

Neutral Citation Number: [2026] EAT 60

Case No: EA-2024-000153-AS

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 22 April 2026

Before :

HIS HONOUR JUDGE AUERBACH

Between :

QRS

Appellant

- and -

LONDON BOROUGH OF TOWER HAMLETS AND OTHERS

Respondents

The Appellant in person
Fergus McCombie (instructed by LB Tower Hamlets Legal Dept) for the **Respondent**

Appeal from Registrar's Order
Hearing date: 11 March 2026

JUDGMENT

SUMMARY

PRACTICE AND PROCEDURE – extension of time for seeking a rule 3(10) hearing

The claimant in the employment tribunal appealed from a decision refusing to strike out the responses to her claims. The EAT emailed her a rule 3(7) letter notifying her that a judge was of the opinion that the substantive appeal was not arguable. She only requested a rule 3(10) hearing many weeks out of time, and the Registrar refused to extend her time. She appealed from that order to an EAT judge.

The appellant was not aware of the rule 3(7) letter, or of a further email from the EAT referring to it, until her attention was specifically drawn to them during a phone call to the EAT. It was also accepted that she had mental and physical ill health during the relevant period. However, the overall evidence did not support the conclusion that her failure to identify, and act on, either of those emails, over the course of the period in question, was caused by her ill health, such as to amount to a good excuse for the default.

In addition, the respondent argued that the underlying appeal was now in any event academic, because the substantive tribunal claims had been dismissed at a full merits hearing upon the claimant's non-attendance. That decision had not been appealed.

There was no realistic prospect of the EAT holding that an application to amend the present appeal amounted to the institution of an appeal against the dismissal decision, and extending time in respect of it. There was also no realistic prospect that the present underlying appeal could lead to the decision to refuse to strike out the responses being overturned and it being decided that the responses could or should properly have been struck out.

The present underlying appeal had, in all the circumstances, become academic.

There was no other particular reason or circumstance warranting an extension of time.

The extension of time was therefore refused, and the appeal from the Registrar's order dismissed.

HIS HONOUR JUDGE AUERBACH:

Introduction

1. The appellant was employed by the first respondent from March 2018 to June 2022. She brought four related claims in the employment tribunal, against the first respondent and others, acting as a litigant in person. She pursued multiple complaints under the **Equality Act 2010** and also complained of unfair dismissal, including by reason of having made protected disclosures.

2. The appellant has brought a number of appeals from decisions taken by the tribunal during the course of the litigation. Appeal 1 was from a decision striking out two respondents. It was considered not arguable under rule 3(7). The appellant applied out of time for a rule 3(10) hearing. The Registrar refused to extend time. Appeal 2 was from a decision refusing an application to add an additional respondent. It was deemed not properly instituted in time as a copy of the tribunal's order was not provided in time. The Registrar refused to extend time. Appeals from the Registrar's orders in those two appeals were dismissed at a hearing on 23 January 2025. The appellant applied for permission to appeal to the Court of Appeal, to which I will return. Appeal 3 was from a decision of May 2023 refusing an application by the appellant to strike out the responses. It was considered not arguable under rule 3(7). The appellant did not seek a rule 3(10) hearing.

3. This hearing before me related to the fourth appeal: EA-2024-153-AS. It is from the decision of EJ Beyzade, arising from a hearing which began on 19 October 2023 and continued on 15 January 2024, refusing a further application by the appellant to strike out the respondents' responses. That appeal was instituted on 29 January 2024. The tribunal's written judgment was sent to the parties on 29 February 2024 and written reasons on 17 April 2024. I note that the appellant also applied for a reconsideration, which was refused by the judge in a further decision sent on 25 June 2024.

4. The judge who considered the appeal on paper at the "sift" stage under rule 3(7) was of the opinion that the grounds of appeal were not arguable. The appellant made an out-of-time application

for a rule 3(10) hearing together with an application for an extension of time in respect of that late application. The Registrar refused to extend time in that respect. The appellant appealed from the Registrar's order. This hearing before me was of that appeal from the Registrar's order.

