Neutral Citation Number: [2026] EAT 71

Case No: EA-2023-000200-RS

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 12 May 2026

Before:

THE HON. LORD FAIRLEY, PRESIDENT

- -

Between:

MS MICHELE ROBINSON

Appellant

- and -

(1) MICHAEL HARRIS
(2) LEE WILLIAMS
(3) STEVE CLARKE
(4) LISA WESTON
(5) 10 KING'S BENCH WALK CHAMBERS

Respondent

- -
- -

Ms Michele Robinson, the **Appellant**, in person
Miss Patricia Leonard, of counsel, for the **Respondents**

Hearing date: 12 May 2026

- -

JUDGMENT

SUMMARY

Discrimination; harassment; victimisation; barrister

The appellant, a self-employed barrister, brought complaints of discrimination, harassment and victimisation against her Chambers, two of its clerks and two of its management committee. Following a liability hearing over four days in January 2023, the Tribunal dismissed all of her complaints.

The Notice of Appeal to the EAT contained five proposed grounds. At sift, only two were found to cross the threshold of arguability. The first was that the Tribunal had misapplied section 47 of the **Equality Act, 2010** ("**EqA**") by failing to recognise the appellant's status as a self-employed barrister. The second was that, in its self-directions on the law, the Tribunal had quoted section 39 of the **EqA**, which applied only to employees.

Held:

1. The first ground of appeal was based upon a misunderstanding of the **EqA** and an absence of engagement with the Tribunal's reasons. Section 47 **EqA** is a jurisdictional gateway through which self-employed barristers may rely upon the protections of the Act against discrimination, harassment and victimisation. There was never, however, any suggestion before the Tribunal that section 47 was not engaged or that the Tribunal did not have jurisdiction to consider the appellant's complaints. The Tribunal expressly recognised that the appellant's complaints were brought through the jurisdictional gateway of section 47. It then considered the merits of the complaints by applying the respective statutory definitions of unlawful discrimination, harassment and victimisation to the facts it had found to be established. That approach was correct and disclosed no error of law.

2. Whilst the Tribunal's quotation of section 39 **EqA** in its self-directions on the law was superfluous, nothing in its reasons suggested that it was under any misapprehension as to the nature of the appellant's complaints. In particular, nothing in the findings of fact, analysis of the evidence or application of the law suggested that it thought that the appellant was an employee, or that it determined any of her complaints on that basis. The Tribunal's reasons had to be read fairly and as a whole without focussing merely on individual passages in isolation and without being hypercritical. When read in that way, there was no error of law that affected the Tribunal's analysis or its conclusions.

The appeal was refused.

THE HON. LORD FAIRLEY, PRESIDENT:

1. This is an appeal from a Judgment of an Employment Tribunal at Central London dated 19 January 2023 (Employment Judge Brown, Mr N Brockman and Mr S Hearn). The Tribunal's unanimous decision, for which it gave written reasons, was that the appellant's complaints against the respondents of discrimination, harassment and victimisation all failed.

2. The appellant seeks to challenge that decision. The Notice of Appeal presented to the EAT on 2 March 2023 contained five proposed grounds of appeal. After consideration under rule 3 of the EAT rules, only two grounds were ultimately found to cross the threshold of arguability. There are, therefore, only two grounds of appeal before me today.

Facts

3. The appellant's complaints to the Employment Tribunal concerned a period of time in 2020 when she was a self-employed barrister. In February 2020, following a period away from practice, the appellant was interviewed for a tenancy at 10 King's Bench Walk Chambers. An offer of a tenancy followed, and a start date of 2 March 2020 was agreed.

4. In April 2020, the appellant was sent two sets of instructions by a clerk, Mr Williams. The first was for a court appearance on 15 April 2020, and the second was for a conference on 9 April 2020. The appellant was paid £360 in advance for the court appearance.

5. Mr Williams understood that the instructions had been properly provided in accordance with the relevant rules on direct access. The appellant disagreed. She did not consider herself able to accept the instructions and returned them. The court appearance was ultimately undertaken by another barrister.

