



# **EMPLOYMENT TRIBUNALS**

**BETWEEN**

**Claimant** **and** **Respondent**  
**Ms AB** **Ministry of Defence**

**Held at: Exeter**

**On: 17, 20, 21, 24 and 25 June 2024**

**Before: Employment Judge Smail**

**Appearances**

**Claimant:** In person (written submissions from Mr C. Milsom, Counsel)  
**Respondent:** Mr N. Fetto KC

## **RESERVED PRELIMINARY HEARING JUDGMENT**

1. Only the claims and issues listed in Annexe 2 to this Judgment (page 39) proceed to a full hearing. The Claimant made a service complaint about those matters and/or the Respondent consents to their progression.
2. The other claims and issues in Annexe 1 to this Judgment (page 29) (set out in italics) are struck out because the Claimant did not make a service complaint about those matters.
3. By consent the Claimant has permission to amend her claim (insofar as is necessary) in respect of the claims and issues set out in Annexe 2 to this Judgment.
4. Whether a service complaint has been made about a relevant matter within the meaning of s.121(1)(a) of the Equality Act 2010 is a question of fact for the Employment Tribunal. This is to be approached in a non-technical way,

by identifying the substance of the service complaint, reasonably read and assessed as a whole. (Edwards v MOD 2024). Ordinarily, it will mean the service complaint as is admitted within the service complaint process. However, where the service complaint process reveals a misunderstanding of the substance of the relevant matter(s), the Employment Tribunal may allow substantive claim(s) to be added to its consideration, to cure the misunderstanding.

5. Regulation 3(2) of the Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015 means what it says and is effective to exclude service complaints against the matters listed and therefore subsequent Employment Tribunal proceedings.
6. The Claimant intentionally did not bring a service complaint against Lt KL and his alleged conduct. Her complaint was against the acts and omissions of Cdr CD, inter alia, as a consequence of her reports of the alleged conduct of Lt KL. This was a position she confirmed in an admissibility meeting on 9 February 2022.
7. By consent, the identities of the Claimant, Cdr CD, Lt KL and Lt Cdr EF will be anonymised as best possible from the public version of this Judgment and Reasons. Similarly HMS MN.
8. The Claimant has 42 days from the date this Judgment is sent to the parties to inform the Tribunal whether she accepts that her claim is limited as set out in Annexe 2 to this Judgment and for directions to be made to bring those to a final hearing, or whether she seeks a stay pending appeal to the Employment Appeal Tribunal.
9. If she accepts Annexe 2, the parties must within 14 days of the Claimant's decision, seek to agree and submit for the attention of Employment Judge Small proposed directions and listing dates for a 15-day hearing in the latter third of 2025 in person in Exeter. In those agreed proposed directions, the parties should state whether they are open to Alternative Dispute Resolution.

## **REASONS**

1. The main purpose of this Preliminary Hearing is to determine which issues go forward to a full merits hearing. Employment Judge Walters identified with considerable care the legal claims and issues that the Claimant wished to put forward following the Preliminary Hearing on 5 November 2023. The present Preliminary Hearing is designed to determine for which of those issues the Tribunal has jurisdiction, save for matters of time limits which are reserved to the final full merits hearing. The Claim Form was presented on 10 June 2022.

2. The parties made considerable progress on 20 June 2024 agreeing what issues could go forward and what might be withdrawn. The Claimant withdrew her claims of pregnancy and maternity discrimination and indirect discrimination. The Respondent agreed that a significant body of issues could go forward. There is in any event a very substantial claim under the Equality Act 2010 to be determined.
3. Annexe 1 represents the position prior to my determinations in this Preliminary Hearing. Those claims that are in normal type are accepted by the Respondent as going forward to the full merits hearing. They accept that those were the subject of the Claimant's service complaint. Permission to amend, insofar as is necessary, is granted for them. It is agreed that any time limits issues in respect of them are to be resolved at the full merits hearing. The italicized issues are objected to by the Respondent. In respect of them, the issues that were identified for this Preliminary Hearing will need to be determined, as relevant.
4. Those issues are:-
  1. What is the meaning of the words 'service complaint' in section 121 Equality Act 2010? In particular:
    - A. Do they mean an admissible complaint for the purposes of the Armed Forces (Service Complaints) Regulations 2015?
    - B. Do they refer to, or include, the contents of the Annex F service complaint form?

The Claimant contends that the interpretation at B is required by s.3 Human Rights Act 2018, in order to interpret s.121 consistently with her rights under Article 6 ECHR. She also contends that, if the interpretation at A is correct, s.121 must to that extent be disapplied on grounds that it is incompatible with the general principles of EU law.

2. Where the Claimant seeks to bring an allegation before the Tribunal which falls within the list of excluded complaints in Regulation 3(2) of the Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015, does the Tribunal lack jurisdiction to determine that complaint by operation of s.121 Equality Act 2010? The Claimant contends that s.121 must be interpreted in such a way as to give the Tribunal jurisdiction so as to be interpreted consistently with her rights under Article 6 ECHR. She further contends that s.121 must be disapplied to the extent that it excludes the Tribunal's jurisdiction to determine such claims, on grounds that it is incompatible with the general principles of EU law.
3. Does the Claimant require permission to rely upon the document headed 'Amended statement of case and particulars' (the Amended Particulars of Claim) dated 30 April 2023 or any part thereof and, if so,

should she be given permission to amend her Particulars of Claim in accordance with the said document?

4. If the answer to 3 above is yes, which of the Claimant's claims does the Tribunal have jurisdiction to determine pursuant to ss.120 and 121 Equality Act 2010?
  
5. I have had the assistance of submissions from Mr N. Fetto KC and from Mr Chris Milsom of Counsel. I have also had the benefit of the Respondent's understanding of the service complaint scheme from the evidence of Mr James Gondelle, Head of Service Complaint and Litigation in Navy Command Headquarters. Even where I do not make express reference to them, I have taken all of those into account. The submissions have been general on the law and have not focussed necessarily on the particular allegations made by the Claimant.

## **INTERNATIONAL PROVISIONS**

### **European Convention on Human Rights**

6. Article 6 European Convention on Human Rights (ECHR) provides as follows:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

7. Article 14 ECHR (prohibition of discrimination) provides as follows:

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...or other status.

### **European Union**

8. Article 14(1)(b) of the Recast Equal Treatment Directive (Directive 2006/54/EC) provides that there shall be no direct or indirect discrimination on grounds of sex in the public or private sectors in relation to employment and working conditions.

The Directive contains the following relevant provisions:

Recital 29: "The provision of adequate judicial or administrative procedures for the enforcement of the obligations imposed by this Directive is essential to the effective implementation of the principle of equal treatment.

Recital 35: “Member states should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive”;

Article 18: “Member states shall introduce into their national legal systems such measures as are necessary to ensure real and effective compensation or reparation as the member states so determine for the loss and damage sustained by a person injured as a result of discrimination on grounds of sex, in a way which is dissuasive and proportionate to the damage suffered.”

## **THE RELEVANT E&W STATUTORY PROVISIONS**

### 9. Section 3 Human Rights Act 1998 provides as follows:

(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.

### Section 121 of the Equality Act 2010

#### 10. This provides as follows:-

(1) Section 120(1) [Jurisdiction of Employment Tribunals] 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, and

(b) either—

(i) the complainant does not apply to the Service Complaints Ombudsman for a review by virtue of section 340D(6) 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.]

(3) ...

(4) ...

(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.]

11. Section 120(1) confers jurisdiction on Employment Tribunals to determine discrimination claims relating to work. Section 121 qualifies that for those serving in the Armed Forces, such as the Claimant.
12. A particular point in the present case is that the Claimant wishes to bring complaints before the Employment Tribunal directly in respect of the actions of Lt KL whereas the terms of her service complaint were accepted as being against her Commanding Officer in respect of his response to the complaints she made in respect of Lt KL. The Respondent does not suggest her service complaint has been withdrawn but rather that she has only made a service complaint about specific matters and they submit she is not permitted to broaden her complaints before the Employment Tribunal.
13. The Claimant wishes to bring other complaints also that were not accepted as service complaints.

S.340A(1) Armed Forces Act 2006

14. This provides –

(1) 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.

(2) If a person who has ceased to be subject to service law thinks himself or herself wronged in any matter relating to his or her service which occurred while he or she was so subject, the person may make a complaint about the matter.

(3) In this Part, “service complaint” means a complaint made under subsection (1) or (2).

(4) A person may not make a service complaint about a matter of a description specified in regulations made by the Secretary of State.

Regulation 3(2) of the Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015

15. This provides as follows:-

3. Excluded complaints

(1) A person may not make a service complaint about a matter within the Schedule.

(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.

#### Schedule of 1 of European Union Withdrawal Act 2018

3 (2) No court or Tribunal or other public authority may, on or after [IP completion day]:

- (a) disapply or quash any enactment or other rule of law, or
- (b) quash any conduct or otherwise decide that it is unlawful, because it is incompatible with any of the general principles of EU law.

