



Time limits (and their extension) for seeking permission to appeal, and for serving notice of appeal

By Peter Susman QC

In *McDonald v. Rose* [2019] EWCA Civ 4, decided on 15 January 2019, the Court of Appeal has given guidance, from which the main lessons are as follows:

- 1 The effect of the Civil Procedure Rules is that time for appealing runs:
 - 1.1 from the date when the lower court gives its *reasoned decision* there and then; or
 - 1.2 from the date when the lower court gives its *decision* but with *reasons* to follow (a trap for the unwary); or
 - 1.3 if the *decision* is *reserved*, from the date when the lower court hands down the reserved judgment.

- 2 Therefore as regards the lower court giving *permission* to appeal:
 - 2.1 when the lower court gives its reasoned decision there and then, permission should also be sought there and then;
 - 2.2 when the lower court gives its decision with reasons to follow, again permission should also be sought there and then; or if the reasons are to be circulated in draft or final form, an extension of time may be sought for a written reasoned application to be made for permission to appeal within (it is suggested) 14 days from circulation of the draft or final reasons, whichever is sooner;
 - 2.3 when the decision is reserved for later handing down with attendance excused, a written reasoned application for permission to appeal should be

submitted on receipt of the draft and before the date of handing down, so that the ruling on whether to grant permission may be included in the consequential Order; or in an exceptional case, a further (i.e. adjourned) hearing should be sought of the application for permission to appeal.

- 3 In every case where the application for permission to appeal is deferred for any reason, it is essential to apply there and then for an appropriate extension of the 21 day time limit for serving notice of appeal, because that time always starts to run from the date specified in paragraph 1 above. Otherwise the time for serving notice of appeal may expire before the application for permission has been considered. This is the main focus of the Court of Appeal decision. In such a case, the application for a retroactive extension will be treated as an application for relief against sanctions under *Denton v. T.H. White Ltd* [2014] 1 WLR 3926, requiring the applicant to persuade the court that the failure to comply with the Rules was neither serious nor significant, and that it ought to be excused, and that it will not result in injustice to any other party.
- 4 If permission to appeal is refused by the lower court, an application for the appeal court to give permission should be included in the notice of appeal.