6. The appellant alleged in her evidence that Mr Williams had "badgered" her to accept the instructions. The Tribunal rejected that evidence, noting that the terms of the emails sent to the appellant about the returned instructions by Mr Williams were "polite and professional".

7. On 14 April 2020, the appellant spoke to a member of the Chambers' management committee, Lisa Weston, about the two instructions that she had returned. The appellant was concerned that the rules on direct access instructions were not being properly adhered to by the clerks. Her concern was communicated to the then Head of Chambers, Mr Harris, who discussed the matter with Mr Williams and reminded him of the relevant rules about direct access instructions.

8. On 29 April 2020, Mr Williams asked the appellant to return the advance payment of £360 that she had received as a brief fee for the court appearance. By 27 May 2020, she had not done so. On that date, the appellant had a conversation with Mr Steve Clarke, the clerk with responsibility for collecting fees. The discussion was primarily about fees that the appellant said were due to her. In the course of that discussion, however, Mr Clarke reminded the appellant that she needed to return the £360 paid to her for the court instruction that she had declined to accept in April.

9. Mr Clarke's evidence – which the Tribunal accepted – was that he was dealing with a purely administrative process of trying to re-direct payment to the barrister who had actually appeared in court. The Tribunal rejected the appellant's evidence that Mr Clarke had shouted

at her. Rather, it accepted Mr Clarke's evidence that the appellant had shouted over him that she was "not paying the money back".

10. On 25 June 2020, the appellant emailed Mr O'Brien, the Chambers' equality and diversity officer, with a request to discuss the clerks' administration of her practice. Mr O'Brien expressed the view that Mr Clarke should not have raised the issue about return of the brief fee directly with the appellant. He advised the appellant that the topic of direct access instructions would be raised at the next management meeting. In relation to the issue of repayment of the £360, Mr O'Brien expressed the hope that this could be resolved amicably following a meeting.

11. On 3 July 2020, the Head of Chambers, Mr Harris, wrote to the appellant. He advised the appellant that not to return the brief fee paid to her for the court instruction she had declined to accept would risk a complaint being made to the legal Ombudsman or the Bar Standards Board. The Tribunal accepted the evidence of Mr Harris that he would have communicated in the same way with any other member of Chambers in the same situation as the appellant.

12. On 6 July 2020, the appellant informed Ms Weston that she wished to make a formal complaint of race and sex discrimination. She stated:

> "I now feel that I am being treated less favourably on the ground of my race and gender as no formal investigation has been conducted into my complaint. I received an email dated 3 July 2020 from Head of Chambers accusing me of deliberately withholding money…The dispute over alleged payment of fees was formally raised as a complaint by me in April 2020 but has not been properly investigated by Chambers."

13. The Tribunal found that this was the first time that the appellant had referred to a "formal complaint". Ms Weston confirmed receipt of the complaint on 6 July 2020 and sent the appellant a copy of the Chambers internal complaints and grievance procedures.

14. On 9 July 2020, Ms Weston advised the appellant that a three-person panel had been appointed to investigate her complaint and that she would be contacted within 14 days.

15. On 29 July 2020, the appellant submitted a written grievance. She complained of race-related harassment by Mr Williams on 14 and 29 April 2020, by Mr Clarke on 27 May 2020 and by Mr Harris on 3 July 2020.

16. In late August 2020, the panel produced an 11-page report on the appellant's grievances. Unsurprisingly, it concluded that it was impermissible for a barrister to retain money for work that they had not done. As to whether the appellant was asked to return the money in the correct manner, it stated:

> "…whilst there might be differing views as to how Chambers should handle such matters in the future, it is perfectly clear that the practice in the past has been that barristers are asked to pay money back by one of the clerks…No offence has ever previously been taken as this is a purely administrative matter."

17. The panel noted that the communications to the appellant from Mr Williams were "unremarkable", and saw "absolutely nothing sexist or racist" in the fact or manner of Mr Clarke's request that the fee be returned. So far as Mr Harris was concerned, the panel found that he was "in no way hostile or unfriendly or creating a degrading environment" in asking for the money to be returned.

