



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr X

**Respondent:** Ministry of Defence

**Heard at:** Midlands West (By CVP)

**On:** 19 to 22 August 2025

**Before:** Employment Judge Bansal

## Representation

**Claimant:** In Person

**Respondent:** Mr L Dilami (Counsel)

## RESERVED PUBLIC PRELIMINARY JUDGMENT

The Judgment of the Tribunal is that;

- (i) the complaint of disability discrimination is dismissed pursuant to Schedule 9 para 4(3) of the Equality Act 2010.
- (ii) the claimant's allegations 8, 43, 44, 45, 48, 49, 50, 51, 53, 54, & 56 in the Table of Information are dismissed. Only allegation 42 is permitted to proceed.

## REASONS

### Introduction

1. This Public Preliminary Hearing was listed to determine the following jurisdictional issues, namely,
  - (i) whether the Tribunal has jurisdiction to consider any complaint "*relating to an act done when the complainant was serving as a member of the armed forces*" unless s/he has made a service complaint which has not been withdrawn pursuant to s121 of the Equality Act 2010.
  - (ii) whether the Tribunal has jurisdiction to consider the claimant's disability discrimination claim contrary to Schedule 9 Paragraph 4(3) of to the Equality Act 2010, Part 5 ("Work") of the Equality Act 2010.
  - (iii) any jurisdictional time points raised by the respondent;

### **Background to claim**

2. The claimant commenced employment with the respondent, initially within the Royal Engineers on 12 November 2012. In September 2019 the claimant started a full-time 3 year BSc (Hons) Nursing (Mental Health) degree programme at the Defence School of Healthcare Education (DSHE), at Birmingham City University (BCU). In December 2020 the claimant was arrested and bailed for three alleged driving offences. In February 2021 the claimant was removed from the nursing degree course pending the outcome of the legal proceedings for the driving offences. At a Court hearing on 5 September 2022 the driving charges against the claimant were dismissed. On 12 May 2023 the claimant was medically discharged by the respondent.
3. Between the period from 15 August 2022 to May 2023, the claimant submitted 8 Service Complaints complaining about his treatment.
4. The claimant relies on the mental impairment of anxiety and depression. The respondent has conceded the claimant, at the material times, was disabled because of this impairment for the purposes of s6 of the Equality Act 2010.
5. The claimant started early conciliation on 8 August 2023 which ended on 19 September 2023. He presented a Claim Form on 19 October 2023 bringing complaints of unlawful discrimination namely discrimination on the grounds of race; harassment related to race; victimisation; discrimination on the grounds of disability; failure to make reasonable adjustments; and unpaid holiday pay.
6. The respondent in their response have resisted the complaints and in particular raised a jurisdictional issue asserting that some of the complaints are outside the jurisdiction of the Employment Tribunal because they were not raised in a valid service complaint in accordance with s121(1)(a) and (b) of the Equality Act 2010 ("EqA") and therefore should be struck out.

### **This Hearing**

7. The claimant appeared as a litigant in person. Mr Dilami of Counsel represented the respondent. The Tribunal was presented with a bundle of documents (1268 pages) and bundle of authorities prepared by the respondent; a Table of Information containing the allegations pursued; a draft List of Issues, and the parties written submissions.
8. The Tribunal did not hear any evidence. Both parties made oral submissions based on their lengthy and detailed written submissions.

### **Submissions**

#### **Jurisdiction to hear the disability discrimination complaint**

##### **Respondent's position**

9. Mr Dilami submitted that Employment Tribunals do not have jurisdiction to hear claims of age or disability discrimination in relation to service in the armed forces. This is the clear and unambiguous meaning of Schedule 9 Para 4(3)

EqA, which provides an unqualified and absolute exemption from Part 5 (Work) of the EqA for the armed forces in relation to the protected characteristics of age and disability. By virtue of s.108(1)(b) EqA, the Schedule 9 Para 4(3) exemption also applies in relation to conduct which occurs after a person's discharge from the armed forces.

