



**CENTRE FOR
MILITARY JUSTICE**

Justice - Welfare - Law

Know Your Rights

A Guide to Making a Claim in the Employment Tribunal for Service Personnel

A Centre for Military Justice guide to help Service Personnel understand their employment law rights

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Key tips

- Buy legal expenses insurance** that includes employment law claims when you join up or as soon as you can – and maintain it.
- Beware tight time limits and don't delay.** For a discrimination claim, you need to issue your claim within six months. This means six months less one day.
- Make sure you cover all the key things you are complaining about in your Service Complaint** and make sure you appeal your Service Complaint if it is decided against you.
- Do not wait for your Service Complaint to advance or finish** before issuing your claim.
- Do not let the Service Complaints process put you off.** It has been strongly and consistently criticised and it is not independent. An Employment Tribunal is an independent forum and is well-placed to judge on whether you have suffered discrimination, harassment or victimisation.

Introduction

This guide aims to provide you with a brief overview of your employment law rights, as a member of the British armed forces. It is based on our experience supporting Service Personnel but it does not claim to be a comprehensive guide to all aspects of employment law.

Every case is different. It aims to provide you with some key points to bear in mind, if you are concerned about a situation that has arisen at work, particularly discrimination.

If you have specific questions, you can contact us through the [Centre for Military Justice website](#). Other sources of help and support are also listed at the back of this guide.

If you think you have a claim it will be important to take independent legal advice as quickly as possible.

Note, this guide applies to Service Personnel, not civilians. There are important differences particularly in relation to time limits and civilians should not rely on this guide. It is based on the law of England and Wales.

Things to know before you make a claim

What is the Employment Tribunal?

The Employment Tribunal (ET) is an independent tribunal (a kind of specialist court) which makes decisions in relation to legal disputes that arise at work.

It hears claims from people who think that an employer (or a fellow employee or manager, for whom the employer is responsible), has behaved unlawfully.

Am I able to bring a claim in the Employment Tribunal at all?

Service Personnel are not employees in the way that most people understand it. They do not have a contract of employment, but instead enter into a service agreement with the MoD.

However, the [Equality Act 2010 \(EqA\)](#), which is the key piece of legislation which sets out your employment law rights, treats Service Personnel as if they were employees of the MoD, with the same rights as an employee, in some respects.

Service Personnel (and applicants to the armed forces) are therefore able to bring certain types of claim in the ET, though they have fewer rights than a civilian employee.

Service Personnel **cannot** bring claims for:

- ✗ unfair/wrongful dismissal
- ✗ constructive dismissal
- ✗ whistleblowing (unless framed as a victimisation claim, see below)
- ✗ wage protection
- ✗ redundancy

Service Personnel **can** bring claims (where the treatment is because of or related to a 'protected characteristic') for the following:

- ✓ direct discrimination
- ✓ indirect discrimination
- ✓ victimisation
- ✓ harassment
- ✓ sexual harassment

Protected characteristics

The protected characteristics are:

- **race** (which includes colour, nationality, ethnic or national origin)
- **sex**
- **sexual orientation**
- **religion** (which means any religion or a lack of religion) or **belief** (which means any religious or philosophical belief or a lack of belief)
- **marriage and civil partnership**
- **pregnancy and maternity**
- **gender reassignment** (which means when a person is proposing to undergo, is undergoing, or has undergone a process for the purpose of reassigning sex)

But the following protected characteristics are not protected by the Equality Act, for Service Personnel:

- **Age:** the charity Child Soldiers International brought a legal challenge to aspects of MoD policy towards young soldiers, arguing that it amounted to discrimination on the basis of age, which failed. The court decided that the MoD's exemption from the age discrimination provisions in the Equality Act was lawful.
- **Disability:** the MoD enjoys a blanket exemption from the provisions of the Equality Act as regards to disability discrimination protection, meaning that Service Personnel cannot bring disability discrimination claims. However this rule only applies to serving Service Personnel, not veterans.

A recently discharged Naval rating was able to bring a disability discrimination claim after she left service.

It may be that victimisation claims can still be brought where you try to raise a complaint about age or disability discrimination and suffer adverse consequences for doing so. The law is presently unsettled on this point and advice should be sought.

Part-time workers

Service Personnel can also bring claims for 'less favourable treatment' under the Part-Time Worker Regulations 2000.

These regulations provide that part-time Service Personnel have the right to not be treated less favorably than full-time workers.

In 2024, a Claimant succeeded in his claim that he had been treated less favourably than a comparable full-time worker ([The Case of Mr C Milroy v The Advocate General Scotland \(Ministry of Defence\)](#)).

What are the types of claim you can bring?

