

Neutral Citation Number: [2026] EAT 136

Case No: EA-2023-000785-RN

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 6 August 2026

Before:

HIS HONOUR JUDGE AUERBACH

Between:

MR A BINDI

-and-

METROPOLITAN THAMES VALLEY

Appellant

Respondent

Mr A Bindi the **Appellant** appeared in person
Mr J Cook (Instructed by **Trowers & Hamlins LLP**) for the **Respondent**

APPEAL FROM REGISTRAR'S ORDER
Hearing date: 6 August 2026

JUDGMENT

SUMMARY

An extension of time in respect of a late appeal, from a case-management order, was refused, in a case where the underlying proposed appeal had become wholly academic, in particular because the substantive claim in the employment tribunal had subsequently been dismissed, and that decision had been unsuccessfully appealed.

HIS HONOUR JUDGE AUERBACH:

1. The claimant in the employment tribunal seeks to appeal from a decision of the tribunal permitting one of the respondent's witnesses to give evidence by video link rather than in person, at what was, at the time, the prospective full merits hearing of his claims.
2. The EAT's Registrar determined that the claimant's appeal had been instituted out of time and she declined to extend time. The claimant appealed from that order to a judge of the EAT and the hearing of that appeal has come before me this morning. The claimant, who was a litigant in person in the tribunal and is again in the EAT, has represented himself. The respondent was represented by Mr Cook of counsel. I had skeleton arguments from both of them and I have heard extensive oral argument this morning. I have a bundle of documents and a bundle of authorities.
3. The relevant chronology is this. The claimant began his employment tribunal claim, which was of unfair dismissal, wrongful dismissal and race discrimination, in December 2020. As of 4 May 2023, the matter had been listed for a full merits hearing to take place in September of that year. On that day the respondent applied for one of its prospective witnesses to be permitted to give evidence at that forthcoming hearing by CVP, having regard to the fact that she no longer worked for the respondent and what were said to be her commitments in her new job and childcare considerations. The application was copied to the claimant, who filed submissions in opposition.
4. On 9 June 2023, a letter from the tribunal notified the parties that Employment Judge R Lewis had granted that application. It is that decision to which the present underlying appeal relates. There is no dispute that, having regard to the date of the decision, and in accordance with the EAT's rules, in order to be in time, that appeal had to be received by the EAT by 4 p.m. on 21 July 2023.
5. There is no dispute that on 21 July 2023 the claimant did email the EAT a notice of appeal and other documents. In the course of the hearing this morning, the claimant referred to correspondence the following week in which the EAT indicated that some documents had been missing and the

claimant sent further documents to the EAT as well as a revised version of his grounds of appeal, although he maintained at that time that nothing relevant had in fact been missing. No point is taken by the respondent about whether there were any documents missing from what was sent to the EAT on 21 July 2023. What is said by the respondent, however, is that the appeal as a whole was not instituted in time, because the claimant's email sent on 21 July was only received by the EAT at 4.02 p.m. It was therefore deemed to be received on the next working day (which, because that was a Friday, was the following Monday).

6. The claimant accepts, he confirmed to me today, that his appeal was instituted late and that he does require an extension of time, although one of the points he made was that in real time his appeal was only two minutes late; and, he says, in seconds, it might have been as little as 62 seconds late.

7. That his appeal had been received out of time was raised with the claimant by the EAT on 17 August 2023 and the claimant was asked if he wished to apply for an extension. He did so by a document sent on 30 August. In summary, the claimant accepted that the appeal had been instituted two minutes late and he apologised. He wrote, in part:

“On 21 July 2023, from memory, I recall sending the appeal submissions to the Employment Appeal Tribunal via ...” and he gave the email address “... and then rapidly after I sent a copy for good measure and consistency to the Employment Tribunal, as the lower Tribunal.”

8. The claimant went on to write that, having looked in his sent emails folder, the email to the employment tribunal was identified in that folder as having been sent at 15:59, whereas the email to the EAT was identified as having been sent at 16:01. They were therefore identified as having been sent in the reverse order from the order in which the claimant said he had in fact sent them. He could not account for why or how this had happened, as he was not a technical expert; but he said that he had acted in good faith, and asked to be forgiven for his prior ignorance of the possibility that his email to the EAT might be delayed. He submitted there was no prejudice to the respondent.