10. Mr Dilami contended this exemption is lawful as it derives from Article 3(4) of the Council Directive 2000/78/EC on equal treatment in employment ("the Framework Directive"). Article 3(4) provides "*Member states may provide that this Directive, in so far as it relates to discrimination on the grounds of disability and age, shall not apply to the armed forces*".
12. This derogation was explained in Recital 19 to the Framework Directive as follows: "*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 part of their armed forces. The Member States which make that choice must define the scope of that derogation.*"
13. Mr Dilami referred to the High Court decision in *R (Child Soldiers International) v Secretary of State for Defence [2016] ICR 1062* . He submitted that even though this was an age discrimination case there is no basis for taking a different approach in relation to disability discrimination.
14. Mr Dilami also submitted that even if the exclusion breached the claimant's rights under the European Convention on Human Rights and the Human Rights Act 1998, any "*reading down*" of the provisions of the Equality Act 2010 would "*go against the grain*" of the legislation and is not permitted or required by the interpretative obligation in section 3 of the Human Rights Act 1998 in accordance with *Ghaidan v GodinMendoza [2004] 2 AC* .
15. Mr Dilami drew the Tribunal's attention to three employment tribunal cases, *T v Ministry of Defence (2201755)*; *Gregory v Ministry of Defence (3207239/2021)* and *Dunn v Ministry of Defence (3309378/2023)* which challenged Schedule 9 para 4(3) EqA. He correctly pointed out these cases are not binding on this Tribunal.

#### Claimant's position

16. The claimant submitted the Tribunal does have jurisdiction to hear his complaints on the basis that firstly, as from 28 October 2022 he was discharged from the armed forces therefore he was not subject to service law, and secondly the disability complaints occurred after the date of his discharge.
17. The claimant agreed the three cases referred to by Mr Dilami, were not binding on this Tribunal, however they may still provide persuasive authority. Notwithstanding this the claimant relies on the decision in *T v Ministry of Defence (2201755/2021)*. In this case the Tribunal decided that the EqA as presently drafted breached the claimant's rights under Article 8 & 14 of the ECHR because it prevented the claimant from bringing a disability discrimination claim in respect of matters that occurred after her discharge. The

Tribunal considered that s3 of the Human Rights Act 1998 required it to be interpreted to avoid the claimant from pursuing her claim.

### **The Legal Framework**

18. Mr Dilami, in his written submissions comprehensively set out the statutory provisions and relevant case law, which are repeated below.

### **Equality Act 2010**

19. Part 5 of the Equality Act 2010 relates to work and Section 39 is relevant to employees and applicants. It provides:

#### **Section 39: Employees and applicants**

- (1) An employer (A) must not discriminate against a person (B) –  
(a) in the arrangements A makes for deciding to whom to offer employment;  
(b) as to the terms on which A offers B employment;  
(c) by not offering B employment.

Section 83(3) of the Equality Act 2010 states that Part 5 applies to the armed forces subject to any exception:

#### **Section 83 Interpretation and exceptions**

83(3) This part applies to service in the armed forces as it applies to employment by a private person;

Section 83(11) of the Equality Act 2010 refers to the exceptions provided in Schedule 9 of the Equality Act 2010 that relate to work. The armed forces are included in schedule 9 at paragraph 4 which states:

#### **Schedule 9, paragraph 4(3): Armed forces**

- (1) A person does not contravene section 39(1)(a) or (c) or (2)(b) 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

20. The Equality Act 2010 explanatory notes regarding Schedule 9, paragraph 4(3) state -It also exempts the armed forces from the work provisions of the Act relating to disability and age.

### **Framework Directive**

21. Council Directive 2000/78/EC establishes a general framework for equal treatment in employment and occupation and recital 19 provides:

*“Moreover, 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 part of their armed forces. The Member States which make that choice must define the scope of that derogation”.*

### **Human Rights Act 1998**

22. The Human Rights Act 1998 section 3 regarding the interpretation of legislation provides:

#### **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.

23. Schedule 1 of the Human Rights Act 1998 includes the rights and freedoms provided by the European Convention on Human Rights and this includes:

#### **Article 8 - Right to respect for private and family life**

Everyone has the right to respect for his private and family life, his home and his correspondence.