16. Section 39 of the European Union (Withdrawal Agreement) Act 2020 provides that IP completion day means 31 December 2020 at 11pm.

#### THE SERVICE COMPLAINT SCHEME

17. This is a brief summary of the Scheme as it is intended to operate. The service complaints process is a creature of legislation: The governing provisions are in Part 14A of the Armed Forces Act 2006 ('AFA 2006'). S.340A(1) AFA 2006 is set out above. Pursuant to s.340B(1) AFA 2006, the Defence Council has the power to make regulations governing the procedure for making service complaints; these include the Armed Forces (Service Complaints) Regulations 2015 ('SC Regs 2015').

18. By that procedure, a 'statement of complaint' (also known as an 'Annex F')

must be made in writing to the specified officer, containing details of how the complainant has been wronged, including whether the wrongdoing involved discrimination, harassment, bullying, biased behaviour, etc (reg 4).

19. The specified officer decides whether the complaint is admissible, either in whole or in part (reg 5). Admissibility is decided by reference to s.340B(5) AFA 2006. The specified officer then refers the admissible part of the service complaint to the Defence Council, which determines the complaint or appoints a person or panel to do so (regs 5, 9).
20. Where the Defence Council appoints a person or panel to determine the complaint, the complainant has a right of appeal to the Defence Council against their decision (reg 10).
21. Excluded matters: Some matters cannot be the subject of valid service complaints. S.120 EqA 2010, submits the Respondent, cannot give rise to jurisdiction to determine such matters. S.340A(4) AFA 2006 (quoted above) provides that a person may not make a service complaint about a matter specified in regulations made by the Secretary of State. S.340B(5)(a) AFA 2006 (also quoted above) provides that a service complaint is not admissible if it falls within s.340A(4) AFA 2006. The Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015/2064 were made pursuant to s.340A(4) AFA 2006. Reg 3(2) is set out above.
22. Decisions at various stages in the service complaints process are subject to review by the Service Complaints Ombudsman ('SCOAF'), and by the High Court.
23. SCOAF has powers conferred under the SC Regs 2015, on a complainant's application:
  - a. to review service complaint admissibility decisions (reg 7);
  - b. to review service complaint appeal admissibility decisions (reg 12);
  - c. to investigate the substance (merits) of finally determined service complaints (s.340H AFA 2006); and
  - d. to investigate alleged maladministration in the handling of such service complaints (s.340H AFA 2006).
24. SCOAF has a wide array of powers to require disclosure and has the same powers as the High Court in relation to witnesses: s.340J AFA 2006. Obstructing SCOAF is a contempt of court: s.340K AFA 2006.



25. Decisions of SCOAF are in turn subject to judicial review by the High Court.

### **CASE LAW**

26. In Molaudi v MOD [2011] ICR Digest D10 UKEAT/0463/10/JOJ (Silber J, EAT) an employment judge had decided that the Claimant was precluded from bringing a claim of race discrimination relating to events when he had been a serving soldier on the ground that the required prior complaint to the military authorities had been out of time and was not a valid service complaint within the meaning of section 75(9) of the Race Relations Act 1976. Silber J ruled –

24. So a complaint which has not been accepted by the prescribed officer cannot be dealt with by the Defence Council. It must therefore follow that the intention of the legislature was that a “*service complaint*” was a complaint which was accepted as valid by the prescribed officer as otherwise it could not have been considered by the Defence Council. As I will explain, the decision of the prescribed officer to refuse to accept what purports to be a “*service complaint*” can be challenged by judicial review.

If this were not the case, pointed out Silber J, the Service Complaint regime could be circumvented by a claim to the ET.

28. I agree with ... counsel for the Respondent, that the purpose of the statutory scheme is to ensure that the complaint of racial discrimination by the soldier is in the first instance determined by a body deemed by the legislature to be the appropriate body to resolve such disputes with the Employment Tribunal being the body dealing with this matter at the next stage.

Article 7 of the Racial Discrimination Directive 2000/43/EC [the EU provision then in force] did not require a different result because there was the residual right to bring an application for judicial review. Article 7, now replaced by other legislation, was in these terms:

“1. Member States shall ensure that judicial and/or administrative procedures including where they deem it appropriate conciliation procedures, the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

2. Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring the provisions of this directive are complied with, may engage either on behalf or in support of a complainant with his or her approval, in any judicial and/or administrative procedures provided for the enforcement of obligations under this Directive.

3. Paragraphs 1 and 2 are without prejudice to national rules relating to time limits for bringing actions as regards the principle of equality of treatment.”

The availability of judicial review satisfied this obligation.

27. In Edwards v MOD [2024] EAT 18 Heather Williams J made the following rulings on aspects of service complaints. First, as to what needs to go into a service complaint:

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 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.

28. Secondly, in rejecting the proposition that the Service Complaint regime breaches a Claimant’s ECHR Article 6 rights, Heather Williams J ruled -

38. It is well established that Member States may impose limitations upon the right of access to Courts and Tribunals without infringing the requirements of Article 6. As the

Grand Chamber of the European Court of Human Rights explained in Zubac v Croatia (2018) 67 E.H.R.R. 28 (with the footnotes omitted):

“77. The right of access to a court must be ‘practical and effective’, not theoretical and illusory. This observation is particularly true in respect of the guarantees provided by art.6, in view of the prominent place held in a democratic society by the right to a fair trial.

78. However, the right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the state, which regulation may vary in time and in place according to the needs and resources of the community and of individuals. In laying down such regulation, the Contracting States enjoy a certain margin of appreciation...Nonetheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with art.6(1) if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.”

118. The remainder of Ground 4 is incorrect as a matter of law. It is not the case that “any interpretation...which imposes stringent technical requirements as to the content of a service complain about a matter infringes” a complainant’s Article 6 ECHR rights, for the reasons I have already addressed at paras 38- 39 above.

119. As regards Ground 5, I have already indicated that Mr Shankland accepts that this must be determined on the basis of the material before the EJ. Furthermore, as I understand it, there is no challenge to the finding at her para 55 that the rationale behind section 121 was “so that the military authorities have the opportunity to resolve the potential claim” (para 71 above) and that this amounted to a legitimate aim. The challenge is to her assessment that section 121 achieved a lawful balance between that aim and a complainant’s right of access to the Tribunal, so that there was a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (para 38 above).

120. It is not suggested that the EJ erred in law in terms of the test that she applied or the approach that she took. The ground seeks to challenge her evaluative conclusion in this regard, with which the Claimant disagrees. Mr Shankland’s central submission was that the right of access to a court must be “practical and effective”, whereas the EJ’s interpretation of section 121 EQA had made access to the ET for service personnel wishing to claim discrimination “practically impossible” (para 78 above).

121. I reject that submission. Section 121 does not render access to the ET practically impossible for members of the armed forces, including the Claimant, who wish to bring a discrimination claim in respect of events during their service and nor is the very essence of the right of access impaired. A member of the armed forces is able to bring a Tribunal claim for discrimination, harassment and/or victimisation provided they have raised a service complaint about the matter/s. As I have earlier explained, there is no requirement for the service complaint to use any particular, technical or legalistic language and the question will be judged by reference to the substance of the service complaint, read as a whole. The pre-printed guidance contained within the service complaint form directs the complainant to potential sources of advice in relation to completing the form and the text indicates in clear terms that if the complaint includes allegations of discrimination or harassment this should be stated and the relevant protected characteristics are listed (paras 41 and 48 – 49 above). In so far as Mr Shankland sought to derive some support from the decision in Duncan v MOD UKEAT/0191/14/RN, the circumstances were very different. In that instance the ET’s

application of section 121 had prevented the Claimant from bringing a claim as a result of circumstances over which she had no control, namely when the complaint was referred to the Defence Council.

29. Heather Williams J in Edwards made extensive reference to the ET decision of Employment Judge McNeill QC in Zulu & Gue v Ministry of Defence, Case Numbers 2205687/2018 and 2205688/2018. This was a carefully considered decision which was not appealed and is persuasive. In that case the Tribunal was concerned with preliminary issues not dissimilar to the present ones. There substantive causes of action had been found not to be admissible service complaints. EJ McNeill found that too narrow an interpretation of what ‘the matter’ and ‘acts done’ were, precluding consideration of substantive rights. Accordingly, she rejected the submission that the service complaints needed to be service complaints found to be admissible by the service complaints procedure because the ET should accept substantive claims that were wrongly excluded at the service complaint stage. The availability of Judicial Review was not the answer because in the real world it is more complicated as a remedy than a simple claim to the Tribunal. Procedural restrictions on the right to have service complaints considered (e.g. limitation or other procedural ones) could nonetheless be accepted as consistent with an effective remedy. She focussed on the applicability of EU law and modified the application of Molaudi above. She opined that Molaudi had to be read subject to Benkharbouche v Embassy of the Republic of Sudan [2016] QB 347 SC (effective remedy for EU rights). She ruled -

I have concluded that s121 should be interpreted in accordance with EU law so as to permit claims in respect of directly effective EU law rights to be brought in the employment tribunal where a service complaint has been brought about the matter, save where claims in respect of such rights have been held inadmissible in the SC process on limitation or other procedural grounds consistent with EU law on effectiveness.

