

Neutral Citation Number: [2026] EAT 2

Case Nos: EA-2025-000231-AT and EA-2023-001231-AT

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 07 January 2026

Before:

HIS HONOUR JUDGE JAMES TAYLER

Between:

Miss D Harding

Appellant

- and -

St George's University Hospital NHS Foundation Trust

Respondent

The **Appellant** in person
Emily Skinner (instructed by Bevan Brittan LLP) for the **Respondent**

Appeal From Registrar's Order
Hearing date: 17 December 2025

JUDGMENT

HIS HONOUR JUDGE JAMES TAYLER:

The relevant facts

1. The claimant was employed by the respondent as an Employee Relations/HR Adviser from 18 April 2017 to 19 September 2021.
2. On 6 May 2020, the claimant brought her first claim, making complaints of direct race discrimination, failure to make reasonable adjustments and victimisation (“the first claim”).
3. On 16 March 2021, the claimant brought a second claim making complaints of unfair dismissal and seeking a redundancy payment (“the second claim”). The claimant continued to be employed by the respondent. Her contention appears to have been that her job had changed to such an extent that she should be treated as having been dismissed from her original role.
4. The claimant's employment with the respondent terminated in September 2021.
5. The claimant started new employment with Croydon Health Services in about September 2021. The claimant moved to work for the Hereford and Worcestershire ICB in April 2023.
6. The second claim was struck out on 4 April 2023. The strike out judgment was sent to the parties on 26 June 2023.
7. On 7 September 2023, the claimant attended a preliminary hearing in respect of her first claim. She requested that the final hearing be postponed. The application was rejected.
8. On the same day, 7 September 2023, written reasons for the strike out of the second claim were sent to the claimant, although she did not immediately look at them.
9. The claimant had a fit note stating that she was not fit for work from 1 September 2023 to 22 September 2023.
10. On 12 September 2023, Dr Chandarana sent a letter to whom it may concern:

I have been asked to write this letter in support of the above named patient, **she is known to suffer from anxiety and is currently on sertraline** for this. **More recently she had quite a severe flareup of her anxiety leading to palpitations and anxiety attacks and required diazepam** to treat this. I understand that this

stems from a court hearing what she has to attend from 11 to 20 September. Unfortunately, Miss Harding feels unable to attend this court hearing as the stress makes her anxiety much, much worse.

I would be grateful if her health needs are taken into consideration as **these court hearings can be quite long and intensive, and I suspect will drastically affect her mental health.** [emphasis added]

Many thanks for understanding.

11. Dr Chandarana did not advise that the Employment Tribunal hearing should be postponed, as the claimant wanted, but did give his opinion that the claimant had significant stress and anxiety symptoms for which she was receiving medication. I reject the respondent's suggestion that Dr Chandarana generally only repeated what the claimant told him. His letters set out his clinical opinion, which necessarily is based to a significant extent on what the claimant has told him.

12. The hearing of the first claim took place between 11 and 20 September 2023.

13. On 13 September 2023, a well-being referral was made for support with the claimant's emotional well-being by the well-being prescription team leader at the claimant's general practitioners.

14. On 19 September 2023, the Employment Tribunal gave an oral liability judgment dismissing all of the claimant's complaints. She was informed towards the end of the day that a costs application would be determined the next day. The claimant was sent substantial amounts of documentation that evening.

15. On 20 September 2023, the costs application was heard. The Employment Tribunal informed the parties by email on 21 September 2023 that the costs application had been granted in the sum of £20,000.

16. After the end of the Employment Tribunal proceedings, and the expiry of the period for which the claimant had been signed off work, she returned to her job with Hereford and Worcestershire ICB towards the end of September 2023.

17. On 5 October 2023, separate liability and costs judgments with reasons in the first claim were sent to the parties.

18. The claimant did not feel well enough to start working on her appeal against the strike out judgment in the second claim until around 6 October 2023. She tried to obtain pro-bono advice but in the end drafted her own Notice of Appeal just before the time limit expired.

19. 19 October 2023 was the final date on which the claimant could appeal the strike out judgment in the second claim.

