Case Number: 3306470/2024.

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Keelan Swords	**v**	Ministry of Defence

Heard at: Reading (by CVP) **On:** 29 and 30 September 2025

Before: Employment Judge S George

Appearances
For the Claimant: Mr A Line, Counsel
For the Respondent: Mr L Dilaimi, Counsel

RESERVED JUDGMENT

1. The Tribunal has no jurisdiction to consider the claim because Part 5 Equality Act 2010 does not apply to the Claimant's service with the Respondent insofar as it relates to disability.

2. The claim is dismissed.

REASONS

Background

1. Following a period of Conciliation which started on 12 April 2024 and ended on 23 May 2024, the Claimant presented a Claim Form on 8 July 2024. By that he complains of disability discrimination and harassment as follows:

   1.1. Breach of the duty to make reasonable adjustments;

   1.2. Indirect disability discrimination;

   1.3. Harassment related to disability; and

   1.4. Discrimination for a reason arising in consequence of disability.

2. The circumstances of the claim arise out of his service with the Respondent which started on 1 April 2023 and is continuing. In particular, the Claimant at the relevant time was a University Officer Training Corps Cadet at the Royal Military Academy Sandhurst Headquarters. He was unsuccessful in two attempts to pass the Army Officer Selection Board Assessment (AOSB) when

he took those tests in August 2022 and October 2023. The circumstances of the claim arise from his allegation that the use of psychometric testing models in the AOSB Assessment and the conduct of the Respondent thereafter amount to unlawful disability discrimination and harassment related to disability. The Claimant was diagnosed with Dyslexia at the age of 6 years and describes his disability for the purposes of the claim as a,

> "Neurological impairment, Dyslexia / specific learning difficulty"
>
> (para 9 of the Particulars of Claim)

3. By an in time Response presented on 10 October 2024, the Respondent defended the claim including on the basis that the Employment Tribunal lacks jurisdiction to consider the complaint of disability discrimination and harassment related to disability because the effect of Schedule 9, para. 4(3) Equality Act 2010, (hereafter referred to as the "EqA") is to exclude service with the Armed Forces from the ambit of Part 5 EqA insofar as it relates to disability. They also applied for a stay pending resolution of a Service Complaint but that has now been concluded.

4. The Tribunal listed the Preliminary Hearing in public, which was ultimately allocated to me, on 13 May 2025. At the Hearing I had the benefit of:

   4.1. A joint Bundle of relevant documents (HB page 1 – 139);

   4.2. This included at HB page 132 a joint agreed List of Issues to be considered at the Preliminary Hearing in public;

   4.3. It also contained at HB page 134 a Witness Statement signed by the Claimant on 25 September 2025;

   4.4. The Claimant's Skeleton Argument prepared by Mr Line, (hereafter referred to as CSKEL);

   4.5. The Respondent's Skeleton Argument prepared by Mr Dilaimi, (hereafter referred to as RSKEL); and

   4.6. An Authorities Bundle containing the relevant Authorities referred to by both Counsel in their Skeleton Arguments, (AB page 1 – 738).

5. It was agreed between the parties that the questions for me to decide at the Preliminary Hearing in public were those set out in the List of Issues appended to this Reserved Judgment.

6. It is not necessary for the purposes of the Preliminary Hearing in public to set out full details of the underlying substantive issues. There has not yet been a Preliminary Hearing for Case Management of the underlying claim or an agreed list of the substantive issues in the case. The Particulars of Claim are at HB page 14. In broad terms the individual complaints are these:-

   6.1. The alleged breach of §.20 and 21 EqA is pleaded as a requirement to complete psychometric testing elements of the AOSB Assessment,

putting the Claimant at a substantial disadvantage compared with people who do not have Dyslexia, as he was likely to score less well because of the nature of the test, (which "assesses writing, reading and numeracy skills in only one format"). He argues that as a consequence of this he failed the AOSB Assessment and was unable to continue to complete the training course in order to be commissioned as an Officer within the Army. He argues that various adjustments to the process would have been steps that it was reasonable for the Respondent to have to take and those are set out in paragraph 56 of the Particulars of Claim.

6.2. The indirect disability discrimination complaint is based on the same alleged PCP and it is argued that people with the Claimant's disability in general would be put at the same disadvantage, (see paragraph 62 of the Particulars of Claim). The same factual basis is relied on for the reasonable adjustment complaint and the indirect disability discrimination complaint.

6.3. The Claimant sets out in paragraph 65 of the Particulars of Claim a number of particular alleged acts which are relied on as unwanted conduct for the harassment related to disability complaint.

6.4. The same conduct is relied on as unfavourable treatment for the purposes of discrimination arising from disability complaint, contrary to s.15 EqA 2010. It is said that his performance in the psychometric test was something arising in consequence of disability and that that was at least part of the reason for the conduct complained of.

Law relevant to the Issues

7. The Human Rights Act 1998 includes the following provisions:

"1.— The Convention Rights.

(1) In this Act "the Convention rights" means the rights and fundamental freedoms set out in—

(a) Articles 2 to 12 and 14 of the Convention,
(b) Articles 1 to 3 of the First Protocol, and
(c) [Article 1 of the Thirteenth Protocol],

as read with Articles 16 to 18 of the Convention.
…

2.— Interpretation of Convention rights.

(1) A court or tribunal determining a question which has arisen in connection with a Convention right must take into account any—

(a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights,
(b) opinion of the Commission given in a report adopted under Article 31 of the Convention,
(c) decision of the Commission in connection with Article 26 or 27(2) of the Convention, or
(d) decision of the Committee of Ministers taken under Article 46 of the Convention, whenever made or given, so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.

(2) Evidence of any judgment, decision, declaration or opinion of which account may have to be taken under this section is to be given in proceedings before any court or tribunal in such manner as may be provided by rules.

(3) In this section "rules" means rules of court or, in the case of proceedings before a tribunal, rules made for the purposes of this section—

(a) by the Lord Chancellor or the Secretary of State, in relation to any proceedings outside Scotland;
(b) by the Secretary of State, in relation to proceedings in Scotland; or
(c) by a Northern Ireland department, in relation to proceedings before a tribunal in Northern Ireland—

(i) which deals with transferred matters; and
(ii) for which no rules made under paragraph (a) are in force.

3.— Interpretation of legislation.

