



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 2303272/2025

Held in Glasgow on 21 April 2026

Employment Judge S MacLean

Major G Brady

**Claimant
In Person**

Ministry of Defence

**Respondent
Represented by:
Ms N Macara -
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the requirements of regulation 13(3)(a) of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 have not been met. The Tribunal accordingly has no jurisdiction to hear the claim, and it is dismissed.

REASONS

Introduction

1. At a preliminary case management hearing on 13 August 2025, it was recorded that, by a claim form received on 20 March 2025, the claimant advanced complaints of:
 - a. unfair dismissal;
 - b. detrimental treatment for having made a protected disclosure; and
 - c. discrimination on the ground of a part-time worker status.
2. Order 9 of the case management note identified the respondent's preliminary arguments which were to be considered at this preliminary hearing.
3. The preliminary hearing was initially listed for 21 October 2025. In preparation, the respondent compiled an agreed file of documents, skeleton

submissions, and an indexed list of authorities. That hearing was subsequently adjourned. Before the reconvened hearing, the respondent lodged updated submissions and authorities, primarily addressing the significance of a further decision under appeal which may affect the future conduct of these proceedings.

List of Issues

4. Although Order 9 set out the issues for determination, the claimant advised at the hearing that, having reconsidered the matter, he no longer sought to pursue his complaints of unfair dismissal or detrimental treatment for having made a protected disclosure. The claimant withdrew those claims. In accordance with rule 50 of the Employment Tribunal Procedure Rules 2024, I recorded the oral withdrawal and indicated that the Tribunal would issue a judgment under rule 51 formally dismissing those claims.
5. In light of that withdrawal, it was agreed that the sole issue for determination at this hearing was whether the complaint of less favourable treatment by reason of part-time worker status should be dismissed for want of jurisdiction.
6. Alternatively the respondent further contended that the claim should be struck out on the basis that it had no reasonable prospects of success, or alternatively that a deposit should be ordered. However, given the pending appeal to the Court of Session in *MOD v Milroy* on the question of whether a reservist is a part-time worker and the appeal to the Supreme Court in *Augustine v Data Cars Limited* in respect of the causation test in part-time worker cases it was submitted that the appropriate course was for the claim to be sisted.

The preliminary hearing

7. The claimant did not give evidence at the hearing. It was agreed that the respondent would address me on its written submissions, to which the claimant responded. On the basis of those submissions and the documentary evidence, the following facts were established.
 - a. The claimant is a reservist member of the UK Armed Forces.
 - b. On 26 April 2024, the claimant submitted a service complaint form (the April Service Complaint). The form signposts allegations specified in regulation 5(2) of The Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015 which includes discrimination, harassment and bullying. For the purposes of regulation 5, “discrimination” is defined as discrimination or victimisation on the grounds of colour, race, ethnic or national origin, nationality, sex, gender reassignment, marital status or civil

partnership, religion or belief, sexual orientation, or less favourable treatment of the complainant as a part time employee.

- c. In the April Service Complaint, the claimant set out the respects in which he considered himself to have been wronged. He described the circumstances of his suspension from duty, the manner in which the procedure was conducted, the vague and unspecific nature of the allegations, the time taken to complete the process, and the appropriateness of the selection of the Assisting Officer. He also raised concerns about the Commanding Officer's previous conduct in relation to his predecessor, and sought contextual information regarding similar treatment allegedly experienced by that predecessor. The complaint further described the pressures placed on reservists who have full-time civilian employment and family commitments. The claimant stated that, unlike a regular service member, he was required to return to paid civilian employment during the period of suspension, which he described as a mental strain that was likely to have a negative effect on his performance in his civilian career and was likely to result in having to take sick leave.
- d. When asked whether the complaint included allegations specified in regulation 5(2) of the 2015 Regulations, the claimant responded that the allegation constituted the culmination of a pattern of behaviour which he believed amounted to bullying.
- e. The claimant sought to have his suspension and the process reviewed.
- f. The April Service Complaint was acknowledged by letter dated 14 May 2024. It identified four heads of complaint. The first two were paused in order to allow the claimant to pursue the relevant specialist procedure. The remaining two were admissible but were also paused on the basis that they were intrinsically linked to the first two. The four heads were:
 - i. alleged mishandling and prejudgment of a major administrative action (MAA) relating to allegations of bullying, and the claimant's subsequent suspension;
 - ii. alleged failure to follow policy and procedure during the investigation, including a failure to exercise due diligence and to carry out the investigatory role properly;
 - iii. alleged bullying by the Commanding Officer; and
 - iv. alleged prejudice to the claimant's future standing and reputation, irrespective of the outcome.

