

Neutral Citation Number: [2026] EAT 106

Case No: EA-2024-000090-BA

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 22 July 2026

Before:

HIS HONOUR JUDGE AUERBACH

Between:

MR LEONARDO WOLFE

Appellant

- and -

TAKA MAYFAIR LIMITED

Respondent

The **Appellant** in person
The **Respondent** did not attend and was not represented

Hearing date: 8 July 2026

JUDGMENT

SUMMARY

RIGHT TO BE ACCOMPANIED

It is a condition of the right to be accompanied at a disciplinary or grievance hearing, conferred by section 10 **Employment Relations Act 1999**, that there be a request by the worker to be accompanied at the hearing in question, in accordance with section 10(1)(b). In the absence of such a request by the worker, the specific rights conferred by the remainder of section 10 do not arise. That is so, even in a case where the reason why the worker did not make a request, is that the employer did not explain to the worker the purpose or nature of the meeting, and, because of that, the worker did not appreciate that it would attract the right to be accompanied, until it was too late for them to invoke it.

HIS HONOUR JUDGE AUERBACH:

Introduction

1. The claimant in the employment tribunal appeals from a decision refusing his application to amend his claim to add a complaint of breach of the right to be accompanied conferred by section 10 **Employment Relations Act 1999**. That right has been in force for more than a quarter of a century. However, this appears to be the first occasion on which the particular point raised by this appeal has fallen to be determined by the EAT.

2. In its decision the tribunal refused to permit two complaints to be introduced by amendment, one of indirect discrimination, and one of breach of the right to be accompanied. At a rule 3(10) hearing the challenge relating to the right to be accompanied, only, was permitted to proceed.

3. The respondent's solicitors thereafter indicated that it did not consider this appeal to have any reasonable prospect of success, but that, in order to preserve costs, it did not wish to participate in the appeal. There was therefore no attendance or representation for the respondent at the hearing before me. The claimant, who was a litigant in person in the tribunal, appeared again in person. He relied upon the contentions set out in his grounds of appeal, the written arguments that he had advanced in his application for a rule 3(10) hearing, and a skeleton argument that he had previously tabled for that hearing. There was also a bundle of legal materials which included one decision of the EAT, and I provided the claimant with a copy of another. He also addressed me orally.

4. The day after the hearing before me the claimant also sent two emails. These attached extracts from the Hansard records of Parliamentary debates on what became the **Employment Relations Act 1999**, one extract from the debates on what became the **Employment Rights Act 2025**, and the decision of an employment tribunal in **Yoskovska v Goldman Sachs International**, 2200529/2021, 18 January 2022. The emails advanced some brief further observations and submissions. I have, in the circumstances of this appeal, considered all of this further material.

5. I record that the claimant's submissions, written and oral, were measured, articulate, eloquent and candid. I thank him for them.

The Right to be Accompanied

6. The statutory regime relating to the right to be accompanied is set out in sections 10 – 15 **Employment Relations Act 1999**. Section 10 was amended in 2000, 2004 and, in a minor respect that is not relevant to this appeal, 2026. As it stood at the relevant time it provided:

“10 Right to be accompanied.

(1) This section applies where a worker—

- (a) is required or invited by his employer to attend a disciplinary or grievance hearing, and**
- (b) reasonably requests to be accompanied at the hearing.**

(2A) Where this section applies, the employer must permit the worker to be accompanied at the hearing by one companion who—

- (a) is chosen by the worker; and**
- (b) is within subsection (3).**

(2B) The employer must permit the worker's companion to—

- (a) address the hearing in order to do any or all of the following—**
 - (i) put the worker's case;**
 - (ii) sum up that case;**
 - (iii) respond on the worker's behalf to any view expressed at the hearing;**
- (b) confer with the worker during the hearing.**

(2C) Subsection (2B) does not require the employer to permit the worker's companion to—

- (a) answer questions on behalf of the worker;**
- (b) address the hearing if the worker indicates at it that he does not wish his companion to do so; or**
- (c) use the powers conferred by that subsection in a way that prevents the employer from explaining his case or prevents any other person at the hearing from making his contribution to it.]**

(3) A person is within this subsection if he is—

- (a) employed by a trade union of which he is an official within the meaning of sections 1 and 119 of the Trade Union and Labour Relations (Consolidation) Act 1992,**
- (b) an official of a trade union (within that meaning) whom the union has reasonably certified in writing as having experience of, or as having received training in, acting as a worker's companion at disciplinary or grievance hearings, or**
- (c) another of the employer's workers.**