(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

(2) This section—

(a) applies to primary legislation and subordinate legislation whenever enacted;
(b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and
(c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

4.— Declaration of incompatibility.

(1) Subsection (2) applies in any proceedings in which a court determines whether a provision of primary legislation is compatible with a Convention right.

(2) If the court is satisfied that the provision is incompatible with a Convention right, it may make a declaration of that incompatibility.

(3) ….

(5) In this section "court" means —

(a) the Supreme Court;
(b) the Judicial Committee of the Privy Council;
(c) the [Court Martial Appeal Court;
(d) in Scotland, the High Court of Justiciary sitting otherwise than as a trial court or the Court of Session;
(e) in England and Wales or Northern Ireland, the High Court or the Court of Appeal [;]
(f) the Court of Protection, in any matter being dealt with by the President of the Family Division, the [Chancellor of the High Court] or a puisne judge of the High Court.

…

Schedule 1

The Articles: section 1(3)
…

Right to respect for private and family life

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

…

Prohibition of discrimination

Article 14

1. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

8. The Equality Act 2010 (hereafter the EqA) includes the following provisions:

Part 5 WORK: Chapter 4 SUPPLEMENTARY

83 Interpretation and exceptions

(1) This section applies for the purposes of this Part.

(2) *"Employment"* means—

(a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;

(b) Crown employment;

(c) employment as a relevant member of the House of Commons staff;

(d) employment as a relevant member of the House of Lords staff.

(3) This Part applies to service in the armed forces as it applies to employment by a private person; and for that purpose—

(a) references to terms of employment, or to a contract of employment, are to be read as including references to terms of service;

(b) references to associated employers are to be ignored.

…

(11) Schedule 9 (exceptions) has effect.

…

120 Jurisdiction

(1) An employment tribunal has, subject to section 121, jurisdiction to determine a complaint relating to—

(a) a contravention of Part 5 (work);

(b) a contravention of section 108, 111 or 112 that relates to Part 5.

…

121 Armed forces cases

(1) Section 120(1) does not apply to a complaint relating to an act done when the complainant was serving as a member of the armed forces unless—

(a) the complainant has made a service complaint about the matter, and

(b) the complaint has not been withdrawn.

…

Schedule 9 WORK: EXCEPTIONS
para. 4 Armed forces

4 Armed forces

(1) A person does not contravene section 39(1)(a) or (c) or (2)(b)[or section 60A(1) by applying in relation to service in the armed forces a relevant requirement if the person shows that the application is a proportionate means of ensuring the combat effectiveness of the armed forces.

(2) A relevant requirement is—

(a) a requirement to be a man;

(b) a requirement not to be a transsexual person.

(3) This Part of this Act, so far as relating to age or disability, does not apply to service in the armed forces; and section 55, so far as relating to disability, does not apply to work experience in the armed forces."

9. The Explanatory Notes to the Equality Act 2010 say the following about Sch.9 para.4(3):

"Armed forces: paragraph 4

Effect

797. This paragraph allows women and transsexual people to be excluded from service in the armed forces if this is a proportionate way to ensure the combat effectiveness of the armed forces.

798. It also exempts the armed forces from the work provisions of the Act relating to disability and age.

Background

799. This paragraph replicates the effects of exemptions for the armed forces in previous legislation, but narrows the scope of the former combat effectiveness exception so that this applies only to direct discrimination in relation to recruitment and access to training, promotion and transfer opportunities.

Example

• Only ground close-combat roles requiring service personnel to deliberately close with and kill the enemy face-to-face are confined to men. Women and transsexual people are, therefore, currently excluded from the Royal Marines General Service, the Household Cavalry and Royal Armoured Corps, the Infantry and the Royal Air Force Regiment only."

10. The number of pages in the joint Authorities Bundle is a testament to the erudition and nuance of Counsel's arguments in this matter. Their Skeleton Arguments and oral submissions were helpful and thorough and I mean no disrespect to them if I list some only of the Authorities referred to. It is not that I disregard points made with reference to other relevant Case Law. It is simply that the following appeared to me to be most relevant to the decision I had to make. I set out the principles that the various cases establish and the reliance placed on them by the Claimant and the Respondent respectively on an issue by issue basis below.

11. The following decisions of the European Court of Human Rights (ECtHR) are referred to in these reasons:

11.1. Carson v UK (App No.42184/05) [2008] ECHR 42184/04 (AB page 215);

11.2. Denisov v Ukraine (App No. 76639/11) (AB page 296);

11.3. Fretté v France (App No. 36515/97) (AB page 177); and

11.4. Glor v Switzerland (App No. 13444/04) (AB page 235).

12. The following decisions of UK Courts and Appeal Tribunals are referred to in this decision:

12.1. R v A [2001] UK HL25 (AB page 356);

12.2. Re S (Minors) Care Order: Implementation of Care Plan [2002] 2 AC 291 UK HL (AB page 398);

12.3. Ghaidan v Godin-Mendoza [2004] 2 AC 557 UK HL (AB page 430);

12.4. Connolly v Director of Public Prosecutions [2007] 2 AER 1012 QBD (AB page 483);

12.5. R (Child Soldiers International) v Secretary of State for Defence [2016] 1 WLR 1062 QBD (Admin) (AB page 546);

12.6. R (Tigere) v Secretary of State for Business Innovation and Skills [2015] 1 WLR 3820 UK SC (AB page 565);

12.7. R (DA) v Secretary of State for Work and Pensions [2019] 1 WLR 3289 UKSC (AB page 675); and

12.8. Steer v Stormsure Limited [2021] ICR 1671 CA (referred to by Mr Dilaimi but not in the Authorities Bundle).

13. Section B of the Authorities Bundle included Reports of decisions in six First Instance Employment Tribunal cases. Both parties accepted - and indeed emphasised – that, as First Instance decisions, they were not binding on me. Different Employment Judges had reached different conclusions about whether or not the principles in Ghaidan required modification of Sch.9 para. 4(3) EqA in a variety of circumstances where an infringement of a claimant's rights under the European Convention on Human Rights (ECHR) was alleged, that provision. Two of the decisions (L v MoD and Pons v MoD) are under Appeal and will be considered by the EAT at a Hearing in October 2025.

