Neutral Citation Number: [2026] EAT 76

Case No: EA-2024-001512-JPD

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building,
Fetter Lane, London, EC4A 1NL

Date: 22 May 2026

Before :

HIS HONOUR JUDGE JAMES TAYLER

- -

Between :

Noel Deans

Appellant

- and -

(1) RBL Law Ltd (in liquidation)
(2) Nicola Foulston
(3) Ian Rosenblatt
(4) Anthony Field

Respondents

Christopher Milsom (instructed by **Blaser Mills LLP**) for the **Appellant**
No attendance or representation for **1st Respondent**
James Bickford Smith and Amany Jabir (instructed by Constantine Law) for **2nd Respondent**
Richard Leiper KC (instructed by Rosenblatt Law Limited) for **3rd and 4th Respondent**

Preliminary Hearing – All Parties
Hearing date: 31 March 2026 and 23 April 2026

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JUDGMENT

SUMMARY

Practice and Procedure

The proposed amended grounds of appeal do not raise arguable errors of law. The appeal is dismissed.

The EAT's requirements for grounds of appeal and the test for amendment are considered.

HIS HONOUR JUDGE JAMES TAYLER

The issues

1. The issues determined at this Preliminary Hearing are whether the claimant should be permitted to amend the Notice of Appeal by adding substitute grounds of appeal, and whether there are arguable grounds of appeal that should proceed to a full hearing.

The parties

2. The first respondent, RBL Law Limited, was a commercial law firm. The first respondent was liquidated by an Order made on 16 April 2025. The parties agreed that if the claimant withdrew his appeal against the first respondent, then the appeal could proceed against the remaining respondents, if arguable. On that basis, the claimant withdrew his appeal against the first respondent.

3. The second respondent, Nicola Foulston, was the Chief Executive Officer of the first respondent during the relevant period (I will refer to the second respondent as Ms Foulston).

4. The third respondent, Ian Rosenblatt, founded Rosenblatt Solicitors, which became the first respondent (I will refer to the third respondent as Mr Rosenblatt). Mr Rosenblatt was described as the firm's "rainmaker", identifying client/work prospects, winning work, developing and maintaining client relationships and providing strategic advice to key clients.

5. The fourth respondent, Anthony Field, was a partner in the first respondent, specialising in litigation, who served as the first respondent's Compliance Officer for Legal Practice (I will refer to the fourth respondent as Mr Field)

6. The claimant is a specialist employment solicitor.

The outline facts

7. I take the facts from the judgment of the Employment Tribunal. I shall set them out in neutral terms.

8. In April 2017, the claimant was offered a role at the first respondent as a salaried partner, specialising in employment law.

9. The claimant had been introduced to Ms Foulston by a recruitment agent. Ms Foulston was keen to recruit the claimant, having formed the impression that he was "confident, a natural self-presenter and seller". Mr Rosenblatt also met the claimant prior to him joining the firm. Mr Rosenblatt sent an email to Ms Foulston saying: "Saw Noel Deans. He's the man for us."

10. The claimant commenced employment with the first respondent on 8 May 2017. The claimant was the firm's first Black partner.

11. In May 2017, Mr Rosenblatt greeted the claimant with a fist bump, which was asserted to be an act of race related harassment, being based on a racial stereotype about Black people.

12. In 2018, there was to be an Initial Public Offering ("IPO") for the first respondent. A dinner was held at Mr Rosenblatt's house. Ms Foulston was asked to provide an update about the IPO. In discussing a difficult aspect of the IPO, Ms Foulston accepted that she used the phrase "like spotting a [N word] in a woodpile". The claimant asserted that Ms Foulston referred to it being "like spotting a [N word] in a field". Mr Rosenblatt was offended by what Ms Foulston had said and admonished her. Ms Foulston apologised for using such grossly inappropriate language. The claimant wrote to Ms Foulston the day following the dinner, on 13 April 2018, to complain about the behaviour of one of the other partners of the first respondent, Laura Clatworthy, and asked Ms Foulston to arrange a meeting to discuss that issue. The claimant did not refer to the comment made by Ms Foulston. The claimant and Ms Foulston continued to work together on good terms, as they had before this shocking incident.

13. During 2019, the claimant acted for the first respondent in Employment Tribunal proceedings brought against it by SP, Ms Foulston's former personal assistant. In April 2019, the Employment Tribunal ordered specific disclosure. Between 5 and 7 June 2019 there were email exchanges between the claimant, Ms Foulston and Mr Field concerning the first respondent's disclosure obligations. The claimant asserted that he made protected disclosures, believing it was likely that there would be a deliberate failure to comply with the first respondent's disclosure obligations.

14. In July 2019, issues arose concerning office allocation, including a possible move for the claimant to a smaller office.

15. Later in 2019, the first respondent initiated a process to recruit an additional employment partner. In November and December 2019, internal communications were exchanged concerning the proposed recruitment of Michelle Chance, and how employment work was to be organised at the first respondent.

16. On 30 January 2020, the claimant was told in an email from Ms Foulston that he was not head of an "employment department".

17. On 14 February 2020, the claimant resigned, alleging that he had been subject to race discrimination and protected disclosure detriment.

18. On 17 February 2020, there was a confrontation between the claimant and Mr Rosenblatt, who accused the claimant of being antisemitic. Mr Rosenblatt asserted that the claimant had only targeted himself and Mr Field, both of whom are Jewish, in his resignation letter.