9. The respondent in submissions in response objected to time being extended and noted that the claimant had reproduced the texts of the sent emails, but not sent separate prints of them to the EAT. In his reply submissions, the claimant said he attached separate prints of the two sent emails.

10. In the meantime, on 18 September 2023, the employment tribunal postponed the full merits hearing that was due to start the next day, because of lack of judicial resource. In October of that year the full merits hearing was re-listed to take place in December 2024.

11. In May 2024 the Registrar gave her decision in which she refused to extend time. The claimant then appealed to a judge of the EAT and that has come before me today. It appears that there was previously some issue raised as to whether his appeal from the Registrar's order had itself been raised in time, but Mr Cook told me that that issue had been resolved and no such point is live before me.

12. Back in the employment tribunal, on 3 October 2024 the respondent made a fresh application for the same witness to be permitted to give evidence by video at the re-listed hearing which was now due to take place in December 2024. On 13 November EJ Quill, in a decision dealing with a number of matters, granted that application. That decision of Judge Quill was the subject of an appeal to the EAT, but it was considered by an EAT judge on paper not to be arguable and the claimant did not then seek to pursue it any further. In the run-up to the employment tribunal hearing in December 2024, the claimant applied for the hearing to be postponed, but that application was refused by EJ Foxwell on 9 December. The claimant also sought to appeal from that decision, but that appeal was dismissed as being totally without merit by the EAT judge who considered it.

13. The claimant did not attend the tribunal on 10 December and the presiding judge, EJ Hyams, decided in all the circumstances to dismiss the claimant's claims in view of his non-attendance, under rule 47. Judge Hyams's written decision was sent to the parties on 15 January 2025. The claimant applied for a reconsideration of that decision and also appealed from it. On 28 March 2025 Judge Hyams refused a reconsideration. The claimant appealed from the refusal of reconsideration. The

appeal from Judge Hyams's original decision under rule 47 was considered by a judge of the EAT on paper not to be arguable, and, having been so notified, the claimant did not seek a hearing. So that appeal also came to an end. The appeal from Judge Hyams's refusal to reconsider was considered by a judge of the EAT to be totally without merit and was dismissed. The claimant did not seek to pursue that further to the Court of Appeal, and so that appeal also came to an end.

14. In the claimant's skeleton argument for today's hearing, he made a number of criticisms of the reasoning in the Registrar's decision. However, as I explained, the decision I am taking today is an entirely fresh decision. I am not reviewing the correctness of the Registrar's decision taken by her on the information available to her when she took it. I am coming to my own view and taking my own decision afresh, based on everything I have read and all the information and submissions that have been put before me and the arguments and information provided to me this morning. (See Nicol v Blackfriars Settlement [2018] EWCA Civ 2285.)

15. I have taken into account all of the submissions that the claimant previously made in writing to the Registrar, including his reply submissions in that process, and the submissions he made when seeking today's hearing, as well as his skeleton argument and everything that he has said to me this morning. Similarly, of course, I have taken account of the respondent's written and oral submissions before me and which I heard today from Mr Cook.

16. The claimant accepted that his appeal was instituted out of time, and for completeness I record that I am satisfied that he was right to do so. It is clearly established in the authorities that where a notice of appeal is sent by email, the appeal is instituted when the appeal email is received by the EAT, and that means when it is received on the EAT's server, not when it is sent by the party concerned. There is no dispute in this case that the deadline was 4 p.m. on 21 July 2023, and, as the appeal was received at 4.02 p.m., it is out of time. I now have to decide afresh whether to exercise the power under rule 37(1) to extend time.

17. The authorities over the years giving guidance on the exercise of this power were comprehensively reviewed by the Court of Appeal in **Ridley v Kirtley** [2024] EWCA Civ 884; [2025] ICR 441, and the guidance given in **Ridley** has been reiterated again in more recent decisions of the Court of Appeal, including **Davies v BMW (UK) Manufacturing Limited** [2025] EWCA Civ 356 and **Mulumba v Partners Group (UK) Limited** [2026] EWCA Civ 30; [2026] ICR 516. In **Mulumba** Elisabeth Laing LJ, giving the principal judgment, said, at [57]:

“In *Ridley* this court considered the authorities in detail in paragraphs 23-97. I refer the interested reader to that summary and do not repeat it here. In paragraphs 13-30 of my judgment in *Davies v BMW (UK) Manufacturing Limited* [2025] EWCA Civ 356; [2025] IRLR 515, I summarised the authorities considered in *Ridley* and the main conclusions in that case. I repeat that summary here.