14. Counsel took me through several of the decisions in greater or lesser detail. It is clear that they are all decisions made on their own facts. Not all of the claims involved complaints of disability discrimination (the complaint this Claimant seeks to bring against the Ministry of Defence), some were age discrimination complaints. It seems to me that whether or not the exclusion of the right not to suffer age discrimination is or may be justified, involves different considerations to whether or not the exclusion of the right to claim disability discrimination is likely to be justified.

15. My fellow Employment Judges set out succinct summaries of the relevant Law but with all respect to them, when applying principles laid out in binding authority to the facts of the instant case, there is no substitute for the words of the relevant Judgments themselves. In one respect Mr Delaimi adopted the clarity of the description of the propositions in the Ghaidan (Gregory paras. 29 – 30, AB page 48). He also adopted the submissions of Mr Fetto KC recorded in paragraph 65 of the decision in L (AB page 96).

16. To that extent it can be helpful to read the way in which different cases with different allegations have been analysed by other Employment Judges and where the parties have adopted phraseology used in other cases as the basis of their submissions, then of course I take that into account. However, I decide the issues in this case based upon the applicable Law and the facts and circumstances of these complaints.

Relevant Factual Background

17. I have not heard any oral evidence and am not making any findings of fact. The Claimant provided a Witness Statement and Mr Dilaimi confirmed that, for today's purposes, the contents were not challenged, so he did not need to cross examine the Claimant. The following is a brief summary of the context to the claim as described by the Claimant.

18. From 19 years of age until 5 June 2024, (when he was 23 years old) the Claimant was an Officer Cadet in the University of London Officer Training Corps and was a Group B Reservist. He started at Sandhurst in April 2023 having successfully completed half of the Reserve Commission Course between October 2019 and July 2021. In order to proceed to complete the 44 week Regular Officer Commissioning Training Course, the Claimant was required to pass the AOSB. He explains that he has always have assistance and support during exams throughout his education because of his Dyslexia. This has included additional time within an examination, a calculator, a laptop to record notes rather than hand writing and extra paper. The account of his educational achievements in paragraph 29 of the Particulars of Claim evidence strong educational results. One of the matters of which he complains is that the psychometric test took a narrow approach to make a conclusive determination of his intellect, which he argues is not justified when set aside evidence of his academic achievements and suitability for training as an Officer.

19. His long standing ambition has been to become an Officer in the British Army and the failure to pass the AOSB Assessment in his case, led to a decision that he should not progress. He has been told that he cannot take the AOSB Assessment for a third time.

20. He has produced a copy of his Service Complaint Form in which he describes being subjected to treatment since the second time that he failed the AOSB Assessment. In particular, he describes the upset at being labelled,

> "polite but intellectually challenged"

and

> "significantly below the standard required for an Army Officer"

which he describes as undermining all of his academic and Military achievements within the OTC. He continues,

> "My self-esteem and self-worth were undermined within my peer and social circles, however, the single most detrimental impact was that it took away my childhood dream and the vision of becoming an Officer within the British Army which had been supported and encouraged and supported every single step of my development outside and inside the Army."
>
> (HB page 81)

21. The Claimant also describes how his reaction caused concern to his family, meaning that his father travelled to Sandhurst to support him upon hearing the news.

22. The Claimant describes how this has continued to affect him through his career as a Soldier. He continues to be engaged in the British Army and describes in paragraph 13 and 14 of his Witness Statement how he is praised for his contribution in his current role and on particular deployments and has even been asked whether he should apply to become an Officer, which he finds embarrassing and upsetting. He states that he recently completed his Junior non-Commissioned Officer Course, finishing in the top third.

23. The Claimant's evidence also set out what he understood to be the prospects of deployment when he was in a position of a Reservist, as he was at the time he took the AOSB. He cites from the Reserve Land Forces Regulations 2016 but was not challenged in his evidence that whether or not he passed the AOSB Assessment, he was not eligible for deployment into a theatre of operation. He states that this is because he was an Officer Cadet serving with Group B Units and, as he had not completed Phase 2 Training, he was not eligible for mobilisation. He argues that had he been permitted to pass the AOSB stage, he would have not been eligible for mobilisation until he moved into a Group A Unit and completed Phase 2 Training, when many other opportunities would have been available to assess his suitability for deployment in the capacity of an Officer.

24. Furthermore, he gives evidence that there is a waiver described as a "Presidential Risk Pass" which can be given to a Candidate at the AOSB stage if certain aspects of performance have fallen below the required standard but there are discretionary grounds, in the Army's view, for allowing them to progress with the Officer Training Corps. He concludes from the existence of this Pass that the AOSB is not viewed as decisive to whether the individual is suitable to be deployed as an Officer and therefore should not be viewed as critical to assessing combat effectiveness.

Discussion and Conclusions

25. List of Issues (or LOI) 1 asks the question whether Sch. 9 para. 4(3) EqA means, on its face, that the Tribunal did not have jurisdiction to consider the

Claimant's claim. I am satisfied that, on its face, it does bear that meaning. Although Sch. 9 para. 4(3) states,

> "This Part of this Act, insofar as relating to age or disability,"

it is plainly a reference to Part 5 of the EqA rather than to Part 1 of Schedule 9 of the EqA. I accept that, in other places, the Part which is excluded from operation, is specifically numbered. However, Sch. 9 is headed "Work: Exceptions" and it is brought into effect by s.83 EqA which is the interpretation section for Part 5. Furthermore, the Child Soldiers International case, in which Kenneth Parker J considered whether this paragraph was incompatible with the Framework Directive (Counsel Directive 2000/78/EC) is relevant here. In paragraph 7 and 8 of the judgment, Kenneth Parker J describes Sch. 9 as setting out exceptions to Part 5 and described there as being a clear link between the Framework Directive and Part 5 EqA.

26. Child Soldiers International was described by Mr Dilaimi as binding authority. In his paragraph 14 he stated it as authority for the exemption being lawful. I consider that it is binding authority that the exemption in Sch. 9 para 4(3) is not contrary to the EU Framework Directive. The question of whether the exemption is contrary to the ECHR was not the subject of the judgment in Child Soldiers International. However, I consider that the judgment of Kenneth Parker J is authority that Sch. 9 para 4(3) disapplies Part 5 where it has effect, which conclusively deals with the question of any ambiguity of draftmanship.

27. I emphasise that although I do not consider Child Soldiers International to be determinative of the issue before me, the reasoning of the Learned Judge is informative for ways I shall explain later in these Reasons.