The Employment Tribunal proceedings

19. The claimant submitted a claim form that was received by the Employment Tribunal on 28 February 2020. The claimant brought complaints of protected disclosure detriment, direct race discrimination, race related harassment, victimisation, unfair constructive dismissal (including on the basis that the reason, or principal reason, for dismissal was the making of protected disclosures) and wrongful dismissal.

20. The claim was heard before Employment Judge E Burns, sitting with members, on 11-13, 16, 19-20, 23 - 27, 31 October 2023 and in Chambers on 5 and 6 February and 8 and 9 August 2024.

The Employment Tribunal judgment

21. The judgment was sent to the parties on 3 September 2024. The race related harassment complaint in respect of the N word comment made by Ms Foulston was found to have been submitted out of time. All the other complaints were dismissed on the merits.

The appeal

22. The claimant lodged a Notice of Appeal on 15 October 2024. By an Order sealed on 21 January 2025, Andrew Burns KC, Deputy Judge of the High Court, put the appeal through to a Preliminary Hearing. The Order provided at paragraph 7:

> 7. The Appellant may lodge with the Employment Appeal Tribunal 1 hard copy and an electronic copy of a skeleton argument and **any concise proposed redrafted grounds of appeal** (and, in the case of any cross-appeal, the Respondent may also do so) **at least 14 days before the date fixed for the preliminary hearing**. [emphasis added]

23. In the attached reasons, Judge Burns stated:

> 1. The Grounds each contain a number of sub-grounds which are not entirely interdependent and will benefit from being considered at a preliminary hearing. …
>
> 5. Any grounds that are found to be reasonably arguable can then be separately and succinctly articulated in an Amended Grounds of Appeal for a full hearing.

24. Judge Burns anticipated the possibility of the claimant providing revised concise/succinct grounds of appeal shortly before, or potentially after, the Preliminary Hearing. His reasoning was that the existing grounds lacked clarity and would benefit from being reduced to grounds that asserted any arguable errors of law succinctly. Judge Burns did not grant permission to add new grounds of appeal.

25. The respondents were required to lodge concise written submissions in opposition for consideration at the Preliminary Hearing within 14 days of the seal date of the Order, dedicated to showing that there was no reasonable prospect of success for any appeal. Thus the order anticipated that the respondents' submissions in opposition would be provided prior to revised concise grounds of appeal being produced.

26. On 5 December 2025, the claimant submitted wholly redrafted grounds of appeal, designed to replace the original grounds of appeal. Ms Foulston, Mr Rosenblatt and Mr Field objected to permission being granted for the amendment.

27. Ms Foulston has separate representation to Mr Rosenblatt and Mr Field, who are jointly represented.

Relevant law

28. Section 21 **Employment Tribunals Act 1996** provides:

> (1) An appeal lies to the Appeal Tribunal on any question of law arising from any decision of, or arising in any proceedings before, an employment tribunal

29. The EAT has long struggled to persuade appellants to limit their appeals to grounds that raise arguable errors of law, and not to dress up disputes of fact in an attempt to make them look like challenges asserting errors of law. It is not a struggle we will give up. Parties are required to abide by the overriding objective and should only assert arguable errors of law in appeals and cross-appeals.

30. The **EAT Practice Direction** points litigants in the right direction:

> 3.8. **The Grounds of Appeal**
>
> 3.8.1. **The grounds of appeal are very important.** The grounds of appeal must set out clearly and briefly the error(s) of law that you say the Employment Tribunal made. **An error of law should be easy to identify in a few words. The experience of the Judges of the EAT over many years is that short and focussed grounds of appeal are usually more persuasive than a long one and, in general, the more grounds raised the more it suggests that none is a good one.**
>
> 3.8.2. If introductory or explanatory text is necessary before the grounds of appeal, it should be as short as possible. In any introductory text you should not make a complaint about the decision of the Employment Tribunal that is not made as one of the numbered grounds of appeal.
>
> 3.8.3. Each ground of appeal should be separately numbered starting from Ground 1. The heading of each ground of appeal should state in bold (or underlined) "**Ground 1**", "**Ground 2**" etc. Each ground should have in the heading a brief description of the error of law. For example **"Ground 1 - Misinterpreted Section 136 of the Equality Act 2010" or "Ground 2 - Reached a decision on a point which had not been argued"**. The heading should be followed by a brief explanation of the error of law that is sufficient to enable a Judge to understand the error of law that is being asserted, but no more. It is helpful to number the paragraphs of the grounds of appeal. It is important that it is clear which paragraphs are relevant to which ground of appeal.
>
> 3.8.4. The grounds of appeal **should**:
>
> > a be short and focussed
> >
> > b clearly set out separately numbered grounds of appeal that clearly assert errors of law
> >
> > c usually be no more than 1 to 5 A4 pages in length;

3.8.5. The grounds of appeal **should not**:

a be lengthy (usually they should be no more than 1 to 5 A4 pages in length)

b criticise the decision of the Employment Tribunal paragraph by paragraph

c seek to argue the claim or response in the Employment Tribunal again; an appeal to the EAT is not a second opportunity to run the case that was argued in the Employment Tribunal; there must be an arguable error of law

d include lengthy or extensive quotations from the decision of the Employment Tribunal; you can refer to the relevant paragraph numbers where you assert the error of law occurs; the EAT will read the decision of the Employment Tribunal

e include lengthy or extensive quotations from case law; you can refer to case law by giving the name of the case, the case reference (such as a case number and/or neutral citation number that will be on the first page of the case) and the paragraph number(s) you rely on (or if there are no paragraph numbers the page number and any letter in the side margin); and/or you can briefly set out the legal principle(s) you rely on the case to establish

f seek to incorporate any other document or documents (such as a witness statement or application for reconsideration etc.); any such document will not be part of the grounds of appeal and may be disregarded by the EAT

g have footnotes

3.8.6. In the grounds of appeal you must state the order that you will ask the EAT to make if you win (will you ask the EAT to send back the whole or part of the case for a new decision to the same or a different Employment Tribunal, or to substitute a different decision for that of the original Employment Tribunal?).