#### **Article 14 Prohibition of discrimination**

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.

### **Analysis and conclusion**

24. In my analysis the law is clear. Schedule 9 Para 4(3) EqA clearly excludes disability and age discrimination claims from being pursued by those engaged in the armed forces during service. Further the Framework Directive 2000/78/EC recital 19 permits member states to choose not to apply the provisions of the Directive regarding disability and age to all or parts of their armed forces. This is further confirmed in Article 3(4) of the Directive

25. Despite this statutory exclusion, I recognise there has been litigation suggesting that ex-servicemen/women should be able to bring claims under the EqA. I have noted the Employment Tribunal decision of T v Ministry of Defence referred to and relied upon by the claimant. Based on that case it means that a disabled veteran might now be able to bring an EqA claim in respect of treatment after discharge (for example, delays or failures in processing a

complaint or to make reasonable adjustments) under s108 EqA. However, this is the decision of an Employment Tribunal and not a higher court which means it is not binding precedent and Tribunals are therefore not bound to follow it.

26. The claimant has also raised the argument that Schedule 9 para 4(3) EqA infringes his Convention rights under Articles 6 & 14 and therefore the Tribunal is required under s3 HRA 1998 to read para 4(3) in a way that allows it jurisdiction to permit the claim. In considering this argument I have considered two cases as referred to below.
27. Firstly, I have taken into account a recent EAT case, Ministry of Defence v Rubery (2024) In this case, the EAT held the Employment Tribunal had erred in reading down s121 EqA to allow a sex-discrimination claim about the handling of a service complaint. The EAT concluded that the domestic law (i.e EqA) could not be reinterpreted as to permit a particular kind of claim. Notwithstanding this case is subject of an appeal, it appears from this case there is resistance in the higher courts to use human rights reinterpretation to override the statutory exemption.
28. I also considered the case of Ghaidan v Godin-Mendoza (2004) 2 AC 557 SC which involved interpretation of s3 Human Rights Act 1998. The House of Lords held that s3 imposes a strong interpretive obligation allowing courts to depart from the literal meaning of legislation to achieve convention compatibility but only up to a point. The court cannot adopt an interpretation that contradicts the fundamental feature of the legislation or makes changes inconsistent with parliament's clearly expressed intention. This boundary is often described as the grain of the legislation. The court must ask, "*would the proposed interpretation run counter to the fundamental policy choice by Parliament?*"
29. In my judgment, whilst s3 imposes a strong interpretive obligation, applying Ghaidan, this duty does not permit a court or tribunal to adopt an interpretation which is inconsistent with a fundamental feature of the EqA or the grain of the legislation. Schedule 9 para 4(3) EqA represents a clear and deliberate legislative choice and is a fundamental feature of the EqA to exclude Employment Tribunals jurisdiction in respect of the armed forces. I therefore agree with Mr Dilami's submissions and conclude that s3 cannot be used to override Schedule 9 para 4(3) EqA, and that the Tribunal must respect Parliament's choice. Therefore s3 is not engaged so to allow the disability claim to proceed.
30. The disability discrimination claim is therefore struck out as having no reasonable prospect of success in accordance with Rule 38(1)(a).

## **(ii) Service Complaints**

### **Background**

31. During the period from August 2022 to May 2023 the claimant issued 8 separate Service Complaints in accordance with Regulation 4 of the Armed Forces (Service Complaints) Regulations 2015. These complaints were as follows:

- (1) Service Complaint Ref No. SR6700822 ("SC1") – 15/08/2022
- (2) Service Complaint Ref No. SR6741816 ("SC2") - 06/06/2022
- (3) Service Complaint Ref No. SR6828374 ("SC3") - 02/03/2023
- (4) Service Complaint Ref No. SR6825436 ("SC4") – 02/03/2023
- (5) Service Complaint Ref No. SR6875098 ("SC5") – 10/05/2023
- (6) Service Complaint Ref No. SR6878064 ("SC6") – 12/01/2023
- (7) Service Complaint Ref No. SR6875098 ("SC7") - 08/05/2023
- (8) Service Complaint Ref No. SR6878064 ("SC8") - 10/05/2023