'THE RELEVANT AUTHORITIES

...14. The first such authority is *United Arab Emirates v Abdelghafar* [1995] ICR 65. On page 70, Mummery J (as he then was) explained that there were four relevant principles. They included, first, that the discretion was to be exercised 'not subjectively or at whim or by rigid rule of thumb, but in a principled manner in accordance with reason and justice'. All the relevant factors were to be weighed and balanced. The outcome was not 'dictated by any set factor. Discretions are not packaged, programmed responses'. Second, courts are stricter about enforcing the time limits for an appeal than they are about enforcing the time limits for interlocutory steps. A person who is dissatisfied with a decision on the merits should act promptly. Third, an extension of time is an indulgence, not a right. An appellant must give a 'full honest and acceptable explanation of the reasons for the delay'.

15. He explained that the EAT followed 'guidelines' which did not fetter the exercise of the discretion. They were designed to achieve, as far as possible, consistency, predictability, and 'the attainment of justice'. There is no excuse for ignorance of the time limit, or of the importance of complying with it, even if an appellant is not represented. The time limit would only be relaxed in 'rare and exceptional cases' when the EAT is satisfied that there is 'a reason which justifies departure from the time limit'. If there is an explanation, 'other factors may come into play'. Extensions had been refused even where the delay was only a day long. Appellants were advised not to leave lodging a notice of appeal until the last few days of the time limit, because of the risk of postal problems. The merits of an appeal are usually of 'little weight', because it is not appropriate to investigate the merits on an application for an extension of time. Lack of prejudice to the respondent is 'of little or no significance'.

16. There are three questions (p 72C).

1. What is the explanation for the default?
2. Is it a good excuse?
3. Are there circumstances which justify the exceptional step of giving an extension of time?

17. The respondent in that case was represented. Mummery J was not impressed by the respondent's explanation for the delay (of 52 days). He referred to the respondent's 'neglect and mismanagement' of the case. The exceptional feature of the case which persuaded him to give an extension of time was the positive duty imposed on the EAT by section 1(2) of the State Immunity Act 1978.

18. The approach in *Abdelghafar* has been approved by this court more than once, and, significantly, at least once after a full appeal at which both the parties were represented by counsel (*Jurkowska v Hlmad Limited* [2008] ICR 841). In that case, both the Registrar of the EAT, and Underhill J (as he then was), on an appeal from the order of the Registrar, had extended the time for appealing.

19. The appellant employer in that case was represented by counsel and solicitors. The solicitors lodged an appeal on the last day of the 42-day period. The ET's judgment was missing. It was filed by fax, after the EAT pointed that out, and after close of business that day, so that it was officially lodged after the expiry of the time limit. Underhill J held that the mistake of the solicitors in failing to appreciate that lodging the ET's written reasons did not also amount to lodging the judgment was 'pardonable', even though, if the reasons were read carefully, it would have been clear that they were only the reasons for the decision. He was not surprised that experienced solicitors might expect the judgment and the reasons to be in one document. It was 'the sort of exceptional circumstance which ought to attract the exercise of the discretion where it was promptly rectified as soon as it was brought to their attention'. That was so even though the solicitors had left it until the last day to lodge the appeal (paragraph 34).

20. Rimer LJ rejected an argument that the introduction of an overriding objective in the Rules required a different approach from the approach described in *Abdelghafar*. He noted that the strict view was that the solicitors should have known better (see paragraph 44). The solicitors had not considered the express requirements of the Rules or other materials which would have shown them that 'the judgment is one thing and the reasons are another'. Underhill J had explained why he considered the explanation was acceptable and why the mistake was 'venial', given that the solicitors had promptly corrected it.