3.8.7. If your grounds of appeal fail to comply with this Practice Direction because, for example, they lack clarity and/or do not identify arguable errors of law, a Judge or the Registrar may send them back and require you to submit grounds of appeal that fully comply with this Practice Direction. Alternatively, a Preliminary Hearing (see Section 6) may be fixed for you to seek to persuade a Judge that there are reasonably arguable grounds for bringing the appeal.

3.8.8. You cannot "reserve a right" to amend, alter or add, to your grounds of appeal. You do not have a right to amend the grounds of appeal without permission of the EAT. Any application for permission to amend should be made in accordance with the procedure set out at Section 8.2. [emphasis added]

31. The EAT receives an excessive number of appeals that, expressly, or in reality, assert perversity, the majority of which are hopeless. Accordingly, the **EAT Practice Direction** makes specific provision about grounds of appeal asserting perversity:

3.9. **Grounds of appeal alleging perversity**

3.9.1. **Perversity grounds of appeal rarely succeed because it is necessary to establish that the Employment Tribunal reached a decision which no reasonable tribunal, directing itself properly on the law, could have reached.** It is not sufficient to argue that a different Employment Tribunal may have made a different decision or that the tribunal did not accept your evidence or arguments.

3.9.2. You should **clearly state** whether you allege that:

a no reasonable Employment Tribunal could have reached the conclusion reached by the Employment Tribunal on the basis of the findings of fact it made; and/or

b no reasonable Employment Tribunal could have made the findings of fact that the Employment Tribunal made on the basis of the evidence

3.9.3. **It is particularly difficult to establish that no reasonable Employment Tribunal could have made the findings of fact it did on the basis of the evidence it heard. Findings of fact are matters for an Employment Tribunal.**

3.9.4. It is not sufficient to make a generalised allegation in a ground of appeal such as "the judgment was contrary to the evidence", or that "there was no evidence to support the judgment", or that "the judgment, order, direction or other decision was one which no reasonable Employment Tribunal could have reached and was perverse". The grounds of appeal must set out full details of the matters relied on in support of any allegation of perversity.

32. Grounds of appeal that assert perversity should clearly state that is the case. Grounds of appeal asserting perversity should state whether it is asserted that no reasonable Employment Tribunal could have reached the conclusion reached by the Employment Tribunal on the basis of the findings of fact it made, or, alternatively, on the basis of the evidence it heard.

33. A particularly dim view is taken of grounds of appeal that assert perversity, but do not say so, or are designed to obscure the reality that they challenge findings of fact. Perversity challenges generally should not be mixed in amongst challenges to matters such as the Employment Tribunal's directions on, and application of, the relevant legal principles. Doing so is unlikely to result in the perversity challenge slipping through the net, but is more likely to result in the other challenges not being permitted to proceed, because they are obscured by being hidden amongst impermissible challenges to findings of fact.

34. The **EAT Practice Direction** makes provision as to amendment:

> 8.2. **Amendment**
>
> 8.2.1. An application for permission to amend a Notice of Appeal, Respondent's Answer, cross-appeal or Reply should be made as soon as practicable in accordance with Section 7 by completing the application form at Annex 2.
>
> 8.2.2. The application must be accompanied by a draft of the amended Notice of Appeal, Respondent's Answer, cross-appeal or Reply. The draft must include the text of the original document with any proposed changes clearly marked, for example:
>
>> a with deletions struck through in red and the text of the amendment either written or underlined in red; if permission has already been given to make amendments any further proposed amendments should be in a different colour to distinguish them from earlier amendments
>>
>> b with deletions struck through, and new wording in italics; if permission has already been given to make amendments any further proposed amendments should be in bold italics or a distinctive and easily readable font to distinguish them from earlier amendments
>
> 8.2.3. A document will only be amended once an application for permission to amend is granted by the EAT. The EAT may refuse the application to amend, or grant it only for some of the proposed amendments.

35. Specific provision is made about amendment at a Preliminary Hearing:

> 6.3.5. Permission to amend may be granted at a Preliminary Hearing. The proposed amendment should be made available in writing before or at the hearing wherever practicable, and will not take effect unless the Judge has approved it.
>
> 6.3.6. If an amendment is permitted at a Preliminary Hearing, or a direction is made to submit amended grounds of appeal that are subsequently approved, the other party, or parties, will generally be given the opportunity to apply on notice to vary or discharge the permission to proceed, and for consequential directions, particularly if the appeal might not have been permitted to proceed but for the amendment.

