



# EMPLOYMENT TRIBUNALS

**Claimant:** Andrew Smith

**Respondent:** XDP Limited

**Heard at:** Midlands West

**On:** 28 April 2026

**Before:** Employment Judge M Hussain

## REPRESENTATION:

**Claimant:** Litigant in person

**Respondent:** Mr John Brotherton (non-practicing solicitor)

**JUDGMENT** having been sent to the parties on 08 May 2026 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunals Rules of Procedure 2024, the following full reasons are provided:

# REASONS

## Introduction

1. The claimant was employed by the respondent from September 2019 until his dismissal on 3 October 2024. He presented a claim for unfair dismissal to the Employment Tribunal on 6 March 2025.
2. It is common ground that, allowing for the early conciliation extension, the primary limitation period for presenting the claim expired on 5 March 2025. The claim was therefore presented out of time.
3. Following a preliminary hearing on 19 February 2026, Employment Judge Wedderspoon made an unless order. That order required the claimant, by no later than 27 February 2026, to provide to the Tribunal and the respondent:
  - 3.1 a written statement explaining why he issued his tribunal claim on 6 March 2025 and not before, what he knew about employment tribunal claims, the process for making such a claim, and the applicable time limits; and

3.2 any documentary evidence relied upon in support of that explanation.

4. The unless order provided that, in the event of non-compliance, the claimant's claim would be dismissed automatically.
5. The claimant subsequently sent emails to the Tribunal and the respondent attaching documentary material, largely relating to his partner's medical treatment and to family circumstances. The respondent contends that these documents did not amount to compliance with the unless order, as no written witness statement addressing the required matters was provided. On that basis, the respondent applied for the claim to be dismissed.
6. The issues for the Tribunal at this hearing were therefore whether the claimant had complied, or materially complied, with the unless order, and, if jurisdiction remained, whether the Tribunal should extend time for presentation of the unfair dismissal claim.
7. The Tribunal considered whether a non-compliance order should be made arising from the claimant's failure to provide a document formally described as a witness statement. The Tribunal had regard to the terms and purpose of the unless order, which required the claimant to explain why the claim was presented out of time, the steps he took to present it, and his knowledge of the tribunal process and time limits. It was accepted that on 26 February 2026 the claimant sent an email attaching documentary material addressing the issue of reasonable practicability, but that he had not included details of his knowledge of proceedings and time limits and did not provide a document that could be described as a witness statement. The respondent submitted that this amounted to non-compliance. The claimant maintained that he understood, as a litigant in person, that the email and attachments satisfied what the Tribunal had ordered, and relied on his personal circumstances and the matters already explored at the earlier hearing.
8. In deciding not to make a non-compliance order, the Tribunal applied the established principles governing unless orders, including that the assessment is one of material rather than technical compliance and should be facilitative rather than punitive. The Tribunal also had regard to the overriding objective, particularly the need to avoid unnecessary formality and to deal with the case proportionately and fairly, bearing in mind the claimant's status as a litigant in person. In summary, the Tribunal concluded that the purpose of the order had been achieved namely, that the claimant had set out, through his written material and prior discussions, the case he intended to advance on timeliness, and the respondent was fully aware of the case it had to meet. The absence of a document formally drafted witness statement did not defeat that purpose. In those circumstances, the Tribunal was satisfied that there had been material compliance and that it would not have been just or proportionate to make a non-compliance order or to apply any sanction.
9. The Tribunal considered the claimant's application for an extension of time under section 111(2)(b) of the Employment Rights Act 1996. The claim was presented out of time by a day.
10. The Tribunal heard evidence under oath from the claimant, a bundle with 121 digital pages and a skeleton argument prepared by the respondent's representative.

11. The claimant's position is that the claim was presented late because of a combination of serious personal and family circumstances at the relevant time. He relies on significant emotional distress, the loss of his employment and home, his own mental health, and the serious health concerns affecting his long-term partner, who is also the primary carer for their disabled child. He says that the time limit slipped his mind during this period, that he was unaware of the precise deadline, and that he believed he had complied with Tribunal orders by providing documentary material explaining his situation.
12. The respondent's position is that the Tribunal has no jurisdiction to hear the claim because it was presented out of time and because it was reasonably practicable for the claimant to have presented it within the statutory time limit. The respondent submits that the claimant was aware that he needed to bring a claim, engaged with Acas, had access to information about the deadline, and was not prevented by illness or incapacity from presenting the ET1 in time.