30. So that was a modest modification to the service complaint regime. Where the ET disagreed with an admissibility decision because it thought a substantive claim was in fact covered by the service complaint, then E.U law could be invoked to lend weight to that approach. Following Edwards 2024, however, the same result can be achieved by the ET construing the service complaint ‘in a non-technical way, by identifying the substance of the service complaint, reasonably read and assessed as a whole’.

31. The Employment Tribunal case of Rubery v MOD 3312963/2021 is presently under appeal. It concerned whether an Employment Tribunal has jurisdiction over matters purportedly excluded by Regulation 3(2) of the Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015. Employment Judge Anning held that European Union Law could not help the Claimant because the relevant dates post-dated 31 December 2020, Brexit implementation day. He did agree with Mr Milsom, however, that the Regulation contravened Articles 6 and 14 of the ECHR. He felt able to propose, in effect, a new s.121(1A) of the Equality Act 2010, as follows -

“(1A) Section 121(1) is not applicable to the extent that the matter is an excluded matter as defined by Reg.3(2) Armed Forces (Services Complaints Miscellaneous Provisions)

Regulations 2015.”

32. Some weeks before this Preliminary Hearing I refused an application by the Respondent to stay the Preliminary Hearing pending the result in the EAT in Rubery. It would have been useful to have the decision. As it is, we have made considerable progress by agreement in identifying the issues that go forward. There is a very substantial case that goes forward in any event. I am glad we went ahead.

### **THE CHRONOLOGY OF THE CLAIMANT’S SERVICE COMPLAINT AS IT APPEARS FROM THE DOCUMENTS**

#### The Service Complaint

33. To put all of this into context, it is necessary to examine the content of the service complaint and the surrounding circumstances of its inception. It is also instructive, now that the Service Complaint has been investigated and decided, to record what happened.
34. On 26 January 2022 (wrongly dated 2021) the Claimant submitted her service complaint. This is otherwise known as an Annex F. It was revised on 2 February 2022 ‘to include evidence and quotes’. She had 3 headings to the complaint. A summary of these is here -
1. Failure by the CO, Cdr CD to take appropriate action when an informal report of sexual harassment was submitted. The harassment was reported through the chain of command between July 2020 and February 2021. The complaints were raised face to face with the CO on 9 February 2021. The behaviour of the Navigator to herself and a female colleague was detailed. No reasonable steps were taken to investigate, prevent or rectify the behaviour which was said to be a failure in the duty of care.
  2. Victimization by Cdr CD for raising sexual harassment and challenging discipline issues. Her OJAR June 21 (an appraisal) contained negative statements limiting her chances at a promotion board. Her authority was undermined. Colleagues were preferred, the Claimant being labelled a trouble-maker.
  3. Reporting history. Unavoidable gaps due to the effect of maternity, poor reporting, significant workplace injury and lack of meaningful employment to mitigate this detriment. Despite being more professionally qualified than most of her peers, she was still being overlooked for promotion. Men and childless women were being promoted instead of her.
35. She stated that her complaint fell into categories A (Discrimination), B (Unlawful harassment), C (bullying) and D (dishonest or biased behaviour), she then wrote-

Discrimination based on my gender, bullying and harassment, biased dishonest behaviour, and victimisation by the CO Cdr CD.

Sexual harassment by the navigator Lt KL. The dates the behaviour occurred are from June 2020 to December 2021. There are a series of discriminatory acts, with the last being denial of promotion December 2021. The acts are all interrelated conduct that has continued to disadvantage me.

36. In the details under Heading 1 the Claimant details the alleged harassment from Lt KL which is listed the harassment section of the Claimant's desired list of issues for the ET in the Annexe hereto. She also details her disappointment at the lack of action from superior officers including Cdr CD. Her failure to be promoted at the December 2021 board was described as being the last straw.
37. One of the questions (4b) in the Service Complaint Form asks the complainant to identify any persons the complainant has behaved towards her under a category or categories of behaviour described in the narrative. The Claimant identified Cdr CD and Lt KL.
38. Question 5 asked for the outcome or redress that was sought. The Claimant replied –

Heading 1 – Investigation into the action taken by Cdr CD in response to my report of sexual harassment by Lt KL; if found not to be in accordance with policy, appropriate disciplinary or administrative action be taken against both Cdr CD and Lt KL. Failure of duty of care, harassment and victimisation by Cdr CD. To be investigated and if in breach of service policy, individual to be subject to disciplinary action.

Heading 2 – I seek my promotion that has been denied because of the strength of my latest OJAR. My merit for promotion has been omitted due to victimisation by my reporting officer. OJAR June 21 to be withdrawn and re-written.

Heading 3 – Reporting history and gaps should be more holistically looked at during promotion boards and reasonable adjustments made to mitigate the impact of time away from primary role. I should not be penalized at promotions board for reporting gaps.

[Generally] A timely solution for resolving. The last act in a series of connected conduct was the promotion denial on 13 December 2020. I have 3 months to raise these issues through an employment tribunal from this date. I seek a swift solution and do not wish to suffer any unnecessary delays. I will be seeking recompense for the hurt and distress of the harassment, personal injury and aggravated damages from the Royal Navy.

39. Whether or not the Service Complaint was directly against Lt KL is a regular theme of it. The Claimant made note of an admissibility meeting she had on 9 February 2022 with Lt Cdr Lees and Cdr Jacobs. She communicated the content of the meeting to a solicitor, Mr Hirst, that same day. As the document is in the bundle, and was referred to at the Preliminary Hearing, the Claimant plainly waives privilege in respect of it. Those commanders invited the Claimant to amend the service complaint to make it directly against Lt KL. The Claimant maintained she did not want to alter it:

Cdr Jacobs said he found it bizarre that I am complaining about sexual harassment but have not submitted a formal complaint of sexual harassment against Lt KL and that nothing is likely to change if a formal complaint is not raised and that my CO cannot investigate something he doesn't know about. I disagreed and stated he did know about it, and I was silenced on the matter and coerced into accepting it.

I explained that is only one part of my complaint and conduct. The issue is why was it not investigated or appropriate action taken to safeguard me or any reasonable duty of care, or the redress that I sought was not followed through. This individual has been promoted, it has clearly not been captured and I have been victimised for raising this issue amongst others to damage me at a promotion board.

They strongly stated I should be complaining about Lt KL and it was heavily implied not my CO, Cdr CD as how could he possibly investigate what wasn't formally reported. I stated he knew about it over several months and it was reported by two separate individuals that were coerced into keeping quiet.

I was told by Cdr Jacobs I should remove subjective conversations that I have mentioned between myself and my CO in my SC as there is no proof.

I stated the focus is on my CO, Cdr CD and the victimisation and harassment I received from him during my time onboard and the coercion into accepting my OJAR through fear of repercussions. I had previously been silenced on several discipline issues.

40. Capt Preece ruled the Service Complaint to have been presented out-of-time on 20 April 2022. This was successfully appealed to SCOAF (the Service Complaints Ombudsman for the Armed Forces) at least in respect of the first two Heads of Complaint. That outcome was advocated by the Lead Investigator Michelle Yore on 16 June 2022.
41. When the Claim Form was presented to the Employment Tribunal on 10 June 2022, the status of the Service Complaint was that it had been ruled inadmissible as being presented out-of-time.
42. Tony Carruthers, Investigating Officer, presented an Initial Investigation Report into the Service Complaint on 14 September 2022. In the introduction he noted this about the Service Complaint –

This investigation arose as a result of a formal complaint of sexual harassment and discrimination made by Lieutenant Y AB on 2 February 2022 regarding the conduct of Commander CD in responding to complaints of sexual harassment, and perceived bias and discrimination in her Annual Report of 2020/21. Although the complaints mainly

related to alleged inappropriate behaviour by a third party, the complaint is regarding how the Chain of Command responded to the concerns and subsequently Lieutenant AB's belief that her annual report was written with bias owing to her raising the concerns in the first place.

So, the Service Complaint was understood to be against Cdr CD not Lt KL. Lt KL was not interviewed in the course of the investigation. Lt Cdr EF, the Executive Officer (XO) was included as a Respondent by the Investigating Officer owing to allegations made against him for not dealing with matters the Claimant's complaints against Lt KL appropriately.