18. On 17 August 2020, the chair of the panel, Mr Panton, emailed the appellant and other interested parties to advise that the panel had reached its decision. He stated:

> "To try to maintain confidentiality, we do not send out decisions electronically but put them in the pigeon holes of the complainant, the persons complained of and a member of the management committee (in this case, Lisa Weston)…In these difficult times, if anyone wants a hard copy posted to them, let me know the address and I will send it to them."

The reference to "difficult times" seems to have been to the ongoing Covid-19 pandemic.

19. The appellant did not wish to receive a hard copy of the report by post because she had a shared home post box. She described the arrangements for collection of the decision from her Chambers as "insensitive and unreasonable". Mr Panton therefore suggested that the report could be sent to all recipients by email in PDF format. The appellant agreed to that suggestion.

20. On 21 November 2020, the appellant presented a claim form to the Employment Tribunal. At section 8.1, she ticked the box which indicated that she was making a complaint of race discrimination. In section 8.2 of the form (entitled "Please set out the background and details of your claim") she set out her chronology of events from 6 April 2020 to 28 August 2020 when the investigation panel issued its report. At a case management hearing on 11 March 2022, Employment Judge Tinnion identified and clarified the particular complaints that were being made and the parties against whom those complaints were directed. Judge Tinnion set out those complaints in detail at paragraphs 18 to 22 of a case management noted dated 21 March 2022 which was sent to the parties on 22 March 2022.

21. In summary, the appellant made complaints of direct race discrimination and / or harassment against the Chambers, Mr Williams, Mr Clarke and Mr Harris. To some extent, these complaints mirrored her internal grievances. She maintained that her complaints against Mr Williams and Mr Clarke had not been taken seriously, and that the requests that she return the £360 and the requirement to pick up a hard copy of the panel's report from Chambers were, in each case, "less favourable treatment" on the ground of her race. She took issue with the investigation panel's conclusions and with its initial intimation of how its report would be provided to her.

22. Thereafter, in a separate complaint, the appellant also maintained that, as a result of having brought the 21 November 2020 complaint to the Employment Tribunal, she was "not being properly referred for work whilst still being charged Chambers rent". On 22 June 2021, she presented a separate claim of victimisation based upon that assertion.

23. The jurisdictional basis on which both claims were brought was section 47 of the **Equality Act, 2010** ("**EqA**") which, as will be seen, extends the statutory protections against discrimination, harassment and victimisation to self-employed barristers.

The Equality Act, 2010

24. Section 13 of the **EqA** defines direct discrimination:

> **13 Direct discrimination**
>
> (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

25. In terms of section 26, harassment by a person ("A") of another ("B") occurs where A engages in unwanted conduct related to a relevant protected characteristic (including race), and the conduct has the purpose or effect either of (i) violating B's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

26. Section 27 **EqA** defines victimisation:

> **27 Victimisation**
>
> (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
>
> (a) B does a protected act, or
>
> (b) A believes that B has done, or may do, a protected act.
>
> (2) Each of the following is a protected act—
>
> (a) bringing proceedings under this Act;
>
> (b) giving evidence or information in connection with proceedings under this Act;
>
> (c) doing any other thing for the purposes of or in connection with this Act;
>
> (d) making an allegation (whether or not express) that A or another person has contravened this Act.

27. Section 47 **EqA** features prominently in the first ground of appeal, and states:

> **47 Barristers**
>
> (1) A barrister (A) must not discriminate against a person (B)—
>
> (a) in the arrangements A makes for deciding to whom to offer a pupillage or tenancy;
>
> (b) as to the terms on which A offers B a pupillage or tenancy;
>
> (c) by not offering B a pupillage or tenancy.
>
> (2) A barrister (A) must not discriminate against a person (B) who is a pupil or tenant—
>
> (a) as to the terms on which B is a pupil or tenant;
>
> (b) in the way A affords B access, or by not affording B access, to opportunities for training or gaining experience or for receiving any other benefit, facility or service;
>
> (c) by terminating the pupillage;
>
> (d) by subjecting B to pressure to leave chambers;
>
> (e) by subjecting B to any other detriment.
>
> (3) A barrister must not, in relation to a pupillage or tenancy, harass—
>
> (a) the pupil or tenant;
>
> (b) a person who has applied for the pupillage or tenancy.
>
> (4) A barrister (A) must not victimise a person (B)—
>
> (a) in the arrangements A makes for deciding to whom to offer a pupillage or tenancy;
>
> (b) as to the terms on which A offers B a pupillage or tenancy;
>
> (c) by not offering B a pupillage or tenancy.
>
> (5) A barrister (A) must not victimise a person (B) who is a pupil or tenant—
>
> (a) as to the terms on which B is a pupil or tenant;