### **The Legal Framework**

13. Section 111(2)(b) ERA 1996 imposes a two-stage test:

13.1 The claimant must establish that it was not reasonably practicable to present the complaint within the primary three-month time limit.

13.2 If, and only if, that hurdle is cleared, the claimant must then show that the complaint was presented within such further period as the Tribunal considers reasonable.

#### Illness, Mental Health, and Reasonable Practicability

14. Where an employee is prevented from presenting a complaint in time by serious illness or incapacity, a tribunal can find that it was not reasonably practicable for the claim to have been presented within the primary limitation period. However, the mere presence of illness, stress or a medical condition during the relevant period is not, without more, sufficient to establish that it was not reasonably practicable to comply with the statutory time limit, nor does it automatically render ignorance of that limit reasonable.
15. The question is always one of fact for the tribunal. The tribunal must consider the nature, severity, and practical effects of the illness in question, its impact on the claimant's ability to take steps to pursue the claim, and whether the illness genuinely prevented timely presentation rather than merely making it more difficult or less convenient.
16. In *Schultz v Esso Petroleum Co Ltd* [1999] IRLR 488, the Court of Appeal emphasised the importance of examining the claimant's conduct during the entire limitation period and the purpose of that conduct. The claimant had suffered from depression and had pursued an internal appeal during the early part of the three-month period, with the aim of avoiding litigation if possible. In the final six weeks he was too ill to instruct solicitors. The Court held that the tribunal and EAT had erred by focusing narrowly on what was physically possible during part of the period and by failing to consider the claimant's reasonable objective of resolving matters internally. In those circumstances, it had not been reasonably practicable to present the claim in time.
17. By contrast, emotional distress or stress arising from difficult circumstances will not necessarily equate to illness or incapacity of the requisite severity. In *Asda*

Stores Ltd v Kauser UKEAT/0165/07, stress caused by a police investigation was held not to be comparable to illness or incapacity to render it not reasonably practicable for the claimant to bring her claim in time. The EAT made clear that the threshold is not met merely because a claimant experiences anxiety or pressure.

18. Exceptional cases may arise where the claimant's mental health is so profoundly affected that they are unable to enquire into their rights or take procedural steps at all. In *Grabe v United Reformed Church* ET/2204367/12, the tribunal accepted that the claimant's mental health had significantly impaired her cognitive functioning, memory, and ability to perform even basic tasks, including getting out of bed. Medical evidence supported that conclusion. In those circumstances, the tribunal found that it had not been reasonably practicable to present the claim in time and considered the absence of prejudice to the respondent.
19. The authorities make clear that even diagnosed mental health conditions do not, of themselves, establish that it was not reasonably practicable to bring a claim in time. In *Cygnnet Behavioural Health Ltd v Britton* [2022] EAT 108, the EAT held that the tribunal's conclusion that it had not been reasonably practicable for the claimant to present his unfair dismissal claim was perverse. Despite findings that the claimant suffered from depression, anxiety and dyslexia and was involved in regulatory proceedings, the tribunal had also found that during the relevant period he was able to pursue an appeal against dismissal, engage with Acas and early conciliation, work as a locum, move house, participate extensively in professional fitness proceedings, discuss a potential tribunal claim with a colleague, and make enquiries of Acas. Against those findings, the conclusion that he could not ascertain or comply with the time limit was irrational. The EAT observed that it would have been "the work of a moment" to identify the relevant time limit by asking someone or making a simple enquiry, and that depression and dyslexia did not amount to incapacity.
20. The EAT further emphasised in *Cygnnet* that the statutory test for unfair dismissal is materially stricter than the "just and equitable" test applicable in discrimination claims. Honest evidence and sympathetic circumstances are insufficient unless the statutory threshold is met.
21. Drawing these authorities together, illness or mental health difficulties will only render timely presentation not reasonably practicable where they operate as a genuine and material impediment to taking the steps required to present the claim or to ascertain the relevant time limits. Stress, emotional turmoil, competing responsibilities, or a subjective lack of focus, without medical or other cogent evidence demonstrating such an impediment, will not suffice.

#### Ignorance and Reasonable Practicability

22. Ignorance of the existence of a time limit, or mistake as to when it expired, may in some circumstances render it not reasonably practicable to present a claim in time, but only where that ignorance or mistake was itself reasonable. The assessment is fact-sensitive and must be rooted in the evidence before the Tribunal.

