

SUMMARY NOTE ON CASE LAW ON EXTENSION OF TIME FOR SUBMITTING ET1s

Claim Type & Test.	Case	Points Established
<p><u>Unfair Dismissal: The not reasonably practicable test:</u></p> <p>A claim for unfair dismissal usually has to be presented to a tribunal before the end of a three month period starting with the effective date of termination.</p> <p>However, if the tribunal finds that it was not reasonably practicable for the claimant to present the claim in time, it will then consider whether the claim was nevertheless presented "within such further period as the tribunal considers reasonable", and if so will extend the time limit to accept the claim late.</p> <p>What is a 'reasonable period' for these purposes will depend on the circumstances of each case and is for the tribunal to decide.</p> <p>Factors taken into account will vary but may include:</p>	<p><i>Marks & Spencer plc v Williams-Ryan [2005]</i> <i>EWCA Civ 470</i></p>	<p>Principles established:</p> <ul style="list-style-type: none"> - Section 111(2) of the ERA 1996 (which governs the time periods for which a tribunal claim should be brought) should be given a liberal interpretation in favour of the employee. - Regard should be had to what the employee knew about the right to complain to a tribunal and the time limits for doing so. - Regard should be had as to what knowledge the employee should have had, had they acted reasonably in the circumstances. An employee's awareness of their right to complain to a tribunal does not automatically prevent a finding that their ignorance of the time limits was reasonable, but it would make it <i>harder</i> for that employee to prove that not knowing the time limits was reasonable. - Failure to meet a time limit because of a solicitor's negligence does not allow the claimant to argue that it was not reasonably practicable to submit the claim in time. <p>Specific case facts:</p> <p>The claimant was sent a letter from her employer which referred to her right to bring a tribunal claim but didn't advise her of the deadline.</p> <p>The Court of Appeal held that the letter was at least capable of misleading the employee into thinking that any claim could be left until after the internal appeal. The tribunal found that her ignorance was reasonable and the Court of Appeal refused to interfere with this finding.</p>

<ul style="list-style-type: none"> - The manner of & reason for dismissal - Whether the employer's internal conciliation procedure had been used - The substantial cause of failure to comply with the time limit 	'Reasonable ignorance'	
	<p><i>Andrews v Kings College Hospital NHS Foundation Trust and another</i> UKEAT/0614/11</p>	<p>It was not reasonably practicable for the employee to bring a claim within the relevant time period where the employer's head of payroll and pension services had <u>incorrectly informed her</u> that the time limit was six months and not three months.</p> <p>It was obvious that the employee had relied on the information provided and was not at fault in doing so.</p>
	<p><i>John Lewis Partnership v Charman</i> UKEAT/0079/11</p>	<p>A 'young and inexperienced' 20-year-old who knew nothing about unfair dismissal rights or employment tribunals was 'reasonably ignorant' of the deadline. It was reasonable for him to not explore his legal position until after he found out the outcome of his internal appeal.</p>
<ul style="list-style-type: none"> - Whether there was a physical impediment – e.g. illness or a postal strike - Whether and when the claimant knew of their rights - Whether the employer had misrepresented anything relevant to the claimant - Whether the claimant had been advised by anyone and the nature of advice - Whether there was any substantial fault on the part of the claimant or their adviser 	'Unreasonable' ignorance	
	<p><i>Biggs v Somerset County Council [1996] ICR 364</i></p>	<p>A teacher was unaware of the possibility of bringing her claim following a change in the law.</p> <p>The Court of Appeal held it was reasonably practicable to have brought the claim in time, on the basis that it would be contrary to the principle of legal certainty to allow limitation periods to be circumvented because the law at the time had not yet been explained or fully understood.</p>
	<p><i>Porter v Bandridge Ltd [1978] ICR 943</i></p>	<p>Even though the claimant did not know of their right to bring a claim, they ought to have known and it was therefore reasonably practicable to have brought the claim in time.</p> <p>The facts of this case were that the claimant was dismissed following an accusation by his employer that he had stolen company equipment. He was charged with theft and did not file a claim for unfair dismissal until after he had been acquitted of the criminal charges, 11 months later.</p> <p>The Court of Appeal were disappointed with the lack of reasoning disclosed in either judgment of the two lower courts for not allowing the claim to proceed, but in any case, refused to interfere with the decision. In his judgement Waller L.J reflected on the fact that an innocent man dismissed due to a false theft accusation, would 'wish to establish as soon as possible that what was really only a technical mistake was not dishonest' and that he 'would wish to take steps against his employer to show that'..</p>
Tech issues & problems with online submission		