21. With some hesitation, this court dismissed the employee's appeal against the decision of the EAT to extend the time for the employer's appeal. Rimer LJ had 'some reservations' about Underhill J's conclusion (as he explained in paragraph 47). To take a 'strict view' was 'probably' to rely too much on hindsight. Whether or not to extend time was 'pre-eminently' for the judge. Underhill J was an experienced judge of the EAT and fully aware of the principles in *Abdelghafar*. Rimer LJ rejected a submission that Underhill J should have found out why the solicitors left the appeal until the last moment. He said that an appellant is fully entitled to wait until the last day, although he would run the risk that something could go wrong at the last minute. Underhill J had been entitled to decide to give an extension of time, even though everything had been left until the last minute (paragraph 48). He had not misdirected himself (paragraph 49).

22. Hooper LJ agreed, for essentially the same reasons (paragraph 50). Sedley LJ said if the discretion had been his to exercise, he would not have exercised it in the employer's favour (paragraph 70). With 'the very greatest of hesitation' he accepted that Underhill J had been entitled to extend time (paragraph 71).

23. Rimer LJ added two qualifications to the guidelines in *Abdelghafar*.

1. It is not, in every case, a precondition of success for an appellant to show a good excuse for any delay, 'although in the ordinary run of cases, absent some such exceptional circumstance as...in *Abdelghafar*, it will be'. The principles in *Abdelghafar* were guidelines and 'every case will turn on its own facts' (paragraph 16; see also paragraph 19). Underhill LJ referred to this statement with apparent approval in paragraph 36 of his judgment in *Green v Mears Limited* [2018] EWCA Civ 751; [2019] ICR 771.

2. An appellant did not have to show that his case was 'rare and exceptional'. What was meant, rather, was that it was only in rare and exceptional cases that it would be appropriate to extend time (paragraph 20).

24. In paragraph 152 of Ridley, this court took four points from *Jurkowska*. Two are worth repeating here.

1. There is no rule of law which prevents an extension of time for a person who is professionally advised and who leaves it until the very last moment to appeal. Those circumstances may be relevant to the exercise of the discretion, but that is a different point.

2. There is no rule of law which prevents an extension of time for such a person, whose adviser makes a 'venial mistake', when he should have known better. In other words, it is not always necessary to show that an appellant has shown that he has a good excuse for the delay.

25. In *J v K* [2019] EWCA Civ 5; [2019] ICR 815 the appellant tried to email the documents for his appeal to the EAT at 3.55pm on the last day of the time limit. The EAT's server could only accept an attachment of 10MB. The attachment to the appellant's email was bigger than that. His appeal was not delivered in time. He then sent a number of smaller attachments. They were all received by 5pm that day. The EAT treated the appeal as being out of time. The judge in the EAT found that the appellant had not received a hard copy of the ET's decision or of the covering letter on how to appeal. Those would have directed him to guidance about appealing to the EAT on a government website (T440) which warned potential appellants about the limitations of the EAT's server. The registrar and the judge in the EAT refused his application for an extension of time. On the limited evidence provided by the appellant, the judge and this court were prepared to accept that the appellant suffered from a 'degree of mental ill-health'.

26. One of the two issues on which Lewison LJ gave permission to appeal to this court was whether the very modest delay, coupled with the limitations of the EAT's server, amounted to exceptional circumstances such as to require an extension of time in order to comply with overriding objective. Underhill LJ, giving a judgment with which the other members of this court agreed, referred to two cases in which the EAT had given extensions of time in similar cases. The appellants had appealed very late, and should have known about the limitations of the server because of the information in T440. Other things being equal, a person might expect a server to be able to accept a large attachment. Underhill LJ disagreed with the judge that the information about the server was freely available. The appellant had not received the letter with its 'somewhat indirect pointer' to T440. It was relevant, but not decisive, that the appellant had left it to the last moment. The limitations of the EAT server were also a relevant factor. It was 'inconceivable' that an extension of time could be justly refused if an appellant had tried to lodge an appeal in person at 3.55pm on the last day and had found the EAT's doors were locked (paragraph 28). The judge had been wrong to refuse an extension of time. The correct analysis was probably that the appellant had given a good explanation for missing the deadline, that is, his reasonable ignorance of the limitations of the server. But if, contrary to that view, he should have found T440 for himself, 'any failing in that regard seems to me to have been venial'. The real problem was the EAT's server. Service was correctly completed within the hour. It was an exceptional case in which 'an extension of time was required as a matter of justice' (paragraph 29).