20. At 15:36 on 19 October 2023, the claimant created a CE-File user account. She believed that because she had a computer she was required to use e-filing. The information provided with judgments at the time explained that that is the preference, but does allow the possibility of filing at the EAT by email. The email address for the EAT is readily available.

21. The claimant found she was unable to upload the documents by e-filing.

22. At 16:19 on 19 October 2023, the claimant attempted to institute her appeal against the strike out judgment in the second claim by an email sent to London South Employment Tribunal.

23. On 20 October 2023 at 14:49, the claimant sent an email to the EAT attaching the required documents, save for the strike out judgment (as opposed to the reasons) (“the first appeal”).

24. The claimant cannot remember what led her to appreciate that she could email the documents to the EAT, at some stage on 20 October 2023.

25. On 23 October 2023, staff at London South Employment Tribunal sent a reply to the claimant’s email explaining submission should be made to the EAT, by which time the claimant had already done so.

26. On 23 October 2023, an administration officer of the EAT sent an email to the claimant, explaining that she was required to submit a copy of the strike out judgment in the second claim

for the first appeal to be properly instituted. The claimant did so on 24 October 2023. The first appeal was properly instituted five days out of time.

27. 16 November 2023 was the last day to appeal the liability and costs judgments in the first claim. On 16 November 2023, the claimant lodged in time an appeal against the liability judgment in the first claim (“the second appeal”). The claimant attached the necessary documents and also attached a copy of the costs judgment. The grounds of appeal only challenged the liability judgment.

28. On 20 December 2023, the claimant applied for an extension of time to properly institute the first appeal.

29. On 2 February 2024, Dr Chandarana provided a further letter in which he stated:

I have been asked to write this letter on behalf of the above patient. I understand that her case is going to the appeals process and some further information is required.

I can **confirm that Mrs Harding suffers with anxiety and depression and has done since January 2019. She continues to be on medication for her condition. She takes Sertraline 50mgs once daily.**

In my last letter I mentioned that the court case is likely to affect her mental health, and unfortunately her mental health has deteriorated since then. I understand that she already has a sick note covering her up until September. I understand that some questions that you need answered are whether or not she was suffering with a mental health condition during the time of her appeal. I can confirm that she was suffering with anxiety and depression during this time, and she tells me that this health condition, when it is severe can cause her to get brain fog where she struggles to keep deadlines, and I suspect this led to the delay in her appeal.

I would be most grateful if reasonable adjustments can be given to accommodate her mental health condition.

30. I accept that Dr Chandarana gave his genuine opinion that the claimant’s mental health had deteriorated after the Employment Tribunal hearing, despite the fact she was able to go back to work, and he considered that the claimant’s suggestion that she could suffer “brain fog” and struggle with deadlines was plausible and he thought it likely this had a substantial effect on her ability to submit her appeal.

31. On 22 October 2024, Ms A Kerr, acting on behalf the Registrar, refused the application for an extension of time to institute the first appeal properly.
32. On 29 October 2024, the claimant submitted an appeal from the Registrar's order refusing the application for an extension of time for the first appeal ("the first ARO").
33. The claimant submitted a further letter from Dr Chandarana dated 25 October 2024 in support of the first ARO, in which he stated:

Miss Harding came to see me on 24 October 2024 and spoke to me about the outcome of her application for an extended period of time for an appeal. She explained that she needs to respond to this, if she wished, by Wednesday 30 October 2024. I understand that Miss Harding needs to provide evidence to establish that she was suffering from mental ill-health at the relevant time. On 25 October 2024, she provided me with the details of her WhatsApp messages (as below) from 9 September 2023 to the end of September 2023. It is clear from these WhatsApp messages that Miss Harding despite being signed off as medically unfit, due to stress, from 1 September 2023-22 September 2023 was completely preoccupied with her employment tribunal hearing. She tells me that she was representing herself, had sought a postponement in July 2023 but this was refused in September 2023. **It is also clear that she was suffering with her mental ill-health condition during this time for which she was being prescribed for Sertraline (50mg at that time).**