36. Usually, respondents do not attend Preliminary Hearings, hence the provision for an application on notice to apply to vary or discharge permission to proceed given in respect of an amended Notice of Appeal. In this case, when the respondents objected to permission being granted to amend the grounds of appeal, they were permitted to attend the Preliminary Hearing, and so have been able to set out their objections to the proposed amendment.

37. The **EAT Practice Direction** is interpreted in accordance with the overriding objective, set

out in Rule 2A **EAT Rules 1993**:

> 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.

38. The leading authority on amendment of grounds of appeal in the EAT is **Khudados v Leggate and Others** [2005] I.C.R. 1013, in which His Honour Judge Serota QC held:

> 79. **We shall first set out our conclusions on the principles to be applied when the Employment Appeal Tribunal considers applications to amend notices of appeal**; the **starting point is clearly the overriding objective** which now appears both in *Practice Direction (Employment Appeal Tribunal: Procedure)* 2002 [2003] ICR 122 and the *Employment Appeal Tribunal Rules 1993* (as amended by rule 3 of the Employment Appeal Tribunal (Amendment) Rules 2004) from 1 October 2004. Rule 2A now provides:
>
> > "Overriding objective
> >
> > "(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."
>
> 80. It is also necessary to have in mind the provisions of *Practice Direction (Employment Appeal Tribunal: Procedure) 2002*. We refer again to para 2(6) "Institution of appeal":
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> > "A party may not in a notice of appeal or a respondent's answer reserve a right to amend, alter or add to it. Amendments can be made only pursuant to an order on an interim application and that should be made as soon as the need for amendment is known." (Emphasis applied.)

81. We also refer to para 3, "Time for serving appeals", and in particular to para 3(7), which provides: "In any case of doubt or difficulty, a notice of appeal should be lodged in time and an application made to the Registrar for directions."

82. It will be recalled that Peter Gibson LJ in *Cobbold v Greenwich London Borough Council* , 9 August 1999, had suggested that amendments to statements of case should be allowed in general provided that any prejudice to the other party or parties caused by the amendment can be compensated for in costs and the public interest in the efficient administration of justice is not significantly harmed. We do not consider that this principle can be applied without some modification to applications to amend notices of appeal in the Employment Appeal Tribunal, for a number of reasons.

> (a) The Practice Direction requires specifically that applications to amend should be made "as soon as the need for amendment is known". There is no equivalent provision in the CPR.
>
> (b) The approach of the Employment Appeal Tribunal in ensuring that parties deal with proposed appeals expeditiously is, as Butler-Sloss LJ observed in *Aziz v Bethnal Green Challenge Co Ltd* [2000] IRLR 111, stricter than the approach of the Court of Appeal, at least in so far as presenting notices of appeal within time limits is concerned. **Those who practise in the appeal tribunal are well aware of its success in reducing waiting lists and in ensuring that all appeals are heard promptly. The current average time between presentation of a notice of appeal and the final hearing is now between two and three months unless there is a preliminary hearing, in which case the lead time is a little longer.** The fact that appeals are heard so quickly reflects the importance the appeal tribunal attaches to the speedy resolution of employment disputes.
>
> (c) **The appeal tribunal takes a strict view of anything, including proposed amendments, that might delay a final hearing**, especially in cases where there has been a failure to comply with a rule or a Practice Direction. The approach of the appeal tribunal is consistent with the fact that the period within which most claims can be brought in employment tribunals is significantly less than the relevant period of limitation for most civil claims dealt with under the CPR. Thus, for example, claims for unfair dismissal must be presented within three months of dismissal unless not reasonably practicable, and claims for discrimination on the grounds of disability, race, or sex, within three months of the act complained of, unless the time is extended by reason that it is just and equitable to do so.
>
> (d) The regime in the Employment Appeal Tribunal is still largely a "cost-free" regime: see *Employment Appeal Tribunal Rules 1993*, rule 34A (as inserted by regulation 21 of the *Employment Appeal Tribunal (Amendment) Rules 2004*), which provides that an order for costs may only be made against a litigant where proceedings were "unnecessary, improper, vexatious or misconceived or that there has been unreasonable delay or other unreasonable conduct in the bringing or conducting of the proceedings" and see also rule 34A(2), which allows a cost order to be made where costs have been wasted as a result of any improper, unreasonable or negligent act or omission on the

> part of any representative, rule 34A(2) does provide an exception where a party "(a) ... has not complied with a direction of the appeal tribunal; or (b) he has amended its notice of appeal". Nevertheless the appeal tribunal under rule 34B(2) may have regard to the paying party's ability to pay when considering the amount of a costs order. There is no equivalent provision in the CPR.

83. We also do not consider that the strict principles applied by the Employment Appeal Tribunal to extensions of time for presenting notices of appeal, as set out by Mummery J in *United Arab Emirates v Abdelghafar* [1995] ICR 65, can apply in their entirety. We accept, in this regard at least, Mr Hendy's submission that there is a difference in quality between an application to extend time for presenting an appeal, and an application to amend an existing notice of appeal. The important public interest in achieving closure and finality of litigation is stronger in cases where it is sought to extend time to bring an appeal.