Here, we explain the different types of claim you can bring, including:

- **Direct discrimination**
- **Indirect discrimination**
- **Victimisation**
- **Harassment**

The MoD is liable for the discriminatory acts of Service Personnel and its employees, where those acts were carried out in the course of their employment, regardless of whether the MoD approved them or not, unless the MoD took all reasonable steps to prevent the behaviour.

Employers are liable for the harassment of their staff where an employee's conduct has created an intimidating, hostile, degrading, humiliating or offensive environment.

All the examples given in this guide are anonymised real examples from our casework.

What are the types of claim you can bring?

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DIRECT DISCRIMINATION

Direct discrimination is the most obvious form of discrimination and refers to the situation where a person is treated less favourably because of a protected characteristic. It is not possible for the MoD to justify direct discrimination, which means it is never permitted.

Some examples of **direct discrimination** would be:

Person A, who is black, asks to speak to a superior officer about a concern that there may be unconscious bias in the guard room. His superior officer refuses to discuss his concerns and walks away, accusing D of 'playing the race card'. This is direct discrimination on the basis of race because he would not have said this to a white person.

Person B, who is a Muslim, is mocked by soldiers for wearing his prayer attire when attending Mosque during Ramadan. When he reports this to his Chain of Command (CoC), no meaningful action is taken. This is direct discrimination on the basis of religion both in respect of the abuse and the lack of action.

Person C, who is a woman, discloses having been sexually assaulted by a colleague to her CoC. Her Officer Commanding immediately asks her if she has been 'sleeping with' colleagues and drinking too much. This is direct discrimination on the basis of sex because the OC did not ask (and would not have asked) the same questions of a man.

Person D, who is a woman, attends a meeting with her colleagues and CoC. At that meeting, one of her colleagues speaks disparagingly about another female colleague and said he does not like working with women. This is direct discrimination on the basis of sex.

See [ACAS resources and other examples of direct discrimination](#)

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INDIRECT DISCRIMINATION

Indirect discrimination is where there is apparently equal treatment of all employees, but the effect of certain requirements or policies (which in law are called a ‘provision, criterion or practice’ (‘PCP’)) puts people with a protected characteristic at a particular disadvantage. Indirect discrimination is capable of justification in certain circumstances which means it can sometimes be permitted.

Some examples of **indirect discrimination** would be:

Person E is posted overseas. There are no forensic testing facilities in the overseas location because it has been decided that they are too expensive to maintain (this is the ‘PCP’). When E is sexually assaulted, there is no ability for her to be properly examined or forensic evidence seized. This negatively impacts the criminal investigation in E’s case. Women are far more likely to be the victim of a sexual offence than men and their cases therefore disproportionately negatively affected by the lack of facilities. This could be indirect discrimination based on sex.

Person F has a history of breast cancer in her family. Her application to join the Army is refused on that basis, even though she is perfectly healthy. If the Army is operating a practice (a ‘PCP’) of automatically refusing people with family history of breast cancer, this would have an overwhelming impact on women, though is not expressed to be directed exclusively at women. This could be indirect sex discrimination.

See [ACAS resources and other examples of indirect discrimination](#)

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VICTIMISATION

Victimisation is where a person is disadvantaged because they have complained about discrimination in one way or another.

In order to establish victimisation, a person must show that they have done a 'protected act'. A protected act is something that a person must be allowed to do without fear of repercussions, because otherwise they would not be able to enjoy their rights under the Equality Act and those rights would therefore be meaningless. It is a particularly important right for Service Personnel who often report suffering negative consequences after they try and address unacceptable behaviours, or 'whistle-blow'.

A **protected act** is

- When you bring legal proceedings under the Equality Act or allege that someone has breached the Equality Act.
- When you give evidence or provide information or do 'any other thing' in connection with bringing proceedings under the Equality Act (for example, you might report a crime of gender-based violence, or a racially aggravated offence, or give evidence as a witness in a Service Complaint, or give evidence in someone else's legal case, or provide other support to someone bringing a claim under the Equality Act or making a Service Complaint of discrimination).

Examples of **victimisation** would be:

Person G reports her manager for making discriminatory comments about her. After she does so, her manager decides to bring 'administrative action' against her for an apparent shortcoming in her work from several months before (that he had not raised before she made her complaint). He also remains her First Reporting Officer for purposes of her annual appraisal and her annual appraisal is subsequently unjustifiably poor. Both the administrative action and poor annual report would be victimisation.