THE DECISION IN *RIDLEY*

27. In paragraph 143, this court said that the guidance in *Abdelghafar* has been approved by this court several times. The approach is seen as 'strict', but 'it is not inflexible. It involves the exercise of a discretion in a way which is "judicial", "even-handed" and, above all, fair'.

28. The exercise of the discretion involves recognising a legally significant distinction between a case in which an appellant misses the deadline altogether, and a case in which an appellant has lodged nearly all the necessary documents within the time limit. In the latter case, the appellant, while not fully meeting the requirements of rule 3(1), has substantially complied with them. How substantially he has complied will depend on what is missing, how much of it is missing, and how important it is to the appeal. Such an appellant has also met the time limit in rule 3(3). The relevant authorities do not refer to, or recognise this distinction, or consider whether or not it is relevant to the exercise of the discretion (paragraph 144).

29. The express recognition of such a distinction does not conflict with the guidance in *Abdelghafar*. Nothing in the later authorities conflicts with the principles described by Mummery J in pp 70-71 of his judgment ...

30. Three further points followed (paragraph 147).

1. A case in which an appeal is lodged in time but a document or part of a document is missing is very likely to be a case in which an appellant has made a mistake. The mistake is the reason for invoking the discretion. It cannot, therefore, be used as a reason for refusing to extend time (see also paragraph 152(ii)). Such a mistake cannot necessarily be discounted simply because, had the appellant filed the appeal earlier, the mistake would have been picked up. That would be to exercise the discretion in a 'programmed way'.

2. Before it considers the exercise of the discretion, the EAT must clearly understand the appellant's explanation. Unless it does so, it cannot decide whether that explanation is satisfactory or not.

3. While the EAT has no duty to correct mistakes, the delay which is relevant to the exercise of the discretion is the delay between the time when the EAT tells the appellant of her mistake and when she corrects it.”

18. In accordance with that guidance, and in particular what was said in the Abdelghafar case referred to there, I start by considering what is the factual explanation for the late institution of this appeal. The claimant accepts that he knew that the time limit was 4 p.m. on the day in question. He says that, having written his email to the EAT and assembled the attachments, he hit the “send” button on his device at 15:59, but that it transpires from the sent email record that the email was only actually sent on its way from his end at 16:01; and then it arrived at the EAT’s server at 16:02.

19. Mr Cook does not accuse the claimant of deliberately misleading the EAT about when he hit the send button; but he submits that it is inherently more likely that the two emails that the claimant sent were despatched from his server in the same order in which he in fact hit the send button on each of them, rather than in reverse order. He submits that the claimant’s recollection of the order in which he hit the send button on the two emails is most likely mistaken, and so he did not hit the send button on the email to the EAT at 15:59, but later than that.

20. I do note that, as I have set out, in the claimant’s very first email to the EAT on this subject, he wrote about what he *recollected* having done and not what he was certain about. However, for the purposes of what I have to decide, I have assumed that his recollection may be right and that for some reason the two emails were successfully sent on their way in terms of being sent from his device or server, in the reverse order from the order in which he had hit the send button on each of them. I also

accept in any event that the claimant did not realise on the day that the email to the EAT had reached the EAT's server too late; and that he thought on the day that he had appealed in time.

21. What the claimant had not addressed in any of his previous documents or submissions was why, even on his own account, he did not hit the send button, or deal with this matter, sooner than the afternoon of the last day, and did not, on his own account, attempt to send the email until he had literally only a minute to spare. In the course of addressing me this morning, the claimant referred to various family problems and difficulties in the 42-day period and also to some health problems to do with blood pressure. However, the claimant said to me that he was not particularly seeking to rely on those matters, which was why he had not elaborated on them before. He accepted and recognised that, if he had dealt with matters sooner, then he might not be facing the difficulty that he faces now.

22. I accept that the claimant has, to the best of his ability and recollection, given a full and honest explanation factually for what happened. However, the fact remains that, even on his own account, the claimant did leave it until the last minute – literally – to attempt to send his notice of appeal. He himself does not seek to rely on any good excuse for having left it until then. Whilst the claimant says that it was, as it were, out of his hands once he had pressed the send button, as to when the email arrived, and if, as he recollects, and I have assumed in his favour, the two emails that he sent in terms of when he hit the send button were in fact sent by his device in reverse order, the claimant nevertheless took the risk, by leaving it as late as he did, of something going wrong. Any number of things might have happened to thwart him successfully appealing in time, given that he left it until the very last minute. That was a risk that he took by leaving it as late as he did.

