

Neutral Citation Number: [2026] EAT 65

Case No: EA-2025-000698-AS

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London
EC4A 1NL

Date: 30 April 2026

Before :

HIS HONOUR JUDGE JAMES TAYLER

Between :

Miss H Lau

Appellant

- and -

(1) Dragon Cat Ltd T/A Dragon Cat Cafe
(2) Mr Yohannes Miller
(3) Ms Yen-Ting Li

Respondents

Dr. Michael Young, Lay Representative for the **Appellant**
No attendance or representation for the **Respondents**

Appeal From Registrar's Order
Hearing date: 15 April 2026

JUDGMENT

HIS HONOUR JUDGE JAMES TAYLER:

The Issue

1. The issue raised in this appeal from a Registrar’s Order is whether the EAT should adopt the same strict approach to granting an extension of time to submit an answer to an appeal as it does to the submission of the appeal itself.

The relevant proceedings

2. The parties are referred to as the claimant and respondents as they were before the Employment Tribunal.

3. The claimant submitted an appeal against a liability judgment of the Employment Tribunal after a hearing on 20, 21, 22, 25, 26, 27 November and 20 December 2024. The judgment was sent to the parties on 6 March 2025.

4. On 11 March 2025, the second respondent contacted CMB Partners, insolvency practitioners, to commence the voluntary winding up of the first respondent. On 10 April 2025, the second respondent signed a Statement of Affairs for the first respondent, which did not refer to the claimant’s claim as a contingent liability.

5. On 15 April 2025, the first respondent was placed into voluntary liquidation. The claimant contends that the second and third respondents purchased the business and that it continues to operate.

6. By an Order sealed on 4 August 2025, Caspar Glyn KC, Deputy Judge of the High Court, permitted 5 of the 28 grounds of appeal to proceed to a full hearing. The Order provided that:

Within 28 days of the seal date of this Order, the Respondent(s) must lodge with the Employment Appeal Tribunal and serve on the Appellant an Answer.

7. As a result of an administrative error the Order was only served on the insolvency practitioners of the first respondent. It was not sent to the second and third respondents.

8. On 11 August 2025, the EAT sent an email to the second and third respondents attaching a copy of the email under cover of which the Order of Judge Glyn was served, stating that they were “accidentally missed out to be included in the original email”.

9. A reminder email was sent to the second and third respondents on 10 September 2026.
10. The second and third respondents served an answer and sought an extension of time on 17 September 2025, 16 days out of time.
11. The second respondent, Mr Miller, explained that the second and third respondents are no longer legally represented. The Order permitting some of the grounds of appeal to proceed was received on 11 August 2025 as an attachment to an email. The second respondent contended that the attachments could not be opened on his phone. He only took further steps to open the attachments when he received the reminder email on 10 September 2026.
12. The second and third respondents were granted an extension of time to serve the answer by Order of Ms L Meredith sealed on 8 October 2026.
13. An appeal from a Registrar’s Order is determined afresh, rather than by considering whether there was any error of law in the decision of the Registrar.

Extensions of time in the Employment Appeal Tribunal

14. The EAT adopts a notoriously strict approach to extension of time to submit appeals: **United Arab Emirates v Abdelghafar and Anor** [1995] I.C.R. 65, EAT, albeit the approach may be more generous where an appeal is submitted in time but with required documents missing: **Ridley v HB Kirtley** [2024] EWCA Civ 884, [2025] I.C.R. 441.
15. The time limit in which an appeal to the EAT is to be submitted is set by Rule 3 **Employment Appeal Tribunal Rules 1993 (as amended)** (“EAT Rules”).
16. The **EAT Rules** do not fix a time limit for the service of an answer. Rule 6 **EAT Rules** provides:

6.—(1) The Registrar shall, as soon as practicable, notify every respondent of **the date appointed by the Appeal Tribunal by which any answer under this rule must be delivered.** [emphasis added]

17. The **Employment Appeal Tribunal Practice Direction 2024** (“EAT PD”) provides:

9.1.2. **You must send a Respondent's Answer** to the EAT and the other party or parties, including any cross-appeal, **within 28 days** of the seal date of the order

allowing the appeal to progress to a Full Hearing (**unless otherwise directed**).
[emphasis added]

18. That was the time period for an answer fixed in the Order of Judge Glyn.

19. The **EAT PD** does not say anything about the approach adopted by the EAT to granting an extension of time to submit an answer, as opposed to the explanation of the strict approach to the time limit for appeals explained at Section 3.5 **EAT PD**.

20. Rule 26 **EAT Rules** provides:

26 (1) If a respondent to any proceedings **fails to deliver an answer ... or if any party fails to comply with an order or direction of the Appeal Tribunal**, the Tribunal **may order that he be debarred from taking any further part in the proceedings, or may make such other order as it thinks just**.