43. The Claimant was aware that Lt KL was not the subject of the Service Complaint but hoped that action would be taken against him independently of the service complaint. She emailed Nicola Window, Service Complaints Caseworker, to this effect on 12 October 2022 –

I'm hoping you might be able to help or pass this onto the legal team as I am a bit confused regarding the actions taken regarding Lt KL and the email below from Cdr Wright as my understanding is that they are separate issues and not related to the SC.

My SC is very much focused on the actions not taken by the respondents [CD and EF], my direct chain of command, conveniently both respondents are now disputing that sexual harassment was ever reported despite witness accounts and this obviously complicates matters, and I feel I am being closed down and the existence of the behaviour completely denied. I'm getting the impression that the outcome of the SC is the decider on whether any inappropriate behaviour happened or if action is going to be taken against KL since the zero tolerance policy is not due to come into effect until Nov.

Lt KL is not a named respondent in my SC; he is obviously implicated and my understanding is he would be dealt with separately but understandably since raising this at the beginning of the year, I don't feel this has been taken seriously. He has been promoted, I've had to avoid going on a course several times to my own career detriment and I've not been kept updated on what action is going to be taken other than the below email that is relating to my SC which he is not a named respondent in.

My understanding is that as Lt KL is not named in the SC this is a separate matter and it shouldn't rely on the outcome of my SC for action to be taken against him? I am obviously rather concerned and frustrated about this, as all I'm seeing is an individual that sexually harasses women has been both rewarded and continuing with his career progress whilst my career has been put on pause for several months trying to raise this complaint.

44. Nicola Window replied –

The Service Complaint investigation is considering the actions of your Commanding Officer when you served in HMS MN, as well as your subsequent appraisal. As part of its determination of your complaint, the Decision Body will need to decide from the evidence gathered in the investigation what reports or complaints you made to the Chain of Command and what, if any, actions were taken as result.

Separately to the Service Complaint process, information and evidence has been gathered regarding the behaviour you have alleged of Lt KL. This information is not part of the Service Complaint and it is not disclosable as part of the Service



Complaint process. It will be considered in due course; however, it will be considered in the context of any factual findings made by the Decision Body in the Service Complaint to ensure that any action the Service takes is based on a consistent view of everything that took place in HMS MN.

Please be aware that any administrative action taken against an individual is a confidential matter between that person and the RN. Therefore, in the Service Complainant process, other than being informed that a matter has been referred to the relevant Chain of Command for consideration, complainants are not informed of action taken against respondents or affected persons when a complaint is upheld. The same is true in cases where administrative action is taken against individuals following other types of investigation. You should therefore not expect to be informed if any administrative action is taken as a consequence of the issues you have raised.

45. On 17 November 2022 Cdre Wood OBE and the Independent Member, Mr J Alderwick, provided a Decision in respect of the Service Complaint. It noted the complaints that the Service Complaints Ombudsman for the Armed Forces had admitted were the first 2 Heads of Complaint against Cdr CD. They had done so allowing in part the Claimant's appeal against all three Heads of Complaint being ruled out-of-time. The third on career gaps was confirmed as rejected as out-of-time. The other 2 reinstated. The complaint had been investigated by a member of the Navy Command Service Complaints Team and someone from the Outsourced Investigation Service. The 2 Heads of Complaint considered were defined as follows:-

**HoC 1.** *I believe I have been wronged by Cdr CD for failing to take appropriate action when I made numerous reports of sexual harassment through my CoC both as an individual and in my role as the EDA. (Unit Equality and Diversity Adviser) My concerns were not taken seriously despite expressing that the conduct was unwanted there were no reasonable steps taken to prevent, stop or discipline the perpetrator or duty of care afforded. I was treated in a biased and dishonest manner for raising this, especially after I left the unit and the timeframe to officially complain had elapsed.*

**HoC 2.** *I believe I have been wronged by Cdr CD by making unsubstantiated negative comments and significant omissions in my June 2021 OJAR which I complained about at the time, to present me as less competitive than my peers in the same promotions board. Despite receiving no MPAR and repeatedly asking for their removal. I believe this was a deliberate response to the reports and concerns I had raised and constitutes victimisation and biased dishonest behaviour and reporting.*

46. At paragraph 10 of their Decision they found that the complaint was not directed at Lt KL. They analysed the Complaint as being about the inadequacy of Cdr CD's response, and then his subsequent victimisation of the Claimant. They considered whether Cdr CD or Lt Cdr EF had committed harassment.

They observed in passing that it may well have been the case that Lt KL's conduct amounted to harassment, but they were not investigating that.

47. Detailed findings were made within a 24-page report. The conclusions were as follows –

**Conclusions**

71. We have no doubt that the behaviour directed towards you by the 3P in HMS MN between July 2020 and May 2021 was unacceptable. It likely initially constituted bullying, before evolving into behaviour which could have been described as harassment and/or a breach of the Armed Forces' Code of Social Conduct. As a unit EDA, you knew what you were dealing with and, up to a point, you felt that you could deal with it. You were senior to the 3P and did not feel in the least threatened by his conduct, you just wanted it to stop because it was disrespectful and it increasingly undermined you. You had repeatedly assured the XO that you preferred to deal with the 3P informally because you and the 3P were mates and you wished to maintain good working relationships. You said the same to the CO when you discussed the 3P with him in February 2021 at around the same time as you had encouraged Lt QR to take her concerns to the CO.

72. This collective preference for informal resolution of the situation was, we find, partly influenced by what appears to have been a shared assessment of the nature of the harassment which, while in no way wishing to downplay it, appears to have been tiresome rather than threatening; partly because watch rotation leave tended to defuse the situation from time to time; and was partly a reflection of a command culture which preferred informal remedial approaches where possible and appropriate. This default setting continued to persist even when a third party female officer joined MN's watch bill for two months and chose to complain about similar behaviour within days of joining, directly to the CO. The justifications for repeated resort to informal responses were (1) that there always remained the option to escalate matters into the formal response structures if the 3P failed to learn his lesson and (b) that due account was being taken of the complainant's wishes, as the extant policy allowed. Once the CO had been appraised of your wish to have him intervene to deal informally with the 3P's behaviour, he did so. The objectionable behaviour ceased and, as far as the evidence can show, there was no repeat of it insofar as you were concerned.

73. A remedial action plan was devised but the evidence is that it was not put fully into effect. It is unclear whether this was, as you suggest, a deliberate ploy to mislead you into acquiescence but it may also have been a mismatch between command ambition and what policy allowed. For example, we learn from the investigation that attendance on D&I training is not permitted as a remedial measure, for reasons that have not been made clear to us. The lack of reference to 3P's objectionable conduct in his 2021 report was disappointing

to you but given your wish to have the matter resolved informally, was neither surprising nor out with policy. In all, Cdr CD and Lt Cdr EF did respond appropriately to the concerns you raised in these circumstances, your concerns were taken seriously and in particular, Cdr CD's intervention, when it was called for, did prove effective. Although more could have been done, and although the CO didn't follow through on everything he had said he would do, he did do enough as far as it concerned you. The combined command response was within the range of reasonable responses to the issues you raised.

74. While your 2021 OJAR was not as strong or persuasive as you had hoped it would be, the evidence is that it was not an unfair report. Legacy issues in your career meant that a lot was being asked of you during a reporting period – and consequently being asked from a report – which covered 10 months in MN, however varied the ship's programme. You had in any event taken opportunities to seek amendments to the text and content, which inputs were acknowledged by your 1RO, albeit that he did not agree with all of them. You were given positive textual and grade recommendations, including for promotion. Key professional milestone achievements were highlighted.

75. We find that the lack of an MPAR, which might otherwise have led to unfairness, did not do so in your case given the opportunities you had both before and after the report was submitted to make comment on the content. You said at the time that the report was "all fairly positive." Because we have concluded that the report was not unfair, it cannot be relied upon as evidence of discrimination, harassment, bias or victimisation. In particular, we wish once again to be clear that there can be no reasonable suggestion that the content of this report is in any way indicative of dishonesty on the part of Cdr CD.

### **Decision**

76. Consequently, we are **unable to uphold** your Service Complaint.

### **Redress**

77. No redress is appropriate in this case.

### **Organisational Learning**

78. We have already noted MOD's publication of new protocols to address unacceptable sexual behaviours (July 2022) and we welcome the intent behind it, subject to the procedural safeguards proving effective. This remains a fast-moving, complex challenge for the chain of command. In our view, the necessary cultural shift towards a more respectful workplace environment depends as much on the carrot as the stick. Thus, the ready availability of (remedial and non-remedial) D&I training, the encouragement of proactive mentoring and the development of reward and recognition policies which give credit for positive behaviours, deserve attention.