	<p><i>Fishley v Working Men's College</i> UKEAT/0485/04</p>	<p>Last minute tech issues are unlikely to persuade a tribunal that it was not reasonably practicable to submit in time – the tribunal will query why it was left to the last minute - <i>"it is the common experience of anyone who has tried to operate a computer, a printer, or a fax machine, that they are temperamental creatures and one cannot rely on success first time within a few minutes."</i></p>
	<p><i>Beasley v National Grid Electricity Transmissions</i> UKEAT/0626/06</p>	<p>If the tribunal determines that the claim <i>could</i> have been submitted in time, they will not be interested whether it was only a minute, or a month late:</p> <p>The claimant submitted his claim by email at 11:44 on the last day but mistyped the email address. He then re-sent at midnight – and the form was received by the tribunal 88 seconds later. The EAT upheld the tribunal's decision that it had been reasonably practicable for the claim to have been submitted on time.</p>
	<p><i>Tyne & Wear Autistic Society v Smith</i> UKEAT/0652/04</p>	<p>Late presentation of an online form was accepted because, on the facts, 'the claimant did not have control over the operation of the online system'.</p> <p>The respondent received confirmation from the web host that his form had been successfully submitted, but he received no acknowledgment of his application from the tribunal so submitted another form two weeks later – this being received 16 days out of time. The first complaint was held to have been presented in time on the basis that receipt by the web host, who transferred the applications to the central and regional offices, amounted to receipt by the tribunal.</p>
	<p><i>Wall's Meat Co Ltd v Khan [1979] ICR 52</i></p>	<p>Impediments to presenting a claim in time may be physical (e.g. illness or postal strike) or mental, namely ignorance or mistaken belief about essential matters. However, these mental impediments can only be regarded as making it not reasonably practicable to present a claim in time if the ignorance or mistaken belief was itself reasonable</p>

Early conciliation issues	
<i>Cohen v Mahmood</i> [2023] EAT 144	<p>Ms Cohen entered the wrong EC number on her ET1. She rectified it as soon as it was brought to her attention, but by this point the limitation period had expired.</p> <p>The tribunal accepted the claim and the EAT dismissed an appeal against this by the respondent.</p> <p>The tribunal found that, Ms Cohen had made a genuine and unintentional mistake and in being unaware of this was under the false impression that her claim had been validly submitted. In light of this it had not been reasonably practicable for her to present the original ET1 in time.</p>
<i>Labongo Alum v Thames Reach Charity</i> [2022] EAT 8	<p>The claimant presented her claim in time but with the EC number missing. The claimant posted her claim again with the EC number included, but it was not received by the tribunal until after the time limit had expired.</p> <p>The claimant had been moving house which the tribunal accepted was 'time consuming and stressful' but did not explain what impact this would have had on her ability to submit on time, given it only lacked the EC number.</p> <p>On appeal to the EAT, the claimant tried to argue that her dyslexia could have played a part in not including the EC number. However, since there was no good reason why this could not have been argued at first instance the EAT held that it could not be argued on appeal, and the tribunal's reasoning could not otherwise be faulted.</p>
Illness	
<i>Cygnets Behavioural Health Ltd v Britton</i> [2022] EAT 108	<p>"A person who is considering bringing a claim for unfair dismissal is expected to appraise themselves of the time limits that apply; it is their responsibility to do so." (Paragraph 53.)</p> <p>In spite of his dyslexia and mental health issues, the claimant had been able to do many things during the relevant time period – there was no explanation as to why he had not been able to establish the time limit for submitting his claim.</p>