(2) An order made by the Appeal Tribunal under paragraph (1) **may include, but is not limited to, an order that all or part of an appeal or answer is to be struck out**.
[emphasis added]

21. Analysis of the **EAT Rules** demonstrates that the failure to serve an answer within the time set by an Order putting an appeal through to a full hearing constitutes the breach of an Order of the EAT. Once a late answer has been lodged there is no longer a failure to deliver an answer for the purposes of Rule 26(1) **EAT Rules**. There is a failure to comply with an Order for the purposes of Rule 26(1) **EAT Rules**, with the consequence that the respondent could be debarred from taking any further part in the proceedings or the EAT might make such other order as it thinks just, which could include an Order that all or part of the answer be struck out: Rule 26(2) **EAT Rules**.

22. Rule 37(1) **EAT Rules** gives the EAT the power to extend time, even if a time limit set by an Order has expired:

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. ...

23. In interpreting its rules and Orders, the EAT is guided by the overriding objective in Rule 2A

EAT Rules:

2A (1) The overriding objective of these Rules is to enable the Appeal Tribunal to deal with cases justly.

(2) Dealing with a case justly includes, so far as practicable—

- (a) ensuring that the parties are on an equal footing;
- (b) dealing with the case in ways which are proportionate to the importance and complexity of the issues;
- (c) ensuring that it is dealt with expeditiously and fairly; and
- (d) saving expense.

(3) The parties shall assist the Appeal Tribunal to further the overriding objective.

24. There is little authority about the consequences of serving an answer late. Surprisingly, the most significant authority is not reported. In **Slingsby v Griffith Smith Solicitors** UKEAT/0619/07/MAA, His Honour Judge Burke QC held:

Conclusion

16. There is a substantial and clear line of authority as to the principles which apply to the grant of an extension of time for the presentation of an appeal to the EAT. Those principles, derived essentially from *Abdelghafar* and *Aziz*, were recently considered in detail by the Court of Appeal in *Jurkowska*; and in the circumstances of this case it is neither necessary nor appropriate for me to revisit them. In paragraph 19 of his judgment in *Jurkowska*, with which Hooper LJ in substance agreed, Rimer LJ, as it appears to me amplified those principles by the following valuable propositions, that:

- (1) The overriding objective incorporated into the EAT Rules by amendment in Rule 2A of those Rules does not play any additional role when an extension of time for institution of an appeal is being considered.
- (2) Even if the explanation for the delay does not amount to a good excuse, there may be exceptional circumstances which justify an extension of time.

17. In my judgment there is however a manifest juridical difference or difference of a legal nature between the institution of an appeal and the lodging or delivery (Rule 6(2) uses the word “deliver”; the Practice Direction at paragraph 10.1 uses the word “lodge”; there has been no suggestion the two words do not have the same meaning) of a Respondent’s Answer. In *Abdelghafar* at page 70E-G Mummery J said:

“(3) The approach indicated by these two principles is modified according to the stage which the relevant proceedings have reached. If, for example, the procedural default is in relation to an interlocutory step in proceedings, such as a failure to serve a pleading or give discovery within the prescribed time limits, the court will, in the ordinary way and in the absence of special circumstances, grant an extension of time. Unless the delay has caused irreparable prejudice to the other party, justice will usually favour the

action proceeding to a full trial on the merits. The approach is different, however, if the procedural default as to time relates to an appeal against a decision on the merits by the court or tribunal of first instance. The party aggrieved by that decision has had a trial to hear and determine his case. If he is dissatisfied with the result he should act promptly. The grounds for extending his time are not as strong as where he has not yet had a trial. The interests of the parties and the public in certainty and finality of legal proceedings make the court more strict about time limits on appeals. **An extension may be refused, even though the default in observing the time limit has not caused prejudice to the party successful in the original proceedings.”**

18. That paragraph was set out in and applied by Rimer LJ in *Jurkowska*; see paragraph 4. It lays emphasis on the fact that, when the employment tribunal’s judgment is promulgated, the trial process in the Employment Tribunal is complete and constitutes a definitive resolution of the issues between the parties, unless one of the parties initiates further proceedings by the institution of an appeal. It is for that reason that the time limits for appealing to the EAT are strictly enforced - as are the Rules as to what constitutes sufficient institution of such an appeal (see Rule 3(1) and Practice Direction paragraph 2.1).

19. **A Respondent’s Answer, in contrast, does not involve the institution of further proceedings; the strictness, which applies to the latter, does not as a matter of policy need to be similarly applied to the former,** to which, in my judgment, the first rather than the second half of the paragraph from Mummery J’s judgment in *Abdelghafar* which I have just set out should apply.

20. It is common ground that there appears to be no clear reported authority on the principles to be applied where an extension of time to lodge an Answer is sought; I doubt whether it is truly surprising that is so. The reason is, as I see it, that the application of general discretionary principles to an extension of time for the delivery of an Answer has been generally accepted and does not merit wider publication.

