

NSC Webinar:

Appeals to the Court of Appeal: limitations; procedure; and practice

**Thank you for waiting.
The seminar will start shortly**



Appeals to the Court of Appeal

- **Cawsand Fort Management Co Ltd v Stafford & Ors**
[2007] EWCA Civ 231
- Chadwick LJ
- **Rights of appeal are confirmed by statute. Statute has imposed limitations on those rights; in particular the limitations in section 55(1) and (4) of the Access to Justice Act 1999. Those limitations have been given effect by the rule-making body responsible for the Civil Procedure Rules; . . .**

Appeals to the Court of Appeal

- **Cawsand Fort Management Co Ltd v Stafford & Ors**
[2007] EWCA Civ 231
- Chadwick LJ
- **This . . . is a case in which it may be said that the Court should not, of its own motion, introduce a restriction which Parliament and the rule-making body has not thought necessary or appropriate.**

Appeals to the Court of Appeal

- Section 16(i), Senior Courts Act 1981
- **16.— Appeals from High Court**
- **(1) Subject as otherwise provided by this or any other Act (and in particular to the provision in section 13(2)(a) of the Administration of Justice Act 1969 excluding appeals to the Court of Appeal in cases where leave to appeal from the High Court directly to the Supreme Court is granted under Part II of that Act) or as provided by any order made by the Lord Chancellor under section 56(1) of the Access to Justice Act 1999, the Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of the High Court.**

Appeals to the Court of Appeal

- Section 54(1), Access to Justice Act 1999
- **54.— Permission to appeal**
 - (1) Rules of court may provide that any right of appeal to—**
 - (a) the county court,**
 - (aa) the family court,**
 - (b) the High Court, or**
 - (c) the Court of Appeal,**
 - may be exercised only with permission.**

Appeals to the Court of Appeal

- All courts, as courts of justice, have, inherent in their substantive jurisdiction, powers to enforce their rules of practice and to suppress any abuses of their process and to defeat any attempted thwarting of their process - per Lord Morris in **Connelly v DPP** [1964] AC 1254 at 1301. It is inherent in their constitutional function as courts of justice - per Lord Diplock in **Bremer Vulkan v South India Shipping** [1981] AC 909 at 977D-H.

Appeals to the Court of Appeal

- It has been held that “the inherent jurisdiction of the court can be invoked to make good the want of an express right of appeal”- In re Macro [1996] 1 WLR 145 at 154B-155E , following Woolf J, Ex p Bee-Line Roadways International [1982] Lexis Citation 59; Riniker v University College London [2001] 1 WLR 13 at [10] to [11].

Appeals to the Court of Appeal

- The construction of the CPR requires the application of ordinary canons of construction **Vinos v Marks & Spencer Plc** [2001] 3 All E.R. 784, CA

Appeals to the Court of Appeal

- In matters of practice the Court of Appeal is not bound by its own decisions – see **R (Gourlay) v Parole Board** [2020] UKSC 50; [2020] 1 WLR 5344; **Potanina v Potanin** [2024] UKSC 3

Appeals to the Court of Appeal

- Section 54(3), Access to Justice Act 1999
- **54.— Permission to appeal**
- **(3) For the purposes of subsection (1) rules of court may make provision as to—**
 - (a) the classes of case in which a right of appeal may be exercised only with permission,
 - (b) the court or courts which may give permission for the purposes of this section,
 - (c) any considerations to be taken into account in deciding whether permission should be given, and
 - (d) any requirements to be satisfied before permission may be given,**and may make different provision for different circumstances.**

Appeals to the Court of Appeal

- Smith v Cosworth Casting Processes Ltd [1997] 1 WLR 1538 at [1] and [2]
- Lord Woolf MR
- The power to refuse permission to appeal only arises if the appeal does not have a real prospect of success: **"The court will only refuse leave if satisfied that the applicant has no realistic prospect of succeeding on the appeal"** (original emphasis) and even then, the court has a discretion to give permission.

Appeals to the Court of Appeal

- Williams v Williams [2023] EWCA Civ 1465 at [23]
- Nugee LJ
- “decisions by the Court of Appeal whether permission to appeal should be granted, will usually be made on paper by a single Lord or Lady Justice. That, contrary to a submission of Mr Adams, seems to me to be plainly an exercise of judicial decision making and not an administrative or executive decision in any sense at all.”