Person H, who is black, is asked to attend a meeting to discuss a disagreement that took place at work between himself and some colleagues, who are white. He is told that Minor Administrative Action is being contemplated against him. H believes he is being treated differently from his colleagues and that this is in part due to his race. He says he is thinking of bringing a Service Complaint or going to the press about it. His CoC then decide to 'upgrade' the action to be taken against him from Minor Administrative Action to a formal charge with a service offence, because he threatened to complain or go to the press about his discrimination. That is victimisation.

See [ACAS resources and other examples of victimisation](#)

What are the types of claim you can bring?

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HARASSMENT

Harassment is where someone engages in unwanted conduct related to a protected characteristic and the conduct has the purpose or effect of violating the person's dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment. (It is not possible to rely upon the protected characteristic of marriage or civil partnership in a claim of harassment.)

More specifically, sexual harassment is unwanted conduct of a sexual nature which has the purpose or effect of violating the victim's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. It can include sexual assaults committed at work.

Harassment can also include a situation where someone suffers less favorable treatment following their rejection of or submission to sexual harassment or harassment related to sex or gender reassignment.

Sometimes, things said or done that amount to direct discrimination might also amount to harassment if they meet this criteria. But a person can be harassed by conduct that is directed towards someone other than themselves, too.

Examples of **harassment** would be:

Person J is a black woman. She experiences colleagues making racist comments about her but also overhears them making racist comments about some of the Junior Soldiers for whom she is responsible. This would be both direct race discrimination (in relation to the comments made about her) and harassment (in relation to the racist comments about the JSs, because it creates a hostile and offensive environment for her to hear those racist comments about others).

Person K is subjected to a sexual assault while at work by her colleague. She claims that the conduct amounted to 'unwanted conduct of a sexual nature' (as well as amounting to a criminal offence which she reported to the police), which is a form of harassment, namely harassment of a sexual nature.

Person L is a woman. Her male manager makes repeated explicit sexual comments to her, often in front of others. This makes L feel humiliated and intimidated. L has been sexually harassed and harassed because she is a woman.

See [ACAS resources and other examples of harassment](#)

Time Limits

Time limits (sometimes known as the ‘limitation period’) are very strict and very short.



Important information

The time limit for Service Personnel to make any claim under the Equality Act claim is just **6 months less one day** from the date of the discrimination, victimisation or harassment. If you are no longer serving then you do not need to make a Service Complaint.

If you are complaining about a pattern of behaviour, you may be able to say that, although some of the incidents started some time ago, time runs from the date of the last event complained of, or even that the conduct is continuing at the time you issue your claim.

Never delay. Do not wait for your Service Complaint to conclude. Assume the Tribunal will not accept a late claim and make sure you issue, even if it is only protectively, in time.

If you are late, issue as soon as you can. You can ask the Tribunal to extend time ‘where just and equitable’ to do so.

It’s important to note that...

The time limit for non-armed forces Tribunal claims for discrimination, victimisation and harassment is different.

It is 3 months less one day. Civilian staff bringing claims against the MoD should be aware of this.



Good reasons why your claim might be late

Such reasons might include, for example:

- **There was a good medical reason why you were not able to prepare your Service Complaint**, instruct solicitors and prepare your claim in time. You may have been in hospital, or you may have suffered mental health problems. Be prepared to provide evidence of this.
- **You may have a disability and/or be otherwise vulnerable**, perhaps because of the things you are claiming about. For example, you may suffer from PTSD. While the MoD enjoys a blanket exclusion from the disability provisions under the Equality Act, the Tribunal does not and will be able to consider whether your disability ought to be taken into account when considering whether to extend time.
- **You were deployed** and due to pressure of work it was not practically possible for you to issue the claim in time but you did it as soon as you reasonably could upon your return.
- **You may have been misadvised about the process by someone**. For example, we have had clients say that their Assisting Officer incorrectly advised them to await the outcome of their Service Complaint before issuing a claim. Lots of clients are also put under pressure to try and resolve their complaints 'at the lowest level' first, not understanding that this can create very serious limitation problems later on if they want to bring a claim.
- **You suffered a bereavement or other significant life event** that made it very difficult to issue your claim within the primary limitation period.
- **You were waiting for a criminal matter (e.g. a sexual assault case) to conclude** and it would not have been appropriate to bring your claim before, for fear it might prejudice the criminal case, or simply because pursuing the criminal case was your priority.

Never assume the tribunal will grant an extension - time limits are strictly enforced and you need to have good reasons for any delay, with evidence.

What you must do before you make a claim

Notify the conciliation service, ACAS (the Advisory, Conciliation and Arbitration Service)

Before you issue your claim in the Tribunal, you must first notify ACAS that you intend to bring your claim. **If you do not do this, then your claim will fail.**

Once you have notified ACAS that you intend to bring your claim, it will send you a certificate confirming that you have notified them. You will not be able to issue your claim without the certificate number. If you are bringing claims against more than one person or organisation (for example, the MoD and a particular named individual), you need to have made separate ACAS notifications for each and obtain separate certificates for each Respondent.