28. I therefore answer question 1 on the page HB page 132 in the affirmative. On the face of it the Tribunal does not have jurisdiction to consider the Claimant's claims because of that exemption. I need to go on to consider the separate elements in LOI 3 in order to answer the questions in LOI 2.

Does the Claimant have a status that is recognised by Article 14 ECHR?

29. As the Claimant points out (CSKEL para. 22), Article 14 ECHR does not expressly include disability in the non-exhaustive list of grounds on which discrimination in exercised of convention rights is unlawful. However, disability falls within "other status": Glor v Switzerland.

30. The Respondent has not made a formal admission in the proceedings that the effects of Dyslexia on the Claimant mean that he was disabled within s.6 EqA at the relevant times. For that reason, Mr Dilaimi explained that the Respondent was not in a position to concede disability status for the purpose of the Preliminary Hearing in Public. However, the Respondent conceded that the Claimant had "other status" within the meaning of Article 14 ECHR.

31. Given the stance that the Respondent has taken and the limited scope of enquiry of this Preliminary Hearing, I accept that the Claimant has "other status" which is recognised by Article 14 ECHR. The issue of whether the Claimant was and is disabled within s.6 EqA remains live.

Are the circumstances of the case within Article 8 ECHR?

32. It was accepted on behalf of the Claimant that Article 14 ECHR is not a free standing provision. It protects against discrimination in the enjoyment of other convention rights. However, it was argued that there is no requirement to establish that a substantive convention right (a tier, a right to respectful private family life under Article 8), has actually been violated,

> "It is necessary but it is also sufficient for the facts of the case to fall "within the ambit" of one or more of the convention Articles":
>
> (Carson v United Kingdom paragraph 70)

33. Mr Line continued by saying that Article 8 has been interpreted widely, in particular in Denisov which he analysed in CSKEL para. 15. This was in the context of whether issues relating to employment can fall within the ambit of Article 8. He pointed to paragraphs 100 – 101 of Denisov arguing that the notion of "private life" does not exclude activities of a professional or business nature:

> "Professional life is therefore part of the zone of interaction between the person and others which, even in a public context, may, under certain circumstances fall within the scope of "private life" (…)
>
> Within the employment elated scenarios involving Article 8, the Court has dealt with different types of cases. In particular it has dealt with discharge from Military Service (see Smith and Grady v the United Kingdom …), dismissal from Judicial Office (…), Removal from administrative functions in the Judiciary (…) and transfers between posts in the public service (…). Other types of cases have concerned restrictions on access to employment in the public service (…), loss of employment outside the public service (…) and restrictions on access to a professional in the private sector (…)."

34. The particular matters relied on as causing the facts of this case to fall within the ambit of Article 8 are the deeply held and long standing nature of the Claimant's ambition to become an Officer in the Army, which it was argued was part of his identity and had influenced important choices he had made in his life. Although he remains in the Army it was argued that his inability to progress to become an Officer, in the absence of what he argues to be reasonable adjustments to the AOSB, limits what he can achieve, curtails his ambition, and affects his relationships inside and outside of the Army. There is reference to the Claimant's stated huge disappointment, upset, annoyance and frustration and to the way that that is described in the Service Complaint. The Claimant argues that his self-esteem and self-worth were undermined within his peer and social circles. In oral argument I was also urged to take into account the ongoing frustration and embarrassment when he receives career development advice

when performing well, that he might consider applying to be an Officer but has to explain that that path is closed to him.

35. Denisov analysed the cases where the ECtHR had applied Article 8 to the exercise of professional functions in the passages quoted above in para.33. The Court continued at paragraph 102,

> "In the cases falling into the above–mentioned category, the Court applies the concept of "private life" on the basis of two different approaches: (α) identification of the "private life" issue as the reason for the dispute (reason-based approach) and (β) deriving the "private life" issue on the consequences of the impugned measure (consequence based approach)."

36. The first of these applies when,

> "Factors relating to private life were regarded as qualifying criteria for the function in question and when the impugned measure was based on reasons encroaching upon the individual's freedom of choice in the sphere of private life."
>
> (para. 103)

37. The parties agreed that in the present case the "function" or the "impugned measure" under consideration is the Sch. 9 para. 4(3) exemption or derogation.

38. The alternative approach is the consequence-based approach which is that an issue under Article 8 may arise

> "Insofar as the impugned measure has or may have serious negative affects on the individual's private life"
>
> (para. 107 of Denisov)

39. However, in the case of the consequence-based approach, there is a minimum level of severity of the alleged violation required in order to identify whether an issue under Article 8 arises. In that regard Mr Dilaimi pointed to Denisov para. 116 and the description in relation to the consequence – based approach that,

> "It is for the Applicant to show convincingly that the threshold was obtained in his or her case. The Applicant has to present in evidence substantiating consequences of the impugned measure. The Court will only accept that Article 8 is applicable where these consequences are very serious or affect his or her private life to a very significant degree."

40. Mr Line countered by arguing that, in the present case, the underlying reasons for the impugned measures meant that a private life issue arose. He also reminded me that the Claimant is not before me seeking to prove an infringement of Article 8 but rather that his claims engage Article 14, (see paragraph 17 of CSKEL and the reference to Fretté v France paragraph 31). All that was needed, he argued, was that the circumstances of the case were

linked to the exercise of Article 8. He also argued that the reason for the derogation was very closely linked to disability.

41. The reason for the Sch.9 para.4(3) derogation is something which requires further consideration on LOI 3e, whether the treatment was objectively justified. The Respondent has put forward no evidence to explain the reason for the exemption, which was a legislative provision which came into force in 2011. They rely on the Explanatory Note and the Judgment in Child Soldiers International to explain the reasons for it. Para. 4 of Sch. 9 also contains an exemption of a more limited nature in respect of women and transexual people (which was the terminology used in the EqA) allowing them to be excluded from service in the Armed Forces,

> "If this is a proportionate way to ensure the combat effectiveness of the armed forces".

The example in the Explanatory Note explains the limits in practical terms of this exemption.

42. Paragraph 798 of the Explanatory Note simply states that the Armed Forces are exempt from Part 5 relating to disability and age. It does not explain the reasons for that derogation.

43. Child Soldiers International was a Judicial Review claim in which the High Court considered Article 3(4) of the Framework Directive. That is a exemption from the principle of equal treatment which provides,

> "Member States may provide that this Directive insofar as it relates to discrimination on the grounds of disability and age, shall not apply to the armed forces."