Legal Framework

5. Rule 3(7) **Employment Appeal Tribunal Rules 1993** (as amended) provides:

“Where it appears to the Appeal Tribunal or the Registrar that a notice of appeal or a document provided under paragraph (5) or (6)—

- (a) discloses no reasonable grounds for bringing the appeal; or**
- (b) is an abuse of the Appeal Tribunal's process or is otherwise likely to obstruct the just disposal of proceedings,**

the Appeal Tribunal or the Registrar shall notify the Appellant or special advocate accordingly informing him of the reasons for its opinion and, subject to paragraph (10), no further action shall be taken on the notice of appeal or document provided under paragraph (5) or (6).”

6. Rule 3(10) provides:

“Subject to paragraph (7ZA), where notification has been given under paragraph (7) and within 28 days of the date the notification was sent, an appellant or special advocate expresses dissatisfaction in writing with the reasons given by the Appeal Tribunal or Registrar for their opinion, he is entitled to have the matter heard before the Appeal Tribunal which shall make a direction as to whether any further action should be taken on the notice of appeal or document under paragraph (5) or (6).”

7. Rule 37(1) provides:

“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.”

8. Rule 37(3) provides:

“An application for an extension of the time prescribed for the doing of an act, including the institution of an appeal under rule 3, shall be heard and determined as an interim application under rule 20.”

9. Rule 20 enables interim applications to be disposed of by the Registrar. Rule 21 provides for an appeal from the Registrar's determination of such an application, and that notice of appeal may be given, orally or in writing, “within five days of the decision appealed from.”

10. I will refer to a notification under rule 3(10) as a request for a rule 3(10) hearing. In considering an application for an extension of time in respect of a late request for a rule 3(10) hearing,

the EAT takes the same general approach as it does to such applications in respect of late substantive appeals from the tribunal. See: **Echendu v William Morrison Supermarkets plc**, UKEATPA/1675/07, citing also **Morrison v Hillcrest Care Ltd** [2005] EWCA Civ 1378.

11. In **United Arab Emirates v Abdelghafar** [1995] ICR 65 Mummery P noted that the grant or refusal of an extension of time is a matter of judicial discretion, to be exercised in a principled manner, weighing and balancing all of the relevant factors in the given case, and not in a packaged or programmed way. He went to set out a number of guidelines and to identify three questions to be addressed in each case: (a) what is the explanation for the default?; (b) does it provide a good excuse for the default?; (c) are there circumstances which justify the exceptional step of extending time?

12. The **Abdelghafar** guidelines have been approved in a number of Court of Appeal decisions. These include **Jurkowska v Hlmad Limited** [2008] EWCA Civ 231; [2008] ICR 841 in which Rimer LJ observed that a good excuse may not be a precondition of success in every case, although in the ordinary run of cases it probably will be. It would not automatically be enough for an appellant to say that they had forgotten the deadline or been too busy with other things. Rimer LJ also observed, however, that an appellant does not have to show that their case is rare and exceptional. In **Ridley v Kirtley** [2024] EWCA Civ 884; [2025] ICR 441 at [143] the Court observed that the **Abdelghafar** approach “is perceived as being a strict, perhaps ‘hard-hearted’, approach. But it is not inflexible. It involves the exercise of a discretion in a way which is ‘judicial’, ‘even-handed’ and, above all, fair.”

13. In **J v K** [2019] EWCA Civ 5; [2019] ICR 815 there was discussion of the approach to be taken where the extension application relies on mental ill health. At [39] Underhill LJ gave some general guidance. The starting point should be to consider whether the available evidence shows that the applicant was indeed experiencing mental ill health at the time. Such a conclusion could not usually be reached simply on their say-so, and would require independent support such as a medical report directly addressing the question, although other forms of evidence might suffice. The next

question would be whether the condition in question explained or excused the default. In considering that question the EAT often properly takes into account evidence as to other effective actions and decisions that the applicant was able to take in the same period. Again, specific medical evidence would be helpful. Finally, if the requisite impact of the ill health was shown, justice would usually, though not always, require an extension. The interests of other parties must also be considered.

14. It is well-established that, in deciding an appeal from a Registrar's order, the EAT judge is not reviewing the decision that was taken by the Registrar, based on the information that was available to her. Rather, the judge rehears the matter and comes to their own decision.

