephoned the rejoiners team to question the decision. We did not find this dispute to be relevant and made no finding as to whether a conversation took place. In our view, it simply is not relevant to the issues in the case. The fact is that the application was rejected regardless of whether or not the decision was effectively communicated. There could have been better communication. This is separate point to the basis of the rejection.

24. The reason for the rejection was that the Claimant did not meet the criteria outlined in the relevant Joint Service Publication ("JSP"), which serves as the policy framework for such applications. We accept Mr Morris's evidence that this was the basis for the reason recorded on the online portal which noted age and qualification.
25. The claimant applied again to join the RAF on 15 July 2022. His application was processed by Mr Harford, who worked in the Transferee and Rejoiners Team. Mr Harford determined that the claimant was in a "unique" position because of the rank he held and the fact that he had not completed phase 1 training. This meant that he could not be processed by Mr Harford's team.
26. Mr Harford sought advice from the Policy and Processing Team to determine what should be done. The Policy and Processing Team determined that the Claimant was a direct entrant for the purposes of his application. We accept Mr Harford's evidence that he was told by the Policy and Processing Team that applications for the role of pilot were not being accepted. In addition, Mr Harford says in his witness statement that the policy team also "noted that this may change in the future, and that the Claimant should wait 3 to 6 months before re-applying." Mr Harford informed the claimant of this and closed the application.
27. It was accepted by the respondent that positive discrimination had taken place within recruitment. This was explained by Mr Coleman as follows: "The positive discrimination referred to in the 2020–2021 Non-Statutory Inquiry (NSI) was confined to Direct Entry and Internal Commissioning Scheme candidates. It did not apply to Lateral Entry/Re-Joiner/Transfer candidates."

Conclusions

28. The fact of the admitted positive discrimination within recruitment in the RAF is sufficient that, in the absence of any other explanation, the tribunal could conclude that discrimination occurred. The tribunal rejects the submission that the policy of positive discrimination was never put into effect. It is very clear from the evidence before us that it was: BAME and female candidates were prioritised for the OASC and subsequent training. This was recognized publicly. The fact that it applied only to direct entry and ICS candidates is relevant because, in this case, the claimant was told he was not eligible to rejoin. In 2022, he was told that he could only apply as a direct entrant, but that applications were not being accepted. The positive discrimination policy was therefore never applied to either of the claimant's applications. The decision makers behind the policy would not have provided evidence relevant to this case.
29. It is understandable that Mr Coverley formed the view that he, also, had been discriminated against considering the publicity around the policy on

recruitment. We accept that this is his honestly held belief and that he has pursued his claim in that light. There are certainly aspects of the handling of his applications, particularly in 2020, that were not dealt with appropriately. However, we do not think that he was discriminated against because of his race or sex.

30. The reason that we are satisfied that the respondent did not discriminate against the claimant in 2020 is because we accept that the respondent could not process him as a rejoinder. This is because he was not a commissioned officer when he left service, and he was not in service. No waiver was available to him. The evidence before us is that, exceptionally, a waiver may be granted to a serving Warrant Officer 1st class. The fact that Wing Commander Dewar directed colleagues “to run it ground” does not mean that the impossible could be made possible. It simply was not permitted under the rules applicable. The phrase “Run it to the ground” means, in our view, to exhaust all options. That did not happen, because of the delays caused during the Covid-19 pandemic and sick leave from one of those dealing with the case. Given that his application was unique, more care could have been taken to explain this to the claimant at the time and to make sure he understood the options available to him (if any).
31. The 2022 application was rejected because the claimant was not eligible to be processed by the rejoining team. This was the evidence of Mr Harford, which we found to be credible. It is consistent with the evidence we have seen regarding the rules about rejoining. In addition, we note that Mr Harford administered the application promptly and communicated efficiently with the claimant. This was an example of much better handling and administration than the claimant received in 2020.
32. It is concerning that the policy team informed Mr Harford that applications for qualified pilots were not being accepted, when the evidence in the bundle is that applications were being accepted. However, in our view the fact that it was said that the claimant should apply again in 3 – 6 months is consistent with the fact that he was not being treated less favourably than a hypothetical female or BAME candidate. It is much more likely that no thought was given to the fact that, because of his age, he would not – in reality- have been eligible to apply in that way regardless of his race or sex.
33. Ultimately, the tribunal understands that this must have been an incredibly frustrating position for the claimant. He clearly had the skills and experience necessary (as he had done the job before) but the rules of rejoining meant that he simply was not eligible to join the RAF in a role that required him to be a commissioned officer. Nothing in the relevant AP or JSP policy documents demonstrates that he could be permitted to join in the role he had previously been undertaking on secondment. We are satisfied on the balance of probabilities that this was the only reason for the rejection of the claimant’s applications for employment and that the policies applied would also have been applied in the same way regardless of the applicant’s race and/or sex if their circumstances were materially the same as those of the claimant.
34. The claimant’s race and sex played no part in either rejection and both complaints are dismissed.

Approved by:

Employment Judge Freshwater

23 June 2025

REASONS SENT TO THE PARTIES ON

27/06/2025

FOR THE TRIBUNAL OFFICE