I have noted, in her WhatsApp messages where she refers to 11 09 23 being exhausted-13 09 23 needing to recharge-13 09 23 been up since 4am working-13 09 23 I need to work on and finish reading files-13 09 23 masses for me to get through-15 09 23 feeling too down yesterday-22 09 23 awoke very early this morning after a very disturbed sleep 'body felt very cold been on the toilet a few times this morning with very loose bowels; very unusual for me. Think I might be in shock and my body is processing it-25 09 23 good to focus on moments like that not all the negative stuff. **It is from these WhatsApp messages that illustrates that Miss Harding was suffering from mental ill-health at the relevant time. Miss Harding, as I have mentioned previously, suffers with anxiety and depression and has done since January 2019. She has informed that she managed to eventually start working on her appeal but then had to seek legal advice, for what was another legal process for her to work on and entailed visiting the Citizens Advice and making lots of telephone calls.** It has, from the above Whatapp messages, been made clear that the delay in lodging her appeal was as a result, wholly or in substantial part of a condition suffered by her.

Again, I would be most grateful if reasonable adjustments can be given to accommodate her mental health condition. Miss Harding simply needed more time to process, read and review.

34. It is for the EAT to decide whether the claimant was affected in her ability to submit her claim, drawing what assistance it can from the medical evidence. I do not derive any assistance from Dr Chandarana's analysis of the claimant's WhatsApp messages, but I do accept that Dr Chandarana is genuinely of the opinion that the claimant's significant mental ill health was likely to have been a significant contributing factor in her failure to lodge the first appeal properly within time.

35. On 5 February 2025, His Honour Judge Auerbach held a Rule 3(10) hearing in the second appeal. He permitted two grounds to proceed. The claimant raised issues about costs in her skeleton argument, about which Judge Auerbach said:

3 I noted that her notice of appeal paragraph 3 identified only that the appeal was against the liability decision, not also the costs decision. The original grounds of appeal also did not raise any substantive issue in relation to the costs decision. Accordingly, the only live appeal before the EAT at present, and the only appeal I was dealing with, is against the substantive liability decision.

4 I noted that, should the appeal against the liability decision succeed, it would be open to the Appellant to contend that this required the costs decision to be revisited. But, in that event, that would be a matter for the employment tribunal.

5 I noted that, should the Appellant wish to seek to appeal the costs decision as in error of law in its own right, she would need to present a notice of appeal relating to the costs decision and setting out her grounds of appeal relating to it. Any such appeal would be out of time, and so she would need to apply for an extension of time including explaining why she had not appealed in time. Any such application would be considered by the Registrar, following the EAT's established procedure.

36. On 19 February 2025, the claimant lodged an appeal against the costs judgment in the first claim ("the third appeal"). The third appeal was submitted 461 days out of time. The claimant applied for an extension of time when submitting the third appeal.

37. On 17 June 2025, Ms A Kerr on behalf of the Registrar refused the claimant's application for an extension of time to submit the third appeal.

38. On 24 June 2025, the claimant submitted an appeal from the Registrar's order refusing an extension of time for the third appeal ("the second ARO").

39. The full hearing of the two grounds permitted to proceed in the second appeal are due to be considered at a full hearing on 9 June 2026.

The legal principles

40. Rule 37(1) the **Employment Appeal Tribunal Rules 1993** (as amended) (“**EAT Rules**”) gives the EAT the power to extend time:

37(1) The time prescribed by these Rules or by order of the Appeal Tribunal for doing any act may be extended (whether it has already expired or not) or abridged, and the date appointed for any purpose may be altered, by order of the Tribunal. ...

41. The EAT takes a relatively strict approach to time limits. In **United Arab Emirates v Abdelghafar and Anor** [1995] ICR 65, EAT, Mr Justice Mummery stated that the EAT will expect a full and honest explanation for the delay and will consider whether there are circumstances which justify granting an extension of time. Mummery J stated that the EAT should consider the explanation for the delay, whether it provides a good excuse for the default and whether there are circumstances that justify the EAT taking the exceptional step of granting an extension of time.

