Neutral Citation Number: [2026] EAT 139

Case No: EA-2021-001145-AT

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 17 September 2026

Before:

MARCUS PILGERSTORFER KC

DEPUTY JUDGE OF THE HIGH COURT

Between:

MR TERENCE HANCOX

Appellant

- and -

(1) KENNETH SUTHERLAND
(2) BEN COATES
(3) CATHERINE COOPER
(4) VICKY JONES

Respondents

- -
- -

Ms Robin White (ELAAS representative) and **Mr Terence Hancox (**the Appellant in Person) for the **Appellant**
Ms Jude Shepherd (instructed by Foot Anstey LLP) for the **Respondents**

Preliminary Hearing date: 29 July 2026

- -

JUDGMENT

SUMMARY

Practice and Procedure – Strike out – Preliminary Hearing – Skeleton arguments – Use of artificial intelligence – Compliance with EAT Rules and Practice Direction

The Appellant's claim against four individual Respondents was struck out by the Employment Tribunal on the grounds that the Appellant had conducted the proceedings in a scandalous, unreasonable and vexatious manner by conducting a social media campaign on LinkedIn, and that a fair trial was no longer possible. The Appellant appealed and the matter was listed for an *inter partes* preliminary hearing.

No supplementary bundle of required documents was prepared before the preliminary hearing. The Appellant submitted a 300-page skeleton argument created using ChatGPT. At the hearing, with the assistance of ELAAS counsel, the Appellant advanced submissions on a single ground of appeal concerning whether he had received fair notice that the strike out application was to be determined, and whether he had a fair opportunity to prepare and participate. It was confirmed that the Appellant did not pursue other grounds. Directions were made for the preparation of a supplementary bundle. After the hearing, the Appellant applied to resile from that position; he wanted to pursue a further ground concerning whether the Tribunal had weighed into the balance his article 6 and article 10 ECHR rights when deciding to strike out the claim. Both before and after the hearing, the Appellant made numerous (sometimes repetitive) applications and engaged in excessive correspondence with the EAT.

Held:

1. The single ground of appeal pursued orally at the preliminary hearing was reasonably arguable and would proceed to a full hearing. The Appellant's application to resile from the position taken at the preliminary hearing and to rely on an additional ground of appeal was dismissed. **Nowicka-Price v Chief Constable of Gwent Constabulary UKEAT/0268/09** considered and applied.

2. The Appellant's application for disclosure was dismissed and certified totally without merit. The Appellant's applications to review orders of the EAT were dismissed.

3. All litigants before the EAT, whether represented or not, must comply with the EAT Rules and Practice Direction ("PD"). Procedural requirements for skeleton arguments, set out at PD§11.6.6, must be rigorously observed. In appropriate cases, skeleton arguments that do not comply will be rejected (see PD§11.6.6(a)) or other sanctions imposed (see PD§11.6.7).

4. All litigants and their representatives, including litigants without representation, should be mindful of the risks posed by the use of generative AI when creating documents for submission to the EAT. They must take personal responsibility to ensure, at a minimum, that documents (i) comply with applicable procedural rules, (ii) have been checked as thoroughly as the litigant or representative is reasonably able for accuracy, ensuring that the factual, evidential and legal position is not misstated and the EAT is not misled, and (iii) contain only relevant points, with the focus being on the central or best arguments, presented in an easily comprehensible manner and avoiding undue repetition. It is not acceptable to submit documents created by generative AI without them being checked, or to attempt to place the onus for checking them on the opposing party. **R (Ayinde) v London Borough of Haringey [2025] 1 WLR 5147** and other authorities considered and applied.

5. Case management directions were made for the full hearing of the appeal in light of the conduct of proceedings to date. An order was made requiring all applications to be made on the form at Annex 2 of the PD, failing which they would not be considered. If excessive correspondence that adversely affects the EAT's resources continues, consideration will be given to an order limiting the Appellant's ability to communicate with the EAT by email. **J v K [2019] ICR 815** and PD§1.9.2 considered.

MARCUS PILGERSTORFER KC, DEPUTY JUDGE OF THE HIGH COURT:

Introduction

1. Generative artificial intelligence ("AI") is being used with increasing frequency by litigants in the EAT to prepare notices of appeal, skeleton arguments and correspondence. Its potential to assist those who do not otherwise have access to professional legal advice falls to be recognised; but so too do the risks, including that the output may be inaccurate (including on legal issues), unfocused, excessive, or that it might not comply with procedural requirements. What are the responsibilities that fall on those who use such tools to prepare documents for submission to the EAT?

2. That question arises in this case which came before me at an *inter partes* preliminary hearing for the EAT to perform its gatekeeping function of assessing whether a reasonable basis for bringing the appeal was disclosed. The Appellant, a litigant in person, filed a 300-page skeleton argument created using ChatGPT. It did not comply with the **Practice Direction of the Employment Appeal Tribunal 2024** ("the PD") and served to obscure rather than to illuminate during preparation for the hearing. The document was not ultimately relied upon at the hearing. As well as considering the use of AI, this judgment presents a suitable opportunity to remind all litigants – whether represented or not – of their responsibility to comply with the **Employment Appeal Tribunal Rules 1993** (as amended) ("the EAT Rules") and the PD, including the requirements concerning skeleton arguments.

3. At the preliminary hearing, and with the assistance of his ELAAS representative, the Appellant advanced submissions on a single ground of appeal and confirmed that only that ground was pursued. As no supplementary bundle had been prepared, directions were made (without objection) for the necessary documents to be filed and considered without a further hearing. Shortly thereafter, the Appellant applied to resile from the position he had adopted. He wished to pursue a second ground of appeal. He made other applications in the days that have followed, including that the EAT should set aside directions and orders and conduct a fresh preliminary hearing, relying on ill-health and other matters.

4. There has been an unusually large, indeed excessive, amount of correspondence and applications from the Appellant. Many have not complied with the PD. That has not advanced the overriding objective. Instead, it has required the EAT to dedicate a disproportionate share of its resources to this case. This judgment addresses how the EAT can manage such conduct proportionately, including where, as here, mental health is said to be a contributing factor.

5. This is my judgment following the preliminary hearing. I also deal with the Appellant's subsequent applications. It consists of the following parts:

   i) **Part 1:** Procedural Requirements in the EAT and the use of Artificial Intelligence

   ii) **Part 2:** The Present Appeal and its Procedural History

   iii) **Part 3:** Assessment of the Appeal

   iv) **Part 4:** Other Applications and Case Management

Part 1: Procedural Requirements in the EAT and the use of Artificial Intelligence

6. I start with some general observations.

The need to comply with the EAT Rules and the PD

7. Procedure in the EAT is governed by the EAT Rules which are prescribed and amended by statutory instrument. The PD supplements the EAT Rules and was made under section 29A of the **Employment Tribunals Act 1996** ("ETA"). The EAT Rules and the PD apply to all litigants whether they are represented or they act in person. In **Barton v Wright Hassall LLP [2018] 1 WLR 1119**, Lord Sumption explained that a person's lack of representation will not usually justify applying a lower standard of compliance with rules and practice directions. At §18, his Lordship said this:

> *"… In current circumstances any court will appreciate that litigating in person is not always a matter of choice. At a time when the availability of legal aid and conditional fee agreements have been restricted, some litigants may have little option but to represent themselves. Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. … The rules provide a framework within which to balance the interest of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than his represented opponent. Any advantage*

enjoyed by a litigant in person imposes a corresponding disadvantage on the other side, which may be significant if it affects the latter's legal rights, under the Limitation Acts for example. Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take."

8. These principles apply equally to litigation before the EAT[1]. It is generally reasonable to expect litigants in person before the EAT to familiarise themselves with the EAT Rules and the PD which are available and accessible on the internet[2]. The PD has been drafted so as to be comprehensible by people without legal qualifications.

9. Since 30 September 2023[3], EAT Form 1 (the Notice of Appeal[4]) directs appellants to place their signature above a statement which reads as follows:

"Before submitting a Notice of Appeal, you should read and consider the relevant sections of the Appeal Tribunal Practice Direction. If you decide to submit an appeal, you must comply with the sections of the Appeal Tribunal Practice Direction relevant to each step you take in the appeal. You must also comply with the overriding objective and communicate with the Appeal Tribunal and the other party or parties in a respectful and appropriate manner."

10. Parties are therefore clearly referred to the need to consider and comply with the PD at every step. Whilst the present appeal was filed in 2021, and therefore before Form 1 contained these words, it was still incumbent on litigants to familiarise themselves with the EAT's procedural rules, and to comply with them.

11. Following the correct procedures helps to ensure that the overriding objective of dealing with cases justly is achieved. Parties are required by rule 2A(3) of the EAT Rules to assist the EAT to further that objective. The aspects of the overriding objective are set out in rule 2A(2), supplemented by PD§1.6.1. The latter reads as follows:

"Dealing with an appeal justly includes, so far as is practicable:

a. ensuring that the parties are on an equal footing (have a fair chance to bring or respond to an appeal)

b. dealing with the appeal in ways which are proportionate to the importance and complexity of

[1] See PD§1.4.3.
[2] This has been the case for many years, including in respect of the practice directions in existence prior to the PD.
[3] See the **Employment Appeal Tribunal (Amendment) Rules 2023**
[4] See also the similar text in Form 3 (Respondent's Answer)

the issues

c. ensuring that the appeal is dealt with expeditiously (reasonably quickly) and fairly

d. saving expense

e. giving a fair share of the EAT's resources to each appeal, while taking into account the need to provide resources for other appeals

f. enforcing compliance with the EAT Rules, Practice Direction, orders and case management directions"

12. The EAT has wide powers, subject to the EAT Rules, to regulate its own procedure (section 30(3) ETA) and to give directions (rule 25 EAT Rules). An order made by a Judge or the Registrar may vary the usual procedures set out in the PD (see PD§1.3.5). Failure to comply with an order or direction of the EAT may result in a party being debarred from taking further part in proceedings, the EAT making *"such other order as it thinks just"*, including ordering that an appeal/answer (or part of it) be struck out (rule 26 EAT Rules). The EAT may also make costs orders where proceedings brought by the paying party were *"unnecessary, improper, vexatious or misconceived or [where] there has been unreasonable delay or other unreasonable conduct in the bringing or conducting of proceedings by the paying party"* (rule 34A EAT Rules). Wasted costs orders can also be made where the requirements of rule 34C are met.

Litigants in person and adjustments for disability

13. It is well recognised that acting in person can bring with it additional challenges. These are helpfully summarised in the Equal Treatment Bench Book in Chapter 1. There is no typical litigant in person and the situation of the particular litigant is what matters. The EAT takes account of the challenges facing litigants in person by, for example, making allowances for lack of representation when making case management orders and when conducting hearings. Litigants in person are nonetheless expected to comply with directions and ensure appeals are ready for hearing. As the PD makes clear, the EAT must act fairly to all parties to an appeal; it also cannot act as a legal or tactical adviser to a litigant in person (see PD§1.7.2). The PD also informs litigants that:

a) Each case before the EAT should receive its fair share of resources (PD§1.7.5); and

b) Litigants in person are expected to co-operate with the EAT and other parties (PD§1.8.1) and that the stress of bringing an appeal is not generally an excuse for failing to cooperate (PD§1.8.2).

14. Some litigants, including litigants in person, have disabilities. The EAT is familiar with making adjustments to its procedure to accommodate the needs of disabled persons, see e.g. **Sharma v University of Nottingham [2025] EWCA Civ 1457** and the Equal Treatment Bench Book Chapters 3 and 4. As was made clear in **Rackham v NHS Professionals Ltd UKEAT/0110/15/LA**, a decision as to what is reasonable must be tailored to the individual in question (see §58). See also **Anderson v Turning Point Eespro [2019] ICR 1362** in which a *"mechanistic approach"* was deprecated (§32). Many adjustments will be capable of being made without issue. Where, however, a proposed adjustment would significantly affect another party, or the efficient operation of the EAT, closer scrutiny may be required. That may include scrutiny of its likely effectiveness, its reasonableness, and the evidential basis for it. Assessment of the reasonableness of any proposed adjustment will include considering fairness to the other parties to the appeal.

Documents, Bundles and Skeleton Arguments

15. Ensuring the EAT has the documents required for a hearing is the responsibility of the parties, not the EAT. The PD sets out the requirements, by type of hearing. The contents of the bundle of documents (often referred to as the 'core bundle') are prescribed (see PD§6.1.6 in respect of preliminary hearings). In addition, supplementary bundles may be prepared where the requirements of the PD are met. In the case of preliminary hearings, PD§6.1.7 provides:

"You should only submit any other documents if they are absolutely necessary for your argument at the Preliminary Hearing. If you do so the additional documents should be in a supplementary bundle and you must (rather than may – see paragraph 6.1.10) submit a skeleton argument that refers to each document in the supplementary bundle and clearly explains why it is necessary for the Judge to read it. If you do not provide such a skeleton argument, the Judge need not read the additional documents. Save in exceptional circumstances, a supplementary bundle should not exceed 50 pages of documents. Usually, a supplementary bundle is unnecessary."

16. Skeleton arguments produced by or for a party should have the aim of assisting the EAT (and any other parties to the appeal) to understand the relevant party's position on, and the core steps of

argument in relation to, the points of law raised in the appeal. PD§11.6.5 explains that *"A well-structured skeleton argument helps the EAT and parties to focus on the points of law raised in the appeal and makes the oral hearing more effective."*

17. As the Court of Appeal has emphasised in **Standard Bank Plc v Via Mat International Ltd, Via Mat International (Hong Kong) Ltd [2013] EWCA Civ 490; [2013] 2 All ER (Comm) 1222**, *"skeleton arguments are not intended to serve as vehicles for extended advocacy… in general a short, concise skeleton is both more helpful to the court and more likely to be persuasive than a longer document which seeks to develop every point which the advocate would wish to make in oral argument"* (§27, per Moore-Bick LJ); *"prolixity only adds to unnecessary costs; it does nothing to clarify and simplify the issues or to shorten proceedings, which aims should be the objectives of both pleadings and written submissions"* (§29, per Aikens LJ).