Appeals to the Court of Appeal

- **McDonald v Rose** [2019] EWCA Civ 4, at [21]
- *(a) The date of the decision, the decision hearing for the purposes of r.52.12, is the date of the hearing at which the decision is given. This may be ex tempore or by the formal handdown of a reserved judgment . . .*
- *(b) An application for permission to appeal from the lower court should normally be made at the decision hearing. The application can be made in advance of the hearing in writing by counsel, i.e. where attendance has been excused from the formal hand-down.*

Appeals to the Court of Appeal

- **McDonald v Rose** [2019] EWCA Civ 4, at [21]
- *(c) While the decision to grant or refuse permission will usually be made at the decision hearing, a judge may need to consider whether further submissions are necessary or time to consider the decision is needed. In such circumstances, the permission decision may postdate the decision hearing.*
- *(d) Where a party is not able to make an application at a decision hearing, they must ask for the hearing to be formally adjourned to give them time to do so If the adjournment is granted, the judge should set a timetable for written submissions. The adjourned application should then, normally, be determined on the papers. The permission decision in such circumstances when given is deemed to have been made at the decision hearing.*

Appeals to the Court of Appeal

- **McDonald v Rose** [2019] EWCA Civ 4, at [21]
- *(e) Applications to adjourn were, however, to be deprecated. They would generally be unnecessary irrespective of whether the judgment was ex tempore or, where there was a formal hand-down a draft judgment had been circulated to the parties. It was accepted that in certain circumstances an adjournment may be necessary to enable the parties to formulate their grounds of appeal and their submissions in support.*
- *(f) Where an application to adjourn the decision hearing is made, it should be accompanied by an application to extend time to file the appellant's notice. This is to avoid the risk that time to file the appellant's notice, which continues to run from the decision date, will run out. An adjournment does not automatically extend time to file the appellant's notice . . .*

Appeals to the Court of Appeal

- **McDonald v Rose** [2019] EWCA Civ 4, at [21]
- *(g) Both parties and the judge should be aware that an application to extend time to file the appellant's notice will also be required in any situation where a permission decision is not made at the decision hearing. If a judge requires time to consider whether to grant permission, an extension of time may be necessary, unless it is apparent that they will be able to give their decision well within the 21-day period to file the appellant's notice.*
- *(h) Where an extension of time is to be granted, 21 days after the permission hearing was the default position. Before making such an order the judge should consider if it was necessary to do so. It may be reasonable to expect the party seeking the extension to be able to file their appellant's notice more promptly.*
- *(i) If no permission application is made at the decision hearing, and there has been no adjournment, the lower court has no jurisdiction to consider a retrospective application for permission to appeal. . .*

Appeals to the Court of Appeal

- Section 54(4), Access to Justice Act 1999
- **54.— Permission to appeal**
- **(4) No appeal may be made against a decision of a court under this section to give or refuse permission (but this subsection does not affect any right under rules of court to make a further application for permission to the same or another court).**

Appeals to the Court of Appeal

- **Rickards v. Rickards** [1990] Fam. 194, 201
- Lord Donaldson MR
- "In my judgment what Lane v. Esdaile decided, and all that it decided, was that where it is provided that an appeal shall lie by leave of a particular court or courts, neither the grant nor refusal of leave is an appealable decision."

Appeals to the Court of Appeal

- **CPR 52.30—(1) The Court of Appeal or the High Court will not reopen a final determination of any appeal unless—**
 - (a) it is necessary to do so in order to avoid real injustice;
 - (b) the circumstances are exceptional and make it appropriate to reopen the appeal; and
 - (c) there is no alternative effective remedy
- (2) In paragraphs (1), (3), (4) and (6), “appeal” includes an application for permission to appeal.**

Appeals to the Court of Appeal

- Lane v Esdaile
- Lord Chancellor, Lord Halsbury
- *"How could any Court of Review determine whether leave ought to be given or not without hearing and determining upon the hearing whether it was a fit case for an appeal?"*

Appeals to the Court of Appeal

- **Ceredigion Recycling and Furniture Team v Pope**
[2022] EWCA Civ 22
- The only jurisdiction to reopen an application for permission to appeal is under CPR 52.30

Appeals to the Court of Appeal

- **Yorkshire Bank v Hall** [1999] 1 All ER 879 [1999] 1 WLR 1713at 1725G
- Robert Walker LJ
- **“once an appeal reaches the Court of Appeal for hearing, its power to regulate its own proceedings, and to permit new points to be taken, cannot be rigidly limited by the terms on which leave has been granted”.**

Appeals to the Court of Appeal

- **CPR 52.21-**
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- **(5) At the hearing of the appeal, a party may not rely on a matter not contained in that party's appeal notice unless the court gives permission.**



Thank you for joining

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