32. The respondent submitted that a number of complaints in the Particulars of Claim appear not to have been raised in a valid Service Complaint ("SC") as is legally required. The complaints were either not raised in the SC or if raised were made in a SC which was ruled inadmissible by the SO.
33. The claimant submitted the complaints were either expressly or implicitly raised in a valid SC.
34. The respondent helpfully prepared a comprehensive Table of Information, setting out the 68 allegations pursued by the claimant under the headings; dates; type of claim; allegations raised in the SC's and those disputed allegations not considered to have been raised in a SC.
35. Following a lengthy discussion and consideration of the allegations in the Table of Information, the respondent disputed allegations 8,42,43,44,45,48,49,51,53, 54, and 56 on the basis that no valid SC was made or if a SC was made it did not specifically raise that particular allegation/complaint. The claimant disputed the respondent's argument and submitted that there was documentation which had not been disclosed which would show the allegation/complaint had been expressly raised. Accordingly, the Tribunal gave the claimant an opportunity to disclose the supporting documents and for the respondent to respond. From the exchange of correspondence between the parties, which was copied to the Tribunal the respondent's position remained unchanged.
36. Therefore, the Tribunal was required to determine the disputed allegations namely: 8,42,43,44,45,48,49,51,53, 54, and 56
37. The claimant disclosed further documents by email dated 8 September 2025 in support of his position. He asserted that *"he raised facts from which discrimination was inferred because of his nationality and belief which the Tribunal must consider. I was directly discriminated against by the respondent with my DOMCOL and leave because of my race as a commonwealth soldier in the British Army of Cameroonian origin."* The claimant explained the reason why he wanted to travel to Cameroon was because of the cultural significance, traditional rights, and custom. He confirmed he had been directly discriminated and unfairly treated because of his race as a commonwealth soldier in the British Army of Cameroonian origin.

### **Legal Framework**

#### **Law relating to s121 Jurisdictional issue**

38. s.120 EqA 2010

- (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.

39 s.121 EqA (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.
  - (2) Where the complaint is dealt with by a person or panel appointed by the Defence Council by virtue of section 340C(1)(a) of the 2006 Act, it is to be treated for the purposes of subsection (1)(b) as withdrawn if—
    - (a) the period allowed in accordance with service complaints regulations for bringing an appeal against the person's or panel's decision expires,
    - (aa) there are grounds (of which the complainant is aware) on which the complainant is entitled to bring such an appeal, and
    - (b) either—
      - (i) the complainant does not apply to the Service Complaints Ombudsman for a review by virtue of section 340D(6)(a) of the 2006 Act (review of decision that appeal brought out of time cannot proceed), or
      - (ii) the complainant does apply for such a review and the Ombudsman decides that an appeal against the person's or panel's decision cannot be proceeded with.
- [...]
- (5) The making of a complaint to an employment tribunal in reliance on subsection (1) does not affect the continuation of the procedures set out in service complaints regulations.
  - (6) In this section—
    - “the 2006 Act” means the Armed Forces Act 2006;
    - “service complaints regulations” means regulations made under section 340B(1) of the 2006 Act.

Service Complaint

40. Section 340A of the Armed Forces Act 2006 (“**AFA**”) states, *“If a person subject to service law thinks himself or herself wronged in any matter relating to his or her service, the person may make a complaint about the matter.”* This is defined as a ‘service complaint’.

Process for making a Service Complaint

41. The process for making a service complaint is set out in Regulation 4 of the Armed Forces (Service Complaints) Regulations 2015 (“**the Service Complaints Regulations**”).
42. Regulation 4(2)(c) of the Service Complaints Regulations provides that the statement of complaint (also known as an ‘Annex F’) must state whether any matter stated in accordance with sub-paragraph (a) [i.e. how the complainant

thinks himself or herself wronged] involved “*discrimination, harassment, bullying, dishonest or biased behaviour, a failure by the Ministry of Defence to provide medical, dental or nursing care for which the Ministry of Defence was responsible or the improper exercise by a service policeman of statutory powers as a service policeman*”.