18. PD§11.6 sets out the rules that apply to skeleton arguments in the EAT. For appeals in England and Wales, those rules include the following which are worth repeating:

"11.6.6 Your skeleton argument should:

a. be concise (as short as it reasonably can be) - a skeleton argument should generally be between 5 and 15 pages, depending on the number of grounds of appeal and their complexity – if you submit a skeleton argument of more than 20 pages the Judge may require you to resubmit a shorter version or reduce your time for oral submissions (because some or all of your arguments have already been fully set out in your skeleton argument)

b. refer to the parties as they were described in the Employment Tribunal (the claimant and respondent etc.) or by name

c. identify the paragraph(s) of the judgment, order, direction or other decision appealed that demonstrates that there was, or was not, an error of law

d. make it clear which arguments in the skeleton argument are relied on for each of the numbered grounds of appeal

e. identify and summarise for each ground of appeal:

i. the point(s) of law

ii. the relevant propositions of law – concisely stating the relevant legal principle(s) (including any that are adverse to your case) and where they are derived from. For statutory provisions, state the section number, rule etc. For case law, state the name

of the case, citation (neutral citation number and any citation in the official law reports), page number and paragraph number or any letter in the margin if there are no paragraph numbers, and the principle of law it is said the authority establishes. Do not include substantial extracts from provisions or decisions

iii. the steps in the legal argument

f. be self-contained – you should not seek to incorporate arguments from other documents

g. state the order that you want the EAT to make (whether the EAT should remit the whole or part of the case to the same or to a different Employment Tribunal or substitute a different decision for that of the Employment Tribunal)

h. be typed rather than hand written (unless you are not able to provide a printed copy)

i. be printed on A4 paper in a clear and readable 12 point font

j. have sequential paragraph numbers and page numbers

k. refer to any document by the correct page number in the agreed core or supplementary bundle"

19. These rules do not only apply to skeleton arguments prepared for a full hearing. They equally apply to skeletons produced for a preliminary hearing (see PD§6.1.10) or a rule 3(10) hearing (see PD§5.2.6). Compliance is mandatory for all litigants. Being a litigant in person, or being unaware of the requirements, will not generally provide a good reason for non-compliance.

20. Just as the Court of Appeal expects its requirements concerning skeleton arguments to be *"rigorously observed"*[5], so too does the EAT. The observations of Jackson LJ (with the agreement of the Master of the Rolls) at §65 of **Ben Nevis (Holdings) Limited, Metlika Trading Limited v Commissioners for HM Revenue & Customs [2013] EWCA Civ 758** are also applicable to the EAT. His Lordship explained the corresponding provisions of the Court of Appeal's practice directions:

"…mean what they say and they serve a serious purpose. The civil division of the Court of Appeal works under considerable pressure of time and does its utmost not only to decide cases justly and in accordance with the law, but also to deliver an efficient service to court users. To this end what the court needs from each party is a concise skeleton argument, setting out clearly the points which will be argued and providing relevant references".

21. The EAT has powers to enforce compliance with these provisions and litigants can expect the EAT to utilise those powers in appropriate cases. PD§11.6.6(a), which I have already extracted, refers to the

[5] **Standard Bank Plc** at §27, per Moore-Bick LJ

power to reject a skeleton that is too long, and to require a shorter version to be submitted. Alternatively, the EAT can reduce the time for oral submissions on the basis that arguments have already been set out fully in writing. In addition, PD§11.6.7 explains:

> *"Failure to comply with the requirement to lodge a skeleton argument in time or at all may lead to the postponement of an appeal or dismissal of the appeal for non-compliance with this Practice Direction pursuant to Rule 26 EAT Rules, and/or to an award of costs (in Scotland, expenses). If you fail to submit the skeleton argument within time you should send it as soon as you can, although late submission of the skeleton argument may mean that the Judge or panel is unable to consider its content prior to the commencement of the hearing if the appeal is permitted to proceed."*

The Use of Artificial Intelligence

22. There has been a significant increase in the use of AI tools by litigants appearing before courts and tribunals. The ET and EAT are no exception. Recently published **Presidential Guidance – Applications for interim relief** (22 June 2026) notes that applications for interim relief now *"often indicat[e] a use of artificial intelligence"*. Experience in the EAT suggests that such tools are being deployed to help prepare notices of appeal, skeleton arguments and correspondence.

23. As is well-known, the technology presents both risks and opportunities. There is potential benefit to be gained from its effective, responsible and ethical use, including by those who do not otherwise have access to professional legal assistance[6]. Greater benefit is likely to arise as the technology improves and there is little doubt that *"[a]rtificial intelligence is likely to have a continuing and important role in the conduct of litigation in the future"*[7]. There are also risks, including (and I do not attempt an exhaustive list) that the output is unfocused, excessive or not of direct relevance; does not comply with procedural requirements; is the product of inadequate/inaccurate input material or poor prompting; is misleading or does not reflect the true factual, evidential or legal position in a case; raises new points on appeal that were not raised at first instance; is affected by in-built biases; or contains hallucinations (for example made-up case citations).

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[6] The Lady Chief Justice has expressed the view that AI can facilitate access to justice for litigants in person *"because they can get support in drafting their submissions. We as judges are trained to look out for fake hallucinations, fake cases and the like, but many judges say to me that they find AI-assisted submissions from litigants in person more helpful and easier to digest than submissions drafted without the support of AI."*: see House of Lords, Constitution Committee: Annual evidence session with the Lady Chief Justice (10 June 2026, Q4).

[7] Per Dame Victoria Sharp P at §4 of **Ayinde**.

24. In its important judgment in **R (Ayinde) v London Borough of Haringey [2025] 1 WLR 5147**, the Divisional Court considered issues arising *"out of the actual or suspected use by lawyers of generative artificial intelligence tools to produce written legal arguments or witness statements which were not then checked, so that false information (typically a fake citation or quotation) is put before the court"* (§3). The Court's focus was primarily the use of generative AI by regulated professionals and the need to ensure appropriate oversight within a sufficiently robust regulatory framework. Since **Ayinde**, regulated professionals are now increasingly being held to those standards[8].

25. At §§6-9 of **Ayinde**, the President of the King's Bench Division, Dame Victoria Sharp P, highlighted the risks that apply when freely available AI tools are used for legal research:

> *"6. In the context of legal research, the risks of using artificial intelligence are now well known. Freely available generative artificial intelligence tools, trained on a large language model such as ChatGPT are not capable of conducting reliable legal research. Such tools can produce apparently coherent and plausible responses to prompts, but those coherent and plausible responses may turn out to be entirely incorrect. The responses may make confident assertions that are simply untrue. They may cite sources that do not exist. They may purport to quote passages from a genuine source that do not appear in that source.*
>
> *7. Those who use artificial intelligence to conduct legal research notwithstanding these risks have a professional duty therefore to check the accuracy of such research by reference to authoritative sources, before using it in the course of their professional work (to advise clients or before a court, for example). Authoritative sources include the Government's database of legislation, the National Archives database of court judgments, the official Law Reports published by the Incorporated Council of Law Reporting for England and Wales and the databases of reputable legal publishers.*
>
> *8. This duty rests on lawyers who use artificial intelligence to conduct research themselves or rely on the work of others who have done so. This is no different from the responsibility of a lawyer who relies on the work of a trainee solicitor or a pupil barrister for example, or on information obtained from an*

[8] See by way of example: **MS (Professional conduct; AI generated documents) Bangladesh [2025] UKUT 00305 (IAC)** (12 August 2025, Upper Tribunal (Immigration and Asylum Chamber)) (grounds of appeal containing a fictitious authority); **Ndaryiyumvire v Birmingham City University & Others, L20ZA723, unreported** (14 October 2025, County Court at Birmingham) (application to amend containing two fictitious case authorities); **UK v Secretary of State for the Home Department; R (Munir) v Secretary of State for the Home Department (AI hallucinations; supervision; Hamid) [2026] UKUT 00081 (IAC)** (17 November 2025, Upper Tribunal (Immigration and Asylum Chamber)) (citation of fictitious authorities; placing client letters into open source AI risking information being placed in the public domain and breach of client confidentiality/waiver of legal privilege); **Rodney v Gee'z Micro Bar & Pitstop & Others, M00DD215, unreported** (23 April 2026, County Court at Dudley) (appeal documents containing incorrect citations and features indicative of AI generation); **Cork & Another v Smith [2026] EWHC 1199 (Ch)** (22 May 2026) (AI hallucinated a non-existent statutory provision; supervising solicitors held accountable for failure to check junior's work); **Habib & Habib v Secretary of State for the Home Department, UI-2026-000882 & UI-2026-000883, unreported** (12 June 2026, Upper Tribunal (Immigration and Asylum Chamber)) (grounds of appeal and supplementary skeleton argument containing incorrect and misleading citations suspected to be AI-generated; show-cause directions).

internet search.[9]

9. We would go further however. There are serious implications for the administration of justice and public confidence in the justice system if artificial intelligence is misused. In those circumstances, practical and effective measures must now be taken by those within the legal profession with individual leadership responsibilities (such as heads of chambers and managing partners) and by those with the responsibility for regulating the provision of legal services. Those measures must ensure that every individual currently providing legal services within this jurisdiction (whenever and wherever they were qualified to do so) understands and complies with their professional and ethical obligations and their duties to the court if using artificial intelligence. For the future, in Hamid hearings such as these, the profession can expect the court to inquire whether those leadership responsibilities have been fulfilled."

26. The Court referred to guidance[10] aimed at regulated professionals and judges about the use of AI tools and emphasised that legal representatives are responsible for ensuring, and owe duties to ensure, that material put before a court or tribunal is accurate and appropriate. At §15, the Court underscored that it is:

"…necessary to check any information that is provided by an artificial intelligence tool before it is used or relied upon. [The guidance] further emphasises the need to be aware that artificial intelligence tools may make up fictitious cases, citations or quotes, or refer to legislation, articles or legal texts that do not exist, or provide incorrect or misleading information regarding the law or how it might apply, or make factual errors."

27. Whilst the Court's discussion in **Ayinde** was in the context of regulated lawyers, the same risks to the administration of justice arise where a litigant in person uses generative AI in the course of litigation. This has been recognised in **Taiwo v Homelets of Bath Limited & Others [2025] EWHC 3173**. There, Constable J observed (§27):

"The reliance upon false citations is just as unsatisfactory when presented to the Court by a litigant in person (or Litigation Friend), although of course the sanction for having done so may not necessarily be the same as those applicable if a registered lawyer is responsible for the submission. I make clear that where (as seems at least possible here) the citation was included in a document authored or reviewed by a lawyer, without attribution, whether for reward or pro-bono, for use by the litigant in person, that lawyer may, upon identification, be subject to a reference for misconduct or potential contempt…."[11]

[9] See further §95 of **Cork & Another v Smith** (above): *"AI has the potential to be wholly unreliable. AI may of course provide a jumping off point for research and legal reasoning but it does not, at least at present, do away with the need for proper research and thought on the part of a legal professional, even a very junior legal professional."*

[10] See the guidance referred to in **Ayinde** from §§10ff, as well as subsequent professional guidance, e.g. Bar Standards Board, **Guidance on the use of Artificial Intelligence and Other Technologies** (18 May 2026). See also §16 and the subsequent discussion of barristers' and solicitors' professional obligations.

[11] See also **Rafique v Revenue and Customs Commissioners [2026] UKFTT 673 (TC)** at §§97-100, esp §99: *"There*

28. Use of AI by unrepresented litigants is referred to in **Artificial Intelligence – Guidance for Judicial Office Holders** (31 October 2025). That guidance makes the point that litigants in person will generally be less able to check AI generated legal information. At section 3 (VI), the guidance states:

"AI chatbots are now being used by unrepresented litigants. They may be the only source of advice or assistance some litigants receive. Litigants rarely have the skills independently to verify legal information provided by AI chatbots and may not be aware that they are prone to error. If it appears an AI chatbot may have been used to prepare submissions or other documents, it is appropriate to inquire about this, ask what checks for accuracy have been undertaken (if any), and inform the litigant that they are responsible for what they put to the court/tribunal."

29. On a similar theme, in **Re D (A Child) (Recusal) [2025] EWCA Civ 1570; [2026] 1 FCR 864**, Baker LJ explained that (§83):

"Litigants in person are in a difficult position putting forward legal arguments. It is entirely understandable that they should resort to artificial intelligence for help. Used properly and responsibly, artificial intelligence can be of assistance to litigants and lawyers when preparing cases. But it is not an authoritative or infallible body of legal knowledge. There are a growing number of reports of "hallucinations" infecting legal arguments through the citation of cases for propositions for which they are not authority and, in some instances, the citation of cases that do not exist at all. At worst, this may lead to the other parties and the court being misled. In any event, it means that extra time is taken and costs are incurred in cross-checking and correcting the errors. All parties – represented and unrepresented – owe a duty to the court to ensure that cases cited in legal argument are genuine and provide authority for the proposition advanced."

30. In the context of employment disputes, the **Presidential Guidance – Applications for interim relief** states (§29):

"A particular difficulty arises in practice when legal submissions are generated using AI. While there is no objection in principle to the use of AI, it often results in submissions that are too long and complex, contain irrelevant material and fail to focus on the key points in the case. Litigants who use AI to assist them have a responsibility to ensure that what is submitted is concise, relevant and accurate."

31. The potential risks posed by the use of generative AI are now widely known. There is no principled reason why a litigant in person should not take reasonable steps to use it responsibly. Whilst such a litigant will not usually[12] be subject to the professional duties with which the court in **Ayinde** was

is no bar on any person using AI to help them to write their submissions but all parties – whether legally trained or not – are under an obligation to ensure that what they submit to the FTT (or any other tribunal or court) is factually correct and true. All parties are under a duty not to mislead the FTT."

