EMPLOYMENT TRIBUNALS

Claimant	Mrs Sharon Curtis	
Respondent	Charlton Park Academy	
Heard at	Croydon (by video)	**On** 15 January 2026
Before	Employment Judge Fowell	
Appearances:		
Claimant	Sharon Pankowski, Paralegal, for SAP Legal Services	
Respondent	Michael Magee of counsel, instructed by Judicium Consulting Ltd	

JUDGMENT ON A PRELIMINARY ISSUE

1. The complaints of unfair dismissal and wrongful dismissal are dismissed. They were presented outside the normal time limit and there is no proper basis to extend time; it was reasonably practicable to have submitted those complaints in time.

2. The claims of discrimination on grounds of age and disability can proceed to a final hearing on 19 October 2026. While those claims were also presented outside the normal time limit, having regard to the balance of prejudice it is just and equitable to extend time.

REASONS

1. These written reasons have been provided following oral reasons given at the hearing today. As usual some editing has taken place for the sake of clarity, and here and there some points are expanded, so these written reasons shall stand as the final version.

Background

2. Ms Curtis worked for over 20 years at what is now Charlton Park Academy, a special needs school, helping to care for the children there. That involved giving them personal care and helping them to carry out various activities. In late 2023 an allegation was made that she had made a girl cry by pushing her head with a

closed fist, then a few days later that she kicked a child's legs in the course of getting them out of a wheelchair.

3. These allegations were made by the same member of staff. There was an extensive investigation to see if anyone else had similar concerns, or anything to indicate that this sort of thing went on.

4. Nothing major came to light. One suggested that Ms Curtis might need reminding to talk to the child before wiping their face or moving them in a sling. Another felt that she often had to be reminded to tighten straps. Someone else suggested that agency staff had reported similar concerns about the level of physical contact. That was enough to tip the balance. The investigation concluded that the original allegations were valid. There was then a disciplinary hearing which concluded that they were serious enough to justify dismissal.

5. Mrs Stacy was represented by a trade union representative throughout and appealed the dismissal, largely on the basis that it was one person's word against another, and that the allegations should not have been upheld given the lack of supporting evidence and her long service. In her claim form she also mentioned that she was always under pressure to do personal care quickly and that because of the menopause she was sometimes slower to follow the right procedures for lifting and handling.

6. As well as unfair dismissal therefore Mrs Curtis brings claims of discrimination on grounds of age and disability. For the disability discrimination claim she relies on a number of health conditions in addition to the menopause. One is a long-term heart condition, another is diabetes, and finally she references long-term sleep difficulties.

7. This hearing, however, was arranged to decide whether the claims should be dismissed as out of time. There was a preliminary hearing on 6 November 2025 before Employment Judge Burge, who set out the legal tests and gave directions for the exchange of evidence and submissions at this hearing.

8. The relevant dates are as follows:

a)	The dismissal took place on	15 April 2024
b)	Early conciliation began on	30 September 2024
c)	Early conciliation ended on	2 October 2024
d)	The claim was submitted on	29 October 2024

9. Claims have to be brought within three months of the act in question. The process is begun by contacting ACAS. So, in this case, ACAS should have been contacted by 14 July 2024 (to be within three months of the dismissal).

Alternatively, working back from the date of the claim form, anything before 1 July 2024 (three months before early conciliation) is out of time.

10. It is not suggested here that the appeal decision was an act of discrimination, and even if it were, it would still be outside the normal time limit.

11. So, whether from the point of view of the unfair dismissal claim or the claims of discrimination, there was a delay of about six weeks.

12. To pursue any earlier acts of discrimination Mrs Curtis must prove that it would be just and equitable to extend the normal time limit. (The previous case management order made clear that, for the purposes of this hearing, it would be assumed that events before dismissal were conduct extending over a period, and ending on 15 April 2024. If the respondent disputes that assumption, that will need to be decided at the final hearing.)