48. The Claimant hopes to secure a different outcome before the Employment Tribunal. She will get a re-run.

Appeal Attempt dated 2 December 2022

49. She appealed the decision on the service complaint by email on 2 December 2022. The appeal document was 24 pages in length. She claimed procedural and material errors of fact on both heads of complaint. There were 103 separate bullet points. By a letter on 12 December 2022 the appeal was not admitted by the Service Complaints Secretariat (Cdr Fane-Bailey) on the basis that the Decision Board had not made a material error of fact or a material error of procedure. There were some significant points made in this letter. Here are a few –

**20. Suggestion that there was an insistence on my part to deal with 3P informally.** This conclusion by the DB is based in part on your own text messages to the XO on the subject where you make comments such as *“I was planning on having a chat with him [3P] informally”, “I made it clear [to the CO] that it was not a complaint”* and *“I made it clear to the boss that [Lt QR] and I have no intentions on taking this anywhere and it’s not a formal complaint.”* Given that these are your own words on 9 Feb 21 having just spoken directly to the CO, the DB is right to give them due weight and consideration. Therefore, the DB has not made an error in fact in concluding that you wanted the matter dealt with informally.

**26. You and 3P have been presented as being friends.** Whilst you might now state that you and 3P were not friends, this assessment is based not only on the XO’s view but also your own text messages which describe 3P as *“pal”* and also, to the XO, you said *“we’re [you and 3P] mates”* and *“I like [3P] as a mate.”* Given that these are your own words at the time, it is not unreasonable for the DB to have given them due weight. Therefore, on a balance of probabilities the DB has not made an error of fact.

Application to the Service Complaints Ombudsman for the Armed Forces (SCOAF) dated 9 February 2023

50. On 9 February 2023 the Claimant applied to the Service Complaints Ombudsman for the Armed Forces for an investigation of the substance (merits) of her service complaint and alleged maladministration in the handling of the complaint. Lead Investigator Jonathan Mullaney partly upheld the application as follows –

1... I have found that the Decision Body (DB) should have taken account of the third party allegedly subjected to similar behaviour as Lt AB and another officer experienced. I have also found that it was unfair for the DB to have assigned equal responsibility to Lt AB and her Chain of Command to report

the behaviour she experienced.

2. I have not otherwise upheld Lt AB's application.

51. This third party was a civilian woman. A third woman said to have been sexually harassed. Mr Mullaney then doubts whether having done so would have actually led to formal action being taken against Lt KL –

25. However, it remains the case that Lt AB and her CoC had a choice to make as to whether to treat the concerns raised by Lt AB (and then Lt C) formally or informally. The relevant extracts from the version of JSP 763 in place at the time are in the Annex to the report.

26. Of particular relevance to this matter is paragraph 2.7 of JSP 763, '*The MOD Bullying and Harassment Complaints Procedures*', in place at the time of events. Paragraph 2.7 is titled '*Suitability of Resolution Processes*' and explains that the CoC may initiate formal action if, for example, they become aware of allegations that seem sufficiently serious and/or a Respondent's track record suggests formal action is appropriate. There are examples of issues to consider listed a-g and which include whether the Complainant does not believe informal action is appropriate.

27. I find that had the DB explicitly mentioned and/or taken account of the matter of the civilian, then they may reasonably have determined that the CO *should* have pursued formal action with Lt KL rather than 'might have prompted him' to pursue more formal action. However, in light of Lt AB's (and Lt QR's) apparent reluctance to submit a formal complaint, I do not see any basis to find, on the balance of probability, that the CO's approach, or the DB's decision, were unreasonable or would have been any different even had they explicitly referenced the civilian.

28. I find that the DB should have mentioned the civilian in the overall context of how the CoC dealt with Lt AB's concerns about Lt KL and so I partly uphold her application to SCOAF on this matter. However, I also find that the absence of this matter from the DB's consideration does not make their determination unsafe...

37. With regard to the DB's conclusion that Lt AB wanted the matter to be dealt with informally, I find that the DB was not unreasonable to reach such a conclusion. Although there are differing views on the nature and seriousness of Lt KL's behaviour, and differing accounts of how Lt AB reacted to his behaviour, there is no evidence that Lt AB at any stage told her CoC that she wanted the matter to be dealt with as a formal complaint...

39. I do note that JSP 763 leaves open the option for the CoC to take a more formal approach as a first step where the seriousness and/or pattern of behaviour requires such an approach. However, again in light of Lt AB's stated preference at the time for an informal approach, I do not see a basis to find that the approach taken, and the DB's conclusion, was unreasonable. I have not upheld Lt AB's application to SCOAF regarding this matter.

## **DISCUSSION AND GENERAL CONCLUSIONS**

52. I understand the purpose behind the service complaints regime. The idea is that the Armed Forces get the first opportunity to resolve Equalities issues within the Armed Forces. I know that a complaint can be made to the Employment Tribunal before a service complaint has been dealt with. Ordinarily, as with internal grievances outside the Armed Forces, the Tribunal will be keen to await the outcome of the service complaint (internal grievance) process because that will ordinarily be in the Claimant's interests. The service complaint might be upheld, and acceptable remedial action might follow. It will not always be the case that the Employment Tribunal waits because in some circumstances the service complaint process may not be progressing, and the Employment Tribunal should seek to resolve matters because that is more efficient. Typically, however, the Service Complaint process should go first.

53. I also understand what is intended by Regulation 3(2) of the Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015. The idea is that the service complaint process is separate from the ET process. The service complaint process may lead to one result; the ET may take a different view. A Claimant gets a complete re-run in the ET if the service complaint process has taken place and results unfavourably for the Claimant. Regulation 3(2) means that what is to be avoided is the ET getting involved in challenges to the Service Complaint process, such that they do not run separately. As is hoped for by the Claimant in this case, if a Claimant can challenge the Service Complaints process, they would tend always to bring claims about the original index events coupled with Equalities challenges to the Service Complaint process including its decisions. The tendency would be for significant mushrooming of claims: the index events and the way the Service Complaint process sought to deal with them.

54. It seems to me that there is a potential paradox in that situation. The substantive decision dismissing the service complaint (where that happens) is likely also to be challenged under the Equality Act (if permitted) such that it would become of a central focus in the Tribunal proceedings, along with the index events, rather than just a separate decision to which the Employment Tribunal may or may not have regard. In this way the decision that dismissed the substance of the service complaint would have much greater influence in the Employment Tribunal proceedings (if the decision was not discriminatory) than it would if it was just a separate matter to which the Employment Tribunal may or may not have regard.

55. It is therefore by no means clear that it is desirable that the ET have jurisdiction over the matters that are excluded under Regulation 3(2). The inevitable mushrooming of claims is not desirable.
56. Regulation 3(2) intends to take all of that away from the ET. If the Service Complaint process needs correcting, there is SCOAF (administrative appeal) and Judicial Review (judicial). That is not a regime that breaches ECHR rights. I am bound by the principle in Molaudi and the conclusion in Edwards 2024 in that regard. I do not follow the ET decision in Rubery. Similarly, EU law does not require the disapplication of the service complaint regime including its limitation and procedural conditions (following the ET in Zulu and Gue). In any event, relevant EU law no longer applied post 31 December 2020, the Brexit implementation date.
57. Parliament might have given a right of appeal, for example, on admissibility decisions in relation to service complaints to the ET. It did not. Instead, it gave it to an administrative body the SCOAF, which in turn is subject to judicial review.
58. This case is not a good example of the SCOAF appeal system not working. The SCOAF overturned the decision not to admit the Service Complaint at least for Heads of Complaint 1 and 2. The Claimant does not seek to challenge the dismissal by the SCOAF of Head of Complaint 3 in this case to the extent that she withdraws her indirect sex and pregnancy and maternity claims. She is likely to have recognised the time limits problems with them.
59. The justiciability of the allegations against Lt KL is a difficult feature of this Preliminary Hearing. The Claimant's service complaint was initially ambiguous as to the position. The Heads of Complaint were not directly against Lt KL. They were in respect of Commander CD's responses including victimisation. However, in the remedy section she wanted action to be taken against Lt KL. This was then expressly discussed at the admissibility meeting held on 9 February 2022 with Lt Cdr Lees and Cdr Jacobs. The Claimant made it expressly clear that her service complaint was not about sexual harassment at the hands of Lt KL but the responses of her commander.
60. She further understood the allegations of sexual harassment were outside the service complaint in correspondence with Nicola Window on 12 October 2022. She was hoping, although she recognised the allegations of sexual harassment were outside the service complaint, that action would be taken against Lt KL. So whilst there is a degree of muddle and confusion, the issue of whether the service complaint was against Lt KL was expressly raised with the Claimant. She had the opportunity to confirm her service complaint was indeed against Lt KL for alleged acts of sexual harassment. She decided it was not.
61. The Claimant comes across as a very articulate, capable and determined woman. When listening to her, it comes as no surprise that she is an officer in the Royal Navy. Along with that, though, goes the inevitable conclusion that

she knew what she was saying when she said the service complaint was not against Lt KL for acts of alleged sexual harassment. The consequence of that position has been that Lt KL was not interviewed in the service complaint process and no findings on the allegations were made by the Decision Board . That is a consequence of the Claimant's position. She now seeks to change that position. I find that she cannot do so. The Tribunal is limited to consider afresh the claims in the service complaint. Not the alleged background to them, but the matters of the service complaint. The Claimant decided deliberately that the complaint was not against Lt KL and the alleged acts of sexual harassment.