This hearing

15. At the hearing before me the appellant represented herself and the respondent was represented by Mr McCombie of counsel. I had a bundle prepared by the EAT's administration in compliance with the Practice Direction, a substantial bundle prepared by the appellant, skeleton arguments from both parties, and a list of authorities and a chronology prepared by the appellant. There was extensive oral argument during the course of which the appellant also gave me her account of events. I extended the half-day hearing into the afternoon to enable arguments to be completed, putting back the start of my next hearing. I reserved my decision, which I now provide.

16. Both parties referred in argument to a decision of the Court of Appeal in respect of an application for permission to appeal from the EAT's decision on the appeal from Registrar's order in appeal 2. Following the hearing before me I located that decision. The contents reflected what I had been told, but for good order I sent a copy to the parties. Thereafter the appellant made a written application for an anonymity order, which I have addressed separately.

Chronology in the EAT

17. There has been a great deal of correspondence on this matter. For the purposes of what I have to decide it is sufficient to identify at this point the following relevant chronology.

18. As I have noted, the tribunal refused the appellant's strike-out application at a hearing in January 2024. She put in her notice of appeal prior to the tribunal providing its written reasons, which were sent on 17 April 2024. In May 2024 the appellant emailed further materials to the EAT.

19. The full merits hearing in the tribunal was scheduled to open at the start of July 2024. Starting in April 2024 the appellant made unsuccessful applications for it to be postponed. On 20 June 2024 the appellant emailed the EAT referring to that, and other matters, and indicating that she was working on further materials to present to the EAT. She wrote that her GP had recommended "additional therapeutic support to address stress and anxiety, as well as to assist in managing my heightened blood pressure." She also had a post-TMJ (temporomandibular joint) surgery appointment in July.

20. The appellant did not attend the full merits hearing on 1 July 2024. The panel treated her most recent emails as amounting to a further application for a postponement. Efforts were made to contact her by telephone and an email was sent indicating that the tribunal would consider that application the next day. On 2 July the appellant did not attend. The administration spoke to her and what she said was reported to the tribunal. It then considered and refused her further application to postpone. It went on to dismiss her claims upon her non-attendance under what was then rule 47. Its written judgment and reasons covering both decisions were sent to the parties on 15 July 2024.

21. On 11 July 2024 the appellant emailed the EAT. She referred to an assessment call with Talking Therapies on 2 July and a letter from them of 9 July 2024 with a diagnosis of anxiety and depression. She wrote that she did not know if the tribunal had proceeded with the full merits hearing. She apologised for not yet submitting pending grounds and additional evidence to support her appeal. She said this was because of her medical condition and outstanding subject access requests.

22. On 23 July 2024 the EAT emailed the appellant a letter notifying her that her appeal had been referred to a judge in accordance with rule 3(7) and that in his opinion the notice of appeal disclosed

no reasonable grounds for bringing the appeal. As is usual, the letter drew attention to rule 3(10) and relevant parts of the Practice Direction. It attached extracts from rule 3, including rule 3(10).

23. On 20 September 2024 the appellant emailed the EAT. She attached a completed form applying for a direction or order, indicating that she wished to rely on various evidence. She also attached what she described as an updated index/chronology. In the email she wrote, in part:

“Unfortunately, due to circumstances beyond my control, specifically my physical and medical condition, I was unable to provide the aforementioned documents as initially anticipated. Furthermore, owing to the same reason and the volume of information/documents, it has been challenging to compile all the pertinent documents outlined in the attached index as planned. However, the outstanding documents are of utmost importance and will be sent to the EAT in due course, as soon as possible.”

24. The EAT’s Associate responded on 26 September 2024 that that email was unclear. He asked whether this was an out-of-time application regarding the EAT’s letter of 23 July 2024, or, if the appellant had already made such an application, for a further copy of it.

25. The appellant emailed the EAT on 14 October 2024. She attached a covering letter (dated 11 October) a revised “index/chronology” document and a bundle of documents. The letter referred to her “currently undergoing therapy/treatment for stress/anxiety/depression”, awaiting further treatment for TMJ and another appointment in the hypertension clinic. She wrote that these health challenges had “significantly impeded my ability to manage my responses and day-to-day activities as expected.” She asked that the EAT “consider these concerns during their sifting decision.”