13. The test is slightly different for claims under the Employment Rights Act 1996, i.e. for unfair and wrongful dismissal. For these claims, the test is whether:

    a) it was reasonably practicable (i.e. reasonably feasible) for the claim to have been made in time, and

    b) if not, was it then made within a further reasonable period afterwards.

Procedure and evidence

14. I heard evidence from Mrs Curtis, who provided a witness statement. There was also a bundle of just over 200 pages, documenting the disciplinary process. Having considered that evidence and the submissions on each side, I make the following findings.

Findings of Fact

15. The main point made in Mrs Curtis' witness statement is that the blame for the delay lay with her trade union advisor. She stated:

> "4. I contacted ACAS regarding concerns about my treatment at work. However, I relied heavily on my trade union for guidance and support.
>
> 5. My trade union did not advise me of my legal rights or the strict time limits for bringing an employment tribunal claim. They did not guide me on what steps I needed to take.
>
> 6. As a result, I did not understand that I had only a short period in which to bring a claim."

16. She went on to say that at no point was the three-month time limit explained to her. Also, she thought that matters would be resolved internally. And she was suffering with the long term health conditions described above which, she said, made her forgetful and affected her concentration.

17. Mr Magee explored these points with her. Mrs Curtis agreed that she had been represented by Ms Donna Spicer at the disciplinary hearing and that Ms Spicer also helped her draft the appeal letter. She is the Chair of the National School's Committee. In fact, Ms Spicer was involved before the disciplinary hearing, from about 30 November 2023 in fact, when Mrs Curtis was suspended, a period of about six months.

18. More generally, Mrs Curtis knew that she might be dismissed, knew about employment tribunals and knew that she could bring claims for unfair dismissal and discrimination. She discussed all this with Ms Spicer even after the appeal decision. Ms Spicer told her that the next thing to do was to bring an Employment Tribunal claim, that she needed to get an ACAS certificate and that time limits applied – but she did not say what they were and Mrs Curtis did not ask at any time. She only became aware of them when she first rang ACAS, though when she did so is unclear. Mrs Curtis was of the view that the ball was in Ms Spicer's court and she "left it to her".

19. She also accepted that she had a computer and knew how to google things. Pressed about why she did not act sooner, she said that her head was all over the place. However, she also accepted that she had managed at work until her dismissal and had been able to participate fully in the disciplinary process.

Extension of time for claims under the Employment Rights Act 1996

20. In those circumstances, was it reasonably practicable to have submitted the claim on time?

21. In **Palmer and anor v Southend-on-Sea Borough Council** 1984 ICR 372, the Court of Appeal held that this does not mean "reasonable", which would be too favourable to employees, and does not mean "physically possible", which would be too favourable to employers, but something like "reasonably feasible".

22. On the facts just outlined, it seems obvious that it was. Had Mrs Curtis simply asked about the time limit, or googled the answer, she would have known what it was and could have contacted ACAS. It was not just reasonably feasible, it is baffling that months dragged on and that nothing was done. The only plausible explanation here is that Mrs Stacey assumed that Ms Spicer was dealing with it, while Ms Spicer had left it with Mrs Stacey (understandably) to take the necessary steps.

23. However, even if Ms Spicer was at fault, which I do not accept, putting the blame on her is no excuse. Where you have a skilled advisor involved, and they make a mistake, you are bound by it, and your remedy is to sue the advisor for their

negligence. That principle was established by the Court of Appeal in **Dedman v British Building and Engineering Appliances Ltd** 1974 ICR 53.

24. That applies whether the advisor is a solicitor or a trade union representative. It was established as long ago as 1977 that a trade union representative is a skilled advisor for these purposes, in the case of **Times Newspapers Ltd v O'Regan** 1977 IRLR 101.

25. In **Wall's Meat Co Ltd v Khan** 1979 ICR 52 Lord Justice Brandon clarified this principle. He explained that lack of knowledge will not be a reasonable excuse, whether it is the fault of advisers in not giving the employee all the information they should in the circumstances, or whether the employee was at fault in not making enquiries.