62. When considering the responses of Cdr CD, the service complaint process also considered the responses of Executive Officer, Lt Cdr EF, the second-in command. His decisions are in scope of the service complaint, where related to the relevant acts and omissions of Cdr CD.

**SPECIFIC DECISIONS: THE PARTICULAR CLAIMS FOR WHICH JURISDICTION IS DISPUTED**

63. The Claimant wishes to bring the following allegations of direct sex discrimination in respect of the handling of her service complaint, taken from the list of claims at Annexe 1 as follows:

**1. DIRECT SEX DISCRIMINATION (EQUALITY ACT 2010 SECTION 13)**

**CLAIM 1**

- a. failed to accept as admissible the Claimant's service complaint submitted in January 2022 [**1,2**]
- b. failed to investigate her complaints appropriately [**2**]
- c. failed to believe her service complaints [**3**]

64. The Respondent submits these are excluded matters and may not be pursued in the Employment Tribunal under Regulation 3(2) of the Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015. 'Failed to accept as admissible' falls squarely within reg 3(2)(a). 'Failed to believe' falls within Reg 3(2)(b); and 'failed to investigate appropriately' engages Reg3(2)(b) and Reg 3(2)(e). I agree. Regulation 3(2) is effective to exclude them.

**CLAIM 2**

- a. *in February 2021 failed to promote the Claimant. The comparator is Lt. Commander Gowling* [**12**]
- b. *in December 2021 failed to promote the Claimant. The comparators are Officer KL and Lt. Olly Barrett* [**12**]



65. These were not the subject matter of the service complaint in the sense of less favourable treatment than the comparators. It is part of the service complaint that Cdr CD's comments prejudiced her in promotion. The allegations as recorded in claim 2 above were not part of the service complaint and so the ET does not have jurisdiction for them. The Tribunal is not going to re-run promotion boards.

**CLAIM 3**

*Refused to permit a special OJAR to be submitted in December 2020.  
[17]*

66. As a matter of fact, this was not the subject matter of the service complaint and so the Employment Tribunal does not have jurisdiction for the allegation.

**CLAIM 9**

*On 16 January 2021 when the ship was alongside in Falmouth the Claimant was excluded by Lt Commander EF from a social event for a colleague and she was sent home because they needed her cabin.*

67. As a matter of fact, this was not the subject matter of the service complaint and so the Employment Tribunal does not have jurisdiction for the allegation.

**CLAIM 10**

*Shortly after the above event Officer KL stated on the Claimant's return from watch rotation leave that it was just as well she hadn't attended the event as he was drunk and would have behaved inappropriately towards the Claimant.*

68. As found above, the Claimant made a positive decision that the allegations of sexual harassment against Lt KL were not the subject of her service complaint. Accordingly, the Tribunal does not have jurisdiction over this allegation.

**CLAIM 11**

*In February 2021 the Tallywacker state board appeared in the wardroom. This was essentially a pie chart detailing when male crew members could expose their genitals in various circumstances on board. The Claimant ordered that it be removed but the following day it reappeared.*

69. As found above, the Claimant made a positive decision that the allegations of sexual harassment against Lt KL were not the subject of her service complaint. Accordingly, the Tribunal does not have jurisdiction over this allegation.

**CLAIM 12**

*In February 2021 Commander CD unreasonably expressed unhappiness with views expressed by the Claimant about a young inexperienced officer keeping night watch when he was not permitted to do so by reason of his experience and qualifications.*

70. As a matter of fact, this was not the subject matter of the service complaint and so the Employment Tribunal does not have jurisdiction for the allegation.

**HARASSMENT RELATED TO SEX (EQUALITY ACT 2010 S. 26)**

**CLAIMS 1-**

**10**

- 1.1 *Did the Respondent sexually harass the Claimant by doing the things set out below? The Claimant alleges that either it had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.*

**Acts of sexual harassment**

1. *On 30 June 2020 – Officer KL suggestively winked at the Claimant.*
2. *Between June – August 2020. When the Claimant joined HMS MN, Officer KL stated, 'You are more attractive than we were expecting'.*
3. *Between June- August 2020 Officer KL made unnecessary visits to the Claimant's cabin during which he commented on the 'attractiveness' of her friends and the Claimant when looking at photographs on the wall of the cabin.*
4. *Between June-August 2020 Officer KL placed photographs of himself covered in love hearts in her cabin.*
5. *Between June- August 2020 Officer KL made sexualised unwanted pestering comments and winking. For example, referring to himself as 'big Rod, size 12 feet etc'*
6. *In August 2020 - Officer KL showed photographs in the wardroom of women he had slept with calling himself the 'wren slayer'.*

7. *On 15 August 2020 – the Claimant was Officer of the Day so did not attend the Wardroom Mess Dinner and was completing navigation planning in the operations room. There were pre drinks onboard where the wardroom brought their partners. Officer KL approached the Claimant and asked what she was doing and when she replied “navigation planning.” He stated “oh you are planning our lives together”.*
8. *Throughout August – September 2020 Officer KL recounted his sexual exploits at Britannia Royal Naval College to the Claimant and how he had slept with most of his intake, and said that if we were in the same intake at Dartmouth then she would have fallen for his charms, suggesting she would have slept with him. There was almost constant daily pestering, with Officer KL speaking of how they had lots in common and if they didn’t have partners, the Claimant wouldn’t be able to resist him.*
9. *On 6 September 2020 – on a visit to a restaurant Officer KL placed himself next to the Claimant at dinner where he made sexualised comments, about how he found her attractive and that again, they had so much in common that she couldn’t resist him, and it was a pity they both had partners. He said how she clearly liked facial hair and referring to himself as a “sexy viking”, and he later sent a photograph to her with the word “viking” underneath.*
10. *On 6 September 2020 Officer KL sent the Claimant messages that evening such as: “Goodnight beautiful”, and “Outrageous behaviour from me last night. Apologies”*

71. As found above, the Claimant made a positive decision that the allegations of sexual harassment against Lt KL were not the subject of her service complaint. Accordingly, the Tribunal does not have jurisdiction over these allegations.

**VICTIMISATION  
CLAIM 4**

*Did the Claimant do a protected act as follows: raise concerns to Lt Commander EF as set out below and Commander CD on or about 8 February 2021, the raising of the service complaint on 26 January 2022 followed by the evidence provided therein in August 2022?*

*Did the Respondent do the following things:*

*Commander Wood, the Decision Body on 18 November 2022 did not take the Claimant’s complaints seriously and condoned the inadequacy of the investigation into the Claimant’s complaints;*

*and*

*blamed the Claimant for not recording the incidents at or shortly after they had allegedly occurred.*

*By doing so, did the Respondent subject the Claimant to detriment?*

*If so, was it because the Claimant had done the protected act?*

72. This claim is excluded under Regulation 3(2) of the Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015. The Employment Tribunal does not have jurisdiction over it.

### **THE WAY FORWARD**

73. The Claimant must now decide whether she is content to proceed to a full-merits hearing on only the allegations that do go forward under Annexe 2. There is a substantial case to look at in any event; the case that she made a service complaint about. It is a matter for her and her advisers, of course, but if she wishes to go down the appellate route, there will be yet further considerable delays.

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Employment Judge Smail

South West Region

Date: 19 September 2024

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Judgment sent to the parties on:

20 September 2024

For the Tribunal Office

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**ANNEXE 1**

Those issues accepted by the Respondent as going forward to the final hearing are in normal type.

The issues requiring a ruling on jurisdiction are italicized.

The Claimant withdrew one claim of direct discrimination concerning a chef, all claims of pregnancy and maternity discrimination and all claims of indirect discrimination.

The formulation of the issues is accepted by the parties who were involved in the work of Employment Judge Walters in preparing a list of issues following a Preliminary Hearing on 5 November 2023.

**1. DIRECT SEX DISCRIMINATION (EQUALITY ACT 2010 SECTION 13)**

The Claimant alleges that the Respondent did the following things which amount to less favourable treatment because of her sex and in respect of all save where identified below she relies upon a hypothetical comparator.

