



EMPLOYMENT TRIBUNALS

Claimant: Ms C Webster

Respondent: Ministry of Defence

Heard at: Watford employment Tribunal via CVP
On: 26 September 2025

Before: Employment Judge Bartlett

Representation
Claimant: Mr Kohanzad
Respondent: Mr Feeny

PRELIMINARY HEARING RESERVED JUDGEMENT

1. The claimant's application to amend the grounds of claim dated 23 June 2025 is granted.

REASONS

2. This preliminary hearing was scheduled at the case management hearing which took place on 24 June 2025.
3. The claimant submitted her ET1 on 21 January 2025. ACAS conciliation started on 12 December 2023 and ended on 21 December 2023.
4. The claimant submitted an application to amend her claim on 23 June 2025. The respondent objects to that amendment and that is the issue that has come before me today.
5. The claimant's written application was accompanied by an amended Grounds of

claim. Unfortunately, the amended Grounds of claim was not marked up but I checked with Mr Kohanzad and he identified that the only changes were to the paragraphs from 39 onwards.

6. The original application was in respect of amending the claim to include a claim under section 47C ERA and s19 Equality Act 2010. Mr Kohanzad abandoned the application in respect of section 47C ERA and therefore the only issue before me was in relation to an amendment in respect of section 19 Equality Act 2010 which is in an amendment in respect of indirect discrimination on the basis of sex.
7. At the hearing today I heard submissions from Mr Kohanzad and Mr Feeny. They are all recorded in the records of proceedings and I will not repeat them all here.
8. I must consider this application under Rule 30 and Rule 3 of the Employment Tribunal Rules of Procedure 2024. The test to apply in relation to amendment applications has been developed through a significant number of cases the most well-known of which is [Selkent Bus Co Ltd v Moore 1996 ICR 836, EAT](#) (whose approach was itself endorsed by the Court of Appeal in [Ali v Office of National Statistics 2005 IRLR 201, CA](#)).
9. I must consider the nature of the amendment, the applicability of time limits and the timing and manner of the application. This is not an exhaustive list. The core tests is the balance of injustice and hardship in allowing or refusing the application.
10. It was not disputed that:
 - 10.1. the claimant's Grounds of claim did not identify sex discrimination until the amendment application and the discrimination originally relied on was pregnancy/maternity discrimination under the Equality Act 2010;
 - 10.2. the claimant has been legally represented by specialist employment solicitors throughout. She has not changed representation.
11. At the start of his submissions Mr Kohanzad set out that I needed to consider the usual legal issues relevant to amendment applications and also if the issues have been raised by a service complaint. The respondent did not take any point about the issues having been raised by a service complaint. Therefore, for these purposes I find that the issues that are sought to be covered by the amendment have been raised by a service complaint and no further consideration of this is necessary for consideration of the amendment application.
12. The amendment sought is to add new paragraphs 40 and 41 to the claim only. These set out the following:

40. The Claimant further claims that the Respondent applied the following PCPs:

- (a) requiring service personnel on a placement to return to their parent unit rather than remain on the placement during their maternity leave;
- (b) not providing service personnel maternity leave benefits when on an overseas placement;
- (c) disentitling service personnel who choose to remain in their placement country during their maternity leave all public funding, including that for accommodation, health care and other support during their maternity leave; and
- (d) not allowing service personnel to continue their Fellowship after maternity leave with their children if the Fellowship was not “accompanied”.

41. The Claimant contends that those PCPs put women at a particular disadvantage when compared to men, that they similarly disadvantaged the Claimant and that the application of the PCPs were not a proportionate means of achieving a legitimate aim, given that if they considered that the Claimant was on an assignment she would not have been required to return to her parent unit.

13. I note that the amended claim does not specifically make reference to section 19 of the Equality Act 2010 nor does the now paragraph 42, which was paragraph 40, set out sex discrimination. However, it is necessary to the amendment application that the amendments are considered as a section 19 Equality Act 2010 indirect discrimination on the basis of sex claim.

The nature of the amendment

14. Mr Feeny accepted that the amendment did not add any new facts but it adds a new cause of action. Mr Kohanzad agreed with this analysis.

15. I have given consideration to the recent EAT decision in *CX v Secretary of State for Justice*, [2025] EAT 114 and the established decision of *Abercrombie v Aga Rangemaster Ltd* [2013] EWCA Civ 1148. I must consider the practical impact of the amendment and in particular the scope of the substantive enquiry and future conduct of the litigation.

16. As it is accepted that the amendment does not add any new facts, I find that it does not take the parties and the tribunal into materially new factual territory but it does take it into materially new legal territory. This is because I accept the respondent's argument that it would have to provide a defence in relation to the different issues that are involved in an indirect sex discrimination case. As I will come to below, I accept that this would require it to disclose and rely on potentially substantially more documentation and one or two witnesses. It is evident that this will impose some disadvantage on the respondent with regards to disclosure, the scope of witness evidence and dealing with these issues.

