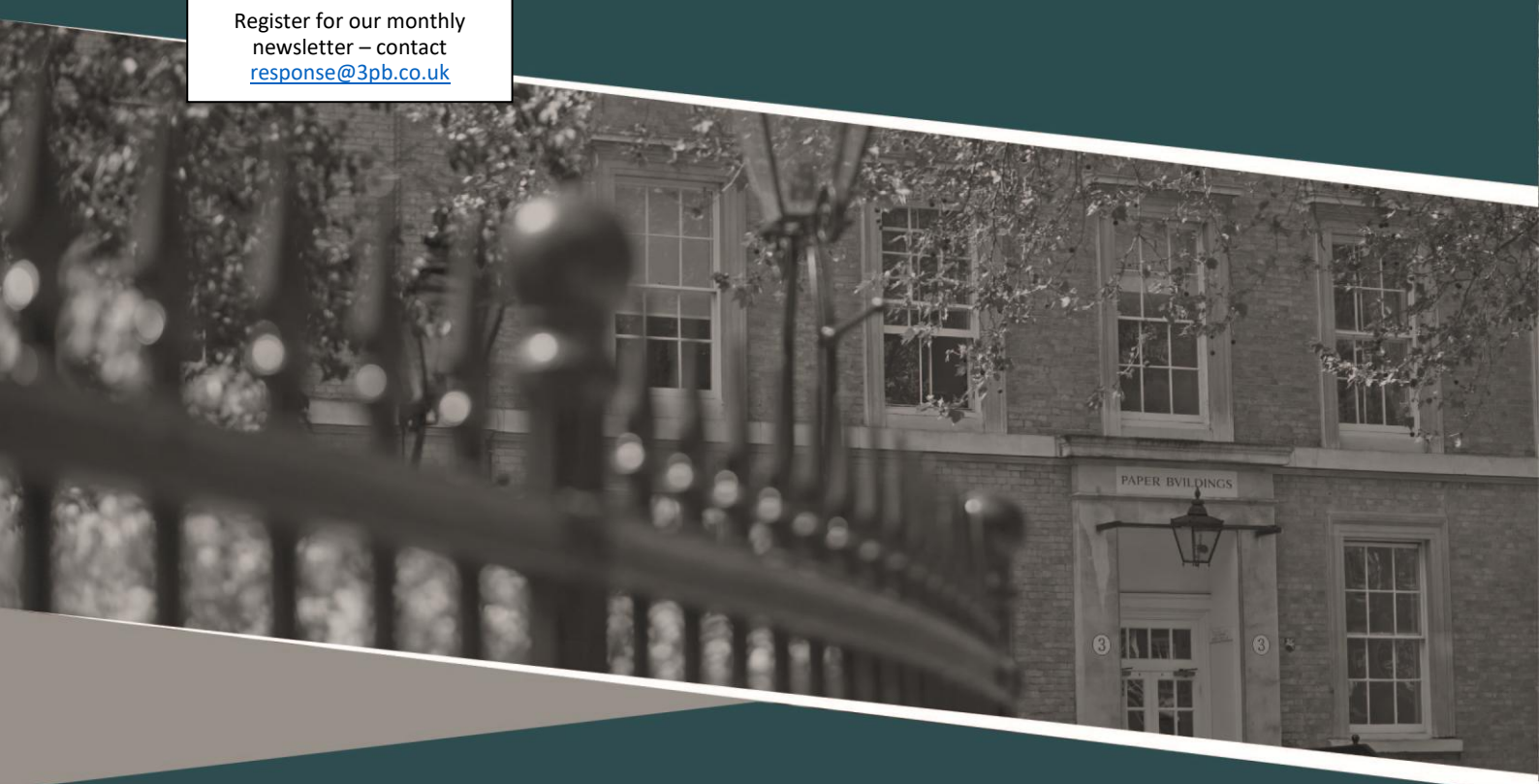


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EAT Guidance on the Use of Artificial Intelligence by Litigants in Person

30 September 2026

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EAT Guidance on the Use of Artificial Intelligence by Litigants in Person

By Sarah Bowen
3PB Barristers

[*Mr. T. Hancox v Kenneth Sutherland & Others* \[2026\] EAT 139](#)

Introduction

1. There has been a dramatic increase in the use of Artificial Intelligence ('AI') by both legally represented parties and unrepresented Litigants in Person ('LiP') in litigation.
2. When used effectively (including by LiPs), there are many benefits to the use of AI. It can enable access to justice for those who cannot secure legal representation. In **Ayinde**, Dame Victoria Sharp President of the King's Bench Division, stated: "*Artificial intelligence is likely to have a continuing and important role in the conduct of litigation in the future.*"¹
3. The [Joint Presidential Guidance: Applications for Interim Relief \(26 June 2026\) \('PG'\)](#), specifically refers to the use of AI² and includes the following observation:

"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."