43. Regulation 4(5) defines ‘*discrimination*’ for the purpose of Regulation 4 as “*discrimination or victimisation on the grounds of colour, race, ethnic or national origin, nationality, sex, gender reassignment, status as a married person or civil partner, religion, belief or sexual orientation, and less favourable treatment of the complainant as a part-time employee.*”
44. Some matters cannot be the subject of a service complaint. Regulation 3(2) of the Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015 provides as follows:
45. 3.– Excluded complaints
- ...
- (2) A person may not make a service complaint about —
  - (a) a decision under regulations made for the purposes of section 340B(4)(a) (admissibility of the complaint);
  - (b) a decision under regulations made for the purposes of section 340C(2) (decision on the service complaint);
  - (c) a decision under regulations made for the purposes of section 340D(2)(c) (decision relating to whether an appeal has been brought before the end of the specified period);
  - (d) a determination of an appeal brought under regulations made for the purposes of section 340D(1) (appeals);
  - (e) alleged maladministration (including undue delay) in connection with the handling of his or her service complaint;
  - (f) a decision by the Ombudsman for the purposes of any provision of Part 14A of the Act;
  - (g) the handling by the Ombudsman of a service complaint;
  - (h) a decision for the purposes of regulations made under section 334(2) whether a service complaint could be made about a matter;
  - (i) a decision under regulations made for the purposes of paragraph (b) of section 334(5) whether a service complaint, or an application referred to in that paragraph, could be made after the end of a prescribed period.
46. Regulation 5 of the Service Complaints Regulations provides that, once the statement of complaint has been received, the ‘specified officer’ must decide whether the service complaint is admissible. If the specified officer decides that the service complaint is inadmissible in whole or in part, the complainant may apply to the Ombudsman (i.e. the Service Complaints Ombudsman for the Armed Forces, often abbreviated to SCOAF) for a review of the specified officer’s decision on admissibility. Regulation 7 of the Service Complaints Regulations provides that the Ombudsman’s decision on review in relation to admissibility is binding on the complainant and the specified officer.
47. Where a service complaint is decided by the specified officer or the Ombudsman to be admissible, it is referred to the Defence Council. The

Defence Council will normally appoint a person or panel of persons to deal with the service complaint. The person or panel of persons appointed to deal with the service complaint must decide whether the complaint is well-founded and, if it is well-founded, must decide what redress would be appropriate and grant such redress: Regulation 9(2) of the Service Complaints Regulations.

48. Where a decision under Regulation 9(2) is made by a person or panel of persons appointed to deal with the service complaint, the complainant has the right to appeal to the Defence Council against that decision: Regulation 10(1) of the Service Complaints Regulations.

49. Regulation 11(1) provides that such an appeal will only be proceeded with if:

- ...
- (a) the Defence Council decides the appeal is brought on at least one valid ground under regulation 10(1); and
  - (b) the appeal is brought –
    - (i) within two weeks beginning with the day on which the complainant received notification under regulation 9(3) of the decision on the service complaint; or
    - (ii) after the end of the period stated in paragraph (i) but the Defence Council considers it is just and equitable to allow the appeal to be proceeded with.

50. Regulation 12 of the Service Complaints Regulations deals with the Ombudsman's review of a decision under Regulation 11 not to proceed with an appeal.

#### Relevant case law

51. Mr Dilami in his skeleton argument helpfully referred to a number of cases relevant to this issue. In particular, to Zulu & Gue v Ministry of Defence, (ET Case no. 2205687/2018 & 2205688/2018); Edwards v Ministry of Defence (2024) ICR 687; and Ministry of Defence v Rubery (2024) EAT 165.