26. On 18 October 2024 the appellant telephoned the EAT and spoke to the Associate. Following that he emailed her attaching a copy of the EAT’s application form for her to complete and return. The appellant emailed back later that same day. She referred to the call earlier that afternoon:

“You informed me that on 23 July 2024 at 9:35 AM, the EAT sent me an email advising that an Employment Appeal Tribunal (EAT) Judge/KC?? had dismissed my case. You also mentioned that the deadline for appeal had lapsed, and my case was closed. I clarified that I was unaware of the EAT’s decision, which prevented me from exercising my right to appeal under Rule 3 (10). I shared that due to my current physical (elevated blood pressure, etc.) and mental health issues (stress, anxiety and depression) for which I have been receiving therapy since 11 July 2024, as outlined in various correspondences to the EAT, I have not been able to manage my responsibilities as I had hoped.”

27. A little further on the appellant wrote:

“I will review my email records to locate the EAT’s correspondence from 23 July 2024, of which I had no prior knowledge, and I will proceed to lodge an appeal in due course.”

28. On 23 October 2024 the appellant sent the EAT a further email with attachments. These included screenshots from her inbox, showing the EAT’s emails of 23 July 2024 and 26 September 2024 present, but marked as unopened. She wrote that she had been unaware of them, and continued:

“I would like to reiterate that the oversight was not intentional. My ongoing health issues have significantly impacted my ability to manage my case effectively and handle my day-to-day activities as expected. My recent medical record will provide more details for your perusal. This will be provided in due course.”

29. The appellant also attached the completed application form seeking a rule 3(10) hearing and a time extension for that request. Further correspondence followed. By a decision sealed on 6 December 2024 Ms Sarah Lindsay on behalf of the Registrar refused to extend time in respect of the late application for a rule 3(10) hearing. The appellant appealed and sent in further materials in support. The hearing of that appeal came before me on 11 March 2026.

Overview of the Issues

30. The 28-day period for seeking a rule 3(10) hearing runs from the date on which the rule 3(7) notification is sent. Accordingly, the last day to make a timely request for a rule 3(10) hearing in this case was 20 August 2024. There is no dispute that the appellant applied out of time and sought an extension of time. The overarching question that I have to decide is whether or not to grant that extension. I am taking a fresh decision, based on the evidence and arguments presented to me.

31. In summary, the appellant accepts that the emails from the EAT, of 23 July 2024 attaching the rule 3(7) letter, and of 26 September 2024 referring to it, did arrive in her inbox; but she says that she was not aware of them until she spoke to the Associate on 18 October 2024. She relies on what she says was the impact of her ill health during this time period. She says that the appeal was generally actively pursued, and that, following the conversation on 18 October 2024, she made her rule 3(10)

request promptly. The respondent disputes that there is a good excuse for the default. In particular it contends that the evidence does not show that it was caused by the appellant's ill health.

32. The respondent also contends that permission should be refused because the underlying appeal is in any event essentially hopeless and it has become academic. That is because the underlying claims have all been dismissed, a decision in respect of which the appellant did not institute an appeal.

Evidence Relating to the Appellant's Ill Health

33. The appellant relies upon various evidence relating to her ill health. Specifically in relation to her mental health during the relevant period that includes the following.

34. There was an email from an NHS Foundation Trust of 9 July 2024 headed "outcome of assessment and treatment plan". That referred to a call on 2 July and the appellant having completed questionnaires measuring her low mood and anxiety. Her scores were: "PHQ-9=14, GAD-7=14 indicating moderate levels of depression and moderate levels of anxiety." She was offered six Skype sessions of CBT for stress. The waiting list was five to six weeks.

35. There were email exchanges between the appellant and a Talking Therapies service during August and September 2024, in one of which she referred to the stresses of the litigation and wrote that she was struggling to cope with the overwhelming emotional and psychological toll. She also referred in argument to a homework note for session 3 in September 2024 and extracts from her "behavioural activation diary", showing the daily entries she had completed for 2 – 15 October 2024.