		Having an illness or medical condition during the relevant time will not by itself mean that an employee was reasonably prevented from presenting their claim in time or that the employee's condition meant that ignorance of the relevant time limit was reasonable.
	<i>Asda Stores Ltd v Kauser UKEA/0165/07</i>	Stress due to a police investigation was not comparable to illness or incapacity so as to make it not reasonably practicable for a claimant to bring their claim in time.
	<i>Wright v Allied Vehicles Ltd ET/4108387/21</i>	Claimant brought proceedings on behalf of her deceased husband – the tribunal found that it was not reasonably practicable for her to have brought the claim in time in circumstances where her husband was suddenly ill with cancer with a rapid deterioration until his death. The claimant was also not aware of the time limits, and the tribunal took both these circumstances into consideration and allowed the claim to proceed.
Advisers at fault		
	<i>London International College v Sen [1992] IRLR 292</i>	A tribunal employee is not an adviser – an error on their part should not be attributed to the claimant.
	<i>DHL Supply Chain Ltd v Fazackerley UKEAT/0019/18</i>	The employee had been dismissed and advised (incorrectly) by ACAS that, prior to considering any other form of action, including tribunal proceedings, he should first exhaust an internal appeal process. In these circumstances the tribunal considered it had not been reasonably practicable for the claimant to present the claim in time, but it was acknowledged that another tribunal may not take the same view.
	<i>Dedman v British Building and Engineering Appliances Ltd</i>	Where a claimant's skilled advisers are at fault – the tribunal usually considers it was reasonably practicable for the claim to have been presented in time.

	<p><i>Northamptonshire County Council v Entwistle</i> <i>UKEAT/0540/09</i></p>	<p>The Council had incorrectly advised the claimant on the time limits for a claim, and this error was not spotted by the claimant's solicitors, who presented the claim two weeks late.</p> <p>The EAT overturned the original decision that it had not been reasonably practicable to submit the claim on time. They held that, in this case, the solicitor's error was negligent and that it had been reasonably practicable to submit the claim on time – the claimant's claim now being one of negligence against his solicitors.</p>
<p>Unskilled advisers</p>		
	<p><i>Benjamin-Cole v Great Ormond Street Hospital for Sick Children Trust</i> <i>UKEAT0356/09</i></p>	<p>An example of a claim where it is recognised that if a claimant is assisted by an adviser who might be described as 'unskilled', i.e. they do not have legal training or qualifications, it may not be reasonably practicable for them to submit the claim in time.</p> <p>In this case, the EAT found that the employment tribunal had been wrong to lay the faults of the adviser, who was an experienced but not legal qualified charity volunteer, at the door of the claimant.</p>
<p>New information after expiry of time limit</p>		
	<p><i>Cambridge and Peterborough Foundation NHS Trust v Crouchman</i> <i>UKEAT/0108/09</i></p>	<p>This case brought together the relevant case law to outline the principles relevant to a case where new information is discovered after the expiry of the time limit:</p> <ul style="list-style-type: none"> - Ignorance of a fact which is "crucial" or "fundamental" to a claim will in principle make it impracticable for a claimant to present that claim (<i>Churchill v A Yeates & Sons Ltd [1983] IRLR 187</i>) - A fact is crucial or fundamental if the claimant's state of mind genuinely changes from one where they do not believe they have ground for a claim to one where they do. (<i>Machine Tool Industry Research Association v Simpson [1988] IRLR 212</i>) - Ignorance of the fact in question will only make it "not reasonably practicable" to present the claim if first the ignorance is reasonable and second the change of belief in the light of the new knowledge is also reasonable.

		<ul style="list-style-type: none"> - Whether or not the new information is genuinely true is not relevant – what matters is whether it genuinely and reasonably produces a change in belief (<i>Machine Tool</i>) - The test must be applied to each "head of unfair dismissal upon which a complaint or complaints is or are founded" (Marley). - Where it was not reasonably practicable to bring a claim under a head of unfair dismissal (provided it is brought within a reasonable time once the relevant fact is known) the claim can proceed.
	Commercial interests	
	<i>Birmingham Optical Group plc v Johnson</i> [1995] ICR 459	Claimant was re-employed by his employer as a consultant shortly after dismissal and was anxious not to risk the arrangement with an unfair dismissal claim. The EAT held that convenience and commercial interests could not by themselves result in it not being practicable to bring the claim within the time limits.
	Internal appeals	
	<i>Palmer and another v Southend on Sea Borough Council</i> [1984] IRLR 119	The fact an employee is pursuing an internal appeal does not itself suggest that it is not reasonably practicable to submit the claim on time, even if that means submitting before the internal appeal has concluded.
<u>Discrimination: The 'just and equitable' test:</u> The tribunal has the discretion to accept a claim presented outside of the time limit if it was presented within "such other	<i>Berry v Ravensbourne National Health Service Trust</i> [1993] ICR 871	It was considered appropriate to extend the time limit where a claim of race discrimination was additional to and overlapped with an existing unfair dismissal complaint which was made in time but had not yet been heard.
	<i>London Borough of Southwark v Afolabi</i> [2003] IRLR 220	It was considered appropriate to extend the time limit in a matter where there <u>was a late discovery (after nine years) of the evidence</u> which led to a race discrimination claim