52. As Mr Dilami submitted the leading authority on the question of what a service complaint requires by way of content in order to satisfy s121 EqA is the case of Edwards v Ministry of Defence. In this case, Heather Williams J held as follows:

*89. The wording of section 121 makes clear that the "matter" about which the service complaint must be made is the complaint to the Tribunal "relating to an act done when the complainant was serving as a member of the armed forces". Accordingly, I agree with the observations of EJ McNeill QC in Zulu & Gue v Ministry of Defence, Case Numbers 2205687/2018 and 2205688/2018, that section 121 requires there to be a sufficient link between the "act(s) done" that are complained of in the Tribunal claim and the content of the service complaint, but that usage of the word "matter" suggests that the requirement may be met by something more general than a complaint about the "act done".*

90. *Given the requirements of the Service Complaint Regs, the service complaint should state how a person thinks that they have been*

wronged in relation to their service; and whether the contents contain the “matter” that forms the subsequent complaint to the ET about “an act done” is to be judged in that light. I also agree with EJ McNeill’s observations that the requirements for a service complaint are not equivalent to those that apply to a pleading and that although “a significant degree of particularity is required in a service complaint, the approach to a service complaint should not be overly legalistic”. This is consistent with the purposive approach to the provision that is required.

91. *In my judgement, the question of whether the act complained of in the Tribunal claim was “the matter” raised in the earlier service complaint is to be approached in a non-technical way, by identifying the substance of the service complaint, reasonably read and assessed as a whole.*

92. *I consider that the EJ was correct to conclude that section 121 requires a complainant who subsequently brings an EQA claim, to have indicated in their service complaint that their complaint alleges discrimination and/or harassment and the protected characteristic that they rely upon, or, where the Tribunal claim is one of victimisation, that they were victimised because of some action that it can be seen is capable of amounting to a protected act. For the avoidance of doubt, and consistent with the applicable non-technical approach, the service complaint need not use the words “discrimination” “harassment” or “victimisation”; the question is whether in substance and considered reasonably in the round, this was the nature of the allegation being made. Equally, there is no need for the service complaint to refer to the relevant protected characteristic/s by the terminology used in the EQA or to use the phrase “protected act”. Again, it will depend upon the substance of what is said. By way of illustrative examples only (and recognising that ultimately it will always depend upon the variables of context and contents of the particular complaint), a sex discrimination allegation would likely to be clear from a service complaint that said of an incident “no male officer would have been treated like that”; or an allegation of race discrimination, where the complainant said they believed “it happened because I am black”. I agree with the EJ that service complainants would not be expected to distinguish between technical concepts such as “direct discrimination” and “indirect discrimination”. Nor would I expect fine distinctions between the EQA concepts of “discrimination” and “harassment” or between the various grounds comprising “race” in section 9(1) EQA to be applied to what was said in the service complaint.*

...

105. ... there is no basis whatsoever for suggesting that simply because a service complaint is made by a woman, an allegation of sex discrimination can be inferred and/or because it is made by a black soldier, an allegation of race discrimination can be inferred.

53. The guidance given in Annex F – Service Complaint Form expressly states, Regulation 5 of the Armed Forces (Service Complaints Miscellaneous

Provisions) Regulations 2015 refers to the type of conduct described below. If behaviour under one or more of the categories is alleged sections 3 and 4 of the form must be completed. It defines discrimination to mean “*discrimination on the grounds of colour, race, ethnic or national origin, nationality, sex, gender .....*”

54. The form also states “ if your complaint is about bullying or harassment, you should provide:
- a. details of who you believe is bullying or harassing you;
  - b. details of anyone who witnesses the incident(s);
  - c. the effect that the incident(s) had on you;
  - d. any attempt you have made to resolve the matter.

#### Analysis and conclusion

55. In reaching my decision I applied the statutory guidance and approach confirmed in Zulu & Gue v Ministry of Defence, and Edwards v Ministry of Defence. Each of the allegations were therefore determined as confirmed below.