44. That derogation was explained in Recital 19 to the Framework Directive as being,

> "In order that the Member States may continue to safeguard the combat effectiveness of their armed forces, they may choose not to apply the provisions of this Directive concerning disability and age to all or any part of their armed forces. The Member States which make that choice must define the scope of that derogation."

45. This was described by Kenneth Parker J in Child Soldiers International as,

> "An unqualified and unrestricted power not to apply the Directive to the armed forces",

and that the words in the Recital provide the reason for the grant of the derogating power. Kenneth Parker J inferred from that that Member States were permitted to limit the extent to which the derogation should apply but that the derogation in Article 3(4) itself was unrestricted.

46. In that unappealed decision of Kenneth Parker J therefore, it was concluded that the exemption in Schedule 9 para. 4(3) derived from a derogation in the Framework Directive which was worded to empower Member States to,

> "continue to safeguard the combat effectiveness of their Armed Forces"

by choosing not to apply the provisions of the Directive concerning disability and age.

47. In my view, the circumstances of the case are within Article 8 ECHR. The Claimant complains of being blocked from progressing through his Service to appointment as an Officer. This has affected his ability to establish and develop work relationships and I accept that it has affected his social and professional reputation, in particular within the Armed Forces.

48. The only reasons relied on as being those behind the measure are combat effectiveness. The next question is whether the circumstances I have found suggest that the impugned measure, the derogation in the Schedule, is based on reasons encroaching upon the individual's private life.

49. It was found in Child Soldiers International that the derogation was sanctioned by Recital 19 and Article 3(4) of the Framework Directive, which appears to have been incorporated into UK Law by the UK Parliament through the EqA. The reasons for the measure, insofar as can be seen from that case, are that the Parliament wanted to take advantage of a derogating power in the European legislation from which the right not to suffer disability discrimination was derived to exclude that right from those in the Service of the Armed Forces.

50. That reason was, therefore, linked to disability itself which I accept to be linked to the Claimant's private life, in his case. In his case he relies upon a neurological condition which he has had from birth, was diagnosed at 6 years of age and affects many aspects of his life and interactions with his social and professional groups.

51. Although the Claimant argues that the matter set out in CSKEL paragraph 18.2 support the conclusion that this is within the ambit of Art.8 on the reasons-based approach, with respect, those arguments appeared to be predicated on the wrong question: whether the reasons for the treatment *by the Respondent* were linked to the Claimant's private life. The question is whether the reasons for the derogation are linked to the Claimant's private life. Nevertheless, as Mr Line argues, overall I am considering whether the circumstances of the case are within the ambit of Article 8, it is not whether there has been an infringement of those rights.

52. I consider that they are because the reasons for the derogation are very closely linked to disability itself, which, in the case of the Claimant, affects many aspects of his private life. Furthermore, the consequences of the measure are that the Claimant does not have the right not to suffer disability-related acts of the kind unlawful in the field of work or professional life were he engaged in a different industry. The consequences disapplies Part 5 entirely. This relates to an aspect of the Claimant's private life because, in his case. failure to progress

through the necessary training stages has affected the workplace relationships that he has made and his sense of self-worth and self-esteem. I consider that this may reach the minimum level of severity required to come within the scope of Article 8 on the consequences-based analysis; for an individual to be excluded from a raft of rights available to people in similar situations in other fields or professions, could affect his private life to a very significant degree.

53. In any event, it is sufficient that I am satisfied that the subject matter of the disadvantage (exclusion from the right to enforce what would otherwise be alleged discrimination and harassment) concerns and is sufficiently linked to, the exercise by the Claimant of his right to a respect for private life, for it to be said that it was within the ambit of Article 8.

54. The Respondent accepts that the Claimant was treated differently from other people not sharing his status who were similarly situated and that the difference in treatment is based on his status under Article 14. Mr Dilaimi confirmed that the Respondent did not put forward positive case on those points at the start of Day 1.

Is the difference in treatment objectively justified?

55. The questions in the agreed List of Issues are based on the approach to Article 14 set out, in amongst other places, in R (DA) v Secretary of State for Work and Pensions.

56. The objective and reasonable justification question is worded as follows:

> "Does that difference or similarity in treatment have an objective and reasonable justification, in other words, does it pursue a legitimate aim and do the means employed bear "a reasonable relationship of proportionality" to the aims sought to be realised?"

57. The test was also explained by Lady Hale in R (Tigere) v Secretary of State for Business Innovation and Skills, paragraph 33 (AB page 565), which concerned the requirements of Regulations setting eligibility for a student loan. They were alleged to be incompatible with the Claimant's ECHR rights. Paragraph 33 describes the test for justification as,

> "fourfold: i. Does the measure have an legitimate aim sufficient to justify the limitation of a fundamental right; ii. Is the measure rationally connected to that aim; iii. Could a less intrusive measure have been used; and iv. Bearing in mind the severity of the consequences, the importance of the aim and the extent to which the measure will contribute to that aim, has a fair balance been struck between the rights of the individual and the interests of the community?"

58. The Claimant starts with a broad assertion that,

> "There can be no such justification in the circumstances of his case for the blanket nature of the exemption" (CSKEL para. 25).

59. The Claimant does not dispute that combat effectiveness is the legitimate aim and argues that this appears to be the limits of legitimate aim relied on by the Respondent.

60. By contrast, the Respondent points to paragraph 13(ii) of the Grounds of Response to argue that the aim relied on is wider than mere combat effectiveness. That paragraph reads,

> "The exemption under Schedule 9(4)(1) of the Equality Act is clearly intended to protect national security by ensuring that the effectiveness of the armed forces is not compromised by the necessity of complying with all aspects of discrimination law (with reference to the protected characteristics of disability and age)."

61. I presume that this is a typographical error and the reference was intended to be a reference to Sch. 9 para. 4(3).

62. The Claimant argues that this is, in effect, limited to combat effectiveness, relying upon the analysis in Child Soldiers International of the reason for the derogating power in Article 3(4) of the Framework Directive that enabled Parliament to enact the exemption. However, it does not necessarily follow that Parliament's aim was limited to the rationale provided for the derogating power when Parliament decided to enact the exemption in the terms that it chose. Besides, it seems to me that the measure falls to be justified insofar as it treats the Claimant differently on the grounds of his protected status. The original aim of the measure is informative as to the aim pursued by its remaining unaltered in the statute but if a broader aim can be evidenced, then in principle it can be adopted.