You can notify ACAS via [the form on their website](#). The process is straightforward and user friendly.



What you'll be asked

When you notify ACAS, you will be asked:

- **Who you are representing** (yourself or someone else).
- **Very basic details about the dispute.** You do not need to provide lots of detail at this stage. A short summary will do. For example:

'I am a Sergeant with the British Army. I am a female. For the last 12 months, and continuing today, I have been subjected to unacceptable behaviours by my manager. I have repeatedly tried to address this but now find myself subject to a disciplinary process which is unfair. This amounts to discrimination, harassment and victimisation.'

- **If the claim is against an organisation or person.** Tribunal claims are almost always brought against the employer which, for Service Personnel, will be the MoD. If your claim is also against a named individual, you can name them as well.
- **If you wish to try and solve your problem without going to the Tribunal** (which will involve a conciliator calling you and discussing the matter with you).

If you want to try conciliation, you will not get your certificate until that initial conciliation process is concluded and you will not be able to issue your claim yet (because you cannot issue your claim without a certificate).

If you do not wish to try conciliation at this stage, you can confirm this and request that your ACAS certificate be issued straightaway. That will usually happen the same or next working day. If you are close to limitation, you should do this. You can always confirm after issuing, that you are open to conciliation.

Even if you do indicate a willingness to try conciliation, the reality is that in almost all cases the MoD will decline it at this stage, because it will say that it is too soon.

After notifying ACAS

After that, you will be given a code to keep.

Normally, the effect of notifying ACAS is to ‘stop the clock’ on the limitation period while conciliation is attempted. However, this helpful provision does not appear to apply to Service Personnel - a point the MoD sometimes takes against claimants (and sometimes does not). Do not rely on the ‘stop-the-clock’ provisions and ensure you issue your claim within 6 months less one day, regardless of what happens with ACAS and conciliation.

Once this initial ACAS process is concluded, you will be issued with your ACAS certificate with its own reference number. This is a very important document and means that you can proceed to issue your claim.

Make your Service Complaint

Service Personnel cannot bring a claim in the Tribunal for discrimination, victimisation or harassment unless they have first made and not withdrawn (and if necessary, appealed) a Service Complaint in relation to the same matter.

Think of your Service Complaint as a special pass that enables you to access the Tribunal – without it, the Tribunal lacks jurisdiction to hear your case, no matter how important your case is. This requirement is found in Section 121 Equality Act.

People can easily trip up over this rule so it is worth taking time to make sure your Service Complaint has covered everything it needs to cover.



The address for the MoD is: **Main Building, Whitehall, SW1A 2HB**
The legal representative for the MoD in all claims is:
Government Legal Department, 102 Petty France, SW1H 9GL

Bringing a Service Complaint

Regardless of whether you are bringing a Tribunal claim or not, if you are thinking of bringing a Service Complaint, regulations require you to set out in your Service Complaint how you think you have been 'wronged' and whether the matter you are complaining about involves discrimination, harassment, bullying, dishonest or biased behaviour. (See next page on 'What your service complaint needs to cover')

You must have raised a Service Complaint about all of the conduct you seek to make a Tribunal claim about or the Tribunal may decide that it does not have jurisdiction to determine all parts of your claim.

The MoD will scrutinise your Service Complaint extremely closely and, if it thinks you are bringing a claim about something that has not been raised in your Service Complaint, you should expect it to argue that that part (or all) of your claim should be struck out.

You should not wait to conclude your Service Complaint before issuing your Tribunal claim. Even though you have made a Service Complaint, and even though it will take many months if not longer to conclude, and even though the first thing the MoD will do is apply to pause your Tribunal claim pending the outcome of the Service Complaint, you must still issue your Tribunal claim within the correct timeframe (6 months less one day).

Once you have issued your Tribunal claim, you must make sure that you stick with the Service Complaints process - which means appealing a negative decision in your Service Complaint at Decision Body stage; and making a fresh Service Complaint and issuing a fresh claim in relation to any new acts of discrimination, victimisation or harassment which post-date your first claim/complaint.

See [the Service Complaints policy \(GOV.UK\)](https://www.gov.uk/government/policies/service-complaints-policy)



Bear in mind

The Service Complaints process has been declared by the Service Complaints Ombudsman for the Armed Forces to be neither effective, efficient or fair, for every year that her office has existed.

In the Centre for Military Justice's experience, those making decisions on Service Complaints are rarely if ever willing to find discrimination and have a very poor understanding of how to investigate and assess alleged discrimination.