#### Allegation 8

56. “Training records provided by the claimant have not been recorded between the period of 3 Feb 21 and 6 May 21”
57. This complaint is pleaded as direct race discrimination. The respondent asserted this allegation should be dismissed for the following reasons; (i) this complaint was not raised in SC1; (ii) it was raised in Annex G Form appealing the admissibility decision of SC1 which is not a valid SC; (iii) it was raised in SC4 but this was found to be inadmissible by the Service Complaints Ombudsman; (iv) the allegation was raised in SC7 but not specifically that the allegation constituted race discrimination.
58. The claimant in his email of 8 May 2025 has asserted that Mr Dilami conceded the allegation at race discrimination was made by the claimant. The Tribunal does not have a note of this concession.

#### Decision

59. I accept Mr Dilami observations, and noted the claimant covered this in SC7, stating, “*information on my TRC automatically disappeared and there is no record on TRC from 3 Feb 21 to 7 May 21.*” . The statement was made to support a complaint of victimisation and harassment and bullying. The complaint did not allege discrimination and neither did it mention the protected characteristic of race. Notwithstanding this, it could not be reasonably read or implied that the complaint of not recording his training records was being made to point to an act of race discrimination. This allegation does not satisfy the requirement of s121 EqA. This allegation is therefore refused.

#### Allegation 42

60. “On 5 October 2023, CO DSHE Lt Col Fernando told the Claimant that he was under investigation by the Respondent for the alleged driving offences even

though he had been told he would not be investigated if he was found not guilty.”

61. The complaint is for direct race discrimination; harassment related to race and victimisation. The respondent does not accept the claimant raised this allegation in a SC.
62. The claimant pointed out that in SC6, he made reference about taking DOMCOL Substitute which is leave for commonwealth soldiers, which he needed to travel to Cameroon to visit his family. At the end of the complaint, the claimant stated *“I have been discriminated and treated unfairly in this matter”*. The claimant has argued that he was discriminated against because of his race as a commonwealth soldier in the British Army of Cameroonian origin.

#### Decision

63. In SC6, at Section 4, the claimant stated under the heading of discrimination *“My court case concluded on 5 Sep 22 and all charges against me was dismissed. I was told by the CoC that there will be no case to answer if I am found not guilty I was still being investigated by the military after my case was concluded..... I have been discriminated and treated unfairly in this matter and I would like this to be redress.”*
64. I noted in SC6 the claimant has not expressly mentioned race or about his ethnic origin or being Cameroonian. There is no direct or explicit race discrimination, victimisation or harassment allegation. In applying non-technical approach there is no requirement that the SC must refer to the relevant protected characteristic, or use the words discrimination, harassment or victimisation. It is necessary to consider what is the substance of the SC, reasonably read and assessed as a whole. I conclude that it could be reasonably read and implied the claimant was complaining about the difference in treatment which was based on his race. This allegation is permitted to proceed.
65. The respondent also claimed that the claimant has not raised allegation of victimisation. It appears from the details contained in the Table of Information details of the protected act and allegations have been provided. This allegation of victimisation is permitted.

#### Allegations 43

*“The claimant was told by Sgt Davies that he cannot take his leave because he is going to the medical board.”*

66. The complaint is for direct race discrimination. The respondent accepts this was raised in SC6 but disputes that it was stated to be direct race discrimination.

#### Decision

67. The claimant stated in SC6, *“I was informed by the CoC that I am not entitled for DOMCOL. However, I was not permitted to take normal leave (ILA) to travel*

*back home because I was going on the medical board.”*

68. In the context of the claimant having stated that he considered that “*I have been discriminated and treated unfairly in this matter*”, taking a non-technical approach, I do not consider that it could reasonably have been considered or inferred that the claimant was complaining that being told he was not entitled for DOMCOL was because of his race or ethnic background. No valid SC has not been raised. This allegation is therefore dismissed.

Allegation 44

“SLt Becky Lonsdale emailed the Claimant saying that he cannot take leave until the outstanding discipline has been resolved.”

69. The complaint is for direct race discrimination and victimisation. The respondent accepts this allegation was raised in SC6 but disputes that it was stated to be direct race discrimination and victimisation.

Decision

70. This allegation is dismissed as it could not reasonably have been considered or inferred that the claimant was complaining of race discrimination.

Allegation 45

“SLt Becky Longsdale said that the Claimant’s 41 accrued individual leave allowance would be added to his annual leave allowance but it wasn’t.”