84. **We also consider that the merits of the proposed amendment must also be relevant**. Rule 3(7) of the *Employment Appeal Tribunal Rules1993* provides that where it appears to a judge or the Registrar that a notice of appeal discloses no reasonable grounds for bringing the appeal or that it is an abuse of the appeal tribunal's process or is otherwise likely to obstruct the just disposal of the proceedings, the appellant is to be notified that no further action will be taken on the appeal, subject of course to the appellant's right to amend. Further para 9(7) of *Practice Direction (Employment Appeal Tribunal: Procedure) 2002* [2003] ICR 122 provides that the purpose of a preliminary hearing is to determine whether the grounds in the notice of appeal raise a point of law which gives the appeal a reasonable prospect of success at a full hearing; or for some other compelling reason the appeal should be heard. In cases where these conditions are not fulfilled the appeal will be disposed of at the preliminary hearing.

85. **We are accordingly of the view that no amendment can properly be entertained unless it at least raises a point of law which gives the appeal a reasonable prospect of success at a full hearing, or where there is some other compelling reason for the appeal to be heard. We are concerned however, that applications to amend should not become mini-appeals.** We recognise that the case before us lasted in the employment tribunal some 20 days or more and that there were some five lever arch files of documents: the claimant's own witness statement ran to some 364 paragraphs; and accordingly, of necessity, it may take longer to assess the merits or otherwise of the proposed amendments than in a shorter case in which the amendments raise clear cut issues of law.

86. **The appeal tribunal has a broad and generous discretion in applying its rules and practices so as to achieve the overriding objective of dealing with cases justly. We consider that, without wishing to set out an exhaustive list of considerations, the following are among the matters to be taken into account in determining whether or not an amendment should be allowed.**

> (a) Whether the applicant is in breach of the Rules or Practice Directions; in our opinion compliance with the requirement in para 2(6) of *Practice Direction (Employment Appeal Tribunal: Procedure) 2002* [2003] ICR 122 ,

> that **an application for permission to amend a notice of appeal be made as soon as the need for amendment is known, is of considerable importance. The requirement is not simply aspirational or an expression of hope. It does not set a target but is a requirement that must be met in order to advance the efficient and speedy dispatch and conduct of appeals.**
>
> (b) Any extension of time is an indulgence and **the appeal tribunal is entitled to a full honest and acceptable explanation** for any delay or failure to comply with the 1993 Rules or 2002 Practice Direction, as Mummery J observed in *United Arab Emirates v Abdelghafar* [1995] ICR 65 .
>
> (c) **The extent to which, if any, the proposed amendment if allowed would cause any delay.** Clearly **proposed amendments that raise a crisp point of law closely related to existing grounds of appeal, or offering limited particulars that flesh out existing grounds, are much more likely to be allowed than wholly new grounds** of perversity raising issues of complex fact and requiring consideration of a volume of documents, including witness statements and notes of evidence. Such amendments if allowed are bound to cause delay and extra expense. The latter class of amendments should be contrasted with the first. In many cases in the first category the party against whom permission to amend is sought will be in no worse position than if the amended grounds had been included in the original notice of appeal.
>
> (d) **Whether allowing the amendment will cause prejudice to the opposite party, and whether refusing the amendment will cause prejudice to the applicant by depriving him of fairly arguable grounds of appeal.** We recognise that a party cannot be prejudiced in point of law simply because an argument is raised by way of amendment that saves what would otherwise be an unsustainable appeal. We also would suggest that the prejudice caused by refusing permission to amend to an applicant who seeks permission to amend by adding fairly arguable grounds, but who has failed in a significant way to comply with the Rules or Practice Direction, or who has delayed excessively, is likely to carry less weight than in the case of an applicant who has not delayed and has acted in accordance with the 1993 Rules and 2002 Practice Direction.
>
> (e) **In some cases it may be necessary to consider the merits of the proposed amendments**, assuming they can be demonstrated to cross the appropriate thresholds we have mentioned earlier; that is to say as a general rule they must raise a point of law which gives the appeal a reasonable prospect of success at a full hearing.
>
> (f) **Regard must be had to the public interest in ensuring that business in the appeal tribunal is conducted expeditiously** and that its resources are used efficiently.

87. We are not able to accept Mr Hendy's submission that having regard to the overriding objective "justice" requires that where a party has good grounds of appeal he wishes to bring by way of amendment he should be allowed to ventilate them.

> "Justice" includes fairness to all sides and to the interests of the public in the efficient administration of courts and tribunals. We, therefore, consider that the merits of the proposed amendments alone cannot be a determining factor in the decision as to whether permission to amend should be given. [emphasis added]

39. A more generous approach may be appropriate where a litigant in person obtains pro bono assistance from ELAAS at a Rule 3(10) or Preliminary Hearing: **Readman v Devon Primary Care Trust** UKEAT/0116/11/ZT and **King v Royal Bank of Canada Europe Ltd** [2012] IRLR 280 (EAT).

40. Those authorities are not applicable here, because the claimant is an experienced employment lawyer who was represented when he submitted the appeal.

41. The application to amend results from the instruction of Mr Milsom to represent the claimant at the Preliminary Hearing, who concluded that the grounds of appeal could be improved by amendment during the course of his preparation.

42. **Khudados** remains the leading authority on amendment in the EAT. That said, leading authorities are not statutes and should not be treated as setting out hard and fast rules. **Khudados** refers to a number of factors that will generally be relevant, but their comparative importance will vary substantially from case to case. **Khudados** does not set out a series of hurdles, failing to clear any one of which means that an amendment cannot be permitted. The identified factors are to be considered against the circumstances of the particular case, as Judge Serota noted.