(4) If—

- (a) a worker has a right under this section to be accompanied at a hearing,**
 - (b) his chosen companion will not be available at the time proposed for the hearing by the employer, and**
 - (c) the worker proposes an alternative time which satisfies subsection (5),**
- the employer must postpone the hearing to the time proposed by the worker.**

(5) An alternative time must—

- (a) be reasonable, and**
- (b) fall before the end of the period of five working days beginning with the first working day after the day proposed by the employer.**

(6) An employer shall permit a worker to take time off during working hours for the purpose of accompanying another of the employer's workers in accordance with a request under subsection (1)(b).

(7) Sections 168(3) and (4), 169 and 171 to 173 of the Trade Union and Labour Relations (Consolidation) Act 1992 (time off for carrying out trade union duties) shall apply in relation to subsection (6) above as they apply in relation to section 168(1) of that Act.”

7. Section 11(1) enables a worker to complain to an employment tribunal that their employer has failed, or threatened to fail, to comply with section 10(2A), (2B) or (4). Section 11 also addresses the time limit for presenting such a complaint. It also sets out that where a complaint is well-founded the tribunal shall “order the employer to pay compensation to the worker of an amount not exceeding two weeks’ pay” calculated in accordance with provisions of the **Employment Rights Act 1996**.

8. Section 12 gives a worker the right not to be subjected to a detriment on the ground that they exercised, or sought to exercise, the right under section 10(2A), (2B) or (4). It also provides that, for the purposes of an unfair dismissal claim, a dismissal for that reason or principal reason shall be treated as unfair. There is no qualifying period. Interim relief may be sought. These rights also extend to a person accompanying, or seeking to accompany, a worker pursuant to a section 10 request.

9. Section 13 contains interpretation provisions, including, at section 13(4):

“For the purposes of section 10 a disciplinary hearing is a hearing which could result in—

- (a) the administration of a formal warning to a worker by his employer,**
- (b) the taking of some other action in respect of a worker by his employer, or**
- (c) the confirmation of a warning issued or some other action taken.”**

10. Sections 14 and 15 concern contracting out, conciliation and exclusion of national security employees.

11. I note the following general features of this regime. Section 10 confers a freestanding, self-contained, statutory right, regardless of what other employment rights the particular worker does or does not have. It is conferred on workers (as defined in section 13), and not only upon employees. There is no qualifying service period. The definition of a disciplinary hearing is not confined, for these purposes, to one which could result in the termination of the relationship. The right may also be invoked in respect of a grievance hearing, as defined.

12. As well as permitting a complaint that the employer has failed to comply with section 10(2A), (2B), or (4), section 11(1) also enables a worker to complain that their employer has “threatened to fail” to comply with those provisions. However, the claimant was not alleging that the respondent had threatened to fail to comply; and so I do not need to consider the scope of that provision.

The Employment Tribunal’s Decision

13. The amendment applications were considered by EJ Gidney at a hearing at London Central conducted by CVP. The tribunal identified that the claimant had been employed by the respondent, which runs a restaurant, as a Head Sommelier / Manager from 21 December 2022 to 21 January 2023. In relation to the application to amend concerning the right to be accompanied, the claimant’s case was that, following the end of a shift, and without advance warning, the two owners of the restaurant had a face-to-face discussion with him, without explaining the purpose, or what might happen, at the end of which he was dismissed. The application related to that meeting.

14. After setting out section 10(1), the tribunal continued at [22]:

“Thus there are two gateway requirements to be satisfied for the right statutory right to be accompanied to be engaged. The first is an invitation to a disciplinary or grievance hearing. The second is that the employee requests to be accompanied at the hearing.”

15. In respect of what it called the first qualifying requirement, at [23] the tribunal noted that the respondent contended that the meeting in question was not a disciplinary or grievance hearing, but, rather, what it called a “performance review meeting”. The claimant disputed that. The tribunal considered that resolution of that point would require evidence, but indicated that it had approached the amendment application taking the claimant’s case its highest. The tribunal said: “This point alone would not have acted against allowing the amendment.”