[12] Litigants in person are of course a diverse group. Regulated professionals can act in their own cases and regulatory obligations may apply when they do so. See, for an example, **Re A, B, C, D (Extension of assessment; Use of AI:**

primarily concerned, the underlying principles of personal responsibility and accuracy apply to all persons who submit documents to a court or tribunal.

32. In accordance with the guidance and authority I have cited above, litigants who use AI should ensure, at a minimum, that all documents submitted:
    a) comply with applicable procedural rules - for example, in the EAT, PD§3.8 (grounds of appeal), and PD§11.6 (skeleton arguments);
    b) have been checked as thoroughly as the litigant or representative is reasonably able for accuracy, ensuring that factual, evidential and legal points (including references to authorities) are correct and that the court or tribunal is not misled; and
    c) contain only relevant points, with the focus being on the central or best arguments, presented in an easily comprehensible manner and avoiding undue repetition.

33. Simply submitting the product of generative AI to a court or tribunal, or placing the onus to check a document onto an opponent, is not acceptable. Where concerns arise that necessary checks have not been undertaken, or that they have been conducted inadequately, judicial enquiries and potential sanctions are likely to ensue.

34. In many appeal jurisdictions, such as the EAT, the appeal court or tribunal will not generally consider an argument that was not advanced at first instance (see PD§8.13.1). It is therefore also important to ensure that any document produced by AI does not include such matters or that new points are clearly identified and applications in accordance with PD§8.13 properly made.

35. In **Ayinde**, the court recognised that it had a range of powers to ensure that regulated lawyers complied with their duties, noting that the response would depend on the facts of the case (see §§23-4). Potential outcomes include a reference to a regulator (§29) or making a wasted costs order (§30). Other responses do not depend upon the individual's status as a regulated professional or representative. In

hallucinations) [2026] EWFC 71 (B) at §73 (litigant in person was an unregistered barrister).

the most serious and egregious cases (expected to be rare) a referral to the police to investigate the common law offence of perverting the course of justice, or the initiation of contempt proceedings, might be appropriate (see §§25, 26). The Court also referred to powers to strike out a case, impose costs sanctions and to deliver public admonishment (§§30-1). The EAT has similar powers and sanctions available to it to ensure proper compliance.

36. In addition, and depending on the circumstances, the use of AI may also cause a court or tribunal to be circumspect about the reliance that can properly be placed on a document or evidence. Responses to the Civil Justice Council's Working Group on AI have raised concerns *"about the potential for AI tools to reshape, embellish or otherwise influence evidence in ways that may not be immediately apparent"*[13]. The use of ChatGPT in preparing witness statements resulted in a cautious approach to the evidence in **Godwin v Godwin [2026] EWHC 923 (Ch)** see §§42-49[14]. Witness coaching by AI, just as by other means, is not permitted: see **R v FGD [2026] EWCA Crim 918** at §22. On the other side of the coin, suggesting that false factual information was purely the invention of an AI tool is also likely to require careful scrutiny: see for example **Lodhia v Twelve Trees (Bromley-By-Bow) Management Company Limited [2026] EWHC 1889 (KB)** at §§111, 119-120.

37. A clear message emerges from all of the above and applies beyond legal representatives to those litigants representing themselves. Whilst the use of AI is not generally prohibited for tasks such as preparing skeleton arguments, all litigants must take personal responsibility for any document submitted to the Tribunal and it must be carefully checked in the ways I have described, as thoroughly as the author is reasonably able.

Part 2: The Present Appeal and its Procedural History

38. I now turn to the present appeal: the underlying claim, the ET judgment appealed from, and the history

[13] See Civil Justice Council, Update on consultation findings – June 2026, available at https://www.judiciary.uk/related-offices-and-bodies/advisory-bodies/cjc/current-work/use-of-ai-in-preparing-court-documents/ See also Civil Justice Council, **Use of AI for Preparing Court Documents – Interim Report and Consultation** at §§7.11-7.15 (concerning witness statements).
[14] See also **Oakley v Information Commissioner [2024] UKFTT 315 (GRC)** at §27 concerning reliance on information obtained by way of ChatGPT prompt.

of these appeal proceedings.

The Relevant Claim before the Employment Tribunal

39. The Appellant brought 12 claims in the ET against a number of different respondents. The judgment under appeal applies to four of those claims. For reasons explained in the judgment of HHJ Tayler dated 14 June 2024, this appeal is only concerned with one, case number 1306228/2020 ("the Claim").

40. The background is that the Appellant worked for the National Farmers' Union ("NFU") as a facility services handyperson, initially as an agency worker, and subsequently as an employee. He was employed from late 2019 until his dismissal on 7 February 2020. He contended that during his employment he had uncovered and raised several serious health and safety breaches by the NFU amounting to protected disclosures. The Appellant claimed to have been subjected to detriment because of these protected disclosures, and ultimately automatically unfairly dismissed. He also claimed ordinary unfair dismissal and disability discrimination. The nature of the disability relied on is not spelled out clearly in the details of the claim; the Appellant referred to *"mental health issues I have"* and pleaded that he had been signed off by his doctor on 25 January 2020 with *"anxiety and depression"*. The Appellant's main claim was presented against the NFU on 14 February 2020. Subsequent claims followed, including the Claim which on 15 June 2020 was brought against five individuals, although subsequently withdrawn against one.

41. The Appellant's claims were all denied. The Respondents' case was that concerns and complaints arose about the Appellant's conduct. These included the Appellant arriving late without notification; being belligerent, confrontational and aggressive towards colleagues; one of the Respondents feeling physically unsafe and being reduced to tears; the Appellant using inappropriate terminology with female colleagues; and the Appellant contacting colleagues whilst suspended in breach of express instructions. These concerns were investigated and ultimately the Appellant was dismissed for misconduct during his probationary period. He was given payment in lieu of one week's notice. The Respondents denied the various heads of claim on a variety of grounds.

42. An interim relief hearing took place in the primary claim on 27 August 2020 before EJ Hindmarch. The Judge was not persuaded that the Appellant had *"a pretty good chance"* of showing that any protected disclosures he could establish were the sole or principal reason for the dismissal.

The Judgment Appealed Against

43. The judgment appealed against is that of EJ Lloyd following a hearing on 23 April 2021. It was sent to the parties, with reasons, on 18 May 2021. The Judge struck out the Appellant's claims pursuant to rule 37 contained within Schedule 1 of the **Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013** ("the ET Rules"). The Judge concluded that:

"(a) the manner in which the proceedings have been conducted by the Claimant has been scandalous, unreasonable or vexatious; and,
(b) that all of the substantive matters and issues are prejudiced to an extent that a fair trial of the claims (which was scheduled for May 2022) is no longer possible."

44. At the time the Tribunal was considering the case, rule 37(1) and (2) provided as follows:

"37.—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing."

45. The application was considered on submissions. The Judge found as follows:

"3.2 I accept, having regard to the substantial documentary evidence placed before me, that since March 2021 the Claimant has embarked upon a campaign, specifically on the social media website, Linked-In, criticising the NFU and the individual Respondents. Further, and although he vehemently disputes this, in some of his posts, he has publicised information relating to the subject matter of his ET claims and has also attached documentation disclosed to him by the Respondents during the course

of these proceedings. On 29 March 2021, the Respondents' solicitor wrote to the Claimant requesting that he immediately cease his behaviour as described above.

3.3 The Claimant was properly put on notice that the Respondents considered that his recent posts on social media amounted to conducting these proceedings in a scandalous, unreasonable, and vexatious manner. The Respondents' solicitors reminded him in clear terms that documents disclosed in this litigation are not to be used for any purpose other than the litigation itself.

3.4 In the face of all that I accept and find on the evidence, that the Claimant continued his behaviour and posted a large number of posts on Linked-In in the following days.

3.5 After receiving the Respondents' strike out application on 31 March 2021, setting out the clear impact his behaviour was having on the individual Respondents in this case, the Claimant has nevertheless persisted. After receiving the witness statement of Kenneth Sutherland, a senior officer of the NFU, and the emails of the individual Respondents setting out in their own words the impact the Claimant's conduct was having upon them, the Claimant has continued his personal campaign with an air of impunity. He has been without remorse or genuine apology.

3.6 In my finding his scandalous, vexatious, and unreasonable behaviour has persisted."

46. The Judge then referred to a number of decided cases. First, **De Keyser Ltd v Wilson [2021] IRLR 324**, in which the EAT held that the ET had erred when deciding whether or not to strike out a claim because it had left out of account the question of whether a fair trial was still possible. Having analysed the decision of the Court of Appeal in **Arrow Nominees Inc v Blackledge [2000] 2 BCLC 167**, Lindsay P (and members) held (at §25):

"Parts of those passages from Arrow Nominees and in particular the passage from Logicrose show the great importance, in relation to a discretion to strike out the whole of a case where there has been no such disobedience, of an inquiry into whether a fair trial is or is not still possible. Unfortunately, there is no sign whatever of that having been considered by the employment tribunal in the case before us. Whilst no one would suggest that it is incumbent upon a tribunal necessarily to set out every consideration which, in the exercise of its discretion, affects its mind one way or another, to leave out so crucial a factor as the question of whether a fair trial is still possible either indicates that the matter was not within the contemplation of the tribunal (thereby committing the error of law of leaving out of account something which so obviously should have been taken into account) or, if the matter had truly been in the tribunal's mind but is omitted from express mention, leaves the tribunal open to argument that it has failed the Meek v City of Birmingham [1987] IRLR 250 test."

47. Next, the Judge referred to **Bolch v Chipman [2004] IRLR 140**. The EAT (Burton P and members) set out steps that an ET should take when determining whether to make a strike out order (§55):

"(1) There must be a conclusion by the tribunal not simply that a party has behaved unreasonably but that the proceedings have been conducted by or on his behalf unreasonably…. There can no doubt be a finding in relation to conduct outside the court room and outside the ambit of legal correspondence

which could be found to be a method of conducting the proceedings. For example, it may well be, on appropriate facts, that a tribunal might find that if there were a threat that unless proceedings were withdrawn some course or other could be taken, that that would amount to a scandalous method of conducting those proceedings. ...

(2) Assuming there be a finding that the proceedings have been conducted scandalously, unreasonably or vexatiously, that is not the final question so far as leading on to an order that the notice of appearance must be struck out. ... An enquiry must be held by the tribunal, having made its finding as to the conduct in question, absent the exceptional case as to whether a fair trial is still possible. ... The reason for the need for that question to be asked, save in the exceptional circumstance to which we and Lindsay P [in De Keyser] have referred, is that a striking out order is not (or at any rate not simply) regarded as a punishment. ...

(3) Once there has been a conclusion, if there has been, that the proceedings have been conducted in breach of rule 15(2)(d), and that a fair trial is not possible, there still remains the question as to what remedy the tribunal considers appropriate, which is proportionate to its conclusion. It is also possible, of course, that there can be a remedy, even in the absence of a conclusion that a fair trial is no longer possible, which amounts to some kind of punishment, but which, if it does not drive the defendant from the judgment seat (in the words of Millett J) may still be an appropriate penalty to impose, provided that it does not lead to a debarring from the case in its entirety, but some lesser penalty.

(4) But even if the question of a fair trial is found against such a party, the question still arises as to consequence. That is clear because the remedy, under rule 15(2)(d), is or can be the striking out of the notice of appearance. The effect of a notice of appearance being struck out is of course that there is no notice of appearance served…."

48. The Judge also referred to **Force One Utilities Ltd v Hatfield [2009] IRLR 45** in which one of the employer's witnesses made threats to the claimant in the car park after the hearing had been adjourned for the day. The ET concluded that a fair trial was no longer possible. Even though the claimant indicated a willingness to continue, he was in real fear. The EAT (Elias P and members) held (§20):

"In a case of this kind, Bolch established a three-stage approach. First, has the conduct related to the manner of proceedings? Second, did the conduct make it impossible to hold a fair trial? Third, if so, was there some response short of barring the wrongdoing party which would be proportionate? We would only observe that questions two and three are, it seems to us, interrelated. If steps short of a strike out can properly be considered a proportionate response, in our judgment that can only be because they are sufficient to render a fair trial possible. If such steps still render the trial unfair, they cannot be proportionate to deal with the prejudice to the wronged party."

Later, at §§36-7, the EAT held:

"36 We do not accept that a balancing exercise is the correct metaphor in a case of this kind. The intimidatory conduct of one party is specifically designed to put the other in fear of the consequences of continuing with the action. Where a tribunal concludes that the intimidated party will be unable to manage that fear and is likely to tailor the evidence to fit with the other party's case, then it seems to us that the only proportional response is to disallow the intimidating party from being allowed to

take further part in the proceedings, at least with respect to liability. It is a draconian step to take and it plainly does affect the ability of the intimidating party to defend the case, but that is a consequence which that party has brought upon itself.

37 In our judgment, once a tribunal finds that a party is sufficiently intimidated as to affect his or her ability to give evidence without fear of consequences, the only proportionate response can be to bar the other party from participating in the trial. Of course, as in this case it will still be necessary for the claimant to prove the evidence to establish the case and that may not always be possible, such as where the evidence conflicts with contemporaneous documents. Plainly there is prejudice to the respondent in this case, but it is something which they have brought upon themselves."

49. Finally, the Judge referred to the first instance case of **Jones v Wallop Industries Ltd (Case No 17182/81)** where the ET found the claimant was *"hell-bent on causing the respondent company and a number of individuals as much inconvenience, distress, embarrassment and expense as possible"* and ordered the whole claim to be struck out as being largely scandalous or vexatious.

50. The Judge reached the following findings and conclusions:

"Findings

4.6 I conclude on what is put before me, that the Claimant has made it plain even at this hearing today that he is determined to cause the NFU and the individual Respondents as much inconvenience, distress, embarrassment, and expense as possible. He is completely unapologetic about his campaign on social media. He refers frequently to his right of free speech and even his right to offend people if he thinks that is called for. The Claimant has made over 145 posts on Linked-In relating to the subject matter of his Tribunal claims since 15 March 2021.