Do not expect a positive outcome and do not let it put you off your Tribunal claim. The processes are completely different and the Tribunal is independent. The Service Complaints system is not.

What your Service Complaint needs to cover:

This issue has been the subject of a lot of litigation and was most recently considered in the case of Edwards v Ministry of Defence. This was an Employment Appeal Tribunal decision and so the Tribunal must follow it. The Court decided:



If you are claiming to have been the victim of discrimination or harassment, then your Service Complaint needs to have indicated that you believe you have been the victim of discrimination or harassment and on what basis, i.e:

- race
- sex
- sexual orientation
- religion/belief
- gender reassignment
- marriage or civil partnership
- pregnancy or maternity



If you are claiming that you have been victimised, then your Service Complaint needs to make that clear and state that this was because of some action that could be seen as a 'protected act', i.e:

- **bringing legal proceedings under the Equality Act** (eg. you started legal proceedings or said you were going to bring legal proceedings)
- **alleging that someone has breached the Equality Act** (eg. you said someone had discriminated against you or someone else)
- **giving evidence or providing information in Equality Act proceedings** (eg. you gave evidence in your or someone else's discrimination claim)

BUT your Service Complaint does not need to cover or contain:

- the actual words ‘discrimination’, ‘victimisation’, ‘harassment’ or ‘protected act’
- technical concepts of law: such as direct and indirect discrimination
- overly legalistic language: it is not like a formal legal document (or ‘pleading’), such as a lawyer might prepare for a hearing
- the same words as in the Equality Act to describe the basis of the discrimination you are complaining about (ie you do not have to use the words ‘race’, ‘sex’, etc.) provided that this was the nature of the allegation being made.

For example, you do not need to say:

- “I experienced direct sex discrimination”
- “I was racially discriminated against”
- “I was victimised due to my sexual orientation.”

Instead, you can say:

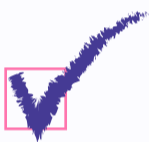
- “I don’t think a male officer would have been treated like that”
- “I believe it happened because I am black”
- “I think this was because I am gay”



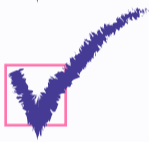
Remember



You must have raised a Service Complaint about all of the conduct you seek to make a Tribunal claim about or the Tribunal may decide that it does not have jurisdiction to determine all parts of your claim.



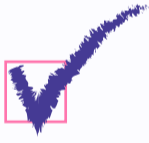
Do not wait to conclude your Service Complaint before issuing your Tribunal claim.




You have six months less one day to issue your Tribunal claim from the date of the discrimination.



Stick with the Service Complaints process even after you have issued a Tribunal claim.



Do not expect a positive outcome from the Service Complaint procedure and do not let it put you off your Tribunal claim. The Tribunal process is independent, the Service Complaints system is not.



Issuing your Tribunal claim

What you need to know

After you have made your Service Complaint and notified ACAS and got your ACAS certificate, you can issue your Tribunal claim.

As of 2024, no fees are payable in the Tribunal.

When you issue your tribunal claim, you become known as the **Claimant** and the MoD is known as the **Respondent**.

You can issue your claim through a GOV.UK online form. You can save your progress as you go through. You do not need to complete it all in one go. Many of the questions are easy to answer.



The form to make a claim at an employment tribunal is sometimes referred to as an **ET1**.

The Respondent will be the MoD in most cases, who is responsible for the actions of its employees or Service Personnel, unless you are also bringing a claim against a named individual person.

What you'll be asked on the form

- **to confirm the type of claim** (discrimination, harassment, victimisation) and on what grounds you are claiming to have been discriminated against.
- **details about your employment** (service), including how long you have worked for the MoD and how much you earned (before and after tax). Many of these questions are optional.
- **the address you worked at** which will ordinarily be the place you were based at when the discrimination, victimisation or harassment occurred. Normally the Tribunal claim will then be issued in the Tribunal region for that area. In due course, you can apply to transfer the claim to a different Tribunal region if that is more convenient for the parties.
- **to set out the background and details of your claim.** These should include the dates when the events you are complaining about happened.' For more detail on how to deal with this section, please see 'Particulars of Claim'.
- **what remedy you want if you win:** for discrimination claims this could be compensation, or (if you are still serving) a recommendation. A recommendation might be that you should be restored to your old job if the discriminatory conduct was the reason you left it, or it might be for the Respondent to ensure that wider training and learning is disseminated. If you have left the armed forces, the Tribunal has no power to make a recommendation.
- **if you have a disability,** so the Tribunal can consider whether you need any particular assistance at the hearing.
- **if you are making any other claims.** Here, you may wish to note any other applications you are making. If you have been the victim of a sexual offence, you are entitled to life-long anonymity (see following page). You may wish to note that on the form and ask the Tribunal to make an order for anonymity.