43. It may be helpful to draw out a few points:

(1) deciding whether to grant an amendment involves the exercise of a discretion that should not be fettered

(2) the starting point is the overriding objective

(3) the nature of the proposed amendment is of considerable importance – there is a spectrum between proposed amendments that raise a crisp point of law closely related to existing grounds of appeal, or offering limited particulars that flesh out existing grounds, as opposed to wholly new grounds, particularly grounds that assert perversity,

potentially raising issues of complex fact and requiring consideration of a volume of documents, including witness statements and notes of evidence

(4) if a proposed amendment does nothing more than clarify an existing ground of appeal, the amendment may assist the respondent in answering the ground, and the EAT in deciding the point of law, so that refusing the amendment could be self defeating

(5) delay may weigh heavily against permitting an amendment, but that will usually depend on what, if any, prejudice has been caused by the delay – unfortunately the EAT currently has significant backlogs so the picture is no longer as rosy as that painted in **Khudados**

(6) the prejudice caused by delay to respondents and the efficient conduct of business in the EAT, is not linear, there are points at which respondents will generally suffer increased prejudice such as when they have responded to a Notice of Appeal and taken significant steps to prepare for a hearing, such as drafting a skeleton argument

(7) delay is likely to weigh less in the balance where existing grounds are clarified as opposed to where new grounds are introduced, particularly if their introduction may delay the appeal and potentially result in the vacation of a hearing which will prejudice the respondents and other parties who are awaiting the hearing of their appeals

(8) the merits of proposed amended grounds may be relevant

(9) if the indulgence of an amendment is sought the proposed amendment should be pleaded so as to comply fully with the requirements of the **EAT Practice Direction**

(10) a full, honest and acceptable explanation is generally required, particularly if the amendment raises new points, as opposed to clarifying and simplifying existing grounds

The application to amend

44. This application was made relatively late, although Judge Burns anticipated that clarified and simplified grounds might be produced in the lead up to the Preliminary Hearing, or shortly thereafter, if arguable points were clarified at the Preliminary Hearing.

45. I accept that I have been provided with a full and honest explanation for the delay. I accept that, having been instructed to attend the Preliminary Hearing, when Mr Milsom started work on the case he concluded that amended grounds of appeal should be produced. They were produced significantly before the Preliminary Hearing.

46. There is some limited prejudice to the respondents, because their initial responses to the original grounds of appeal have been overtaken by events.

47. There is lack of compliance with the **EAT Practice Direction** because the amendment is by way of substitution and it does not include the text of the original document with any proposed changes clearly marked.

48. I appreciate that it can be difficult to include the original text where there is a wholesale redraft, but it is particularly important that if an application is made to amend by substitution there is a clear explanation of what parts of the grounds of appeal are clarifications of existing grounds and what, if any, are new grounds. This clarification could potentially be set out in the application to amend, rather than the grounds themselves.

49. While I note that Mr Milsom asserts that if permission to amend is refused he would rely on the original grounds, all of the points that the claimant seeks to argue at a full hearing must necessarily be in the amended grounds. If the amended grounds are unarguable that would be a reason not to permit the amendment and would also mean that the ground should not be permitted to proceed, whether as asserted in the new or old grounds of appeal.

50. I have concluded that the most effective way to consider the extent to which the amended grounds clarify the existing grounds of appeal or raise new points, assert errors of law or challenge findings of fact, and are sufficiently arguable to progress, is to consider each of the proposed amended

grounds in turn. I shall only set out the heading of each ground but have considered the very extensive text that sets out the detail of each of the grounds.

51. It did not prove possible to complete the Preliminary Hearing within the time listed on 31 March 2026, as a result of which the hearing was postponed to 23 April 2026.

52. The claimant was required to explain his position in respect of the first respondent's liquidation and to state which ground is maintained against which of the respondents. The parties agree that the appeal against the first respondent should be dismissed on withdrawal and the appeal against the other respondents can proceed if arguable.

53. In broad terms the claimant has set out which grounds are maintained against which of the remaining respondents.

Ground 1

The ET erred in its approach, reasons and conclusions on ss43B ERA 1996

54. As noted above, the **EAT Practice Direction** requires that each ground should have in the heading a brief description of the error of law. The heading to ground 1 asserts that the "ET erred in its approach, reasons and conclusions". Such vague wording is not a promising start. It does not identify the type of error of law asserted and suggests that an attack is, in reality, being made on the fact finding of the Employment Tribunal.

55. The ground challenges the conclusion of the Employment Tribunal that the claimant had not made protected disclosures. The alleged protected disclosures related to the SP Employment Tribunal claim. The Employment Tribunal found that the reason that the claimant was not shown documents, the disclosure of which was disputed, was because they contained confidential financial information, concerning Mr Rosenblatt.

56. I consider that the core finding of the Employment Tribunal was that:

> 401. We further find that the Claimant did not himself genuinely believe that the Respondents were going to bury evidence.

57. The starting point in analysing whether a qualifying disclosure has been made is to determine

whether the claimant, as a matter of fact, believed that the disclosure tended to show wrongdoing. If not, there cannot be a qualifying or protected disclosure. The Employment Tribunal gave more than adequate reasons for the conclusion that the claimant did not have a genuine belief that the information disclosed tended to show wrongdoing. There is no arguable error of law in this finding of fact, as a result of which this ground of appeal is not arguable.