42. There is a discretion to be exercised in every case. In **Ridley v HB Kirtley** [2024] EWCA Civ 884, [2025] I.C.R. 441, the Court of Appeal stated, at paragraph 6, that previous decisions should not be treated as a fetter on the proper exercise of discretion:

We of course accept the broad proposition, by which this Court is bound, that the EAT is entitled to enforce the time limit strictly. ...we accept Mr Crozier and Ms Greenley’s submission that the broad power to extend time has become ‘encrusted by authority’ in a way which has led to the emergence of rigid sub-rules which are not justified by the broad terms of rule 37(1), or by the reasoning in the important relevant cases. As a result, some judges have tended to rely on those sub-rules for automatic answers, rather than to **consider the exercise of the discretion afresh in each case, by looking closely at the facts of each case, and not relying on generalisations.** [emphasis added]

43. The EAT is alive to the difficulties faced by those with mental ill health and will, where appropriate, take that into account when considering whether to extend time, particularly if there is supporting medical evidence. In **J v K** [2019] EWCA Civ 5, [2019] I.C.R. 815 Lord

Justice Underhill suggested a general framework for analysis that will often assist:

39. I am hesitant about prescribing any kind of detailed guidance for the Registrar and judges of the Employment Appeal Tribunal about the exercise of what is **inevitably a broad discretion which will fall to be exercised in a wide variety of circumstances**. But I am persuaded that **there may be some value in making the following few, very general, points**.

(1) The starting point in a case where an applicant claims that they failed to institute their appeal in time because of mental ill-health must be to **decide whether the available evidence shows that he or she was indeed suffering from mental ill-health** at the time in question. Such a conclusion cannot usually be safely reached simply on their say-so and will require independent support of some kind. That will preferably be in the form of a medical report directly addressing the question; but in a particular case it may be sufficiently established by less direct forms of evidence, e g that the applicant was receiving treatment at the appropriate time or medical reports produced for other purposes.

(2) If that question is answered in the applicant's favour the next question is **whether the condition in question explains or excuses (possibly in combination with other good reasons) the failure to institute the appeal in time**. Mental ill-health is of many different kinds and degrees, and **the fact that a person is suffering from a particular condition—say, stress or anxiety—does not necessarily mean that their ability to take and implement the relevant decisions is seriously impaired**. The Employment Appeal Tribunal in such cases **often takes into account evidence that the applicant was able to take other effective action and decisions during the relevant period**. That is in principle entirely acceptable, and was indeed the basis on which the applicant failed in *O’Cathail* [2013] ICR D2; [2012] IRLR 1011 (though **it should always be borne in mind that an ability to function effectively in some areas does not necessarily demonstrate an ability to take and implement a decision to appeal**). Medical evidence specifically addressing whether the condition in question impaired the applicant's ability to take and implement a decision of the kind in question will of course be helpful, but it is not essential. It is **important, so far as possible, to prevent applications for an extension themselves becoming elaborate forensic exercises**, and the appeal tribunal is well capable of assessing questions of this kind on the basis of the available material.

(3) **If the tribunal finds that the failure to institute the appeal in time was indeed the result (wholly or in substantial part) of the applicant's mental ill-health, justice will usually require the grant of an extension**. But there **may be particular cases, especially where the delay has been long**, where it does not: although **applicants suffering from mental ill-health must be given all reasonable accommodations, they are not the only party whose interests have to be considered**.

40. I emphasise that that guidance, if such basic propositions deserve that label, is not intended to be comprehensive. The facts of particular cases are likely to be

infinitely variable, and it is not desirable to seek to resolve all possible issues in the abstract. [emphasis added]

44. In **Ridley**, having reviewed the authorities, Nicola Davies LJ and Elisabeth Laing LJ concluded that a more generous approach is permitted where a Notice of Appeal is submitted in time, but some documents are missing, as opposed to where no Notice of Appeal is submitted in time.

45. With effect from 30 September 2023, Rule 37 **EAT Rules** was amended to add:

(5) If the appellant makes a **minor error** in complying with the requirement under rule 3(1) **to submit relevant documents** to the Appeal Tribunal, and rectifies that error (on a request from the Appeal Tribunal or otherwise), the time prescribed for the institution of an appeal under rule 3 may be extended **if it is considered just to do so having regard to all the circumstances, including the manner in which, and the timeliness with which, the error has been rectified** and any prejudice to any respondent. [emphasis added]

46. The requirement to submit the ET1 claim and ET3 response was removed and a specific power to extend time was added where an appellant has made a minor error in complying with the requirement under rule 3(1) **EAT Rules** to submit relevant documents.