> (b) in the way A affords B access, or by not affording B access, to opportunities for training or gaining experience or for receiving any other benefit, facility or service;
>
> (c) by terminating the pupillage;
>
> (d) by subjecting B to pressure to leave chambers;
>
> (e) by subjecting B to any other detriment.
>
> (6) A person must not, in relation to instructing a barrister—
>
> (a) discriminate against a barrister by subjecting the barrister to a detriment;
>
> (b) harass the barrister;
>
> (c) victimise the barrister.
>
> …
>
> (8) The preceding provisions of this section (apart from subsection (6)) apply in relation to a barrister's clerk as they apply in relation to a barrister; and for that purpose the reference to a barrister's clerk includes a reference to a person who carries out the functions of a barrister's clerk.
>
> (9) A reference to a tenant includes a reference to a barrister who is permitted to work in chambers (including as a squatter or door tenant); and a reference to a tenancy is to be construed accordingly.

28. Section 47 is, therefore, a jurisdictional gateway which extends the protection of *inter alia* sections 13, 26 and 27 of the **EqA** to self-employed barristers in relation to certain defined acts or omissions. Section 47 does not, however, impose any different rules as to what amounts to discrimination, harassment or victimisation. Those are matters that are regulated entirely by sections 13, 26 and 27.

The Tribunal's decision

29. The Tribunal set out its analysis and conclusions on the evidence between ET § 118 and 148. In summary, it concluded that:

a) Mr Williams did not subject the appellant to discrimination or harassment. His interactions with the appellant were "nothing to do with race". He did not "badger" or "urge" the appellant to take the April court instruction. His request that she repay the £360 for the returned court instruction was neither an act of either discrimination or harassment (ET § 138 to 141).

b) Mr Clarke did not subject the appellant either to discrimination or to harassment. He did not shout at the appellant. Rather, she had shouted at him. Clerks asked barristers, whatever their race, to return advance payments of fees if they had not undertaken the work for which the payment was made (ET § 143).

c) Mr Harris did not ignore the concerns about direct access instructions that the appellant raised in April 2020. He dealt with those concerns no differently to the way in which he would have treated similar concerns from any other member of Chambers. Similarly, his email of 3 July 2020 about the need to return the brief fee was in the same terms as he would have written to any other member of Chambers in the appellant's position. He did not pursue Mr O'Brien's suggestion of a meeting with the appellant because, on the same day

as that suggestion was made, the appellant made a formal complaint that included Mr Harris. There was no evidence that the way in which Mr Harris dealt with the appellant's complaints was because of her race, and he did not subject the appellant to either discrimination or harassment (ET § 120 to 124 and 132 to 136).

d) The conclusions reached by the investigation panel were fair, logical and inevitable. The appellant had been paid for work that she had not done. Neither the requests that she return the money nor the panel's conclusions about that were in any way to do with her race (ET § 128 to 130).

e) In making the initial suggestion as to how its report should be issued, the investigation panel treated the appellant no differently to any other party with an interest in the outcome of its inquiry. When the appellant complained about having to uplift a hard copy from Chambers, the panel immediately accommodated her by suggesting that the report be sent to all parties by email in PDF format (ET § 125 to 127).

f) The appellant was not victimised. There was no evidence of work being withheld from her after November 2020. There was, however, substantial evidence that the appellant had declined work that was offered to her and that she made herself unavailable for work (ET § 144 to 148).

30. As is clear from this summary, the appellant's complaints of discrimination, harassment and victimisation each failed because, on its assessment of the evidence, the Tribunal concluded that there had been no unlawful treatment of her which contravened any of sections 13, 26 or 27 **EqA**.

