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## How to agree on a reasonable extension

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**John Bramhall and Melissa Jones examine Lord Justice Jackson's ruling on extensions of time**

In *Hallam Estates and Anr v Baker* [2014] EWCA Civ 661, Lord Justice Jackson clarified the effect of his recent civil justice reforms on applications for extensions of time. He welcomed the fact that his recommendation on being less tolerant of unjustified delays and breaches of orders had been implemented (by way of amendment to CPR 3.9).



However, he noted that "it was no part of my recommendations that parties should refrain from agreeing reasonable extensions of time, which neither imperil hearing dates nor otherwise disrupt the proceedings..."

"Nor was it any part of my recommendations that the court should refuse to grant reasonable extensions of time."

Jackson LJ also referred to the recent amendment to CPR 3.8, which came into force on 5 June, allowing parties to agree extensions up to a maximum of 28 days, provided that the extension does not put any hearing date at risk.

In this respect he noted that "legal representatives are not in breach of any client duty, when agreeing to a reasonable extension which neither imperils future hearing dates nor otherwise disrupts the conduct of litigation.

"On the contrary, by avoiding the need for a contested application they are furthering the overriding objective and also saving costs for the benefit of their own clients."

Jackson LJ also confirmed that 'in-time' applications for an extension of time (i.e. made before the time for compliance has passed), even if dealt with by the court after the expiry of the relevant period, will be dealt with in accordance with the overriding objective and that the guidance in *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537 is not applicable (confirming the recent first instance decision of *Kaneria v Kaneria* [2014] EWHC 1165 (Ch)).

However, it should be remembered that applications for retrospective extensions of time (i.e. made after the time for compliance has passed) will be treated as applications for relief from sanction and the guidelines in *Mitchell* will therefore apply.

This position was confirmed in *Associated Electrical Industries Ltd v Alstom UK* [2014] EWHC 430 (Comm), *McTear and Anr v Engelhard and Ors* [2014] EWHC 722 (Ch) and, more recently, by the Court of Appeal in *Baho and Ors v Meerza* [2014] EWCA Civ 669, in which the court refused a request for a retrospective time extension for filing an appeal notice (served seven days late) in relation to a committal order.

## KEY POINTS

- Be clear about the circumstances in which you are permitted to agree an extension of time. Where CPR 3.8(3) does not apply (i.e. where the rule, practice direction or court order which requires a party to do something, does not specify the consequences of a failure to comply), you are generally free to grant an extension of time (in accordance with CPR 2.11).
- However, check the relevant sections of the CPR to make sure that the extension you are seeking to agree is not prohibited. For example, CPR 26.3(6A) specifically prohibits the parties from agreeing an extension for compliance with the matters specified in the notice of allocation, including filing of the directions questionnaire. Also, time limits relating to appeals cannot be varied by the parties (see CPR 52.6).
- If you are agreeing to an extension under the new provisions of CPR 3.8(4), remember that the extension can be for a maximum of 28 days. Also, if the extension would put at risk any hearing date, you are not permitted to agree it without the court's permission.
- If you are unable to agree an extension of time, you must make an application to court before the time for compliance has passed. If you do not, the application will be treated as an application for relief from sanction and the strict guidelines laid down in Mitchell and subsequent cases will apply.
- If you receive a request for an 'in time' extension of time, be mindful of Jackson LJ's message in Hallam Estates, that in furtherance of the overriding objective, parties should accede to reasonable requests for extensions of time which will not impact on any future hearing dates or otherwise disrupt the conduct of the litigation.

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