63. The challenge for the Respondent is the limited nature of evidence available as to the aim pursued. Mr Dilaimi argued that it covered operational effectiveness. He argued that the Armed Forces need to be able to act in a way that safeguards combat effectiveness and doing so at times might not be compliant with disability discrimination legislation. It was also a question of ensuring organisational effectiveness.

64. There are cases in which records of Parliamentary debates, occasionally equality impact assessments, can be put in front of a Court or Tribunal as evidence of what should be taken to have been reasons why a particular legislative provision was enacted. The Respondent has relied heavily on the Child Soldiers International case. That states that the explanation for the derogating power in Article 3(4) of the Framework Directive is found in Recital 19, which states that the reason for the derogating power is,

> "In order that the Member States may continue to safeguard the combat effectiveness of their Armed Forces."
>
> (see para. 13 of Kenneth Parker J's Judgment)

65. In principle, the aim set out in paragraph 13(ii) of the Grounds of Response might be a logical reason broader than combat effectiveness for not requiring

the Armed Forces to comply with all aspects of discrimination law, but there is no evidence that any broader reason was, in fact, its purpose. Strictly speaking, Child Soldiers International is not evidence. However, the Explanatory Notes include combat effectiveness as a reason for the qualified exemption in respect of sex and transexual people, so it appears to be widely accepted that combat effectiveness is the aim of the exemption in Schedule 9 para. 4.

66. I then need to consider whether the measure is rationally connected to that aim. In my view it is. It does not require much imagination to envisage situations where applying the full force of the Equality Act 2010 provisions about disability to service in the Armed Forces might significantly impinge on combat effectiveness. An example might be the s.60 EqA prohibition on asking questions relating to health of applicants. Imposing on the Armed Forces a requirement to consider making reasonable adjustments to the role of a soldier in front line combat could easily impinge on combat effectiveness. and therefore a measure which excludes Service in the Armed Forces entirely from the protection against disability discrimination, is rationally connected to that aim.

67. Mr Line argues that the wide ranging nature of the exemption is not rationally related to combat effectiveness (CSKEL para.30) and sought to argue that not permitting this Claimant to proceed with a claim in relation to a narrow part of the Officer Selection process, namely the AOSB psychometric test, was not rationally connected with and proportionate to the aim of combat effectiveness as it did not impact upon it.

68. That is more relevant to the next question of whether a less intrusive measure could have been used. I note at this point that neither party has argued that the test for justification of manifestly without reasonable basis was applicable in this case. I say that because that was an argument relied on by the Respondent in the case of L which is to be heard by the EAT next month.

69. The Claimant argues that the examples Mr Line puts forward in his Skeleton Argument for words which could be read into paragraph 4(3), illustrate that a less intrusive way of achieving the aim could have been used. He also points to paragraph 4(1) which rather than disapplying the whole of Part 5 to people with particular protected characteristics, provides a defence to the Ministry of Defence if they can show that their actions were a proportionate means of achieving a legitimate aim. In the context of reasonable adjustments complaints, discrimination arising in consequence of disability and indirect disability discrimination, it is hard to see how adding that form of words would alter the burden on the Respondent in any litigation and therefore alter the steps which it needed to take towards service personnel who met the definition of disability.

70. On the other hand, the Respondent argues that there is no less intrusive measure that could have been used. That is also a difficult submission to accept. For example, this Claimant has presented complaints of harassment along with other legal heads of claim. On the face of it, it is hard to see why restricting a member of the Armed Forces from complaining to the Employment Tribunal of harassment related to race or to religion or belief, is not likely to impinge on combat effectiveness but harassment related to disability is.

71. As Mr Line argues, in order to assess (as I am advised to do in Tigere) whether there is,

> "a reasonable relationship of proportionality between the means employed and the aims sought to be realised",

more needs to be understood about the extent to which the measure contributes to the aim and the Respondent's arguments in that regard have been very broad brush.

72. The Claimant seeks to narrow the focus of enquiry to the impact on him of the psychometric assessment, or rather to the effect of the derogation being that he is unable to challenge it. On the question of whether the circumstances of the case were within Article 8, it was argued strongly on his behalf that he did not have to show that there had been a contravention; he did not have to show that there had been an interference with his right to respect for private life. That is true. However, the fact that he has not set out to show there was interference with his right to respect for private life, is a relevant matter when considering the impact on him of being unable to bring an Employment Tribunal claim.

73. He argues that it is relevant to justification that passing the AOSB would not have resulted in him becoming an Officer, he was not in a category of those who could immediately be mobilised and had yet to carry out the remainder of the Officer Training Course. He argues the latter would enable a full and proper assessment of him and any impact his Dyslexia might potentially have on combat effectiveness to be undertaken. In other words, he argues that the risk to combat effectiveness of giving him reasonable adjustments so that he would have a fair chance to succeed in the psychometric test, rather than one disadvantaged by the effects of his disabilities, was negligible. He also argues that the existence of the Presidential Risk Pass is evidence that the AOSB psychometric assessment could not be regarded by the Respondent themselves as essential in all circumstances.

74. Nevertheless, the effects of the measure on the Claimant has been that he, on the face of, it is prevented from complaining to the Employment Tribunal about alleged disability discrimination which he states has prevented him, unfairly and disproportionately, from pursuing his childhood ambition to be an Officer in the British Army. Had he sought appointment to other professions such as the Civil Service or the legal profession, then he will have had that opportunity to seek redress.

75. In the present case, the Respondent has put forward no evidence about the impact on the Armed Forces of having to comply with the UK legislation on disability discrimination, or to explain why that would impact on combat effectiveness specifically. I can well imagine that it might. However, the absence of any evidence about that means that when I seek to weigh the extent to which the measure contributes to the aim of combat effectiveness and balance the undoubted interests of the Community that the Armed Forces should maintain combat effectiveness against the rights of an individual who is unable to seek redress for alleged discrimination, there is little to put on the "combat effectiveness" side of the scales. This means that the analysis

described by Lady Hale in Tigere para.33 cannot be carried out. Given that I conclude that less intrusive measures could have been used, I am not satisfied that a fair balance has been struck.

If Schedule 9 paragraph 4(3) breaches the Claimant's rights, should I apply section 3(1) of the Human Rights Act?