36. There was also an email of 17 October 2024 from the appellant attaching her assignments for weeks 5 and 6, and an email of that date indicating that she was discharged at that point at her request following five sessions of CBT. Her scores at the end of treatment were recorded as: "PHQ-9 = 17, GAD-7 = 18, indicating severe levels of depression and severe levels anxiety. There has been no change in scores since the first treatment session." There was then an email of 11 March 2025

following a review call. The appellant had completed the questionnaires again. Her scores were: “PHQ-9 = 14, GAD-7 = 17 indicating moderate levels of depression and severe levels of anxiety.”

37. There were also letters from the facial pain service at the Eastman Dental Hospital in March and November 2024. These refer to the appellant having had TMD (temporomandibular disorder) pain since 2021 and an operation in September 2023 under the auspices of Guys. In November 2024 she was awaiting input from the pain management team. The appellant also included various leaflets from the Eastman, slides from a group session in April 2025, a letter in May 2025 referring to a booking on a pain-management programme, and an invitation to that programme from January 2026.

38. There are also GP’s notes and letters from March and June 2024 referring to stress-related hypertension, the appellant being on blood-pressure medication, an A & E visit attributed to the effects of that medication in January 2024, and an episode in which the appellant called NHS 111 and the GP in February 2024. The medication was subsequently adjusted in March. There is also a record of further contact with NHS 111 and the GP, relating to blood-pressure issues, in March 2026. There are also text messages concerning a physiotherapist appointment booked for 9 March 2026.

Arguments

39. There was very full argument before me. The following is a summary of the main points.

40. As noted, the appellant said that she did not open, or read, either of the EAT’s emails of 23 July and 26 September 2024 until after she was alerted to them in the course of her call to the EAT of 18 October 2024. She had been unaware, before that, that a rule 3(7) letter had been sent to her.

41. The appellant said that her health deteriorated during June 2024. She referred to the medical evidence relating to her ongoing hypertension issues and episodes in the first half of the year. She relied upon the assessment of her mental health by Talking Therapy in July. She said she was struggling with basic tasks and activities during this period, such as self-care, and dealing with basic

correspondence. There were gaps between therapy sessions because she was sometimes too unwell. She relied upon the behavioural activation diary and her homework note in September 2024. The latter included a note by her in the column for: “necessary” tasks that she felt she was neglecting: “Reading and responding to emails promptly – especially with tons of spam emails that have been flooding my inbox. I am not sure if my email has been hacked???”

42. The appellant submitted that the wider context was that her communications showed that she was committed to her underlying appeal. She began it in time. Following receipt of the tribunal’s written reasons she was endeavouring to put together further materials in support of her appeal, but progress was impeded by her mental ill health. After sending her email on 20 September 2024 it took her until 14 October to complete further work on these materials, because she was struggling. Following the conclusion of her therapy she rang the EAT. Once alerted to the rule 3(7) letter, she found it, read it and made her rule 3(10) request promptly. She submitted that this wider picture also supported her case that her default was caused by her ill health during this period.

43. Mr McCombie did not dispute that the appellant had, and has, genuine health problems, but he submitted that they were very longstanding. The evidence did not show a significant deterioration during the relevant period. The July 2024 assessment described her levels of anxiety and depression as “moderate”. There was no medical advice that she was unable to engage with documents or use email, or indeed attend hearings, during this period. The homework note from September 2024 showed she had looked at her email inbox. The daily diary showed her sending emails relating to the litigation and dealing with other work-adjacent matters. She had clearly been able to send emails to the EAT and to put together substantial materials relating to the litigation during the relevant period.

44. Mr McCombie said that the evidence showed that the appellant discharged herself from the Talking Therapy course on 17 October 2024, and her scores at that point were almost the same as at the start. Although at the end they were described as showing “severe” depression and “severe”

anxiety, it was also said at that point that there had been no change in her scores since the first session. This was not a picture of a significant deterioration in her mental health over the course of that period.

45. In short Mr McCombie submitted that the evidence showed that, perhaps with the support of Talking Therapy, the appellant was coping with her mental ill health sufficiently during that period. She knew that the next stage of this appeal would be a “sift” decision. She was able to, and did, carry out various tasks, which suggested that she could also have checked her inbox periodically for any email from the EAT about that, and found, opened, and read, the EAT’s emails of 23 July and 26 September 2024, just as she was able to search the inbox and find them, after the conversation on 18 October. The evidence did not suggest that, on account of ill health, she could not have managed to do this. She had not shown a good excuse which justified extending time.