<p>period as it considers just and equitable."</p>	<p><i>Chohan v Derby Law Centre [2004] IRLR 685</i></p>	<p>It was considered appropriate to extend the time limit for a claimant who argued that the delay was caused by incorrect legal advice and because she had been awaiting a decision by the Office for the Supervision of Solicitors regarding the termination of her trainee contract.</p>
	<p><i>Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640;</i></p>	<p>It was considered appropriate to extend the time limit where the employee was off sick for an extended period with depression and during the period prior to her dismissal, was having to deal with periodic meetings to review her absence from work because of sickness. The employee was also awaiting the outcome of a grievance process and hoped that an amicable resolution was possible. The tribunal also took into account that the employer had played a significant part in the delay in dealing with its own processes.</p>
	<p><i>Bozeat-Manzi v Telefonica UK Ltd UKEAT/0389/12</i></p>	<p>It was considered appropriate to extend the time limit where a claimant was too ill owing to clinical depression to run the proceedings or attend the hearing, and the ET1 was only one day late.</p>
	<p><i>Wells Cathedral School Ltd v Souter [2021] 7 WLUK 766</i></p>	<p>It was considered appropriate to extend the time limit where the claimants had submitted internal grievances <u>setting out full details of their allegations of discrimination and had waited for the conclusion of the grievance processes</u> before submitting their claims. The EAT held that the grievances meant that <u>no forensic prejudice</u> had been suffered by the respondents in relation to the subsequent claims, which weighed in the claimants' favour.</p>
	<p><i>Apelogun-Gabriels v Lambeth London Borough Council [2002] ICR 713</i></p>	<p>The Court of Appeal made it clear that a delay caused by a claimant awaiting completion of an internal procedure may justify the extension of the time limit <u>but will not automatically do so</u>.</p> <p>A grievance was not considered sufficient justification for an extension of time for example, in <i>Robinson v Post Office [2000] IRLR 804</i>.</p>
	<p><i>Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23</i></p>	<p>It was not considered appropriate to extend the time limit where a claimant, having twice been warned by his legal adviser to bring his claims within the primary time limits, chose to ignore that advice as a result of his alleged misunderstanding of the EC rules</p>
	<p><i>Thorpe v Sainsbury's Supermarket Ltd [2023] EAT 20</i></p>	<p>It was not considered appropriate to extend the time limit where a claimant, who suffered from acute adjustment disorder and acute and transient psychotic disorder following domestic violence, <u>incorrectly submitted a claim form for discrimination and unfair dismissal without an Acas early conciliation number or an explanation of why she did not have one.</u></p>

	<i>Robinson v Post Office</i> [2000] IRLR 804	It was not considered appropriate to extend the time limit where a claimant delayed making a discrimination claim while he pursued an internal disciplinary appeal, as <u>he knew the time limit for bringing a discrimination claim and ignored his union's advice to lodge the claim in time.</u>
	<i>Holbrook v Cosgrove</i> [2023] EAT 168	It was not considered appropriate to extend the time limit for an experienced barrister who had delayed bringing his claim for five months because he was focusing on Bar Standards Board proceedings and had taken account of a non-binding authority in order to initially conclude that his claim was unlikely to be successful.
	<i>Rashad v Chief Constable of Cleveland Police</i> [2026] EAT 1	It was not considered appropriate to extend the time limit where the delay by the police officer claimant in bringing his claim <u>created potential reputational risk to a non-party witness insofar as it related to forensic disadvantage.</u>