76. Insofar as it is possible to do so, Sch.9 para. 4(3) must be read and given effect in a way which is compatible with the ECHR rights. The Employment Tribunal is not at court within the definition applicable to Section 4 HRA and therefore, it is not open to me if I consider that the legislation cannot be read in a way which is compatible with convention rights to make a declaration of incompatibility. I note what Lord Nicholls said in Re S (Minors) (Care Order: Implementation of Care Plan) at paragraph 37 about s.3(1), he said,

> "This is a powerful tool whose use is obligatory. It is not an optional cannon of construction nor is its use dependent on the existence of ambiguity, further, the section applies retrospectively. Insofar as it is possible to do so, primary legislation "must be read and given effect" to in a way which is compatible with convention rights. This is forthright, uncompromising language."

77. However, he goes on to note in paragraph 38 that not all provisions in primary legislation can be rendered conventionally compliant by the application of s.3(1) and that Courts must be ever mindful of this outer limit,

> "The Human Rights Act reserves the amendment of primary legislation to Parliament. By this means the Act seeks to preserve Parliamentary sovereignty. The Act maintains the constitutional boundary. Interpretation of statute is a matter for the courts; the enactment of statutes and the amendment of statutes are matters for Parliament."
>
> (paragraph 39)

78. Lord Nicholls returned to this question in Ghaidan which concerned the rights of survivors of same sex partnerships to succeed to the tenancy of a flat as a member of the original tenant's family. The House of Lords read the relevant provision of the Rent Act 1977 as extending to same sex partners because they, (by a majority) considered that it was possible to do so in order to give effect to s.3 Human Rights Act. Lord Nicholls in Ghaidan said,

> "30. From this it follows that the interpretative obligation decreed by section 3 is of an unusual and far-reaching character. Section 3 may require a court to depart from the unambiguous meaning the legislation would otherwise bear. In the ordinary course the interpretation of legislation involves seeking the intention reasonably to be attributed to Parliament in using the language in question. Section 3 may require the court to depart from this legislative intention, that is, depart from the intention of the Parliament which enacted the legislation. The question of difficulty is how far, and in what circumstances, section 3 requires a court to depart from the intention of the enacting Parliament. The answer to this question depends upon the intention reasonably to be attributed to Parliament in enacting section 3.

31. On this the first point to be considered is how far, when enacting section 3, Parliament intended that the actual language of a statute, as distinct from the concept expressed in that language, should be determinative. Since section 3 relates to the "interpretation" of legislation, it is natural to focus attention initially on the language used in the legislative provision being considered. But once it is accepted that section 3 may require legislation to bear a meaning which departs from the unambiguous meaning the legislation would otherwise bear, it becomes impossible to suppose Parliament intended that the operation of section 3 should depend critically upon the particular form of words adopted by the parliamentary draftsman in the statutory provision under consideration. That would make the application of section 3 something of a semantic lottery. If the draftsman chose to express the concept being enacted in one form of words, section 3 would be available to achieve Convention-compliance. If he chose a different form of words, section 3 would be impotent.

32. From this the conclusion which seems inescapable is that the mere fact the language under consideration is inconsistent with a Convention-compliant meaning does not of itself make a Convention-compliant interpretation under section 3 impossible. Section 3 enables language to be interpreted restrictively or expansively. But section 3 goes further than this. It is also apt to require a court to read in words which change the meaning of the enacted legislation, so as to make it Convention-compliant. In other words, the intention of Parliament in enacting section 3 was that, to an extent bounded only by what is "possible", a court can modify the meaning, and hence the effect, of primary and secondary legislation.

33. Parliament, however, cannot have intended that in the discharge of this extended interpretative function the courts should adopt a meaning inconsistent with a fundamental feature of legislation. That would be to cross the constitutional boundary section 3 seeks to demarcate and preserve. Parliament has retained the right to enact legislation in terms which are not Convention-compliant. The meaning imported by application of section 3 must be compatible with the underlying thrust of the legislation being construed. Words implied must, in the phrase of my noble and learned friend, Lord Rodger of Earlsferry, "go with the grain of the legislation". Nor can Parliament have intended that section 3 should require courts to make decisions for which they are not equipped. There may be several ways of making a provision Convention-compliant, and the choice may involve issues calling for legislative deliberation."

79. Both representatives agreed that I should ask whether the interpretation urged by the Claimant requires me to adopt a meaning,

> "inconsistent with a fundamental feature of legislation"
>
> (Ghaidan paragraph 33)

80. Mr Line in CSKEL para. 35 also referred to the Judgment of Lord Millett in Ghaidan at paragraph 67. Lord Millett dissented from the conclusion of the majority of the House of Lords that the relevant provision could be amended,

67. This does not mean that it is necessary to identify an ambiguity or absurdity in the statute (in the sense of being open to more than one interpretation) before giving it an abnormal meaning in order to bring it into conformity with a Convention right: see *R v A*

(No 2) [2002] 1 AC 45, 67, 87, per Lord Steyn and Lord Hope of Craighead. I respectfully agree with my noble and learned friend, Lord Nicholls of Birkenhead, that even if, construed in accordance with ordinary principles of construction, the meaning of the legislation admits of no doubt, section 3 may require it to be given a different meaning. It means only that the court must take the language of the statute as it finds it and give it a meaning which, however unnatural or unreasonable, is intellectually defensible. It can read in and read down; it can supply missing words, so long as they are consistent with the fundamental features of the legislative scheme; it can do considerable violence to the language and stretch it almost (but not quite) to breaking point. The court must "strive to find *a possible* interpretation compatible with Convention rights" (emphasis added): *R v A [2002] 1 AC 45* , 67, para 44, per Lord Steyn. But it is not entitled to give it an impossible one, however much it would wish to do so.

68. In my view section 3 does not entitle the court to supply words which are inconsistent with a fundamental feature of the legislative scheme; nor to repeal, delete, or contradict the language of the offending statute. As Lord Nicholls said in *Rojas v Berllaque (Attorney General for Gibraltar intervening) [2004] 1 WLR 201* , 208-209, para 24: "There may of course be cases where an offending law does not lend itself to a sensible interpretation which would conform to the relevant Constitution." This is more likely to be the case in the United Kingdom where the court's role is exclusively interpretative than in those territories (which include Gibraltar) where it is quasi-legislative."