The grounds of appeal

31. In the first ground of appeal, the appellant submits that the Tribunal mis-applied section 47 **EqA** by failing to take into account her self-employed status. In the second, she alleges that the Tribunal erred, at ET § 103, by quoting section 39 **EqA**, which deals only with the issue of discriminatory dismissals of employees.

32. In oral submissions today, the appellant submitted that the Tribunal had erroneously mischaracterised her complaints and had failed to rule upon the complaints that she actually made. In particular, it had failed to determine whether or not she had been subjected to a detriment under section 47 **EqA**.

33. In relation to ground 2, she further submitted that ET § 103 demonstrated an error as to the Tribunal's mindset about her status as a self-employed barrister, and that this could also be seen at ET § 25.

Analysis and decision

Ground 1

34. The first ground of appeal is based upon a misunderstanding of the relevant provisions of the **EqA** and an absence of engagement with the Tribunal's reasons. As I have already noted,

section 47 **EqA** is simply the jurisdictional gateway through which self-employed barristers are able to rely upon the provisions of the Act that are also available to others including employed persons and contract workers (sections 39 to 41). Similar provisions extend the scope of the Act's protections to police officers, self-employed members of the Faculty of Advocates, partners in firms and other officer holders.

35. There was never, however, any suggestion before the Employment Tribunal that section 47 was not engaged or that the Tribunal did not have jurisdiction to consider the appellant's complaints. Consequently, neither of those matters was a live issue before the Tribunal. At ET § 4, the Tribunal expressly recognised that the appellant's complaints were brought through the jurisdictional gateway of section 47. It then considered the merits of the complaints by applying the respective statutory definitions of unlawful discrimination, harassment and victimisation to the facts it had found to be established. That was entirely the correct approach.

36. The Tribunal was in no doubt about the acts of the respondents that the appellant alleged were detriments. What it had to decide, however, was whether the respondents had unlawfully discriminated against the appellant, harassed her or victimised her, those being the allegations that were made by her through the gateway of section 47. As is clear from ET § 4 and ET § 118 to 148, it did so in relation to each of the matters that had been identified in pre-hearing case management. There is no merit whatsoever in the appellant's submissions that the Tribunal either misunderstood the complaints that were before it or failed to determine those complaints. It did so carefully and methodically and no error of law is apparent in its approach.

37. The appellant's claims ultimately failed on the facts. That was not, however, because of any conclusion by the Tribunal that the section 47 **EqA** was not engaged. Rather, it was because, on the evidence, no unlawful discrimination, harassment or victimisation was established in terms of any of sections 13, 26 or 27. Nothing in ground 1 justifies interference with the Tribunal's conclusions.

Ground 2

38. In relation to ground 2, whilst the Tribunal's quotation of section 39 **EqA** in its self-directions on the law between ET § 103 and 117 was superfluous, there is nothing in its reasons to suggest that it was under any misapprehension as to the nature of the appellant's complaints. When those reasons are read as a whole, it is plain that the Tribunal carefully considered each of the very serious allegations made by the appellant and found that there was no factual basis for any of them. There is nothing in the Tribunal's findings of fact at ET § 9 to 102 or in its analysis of the evidence and application of the law at ET § 118 to 148 to suggest that it thought that the appellant was an employee, or that any part of her complaints was about an unfair or discriminatory dismissal, or that it purported to determine any complaint on that basis. I do not accept the appellant's submission that ET § 25 is an indication that the Tribunal thought that she was an employee. That paragraph makes no mention at all of employment status. Rather, it is a description of the process that was followed in an attempt to instruct the appellant as counsel for a hearing that was due to take place on 15 April 2020.

39. As was noted in **DPP Law Limited v. Greenberg** 2021 IRLR 1016, a Tribunal's reasons must be read fairly and as a whole, without focussing merely on individual passages in isolation, and without being hypercritical. This second ground places inappropriate focus, in isolation, on a single infelicitous sentence of the reasons that clearly had no bearing whatsoever

on the outcome of the case. There is no merit whatsoever in the suggestion that ET § 103 shows an error of law in any of the Tribunal's analysis or conclusions.

40. For these reasons, the appeal is dismissed.