4. It is noted that the PG does not appear to distinguish between legally represented and unrepresented LiPs.
5. Judges are alert to the risks of using AI to generate documents submitted to the Tribunal. [Artificial Intelligence \(AI\) Guidance for Judicial Office Holders](#) was published on 31 October

¹ per Dame Victoria Sharp P at para 4 of [R \(Ayinde\) v London Borough of Haringey](#) [2025] 1 WLR 5147

² PG, paras 4 and 29.

2025. Section VI “Be aware that court/tribunal users may have used AI tools”, includes the following statement:

“...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...” (Guidance, p.6)

6. This is not just an issue for unrepresented litigants. There have been well publicised occasions where AI has been found not to have been deployed appropriately by legal representatives in litigation.³ In response to those issues, the BSB and SRA issued guidance. The consequences for regulated practitioners are potentially serious and severe if they do not act in accordance with their professional obligations.
7. On the other hand, LiPs do not usually have a relevant code of conduct, professional obligation or regulator (unless perhaps as a result of their own profession etc.). The aforementioned Guidance for Judges acknowledges that they may not appreciate the risks of using AI to draft documents for presentation to the Court or Tribunal. It also states that they are responsible for what they submit. The question has been therefore what responsibilities do LiPs have when using AI? In *Mr. T. Hancox v Kenneth Sutherland & Others* [2026] EAT 139, HHJ Pilgerstorfer KC addresses this in detail in the context of EAT proceedings.

Mr. T. Hancox v Kenneth Sutherland & others [2026] EAT 139

The relevant facts

8. The background is that H’s claims against 4 individual Respondents were struck out by the ET on the grounds that H had conducted proceedings in a scandalous, unreasonable and vexatious manner by conducting a social media campaign on LinkedIn, and that a fair trial no longer possible. H appealed to the EAT and an inter parties preliminary hearing was listed to assess whether H had a reasonable basis for bringing the appeal.

³ Ayinde also Hancox para 24 footnote 8 identifies and summarises some recent examples.

9. In advance of that preliminary hearing, H submitted a 300-page skeleton argument (containing almost 132,000 words) to the EAT which had been created using ChatGPT and did not comply with the Practice Direction of the EAT 2024 ('PD').

10. In the covering email, dated 27 July 2026, H 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...." (para 83)

11. The judgment notes that H also submitted numerous applications and engaged in excessive correspondence with the EAT which is summarised as follows:

*"...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...**"⁴ (emphasis added)*

The guidance: complying with procedure/rules

12. In paragraphs 7-21 of the judgment the EAT considered the procedural requirements of the EAT. This included extensive reference to the PD.

13. In terms of the procedural requirements, the following may be distilled:

⁴ para 4, Hancox v Sutherland & Others [2026] EAT 139

- 13.1. The EAT Rules and PD apply to all litigants whether they are represented or not and it is reasonable to expect LiPs to familiarise themselves with the EAT rules and PD (para 7&8).
- 13.2. The EAT has wide powers to regulate its own procedure, give directions, debar a party, strike out and make costs orders (para 12).
- 13.3. In relation to litigants in person and adjustments for disability:
 - 13.3.1. A LiP is expected to comply with directions and ensure appeals are ready for hearing (para 13). The PD informs litigants that cases before the EAT should receive a fair share of resources, they are expected to co-operate and *“the stress of bringing an appeal is not generally an excuse for failing to cooperate...”* (para 13).
 - 13.3.2. The EAT is familiar with making adjustments to its procedure to accommodate the needs of disabled persons. What is reasonable must be tailored to the individual person. If a proposed adjustment would significantly affect another party or the efficient operation of the EAT, closer scrutiny may be required, which may include its likely effectiveness, reasonableness and the evidential basis for it (para 14).
- 13.4. The aim of a skeleton argument should be assisting the EAT (para 16). PD 11.6 sets out the requirement for skeleton arguments for a full hearing or preliminary hearing and compliance is mandatory including for a LiP (para 19).

The guidance: Using AI in EAT litigation

- 14. In terms of the use of AI, the following guidance was provided (paras 22-37):
 - 14.1. AI is being used to help prepare notices of appeal, skeleton arguments and correspondence in EAT proceedings (para 22).
 - 14.2. There is a potential benefit to the use of AI when used effectively, responsibly and ethically. However, there are also risks that the content is unfocused, excessive, irrelevant; does not comply with procedural requirements; is the product of inadequate/inaccurate input material or poor prompting; is misleading factually, evidentially and/or legally; raises new points on appeal not raised at first instance; is affected by in-build biases; or contains hallucinations (para 23).