***CLAIM 1***

- a. failed to accept as admissible the Claimant's service complaint submitted in January 2022 [1,2]*
- b. failed to investigate her complaints appropriately [2]*
- c. failed to believe her service complaints [3]*

***CLAIM 2***

- a. in February 2021 failed to promote the Claimant. The comparator is Lt. Commander Gowling [12]*
- b. in December 2021 failed to promote the Claimant. The comparators are Officer KL and Lt. Olly Barrett [12]*

***CLAIM 3***

*Refused to permit a special OJAR to be submitted in December 2020. [17]*

**CLAIM 4**

Commander CD and Lt Commander EF did not take the Claimant's complaints seriously and dishonestly reported on Officer KL to present the Claimant as less competitive or lacking merit in comparison with her direct peers in a competitive promotions process and the squadron alignment; despite having similar or more qualifications, experience and seniority. The promotions board take a dim view to those not complying with equality and diversity, and therefore Officer KL's conduct was not captured at the board suggesting it was not reported on by Commander CD or Lt. Commander EF.

**CLAIM 5**

On 13 August 2020 the Claimant attended a pre-arranged MRI early in the morning, which was known to Commander CD as she had told him. On her return she was questioned by Commander CD and told she had to set the record straight as there was gossip regarding her whereabouts. None of her male colleagues had been asked to set the record straight about their whereabouts.

**CLAIM 6**

On 15 October 2020 the Claimant was excluded from attendance at the Armed Forces Minister lunch organised by Commander CD.

**CLAIM 7 (on basis that no discrimination alleged against Lt Cdr EF)**

Around mid-September 2020 sailors were permitted to go on shore by Lt. Commander EF overruling the Claimant. They returned from shore and were drunk and the following day the Claimant ordered that they should be breathalysed in accordance with service policy but this was the subject of criticism by Commander CD.

**CLAIM 9**

*On 16 January 2021 when the ship was alongside in Falmouth the Claimant was excluded by Lt Commander EF from a social event for a colleague and she was sent home because they needed her cabin.*

**CLAIM 10**

*Shortly after the above event Officer KL stated on the Claimant's return from watch rotation leave that it was just as well she hadn't attended the event as he was drunk and would have behaved inappropriately towards the Claimant.*

**CLAIM 11**

*In February 2021 the Tallywacker state board appeared in the wardroom. This was essentially a pie chart detailing when male crew members could expose their genitals in various circumstances on board. The Claimant ordered that it be removed but the following day it reappeared.*

**CLAIM 12**

*In February 2021 Commander CD unreasonably expressed unhappiness with views expressed by the Claimant about a young inexperienced officer keeping night watch when he was not permitted to do so by reason of his experience and qualifications.*

**CLAIM 13**

In February 2021 the Claimant expressed concern about the behaviour of a female colleague and Commander CD dismissed it as just "women squabbling".

**CLAIM 14**

In June 2021 the Claimant's OJAR was sent late, with no prior discussion or mandatory mid-term appraisal.

**CLAIM 15**

The OJAR submitted was unfair and presented the Claimant as less competitive than her comparators despite her qualifications, experience and merit. The content of the OJAR was unfounded and damaging in that it consisted of various sexist comments that undermined her competence and questioned her leadership. It used gendered terminology such as 'aggressive' and 'abrasive' and it was also completely unfounded.

The Particulars are:

- a. 'Aggressive and abrasive'

- b. 'Very direct leadership style...she can appear assertive and abrasive'
- c. 'The COVID pandemic has been a consistent feature of her assignment, and she has successfully managed the difficulties, both professional and personal that this has imposed'
- d. 'She has taken the watch from seasick officers demonstrating she is a caring and considerate officer'

The Claimant has provided the emails between 1-4 June 2021 which she exchanged with Commander CD as ordered.

### **CLAIM 16**

In June 2021 during discussions with Commander CD requesting the damaging comments removal as well as questioning the accuracy of the OJAR, Commander CD stated, "*the women onboard thought you would have their back*". She was told by Commander CD once she is a PWO and mess deck officer then this would give her the opportunity to improve her relationship with women.

### **CLAIM 17**

In early June 2021 Commander CD in the above telephone conversation threatened the Claimant with general allegations about her conduct towards female colleagues. When challenged by email he said there were none.

### **CLAIM 18 (on basis that discrimination not alleged against Lt Cdr EF)**

The Claimant spoke with Lt Commander EF regarding the behaviour of Commander CD on a staff course together at Shrivenham, she was told by Commander CD that she was 'overreacting.'

### **CLAIM 19**

Commander CD attempted to present the Claimant as a 'female misogynist' in the 2021 OJAR. He also stated in his interview for the Claimant's service complaint that she had disciplined every



female on board, which was not true and unsupported by evidence. He provided no evidence for this. [45,61]

**2. HARASSMENT RELATED TO SEX (EQUALITY ACT 2010 S. 26)**

**CLAIMS 1- 10**

- a. *Did the Respondent sexually harass the Claimant by doing the things set out below? The Claimant alleges that either it had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.*

**Acts of sexual harassment**

*On 30 June 2020 – Officer KL suggestively winked at the Claimant.*

*Between June – August 2020. When the Claimant joined HMS MN, Officer KL stated, 'You are more attractive than we were expecting'.*

*Between June- August 2020 Officer KL made unnecessary visits to the Claimant's cabin during which he commented on the 'attractiveness' of her friends and the Claimant when looking at photographs on the wall of the cabin.*

*Between June-August 2020 Officer KL placed photographs of himself covered in love hearts in her cabin.*

*Between June- August 2020 Officer KL made sexualised unwanted pestering comments and winking. For example, referring to himself as 'big Rod, size 12 feet etc'*

*In August 2020 - Officer KL showed photographs in the wardroom of women he had slept with calling himself the 'wren slayer'.*

*On 15 August 2020 – the Claimant was Officer of the Day so did not attend the Wardroom Mess Dinner and was completing navigation planning in the operations room. There were pre drinks onboard where the wardroom brought their partners. Officer approached the Claimant and asked what she was doing and when she replied "navigation planning." He stated "oh you are planning our lives together".*

*Throughout August – September 2020 Officer KL recounted his sexual exploits at Britannia Royal Naval College to the Claimant and how he had slept with most of his intake, and said that if we were in the same intake at Dartmouth then she would have fallen for his charms, suggesting she would have slept with him. There was almost constant daily pestering, with Officer KL speaking of how they had lots in common and if they didn't have partners, the Claimant wouldn't be able to resist him.*

*On 6 September 2020 – on a visit to a restaurant Officer KL placed himself next to the Claimant at dinner where he made sexualised comments, about how he found her attractive and that again, they had so much in common that she couldn't resist him, and it was a pity they both had partners. He said how she clearly liked facial hair and referring to himself as a “sexy viking”, and he later sent a photograph to her with the word “viking” underneath.*

*On 6 September 2020 Officer KL sent the Claimant messages that evening such as: “Goodnight beautiful”, and “Outrageous behaviour from me last night. Apologies”*

*Further to the above the Claimant relies upon the matters set out in the Direct Discrimination claims 4-20 as acts of harassment.  
[45]*

### 3. VICTIMISATION (EQUALITY ACT 2010 S. 27)

#### CLAIM 2

- a. Did the Claimant do a protected act as follows: raise allegations of sexual harassment of her and her colleague on board HMS MN on or about 8 February 2021 to Commander CD?
- b. Did the Respondent do the following thing: When writing the OJAR for the Claimant in 2021 Commander CD wrote several unfair and disparaging comments as follows:
  - a. he changed the recommendation from “Yes” to “developing”
  - b. he wrote the matters which were complained about in the emails

from the Claimant to him between 1-4 June 2021. The Claimant must particularise these matters as ordered above. [17]

- c. By doing so, did the Respondent subject the Claimant to detriment?
- d. If so, was it because the Claimant had done the protected act?

### CLAIM 3

- a. Did the Claimant do a protected act as follows: raise allegations of sexual harassment with Lt Commander EF as set out below, raise allegations of sexual harassment on or about 8 February 2021 to Commander CD, the raising of the service complaint on 26 January 2022 followed by the evidence provided therein in August 2022?

- b. Did the Respondent do the following things:

fail to conduct an adequate investigation into the allegations made by the Claimant about sexual misconduct and the failure to deal with the misconduct

permitted Officer KL and/or Lt Commander EF to attend Principal Warfare Officers courses thereby rendering it impossible for the Claimant to attend in October 2021, February 2022, June 2022, October 2022 and February 2023.

- c. By doing so, did the Respondent subject the Claimant to detriment?
- d. If so, was it because the Claimant had done the protected act?