26. Hence, I have to conclude that blaming Ms Spicer is not a valid excuse and that it was reasonably practicable to have submitted the claim on time.

27. The other points put forward are about brain fog and general upset. These seem to be very secondary issues, and are in fact undermined by the evidence that Mrs Curtis was leaving it to Ms Spicer. No medical evidence was put forward for this hearing, in fact there are no documents of any sort showing exchanges with Ms Spicer during this period. There is no question that Mrs Curtis was well enough to discuss matters with Ms Spicer, and, to repeat, even if Ms Spicer was to blame for not passing on information about the time limit, Mrs Curtis was herself at fault in not making any enquiries in the circumstances.

Extension of time for claims under the Equality Act 2010

28. Would it be just and equitable to extend time in these circumstances?

29. There have been many cases on this issue. The main recent decision came from the Court of Appeal in **Abertawe Bro Morgannwg University Local Health Board v Morgan** 2018 ICR 1194. Lord Justice Leggatt said that although the relevant factors will vary from case to case, those which are almost always relevant to consider when exercising any discretion whether to extend time are:

    a) the length of and reasons for the delay and

    b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).

30. The Court also emphasised that employment tribunals have the widest possible discretion in this area and that it would be wrong to put a gloss on the words of the provision or to interpret it as if it contained a list of factors.

31. These points were also emphasized more recently by the Court of Appeal in **Adedeji v University Hospitals Birmingham NHS Foundation Trust** 2021 EWCA Civ 23.

32. The main concern here is that there is no cogent explanation for the delay, beyond leaving everything in the hands of Ms Spicer. Again, no medical evidence has been submitted beyond the impact statement. There is nothing to suggest that the dismissal itself affected Mrs Curtis' mental health or to explain how or when it improved sufficiently to contact solicitors.

33. Mr Magee made the point that some of the allegations go back to 2019. And two of those interviewed, important witnesses, have now left, so there is some prejudice to the respondent.

34. Broadly therefore, there is a delay of about six weeks, which is not really explained, and some potential prejudice to the respondent. But in considering what is just and equitable there is always a balance to be struck. On the one hand there is some prejudice to the respondent, on the other, there is the huge consequence for Mrs Curtis in not being able to pursue her claim at all.

35. A similar situation arose in the case of **Rathakrishnan v Pizza Express (Restaurants) Ltd** 2016 ICR 283. In that case Mr Rathakrishnan had worked at the restaurant for 23 years, as a chef. He was dismissed for breaches of food safety procedures. He said that they had failed to make reasonable adjustments for his diabetes. But his claim was presented 17 days late. His said he had been afraid of recriminations while he was working there so he had delayed with the claim. The tribunal did not accept that. And in the absence of any other explanation they concluded that it would not be just and equitable to extend time. The Employment Appeal Tribunal held that they should have taken into account the balance of prejudice between the parties. In short, the lack of a plausible explanation is not enough.

36. In that case, as this - as in almost all cases in fact - the prejudice to the employee was stark, whereas the prejudice to the respondent was modest. Here, the delay is longer (six weeks rather than 17 days) but it is of the same order of magnitude. Two witnesses have left, but the position would be very similar if the claim had been submitted six weeks earlier. They were interviewed as part of the disciplinary process, so there is a record of their views. The allegations do go back to 2019, but a six week delay in that context is minimal, especially as claims usually take two or three years in the tribunal to resolve.

37. Overall therefore, this is a case where Mrs Curtis has mistakenly or through lack of attention, left matters in the hands of her trade union representative, only to find out too late that the onus was on her to commence proceedings. The prejudice to her in dismissing her claims is, in those circumstances, unjustifiably

harsh, given the modest prejudice to the respondent, and so it is just and equitable to extend time for her discrimination claims.

Employment Judge Fowell

Date 15 January 2026

Public access to employment Tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-Tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/