4.7 In my finding, it can clearly be seen from the written witness statement of Mr Sutherland, and the correspondence from the other individual Respondents, that the Claimant's conduct has had, and continues to have, a significant adverse impact upon the individual Respondents to these claims. As a consequence of the Claimant's recent behaviour, they are anxious about facing the Claimant in Tribunal. They are fearful of the action that the Claimant will continue to take on public forums both in the lead up to, and following the final hearing, which is not listed to take place until May 2022.

4.8 In my conclusion, creating this culture of fear and intimidation with his efforts to publicly ridicule the individual Respondents will affect the ability of the individual Respondents to give evidence. In some cases, they may feel simply unable to appear to give evidence. In other cases, even if they are able to attend to give evidence, being fearful of the public repercussions against them if they give evidence that conflicts with the Claimant's point of view will undoubtedly impact upon the way in which they give their evidence, and whether they feel able to disagree with the Claimant's views.

4.9 The claimant has persisted in spreading inaccurate and distressing information to the colleagues of the individual Respondents, whilst at the same time insisting that he has, and will continue to, approach some of those former colleagues to give evidence on his behalf.

Conclusion

5.1 In seeking to influence the opinions of the Respondents' colleagues in the way that is described in the evidence before the Tribunal, the Tribunal proceedings will themselves be prejudiced if some of those individuals should give evidence on the Claimant's behalf having been influenced by the material he has posted on social media.

5.2 I accept the submission of Counsel, Ms Shepherd, that there can be no confidence that any action less than a strike out of the Claimant's claims will have any impact upon his scandalous, vexatious, and unreasonable conduct of these proceedings, further prejudicing a fair trial in this matter.

5.3 I strike out the Claimant's claims in their entirety."

The Notice of Appeal

51. The Appellant's notice of appeal is dated 28 June 2021. In the section designated for the grounds of appeal, the Appellant stated that the ET had erred in law in several ways highlighted in his reconsideration request. A 42-page reconsideration request was attached. As the PD makes clear, grounds of appeal should be set out in the notice of appeal without attempting to incorporate other documents such as applications for reconsideration. PD§3.8.5(f) states: *"any such document will not be part of the grounds of appeal and may be disregarded by the EAT"*.

52. Returning to the grounds, the Appellant then stated:

"Between EJ Findlay writing to me telling me not to respond to the respondents' strike out request on 31st of March and the hearing on the 23rd April 2021 with EJ Lloyd that request had been accepted with all of my applications put aside without informing me that matters might be decided at [the] hearing. At no point was I informed to prepare for anything other than the preliminary hearing that had been listed. This lack of consideration where I wasn't given [a] chance to or requested to reply to the original request is an error of law".

53. The notice of appeal was considered on the sift and found to disclose no reasonable basis for bringing the appeal within the meaning of rule 3(7) of the EAT Rules. The Appellant made an application pursuant to rule 3(10) of the EAT Rules and submitted a document entitled *"Application to amend appeal"* which set out a commentary over 16 pages and included criticism of the ET and the sift judge's decision.

The Rule 3(10) Hearing before HHJ Tayler

54. The rule 3(10) application came before HHJ Tayler at a hearing on 7 January 2026. Having heard from the Appellant, the Judge set the matter down for an *inter partes* preliminary hearing. He explained

at §3 of the reasons attached to his order of 12 January 2026 ("the January Order"):

> *"I consider that a Preliminary Hearing will give an opportunity to consider, having been provided with the relevant documents, whether there may be arguable grounds of appeal, especially in relation to:*
>
> *3.1 The circumstances in which the strike out application came to be heard on 23 April 2021, and whether the claimant had a fair opportunity to respond, having regard to the preparation for the hearing, including any involvement of the claimant in agreeing a bundle of relevant documents and the provision of the bundle to the claimant.*
>
> *3.2 Whether there was a failure to have regard to and/or including in the balance required in deciding whether to exercise the discretion to strike out, the claimant's Article 6 fair trial and Article 10 freedom of expression rights."*

55. I pause to note that the Appellant has asserted in some of his correspondence that HHJ Tayler decided at the rule 3(10) hearing that there *were* arguable grounds of appeal. That is clearly not the case. As the reasons explain, that was to be decided at the preliminary hearing.

56. HHJ Tayler made directions to ensure the case was ready for the preliminary hearing. At §4 of the January Order, the Judge required the Respondents to file and serve a concise written submission in opposition. At §§6-7, the Judge required the Respondents to serve on the Appellant (i) a copy of the bundle of documents which was before the ET on 23 April 2021, and (ii) a copy of all relevant correspondence between the parties and the ET leading up to that hearing. The Appellant then was required to serve copies of any other documents he considered missing.

57. The clear intention of those directions was to put the parties in the same position so that each had the same pool of source material from which they could draw when preparing their cases for the preliminary hearing, and complying with subsequent directions. The EAT's order did not require a perfect documentary record of the material before the ET to be established for its own sake or in the abstract. Nor was it intended that all of the documents exchanged in accordance with §§6-7 of the January Order would make their way into the bundles for the preliminary hearing.

58. §9 of the January Order required the Respondents to prepare a bundle for the preliminary hearing and for that to be lodged no later than 28 days prior to the date fixed for the hearing. The order continued:

"In addition, other relevant documents which are necessary fairly to consider the appeal and that you are likely to refer to during the preliminary hearing may be added as a Supplementary bundle including those required at 6 above."

59. Thus the Respondents were required to prepare a 'core' bundle of documents in accordance with PD§6.1.6, which specifies the documents to be included. If a party considered additional documentation was required, the onus was on them to propose and agree with the opposing party a supplementary bundle and to comply with PD§6.1.7 when so doing (see paragraph 15 above).

Initial Compliance with HHJ Tayler's Order

60. On 26 January 2026, the Respondents lodged written submissions in opposition. The covering email confirmed they had complied with §6 of the January Order and provided the required documentation to the Appellant. The Appellant provided an emailed submission disagreeing with those provided by the Respondents. He was told by the EAT on 28 January 2026 that emails were not the forum to set out his submissions; those should be reserved for his skeleton argument. He was referred to the January Order in relation to preparing documentation.

61. After an initial issue concerning access to electronic documents was resolved by the Respondents sending the Appellant hard copies, the Appellant confirmed on 4 February 2026 that he had received the paperwork but raised a concern that many of the documents had *"no connection at all to these cases being appealed"*. Pausing there, that is entirely unsurprising. Judge Tayler's order was for *all* documents falling into the classes set out in the January Order to be provided. It was for the Appellant then to identify what was necessary to refer to at the preliminary hearing. The Appellant said he did not have time to sort through the documents to see what was missing before the deadline of 9 February 2026. In the following days, the Appellant maintained the position that the Respondents had not complied with the January Order and had sent *"hundreds of documents that have no relevance at all to the appeals I am bringing"*. He said he would do his own bundle. The Respondents maintained that they had complied with the January Order and explained that the volume of documentation reflected the categories of material which HHJ Tayler had directed should be exchanged.

Appointment for Directions

62. Faced with that correspondence, HHJ Tayler made an order on 16 February 2026 that the matter be listed for an appointment for directions on 17 April 2026. At §3 of the Order, the Judge explained:

> *"At the Appointment for Directions Hearing consideration will be given to preparation for the Preliminary Hearing and, in particular, to ensuring that only relevant documentation is before the EAT at the Preliminary Hearing. The parties are reminded of their obligation to cooperate with each other and to comply with the overriding objective."*

63. The intention was not, as the Appellant would later assert, that the EAT would adjudicate on the issue of what documentation was before the Tribunal on 23 April 2021. Rather to ensure that "*only relevant documentation"* was placed before the EAT at the preliminary hearing.

64. On 10 March 2026, the Respondents filed (i) a proposed 'core' bundle of relevant documents in accordance with PD§6.1.6, (ii) a chronology, and (iii) a large correspondence bundle in 3 parts. The Appellant did not lodge documents in advance of the appointment.

65. On 11 March 2026, the Appellant informed the EAT that he had suffered a heart attack. In response, the EAT informed him that he should make an application on the correct form and the grounds of his application should address the matters set out in PD§8.5.1. The EAT administration was there making a point which should be emphasised: the PD requires applications to the EAT to be made on the form at Annex 2 of the PD: see PD§7.3.1. The PD also sets out particular requirements of applications generally (PD§7.3.2) and in respect of particular types of application (see PD§8). All litigants should consider carefully the relevant parts of the PD and follow it when making applications.

66. On 14 April 2026, the Appellant applied to postpone the appointment, using the Annex 2 form. In support he lodged a Coronary Angioplasty Report and Antiplatelet Medication Card, the former confirming that he had suffered an ST-elevation myocardial infarction on 6 March 2026. The Respondents opposed the application, noting that the medical evidence addressed the occurrence of the heart attack but did not provide any prognosis or indicate when the Appellant would be fit to participate in proceedings. On 15 April 2026, HHJ Tayler vacated the appointment and directed the Appellant to provide medical evidence addressing his future fitness to participate in the appeal.

67. On 5 May 2026, the Appellant wrote to the EAT to say that he had an appointment on 28 May 2026 to assess his rehabilitation and that once he had attended he *"should be able to give more information as to when I can take part in proceedings"*. Nothing further was heard from the Appellant and so, on 12 June 2026, the EAT wrote to the parties to indicate that the case was awaiting the Judge's directions.

Directions and Events prior to the Preliminary Hearing

68. On 15 June 2026, John Bowers KC, Deputy High Court Judge, ordered that the preliminary hearing (which had by then been listed) would remain in the list for 29 July 2026. Instead of relisting an appointment for directions, the Judge gave directions in his order. At §15 he stated:

> *"The Appellant must co-operate with the Respondents in preparing the bundle for the Preliminary Hearing. If he does not the EAT may decide not [t]o consider any additional documents he wishes to bring to their attention. As a reminder in accordance with the 12/01/26 Order, a bundle is required to be lodged by the Respondent[s] in hard copy & electronically by 4pm on 01/07/26."*

69. Given that no medical evidence addressing the issue of fitness to participate had been lodged, Judge Bowers gave the Appellant a further opportunity to provide it. The Judge referred to the EAT's powers to strike out an appeal for non-compliance with directions. The Appellant responded by making the assertion that he would be unable to take part in proceedings until sometime after March 2027. He sent other correspondence criticising Judge Bowers' order, but no further medical evidence was produced. In those circumstances, on 24 June 2026, Judge Bowers directed that the preliminary hearing should remain listed, but indicated that the appeal would not be struck out.

70. On 24 June 2026, the Respondents filed a 'core' bundle of relevant documents.

71. On 26 June 2026, the Appellant applied on the Annex 2 form for a postponement of the preliminary hearing. He relied on the medical evidence previously provided. The Respondents objected. On 27 June 2026 the Appellant wrote seeking clarification about a number of matters, including the purpose of the preliminary hearing and what bundles would be used. The EAT replied referring the Appellant to where in the orders that had been made he could find the answers. Copies of those orders were

attached.

72. In the following days, the Appellant continued to send email correspondence asking and repeating questions, for example whether it was a full hearing, whether the Respondents would be in attendance, whether a new bundle was required, and whether a risk assessment for his attendance would be completed. He maintained he was not medically fit to conduct the hearing, but did not provide any further medical evidence. He also expressed the view that the hearing should not proceed until the documentation issues he had identified had been resolved.

73. On 3 July 2026, Judge Bowers KC refused the Appellant's postponement application. He took into account the lack of evidence containing a prognosis, the delay that would result from a postponement and the prejudice that would result to the Respondents.

74. On 5 July 2026, the Appellant sent further email correspondence applying for disclosure and further directions. He asked the EAT to determine what material had been before EJ Lloyd and maintained there should first be a direction hearing to resolve documentation issues before the preliminary hearing. On 13 July 2026 he said he would aim to attend the preliminary hearing but again criticised the documentation provided by the Respondents and sought directions. The Respondents opposed his applications on 14 July 2026, and on the same day filed a skeleton argument. This prompted further emails from the Appellant criticising the Respondents' position and Judge Bowers' orders.

75. On 16 July 2026, I gave directions. That communication made clear that (i) the purpose of the preliminary hearing had been explained by HHJ Tayler at §§2-3 of the reasons for the January Order; (ii) the documentation before the EAT for the hearing consisted of a core bundle received from the Respondents and the Respondents' skeleton argument; (iii) the Appellant's application for disclosure was opposed and would be considered at the preliminary hearing; and (iv) the directions made by the EAT continued to apply and further directions were not required. I also drew the Appellant's attention to §§10-11 of the January Order which required the Appellant to file a skeleton argument and lodge a

bundle of authorities.

76. The Appellant maintained his position in subsequent emails, including that *"we don't have all the relevant docs"*, and that the EAT should (and had not) established the evidential record on which the ET acted. He continued to criticise previous orders and asked it to be accepted that HHJ Tayler had already identified arguable grounds.

77. On 21 July 2026, I gave further directions. After reciting the background and repeating the purpose of the hearing, I explained that it was for the parties to ensure that the EAT had the documentation necessary for the preliminary hearing to be effective. I emphasised the importance of complying with the EAT's orders and the PD and the need for the parties to cooperate. I observed that no supplementary bundle had been filed and, after setting out PD§6.1.7, I gave a further opportunity for the parties to reflect on whether further material was required. I directed that a supplementary bundle complying with the PD should be filed by 24 July 2026. I also noted the absence of a skeleton argument from the Appellant and extended time to 24 July 2026 for this to be lodged.

78. Emails from the Appellant raised further questions including what the preliminary hearing would determine, which bundle was to be used, and what had happened to the appointment for directions. He sought directions and a range of adjustments, including breaks and permission to attend remotely by video. He also sought a further extension for his skeleton argument.