Can I ask to be anonymous?

If you have been the victim of a sexual offence (whether or not there has been a conviction), you will be entitled to life-long anonymity in relation to that issue, under [the Sexual Offences \(Amendment\) Act 1992](#).

This Act prohibits anything from being published (such as, eg, in a legal decision or judgment or other court papers) that would identify the person. You may wish to note that on the form and ask the Tribunal to make an order for anonymity.

There may be another good reason for you to seek anonymity (such as your claim may involve disclosure of sensitive medical information about you), and you may wish to raise this here.

Remember that the normal rule is that the principle of ‘open justice’ applies and the Tribunal will expect the parties to litigation to be named which means the details of the case, in any published decisions or final judgment, will normally be available to the public.

[All substantive Employment Tribunal decisions are published on the GOV.UK website.](#)



Useful guidance

There are lots of useful online tools and guidance on how to complete an ET1 and how best to present your case in the most effective way.

[Guide: Making an employment tribunal claim \(Citizens Advice Bureau\)](#)

[Make a claim to an employment tribunal: Form ET1 \(GOV.UK\)](#)

[‘Employment Claims without a Lawyer: A handbook for litigants in person’ \(David Curwen, Bath Publishing\)](#)

Particulars of Claim

This is where you set out what happened and what you are claiming.

You can type this directly onto the form or upload a separate document. The above links contain advice on how to approach this task which will vary from case to case.

In summary, you should ensure that you:

- ✓ Provide a brief summary of the claim and some brief background information about yourself – who you are, how long you have served and a summary of the claim.
- ✓ Provide a more detailed ‘factual background’ to the claim with a brief chronology of what happened, in date order. Include only the relevant information.
- ✓ List the heads of claim (ie direct/indirect discrimination, victimisation (including your protected acts) and/or harassment) and specify, under each heading, what happened to you (from the factual background) that amounts to discrimination, victimisation and/or harassment.
- ✓ If you have suffered personal injury due to the unlawful conduct, include this. For example, if you suffered mental health problems because of sexual assault, or race-related bullying, state this.
- ✓ List the remedy you seek (see next page). Are you seeking loss of earnings, injury to feelings, general or special damages.
- ✓ Avoid overly emotive language.
- ✓ Keep it simple and to the point.

There is an option to attach/upload supporting documents. This is where you upload your Particulars (or ‘Grounds’) of Claim or any other document you think the Tribunal needs to see at this stage.

Remedy

At this stage, you will probably not be in a position to set out in detail the full financial value of what you are claiming.

However, it is helpful to know that a Tribunal is able to make a compensation award for 'injury to feelings'. It does not need to be supported by psychiatric evidence although if this is available, that will be helpful.

The range of awards available was originally established in a case called Vento v Chief Constable of West Yorkshire Police which distinguishes between different bands and assigns a value according to which 'Vento band' you fall into, as follows (which are based on the figures for 2024):

- **Lower band (£1200-£11,700)** – this is for less serious or isolated incidents
- **Middle band (£11,700 – £35,200)** – this is for serious cases but which do not merit an upper band award
- **Upper band (£35,200 - £58,700)** – this is for the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the grounds of race or sex.

You may also be claiming loss of earnings where the conduct has cost you a promotion or your career.

You may also be claiming a personal injury payment (for 'pain, suffering and loss of amenity') if you suffered personal injury (including psychiatric injury) as a consequence of the conduct, or following a sexual assault.

You may be able to claim for aggravated damages (where there has been malice or flagrant discriminatory conduct) or exemplary damages (where there has been a serious abuse of trust or unconstitutional conduct by a servant of the Crown) in the most serious cases.

Once you have completed the ET1 form (not forgetting your Particulars of Claim), you can submit the form.

You will receive an emailed acknowledgment and copy of the issued ET1 which will carry the time and date that it was issued.



What happens next?

After your claim is issued, the Tribunal will send a copy of it to the MoD. They will then file their Grounds of Response (with a form called an ET3) within 28 days.

After that, the key stages of the case will be:

1. Preliminary Hearing

The case will usually be set down for a Preliminary Hearing where Case Management Orders will be made, shortly after the Respondent files its response.

Case Management Orders set out all the practical steps that need to be taken to get the case ready for trial. Preliminary Hearings are often held by telephone and may be in public or private. They are practical hearings and only rarely will anyone be asked to give evidence.

There can be more than one preliminary hearing in a complex case.