Ground 2

The ET Erred in its Approach to Harassment Allegations 12.1-12.1 LoI

58. Again the heading of the ground does not suggest a clear arguable error of law.

59. The Employment Tribunal held that the race related harassment complaint in respect of Ms Foulston was out of time:

> 385. The Claimant's complaint of race related harassment dating back to April 2018 is in our judgment, out of time and therefore fails on that basis. Time began to run from the date of the incident (12 April 2018) as it did not form part of a continuing act with any later unlawful incidents.
>
> 386. We do not grant the Claimant an extension of time to bring this complaint late on a just and equitable basis. He was fully aware that he could pursue the compliant if he wished to do so, but chose in the full knowledge of all his employment rights, not to take the matter any further, either internally or externally. In our judgment, he has only sought to revive it in order to cause maximum embarrassment to the Respondents.

60. The Employment Tribunal had directed itself as to the law:

> 349. The tribunal has a wide discretion to extend time on a just and equitable basis. As confirmed by the Court of Appeal in *Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23, the best approach is for the tribunal to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time. This will include the length of and reasons for the delay, but might, depending on the circumstances, include some or all of the suggested list from the case of *British Coal Corporation v Keeble* [1997] IRLR 36.
>
> 350.It is for the Claimant to show that it would be just and equitable to extend time. The exercise of discretion should be the exception, not the rule (*Bexley Community Centre (t/a Leisure Link) v Robertson* [2003] EWCA Civ 576).

61. It is not arguable that the Employment Tribunal erred in law in referring to an extension of time being the exception rather than the rule, in circumstances in which it had first directed itself that there is a wide discretion to extend time on just and equitable grounds. Nor is it arguable that the

Employment Tribunal must always expressly balance the prejudice of granting or refusing an extension of time. Whether that is necessary depends on the nature of the case. The Employment Tribunal unarguably was entitled to conclude that it would not extend time in circumstances in which the claimant had decided that he would not take the matter any further at the time, notwithstanding the wholly unacceptable comment Ms Foulston made, in circumstances in which he had a good relationship with her. This was a matter for the discretion of the Employment Tribunal.

62. This ground of appeal was not included in the original grounds. No clear explanation has been given for the delay in raising it. Rather, as was the case with the original complaint in the Employment Tribunal, the claimant appears to have been prepared to let this matter lie, but then decided to revive it. The appalling language used by Ms Foulston was a one off incident and the claimant decided not to take it any further at the time. The claimant chose not to challenge the dismissal of this complaint in his original grounds of appeal. The claimant has not established a good reason why he should now be permitted to add this as a ground of appeal. I refuse permission to amend.

63. The fist bump complaint against Mr Rosenblatt was dismissed on the merits:

> 368. Our finding of fact was that Mr Rosenblatt did greet the Claimant with a fist bump rather than a professional handshake shortly after the Claimant commenced work.
>
> 369. We first considered whether this conduct constituted race related harassment. We decided it did not.
>
> 370. In reaching this conclusion we observe that many types of greeting gesture are associated with particular racial groups. In our judgment, the fist bump is such a gesture. It has a strong association as a greeting between black men and often as part of the greeting known as the Dap. Although used more widely and by different racial groups by 2017 when the incident happened, that original association remains.
>
> 371. In addition, and of particular relevance to this case, is that the fist bump is associated with being a greeting gesture used in an informal setting. By contrast, in a formal situation, a handshake would be the expectation.
>
> 372. We have accepted the evidence provided by Mr Rosenblatt and his white colleagues that Mr Rosenblatt often used a fist bump as an informal welcoming gesture with them. He did not consider his use of the gesture to have any underlying racial association. All of the people who told us Mr Rosenblatt fist bumped them, however, had known him for a long time.

> 373. At the time the fist bump occurred, Mr Rosenblatt had met the Claimant at interview and then at the subsequent drinks party. We find Mr Rosenblatt used the gesture because he felt enthusiastic about welcoming the Claimant to his firm. It was an extension of the enthusiasm with which he had confirmed by email "He's the man for us" and that he did not intend to cause any offence to the Claimant at the time. Intention to cause offence is not a necessary component of harassment, however.
>
> 374. The question we have asked ourselves is whether the conduct had the effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him taking into account the Claimant's perception, the other circumstances and whether it is reasonable for the conduct to have that effect.
>
> 375. The Claimant did not react negatively to the fist bump and participated in it willingly. We nevertheless consider it is entirely understandable that he felt uncomfortable at Mr Rosenblatt's choice of greeting, given that he would normally have expected a handshake in the context. Although they had met previously, Mr Rosenblatt and the Claimant did not know each other very well at all at the time the fist bump occurred.
>
> 376. Although a misjudgement on Mr Rosenblatt's behalf and insensitive, we do not find the conduct met the threshold for constituting unlawful race -related harassment. This is because it was a one off gesture, which by itself did not violate the Claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for him. Had it been repeated and had Mr Rosenblatt singled the Claimant out for this type of greeting, we would have found the threshold had been crossed. In reaching this decision we are aware that one off gestures are often sufficient to constitute harassment, but we do not think that was the case here.