47. In **Melki v Bouygues E and S Contracting UK Ltd** [2024] EAT 36, [2024] I.C.R. 803 the EAT held that the new Rule 37(5) **EAT Rules** applies to any application for an extension of time to submit an appeal determined after the new rule came into effect, even if the appeal was submitted before the rule change. However, the EAT held that a failure to submit the entire particulars of response was not a minor error. On appeal to the Court of Appeal, the issue about the applicability of the new Rule 37(5) **EAT Rules** to appeals submitted before the rule change was not challenged, but the decision that the omission of the particulars of response was not a minor error was overturned: **Melki v Bouygues E and S Contracting UK Ltd** [2025] EWCA Civ 585. Elisabeth Laing LJ held:

50. 'Minor' is an ordinary English word. It is a comparative adjective, as the Judge observed. The opposite of 'minor' is 'major'. Rule 37(5) refers to 'a minor error in complying with the requirement under rule 3(1) to submit relevant documents' to the EAT. Whether an error is

‘minor’, or not, therefore, is not an abstract question. It is to be answered in the context of compliance with rule 3(1).

The first ARO

48. The failure to attach the judgment when the appeal was submitted meant that the appeal was properly instituted five days out of time. I consider that the failure to supply the judgment was a minor error and consider it appropriate to grant an extension in respect of that element of the appeal pursuant to Rule 37(5) **EAT Rules**. I accept that the failure to provide the judgment, the reasons for which were provided, was an oversight. Once raised with the claimant, it was quickly remedied and caused no prejudice to the respondent.

49. Accordingly, I consider that this matter should be analysed as if the appeal was submitted one day out of time. I accept that the evidence establishes that the claimant was suffering significant anxiety during the whole period in which she had to submit the first appeal. The medical evidence of Dr Chandarana establishes significant anxiety requiring medication. The claimant had to deal with the hearing of the first claim, and the distress of failing in her complaints and being subject to an award of costs. I appreciate that she returned to work after the hearing, but accept that her duties were relatively light at the time. The claimant was able to work on her appeal and sought to obtain some *pro bono* advice once the hearing of the first claim was over. However, the fact that a person is able to do some things does not mean that they are not substantially affected in their ability to do other things by reason of their medical condition. I have concluded that the claimant’s significant level of anxiety played a substantial role in her errors. The claimant worked hard to try to ensure that her appeal was submitted in time. She had nothing to gain by submitting it late. She only finished drafting her grounds on the last day. When she was unable to upload to CE-File she panicked. She did not refer back to documentation that would have told her that she could submit her appeal by email to the EAT as a result of her panic and confusion. The respondent did not assert that it was prejudiced by the very short delay in the appeal being properly instituted. In all the circumstances it is

appropriate to grant an extension of time in respect of the first appeal which will be treated as instituted properly within time. The first appeal will now be subject to consideration on the sif.

The second ARO

50. The position is different in respect of the second ARO. The claimant was able to submit a lengthy appeal against the liability judgment within time. Her primary contention is that although she received two judgments, there was only one covering letter providing information about how to appeal, from which she assumed that she should submit only one appeal. Even if that is correct, it does not explain why there are no grounds that challenge the costs judgment in the grounds of appeal. The claimant accepted in her submissions that she had not thought about the possibility of appealing the costs judgment on a freestanding basis until she had the judgment of Judge Auerbach. I do not consider that there is a good reason for the delay, or there are any other circumstances that mean that time should be extended to allow the appeal to proceed. Judge Auerbach noted, that should the claimant succeed in her liability appeal, and should that result in determinations, either in a decision of the EAT or on remission to the Employment Tribunal, that undermine the conclusions in the costs judgment, that potentially could form a basis to seek to challenge the costs judgment. Nothing that I or Judge Auerbach have said constitutes advice as to how any such challenge might be brought or as to the prospects of success. That is a matter about which the claimant may wish to seek independent legal advice.