79. I gave further directions on 23 July 2026. I converted the hearing to a fully remote hearing and indicated the question of other adjustments would be considered at the outset of the hearing. I directed that if the Appellant intended to rely on any medical evidence to support the adjustments he sought, he should file and serve it by 4pm 28 July 2026. I extended time for filing and serving the Appellant's skeleton argument to 9am on 27 July 2026. The directions also stated:

"Information about the scope of the hearing and which bundle is before the EAT at present has already been provided. If the Appellant considers he requires further documents in order to persuade the EAT that any of his grounds of appeal have arguable merit, then the directions I have set out concerning a supplemental bundle must be complied with.

…

The parties are reminded that the EAT's resources are extremely limited. A significant amount of time has been spent communicating with the parties in relation to this hearing. The EAT must allot its resources fairly amongst all the cases that are before it. The parties should now cooperate with each other to ensure the Preliminary Hearing is effective."

80. The Appellant's subsequent emailed questions to the EAT regarding bundles were answered by the EAT administration explaining what directions and deadlines were in place.

81. On 24 July 2026, the Appellant did not lodge a supplementary bundle. Instead, he wrote criticising the Respondents for the contents of the core bundle, suggesting they had *"unilaterally selected only 148 pages for the hearing"*.

The Appellant's Skeleton Argument

82. On Monday 27 July 2026, the Appellant filed a compressed PDF file containing his 'skeleton' argument. The word 'skeleton' is entirely inapposite for that document: it was 300 pages long and a word count revealed that it contained almost 132,000 words.

83. In a covering email, the Appellant said he did not expect the judge to read every page before the preliminary hearing. He also stated:

"The Respondents now have the consolidated document and therefore have a reasonable opportunity before Wednesday's hearing to identify any specific:

- *factual inaccuracy;*
- *incorrect quotation;*
- *mistaken date or time;*
- *inaccurate description of a document;*
- *erroneous bundle reference; or*
- *material passage which they say misrepresents their position.*

I ask that any such point be identified specifically and in writing by 4.00 pm on Tuesday 28 July 2026.

I will consider any properly particularised correction promptly and, where appropriate, provide a correction or clarification before the hearing.

A general statement that:

- *the document is too long;*
- *the Respondents have not read it;*
- *they have not had sufficient time;*
- *the references are generally disputed; or*
- *the document should simply be excluded,*

would not identify an actual error or enable me or the EAT to address it."

84. The document filed was entirely unacceptable. It did not come close to complying with the requirements of the PD (see paragraph 18). It was not concise and was far in excess of the recommended length of 5 to 15 pages (and a 20 page upper limit). It was formed of numerous sections each with its own paragraph numbering. A uniform 12 point font size was not used. The argument referred to documents beyond the core bundle, no supplementary bundle having been prepared. In short, the document did not assist the EAT in preparing for the hearing; indeed, as the Appellant himself recognised in his covering email, there was simply insufficient time to consider it in full before the hearing.

85. At the preliminary hearing, I gave the Appellant the opportunity to address me on why a non-compliant skeleton had been lodged. The Appellant explained that he had used ChatGPT to create the document, and had done so because he had to prepare it quickly. He told me that much of the document lacked credibility and ultimately no reliance was placed on it. As I have explained, having chosen to use ChatGPT to assist him to prepare his skeleton argument, it was incumbent on the Appellant to check that the document submitted complied with the PD's requirements. Further, he ought to have checked the contents of the skeleton to ensure that it was accurate and properly stated the position. I am satisfied that the Appellant did not undertake these checks. This is clear from the covering email and from the Appellant's own assessment of the skeleton at the hearing.

86. Another unacceptable feature of this document's submission was the attempt to place the onus on the Respondents to identify inaccuracies. It was for the Appellant to take responsibility for the contents of his own written argument. It is not acceptable for a litigant to attempt to place that burden on their opponent, far less to do so over an unreasonable timescale as was attempted here.

87. Compliance with the EAT's procedural requirements is mandatory, not optional. In this case the EAT was left with an unmanageable document which impeded preparation for the preliminary hearing. In future such a document is likely to be rejected by the EAT with consideration given to the exercise of

the other powers I have referred to above.

The Preliminary Hearing – 29 July 2026

88. At the preliminary hearing, Ms White of counsel appeared under the auspices of the ELAAS scheme for the Appellant. The Appellant was also in attendance. Ms Shepherd appeared for the Respondents.

89. The application for reasonable adjustments was dealt with at the outset. The Appellant had not lodged any medical evidence in support. I was told he had recently returned to work. The Appellant addressed me on this issue and confined his application to seeking breaks every 45 to 60 minutes. I indicated that this could be accommodated, and invited the Appellant to inform me if he felt he needed a break before that time had expired. He did not do so, and in fact the hearing was completed within an hour.

90. Next, I dealt with the Respondents' application concerning the correct respondents to the appeal. The Appellant indicated he did not object. See further paragraph 136 below.

91. I then heard submissions on the question of whether the notice of appeal disclosed a reasonable basis for bringing the appeal. Ms White addressed me first, followed by the Appellant in person. Ms White informed me that earlier in the week (on the evening of Monday 27 July 2026) she and the Appellant had been able to discuss the case for around 90 minutes. Ms White focused on the first issue identified by HHJ Tayler (see paragraph 54 above) arguing that this gave rise to an arguable ground of appeal and that it was contained within the notice of appeal. Ms White indicated that she would have wished to take me through the relevant correspondence leading up to the hearing before the ET on 23 April 2021. She submitted it was not before me because the Appellant had not been in a position to identify the relevant documents from the material provided by the Respondents in accordance with the January Order. The Appellant then addressed me directly. He supported the points made by Ms White, emphasising that he did not consider that he had a full opportunity to prepare for the strike out application before EJ Lloyd.

92. I asked Ms White and the Appellant whether any other grounds of appeal were being pursued, including the issue identified at §3.2 of HHJ Tayler's reasons, or set out in the lengthy skeleton

argument. I was told clearly that the appeal was not advanced on any other grounds. No reliance was placed on the article 6 / article 10 ECHR point raised at §3.2 of HHJ Tayler's reasons, or on any other matter raised in the skeleton argument. The Appellant confirmed this to me directly.

93. I then heard from Ms Shepherd. She criticised the Appellant for having failed to propose and submit a supplementary bundle. She submitted that the single ground of appeal pursued was not arguable.

94. After hearing those submissions, the way forward was discussed. Consideration was given to listing a further hearing, however I was concerned that this would increase costs (particularly for the Respondents) and also lead to delay. Given that I had heard submissions, it was ultimately agreed by both the Appellant and the Respondents that I should make an order as follows, which I did:

a) First, the Respondents would, by 5 August 2026, produce and send to the Appellant a proposed supplementary bundle containing only correspondence between the parties and/or ET in the lead up to the hearing on 23 April 2021 that was strictly relevant to the proposed ground of appeal developed orally at the preliminary hearing.

b) Secondly, the Appellant would consider whether any additional correspondence should be included, again limited to that which met the strict criterion of relevance to the proposed ground of appeal. The Appellant was then to lodge a final agreed supplementary bundle of no more than 50 pages with the EAT by 14 August 2026[15].

c) I would then consider that bundle in light of the submissions I had heard and promulgate a reserved judgment.

Events following the Preliminary Hearing

95. Unfortunately, events did not occur as was envisaged. In the evening of 29 July 2026, the Appellant wrote to the EAT expressing his gratitude to Ms White for representing him but that having reflected he was seeking permission to rely on a further ground of appeal: that identified at §3.2 of HHJ Tayler's

[15] Additional time was given to the Appellant to complete this step following his representations to accommodate planned holiday.

reasons for the January Order. The Appellant was happy for this matter to be considered on the papers. He attached two sections of the previous long skeleton argument. Later the same evening, the Appellant sent a further email attaching a 4-page document entitled *"Article 10 and Disputed Facts"*. On 31 July 2026, the Appellant sent a further letter to the EAT making more points relevant to this further ground.

96. These submissions were sent to the Respondents for comment and further submissions were filed on their behalf on 5 August 2026. The Respondents argued that the Appellant should not be permitted to resile from the position he adopted at the preliminary hearing. The impact of the long-running litigation on the individual Respondents was highlighted, including in terms of the costs resulting from the extensive litigation by correspondence between hearings. The Respondents submitted it would not be appropriate to require the Respondents to address this further point; that could have been done at the hearing. The Respondents submitted the point was in any event not arguable.

97. Between 5 and 10 August 2026, the Appellant sent a number of further communications. These raised five recurring themes: (i) that he wished to pursue the additional ground referred to above, (ii) that the January Order had not been complied with, (iii) that the preliminary hearing should not have proceeded without a directions hearing and that led to him being confused as a litigant in person, (iv) that he was not bound by the position adopted by ELAAS counsel, and (v) that he still wished to pursue his application for disclosure and further directions were required. He said that in the circumstances he could not comply with the directions that had been made.

98. Given the Appellant's correspondence, the Respondents sent an email to the EAT on 10 August 2026 enclosing the supplementary bundle of 72 pages which they had sent to the Appellant and his ELAAS representative on 5 August 2026.

99. The Appellant then sent further communications between 10 and 12 August 2026. He repeated his contention that the EAT's orders could not properly be complied with. He again maintained that the preliminary hearing should be set aside and conducted afresh after further directions had been given.

In one email he described the procedural position as *"bordering on ridiculous"*. He also made critical comments concerning Judge Bowers' earlier orders, alleging bias.

100. The correspondence was then referred back to me. On 14 August 2026, in an order provided with separate reasons, I indicated I would adjudicate on the application to rely on an additional ground and the disclosure application in this judgment. I refused the Appellant's applications (i) to set aside the Order of 29 July 2026, (ii) for an appointment for directions to be held, and (iii) for the preliminary hearing to be conducted again. I also gave the Appellant a final opportunity to consider the supplementary bundle lodged by the Respondents and to make additions.

101. Thereafter, the Appellant sent a substantial number of further communications to the EAT repeating themes referred to above. He maintained that the order was wrong, repeated his contention that the January Order had not been complied with, and continued to assert that he had not agreed to abandon the ground identified at §3.2 of HHJ Tayler's reasons. At the same time, the Appellant apologised for aspects of (but not all of) his earlier correspondence and for the frequency of his emails. He stated that his mental health had deteriorated and that this had affected both the volume and tone of his communications. He maintained that he was confused about the procedural position, and indicated an intention to send a medical report. He continued to send further submissions (such as his skeleton for the rule 3(10) hearing) which he considered relevant.

102. Of particular note is that the Appellant issued an application under rule 33 of the EAT Rules seeking review of the 14 August 2026 order. The essential issue he raised in that application was that he was a litigant in person and the order failed to confront an *"obvious imbalance"* between him and the Respondents' counsel. He submitted ELAAS counsel's *"intervention"* should not be permitted to stand and that a further hearing with fresh directions should take place. The Appellant did not rely on ill-health in this application.

103. Further extensive correspondence was received from the Appellant thereafter. On 15 August 2026, the

Appellant wrote that he *"no longer fel[t] well enough to take part"* and that his health issues were exacerbated by confusion when he was *"just getting back on my feet and being able to work"*. He said he had previously taken a decision to take part rather than get a doctor's report. A further email that day apologised for *"my recent emotional reactions and for the frequency of my emails. ... I now recognise that my mental health has deteriorated further and that this has affected the way I have reacted."* On 18 August 2026, the Appellant said he did not want to get a medical note and would rather *"do this now in 2026"*. He again apologised for some of his previous criticism and that he recognised that he had been provided an avenue to submit further documents. He said he was not requesting a hearing, just an understandable process to allow fair adjudication. On 22 August 2026, the Appellant indicated he would prefer to *"get this done now rather than have a medical break"*.

104. Importantly, on 23 August 2026, the Appellant emailed the EAT enclosing 15 additional pages to add to the 72-page supplementary bundle. In a covering letter, the Appellant said he appreciated that submissions had closed. Nonetheless, he attached a further three Word documents, totalling 48 pages, which set out submissions in relation to both grounds he wished to pursue. In subsequent correspondence he provided commentary on various authorities, a letter confirming a medical appointment, and an 'impact statement' in which he said that he was having difficulties combining working and advancing the appeal and that his anxiety had increased.

105. On 5 September 2026, the Appellant made a further application (by email) asking for the EAT to determine that the ground identified at §3.2 of HHJ Tayler's reasons was not validly abandoned. On 8 September 2026, the Appellant made a further application (by email) asking for the preliminary hearing and the orders that Judge Bowers and I had made to be set aside. Attached was a letter from Dzifa Abban, Cardiology Consultant at the Worcestershire Royal Hospital dated 1 September 2026. The letter referred to ongoing tribunal proceedings which were causing the Appellant *"considerable anxiety"*. The letter states that the heart attack in March came when the Appellant was working on the paperwork for these proceedings and *"it exacerbated his anxiety symptoms considerably"*. The opinion is given *"I do not think he can currently safely be part of a tribunal process"*. The letter stated

that the Appellant would be referred to a psychology team. In his application, the Appellant indicated that further medical evidence would follow.

Part 3: Assessment of the Appeal

106. An appeal can only proceed if there are "*reasonable grounds for bringing the appeal"* (see rule 3(7) EAT Rules). That is the central question for me at this preliminary hearing (see PD§6.3.1). As PD§4.3.1 explains: *"There are no reasonable grounds for bringing a ground of appeal if it does not assert an arguable error of law or where, even if correct, it is of no practical significance"*. It follows that I do not need to be satisfied that the appeal will succeed, or is likely to succeed. Rather, the grounds of appeal advanced need to be reasonably arguable.

The Ground of Appeal Pursued at the Preliminary Hearing

107. The single ground of appeal pursued at the preliminary hearing was that identified by HHJ Tayler at §3.1 of the reasons attached to the January Order (see paragraph 54 above). In short, it was that the Tribunal had erred in law by proceeding to determine the Respondents' strike out application, and then to strike out the Appellant's claim, without giving him fair notice and a fair opportunity to respond, having regard to the preparation for the hearing (including the Appellant's lack of involvement in agreeing the bundle, and the timing of the provision of the bundle to the Appellant).