21. The decision of the EAT in *ASDA Stores v Thompson and others (No. 2)* [2004] IRLR 598 does not address that question.

22. Having regard to:

(1) The difference in nature between the institution of an appeal and the lodging of an Answer to it, to which I have referred.

(2) The fact that, no doubt so that the prospective Appellant has ample time in which to decide whether or not to initiate further proceedings by way of appeal, the unusually lengthy period of 42 days is provided by the Rules for such institution, whereas the Practice Direction provides only 14 days for a Respondent to deliver his Answer.

(3) The fact that in the absence of an Answer and of the presence of a Respondent to resist the Appellant’s arguments in favour of the appeal (assuming that the Respondent has not chosen not to resist the appeal, for which special provision is

made by Rule 6(4)) there must be a risk that a judgment of the Employment Tribunal, which does not contain any error of law, may be erroneously overturned by an appeal argued only on one side.

I conclude that the strict principles, which apply to the grant of an extension of time for the institution of an appeal, do not apply to the grant of an extension of time for the delivery of an Answer.

23. That is, of course, not to say that the time for delivery of an Answer should be extended lightly or as a matter of routine; general discretionary principles apply, including the need to consider the length of any delay and the existence and nature of any prejudice to the other party.

24. I am fortified in this conclusion by the terms of Rule 26 of the EAT Rules, as set out in paragraph 12 above.

25. Although, as Mr Matovu pointed out, those words address the consequence of default rather than, expressly at least, the circumstances in which an extension of time for failure to deliver an Answer within 14 days may be granted, they appear to provide to the EAT a general discretion not to debar a Respondent who has failed to deliver an Answer from taking any further part in the proceedings. While pursuant to such a discretion it would be, at least in theory, open to the EAT to permit a Respondent to appear at, and present arguments at, the hearing of an appeal without an Answer, it is in reality far more likely that, if the EAT were to exercise this general discretion in favour of the Respondent, it would do so on terms that the Respondent presented an Answer within a specified period so that the EAT and the Appellant knew and understood the basis of the Respondent's resistance to the appeal in advance of the compilation of skeleton arguments. Without such an Answer issues as to further evidence, notes of evidence and the like might arise too late.

26. If Rule 26 does not of itself provide such a general discretion, it must, in my judgment, be taken to support the general discretion in the case of an extension of time for the delivery of an Answer, which I have earlier described. [emphasis added]

25. I could only depart from the decision of Judge Burke if it were manifestly wrong. On the contrary, I consider it is manifestly correct, and agree fully with the reasoning.

26. I would only add that there is a significant distinction between making a judgment upholding a complaint that has not been defended in the Employment Tribunal, as opposed to allowing an appeal to which no answer, or a late answer, has been served. Allowing an appeal involves finding that the Employment Tribunal has made an error of law. An appeal should not be permitted unless there is an error of law in the judgment of the Employment Tribunal, whatever the procedural failings of the respondent. The EAT is a superior court of record: Section 20 **Employment Tribunals Act 1996**

(“ETA”). An appeal only lies on a question of law: Section 21 **ETA**. The binding nature of the judgments of the EAT mean that it is important that questions of law raised in appeals are considered with care, ideally having heard full arguments.

27. That is why, where an appeal is not defended, for example where a response has been struck out, or the parties agree to the appeal being allowed, the EAT does not allow the appeal without consideration of the merits of the question of law said to arise.

28. Section 8.16.6. **EAT PD** provides:

If the parties reach an agreement that the appeal should be allowed by consent, and that an order made by the Employment Tribunal should be reversed or varied or the matter remitted to the Employment Tribunal on the basis that the decision contains an error of law, it is usually necessary for the appeal to be heard by the EAT to determine whether there is a good reason for making the proposed order. The EAT will decide whether the appeal can be dealt with on the papers or at a hearing at which one or more parties or their representatives should attend to argue the case for allowing the appeal, and making the order that the parties wish the EAT to make. [emphasis added]

29. Dr. Young argues that an extension should not be granted. He contends that the second and third respondents were guilty of default in compliance with Orders in the Employment Tribunal, arranged the liquidation of the first respondent without referring to the claimant in the statement of affairs and without informing the Employment Tribunal. Mr Young contends that any administrative confusion was of the second and third respondents’ making.

30. I have concluded that in light of the initial failure to serve the appeal on the second and third respondents, the short period of delay and lack of prejudice to the claimant in respect of this appeal sufficiently overcomes the matters relied on by Dr. Young so that the interests of justice favour the granting of an extension of time. In addition, the appeal raises points that would benefit from proper argument if possible.

31. The extension of time to submit the response to the appeal is granted and the appeal from the Registrar’s Order is refused.