

A hard line on extensions of time in unfair dismissal cases

By [Matthew Curtis](#)

3PB Barristers

Cygnets Behavioural Health Ltd v Britton [2022] EAT 18

Summary

1. The EAT provides a reminder of the strict test for extensions of time in unfair dismissal cases (the 'not reasonably practicable' extension). Of note:
 - a. The EAT focussed on what the Claimant was able to do during the limitation period (rather than what he had difficulty doing) when finding that it would have been reasonably practicable to present his claim in time.
 - b. The EAT stated that the fact the Claimant was being investigated by his professional body was not a good reason to delay bringing an ET claim.

The Facts

2. The Claimant presented his unfair dismissal claim 62 days after the primary time limit expired. The ET gave him an extension of time, finding that it had not been 'reasonably practicable' to present the claim within the primary time limit, and that it was presented within a reasonable period after the primary time limit expired.
3. The reasons for the delay in presenting the claim were:
 - a. The Claimant's dyslexia (which contributed to his lack of knowledge about time limits)
 - b. The Claimant's depression (which also contributed to lack of knowledge)
 - c. The Claimant being investigated by a Fitness to Practice committee (he was a physiotherapist), which consumed much of his time (his evidence to the tribunal was

that he wrote lengthy letters to the FTP committee, which took up to 10-12 hours at a time to write)

4. The Claimant said that he was ignorant of the time limit and found it difficult to research due to his dyslexia. He had spoken to a friend about a potential claim, but not expressly asked about a time limit. He also spoke to ACAS on two occasions; the second time was near the end of the limitation period and the Claimant asked when he should present his claim. He was told that ACAS could not comment on the specific time limits but *“the sooner the better”*.
5. There was no medical evidence presented to the ET, but the Claimant was a compelling and credible witness and the ET believed all that he said.
6. Based on the above, the ET found that the Claimant was reasonably ignorant of the time limit, and that it was not reasonably practicable to have presented his claim in time. The ET found that the claim was presented within a reasonable time thereafter as:
 - a. The Claimant remained ignorant of the time limits. The Claimant had reasonably believed that the time limits were likely to be similar to the time limits in the NHS (6-8 weeks) and that this ran from the time that he opened the email containing the ACAS certificate.
 - b. The Claimant did not turn his attention to the ET claim until the FTP investigation matters had concluded.
7. The factual findings were not challenged on appeal: the EAT accepted that the Claimant suffered with depression and dyslexia, that he was under investigation by the FTP committee which was consuming a large amount of his time and effort, and that he was ignorant of the time limit.
8. The appeal was on the basis of perversity: that no ET in possession of these facts could have found that it was not reasonably practicable to present the claim in time.

Key point - Compelling evidence was not properly weighed by the ET

9. The EAT placed significant weight on the things the Claimant was able to do during the limitation period, including:
 - a. Appealing against his dismissal

- b. Contacting ACAS to commence early conciliation
 - c. Completing early conciliation
 - d. Working as a locum in a new job
 - e. Moving house
 - f. Engaging in the fitness to practice proceedings, including in detailed correspondence
 - g. Discussing his potential ET claim with a former colleague
 - h. Asking ACAS what the time limit was near the end of the primary limitation period
 - i. Asking ACAS how he could go about starting a claim
10. Given that the Claimant was able to do all of these things, the EAT found that it “*flies in the face of reason*” for the ET to find that the Claimant was not able to ask someone what the primary time limit was [56]
11. The ET also found that it made no sense for the ET to find that the Claimant could not have researched the time limit on the internet, or asked a friend. The EAT described internet research as “*typing a short sentence into a search engine*”, which “*would be the work of a moment*” [56], [58]. Although the Claimant was suffering with depression and dyslexia, this does not give an automatic ‘pass’ to satisfy the ‘not reasonably practicable’ test.

Other interesting points of detail

- i) Claimants have a responsibility to appraise themselves of the time limits
12. In case there was any doubt the EAT expressly stated that a potential claimant who is considering bringing a claim is expected to appraise themselves of the applicable time limits, and they have a responsibility to do so [53]
- ii) Some of the old case law is worded in a way which is a little too generous to Claimants

13. The observation of Lord Denning in *Walls Meat Co Ltd v Khan* that the test is simply to ask “*had the man just cause or excuse for not presenting his complaint within the prescribed time*” does not accurately reflect the statutory test [26].
14. Any suggestion in *Dedman v British Building & Engineering Appliances Ltd.* that the statutory test should be given a liberal construction in favour of the employee, is wrong [27].
- iii) Medical evidence is not necessary or essential to prove reasons for the delay.
15. The EAT said that “*While it is better to have medical evidence of [mental health difficulties and dyslexia], rather than to rely on the say-so of a claimant who has an obvious self-interest in emphasising these matters, there is no rule of law that there must be medical evidence in every case*”
- iv) Depression or dyslexia do not automatically satisfy the ‘not reasonably practicable’ test
16. The EAT pointed out that suffering with a condition which causes difficulty in presenting a claim doesn’t automatically meet the ‘not reasonably practicable’ standard.

“the fact that a claimant has suffered from depression and the fact that a claimant is dyslexic does not mean automatically that it is not reasonably practicable for him to be able to claim during the primarily limitation period, and in particular, that it was not reasonably practicable for him to be aware of the time limits”

Conclusion/points to note going forward

17. Respondents will want to encourage tribunals to focus on what a claimant was able to do during the limitation period. This doesn’t come naturally to employment lawyers, as we’re used to the test for disability which expressly pushes away from focussing on what someone could do and instead focusses on what they cannot do, or what they struggle to do.
18. Respondents will be buoyed by the EAT’s reminder that prospective claimants have an obligation to research time limits, as well as the indication that finding out time limits on

the internet is pretty easy – all a claimant need to is “*type a short sentence into a search engine*” [56].

19. Those claimants who rely on other pressures in their life (moving house, investigation by their professional body etc) will find little sympathy from the EAT (and, in future, from the ET). As the EAT states: “*just as with an internal appeal, the fact that a FTP investigation was underway is no reason or justification to refrain from bringing a claim or at least to ask someone what the time limits are*”

20. Claimants would be well advised to stick to the time limits unless they are incapacitated. The existence of other pressures competing for a Claimant’s time (even career-threatening investigations by a professional regulator) are not good enough excuses for missing the unfair dismissal time limit.

This document is not intended to constitute and should not be used as a substitute for legal advice on any specific matter. No liability for the accuracy of the content of this document, or the consequences of relying on it, is assumed by the author. If you seek further information, please contact the [3PB clerking team](#).

6 September 2022



Matthew Curtis

Barrister
3PB Barristers

01865 793736
matthew.curtis@3pb.co.uk

3pb.co.uk