108. Although not articulated as clearly as it is in the January Order, I am satisfied that this ground is sufficiently raised in the notice of appeal and that no amendment is required: see paragraph 52 above.

The Essential Chronology

109. Having now considered the 72-page supplemental bundle provided by the Respondents on 5 August 2026, along with the additional 15 pages supplied by the Appellant on 23 August 2026, the essential chronology can be summarised as follows:

a) On **2 March 2021**, the ET listed a preliminary hearing for 23 April 2021. The Appellant had, by that stage, made a number of applications. The notice of hearing indicated that *"At the*

hearing, an Employment Judge will … consider the Claimant's various applications made and … make further case management orders if needed". Also on this day, the ET listed a separate preliminary hearing to deal with other matters on 22 April 2021.

b) On **31 March 2021**:

i. At 12:00 the Respondents wrote to the ET and the Appellant asking the tribunal to *"convert this hearing to an open Preliminary Hearing to consider [the Respondents'] application to strike out the Claimant's claims"*. The grounds were set out in detail in that correspondence. A costs application was also made.

ii. At 12:33, the ET wrote to the parties stating *"…the claim remains listed on 23 April 2021 and any application or issues will be discussed at the start of the hearing on 23 April 2021 and the Judge will decide whether he/she can consider the strike out application or not"*. The ET emphasised that it was not appropriate to litigate these claims through correspondence.

iii. The Appellant responded at 14:23 stating that he had refrained from giving a full response to the strike out application and would attend the scheduled hearings and answer questions. He asked if he needed to submit anything in the way of *"new evidence and amendments"*.

iv. at 15:07 the Appellant asked the ET: "*am I to respond to this letter from the respondent in regards a strike out application regarding publications I have made in the public interest?"* He said: *"Please … respond and direct me on this strikeout application and when and how it will be heard?"*

v. At 15:33, the Appellant emailed the Respondents saying that it would help if they could identify any documents that he had publicised.

c) On **5 April 2021**, the Appellant emailed the ET and Respondents a 4-page letter which stated *"I wish to reply"* to the strike out application. He maintained what he said about the

Respondents in his posts was true and in the public interest. He said that the issues were complex and to deal with them in the context of a strike out would be duplicative of a trial. He suggested expert evidence would be required.

d) On **12 April 2021**, the ET acknowledged the correspondence, said it had been placed on file, and indicated that the preliminary hearing on 23 April[16] remained listed.

e) On **19 April 2021**, the ET asked for a bundle for the preliminary hearing listed for 22 April 2021. The Respondents emailed a bundle for use at both preliminary hearings at 17:55 along with a witness statement. At 18:09, the Appellant asked the Respondents' solicitor to forward to the ET a bundle from the interim relief hearing in August.

f) On **20 April 2021**, at 11:09, the Appellant complained to the ET that the Respondents had refused to engage in producing a joint bundle and he had asked for bundles from previous hearings to be provided. At 12:40 he emailed the Tribunal saying he had a *"first review"* of the Respondents' bundle. He made some substantive points about the application to strike out, asserted a right to cross-examine the Respondents' witness and responded to a number of points made in the witness statement. He stated he was not willing to participate in the hearing if accusations were being made against him without the ability to defend himself. He indicated he intended to send through bundles of evidence. At 15:41 the Respondents emailed the ET and Appellant enclosing a note from counsel along with the bundle and witness statement previously provided, and the interim relief bundle. The Appellant responded at 15:57 to say he would not have time to review this material before the hearing. There were other emails, including those dealing with the technical aspects of getting electronic documents to the Tribunal (they had to be split over numerous emails). The Respondents also provided, at the Appellant's request, the bundle used at a preliminary hearing in December. In answer to a query from the Appellant, at 20:18, the Respondents informed the Appellant that their witness would be in attendance on 23 April 2021 *"to give evidence in the event that the Judge hears*

[16] There was a typographical error in the letter. The date was given as 23 April 2020 rather than 2021 but nothing seems to turn on that error.

our application".

g) On **21 April 2021**, the Appellant wrote at 09:45 saying he would seek an adjournment if the issues concerning the Respondents' bundle were not dealt with. He referred to having written to the Tribunal for clarity as to what would be heard and that the Respondents had attempted to change what was to be considered at the preliminary hearing. He complained that he had *"no time to review or prepare a response or seek advice for that matter"*. In that, and other emails, the Appellant said he would send over a bundle for the hearing on 23 April 2021. At 14:46 the ET emailed the parties saying *"the matters raised will be dealt with at the hearing on 22-23 April 202[1] by the Judge hearing the case"*. At 16:21 the Appellant indicated it was very likely he would not be in attendance. He referred to needing time to prepare and *"at least four days to defend any strike out request made against me"*. He referred to having written previously highlighting the issue and that clear guidance had not been given. At 23:30 the Appellant emailed a letter containing reasons for not attending the hearings. He said he expected an adjournment and referred to his mental health disability.

h) On **22 April 2021**, a preliminary hearing took place before EJ Lloyd in two of the Appellant's other claims. The Appellant did not attend and the hearing was adjourned by the Judge. Later in the day, at 14:49, the ET wrote on the direction of EJ Lloyd stating:

"…the Preliminary Hearing by video hearing on Friday 23 April 2021 in case number 1304294/2020 and others will proceed at 10am. That hearing will be an open Preliminary Hearing and will consider:

1. The Respondent's application to strike out the Claimant's claims that is set out in the Respondent's letter of 31 March 2021.
2. The Claimant's various applications made since the Preliminary Hearing on 11 December 2020.
3. Further case management orders if needed.

The parties are notified that the hearing may proceed in the absence of any of the parties."

i) Also on **22 April 2021**, the Respondents sent the ET and Appellant a skeleton argument with authorities at 16:34. The Appellant then sent a number of emails saying he would be in attendance and attaching a 2-page submission on adjournments, a case authority, and 16 other

attachments (the latter sent at 23:23). In the early hours of **23 April 2021**, at 01:44, the Appellant sent a further emailed letter seeking further time to respond to the *"new evidence submitted by the Respondent[s]"* and making other points.

j) The hearing took place on **23 April 2021** from 10am.

Submissions

110. Ms White emphasised to me that the hearing on 23 April 2021 had been arranged to deal with other matters prior to the Respondents making a strike out application on 31 March 2021. She argued that whilst the Appellant understood from the Tribunal's correspondence of 31 March 2021 that the strike out application was to be "discussed", he had not understood that it was then going to be determined. She submitted that this difference in language was of importance bearing in mind that the Appellant was a litigant in person. Ms White submitted that it was only the day before the hearing (22 April 2021 at 14:49) that the Appellant found out from the ET that the application was to be determined. That, it was submitted, gave the Appellant insufficient time to engage with the application, to prepare submissions, or to ensure that the documents the Appellant wished to rely on were all before the ET. It was submitted that the Appellant had no input into the bundle the Respondents had prepared, and this was sent to him on 19 April, with a skeleton argument and authorities arriving on 22 April 2021 at 16:34. Ms White submitted that it was arguable that the Appellant had been taken by surprise, and this had resulted in unfairness, especially because EJ Lloyd had reached definite findings about the Appellant's behaviour, including at §§4.6, 4.8 and 4.9 of the judgment.

111. Ms Shepherd submitted that the correspondence from the Tribunal on 31 March 2021 clearly communicated that the strike out application would be discussed on 23 April 2021 and that the Judge *"will decide whether he/she can consider the strike out application or not"*. Whilst the Appellant had in correspondence made it clear he was not happy about the strike out application being added to the agenda for the hearing, that did not mean he was deprived of a proper opportunity to prepare. Ms Shepherd submitted that the chronology shows that the Appellant had engaged with the Respondents' strike out application, making written submissions and submitting documents. Accordingly, she

argued that the single ground relied on was not an arguable point of appeal.

112. Ms Shepherd also relied on the Reconsideration Judgment in which, at §4.3, EJ Lloyd said this:

> *"The Claimant was on notice over 3 weeks prior to the date of the hearing, that the Respondents' strike out application may be heard at the hearing on 23 April 2021. That is consistent with the requirements of Rule 54 of the Tribunal Rules. The Claimant was on notice that the preliminary issue of the Respondent's strike out application may be decided at that hearing, more than 14 days prior to the hearing."*

113. EJ Lloyd went on to find (see §§4.4-4.8) that the Appellant had been able to prepare a response to the strike out application in his letter of 5 April 2021 and had been able to review both the bundle of documents and witness statement provided by the Respondent on 19 April 2021. The Judge considered that the majority of the 776 pages in that bundle had already been in the Appellant's possession for some time or were documents the Appellant himself had created. The Judge considered the Appellant had the opportunity prior to the hearing to consider the 9 pages of emails not falling into that category (emails from the individual respondents setting out the impact of the Appellant's conduct on them). The Judge therefore concluded (§4.9):

> *"The Claimant has no grounds to assert that it is in the interests of justice to reconsider the judgment either on the basis that there were procedural failings in constituting the hearing on 23 April 2021, or that he was in any way taken by surprise, and therefore prejudiced."*

My Assessment

114. Having considered the documents before me, I am satisfied that this ground of appeal crosses the threshold of being reasonably arguable and should be permitted to proceed to a full hearing. It is reasonably open to argument that the correspondence from the ET at 12:33 on 31 March 2021 could be understood by the Appellant, a litigant in person, to the effect that the application would only be *"discussed"*, in the sense of being case managed (as opposed to determined). I reach that view notwithstanding that the email went on to say that the Judge *"will decide"* whether he/she *"can consider the strike out application or not"*. It is reasonably arguable that those words do not convey the message that at the hearing the Judge would both (i) decide if the application can be considered and (ii) if the answer was in the affirmative, proceed to decide the substantive application itself.

115. It is further reasonably arguable that the Appellant did not understand that the application was going to be determined until the Tribunal's email of 14:49 of 22 April 2021 and this affected (in terms of rule 37(2) of the ET Rules) whether he had a *"reasonable opportunity to make representations"*. See, for example, his email of 31 March 2021 at 15:07 asking when and how the application would be heard. Whilst his correspondence in the run-up to the hearing engaged with the application and the material, it seems to me arguable that this was not engagement for the purposes of a future determination (as opposed to discussion) of the application. I am also satisfied that it is reasonably arguable that the timing of the provision of the primary bundle – which appears to have been prepared by the Respondents without input from the Appellant[17] - and other documents was such that the Appellant did not have a fair opportunity to consider all the material and respond at the hearing. I take into account his status as a litigant in person and his other circumstances. I note that the Appellant did not provide any medical evidence to the Tribunal against which it could assess the assertions he was making about his health, however, as EJ Lloyd pointed out at §5.6.3 of the Reconsideration Judgment, it was not disputed before the Tribunal that the Appellant was a disabled person by reason of suffering from depression. Even if the Appellant had seen the majority of the documents before, the volume of them was considerable and they were being sent in a different form. It is arguable that they still needed to be fully considered in order to determine that they had already been seen, and how they would be answered/deployed at the hearing. The Appellant referred to having had *"a first review"* of the bundle on 20 April 2021. I bear in mind that the decision to strike out was a serious decision, indeed visiting the ultimate sanction so as to end the litigation. I further bear in mind that a separate preliminary hearing, requiring its own preparation, had been listed for the day before the hearing in question.

116. It is clear that the Respondents have counter arguments, and indeed the Appellant's correspondence and preparation in the run-up to the 23 April 2021 hearing is open to potential criticism. However, having satisfied myself that the ground of appeal is reasonably arguable notwithstanding the Respondents' arguments, it is no part of my function to assess further the relative strength of the parties' positions. That is for the Judge hearing the appeal to determine after full argument. For the

[17] I make clear I do not reach a concluded view on this and it can be addressed, if necessary, at the final hearing.

avoidance of any doubt, my decision is not intended to indicate one way or the other who will be successful at that full appeal hearing.

The Ground of Appeal Raised following the Preliminary Hearing

117. After the preliminary hearing, the Appellant applied to rely on an additional ground not pursued at that hearing. The additional ground was that identified by HHJ Tayler at §3.2 of the reasons attached to the January Order (see paragraph 54 above). At the preliminary hearing I asked both Ms White and the Appellant whether this issue was pursued. I was told clearly it was not. I am satisfied that the position adopted was clear, unequivocal and unambiguous, as any concession or abandonment must be (**Poule Securities Ltd v Howe & Others [2021] EWCA Civ 1373** at §34). There was no failure of communication between representative and client of the kind that might require further inquiry (**Drysdale v Department for Transport [2014] EWCA Civ 1083, [2015] ICR D2** at §58). Accordingly, the Appellant's application is for permission to resile from the position he adopted at the hearing. The Respondents have been given an opportunity to respond. They resist the application: see further paragraph 96 above.

118. In our adversarial system, the role of the courts and tribunals is to determine only the disputed issues which the parties present and pursue: see, for example, per Lord Hodge in **Griffiths v TUI (UK) Ltd [2023] 3 WLR 1204** at §41; and per Warby LJ in **Moustache v Chelsea and Westminster Hospital NHS Foundation Trust [2025] ICR 1231** at §§33, 36, 40. Therefore, if a party clearly, unequivocally and unambiguously articulates[18] that they are pursuing only one of a number of previously outlined grounds of appeal, the EAT is entitled to rely on that and confine its consideration to the one ground pursued.