- g. In relation to potential complaints concerning the actions of others, the letter dated 14 May 2024 stated that the service complaints procedure permits only complaints made by a complainant concerning matters affecting their own service. Complaints relating to personal injury were expressly excluded and the claimant was directed to alternative avenues of redress.
- h. The claimant appealed the decision to pause the complaint. That appeal was unsuccessful..
- i. On 1 October 2025, the claimant submitted a further service complaint (the October Service Complaint). He stated that, despite unsuccessfully appealing the stay of the April Service Complaint and having submitted a data subject access request, he still lacked clarity as to the identity of the complainant and the precise allegations made against him. He complained of the conduct of the Commanding Officer, which he alleged amounted to an abuse of process and ongoing bullying. He asserted that this conduct had prejudiced the outcome of the process and had caused irreparable damage to his health and career, resulting in ongoing sickness absence and loss of civilian employment.
- j. The October Service Complaint was acknowledged by letter dated 21 October 2025 which identified three heads of complaint, each of which was ruled inadmissible on the basis that they were substantially the same as the April Service Complaint:
 - i. alleged abuse of the MAA process by the Commanding Officer constituting a course of bullying behaviour;
 - ii. alleged intentional prejudice causing irreparable damage to the claimant's career and reputation, regardless of the outcome;
 - iii. alleged disregard for the claimant's welfare and wellbeing and failure to follow proper processes in the management of the MAA.
- k. The claimant appealed that decision. The matter was referred to the Service Complaints Ombudsman for the Armed Forces, who concluded that both service complaints were broadly similar, as they related to the claimant's suspension and the subsequent handling of the major administrative action investigation.
- l. The Ombudsman concluded that the October Service Complaint added context and detail but was not materially different from the April Service Complaint, and was therefore inadmissible. The Ombudsman

was not persuaded by the claimant's arguments that the complaints were distinct. The claimant had been given the opportunity to clarify his complaints during an inadmissibility interview, and the subsequent email correspondence did not alter their substance. Insofar as the claimant sought to advance matters relating to personal injury, these were in any event excluded from admissibility.

- m. The claimant presented his claim form to the Tribunal on 20 March 2025. He identified complaints of unfair dismissal, whistleblowing, and discrimination as a part-time worker (reservist). In the particulars, he alleged that his prolonged suspension, lasting over a year, had caused financial detriment which he contended would not have been experienced by a full-time regular service member.

Reasoning and conclusion

8. The claim is presented to the Tribunal under regulation 8 of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (the PTWR). The claimant alleges that he was treated less favourably than a comparable full-time worker. He was suspended from service while an internal investigation was conducted. The claimant contends that the suspension imposed a financial penalty upon him by preventing him from working, with consequential effects including potential loss of eligibility for an annual tax-free gratuity payment, pension contributions, long-service medals, and periods counting towards promotion. He maintains that such detriment would not have arisen in the case of a full-time regular service member.
9. As the claimant is a member of the Armed Forces, regulation 13 of the PTWR applies. For the purposes of this preliminary hearing, reliance is placed in particular on regulation 13(3), which provides:

"No complaint concerning the service of any person as a member of the Armed Forces may be presented to an Employment Tribunal under regulation 8 unless

(a) that person has made a complaint in respect of the service matter to an officer under the service redress procedures and that complaint has not been withdrawn."
10. The effect of this provision is that the Tribunal has no jurisdiction to determine the complaint unless the claimant has made a service complaint in respect of the matter complained of.
11. Regulation 4 of the Armed Forces (Service Complaints) Regulations 2015 sets out the procedure for making a service complaint. Under regulation 4(2)(c), a service complaint must state whether the allegation involves

discrimination, harassment, bullying, or another specified matter. For these purposes, “discrimination” is defined as discrimination or victimisation on the grounds of colour, race, ethnic or national origin, nationality, sex, gender reassignment, marital status or civil partnership, religion or belief, sexual orientation, or less favourable treatment of the complainant as a part-time employee. This definition is identical to that contained in regulation 5 of the Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015.