64. The ground of appeal asserts that the Employment Tribunal "erred in failing to consider whether that effect was achieved on a cumulative effect having regard to the proven harassment by R2 in April 2018". This is not a point that was expressly argued below. This act could only be assessed cumulatively together with the comment of Ms Foulston once that comment had been made. The complaint against Ms Foulston was found to be out of time. The Employment Tribunal also stated that had it found that the fist bump incident constituted harassment, it would have found the complaint to be out of time:

> 387. We add that had we found that the Claimant's first complaint of race related harassment / direct race discrimination was well founded, we would also have held it was out of time and not granted an extension of time for the same reasons.

65. Accordingly, any challenge to the finding that Mr Rosenblatt's conduct did not constitute harassment would be academic.

66. Overall, Ground 2 is not arguable.

Ground 3

The ET Erred in its Approach to Detriment in respect to 4.1 and 4.7-4.9 LoI

67. Erring in the "approach to detriment" is not the assertion of a clear error of law, as should be set out in the heading to a ground of appeal. This ground challenges the dismissal of detriment complaints under the **Equality Act 2010**. The specific detriments challenged are 4.1, 4.3, and 4.7 to 4.9. In respect of each of those complaints, the Employment Tribunal was able to make a positive finding as to the reason for the treatment, and held that it was not because of the race of the claimant. That is an approach permitted by **Hewage v Grampian Health Board** [2012] UKSC 37, [2012] ICR 1054. This ground of appeal is not arguable, particularly in light of my decision on Ground 4.

Ground 4

The ET Misdirected itself in law and/or misapplied the Principles of Causation and the Reverse Burden of Proof

68. The Employment Tribunal properly directed itself as to the burden of proof, including that it can be legitimate to go directly to the "reason why" question. It is not arguable that the Employment Tribunal misdirected itself, or misapplied the relevant legal test.

69. It is not arguable that the Employment Tribunal erred in law in stating that it "may be appropriate on occasion, for the tribunal to take into account the respondent's explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof". At the first stage the Employment Tribunal must assume that there is not any "other explanation", that does not necessarily mean that anything said by the respondent about the treatment must always be ignored. More significantly, when analysing the complaints, the Employment Tribunal did not, in fact, rely on what was said by the respondent at the first stage. In most cases the Employment Tribunal considered the reason(s) for the treatment and concluded that there the reasons were non-discriminatory, as permitted by **Hewage**.

70. It is asserted that the Employment Tribunal failed to appreciate that the protected

characteristic need only be a more than trivial reason for the impugned treatment. At paragraph 439 the Employment Tribunal was clearly referring to the sole reason for treatment, which was non-discriminatory. At paragraphs 447-448 the Employment Tribunal first referred to the main reason for the treatment, before going on to find a secondary reason at paragraph 449, both of the reasons were found to be non-discriminatory. At paragraphs 446 and 463 the Employment Tribunal referred to non-discriminatory reasons that were clearly found to be the sole reasons for the treatment.

71. There is nothing to suggest that the Employment Tribunal thought that any of the reasons it accepted were pretexts for the treatment. The Employment Tribunal had to give its conclusions on each of the specific complaints. I do not consider it is arguable that the Employment Tribunal adopted an impermissibly fragmented approach.

72. The judgment included a careful direction as to the law and detailed findings of fact to which the law was applied. I do not consider that there is any arguable error of law in relation to the approach that the Employment Tribunal adopted to the burden of proof.

Ground 5

> *Ground Five: the ET's Conclusions to Detriments 4,2 and 4.11-4.13 were in Error of Law, Inadequately Reasoned and/or Perverse*

73. General assertions in grounds of appeal, such as that the determinations of the Employment Tribunal were "in error of law, inadequately reasoned and/or perverse", is not in compliance with the **EAT Practice Direction** and seems more like an attempt to cover all bases. The detailed material in the ground is no more than an attempt to re-argue the complaints. There is no arguable error of law in the decision of the Employment Tribunal.

Ground 6

> *The ET erred in its conclusions on Constructive Unfair and/or Wrongful Dismissal*

74. I consider that the assertions under this heading are also no more than an attempt to re-argue the complaint, and do not raise an arguable error of law.

Ground 7

The ET Erred in its Approach, Reasons and Conclusions as to the Victimisation Claim

75. This is the ground that comes closest to being arguable. I can see a strong argument that to accuse someone of being racist is detrimental treatment, even where it is the expression of a genuine belief. It is also only necessary that the doing of the protected act is a material cause of the treatment. That could be the case even if the main reason for an allegation of antisemitism is genuine belief in its truth. However, the Employment Tribunal made a clear finding of fact:

> 505. … Mr Rosenblatt did not act in retaliation against the Claimant because he did a protected act but because he thought the Claimant was being antisemitic.

76. I have concluded that factual finding unarguably was open to the Employment Tribunal. It represented the conclusion of the Employment Tribunal as to the sole reason why Mr Rosenblatt made the allegation of antisemitism.

Overall

77. I have concluded that the proposed amended grounds of appeal do not assert arguable errors of law in the decision of the Employment Tribunal. Even if the new ground of appeal, challenging the determination that the harassment against Ms Foulston was out of time, was arguable, I would not have granted permission for it to be added by way of amendment at such a late stage.

78. Standing back, this was a careful and detailed judgment of an Employment Tribunal that undertook its statutory function to determine the complaints brought by the claimant. It reached determinations that were open to it. It is not the role of the EAT to second guess the Employment Tribunal's fact finding. The EAT can only intervene if there is an error of law in the judgment of an Employment Tribunal. Arguable errors of law should be capable of being set out briefly. The appeal is dismissed.