119. A party who wishes to resile from such a position must make an application; other potentially affected parties are entitled to be heard. Eady P made this point at §98 of her judgment in **Marston (Holdings) Ltd v Perkins [2025] EAT 20; [2025] IRLR 318**. In that case, the claimant accepted at a case management hearing that her dismissal was by reason of redundancy there having been genuine

[18] As **Moustache** makes clear at §40, a party may also lose the right to have a pleaded issue decided by the way s/he has conducted him/herself. That does not arise in this case.

redundancy situation. At the substantive hearing, the ET allowed her to depart from that position as she was (i) acting in person, and (ii) explained she had only opted for redundancy as the reason because she did not want a disciplinary investigation to be pursued. The EAT disagreed, holding that neither reason justified the ET allowing the claimant to resile from her position without a proper application and consideration of the principles outlined in **Nowicka-Price v Chief Constable of Gwent Constabulary UKEAT/0268/09** and **Centrica Storage Ltd v Tennison UKEAT/0336/08**. See further **Nicol v World Travel and Tourism Council & Others [2024] EAT 42** at §54.

120. In **Nowicka-Price**, HHJ McMullen QC set out those principles as follows:

"24. … there is no dispute that the approach of the Employment Tribunals should be assisted where the ET rules are silent, as they are on admissions, by CPR 14 and in particular by the judgment of Sumner J in Braybrook v Basildon & Thurrock University NHS Trust [2004] EWHC 3436 (QB). There the judge said the following:

> *"From these cases and the CPR I draw the following principles.*
>
> *(1) In exercising its discretion the court will consider all the circumstances of the case and seek to give effect to the overriding objective;*
>
> *(2) Amongst the matters to be considered will be:*
> *(a) the reasons and justification for the application which must be made in good faith;*
> *(b) the balance of prejudice to the parties;*
> *(c) whether any party has been the author of any prejudice they may suffer;*
> *(d) the prospects of success of any issue arising from the withdrawal of any admission;*
> *(e) the public interest, in avoiding where possible satellite litigation, disproportionate use of court resources and the impact of any strategic manoeuvring;*
>
> *(3) The nearer any application is to a final hearing the less chance of success it will have even if the party making the application can establish clear prejudice. This may be decisive if the application is shortly before the hearing."*

121. Judge McMullen went on to explain that this was an application of the **Civil Procedure Rules 1998** ("CPR") and he cited the relevant part of those rules. These are now to be found at CPR rule 14.5 as follows:

"In deciding whether to give permission for an admission to be withdrawn, the court shall consider all the circumstances of the case, including—

(a) the grounds for seeking to withdraw the admission;

(b) whether there is new evidence that was not available when the admission was made;

(c) the conduct of the parties;

(d) any prejudice to any person if the admission is withdrawn or not permitted to be withdrawn;

(e) what stage the proceedings have reached; in particular, whether a date or period has been fixed for the trial;

(f) the prospects of success of the claim or of the part of it to which the admission relates; and

(g) the interests of the administration of justice."

122. These principles provide a useful analytical framework and are also relevant when the EAT is considering whether to permit a party to resile from a previously adopted position. I have had regard to them, and to the submissions made in writing by both the Appellant and the Respondents. In my judgment, the application falls to be dismissed for the following reasons.

123. **Grounds for resiling:** The initial grounds put forward by the Appellant for seeking to resile from his position were that the Appellant had reflected, needed time for thought, and that he felt as a litigant in person he had been put on the spot. These grounds have been supplemented by other matters in subsequent correspondence. However, in my view, they represent the true operative reasons why the Appellant has made the application. They do not, in my judgment, amount to good reasons in the context of this case. I am entirely satisfied that the Appellant had a full and fair opportunity to consider the question of the grounds of appeal he wished to pursue before the hearing commenced. The ground that is the subject of this application was identified by HHJ Tayler in January 2026. The January Order made clear that the purpose of the preliminary hearing was to consider whether the grounds were arguable. The Appellant therefore knew, or ought to have known, that he would need to identify what he wished to pursue. Correspondence and directions from the EAT repeatedly directed him to the purpose of the hearing. The Appellant therefore had ample time to think through whether this ground

would be pursued. In addition, earlier in the week of the hearing, the Appellant had the benefit of a consultation with ELAAS counsel, and time to reflect after that consultation. In those circumstances, I do not accept that the Appellant was put on the spot at the preliminary hearing by being asked whether any other ground was being pursued. That must have been (and certainly ought to have been) a matter he considered when preparing for the hearing, and also when discussing the case with ELAAS. At the preliminary hearing a clear and unambiguous position was adopted to the effect that only the ground I have permitted to proceed was pursued.

124. The Appellant has also raised other matters in correspondence. He has returned repeatedly to the question of documentation for the purposes of the preliminary hearing and has suggested that the January Order was not complied with, and that no appointment for directions was held. He has suggested this led to confusion. None of these objections, or those based on similar themes, amount to good reasons for resiling from pursuing only one ground. The ground which is the subject of this application is one which turns on analysis of the ET's judgment rather than issues of documentation. In any event, the directions that were made in the lead up to the hearing enabled the Appellant to propose to the Respondents and then put forward a supplementary bundle of documents for consideration. Time was extended to ensure the Appellant had further opportunities to comply. Another point made by the Appellant is that he was *"not bound by ELAAS"* and gave no instruction to withdraw or concede any ground of appeal; but Ms White appeared as his instructed ELAAS representative at the hearing. She made submissions in the Appellant's presence. After she had made her submissions the Appellant followed on and supported them. That too is not a good reason to resile from the position adopted.

125. The Appellant did not rely on his ill-health in his original application to resile. I have nonetheless considered whether it can be said to have caused or contributed to the Appellant adopting the position from which he now wishes to depart. I recognise that it was accepted before the ET that the Appellant was disabled by virtue of depression and that in April 2026 medical evidence was submitted establishing that he had suffered a heart attack in March. An application to postpone the preliminary

hearing was refused on 3 July 2026 but it was not renewed before me at the preliminary hearing. Correspondence from 15 August 2026 suggests that the Appellant had in fact taken a decision to take part in the hearing rather than to postpone it on medical grounds. Further, at the outset of the preliminary hearing, it was made clear that the Appellant need only ask for a break if he needed one. Neither he, nor his ELAAS counsel requested a break, time to consult, or time to consider my question about whether further grounds were pursued. Rather a considered position as to which ground was relied on was advanced. The most recent medical evidence provided on 8 September 2026 refers to the proceedings causing the Appellant considerable anxiety but there is no suggestion that at the time of the preliminary hearing he did not have capacity or was unable to make litigation decisions. As the authorities make clear, the fact that a person is suffering from anxiety does not necessarily mean that their ability to take litigation decisions is seriously impaired: see **J v K [2019] ICR 815** at §39(2). In these circumstances, I am not satisfied that the Appellant's ill health did cause or contribute to him confining his case to a single ground. Instead, I find, the reason for the application is that the Appellant reflected after the hearing and changed his mind.

126. In his most recent application the Appellant has evinced an intention to put forward further medical evidence and I note a reference to the psychology team has now been made. I do not consider it is appropriate to delay this judgment to await that evidence. There is no suggestion from the Appellant that the evidence will be that the Appellant lacked capacity at the time of the hearing. I also take into account the Appellant has been on notice of the need to supply medical evidence concerning fitness to participate since 15 April 2026 when HHJ Tayler ordered it to be provided within 21 days. No timescale is now given for obtaining the further evidence. Any further evidence can be taken into account in relation to the listing of the full hearing.

127. **Absence of developments:** This is not a case where significant developments occurred between the hearing and the application to resile; no new evidence or new case law emerged to justify a change in position.

128. **Conduct in making the application:** A factor in the Appellant's favour is that the application was made promptly, and indeed on the evening of the preliminary hearing. However, in my judgment that does not weigh heavily on the scales given the lack of good reason supporting the application. I have been critical of aspects of the wider conduct of the appeal proceedings elsewhere in this judgment, but I do not consider that is a factor of any particular significance in relation to this application.

129. **Balance of prejudice:** The balance of prejudice in my judgment comes down against the application.

a) Preventing the Appellant from resiling from his position would mean he could not advance a potential ground of appeal. However, on the Appellant's own application, that arises because he has changed his mind having reflected since the hearing. Further, and for reasons given in more detail below, I have concluded that the ground is not reasonably arguable and further that the Appellant would require permission to amend to advance it. These features serve to diminish the prejudice suffered by the Appellant being held to the position he adopted.

b) On the other side of the coin, the Respondents would suffer prejudice by the Appellant being permitted to resile. The preliminary hearing was set down as an *inter partes* hearing entitling the Respondents to be heard on the grounds of appeal that were being pursued. The Respondents only made oral submissions in relation to the one ground of appeal that the Appellant said he wanted the EAT to consider. Unfairness and delay would now result were the Appellant given permission to resile from that. The Respondents have not had a proper opportunity to address the EAT on a second ground. They did make submissions after the hearing in order to respond to the Appellant's application to resile, but not on the substance of the further ground. I agree with Ms Shepherd's submission that a further hearing would need to be held, or the Respondents would need to be given an opportunity to make further written submissions. Either way the Respondents would be put to further time and cost and there would be delay in the context of litigation which has been ongoing for some considerable time. In my judgment this prejudice to the Respondents outweighs that to the Appellant (and

in the circumstances of this claim, including the reasons for applying to resile, would do so even had I concluded that the ground of appeal had arguable merit).

130. **Stage of proceedings:** As for the stage the proceedings have reached, whilst I am mindful that this was a preliminary hearing, and that, if a ground proceeds to a full hearing there would be the opportunity for both parties to be heard on it, the preliminary hearing was fixed as the occasion on which it would be determined whether there were reasonably arguable grounds. That seems to me to be significant. The application came after the hearing fixed to determine that very question, albeit before judgment.

131. **Prospects of success:** The prospects of success of the proposed ground of appeal is also relevant. By this ground of appeal the Appellant wishes to argue that the Tribunal failed to take proper account of his rights to a fair trial (article 6 ECHR) and freedom of expression (article 10 ECHR) when exercising its discretion. I am not satisfied that this is reasonably arguable. The Tribunal referred to the fact that the Appellant had the right of free speech and that he had invoked that right: see §4.6 of the judgment. It plainly took that factor into account. Further the Tribunal was also well aware that were it to decide to strike out, that would prevent the Appellant having a hearing of his claims. That point is not only obvious, but it clearly emerges from the authorities cited by the Tribunal. The ET was therefore plainly cognisant that by striking out the claims for the conduct identified in the application, the Appellant's article 6 and 10 rights would be impacted. Having found the Appellant's conduct to be *"scandalous, unreasonable and vexatious"* the core question for the Tribunal was then whether the ultimate sanction of strike out was a proportionate response. The Tribunal recognised that central to that issue was whether a fair trial was possible. It did this by reference to the authorities, noting (at §4.2.2) that where a fair trial is still possible the case should be permitted to proceed. The Tribunal then considered the impact of the Appellant's conduct on the individual Respondents thereby (and permissibly) weighing in the balance the Respondents' corresponding article 6 ECHR rights to a fair trial. It concluded that the Appellant's conduct significantly affected the ability of the individual Respondents to give evidence. The Tribunal expressly considered whether some lesser (viz more proportionate) action should be taken, concluding it was not. Only strike out was appropriate (see §§5.2-5.3). Whilst the

reasoning was brief, it seems to me clear that the Tribunal did take due account of the impact on the Appellant's article 6 and 10 rights when reaching its decision. Furthermore, once the ET undertook the proportionality exercise and concluded that a fair trial was no longer possible, there was nothing additional which a separate article 6/article 10 analysis could realistically have added on the particular facts of this case.

132. Even had the ground enjoyed reasonable prospects, and therefore the prejudice to the Appellant been greater, I do not consider that this factor would outweigh the others pointing away from permitting the Appellant to resile.

133. A further point falls to be made. The proposed ground of appeal is not, in my view, raised within the notice of appeal. An amendment would be required applying the principles in **Khudados v Leggate [2005] ICR 1013** and **Deans v RBL Law Ltd (in liquidation) [2026] EAT 76** in order for it to be advanced. The Appellant has referred to §39 of **Deans** where the point was made that a more generous approach *"may"* be appropriate where a litigant in person obtains *pro bono* assistance from ELAAS. If I may say so, as a general proposition, that seems to me entirely correct, and in accordance with the authorities cited in **Deans**: see e.g. **King v Royal Bank of Canada Europe Ltd [2012] IRLR 280**. However, as **King** makes clear at §44, each case, and indeed each individual ground of appeal, must be considered on its own merits, applying the principles laid down in **Khudados**, including that the Appellant must justify the grant of permission. In this case, the Appellant would need to persuade the EAT to give permission to amend against the backdrop of the procedural history of this appeal. He does have some points in his favour, namely that the appeal has not yet been listed for a full hearing and the Respondents have not yet put in an answer to the appeal. Further, there are some references to freedom of expression and the right to a fair trial in the Appellant's reconsideration application and in the document submitted in response to the sift judge's decision. However, the Respondents have not been heard on any amendment application given the position the Appellant took at the preliminary hearing. As things stand, it cannot be assumed that the Appellant would obtain permission. That diminishes the prejudice of holding the Appellant to the position he adopted at the preliminary

hearing.

134. **Interests of justice:** Finally I turn to the interests of justice and the overriding objective. In my judgment these factors are against the Appellant. This appeal has not enjoyed an easy procedural history. It would not further the overriding objective or the interests of justice for the Appellant to be permitted to widen the areas of dispute following the clear position he adopted at the preliminary hearing.

135. For all these reasons, I dismiss the Appellant's application.

Part 4: Other Applications and Case Management

The Correct Respondents to the Appeal

136. On 19 January 2026, the Respondents applied for an order correcting the names of the respondents to this appeal. It was argued that only (1) Kenneth Sutherland, (2) Ben Coates, (3) Catherine Cooper (4) Vicky Jones were respondents in case number 1306228/2020 and only they should be named in these appeal proceedings. This application was considered at the preliminary hearing. There was no objection and I agreed with the Respondents that only those four individuals should be named.