23. The authorities establish that ignorance may be reasonable where the claimant is actively or implicitly misled, or where the surrounding circumstances reasonably discourage investigation of time limits. In *Marks & Spencer plc v Williams-Ryan* [2005] EWCA Civ 470, the Court of Appeal upheld a tribunal's finding that a claimant's ignorance was reasonable where an employer's letter referred to tribunal rights but made no reference to any deadline and was capable of misleading the employee into believing that a claim could await the outcome of an internal appeal. Whether such correspondence ought to put an employee on notice to make further enquiries was held to be a question of fact for the tribunal.
24. Reasonable ignorance has also been recognised in cases involving inexperience and lack of any prior exposure to employment tribunal proceedings. In *John Lewis Partnership v Charman* UKEAT/0079/11, the EAT upheld a finding that a young and inexperienced employee was reasonably ignorant of time limits and reasonably delayed enquiring into his legal position until the conclusion of an internal appeal.
25. By contrast, ignorance will not ordinarily be reasonable where a claimant knows, or ought reasonably to know, that a claim may be brought and fails to make enquiries or proceeds on an unfounded assumption. In *Porter v Bandridge Ltd* [1978] ICR 943, the claimant did not in fact know of his right to bring a claim, but it was held that he ought to have known of it, such that it was reasonably practicable to present the claim in time.
26. In *Reed Partnership Ltd v Fraine* UKEAT/0520/10, the claimant presented his claim one day late, wrongly assuming that the time limit ran from the day after dismissal. Although the employment judge permitted the claim to proceed, the EAT overturned that decision. The claimant knew of his right to claim and of the existence of a three-month time limit, had not been misled, and had made no enquiries. His ignorance was therefore not reasonable.
27. The authorities also establish that ignorance is unlikely to be reasonable where information about time limits is readily available and reasonably accessible, and there is no real impediment to enquiry (per *Smith v Pimlico Plumbers Ltd* UKEAT/0211/19 and related appeals).
28. In *Cygnnet Behavioural Health Ltd v Britton* [2022] EAT 108, where the EAT held that the tribunal's finding that it had not been reasonably practicable for the claimant to present his claim was perverse. Despite findings of depression, anxiety and dyslexia, the tribunal had also found that the claimant was able during the relevant period to pursue an appeal, engage with Acas and early conciliation, work as a locum, move house, and engage extensively with regulatory proceedings. Against those findings, it was irrational to conclude that he was unable to ascertain or comply with the time limit. Depression and dyslexia did not of themselves amount to incapacity.
29. The Court of Appeal and the EAT have repeatedly underlined that the test of reasonable practicability in unfair dismissal claims is materially stricter than the "just and equitable" test applicable to discrimination claims. Honest evidence, credibility, and sympathetic circumstances are insufficient unless the statutory threshold is met. The question for the Tribunal is whether the claimant's ignorance of the time limit arose from circumstances which reasonably impeded

enquiry or understanding, or whether it resulted from oversight, inattention, assumption, or a failure to act upon information that was available and reasonably accessible. Only in the former category can ignorance render it not reasonably practicable to present the claim within the statutory time limit.

### **The Evidence**

30. The claimant relied on a combination of personal and family circumstances, emotional distress, mental health difficulties, lack of familiarity with the tribunal system, and ignorance of the precise deadline. He described the relevant period as one in which he had lost his employment, his partner was undergoing serious health concerns, and he was assisting with the care of their disabled son. He said that these factors meant that presenting a tribunal claim was not at the forefront of his mind.
31. The documentary evidence relied upon by the claimant comprised a series of letters and medical documents, the majority of which related to his partner, Ms Holton, rather than to the claimant himself. The Tribunal noted in particular:
  - 31.1 a letter dated 01 March 2025, addressed to Ms Holton, which is four days before the time limit expired.
  - 31.2 The remaining letters relied upon pre-date or post-date the relevant period by weeks or months, including medical letters dated well after the ET1 should have been presented.
32. In his oral evidence, the claimant accepted that the appointment referred to in the letter dated 01 March 2025 took place four days before the expiry of the time limit. He confirmed that he was not working during that period and that he was caring for his partner and their disabled son. He accepted that the appointment itself did not physically prevent him from submitting a claim within the remaining days of the limitation period.
33. The claimant also said that he had delayed presenting the claim because he had been “going back and forth” with the respondent in relation to an internal appeal. However, he accepted in oral evidence that the appeal process had concluded in November 2024, several months before the expiry of the primary limitation period.
34. The claimant accepted that he began the process of presenting the ET1 online on the day before the expiry of the time limit and that he completed and submitted the form shortly after midnight once the deadline had passed.
35. The claimant’s evidence was that he knew he needed to bring a claim and that he contacted Acas for the purposes of early conciliation. He accepted that Acas provided him with information by email which included the relevant deadline. He acknowledged that he did not read that email promptly and that, in his own words, the deadline “slipped [his] mind.”
36. The claimant further accepted that his partner wrote the expiry date of the time limit on a calendar and that a reminder was placed on the fridge at their home. He maintained, however, that at the point when he became aware of the date, it was already too late to submit the claim in time.