16. The tribunal continued, at [24] – [27]:

“24. However the second qualifying requirement is that the Claimant asks to be accompanied to the meeting. With commendable honesty, the Claimant accepted that he made no such request. This means that the statutory right to be accompanied was not engaged. On his own case the Claimant cannot satisfy s10(1)(b) of the Employment Relations Act 1999.

25. In weighing up the balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it and in considering the real practical consequences of allowing or refusing the amendment, it strikes this Tribunal that there can be no injustice or hardship to an applicant in refusing an amendment application, if taking their evidence at its highest, it is bound to fail.

26. Indeed, stopping such a claim at this stage will avoid the time and costs incurred by both parties in pursuing a claim that cannot possibly succeed, given the Claimant's acceptance that he did not ask to be accompanied. Conversely, if it is allowed the Respondent will be put to additional costs and potentially a longer hearing if such a hearing is burdened with additional claims that cannot succeed.

27. This claim, if allowed to proceed by way of amendment, would be doomed to fail, and accordingly the application to amend the Claim Form to include it, is refused."

The Appeal

17. In summary, the cornerstone of this appeal is the claimant's contention that, because, on his case, the respondent failed to make him aware of the nature or purpose of the meeting in advance, nor did he appreciate during the meeting that he might be dismissed until the point at which he was in fact dismissed, he was denied the ability to exercise the right conferred upon him by section 10, or did not get a reasonable opportunity to do so. Once he had been, without any forewarning of the possibility, dismissed, it was simply too late to request a companion.

18. The claimant argues that it cannot be right that an employer could in practice avoid, or attempt to avoid, the right to be accompanied being triggered, by the expedient of not alerting the worker to the nature of the meeting or its potential outcome. He submits that this would fundamentally undermine the purpose of the right and it cannot have been Parliament's intention. It would amount to a major loophole in legislation that is intended to redress the imbalance of power that there will inherently usually be between the employer and the worker at a hearing of this type.

19. The claimant contends that it cannot be an answer that the worker could seek clarification of the nature of the proposed meeting or make a precautionary request to be accompanied. Apart from the impracticality of such a generalised approach, a worker should not have to second-guess the employer or risk putting their head above the parapet, and drawing an adverse response, in a situation in which it is not clear that they have the right. Those who lack the right to claim ordinary unfair

dismissal may be particularly vulnerable to retaliation. The protection of section 12 may also be little comfort to a worker who has lost their job, and a breach of it may also be very difficult to prove.

Discussion

20. The employment tribunal was obliged to apply the legislation as it is, and not as it may be argued that it should be. The starting point is therefore to consider the express words of the statute.

Construction of section 10

21. Section 10(1) sets out the circumstances in which the rights conferred by the remaining provisions of the section apply. *If they apply, then* the employer is obliged to do the things set out in sections 10(2A), (2B) and (4). But, if the circumstances in section 10(1) do not apply, then section 10 does not place the employer under any obligation to do the things set out in those provisions. It is also clear that section 10(1)(a) and section 10(1)(b) must both apply. As a matter of construction of the statute, the tribunal was therefore right to conclude that, if the case is not one where the worker “reasonably requests to be accompanied at the hearing”, the remainder of section 10 does not apply, and the worker cannot complain that the employer failed to comply with it.

22. I turn to the countervailing lines of argument that the claimant put forward.

Reasonableness

23. The claimant notes that section 10(1)(b) provides that the worker must “reasonably” request to be accompanied at the hearing. He submits that, if the worker must act reasonably, there should be an obligation on the employer to do so as well, and that it would not be reasonable for an employer to withhold from the worker the nature or potential outcomes of the meeting.

24. However, Parliament has simply not, in the section 10 regime, imposed any generalised obligation on employers to act reasonably, which might be amenable to such an interpretation. Where section 10(1) is fulfilled, the employer’s obligations are those, but only those, set out in the remainder

of the section. It is not possible to read section 10 as imposing, or triggering, any obligation on employers over and above those specifically identified in sections 10(2A), (2B), (4) and (6).