### CLAIM 4

- a. *Did the Claimant do a protected act as follows: raise concerns to Lt Commander EF as set out below and Commander CD on or about 8 February 2021, the raising of the service complaint on 26 January 2022 followed by the evidence provided therein in August 2022?*

- b. *Did the Respondent do the following things:*

- c. *Commander Wood, the Decision Body on 18 November 2022 did not take the Claimant's complaints seriously and*
- d. *condoned the inadequacy of the investigation into the*

*Claimant's complaints and*

- e. *blamed the Claimant for not recording the incidents at or shortly after they had allegedly occurred.*
- f. *By doing so, did the Respondent subject the Claimant to detriment?*
- g. *If so, was it because the Claimant had done the protected act?*  
[36]

**CLAIM 5**

- a. Did the Claimant do protected acts as follows: raise concerns with Commander CD and Lt Commander EF about the conduct of Officer KL between June 2020 and February 2021 as follows?
  - a. to Lt. Commander EF on or after 30 June 2020
  - b. to Lt Commander EF between June and September 2020
  - c. to Commander CD and Lt Commander EF on 8 February 2021
  - d. to Lt Commander EF in March 2021
- b. Did the Respondent do the following things?
  - a. During the service complaint investigation after January 2022 Commander CD denied receiving complaints about sexual harassment when that was untrue and stated it was in effect a clash of personalities and that the Claimant was less aware of the effect of her behaviour than Officer KL
  - b. During the service complaint investigation after January 2022 Commander CD denied that the complaint raised by the Claimant had occurred in September 2020 and he asserted it was in January 2021 and he denied that there was any reference to a sexual element when that was untrue,.
  - c. During the service complaint investigation after January 2022 Commander CD denied that the Claimant and Lt QR had raised complaints about Officer KL with him when that was untrue.
  - d. Neither Commander CD nor Lt Commander EF took the Claimant's complaints seriously as they both recommended Officer KL for promotion in May 2021

- c. By doing so, did the Respondent subject the Claimant to detriment?
- d. If so, was it because the Claimant had done the protected acts?  
[40,43]

**CLAIM 6**

- a. *Did the Claimant do protected acts as follows: raise allegations of sexual harassment with Commander CD and Lt Commander EF about the conduct of Officer KL between June 2020 and February 2021 as follows?*
  - a. *to Lt. Commander EF on or after 30 June 2020*
  - b. *to Commander CD and Lt Commander EF on 8 February 2021*
  - c. *to Lt Commander EF in March 2021*
- b. *Did the Respondent do the following things?*
  - a. *on or about 15 February 2021 when Lt QR raised complaints about Officer KL she was told by Lt Commander EF that the Claimant told her to complain because she didn't get on with Officer KL*
  - b. *on or about the same date when Lt Commander EF realised a complaint had been made about Officer KL he asserted that the Claimant had pushed for Lt QR to make the complaint.*
- c. *By doing so, did the Respondent subject the Claimant to detriment?*
- d. *If so, was it because the Claimant had done the protected acts?*

**NOTE**

*Further to the above the Claimant relies upon the matters set out in the Direct Discrimination claims 4-19 as acts of victimisation for having raised the concerns already referenced above about sexual misconduct. [45]*

**ANNEXE 2**

These are the claims that go forward following my rulings.

**1. DIRECT SEX DISCRIMINATION (EQUALITY ACT 2010 SECTION 13)**

The Claimant alleges that the Respondent did the following things which amount to less favourable treatment because of her sex and in respect of all save where identified below she relies upon a hypothetical comparator.

**CLAIM 4**

Commander CD and Lt Commander EF did not take the Claimant's complaints seriously and dishonestly reported on Officer KL to present the Claimant as less competitive or lacking merit in comparison with her direct peers in a competitive promotions process and the squadron alignment; despite having similar or more qualifications, experience and seniority. The promotions board take a dim view to those not complying with equality and diversity, and therefore Officer KL's conduct was not captured at the board suggesting it was not reported on by Commander CD or Lt. Commander EF.

**CLAIM 5**

On 13 August 2020 the Claimant attended a pre-arranged MRI early in the morning, which was known to Commander CD as she had told him. On her return she was questioned by Commander CD and told she had to set the record straight as there was gossip regarding her whereabouts. None of her male colleagues had been asked to set the record straight about their whereabouts.

**CLAIM 6**

On 15 October 2020 the Claimant was excluded from attendance at the Armed Forces Minister lunch organised by Commander CD.

**CLAIM 7**

Around mid-September 2020 sailors were permitted to go on shore by Lt. Commander EF overruling the Claimant. They returned from shore and were drunk and the following day the Claimant ordered that they should be breathalysed in accordance with service policy but this was the subject of criticism by Commander CD.

**CLAIM 13**

In February 2021 the Claimant expressed concern about the behaviour of a female colleague and Commander CD dismissed it as just “women squabbling”.

**CLAIM 14**

In June 2021 the Claimant’s OJAR was sent late, with no prior discussion or mandatory mid-term appraisal.

**CLAIM 15**

The OJAR submitted was unfair and presented the Claimant as less competitive than her comparators despite her qualifications, experience and merit. The content of the OJAR was unfounded and damaging in that it consisted of various sexist comments that undermined her competence and questioned her leadership. It used gendered terminology such as ‘aggressive’ and ‘abrasive’ and it was also completely unfounded.

The Particulars are:

1. ‘Aggressive and abrasive’
2. ‘Very direct leadership style...she can appear assertive and abrasive’
3. ‘The COVID pandemic has been a consistent feature of her assignment, and she has successfully managed the difficulties, both professional and personal that this has imposed’
4. ‘She has taken the watch from seasick officers demonstrating she is a caring and considerate officer’

The Claimant has provided the emails between 1-4 June 2021 which she exchanged with Commander CD as ordered.

**CLAIM 16**

In June 2021 during discussions with Commander CD requesting the damaging comments removal as well as questioning the accuracy of the OJAR, Commander CD stated, “*the women onboard thought you would have their back*”. She was told by

Commander CD once she is a PWO and mess deck officer then this would give her the opportunity to improve her relationship with women.

**CLAIM 17**

In early June 2021 Commander CD in the above telephone conversation threatened the Claimant with general allegations about her conduct towards female colleagues. When challenged by email he said there were none.

**CLAIM 18**

The Claimant spoke with Lt Commander EF regarding the behaviour of Commander CD on a staff course together at Shrivenham, she was told by Commander CD that she was 'overreacting.'

**CLAIM 19**

Commander CD attempted to present the Claimant as a 'female misogynist' in the 2021 OJAR. He also stated in his interview for the Claimant's service complaint that she had disciplined every female on board, which was not true and unsupported by evidence. He provided no evidence for this.

**10. VICTIMISATION (EQUALITY ACT 2010 S. 27)**

**CLAIM 2**

Did the Claimant do a protected act as follows: raise allegations of sexual harassment of her and her colleague on board HMS MN on or about 8 February 2021 to Commander CD?

Did the Respondent do the following thing: When writing the OJAR for the Claimant in 2021 Commander CD wrote several unfair and disparaging comments as follows:

- a. he changed the recommendation from "Yes" to "developing";
- b. he wrote the matters which were complained about in the emails from the Claimant to him between 1-4 June



2021.

By doing so, did the Respondent subject the Claimant to detriment?

If so, was it because the Claimant had done the protected act?

**CLAIM 3**

Did the Claimant do a protected act as follows: raise allegations of sexual harassment with Lt Commander EF as set out below, raise allegations of sexual harassment on or about 8 February 2021 to Commander CD, the raising of the service complaint on 26 January 2022 followed by the evidence provided therein in August 2022?

Did the Respondent do the following things:

- a. fail to conduct an adequate investigation into the allegations made by the Claimant about sexual misconduct and the failure to deal with the misconduct;
- b. permitted Officer KL and/or Lt Commander EF to attend Principal Warfare Officers courses thereby rendering it impossible for the Claimant to attend in October 2021, February 2022, June 2022, October 2022 and February 2023.

By doing so, did the Respondent subject the Claimant to detriment?

If so, was it because the Claimant had done the protected act?

**CLAIM 5**

Did the Claimant do protected acts as follows: raise concerns with Commander CD and Lt Commander EF about the conduct of Officer KL between June 2020 and February 2021 as follows?

- to Lt. Commander EF on or after 30 June 2020
- to Lt Commander EF between June and September 2020
- to Commander CD and Lt Commander EF on 8 February 2021
- to Lt Commander EF in March 2021

Did the Respondent do the following things?

- a. During the service complaint investigation after January 2022 Commander CD denied receiving complaints about

sexual harassment when that was untrue and stated it was in effect a clash of personalities and that the Claimant was less aware of the effect of her behaviour than Officer KL.

- b. During the service complaint investigation after January 2022 Commander CD denied that the complaint raised by the Claimant had occurred in September 2020 and he asserted it was in January 2021 and he denied that there was any reference to a sexual element when that was untrue,.
- c. During the service complaint investigation after January 2022 Commander CD denied that the Claimant and Lt QR had raised complaints about Officer KL with him when that was untrue.
- e. Neither Commander CD nor Lt Commander EF took the Claimant's complaints seriously as they both recommended Officer KL for promotion in May 2021

By doing so, did the Respondent subject the Claimant to detriment?

If so, was it because the Claimant had done the protected acts?

**NB** the Claimant relies upon the allegations of direct discrimination also as acts of victimisation.