2. Disclosure

This is where both parties have to share all relevant documents in their possession concerning the claim, whether they help or harm a party's case.

This means that both you and the MoD have to share everything of relevance with each other. This may include emails, text messages, Skype messenger messages, notebooks, appraisals, letters, medical information, Service Complaints documents and salary and pensions information. In the Centre for Military Justice's experience, the MoD will sometimes simply disclose all its Service Complaints papers with you again and little more. That is not enough.

There are no disclosure obligations within the Service Complaints process and it is not overseen by solicitors (and is not an independent process) so it is likely to miss out a lot of information to which you may be entitled. We have had cases where a proper disclosure exercise has not been conducted by the MoD, leading to last minute disclosure of important evidence helpful to the Claimant that should have been provided much sooner.

If you can identify documents or categories of document that you think exist and should have been disclosed, ask the MoD solicitors to seek and disclose it to you. Remember it goes both ways. You have to disclose all relevant information too, whether it helps or harms your case.

3. Agreeing a bundle of documents for the final hearing

These are the documents that the Tribunal will see and which the witnesses will be taken to. If you are a litigant in person, the MoD solicitor ought to do this. But you will need to be involved to check it contains all the relevant information.

4. Witness statements exchange

This is the date you and the MoD agree to exchange the witness statements you have to support your case. Think about who your witnesses will be at an early stage and ensure they are aware of the dates you will need their statements by. Ensure they are given the dates of the final hearing in good time so they can attend.

5. Final hearing

This is when you will give your evidence, and will be cross examined about it by the MoD. Other witnesses will attend too and, after hearing from all the witnesses, the Tribunal will decide whether your claims succeed or not.

Funding your case

Legal aid is not available for Tribunal claims.

Check if you have legal expenses insurance for employment law claims. Check your kit insurance, home contents or even car insurance. If you do, notify your insurer immediately. If you think you may have insurance, and your insurer is vague or sceptical about it, do not accept no for an answer and seek an internal review. Insurers may initially make it difficult for people to access the cover to which they are entitled.

The [Financial Ombudsman](#) oversees the work of insurers. If you think you are covered but your insurer is declining cover, you may wish to raise a complaint with the Financial Ombudsman.

If you do not have insurance, can you afford to pay for some initial help and advice with your claim? Or perhaps you can do the preparatory work yourself, but pay for a solicitor or a barrister to represent you at the final hearing on a 'direct access' basis?

The normal rule in the Tribunal is that each party bears its own costs. What this means is that, if you lose, you will not ordinarily have to pay back the MoD the money it has spent on its lawyers - and vice versa. However, if a party has behaved vexatiously, abusively, disruptively or otherwise unreasonably, then the Tribunal does have the power to award costs.

You can find a solicitor specialising in Tribunal claims involving the armed forces through the network [Forces Law](#). You can find out about barristers willing to work on a 'direct access' basis via [The Bar Council](#).

Arguments the MoD may try and run

Each case is different but in our experience, the Ministry of Defence (MoD) will commonly try and run the following arguments:

The Tribunal should let the MoD deal with your complaint first

The MoD may argue that the claim should be stayed, or adjourned, until a decision has been made (by the MoD) on your Service Complaint.

It will highlight that the purpose of the Service Complaints statutory scheme is to ensure, in so far as possible, that matters can be resolved internally first. It will argue that the Service Complaint is not merely an internal workplace grievance process, it has the force of law and that Parliament has determined that the process should be followed before taking the matter to the Tribunal.

What we say:

This argument is a poor one, but the MoD runs it time and time again. It should be strongly resisted if you don't want a delay. There is no binding case-law, to back it up. There is a very old Tribunal decision (that MoD will repeatedly cite, called 'Odhiambo'), in which that Tribunal decided that the Service Complaint process had to be completed before the Tribunal could hear the claim.

We think the claim was wrongly decided and have had numerous cases where the Tribunal decided that the claim should proceed even though the Service Complaint was outstanding. Previous tribunal decisions are not binding on other tribunals, however they can be persuasive.

In fact, all the legislation does is give the MoD a reasonable opportunity to resolve matters internally before the Tribunal proceedings. But there comes a time when the Tribunal proceedings must be allowed to take precedence.

It is absolutely clear that the Tribunal has jurisdiction to accept and progress a Tribunal claim while the Service Complaints process is ongoing. As long as you have made the Service Complaint about the allegations contained in your claim - and you have not withdrawn your Service Complaint, or failed to appeal it, if dismissed at first stage - the Tribunal will continue to have jurisdiction to hear the claim and, as long as this is your wish, should be urged to do so.

