

Neutral Citation Number: [2025] EAT 206

Case No: EA-2023-001494-OO

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 25 November 2025

Before :

THE HON. LORD FAIRLEY, PRESIDENT

Between :

(1) ROHIT VIKAL
(2) EMMA VICTORIA LIMITED (t/a SHAPINS CLINIC)

Appellants

- and -

MISS APRIL FREKE

Respondent

Mr Rafael Katz (instructed by Peninsula) for the **Appellants**
Miss April Freke the **Respondent** in person

Hearing date: 25 November 2025

JUDGMENT

SUMMARY

Sex discrimination; sexual harassment; evidence; Tribunal accepting claimant's uncontradicted account of harassment

The claimant was employed by the second respondent. She made a complaint of sexual harassment. Her complaint involved alleged conduct of the first respondent in his capacity as a director and owner of her employer, the second respondent. The Tribunal heard evidence and found that eight incidents of sexual harassment had been established. It concluded that the incidents formed a course of conduct by the first respondent. The respondents appealed, contending only that the Tribunal should not have accepted that one of the eight incidents had happened. They submitted that in light of **Tui UK Limited v. Griffiths** [2023] UKSC 48, the Tribunal had erred by impermissibly accepting the evidence of the claimant in relation to that one incident. It was also submitted that, in accepting the claimant as credible and reliable in relation to that single incident, the Tribunal had impermissibly taken account of the other harassing conduct which it had found to be proved.

Held:

- (1) **Tui** concerned a situation where a fact-finding court had rejected part of the evidence of an expert witness whose conclusions had never been challenged in cross-examination and in circumstances where there was no competing expert opinion. **Tui** did not concern the situation where a fact-finder accepted uncontradicted evidence of which advance notice had been given. The Tribunal had been entitled to accept the uncontradicted evidence of the claimant.
- (2) In assessing the claimant's credibility and reliability, it was entirely proper for the Tribunal to take account of the totality of the course of conduct of which it had concluded the incident formed part.

The appeal was dismissed.

THE HON. LORD FAIRLEY, PRESIDENT

1. The appellants were the respondents in a claim by Miss Freke in the Employment Tribunal at Reading. I will refer to Miss Freke (as the Tribunal did) as "the claimant".

2. The claimant worked as a beauty therapist for the second appellant. The first appellant is a director of and owner of the second appellant. The Tribunal heard evidence and submissions on 12 and 13 October 2023. In a reserved judgment dated 15 November 2023, it upheld the claimant's complaints of sexual harassment and unlawful deductions from wages. The wages claim is not the subject of this present appeal.

3. The sexual harassment complaint comprised a number of component elements which the Tribunal ultimately found had been established. These were set out by the Tribunal between ET § 40 and 50, and consisted of the following conduct by the first appellant:

(1) Persistently asking the claimant to give him a massage when she refused to do so (ET § 13 and 41).

(2) Sending the claimant an inappropriate WhatsApp message on 3 May 2022 (ET § 16 and 42).

(3) Waiting for the claimant outside her hotel room on 4 May 2022 and then insisting on entering her room and pressuring her to order pizza (ET §19 and 43).

(4) Repeatedly telling the claimant that he had feelings for her (ET § 45).

(5) On an occasion in either June or July 2022 asking the claimant to click on a link on his laptop to a pornographic website and, when she refused to do so, AirDropping the link to her (ET § 21 and 46).

(6) On an occasion in July 2022 refusing to give the claimant her car keys and repeatedly asking that she chat to him (ET § 22 and 47).

(7) On an occasion in July 2022 telling the claimant that she had sexy legs (ET § 48).

(8) On multiple occasions between June 2022 and September 2022, touching the claimant's knee and the badge that she wore on her chest (ET § 25 and 49).

4. Assessment of remedy was reserved and later dealt with at a separate hearing in December 2023. The claimant was awarded £1,522 for the wages claim, and a total sum of £19,305 for the harassment claim, comprising financial loss of £2,305 caused by the harassment, and an award of £17,000 for injury to feelings. The remedy decision is not appealed.

5. Of the seven grounds of appeal originally presented to the Employment Appeal Tribunal, six were found at a rule 3(7) sift and at a rule 3(10) hearing to disclose no arguable error of law. The effect of that is that the only ground which has been allowed to proceed to a full hearing today is ground 7, which contains two paragraphs. These were paras.20 and 21 of the original proposed grounds.

6. In para.20, the appellants submit that, contrary to the principles in Tui UK Limited v. Griffiths [2023] UKSC 48, the Tribunal impermissibly accepted the evidence of the claimant and thereby rejected the evidence of the respondent in relation to the incident with the car keys. At para.21 it is suggested that the Tribunal erred in concluding that the incident with the car keys event happened by placing reliance on its conclusions about the other incidents.

7. The focus of this appeal is therefore extremely narrow. It focuses on what has been described as “the car keys incident” which, of the various episodes I referred to, is number 6 on the list of 8 instances of proven harassment. It is a challenge to the Tribunal's findings at paras.22 and 47 of its reasons.

8. The Tribunal had witness statements from both the claimant and the first appellant, and heard evidence on oath from both. It recognised that most of the claimant's allegations were matters said to have taken place in private when only the claimant and the first appellant were present. It took that factor into account in its detailed and careful findings on credibility at para.33. The claimant's witness

statement of 14 September 2022 was included in the bundle for this appeal hearing. It set out the details of her various complaints, and within that statement she described the car keys incident in some detail. That is found at p.87 of the core bundle. The first appellant's witness statement, dated 18 September 2022, is also in the bundle at core bundle pp.90 to 95. No mention is made of the car keys incident. The first respondent was, however, have been well aware of that allegation around a year prior to the date of the hearing. In any event, since the burden of showing harassment rested on the claimant, the claimant's evidence was taken first, in accordance with the usual practice.

9. The first point in this appeal relies upon the decision of the Supreme Court in **Tui**. **Tui**, however, involved a situation where a fact-finding court had rejected part of the evidence of an expert witness whose conclusions had never been challenged in cross-examination and in circumstances where there was no competing expert opinion. The Supreme Court gave guidance as to the circumstances in which cross-examination might be necessary before evidence could be rejected, but stressed that its guidance was based upon broad principles of fairness and did not seek to establish fixed rules of law. **Tui** did not, however, concern a situation where a fact finder accepted uncontradicted evidence of which advance notice had been given.

10. Neither the Tribunal's reasons nor the grounds of appeal suggest that the first appellant gave any evidence at all about the car keys incident. The appellants accept, however, that the claimant gave evidence about that incident and that her evidence was never challenged in cross-examination. Nothing in the **Tui** decision supports the proposition that the Tribunal was not entitled to accept the claimant's unchallenged evidence. If anything, **Tui** is authority for the contrary proposition.

11. On the separate point made in para.21 of the grounds of appeal, it is important to read the Tribunal's reasons as a whole, including the various matters referred to in para.33. This particular incident was, as the Tribunal correctly noted, one that was said to have happened when the claimant and the first appellant only were present. The allegation is very specific and was consistent with the

other evidence of the claimant that the Tribunal accepted as credible and reliable, about the first appellant attempting to engage her in conversation about his feelings for her and his wish to enter a relationship with her. It was entirely proper for the Tribunal to have regard to the totality of the course of conduct, of which it plainly concluded the car keys incident formed part. That was an issue of fact, and the conclusions reached by the Tribunal were open to it on the evidence.

12. For these reasons, there is no merit in either of the two paragraphs of ground 7, and the appeal is therefore refused.