### **Findings and Assessment**

23. The Tribunal approached this decision with sympathy for the serious personal and family difficulties described by the claimant. The Tribunal accepted that the relevant period was an extremely challenging and stressful time for the claimant and his family, and that his attention was heavily focused on his partner's health and his caring responsibilities.
24. However, the legal test is not whether the claimant was under pressure or experiencing distress, but whether, viewed objectively and in the round, it was reasonably practicable for him to present the claim within the statutory time limit.
25. The Tribunal found as facts that:
  - 25.1 The claimant knew the facts giving rise to the claim well before the expiry of the primary time limit.
  - 25.2 The claimant knew that a claim could and should be brought and took active steps towards doing so, including contacting Acas.
  - 25.3 The claimant was provided with written information by Acas which included the relevant deadline.
  - 25.5 The claimant had the practical ability to present the claim online and in fact commenced the process before the deadline expired.
  - 25.6 The claimant's circumstances and state of mind did not prevent him from presenting the claim in time.
14. The claimant's primary difficulty was not an inability to act but a failure to prioritise and complete the task in time. His own evidence was that the deadline "slipped [his] mind," that he did not read the Acas email promptly, and that his mental focus was on other pressing matters.
15. Ignorance of the deadline, in these circumstances, was not reasonable. The claimant knew he needed to act, had access to the necessary information, and could reasonably have been expected to read the Acas correspondence and complete the claim form within time.
16. This is not a case where the claimant was misled by Acas or any other official body, nor one where he was unaware of the facts giving rise to the claim. Nor is it a case involving reliance on negligent but reasonable professional advice. While the claimant's explanations were understandable, they did not amount to circumstances which made it not reasonably practicable for him to comply with the time limit. The claimant was aware that action was required, had access to the relevant information, and had reminder prompts within the household. The Tribunal was satisfied that he could reasonably have been expected to read the Acas correspondence and complete the claim form within time.
14. The claimant's failure to comply with the time limit arose from oversight and distraction, not from any external impediment making timely presentation not reasonably practicable.
15. The Tribunal also considered whether the claimant's emotional distress or mental health amounted to an incapacity preventing action. No medical evidence was produced to support the claimant's oral evidence that he was suffering from depression at the time, nor was any evidence, oral or otherwise, presented to demonstrate the impact his mental health had on day-to-day

activities and why that may have prevent him from presenting the claim in time. The claimant maintained that his priority was the wellbeing of his family and that is what he was focused on at the time. The evidence demonstrated that during the relevant period the claimant was able to engage with Acas, pursue steps towards litigation, and begin the online claim process. The Tribunal was therefore not satisfied that his mental state reached the level required to meet the statutory test.

16. The fact that the claim was presented a short time after the expiry of the primary time limit did not alter the outcome. The Tribunal's jurisdiction to extend time is not based on proximity to the deadline, but on whether the statutory criteria are met.

### **Conclusion**

18. The Tribunal was not satisfied that it was not reasonably practicable for the claimant to present the claim within the primary limitation period. The first limb of section 111(2)(b) ERA 1996 is therefore not met.
19. In those circumstances, it was unnecessary to consider the second limb of the test.
20. The application to extend time was refused. The claim was dismissed for want of jurisdiction.

Approved by:

**Employment Judge M Hussain**

**08 May 2026**

### Notes

All judgments apart from those under rule 51 and any written full reasons for judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimant(s) and respondent(s).

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. 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 at [www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/](http://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/)