23. I agree with Mr Cook that this is not a case, like **J v K** [2019] EWCA Civ 5; [2019] ICR 815, where (as discussed more fully in **Mulumba** and **Davies** – see above) there was a technical problem related to the server capacity of the EAT at that time, a problem of which the claimant in that case was not reasonably on notice.

24. Nevertheless, the claimant says that time should be extended. It is established that the fact that he does not, in my view, have a compelling excuse for having left it so very late does not mean that I do not have the power to extend time, and so I have still considered whether to do so. I accept that on the claimant's side of the scales this is a case where he appreciated what the time limit was, understood its importance and marshalled the documents that he needed to file. I have assumed in his favour that he did attempt to comply when still within time, albeit with only a minute to spare. I accept that he thought that he had complied at the time. I also accept that, after the matter was raised with him by the EAT, and within the time allowed to him to do so, he made his application for an extension, and put forward as fully as he could, to the best of his ability and recollection, his explanation for what had gone wrong. I also accept that in real time the delay was very short indeed.

25. The claimant also submits that there was no prejudice to the respondent. As to that, Mr Cook does not say that the respondent has been prejudiced by the delay in its becoming aware of the possibility of an appeal, in the sense that, on account of that delay, it would be harder for it to defend this appeal on its merits if called upon to do so. However, he does fairly submit that, because this appeal is out of time, the whole progress of the appeal to its resolution, whatever that might be, has been substantially put back by the delays caused by the processes that had to be followed for the Registrar to consider whether to extend time and now for the matter to be brought to this hearing before me. This is a factor weighing in the scales on the respondent's side, as such.

26. In his skeleton argument, Mr Cook also made some submissions that the underlying grounds of appeal against the original decision of Judge Lewis look extremely weak. However, he did not particularly emphasise this point in oral submissions, and although the claimant would face the obstacle that this is an appeal from a case-management decision about how a witness gives evidence, I have not formed any view of the underlying merits of the challenge to that decision, as such, and have not taken any such view into account as weighing against the claimant.

27. However, a potentially far more significant factor in this case is that Mr Cook submits that I should not extend time, because the underlying appeal is wholly academic and pointless. That is, he says, firstly because Judge Lewis's decision was superseded by the original hearing dates in the employment tribunal being postponed, and by there having been a subsequent fresh application, leading to a fresh decision by Judge Quill, for the witness to give evidence remotely at the rescheduled hearing (which was also the subject of an unsuccessful appeal).

28. In addition, says Mr Cook, this appeal is academic because of the rule 47 decision by Judge Hyams and his refusal to reconsider, and the appeals against both of those decision also having been unsuccessful. Mr Cook submits that there is simply no purpose to the underlying appeal against EJ Lewis's decision, as the employment tribunal claim to which it related is completely at an end, and the appeals against the decision that brought it to an end, and the reconsideration decision in that respect, have run their course without any success for the claimant. So those decisions stand.

29. Pausing there, but for the point about the underlying appeal being academic, I might have found the decision that I am called upon to take today to be finely balanced, although I would be inclined to think that, notwithstanding that the appeal was only late by a couple of minutes, this is a case in which there is no sufficiently compelling reason to extend time. It is *not* the law that, if there is no particular or good explanation for why a party left it until the very last day, hour or minute to attempt to put in their appeal, therefore they *cannot* be granted an extension of time. In **Jurkowska** (discussed in the above passage cited in **Mulumba**), for example, an extension was granted by the EAT, a decision which was not disturbed by the Court of Appeal.

30. However, nor is the EAT bound to regard it as irrelevant that a party has, without good excuse, left it until the very last minute to attempt to put in their appeal, and then come unstuck. In **Jurkowska** Rimer LJ said at [48]: "...an appellant is fully entitled to take the full 42 days for instituting his appeal. He of course runs a risk in doing so, because things can go wrong at the last

minute.” But he added that the judge in that case was entitled nevertheless to grant an extension.

Citing that passage in **J v K** (also referred to in **Mulumba**) at [28] Underhill LJ said:

“Although there is no absolute rule, the fact that an appellant has, without good reason, left it to the last minute to institute his or her appeal will be an important factor in the exercise of the Court's discretion in a case where they encounter an unexpected obstacle...”.