25. A different angle was, however, postulated by the tribunal (EJ Coghlin QC) in Yoshovska, at [38]. It suggested that “workers who are sufficiently knowledgeable and clear-headed may invoke their right to representation during the meeting itself, as soon as the nature of the meeting becomes clear to them”. It might indeed be argued that, in such a scenario, if, on account of the employer’s reticence, the worker could not reasonably have been expected to appreciate the nature of the meeting any sooner, that would be a reasonable section 11(1)(b) request, triggering the section 11(2A) duty to permit the worker to be accompanied, including by granting an adjournment if need be. I note also that section 11(1)(a) applies however much, or little, notice of the meeting the worker is given; and that, beyond requiring that the worker “reasonably” request to be accompanied, section 10(1)(b) does not require the worker’s request to be in writing, nor set out any express stipulations as to its timing.

26. However, noteworthy though they are, such arguments could not have assisted the claimant in the present case, in which no request was made at all; and so I do not need to consider them further.

Parliamentary purpose

27. Modern principles of statutory construction require the language of a statute or statutory instrument, where ambiguous, to be interpreted having regard to the Parliamentary purpose of the provisions in question, and in a way which, so far as possible, gives best effect to that purpose. In some cases it may be possible to divine the purpose from the wider provisions of the legislation of which the provision at issue forms a part. In others, some light may be shed on Parliament’s intention by Ministerial statements made in Parliamentary debates about the legislation during its passage.

28. However, in this case the relevant provision is not ambiguous. There has to be a reasonable request to be accompanied, which unambiguously means that there has to be a request. There might be cases where, on the evidence, there is a factual dispute as to whether there was a communication

amounting to such a request. But the wording of the statute leaves no room for doubt that, in a case where it is accepted, or found, that there has simply been no request at all, the section 10(1)(b) condition is not fulfilled. There is therefore simply no room for any act of interpretation by reference to what might be argued to be the wider purpose of the legislation as a whole.

29. Similarly, while the rule prohibiting resort to Parliamentary materials was relaxed in **Pepper v Hart** [1992] UKHL 2; [1993] AC 593, reference is only permitted to clear Ministerial statements touching on the point at issue, and only where the wording of the legislation is ambiguous, obscure or leads to an absurdity. In the present case there are policy arguments that can be advanced in support of the claimant's approach, but the wording of the statute cannot be said to lead to an absurdity. Nor is the relevant wording ambiguous or obscure.

30. For these reasons, there is no room in this case for an appeal to Parliamentary purpose or intention. But in any event I add the following observations.

31. First, I do agree with the claimant, that it can be inferred from the substantive nature of these provisions – providing a right for a worker to have a companion, and for the companion to assist them in certain defined ways, at a relevant hearing – that Parliament had the *general* purpose of enabling workers to have the right to a certain defined measure of support at disciplinary and grievance hearings (as defined), without which they might otherwise be at a disadvantage. But Parliament also chose to provide – in terms – that the employer is not obliged to enable the worker to have that support, *unless* the worker has specifically proactively made a request.

32. It might be said, for example, that, even though *some* workers may obtain advice or research their rights, if the employer does not tell the worker that they have the right to request a companion, the worker may simply fail to realise that they have that right. As we shall see, the *ACAS Code* provides that the worker *should* be told of their rights by the employer. But, as was touched upon in **Heathmill Multimedia ASP Ltd v Jones**, EAT/0200/03/LA, 10 June 2003, Parliament has not

included in *section 10* a duty on employers to notify workers of the right, when inviting or requesting them to attend a disciplinary or grievance hearing. A failure to do so may have other consequences for an employer, for example, in the context of an unfair dismissal complaint. But Parliament has not taken the step of outlawing such reticence by making it a breach of section 10 not to do so.

33. The claimant says that, even so, his difficulty was different. He told me that he was, at the time, in fact aware of the existence of the section 10 right. But he simply did not appreciate that it might have been applicable to this particular meeting, until it was too late. It may be that this scenario simply did not occur to Parliament, or the drafter of the legislation, in 1999. But, however that may be, in the absence of express provision, I do not think that it can be inferred from the wider scheme of the legislation that Parliament must have intended that what the claimant contended happened in this case should be treated as amounting to a breach of the rights conferred by section 10.

34. I also note for completeness that the claimant acknowledged that the extracts from the 1999 Parliamentary debates that he sent in do not include any discussion of this particular scenario. The discussions, in the extract he provided from a House of Lords debate on proposed amendments to what was then the Employment Rights Bill 2025, also do not specifically address the specific point at issue in this appeal. So nothing can be inferred, either way, about why Parliament did not amend the legislation in this respect when it had the opportunity, in 2025, to do so.