81. The Claimant also relies on the interpretations that were made in Connolly v DPP and R v A which read into the provision in question a limitation that it would not apply where the result would be a breach of a person's convention rights.

82. I was also referred to paragraphs 123 and 124 in Ghaidan from the speech of Lord Rodger where he puts forward some suggestions about how an offending provision might be read in order that the Court or Tribunal complies with its obligation under s.3 Human Rights Act. In particular, he decries attaching decisive importance to the precise adjustments required.

83. Another way of putting it was in the speech of Lord Steyn who repeated the advice that the interpretation must go,

> "with the grain of the legislation"

although he referred to there being a strong rebuttable presumption in favour of an interpretation consistent with ECHR rights and did not take the opportunity to try to formulate precise rules about where s.3 must not be used.

84. The factors relied on by the Claimant were that a "fundamental feature" would be a fundamental plank of the legislation such as the provisions relating to indirect discrimination, victimisation or the duty to make reasonable adjustments. The purpose of the legislation as a whole was to give protection to certain sectors of society and Service in the Armed Forces is treated in

general as covered by Part 5. It was argued that had the provision been a fundamental feature it would not have been in a Schedule.

85. The Respondent argued that this provision does amount to a "fundamental feature" because it is derived from the Framework Directive as explained in Child Soldiers International and therefore is a part of the entire scheme of protections designed at EU Community level. There had been an apparently deliberate choice not to include words as were in para. 4(1) and therefore it should be presumed that Parliament had made a deliberate choice to restrict the rights of those in the Armed Forces in a way which potentially conflicted with rights not to suffer discrimination on grounds of disability. He argued that it would cross a constitutional boundary and this indicated that Parliament had chosen to enact legislation in terms which were not ECHR compliant in Sch.9 para.4(3). Mr Dilaimi adopted the submissions of Mr Fetto KC in the case of L at paragraph 65 (AB page 96), where he said that,

> "Paragraph 4(3) could not be interpreted either in a manner that fundamentally changed its nature or gave rise to policy considerations that were probably a matter for Parliament."

86. Section 3 HRA creates a presumption in favour of construing a provision in a manner that is compatible with the ECHR. However, that presumption is rebutted if Parliament has exercised the right it retains to enact legislation which is not ECHR compliant.

87. I see force in the argument that the analysis of Kenneth Parker J in Child Soldiers International demonstrates that he accepted there was a deliberate choice by Parliament to enact legislation that was incompatible with the general principles of non-discrimination in the (then applicable) EU Framework Directive, but instead take advantage of a derogation open to the Member States. This is not the same as a conclusion that Parliament had intended to enact legislation which was potentially in conflict with the ECHR. However, it underlines the weight which the High Court considered had been given by Parliament to national interest which might conflict with the rights of the individual.

88. My view is that the presumption of Parliament intended to enact legislation consistent with the ECHR is rebutted in this case. I consider that the scheme of the EqA insofar as it applies to the Armed Forces should be taken as a whole. That means not regarding Sch. 9 para. 4(3) in isolation, but considering it in the context of s.83 EqA, the interpretation and exception section. By s.83(3) Part 5 is applied to Service in the Armed Forces; however that is subject to exceptions incorporated by s.83(11). I read that as a clear a choice as to the extent to which the Equality Act 2010 should apply to Service in the Armed Forces. In those circumstances, the fact that the exemption appears in Sch.9 and not in a section of the Act does not mean it is not a fundamental feature of the legislation. I consider that it is a fundamental feature of the legislation insofar as the legislation provides for application to the Armed Forces at all.

89. Parliament apparently intended in respect of those who serve in the Armed Forces (and here we are concerned with whether the Claimant should be

appointed to the rank of Officer), that prospective service personnel should not have the right not to suffer discrimination on grounds of disability.

90. To hold otherwise would, in the words of Lord Nicholls,

> "require the Courts to make decisions for which they are not equipped"

in that it is a question of where the balance should be drawn between national interest and security, the interests of the community on the one hand and the right of the individual on the other which is, in my view, a matter for Parliament.

91. In those circumstances I do not need to go on to consider what would be appropriate wording to read into Sch.9 para.4(3). Although on the basis of the evidence before me, I find that Sch.9 para.4(3) does breach the Claimant's convention rights. It is not possible to read that measure in a way which is compatible with those rights without adopting a meaning inconsistent with the fundamental feature of the legislation.

92. The consequence of my decision is that the claim the claimant seeks to bring is excluded by Sch.9 para.4(3) and the Employment Tribunal does not have jurisdiction to consider it. The claim is dismissed.

Approved by:

Employment Judge S George

Date: ……17 November 2025……

Sent to the parties on:
18 November 2025.....

.....
For the Tribunal Office.

Public access to Employment Tribunal decisions

Judgments and Reasons for the Judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal Hearing has been recorded you may request a transcript of the recording, for which a charge is likely to be payable in most but not all circumstances. 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:

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

APPENDIX

LIST of ISSUES FOR USE AT THE PUBLIC PRELIMINARY HEARING on 29 and 30 SEPTEMBER 2025

1. Does Schedule 9 paragraph 4(3) Equality Act 2010 ("EqA") mean on its face that the Tribunal does not have jurisdiction to consider the Claimant's claims?

2. If so:

    a. Do the Claimant's claims engage Article 14 of the European Convention on Human Rights ("EHCR")?

    b. If so, can Schedule 9 paragraph 4(3) be interpreted in a way that is compatible with the Claimant's rights under the EHCR?

3. In answering question 2, the Tribunal must consider:

    a. Does the Claimant have a status that is recognised by Article 14 (his disability)?

    b. Are the circumstances of the case within the ambit of another Convention right (Article 8 of the EHCR)?

    c. Has the Claimant been treated differently from other people not sharing his status who are similarly situated or, alternatively, has he been treated in the same way as other people not sharing that status whose situation is relevantly different?

    d. Is the difference in treatment based on his status?

    e. Is the difference in treatment objectively justified (in the sense of there being a legitimate aim and a reasonable relationship of proportionality between the means employed and the aim sought to be achieved)?

4. If Schedule 9 paragraph 4(3) breaches the Claimant's rights under Articles 8 read with 14 ECHR, should the Tribunal apply s.3(1) of the Human Rights Act 1998 to interpret Schedule 9 paragraph 4(3) such that it does not prevent the Claimant from pursuing his claim?