17. However, I also consider that a reading of the original Grounds of Claim does on the face of it indicate that there is a potential indirect discrimination on the grounds of sex claim. Until the application to amend it has not been directly pleaded but it is also not something wholly new. I consider that there is some merit to Mr Kohanzad's submission that had the original paragraph 39 included the words "s19" this application would not be required and it is possible that the indirect claim would have been agreed in the list of issues. I accept Mr Feeny's submissions that paragraph 40 sets out the extra details about what the PCP is and that this is needed but it is also the case that it is not unusual for the PCP and other elements of the category of legal claim under the Equality Act to be conclusively identified at the case management hearing or shortly before in an agreed list of issues.
18. I consider that there is some overlap in the factual enquiry which includes but is not limited to the effect of the policy. I recognize that an indirect discrimination claim also opens up the enquiry to group disadvantage rather than disadvantage to just the claimant. Overall I consider that the new factual enquiry opened up will be limited in extent because paragraph 22 of the respondent's grounds of defence sets out its understanding of the claimant's claim which includes "*the respondent understands that the claimant is contending that respondent's actions and not agreeing to the claimant's request for her to be provided with various benefits so that she could spend her maternity leave in France constitute less favourable treatment due to pregnancy and maternity.*" Leaving aside the specific reference to less favourable treatment due to pregnancy and maternity, the first part of that extract somewhat encapsulates the basis of the indirect discrimination claim, particularly when taken with paragraph 23 of the grounds of response which sets out "*she is classified as a UK based officer who has been temporarily placed overseas.*". I find that enquiries into these matters are material to the claims already pleaded and the amended claim.

Applicability of time limits

19. Mr Kohanzad candidly said that it was a mistake on the part of the claimant's representatives that the original Grounds of claim did not specifically set out the indirect sex discrimination claim. He had picked up the case shortly before the June 2025 preliminary hearing and had immediately identified that it should have included an indirect sex discrimination claim. Therefore, he made the application to amend as soon as he could
20. The application was around 18 months out of time as the ET1 was submitted in January 2024 and the application was made in June 2025. As it is out of time, I must consider section 123 of the Equality Act 2010 and whether it is just and equitable to extend time.
21. Mr Kohanzad submitted that I should be cautious about saying that the claimant would be able to have a remedy against her solicitors in this situation. I consider that it is not just and equitable for the claimant to be penalised for the actions of her representatives in the particular circumstances of this case. I accept Mr Kohanzad's submission that as soon as he became aware he made the amendment application. In the circumstances, I consider that it is just and equitable to extend time.

Timing and manner of the application

22. In relation to the timing, in addition to what is set out above the final hearing is listed for October 2027 which is over two years from this date. The case management orders made in June 2025 have been made with allowance for this application to be decided at today's hearing. This means that if I allow the application, it will not prejudice compliance with the case management orders or put in doubt the final hearing.
23. Therefore, though 18 months is a considerable delay I consider that taking into account the overriding objective the delay does not jeopardise the case being dealt with expeditiously. I recognise that there are costs arising from this hearing because of the application. I also recognise that amendments can properly be made at any stage in proceedings as set out in the Presidential Guidance on General Case Management.
24. In relation to the manner of the application, it was made the day before the case management hearing. It was made in writing. It would have been more helpful to have an amended Grounds of claim in a marked up version but the claimant's representatives did also seek to put the issues in the correct form in the draft list of issues.

Balance of hardship and injustice

25. In terms of hardship to the respondent, the respondent will need to draft a new Grounds of resistance and it will need to defend the claim on the basis of the proposed allegations if I allow the amendment. This will require the respondent to defend an indirect discrimination claim which will require it to have documentation relating to the policy or policies and one or two witnesses giving evidence about the new issues. This gives rise to expense and complication in the claim. It also creates more issues and complexity in the claim at the final hearing and the issues for the tribunal to decide. However, these are limited in nature for the reasons I have set out above.
26. The prejudice to the claimant is that she will not be able to bring these indirect sex discrimination claims. Mr Kohanzad identified that there is case law which sets out that there can be a fine line between some direct and indirect discrimination claims. This is a case that potentially falls within that grouping. As I have set out above, I consider that a reading of the grounds of claim even without the amendments does give rise to a suggestion of an indirect sex discrimination claim from the facts as pleaded.
27. Therefore, taking into account all the factors set out above, I have decided that balancing the injustice and hardship of allowing the amendments against the injustice and hardship of refusing it, that the balance falls in favour of allowing the amendment and I allow the amendment as set out in the claimant's application of 23 June 2025.

Order

28. At the hearing, I said to the parties that if I allowed the amendment I would make a direction for the respondent to file and serve amended Grounds of resistance. I

make the following order:

The respondent is to file and serve on the claimant and the tribunal an amended Grounds of resistance within 28 days of receipt of this document.

Approved by:

Employment Judge Bartlett

26 September 2025

JUDGMENT SENT TO THE PARTIES ON

3 October 2025

.....
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:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/