46. Mr McCombie also submitted that in any event the underlying appeal was essentially hopeless. The rule 3(7) opinion was plainly right. The underlying appeal had also become academic because the tribunal had dismissed all the claims at trial, upon the claimant’s non-attendance, a decision which she had not appealed. In so far as she had applied in February 2025 to amend the present appeal against the EJ Beyzade decision of January 2024, to introduce an appeal against the rule 47 dismissal decision at trial in July 2024, that was not the proper way to institute such a fresh appeal, and in any event the application was long out of time, and bound to be refused.

47. Mr McCombie referred to the decision of the Court of Appeal relating to the refusal to extend time in respect of the late appeal in appeal 2. The appellant’s application for permission to appeal was considered at a hearing in December 2025. The Court held that, in light, of its decision in **Melki v Bouygues E and S Contracting UK Ltd** [2025] EWCA Civ 585; [2025] ICR 1384 (which had come after the EAT’s decision in that case), and the fact that the tribunal’s reasons had been provided, the omission of the tribunal’s order should have been forgiven as a minor error under rule 37(5).

48. However, the Court went on to hold that, because the rule 47 decision had brought the

underlying claims to an end, at present there were no live claims to which a new respondent could be added. In order for the claims to be reinstated the appellant would have to surmount all of five substantial hurdles. The prospect of her doing so was no more than fanciful. So, the underlying appeal was academic. The appeal was therefore dismissed. Mr McCombie invited me to adopt the same approach, and come to the same conclusion, in relation to the present appeal.

49. The appellant said that at the hearing in January 2025 of the appeals from Registrar's orders in appeals one and two Mr McCombie had advanced his argument that the second appeal was in any event academic because the underlying claims had been dismissed under rule 47. The judge accepted that argument. The appellant argued that this was procedurally unfair, as the Associate had notified her in correspondence in the run-up to that hearing, that it would concern solely the time-extension issues in appeals one and two. She had also raised the rule 47 decision with the EAT, in an application in February 2025. This was a relevant consideration in relation to the present matter.

50. The present appeal was also not academic because it served the purpose of correcting an error of law. The appellant had also applied to the Court of Appeal to reopen their decision that the appeal which they considered was academic. She forwarded to the EAT an email chain from February 2026 relating to that application, which had yet to be considered. Mr McCombie said he had not previously been aware of that application to reopen, but submitted that in any event, whatever became of the tribunal's decision not to permit a particular respondent to be added, that could not affect the fact that the underlying claims had been dismissed, with, he said, no prospect of revival.

Discussion and Conclusions

51. I consider first why the appellant did not seek a rule 3(10) hearing within the 28-day period, or sooner than 18 October 2024, and whether the explanation amounts to a good excuse. In particular I have considered whether this default was because of the appellant's ill health. In doing so, I have followed the guidance in the authorities, and in particular **J v K**.

52. I accept that the appellant did not open, or read, either of the EAT’s emails of 23 July and 26 September 2024 until after her call to the EAT of 18 October 2024.

53. The appellant invoked the Court of Appeal’s decision in **Melki** concerning the approach to what she called minor procedural errors. But that decision was concerned with rule 37(5), which applies where there is a minor error in complying with the requirements of rule 3(1), to submit certain documents when instituting an appeal. It has no application to a late request for a rule 3(10) hearing.

54. Every appellant (and respondent) is expected to familiarize themselves with the EAT’s procedures. They are explained in a user-friendly way in its Practice Direction. The present appellant also certainly knew that the next stage for her appeal was that it would be considered by a judge under what the EAT calls the “sift” procedure, and that one possibility was that the judge might be of the opinion that her grounds, or some of them, were not arguable. She also had previous experience that, if or when a rule 3(7) letter to that effect is sent, there is a 28-day period to express dissatisfaction and thereby seek a rule 3(10) hearing. She had experience of having been late doing so once before, and then having to seek an extension of the deadline, in which she had been unsuccessful.