71. The complaint is for direct race discrimination and victimisation. The respondent accepts this allegation was raised in SC6 but disputes it was stated to be direct discrimination.

Decision

72. This allegation is also dismissed for the same reasons as allegation 45 above.

Allegation 48

“The Claimant was not allowed to take any type of leave (ALA, compassionate, welfare or DOMCOL substitute”.

73. The complaint is for direct race discrimination and victimisation. The respondent dispute the allegation was specifically raised as pleaded in SC6 and as direct race discrimination. The claimant maintains he raised this in SC6 and that he was referring to all types of leave.

Decision

74. This allegation is raised in SC6 as “*However, I was not allowed to take leave..*” It was not expressly stated or that it could be implied that the complaint was about “all type of his leave”. On the basis the claimant is specifically pursuing an allegation about not being permitted to take any type of leave in

this claim, the complaint as raised in SC6 does not mirror the pleaded complaint. The claimant, therefore, has not made a valid SC. This allegation is therefore is dismissed

Allegation 49

"The CoC deleted my DOMCOL Substitute leave and by doing so removed the leave record which I could not subsequently challenge".

75. The complaint is for direct race discrimination and victimisation. The respondent accepts the complaint was raised in SC6 but not framed as discrimination and victimisation.

Decision

76. This allegation is dismissed for the same reasons as allegation 45 above

Allegation 50

"I was accused of insubordination by the CoC because I raised this matter directly with RC after going through the CoC and the CoC failed to address my concerns"

77. The claimant has maintained that this complaint was raised in SC6. The respondent has contended this complaint was not raised in SC6 but in Annex G Form appealing SC7, which was not framed as a race discrimination complaint.

Decision

78. This complaint was not raised in SC6 or SC7 as claimed. No valid SC has been made. As no valid SC has been made this allegation is dismissed.

Allegation 51

"I was threatened with disciplinary action by the CoC, if I contacted the Regional Command about this matter."

79. The complaint is for direct race discrimination and victimisation. The respondent dispute the allegation was raised in SC7 in the specific terms or that it constituted race discrimination. The claimant has maintained this was raised in SC6.

Decision

80. This complaint was not raised in SC6 or in SC7. As no valid SC has been made this allegation is dismissed.

Allegation 53

"The claimant was not allowed to take annual leave by the Respondent on compassionate grounds"

81. This allegation is pleaded as a complaint of victimisation. The respondent has accepted this matter was raised in SC6 but not framed as act of victimisation.

Decision

82. In considering the substance of the complaint, it cannot be reasonably read or implied that the claimant was alleging that this constituted victimisation. The claimant has no raised a valid SC, therefore this allegation is dismissed

Allegation 54

*“The claimant was refused Lt Col Fernando’s military email whilst he was sick at home.”*

83. The respondent dispute the allegation was stated to constitute race discrimination.

Decision

84. This allegation is referred to in SC8. The complaint expressly confirms his belief that he has been directly discriminated on the grounds of his race in respect of two specific issues. In considering the substance of this complaint, it cannot be reasonably read or implied that the claim of refusal to disclose the email was also being pursued an allegation of discrimination. Accordingly, this allegation is dismissed.

Allegation 56

*“CoC only closed the disciplinary against the claimant on the 8<sup>th</sup> December 2022 after the claimant was medically discharged”.*

85. The complaint is for direct race discrimination, victimisation and harassment. The respondent submits this allegation was raised in SC6 but not famed as allegations of race discrimination, harassment or victimisation.

Decision

86. In SC6 the claimant makes reference to the fact that he received an email on 8 December 2022 from WO1 Emma Joliffe confirming that the outstanding discipline has been closed. No further comment or allegation about the closure of the disciplinary process was made. In considering the substance of this complaint, it cannot be reasonably read or implied that the CoC decision to close the disciplinary was in any way discriminatory. Accordingly, this allegation is dismissed.
87. The Judge profusely apologises for the delay in sending this judgment to the parties.

**Approved By  
Employment Judge Bansal  
18 December 2025**