- 14.3. The same risks to the administration of justice arise where a LiP uses generative AI in the course of litigation (as when regulated professionals use it) (para 27).
- 14.4. The potential risks in the use of generative AI are now widely known and there is no principled reason why a litigant in person should not take reasonable steps to use it responsibly; the underlying principles of personal responsibility and accuracy apply to all persons who submit documents to a court or tribunal (para 31).
- 14.5. Litigants who use AI should ensure the following as a minimum in relation to any documents submitted:
- 14.5.1. That they comply with the procedural rules;
- 14.5.2. They have been checked as thoroughly as the litigant is reasonably able for accuracy (factually, evidentially and legally) including reference to case law and to ensure the court or tribunal is not misled;
- 14.5.3. Are relevant, focusing on the central or best arguments, comprehensible and avoid repetition. (para 32)
- 14.6. The EAT has emphasised that the following is not acceptable:
- “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.” (para 33)*
- 14.7. Any document produced by AI must be checked to ensure it does not include arguments that were not raised at first instance or that new points are clearly identified and any applications comply with the PD (para 34).
- 14.8. Generally, AI is not prohibited for tasks such as preparing skeleton arguments. ALL litigants must take personal responsibility for any document submitted to the Tribunal which must be carefully checked in the ways identified by the EAT in this decision, *“as thoroughly as the author is reasonably able”* (para 37).

Comment

15. A copy of the EAT's decision can be found online: [Mr T Hancox v Kenneth Sutherland and Others: \[2026\] EAT 139 - GOV.UK](#)
16. This is likely to be a developing area as AI assisted litigation continues to make its way through the Tribunal system. However, these points may assist represented parties in managing LiPs where they consider AI use is excessive and/or not compliant with the above requirements. In addition, this case should assist LiPs to understand the requirements on them in EAT litigation when using AI to assist them.
17. Regarding the EAT's guidance relating to the onus not being on an opponent to check the document for accuracy; this is particularly helpful for practitioners who receive a large volume of documents and extensive references to caselaw and/or other legal references very close to a hearing. However, practitioners should also consider the BSB and SRA guidance when deciding how to deal with such matters.
18. As to the consequences for a LiP of not acting in accordance with this guidance – the summary of sanctions may be considered in appropriate cases (paras 35-36). Some will be specific to legal representatives e.g. reference to regulator/wasted costs but others may potentially be applied to any litigant. The PD also sets out sanctions.
19. This decision is made in the context of EAT proceedings. However, it may be possible to rely on this guidance before the Employment Tribunal where similar issues arise. It will be interesting to see how the ET approaches such matters in due course.
20. In relation to excessive correspondence the EAT found that H had corresponded with the EAT "*excessively and disproportionately*" (para 164). It stated that extensive repetitive correspondence imposes a burden on the EAT's administrative and judicial resources, increases costs for parties and runs contrary to the overriding objective (para 164). H raised that his mental health affected his correspondence and the EAT accepted that this was at least in part the case. It stated that the EAT was still permitted to take reasonable and proportionate steps to ensure that the overriding objective is furthered and that it is not only H's interests that need to be considered but the other parties' interests and the Tribunal's resources (para 166). PD 1.9.2 deals with offensive and abusive communications and covers excessive correspondence per PD 1.9.2(c). The EAT has the power to make an order restricting an appellant's ability to communicate with the EAT by email, but decided not to do so in this case (para 169).

21. Practitioners may also find the following to be of interest in considering AI in litigation: [Civil Justice Council: Use of AI for Preparing Court Documents Interim Report and Consultation](#):

21.1. The focus of the consultation is use of AI by legal representatives (it has also expanded to experts). It is firmly related to civil justice. The final report is anticipated at the end of 2026. It opines that another consultation may be appropriate for LiPs at paragraph 2.22:

“Any regulation of the use of AI by LiPs presents a particularly difficult challenge, owing to its potential to assist with access to justice and thus the undesirability as a matter of policy of discouraging its use as well as the lack of regulatory framework to govern the conduct of LiPs. It is inevitable that LiPs will use AI to produce court documents and that many may do so without appreciating the risks involved or intending to mislead the court. It may be that requiring a declaration on such documents as to the use of AI would at least alert the court to the possibility that the material being presented may be inaccurate or fictitious (albeit the requirement for a declaration might of course be ignored). But we express no concluded view on this now. The CJC may wish to consider whether a further report on this topic would be worthwhile.”

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