55. It was, in principle, the appellant’s responsibility to check her in-box sufficiently frequently to allow herself enough time, in the event of a rule 3(7) letter being received, informing her that a judge considered her appeal not to be arguable, to decide whether she wished to seek a rule 3(10) hearing, and if so, to notify the EAT of her dissatisfaction within the 28-day period.

56. I accept that the appellant had, and has, chronic problems of hypertension, TMJ pain and mental ill health. I accept that, during the relevant time period from July to October 2024, the appellant’s ongoing conditions of hypertension and TMJ pain, and the general stress of the litigation, all bore on her mental health. I also accept that she was dealing with a number of particular matters in relation to the litigation in the run-up to, and then during, the relevant time window. I accept that

it was against that backcloth that, following a referral from her GP, she was assessed by Talking Therapies in July 2024 and offered the CBT course on which she subsequently embarked.

57. However, the evidence does also plainly show that during this period the appellant was able to put together articulate emails and submissions, to compile chronologies and bundles, and generally to marshal a great deal of material that had been generated in this ongoing litigation and that she believed it was vitally important to assemble and present to the EAT. This included one communication sending such materials to the EAT, in July 2024, around the time of the start of the CBT process, and another in October 2024, shortly before it finished. I accept that this substantial project took her many weeks to complete, and she was also dealing with the effects of her mental ill health on her personal life during this period. Nevertheless, it is not the case that the effects of her mental ill health were so severe that she was simply unable to accomplish such tasks at all.

58. The evidence also shows that, not only did the appellant appreciate the nature of the sift process, and the significance of a rule 3(7) opinion for an appeal. She also had not lost sight of the fact that the sift decision was the next stage in this particular appeal. She referred specifically to that when emailing the EAT in both July and October.

59. The appellant referred in her Talking Therapy materials (and in submissions at this hearing) to having had 1000s of emails in her inbox, and a problem with spam. I can understand that this might make it difficult to spot an incoming email from an unknown address that was not expected. But the rule 3(7) letter from the EAT was awaited, and would be coming from a known source. Following the call on 18 October 2024 the appellant was able to find the EAT's emails by using a search filter. I am not persuaded that she could not have used that technique at any time to check for an email from the EAT. She failed to do that during a period of approaching three months, and failed to pick up not just the rule 3(7) email, but a second email responding to one from her, and which would also, had she read it, have alerted her to the fact that a rule 3(7) letter had already been sent.

60. For all of these reasons, I have come to the conclusion that I am not satisfied that the failure of the appellant to identify, open and respond to the rule 3(7) letter within the 28-day period, or sooner than she did, was materially influenced by her ill health during the period in question.

61. The authorities indicate that, when considering whether to extend time, the potential merits of the underlying substantive appeal are not usually relevant. But they may be taken into account, in particular where it is apparent that the underlying appeal has no realistic prospect of success; and an appeal or application will not normally be entertained if it has become academic. The respondent says that in the present case the underlying appeal is palpably very weak; and that it has now become academic in view of the substantive claims in the employment tribunal having been struck out.

62. I take that second aspect first. I note first that the fact that the substantive applications considered at the January 2025 EAT hearing related to appeals from two other decisions, did not mean that the respondent was not entitled to argue, nor the EAT (or indeed, the Court of Appeal) to accept, that the rule 47 dismissal of the underlying claims had rendered *those* appeals irrelevant. Nor is it irrelevant to my consideration of the application in the fourth appeal that is before me. That is because, in each case, whether the rule 47 decision has rendered appeals against earlier decisions of the tribunal academic is a relevant consideration.

63. The Allen tribunal's written judgment and reasons refusing the appellant's further postponement application and dismissing her claims under rule 47 was sent to the parties on 15 July 2024. The 42-day period to institute an appeal from it ran from that date.

64. In her email of 20 September 2024 in relation to this appeal the appellant wrote that it was "still unclear" whether the Allen tribunal hearing had gone ahead. A copy of the Allen decision was attached to her email relating to this appeal of 8 November 2024. The appellant wrote then that due to "ongoing physical and mental health challenges, in addition to other unrelated personal matters, I

have been unable to attend to these issues with the requisite urgency. As a result, I became aware of the ET's correspondence only on 30 October 2024." She also wrote: "I will submit a new appeal" concerning the Allen decision. On 11 November she wrote that in light of that decision she would be completing a form T461. In her email of 14 November she referred to the Allen decision as "concerning." Attachments on 13 December included a copy of a letter to HMCTS about it.