12. It was undisputed that the claimant had made service complaints in April and October 2024 before presenting his claim to the Tribunal. Neither service complaint had been withdrawn. It was irrelevant that parts of those service complaints were treated as inadmissible or had been stayed. The sole issue was whether the service complaints concerned the same matter as that before the Tribunal.
13. I accepted that the regulation 13 of the PTWR requires a purposive construction. The purpose of the statutory scheme is to ensure that complaints are first considered within the service redress system identified by Parliament, with recourse to the Tribunal only afterwards. I did not understand the claimant to dispute that proposition.
14. The respondent accepted that a service complaint need not refer to the same matter in technical terms, nor employ identical language. However, it was submitted that, when assessed holistically, the substance of the service complaint must relate to the same matter as that advanced subsequently before the Tribunal.
15. I approached the question of whether the act complained of in the Tribunal claim was the same “matter” as that raised in the earlier service complaints in a non-technical manner, by identifying the substance of the service complaints, read sensibly and assessed as a whole.
16. The April Service Complaint mentions that being a Reservist unlike a “Regular Officer” suspension does not mean that the claimant can go home and have time to relax, take care of himself and his family. His obligations to his civilian employment continued.
17. During the preliminary hearing the claimant helpfully took me through the April Service Complaint which was submitted at a very early stage when understandably he desired to resolve matters internally and quickly. The claimant explained that at that stage his focus was on avoiding the irreparable damage which at that point had not occurred.
18. The difficulty that I had was that while this appeared to explain as a Reservist the claimant was entitled to undertake civilian employment which would

continue notwithstanding his suspension from his reservist role, it was not clear how taken at its highest that this could be an allegation the claimant was treated less favourably as a result of being a part-time worker.

19. When read as a whole the April Service Complaint related only to his complaints about the manner of his suspension and subsequent investigation by his Commanding Officer; bullying; and the emotions and personal impact on him.
20. The October Service Complaint was submitted when the claimant had more knowledge and information in substantiating the allegation of bullying and was in possession of evidence which he considered demonstrated that the process was being abused. It make no reference to less favourable treatment. The claimant had anticipated that the service complaints would be combined and had been disappointed that they were deemed inadmissible. The claimant also very candidly explained that the service complaints were not made with a view to bringing any Tribunal proceedings.
21. The claimant referred to the statement he submitted as part of the internal process, in particular the section dealing with "initial interviews". That section stated that all regular service personnel must attend an interview in relation to administrative action, while reservists and ex-service personnel are not required to do so but will be invited by registered post at a reasonable time and given reasonable notice. The claimant maintained that he was not so invited. I explained that, although the process may not have been followed, it was not clear on what basis he had been treated less favourably than a "service person".
22. I accepted that, when the April Service Complaint was submitted, the claimant did not necessarily appreciate the likely delay or the impact the process would have on his civilian employment. However, he was aware of those matters when he presented the October Service Complaint, which provided additional detail but was substantially the same as the initial complaint.
23. I also accepted that the claimant disagreed with the Admissibility Assessment, which made no express or implied reference to less favourable treatment on the grounds of part time worker status. However, the claimant did not challenge that assessment at the time.
24. Taking the service complaints at their highest and considering them as a whole, I was not satisfied that they could fairly and objectively be understood as alleging that the claimant had been treated less favourably as a part-time worker.
25. I therefore concluded that the wrongs alleged in the service complaints were not in respect of the same matter as the Tribunal claim.

26. As a result, the requirements of regulation 13(3)(a) of the PTWR have not been met. The Tribunal accordingly has no jurisdiction to hear the claim, and it is dismissed.

Date sent to parties

12 May 2026