The Appellant's Application for Disclosure

137. The Appellant applied for disclosure on 5 July 2026. This application was not advanced on the Annex 2 form. Nonetheless, in advance of the Preliminary Hearing, I directed it would be considered at the hearing. Neither the Appellant nor his ELAAS representative pursued the application at the hearing. Since then, the Appellant has raised it in correspondence and sought a determination.

138. The Appellant seeks disclosure of correspondence between the Respondents and the Environment Agency relating to (i) what he says were disclosures concerning NFU Energy Building and F-Gas compliance prior to 31 March 2021, (ii) any internal emails or documents recording communications with, or information received from, the Environment Agency concerning those disclosures, and (iii) any documents held by the Respondents before the strike-out hearing recording the existence, progress

or outcome of any Environment Agency investigation relating to those matters.

139. The Appellant states that this disclosure will assist the EAT determine the issues identified by HHJ Tayler *"on the basis of a complete and accurate evidential record"*. The Respondents object to the application (see their letter of 14 July 2026). The Respondents' position is that the materials referred to in the application are not in issue in the appeal and were not even disclosures relied on as protected disclosures for the purposes of the substantive claims before the ET. In response, the Appellant argued that the strike out application relied on his LinkedIn posts which included him saying *"Tamsin caught out lying by the Environment Agency"*. The Appellant recognised he was seeking permission to rely on evidence that was not before the ET but contended the disclosure was about what the Respondents knew when advancing the strike out application.

140. The EAT undoubtedly has the power to order the production and inspection of documents (see section 29(2)(b) ETA and rule 27(1) of the EAT Rules). However, this power is not routinely exercised. That is because disclosure of new documents, that were not before the Tribunal below, are rarely necessary in order to determine whether an error of law was made. The principles concerning specific disclosure applications set out by Linden J in **Santander UK plc v Bharaj [2021] ICR 580** at §§16-29, approving Eady J's judgment in **Flood v Times Newspapers Ltd [2009] EMLR 18** at §§23-25, are relevant *mutatis mutandis* bearing in mind the application is being determined in appeal proceedings.

141. In my judgment, this application is entirely misconceived.

142. The material sought cannot assist the EAT on the single ground of appeal that proceeds to a full hearing. That ground of appeal concerns whether the Appellant had adequate notice of the strike out application and a fair opportunity to oppose it. Determining whether the ET erred in law in that way does not require disclosure of correspondence between the Respondents and the Environment Agency or information about any investigations conducted by that body. The documents plainly cannot support or adversely affect the case of any party on this appeal. Nor is disclosure necessary in order to dispose fairly of the appeal. If the appeal were successful, and if the EAT decided to remit, it would be a matter for the ET to consider whether any order for disclosure should be made, and if so what to order.

143. As the Appellant accepts in his response to the Respondents' submissions, the material he seeks was not before the Employment Tribunal. PD§8.12.1 explains that generally the EAT will not consider evidence that was not before the Employment Tribunal. The lack of any relevance to the ground of appeal that I have permitted to advance means that the Appellant cannot establish that the material *"is relevant and would probably have had an important influence on the decision of the Employment Tribunal"* (see PD§8.12.6(b); and **Kieran Corrigan & Co Ltd v Timol [2024] EWCA Civ 1233** at §§74-83). The lack of any prospect of permission being granted to rely on the material is a further (overlapping) reason why disclosure should be refused.

144. Finally, even if (contrary to my views above) some relevance to the issues in the appeal could be demonstrated, I would have exercised my residual discretion to refuse the application. Having regard to the overriding objective, the extent of that relevance would have been insufficient to render an order for disclosure proportionate.

145. I therefore dismiss the Appellant's disclosure application.

146. Employment Tribunals, and the EAT, are encouraged, in appropriate cases, expressly to consider and record whether an application is totally without merit: see **London Underground Ltd v Mighton [2020] EWHC 3099 (QB)** at §79, per Stacey J, following **Nursing and Midwifery Council v Harrold (No. 2) [2016] EWHC 1078 (QB)** at §139, per Elisabeth Laing J.

147. A claim or application may be certified as totally without merit only if it is bound to fail in the sense that there is no rational basis on which it could succeed. It need not be abusive, made in bad faith, or supported by false evidence or documents. See **Sartipy v Tigris Industries Inc [2019] 1 WLR 5892** at §27 and **R (Wasif) v Secretary of State for the Home Department [2016] 1 WLR 2793** at §§13-15.

148. I am satisfied that the Appellant's application for disclosure meets that standard and should be certified as totally without merit. It was always bound to fail. The documents sought are plainly not relevant to

the ground pursued at the preliminary hearing. That is also the case in respect of the second ground the Appellant later wished to pursue. That raised a question of analysis of the ET's judgment and requires no reference to the documents sought by way of disclosure. In all the circumstances there was no rational basis on which the application could succeed.

Appellant's Rule 33 Applications

149. By Rule 33 of the EAT Rules, the EAT may review any order it has made. It may on review revoke or vary the order on the grounds that (a) the order was wrongly made as a result of an error on the part of the Tribunal or its staff, (b) that a party did not receive proper notice of the proceedings leading to the order, or (c) the interests of justice require such a review. An application by a party must be made within 14 days of the order in question.

150. On 14 August 2026, the Appellant applied (albeit not on the Annex 2 form) for my order of that day to be reviewed and set aside. His position was as I have explained at paragraph 102 above. That application was duplicated and expanded by his application of 8 September 2026.

151. The application in respect of the 14 August 2026 order was made in time. However, in my judgment none of the grounds for revoking the order of 14 August 2026 are made out. The order was not wrongly made as a result of an error. There was no lack of proper notice. Nor do the interests of justice require a review.

152. In his original application, the Appellant contends that the order failed to confront an imbalance between him and the Respondents due to their representation. Whilst the Appellant is a litigant in person and the Respondents are represented by counsel, my order did make proper allowance as was appropriate in the circumstances. In the run up to the preliminary hearing, numerous communications and directions from the EAT reminded the Appellant about the purpose of the hearing and gave him further time to consider and prepare a supplemental bundle and a skeleton argument. The Appellant also had an opportunity to consult with experienced ELAAS counsel prior to the hearing. At the preliminary hearing, both the Appellant and his ELAAS counsel were heard. Further allowance was made despite the fact no supplemental bundle had been prepared as directed. It was agreed that the

order of 29 July 2026 should be made. It was after the hearing that the Appellant changed his position. To abandon the hearing and issue fresh directions would run contrary to the overriding objective and contrary to the position that was agreed at the hearing. The order of 14 August 2026 made further allowance and gave the Appellant another opportunity to produce documentation that ought to have been prepared before the hearing. He later filed documents which I have considered. I remain of the view that the order of 14 August 2026 was clearly justified and appropriate.

153. I have considered the medical evidence attached to the further application of 8 September 2026, but this does not cause me to alter my view. The exacerbation of anxiety symptoms that is described does not justify holding a fresh preliminary hearing in circumstances where the Appellant chose to proceed with the hearing rather than to obtain medical evidence and renew his application to adjourn. I also observe that it is not clear that a fresh preliminary hearing could be held expeditiously. I therefore dismiss the Appellant's application for a review of my order of 14 August 2026.

154. Insofar as the Appellant's application dated 8 September 2026 seeks to review earlier orders, it is made well outside the 14-day time period prescribed by rule 33. The Appellant invites me to extend time on the basis that the medical evidence on which he relies was not available during that period. In the circumstances of this case, that is not a good reason to grant an extension. As the Appellant's own correspondence of 18 August 2026 makes clear, he chose to proceed with the preliminary hearing rather than obtain medical evidence at that time. Further, the EAT made an order in April that medical evidence on his ability to participate be submitted. Had there been a medical basis to revisit earlier orders, the evidence should have been obtained and the application made much sooner. As Simler P explained in **Liddington v 2Gether NHS Foundation Trust UKEAT/0064/16/DA** (28 June 2016) at §34, *"There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule."* Having considered that principle, the evidence the Appellant now adduces, and the overriding objective, it is not in the interests of justice for time to be extended to challenge the earlier orders. I dismiss the application of 8 September 2026 accordingly.

Future Case Management

155. Given the difficult history of these appeal proceedings, particularly concerning disputes as to documentation, it would assist in furthering the overriding objective to make some clear case management directions to ensure that the case arrives ready to proceed on the day listed for the full hearing and to ensure the case stops taking up a disproportionate amount of the EAT's resources.

Listing of the Appeal

156. Given the application and evidence submitted on 8 September 2026, I shall give the Appellant a further 21 days to submit any further medical evidence relevant to the question of when the full hearing should be listed. The EAT will then proceed to list the full hearing in light of the available information.

Documents for the Appeal

157. Given the difficulties in agreeing and preparing bundles for the preliminary hearing, I shall vary the usual procedure and order that for the full hearing the Respondents do prepare, file and serve a core bundle for the appeal consisting of the core bundle for the preliminary hearing with the following documents added: (i) this judgment and my order arising from the preliminary hearing, (ii) the Respondents' Answer, and (iii) any other orders the EAT makes in the lead up to the hearing. The Respondents shall also prepare, file and serve a supplemental bundle consisting of the 72-page supplemental bundle provided by the Respondents on 5 August 2026 plus the 15 pages of additions supplied by the Appellant on 23 August 2026.

158. I am doubtful whether any further documents will be required for the appeal to be argued. However, in case that is wrong, if any party considers that it will be necessary to refer to any other document not contained in the core or supplemental bundles when arguing this appeal then they must prepare, file and serve a bundle described as that party's "extra bundle". The extra bundle must be no more than 50 pages in length.

159. A chronology is already contained within the core bundle at page 145-148. Ms White explained at the preliminary hearing that she had been instructed that there was no disagreement with that chronology.

It is therefore unnecessary for a further chronology to be prepared.

Skeleton Arguments

160. Skeleton arguments must be prepared by the Appellant and the Respondents. It is essential that they comply fully with the requirements of the PD which I have set out in this judgment, including importantly as to length. If they do not, the EAT may impose the sanctions I have described in this judgment.

Authorities

161. PD§11.7 contains detailed requirements which must be adhered to when compiling the bundle of authorities. Only the original authorities should be included in the bundle (not submissions on previous cases). After exchanging skeleton arguments, the parties must liaise and prepare a joint bundle as provided for in my order.

Applications

162. Many applications in these proceedings have been and continue to be made informally by correspondence. The PD is clear that applications must be made on the form set out in Annex 2. The danger of applications being made in correspondence is that they may be mixed in with communications about other matters and then missed by the EAT. Further the other parties to the proceedings are entitled to understand clearly when an application is being made and what it is for. The form helps achieve those aims; it also prompts applications to include the necessary information and supporting documents concerning the application being made. The PD also gives guidance on particular applications. I would add that there has also been a tendency in these proceedings for applications to be made, and then further submissions or material provided in dribs-and-drabs by a sequence of follow-up emails. That is not acceptable. The grounds for an application, and the material supporting it, should be set out in one go using the form prescribed.

163. Given the repeated non-compliance with the PD in this case, I shall order that all applications must be made on the form prescribed by the PD and that any application made other than on the prescribed

form will not be considered or responded to.

Excessive Correspondence

164. The Appellant has corresponded with the EAT excessively and disproportionately. This has often been triggered by receiving submissions from the Respondents or an order from the EAT. Extensive repetitive correspondence imposes a burden on the EAT's administrative and judicial resources, increases costs for parties to litigation and runs contrary to the overriding objective. The Appellant has linked his behaviour to mental health difficulties.

165. In **J v K [2019] ICR 815** (in the context of examining whether an extension of time should be granted for the institution of an appeal), the Court of Appeal explained that *"as a matter of general law the exercise of a judicial discretion must take into account all relevant considerations, and in such a case the party's mental condition or other disability would plainly be a relevant consideration"* (§33). Underhill LJ also offered general guidance at §39.

166. Although the medical evidence that is available at present remains limited, I am prepared to assume in the Appellant's favour that the content and frequency of his correspondence has, at least in part, been affected by his mental health. Nonetheless, the EAT is permitted to take reasonable and proportionate steps to ensure the overriding objective is furthered. It is not only the Appellant's interests that are relevant: the other parties' interests, and the resources of the Tribunal all fall to be considered.

167. PD§1.9.2 explains:

"Offensive and abusive communication is not acceptable, however strongly a party feels about the appeal. If you engage in abusive communication:

a. your appeal or response could be struck out, or other proportionate action could be taken

b. if you communicate inappropriately in a telephone call a member of the EAT staff may terminate the call and require you to raise any further matters in written correspondence

c. if you engage in excessive or abusive email correspondence, you could be told that you can only correspond with the EAT by post and that EAT staff will no longer open or read your emails, but will file or delete them"

168. §1.9.2(c) covers email correspondence that is either excessive or abusive, or both. In this case, the Appellant has undoubtedly communicated excessively by email. He has been told not to litigate by correspondence. He has also been told to be mindful of this Tribunal's resources when sending email.

169. I gave some consideration as to whether the time has now come for the EAT to make an order restricting the Appellant's ability to communicate with the EAT by email. I have ultimately decided not to impose such an order at this stage given the available evidence concerning the Appellant's mental health and that some of his recent correspondence contains apologies and a degree of insight that he has corresponded excessively. That gives hope that he will be able to moderate his approach. I wish to make very clear that if the Appellant continues to communicate in the manner as he has done hitherto, the EAT will consider exercising its powers to restrict such communication in order to further the overriding objective. This could, for example, require him to communicate and file documents only by post. Such an order would not prevent participation in the appeal, but would regulate the manner of communication with the aim of reducing the burden on the Tribunal's resources. It is to be hoped that this warning will render such an order unnecessary.

Conclusion

170. I find that there are reasonable grounds for bringing this appeal in respect of one ground of appeal: that identified by HHJ Tayler at §3.1 of the reasons attached to the January Order (see paragraph 54 above). Any other grounds that form part of the notice of appeal are dismissed. The Appellant's application to resile from the position he adopted at the preliminary hearing and pursue the further ground identified at §3.2 of HHJ Tayler's reasons is also dismissed.