The ACAS Code of Practice

35. The claimant referred to the *ACAS Code of Practice 1 on Disciplinary and Grievance Procedures* (2015), in particular paragraphs 9, 10, 13 and 15. Paragraph 9 provides that, where there is thought to be disciplinary case to answer, the worker should be so notified in writing and given sufficient information about the alleged misconduct “**and its possible consequences**” to enable them to prepare to answer the case “**at a disciplinary meeting**”. Para 10 then provides that the notification should give details of the meeting “**and advise the employee of their right to be accompanied at**

the meeting”. Paras 13 – 17 then address the right to be accompanied. The claimant argued that what, on his case, happened to him was plainly a breach of the *ACAS Code*.

36. The fundamental difficulty with this line of argument is that the *ACAS Code* is not a statute. Section 207(1) **Trade Union and Labour Relations (Consolidation) Act 1992** provides that a failure to observe the *ACAS Code* does not render a person liable to proceedings. It cannot be treated as though it is itself a statutory provision.

37. Section 207(2) provides that an employment tribunal is required to take into account any provision of the *ACAS Code* in determining any question arising to which it appears relevant. This means, for example, that relevant provisions of the *ACAS Code* should be taken into account when determining a question such as whether a dismissal is fair or unfair pursuant to section 98(4) **Employment Rights Act 1996**. However, in this case, the provisions of the *ACAS Code* were simply not relevant to the question of whether the condition in section 11(1)(b) had been fulfilled. I can see no basis on which the tribunal could have concluded that a failure to comply with the *ACAS Code* would have meant that the express requirement of section 11(1)(b) could, or should, be disapplied.

Convention rights

38. The claimant made some reference in his written materials to Convention rights, although in oral argument he readily indicated to me that he recognised the limits of these arguments.

39. Section 3 **Human Rights Act 1998** requires a tribunal “so far as possible to do so”, to read and give effect to legislation in a way which is compatible with Convention rights. But this requires both that it to be shown how the proposed reading or application would be compatible with such rights, and that it be possible to read or give effect to the legislation in the way that is advocated.

40. In written materials the claimant had cited **R(G) v Governors of X School** [2011] UKSC; [2011] ICR 1033 and argued that it shows that the Article 6 right to a fair trial can sometimes be

engaged in respect of an internal disciplinary hearing. However, that case concerned the very specific and limited circumstances in which, in a regulated field, Article 6 might apply to such a hearing, in the context of an argument as to whether the individual in that case had the right to legal representation in the internal process. This authority does not assist the present claimant to argue that section 10 should have been construed in the way that he contends, in order to comport with Article 6.

41. The claimant observed that because he did not have a companion at the meeting, he also did not have a witness to what happened. But I cannot see that that assists his case.

42. The claimant also cited **Talon Engineering v Smith** [2018] IRLR 1104. In that case the EAT held that, as the section 10 right and the unfair dismissal right are independent and discrete, just as a *failure* to comply with section 10 will not necessarily *render* a dismissal unfair, nor will *compliance* with section 10 necessarily *preclude* a dismissal from being found unfair. The claimant relied on an observation, in the course of the reasoning at [22], that section 10 has its source in trade union rights stemming from the Convention right of association in Article 11.

43. I observe that the 1998 White Paper, *Fairness at Work* (Cm 3968), which was the precursor to the **1999 Act**, did not, in the section trailing what became section 10, refer to Article 11, nor have I been shown any reference to it in the Parliamentary debates. But, be that as it may, I cannot see how it could provide a basis for interpreting the statute as omitting, or qualifying, the express provision of section 10(1)(b) so as to achieve the result that the claimant seeks.

44. In any event, I am inclined to think that, even if it could somehow be said that, as presently framed, the legislation was, on this point, not compatible with Convention rights, the provisions that would need to be read into it to address the matter in the way that the claimant argues, would go beyond what the authorities contemplate that a section 3 exercise may involve.

Outcome

45. I conclude that the tribunal did not err in determining that the amendment application should be refused because the proposed complaint that the respondent had not complied with section 10 would be bound to fail. That was because, on the claimant's own factual case, he did not request to be accompanied at the meeting in question, and so section 10(1)(b) meant that the rights conferred by the remainder of section 10 did not arise on this occasion at all. If this is thought to be a gap in the statutory protection that ought to be filled, then it is a matter for Parliament to do so.

46. The appeal is accordingly dismissed.