It cannot have been the intention of Parliament that the MoD can deny the Tribunal jurisdiction by taking an unreasonable amount of time to conclude its internal Service Complaints process. [Article 6 of the European Convention on Human Rights](#) supports this and requires that a Claimant must have the right to access an independent court within a reasonable period of time.

You can read [a decision of the Tribunal that rejected the MoD's arguments on this issue](#).

And in the case of *Ministry of Defence v Rubery*, in October 2024, the EAT observed that the Service Complaints regime and the Tribunal procedure were not the same at all, which may be helpful if the MoD tries to argue, in support of its request for a stay of your claim, that the Service Complaint process might give you what you want.

You have not covered the issues in your Tribunal claim adequately in your Service Complaint

The MoD may try and argue that you have not raised a relevant “matter” in your Service Complaint.

What we say:

This issue is addressed previously, in [the case of Edwards v Ministry of Defence](#) so please go back to page 33 and read about the arguments that can be made if this issue comes up. As long as you cover the matters you want to bring to the Tribunal in your Service Complaint in the way required in the case of Edwards, you will be fine.

Read [a recent example of a Tribunal decision that rejected the MoD’s arguments that matters had not been adequately covered in the Claimant’s Service Complaint.](#)

The MoD did not find your Service Complaint admissible and so the Tribunal has no jurisdiction

The MoD may argue that unless it has determined that part or all of your Service Complaint is admissible, then you cannot bring a Tribunal claim about it.

The argument is that until the MoD has determined that your Service Complaint is a valid one – by which they mean they have declared it admissible – then the Tribunal is not allowed to consider your claim. They rely on an old EAT case called *Molaudi v Ministry of Defence* which ruled that because Mr Molaudi’s Service Complaint had been declared inadmissible by the MoD, the Tribunal had no jurisdiction.

What we say:

A Tribunal judge departed from that approach in another case ([Mr Zulu and Mr Gue v Ministry of Defence](#)) and decided that the Tribunal could hear the claims brought by two victims of extremely serious racism in the Army, applying both EU law and the European Convention on Human Rights. Even though some of the parts of the Claimants’ Service Complaints had not been found to be admissible, the Tribunal decided the Tribunal did have jurisdiction to consider most of them.

In the Employment Appeal Tribunal (EAT) case of [Ministry of Defence v Rubery](#) in October 2024, the EAT ruled that the Tribunal had no jurisdiction to hear a discrimination claim brought by Mrs Rubery about an ‘excluded complaint.’ These are the kinds of complaints that are *expressly* excluded from the Service Complaints process in the legislation (in this case, complaints about the investigation or handling of her Service Complaint). That case is now under appeal.

Claimants should not accept the argument that just because the Respondent has decided to find a Service Complaint inadmissible, the Tribunal lacks jurisdiction. If they made their Service Complaint, that should be enough.

Legal help

- **Forces Law** This is a small network of independent civilian lawyers who specialise in advising our Armed Forces community including those who are serving, veterans and their families.
- **Advocate**, a charity that tries to find free help from barristers for those who cannot get legal aid or afford to pay.
- **The Bar Council Direct Access Portal** operates a list of barristers willing to act on a 'direct access basis'. This means members of the public can find and contact specialist barristers and legal professionals directly, without going through a solicitor.
- **Equality Advisory Support Service (EASS)** A helpline providing general advice on issues relating to equality law. You can email them using the [contact form](#) on the EASS website, or use the following phone numbers: Phone: 0808 800 0082 Textphone: 0808 800 0084.
- **Rights of Women**, a helpline for women seeking legal advice, including in relation to work, family and crime.
- **Find A Legal Advisor**, a specialist search tool operated by GOV.UK that can help locate solicitors in your area in the field of law you need
- **The Law Society**, the professional body for solicitors that operates a 'find a solicitor' service.
- **Citizens Advice**, for general legal information and signposting.

Other help

- [Salute Her](#), a gender-specific therapeutic service for female veterans.
- [Forward Assist](#), for veterans struggling to adapt to civilian life.
- [Aya](#), specialist therapy for people that have suffered racialised and other forms of trauma.
- [Service Complaints Ombudsman for the Armed Forces](#) for information about the Service Complaints process.
- [The Centre for Women's Justice](#) for general advice and information about sex-based rights.
- [Rape Crisis](#) for victims of rape and sexual assault.
- [Refuge](#), support for women and children who are victims of domestic abuse. Phone: 0808 2000 247
- [SafeLives](#), for victims of domestic abuse.
- [Respect: Men's Advice Line](#), a helpline for male victims of domestic abuse. Phone: 0808 801 0327
- [Galop](#), the national helpline for lesbian, gay, bisexual and trans people experiencing abuse. Phone: 0800 999 5428

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