

Dispute Resolution
Case Law Update
Rosling King LLP



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The Queen on the application of Dinjan Hysaj v Secretary of State for the Home Department
Reza Fathollahipour v Bahram Aliabadibenisi
Christine May and John Robinson

These three recent Court of Appeal cases consider whether the principles discussed in the decisions of Mitchell and Denton apply to applications for an extension of time to file a Notice of Appeal. In each case the appellants failed to file a notice of appeal within the time prescribed by CPR 52.4 (2), making it necessary to apply for an extension of time.

The main argument was that applications for an extension of time to file a notice of appeal was an application under 3.1(2) (a) and not an application under CPR 3.9 for relief from sanction. This, together with the fact that CPR 52.4(2) imposes no sanction for a failure to file a notice of appeal within the prescribed time, suggested that Mitchell and Denton should not apply. Although the Court had “considerable sympathy” with this argument, it held the authorities were too well established and Mitchell and Denton should be considered on such applications.

R (Hysaj) v SSHD

The appellant wished to appeal against the Secretary of State's decision to declare his British Nationality void. Permission to appeal was granted, but notice of appeal was filed 42 days out of time. It was argued that the delay was caused because the parties were waiting for the Court's decision on the appellant's application for permission to appeal, despite the CPR making it clear that notice should be filed within 21 days from the date of decision to be appealed, not from the date the application to appeal is determined. The Court emphasised that ignorance of the rules is not generally a good reason for delay. However, it held that although the delay was serious in terms of the length of time, it was not significant in terms of the overall proceedings. Accordingly, as there were issues of public importance to be considered an extension of time was granted.

Reza Fathollahipour v Bahram Aliabadibenisi

Here the appellant sought to appeal a costs order nine months out of time. The Court held that although in some cases an applicant may be able to persuade the Court that delay, although substantial, did not have any practical effect on the proceedings, this was not the case here. It noted that one reason for limiting time to file a notice of appeal was to promote finality in litigation. The appellant argued that the reason for the delay was due to the need to find legal representation. On the facts, this was held not to be valid and an extension of time was refused.

Christine May and John Robinson

In this case, the appellant sought to appeal a costs order five and a half years out of time. The Court held that the delay was even longer and the extenuating circumstances even weaker than Aliabadibenisi and decided that the appellant was not entitled to reopen the position after such a significant period of time.

Commentary

These cases confirm that the *Mitchell and Denton* principles will apply to an application for extension of time for filing a notice of appeal under CPR 3.1(2) (a). The fact there is no specific sanction for breach of CPR 52.4(2) is irrelevant. Other points to arise include:

- (1) Public law cases should not be treated any differently to Private law cases and the Court should not construct a special rule for Public Authorities.
- (2) Inability to pay for legal representation or ignorance of the rules is not a good reason for delay.
- (3) The rules and time limits apply equally to Litigants in Person and no special allowances should be made. The mere fact of being unrepresented does not provide a good reason for delay, but will form part of all the circumstances of the case.
- (4) In most cases, the Court should not consider the merits of an appeal when considering the circumstances of the case as to do so will occupy a great deal of time and lead the parties to incurring substantial costs.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.