31. But in any event, I consider that the point about this appeal being academic decisively tips the balance in favour of an extension of time being refused. If the underlying appeal is academic, that is clearly a relevant consideration, as there is no purpose to the EAT extending time in relation to an appeal which is itself academic, would serve no useful purpose, and could make no substantive difference to what was the final outcome of the litigation in the employment tribunal. It is well established that this is a relevant consideration, and may be a good reason for refusing permission for an appeal to proceed unless there is some unusual feature, such as a significant point of law of wider importance, that would nevertheless justify the appeal being further considered on its merits.

32. The underlying appeal being potentially academic is a relative consideration alluded to in **Patel v City of Wolverhampton College** UKEAT/0013/20 (as Mr Cook noted, that decision was disapproved in part in **Cole v Elders Voice** UKEAT/0251/19, but on a different point). It is also alluded to in the more recent decision in **Harding v St George's University Hospital NHS Foundation Trust** [2026] EAT 100. In **Daramy v The London Borough of Tower Hamlets** [2025] EWCA Civ 1789, the Court of Appeal (Lewison LJ, Bean LJ concurring), when considering whether to grant permission to appeal from a decision of the EAT to the Court of Appeal, said at [26] that if the underlying appeal was academic, that was a relevant consideration because there was “no point in extending time for an application for permission to appeal, which even if successful, will be futile”.

33. It seems to me that these general principles must apply equally where the EAT is considering whether to permit an appeal that is in time to proceed to a full hearing, but also where the EAT is considering whether to extend time in relation to an appeal which is out of time.

34. The claimant argued that the present underlying appeal is not academic, because he maintained throughout that the witness concerned was a significant witness, and that the decisions both of Judge Lewis and later of Judge Quill to permit that witness to give evidence remotely were unfair to him. He argues that if I extend his time, and if he is then successful in his appeal against Judge Lewis's order, that could then be said to have knock-on implications for whether the underlying claim would itself have ultimately been dismissed by Judge Hyams in the way that it was.

35. It is true that it is apparent from Judge Hyams's decision that the claimant was continuing in November and December of 2024 to raise his concerns about what he saw as the unfairness of the two decisions that had been taken to permit the witness to give evidence remotely, in respect of which he, at that time, had ongoing appeals. However, in my view, there is absolutely no prospect or possibility that if I extended time in respect of this appeal, this appeal, even if it ultimately succeeded at a full hearing, could lead to any conclusion that the outcome, in terms of Judge Hyams's decisions, would, or might, have been different, or otherwise disturb that outcome.

36. Firstly, that is because the decision of Judge Lewis was superseded by the postponement of the original hearing dates and the fresh decision of Judge Quill on 13 November 2024 to grant permission for the witness to give evidence remotely at the hearing then due to take place in December 2024; and indeed the claimant's appeal against that decision of Judge Quill has also been unsuccessful. Secondly, it is because, in the run-up to the hearing before Judge Hyams, the claimant unsuccessfully applied for a postponement, but that was refused by Judge Foxwell, and the appeal against that decision was dismissed as being totally without merit.

37. Finally, it is because it is also clear from Judge Hyams's decisions that, against that background, and notwithstanding the points that the claimant had sought to raise, about the mode of evidence of this particular witness that had been permitted, Judge Hyams dismissed the claims under

rule 47 because of what he considered to be the claimant's inexcusable failure to attend, for the range of reasons that he gave. Further, the appeals against both *those* decisions have been unsuccessful.

38. There is therefore absolutely no possibility that the outcome of this appeal, if I extended time in relation to it, could make any possible difference to the fact that the tribunal claim is over.

39. The underlying appeal is truly academic. If I extended time, it would be bound not to survive initial consideration under rule 3(7). There is no other compelling reason why, although it is academic, it ought to be heard. Notwithstanding the other points that the claimant has made that I accept lie on his side of the scales, including the extremely short period by which this appeal was late and the fact that I have assumed in his favour that he did attempt to send it one minute before 4 p.m., and he believed on the day that he had appealed in time, the academic nature of the underlying appeal tips the balance against extending time. Therefore, the application for an extension of time is refused.