65. On 23 January 2025 the EAT hearing of the appeals from Registrar's orders in appeals one and two took place. Mr McCombie argued that appeal two was in any event academic because the underlying claims had been dismissed. The appellant had indicated that she attended to appeal that decision but had not yet done so, and any appeal now would be out of time. In her decision sealed on 30 January 2025 the judge accepted that argument.

66. On 7 February 2025 the appellant emailed the EAT in this appeal "an urgent request to amend my appeal". She submitted that the materials she had sent "demonstrate the connection" between this appeal and the Allen decision "which I respectfully request the EAT to consider." She attached an application form seeking to "amend my appeal EA-2024-000153-AS to address a significant issue" being the Allen decision. She sent an amended version of that application on 11 February 2025.

67. The appellant stated in the introductory part of her skeleton argument for this hearing that "subsequent procedural applications made in February 2025 were intended only to amend or consolidate the existing appeal EA-2024-000153-AS and did not constitute the institution of a new appeal." She also stated towards the end that her applications "dated 7 February 2025 and 11 February 2025 were intended to clarify and regularise the scope of the existing appeal."

68. Standing back I note that: (a) the Allen tribunal's decision was sent on 15 July 2024; (b) on the appellant's own account she became aware of it on 30 October 2024; (c) despite at times indicating that she intended to appeal against it she has at no time submitted a notice of appeal relating to it; (d) she instead, following the EAT's decision arising from the hearing in January 2025, submitted an

application to amend this present appeal in relation to it; and she has disavowed that this itself amounted to a new appeal. Were it to be suggested that it did, there would be an issue as to whether it could be treated as such. That application was also in any event made more than six months after the promulgation of the Allen decision and more than three months after the appellant says she became aware of it. It could not be relied upon as a way to sidestep the time limit for an appeal.

69. In light of all of that, I consider that there is no realistic prospect of the EAT concluding that the appellant has properly instituted an appeal against the rule 47 decision, and granting the necessary extension of time to enable such an appeal to be considered on its merits.

70. Turning to the present underlying appeal, I note that (a) it is an appeal from a decision of the tribunal refusing an application to strike out the responses to the appellant's claims; (b) that application was made following the rejection of a previous application to strike out the responses; (c) even where a tribunal finds that a threshold condition for striking out is met, it is not required to strike out, but *may* do so or decline to do so; (d) as the judge who considered the appeal at the rule 3(7) stage noted, the tribunal in the present case gave cogent reasons for holding that the threshold conditions were not materially met and/or declining to exercise the power to strike out; (e) the tribunal refused a subsequent application to reconsider that decision; (f) the EAT cannot only interfere in the exercise of such a discretionary power by the tribunal on limited grounds; (g) even if the EAT considered, that there was, for example, some unfairness in the tribunal failing to consider some materially relevant matter that the appellant had raised, I cannot see on what basis it could be concluded that the tribunal properly could, or should, have struck the responses out.

71. In light of all of that, I consider that, even were I to hold that the appellant had a good excuse for not seeking a rule 3(10) hearing sooner than she did, and even were the matter to proceed to a rule 3(10) hearing, there would be simply no realistic prospect of the underlying appeal proceeding to be upheld on its merits, and that then leading to the conclusion that EJ Beyzade properly could, and

should, have granted the appellant's strike out application. There is therefore no realistic prospect of such a finding leading to the conclusion that there might have been some knock-on impact on the subsequent course of the litigation, which, as matters in fact unfolded, led to the rule 47 decision.

72. For all of the foregoing reasons I am not satisfied that there is a good excuse for the default in this case; I consider that the underlying appeal is indeed academic and has no realistic prospects of success; and there is no other reason or circumstances such that time should nevertheless be extended.

Outcome

73. For the foregoing reasons, the appellant's application for an extension of time in respect of her rule 3(10) application is refused. The consequence is that the substantive appeal is at an end and will proceed no further.